

Medical Negligence Claims - Should Plaintiff Lawyers Accompany Their Clients To "Independent" Medical Examinations?

Darren Moore, Qld

When you act for a Plaintiff claiming damages for personal injuries caused by a doctor's negligence in performing an operation or failing to warn the patient of possible adverse consequences, the Solicitors for the Defendant will invariably request that your client undergo an "independent" medical examination. Such an examination will no doubt be conducted by a specialist practising in the same field as the defendant doctor.

Recently Plaintiffs who have undergone such examinations have been subjected to "verbal bullying" by the examining doctor. Instead of confining the examination to questioning the Plaintiff on the past history, current symptoms and then a physical examination, the Plaintiffs have been urged to discontinue their claims, informed of the Defendant's long standing and expertise in the field, told that they will go bankrupt if they lose their case and that the only people who will make any money from the case are their solicitors.

It should be stressed that not all independent medical examiners engage in such action but even one occurrence of it is too many. Plaintiffs who are seeking damages for personal injuries caused by medical negligence are often suffering from physical deformities which have caused them psychological symptoms. Being subject to a verbal assault by an examining doctor is the last thing that they should have to endure.

Accordingly, the issue arises as to whether the Plaintiff's lawyer should accompany them to the independent medical examination to ensure that no such conversations occur and the examination takes place within the accepted guidelines and practice. Therefore, when responding to a Defendant's request for a medical examination it would be beneficial to

include a condition on such examination that the Plaintiff be accompanied to the examination by their lawyer.

Initially the Solicitors for the Defendant will obviously take exception to such a condition and the doctor may refuse to examine a Plaintiff if accompanied by a lawyer. However, unlike actions for personal injuries caused by motor vehicle accidents, there is no power in the Court to stay a Plaintiff's claim if they do not submit to an independent medical examination.

In a recent matter in Queensland before His Honour District Court Judge Botting sitting in Chambers, the Plaintiff sought an order that an independent medical examination take place only on the condition that her solicitor accompany her to such an examination. His Honour refused to make any order in the matter stating that he had no power to order a person to undergo a medical examination, the conditions of which could not be agreed on, as it would be equivalent to ordering her to undergo an assault. However, it was subsequently agreed between the parties that the Plaintiff's lawyer could accompany her to the medical examination after the Plaintiff signed an authority directed to the examining doctor.

However, it should be noted that if the Plaintiff's lawyer does accompany the plaintiff to the examination, their only duty is to ensure that unwarranted questions and conversations do not take place and the doctors confine themselves to questions, conversations and physical examinations in accordance with the usual practice. The Plaintiff's lawyer should not attempt to interfere with the medical examination or hinder the doctor in such examination.

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