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### What is a Psychiatrist's Medico-Legal Independent Medical Examination (IME)?

An IME is a medical examination performed by a physician who evaluates if medical conditions are present and to what extent. In the context of evaluating **mental health conditions** relevant in a medical-legal setting, a **forensic psychiatrist** would perform this evaluation. The term IME is used interchangeably between Independent Medical Examination or Evaluation.

*In the medical-legal context, the IME is a “face-to-face” interview by a Forensic Psychiatrist. The term “face-to-face” could be by video though it is traditionally in-person.*

*Unique training in conducting an IME is reflected in Board-Certification in Forensic Psychiatry.*

#### **When Would It Be Helpful to Have a Psychiatric IME?**

An IME can assess if there are mental health issues present, and if so, how they are impacting the evaluatee regarding a legal question.

I am sometimes asked if a psychologist can conduct an adequate exam. A psychiatrist is a physician and brings medical knowledge and qualifications to the table, but ultimately it depends on the case. Feel free to contact me with your questions.

**Litigation, Damages.** Common examples are evaluating damages associated with emotional distress if emotional distress—mental health problems—are found to be the case.

**Torts.** Psychiatric conditions may play a part in behavior that is alleged to be consequential legally. A forensic psychiatrist may be retained to conduct an IME in such cases.

**Criminal.** In criminal matters, a Forensic Psychiatrist may address the question of criminal responsibility or competency to stand trial if allegations are made that a psychiatric condition is present or relevant.

**Insurance/Disability.** IMEs are commonly requested in psychiatric disability cases where an IME can help determine if a mental illness is present that is impacting the evaluatee's ability to work or return to work.

**Occupational.** Fitness for Duty is the assessment of an employee to determine if a mental illness exists and if the person can perform the essential functions of their job. An FFD IME by a forensic psychiatrist may be requested to assess this question.

### **What Topics Are Covered During an IME?**

The forensic psychiatrist would obtain information from the evaluation by conducting a clinical interview, during which the examiner obtains the evaluatee's

- medical history,
- mental health history,
- substance use history,
- social history,
- educational history,
- occupational history, and
- family history

More information may be discussed. This is not a limiting list.

The evaluator would also ask questions to assess general well-being and cognition, or thought processes, and evaluate and assess if a mental illness is present and, if so, its severity. Common reasons to expand the scope of the exam is if records are inconsistent with the evaluatee's responses. In addition, during the course of the IME, an evaluatee may provide a history which indicates closer examination / discussion.

Before the IME, the evaluator would review relevant records, including prior medical or mental health records and job records. If the IME precedes records review, and questions are raised that were not addressed in the IME, the examiner may request a supplemental IME. Alternatively, the forensic psychiatrist's report of findings can address concerns raised by records post-IME.

### **Malingering**

*Detection of Malingering is in the training of a Forensic Psychiatrist, but not a clinical psychiatrist.*

*Ruling out, or ruling in, Malingering is always present in a Forensic Psychiatric IME.*

## **Why Can't Your Client's Primary Care Provider or Psychiatrist Perform the IME?**

In a forensic IME, the psychiatrist does not personally know the evaluatee prior to the evaluation. This ensures an unbiased evaluation. Otherwise, a conflict of interest exists: the dilemma of the clinical treating doctor.

### **Conflict of interest is a legal consideration.**

In a clinical exam, a provider might know the patient, and that is a different matter outside the scope of this discussion.

A forensic psychiatrist takes on an evaluative role and is not expected to give treatment to the evaluatee.

Additionally, a treating provider most likely is not trained to perform an IME.

The treating provider may also be biased favorably toward the evaluatee, and the results of the evaluation could complicate the treatment relationship going forward.

Clinicians have no training in the meaning and significance of Discovery, trial schedules and the legal role or obligations of an Expert Witness.

A disclosed Expert Witness vs. a consultant to an attorney about the psychiatric questions in a case also have legal ramifications. Clinical psychiatrists are untrained in this area and unqualified to address it.

*A clinical examination is not a medical-legal IME.*

*In fact, it bears little resemblance.*

*The clinician focuses on diagnosis and treatment in real-time.*

*A clinical exam does not take into account an event timeline where the “event” has legal consequences.*

*For example, before and after a car accident, during the commission of a crime, or a wrongful death claim associated with medical triage.*

## **Can a Psychologist Conduct the Same IME as a Psychiatrist?**

From time to time, I am asked if a psychologist can conduct the same IME as a Psychiatrist.

The answer depends on the facts and features of the case, if there are medical conditions, and the expertise of the Psychologist.

A Forensic IME is unique, and most psychologists are not trained in the distinction from the assessment used for treatment purposes only. Psychologists are qualified to diagnose and treat.

Before retaining a psychologist, attorneys are encouraged to take a close look at the expertise, experience, credentials, and qualifications of the Psychologist. [2]

A Board-Certified **Forensic Psychiatrist**, a physician, is trained and qualified to conduct a Forensic IME.

If there are no medical issues involving **health conditions, medical records, medication, medical treatment, medical history**, or a possibility of these, and the Psychologist has adequate qualifications, a psychologist may be able to conduct the IME.

*A psychologist utilizes their doctorate level training to diagnose and treat mental health disorders, mainly through psychotherapy.*

*While they do not have the medical training or licensing to prescribe medications,[1] a licensed psychologist may believe a medication regimen could help their clients and, accordingly, recommend their clients seek medical attention with a psychiatrist.*

*This is a treatment question, not a medical-legal assessment*

### **What Is the Process of Obtaining an IME?**

An IME can be requested by an attorney or HR organization by contacting a forensic psychiatrist. A formal request to the Forensic Psychiatrist is usually submitted.

In order to maintain an unbiased evaluation, it is recommended that the evaluatee not contact the forensic psychiatrist to arrange the evaluation. Communication from a Plaintiff or Defendant always passes through the attorney representing them.

After the evaluation, the forensic psychiatrist formulates a report and shares the findings with the retaining attorney or organization rather than sharing the findings directly with the evaluatee. This decision is not made by the forensic psychiatrist.  
In the case of litigation, the report may be discoverable.

### **How confidential is the IME?**

An IME is not covered by HIPAA as the evaluatee is not forming a treatment relationship with the forensic psychiatrist. Prior to undergoing an IME, the evaluatee would give

consent to participate in the evaluation and for the results to be released to the party who hired the evaluator and potentially to others related to the case.

The evaluatee is not required to answer all questions asked during an IME, but it may be documented if they choose not to answer a question. The evaluatee should speak to their lawyer prior to getting an IME.

## Endnotes

[1] As of this writing, Psychologists can prescribe in Idaho, Illinois, Iowa, Louisiana, and New Mexico; "[In those states, appropriately trained psychologists can be granted the right to prescribe medications.](#)" APA, APA Services, Inc.

[2] Psychologists may obtain a [PhD or PsyD](#) (APA). The PsyD has received a clinical/treatment focus in training. A few PhD and PsyD programs exist that include forensic training. Of note: fewer than 400 licensed psychologists in the US hold relevant specialty training and [Board-Certification in Forensic Psychology](#) granted by the American Board of Professional Psychology ([ABPP](#)).

## **More Information**

The American Academy of Psychiatry and the Law ([AAPL](#)) issued Guidelines to Psychiatrists for the Forensic Assessment in 2015, [AAPL Practice Guideline for the Forensic Assessment](#). *Graham D. Glancy, Peter Ash, Erica PJ Bath, Alec Buchanan, Paul Fedoroff, Richard L. Frierson, Victoria L. Harris, Susan J. Hatters Friedman, Mark J. Hauser, James Knoll, Mike Norko, Debra Pinals, Marilyn Price, Patricia Recupero, Charles L. Scott and Howard V. Zonana. Journal of the American Academy of Psychiatry and the Law Online June 2015, 43 (2 Supplement) S3-S53*

Training in conducting a forensic evaluation is a key element in *Forensic Psychiatry* Fellowship, a necessary prerequisite to Board-Certification in Forensic Psychiatry. In addition to the features of an IME described in this article and the AAPL Guidelines, Fellowship training includes detection of malingering, which can be relevant in the forensic psychiatrist's findings. Clinical psychiatrists are not trained in conducting a medical-legal IME.



## **ABOUT THE AUTHOR**

Dr. Quimson-Guevarra is a Board-Certified Psychiatrist and Forensic Psychiatrist practicing medicine in Oregon.

She renders medical opinions in legal matters and treats patients in private practice.

Dr. Quimson-Guevarra understands the confusion faced by attorneys and employers who do not know what happens in an IME where legal issues are at stake vs. what a doctor does in an exam with a patient.