

CERTIFIED MEDICAL EXAMINATIONS

The insurance company for the party at fault in a motor vehicle accident has the right to request that an injured person submit to a “Certified Medical Examination”. They are entitled to ask for this examination under the “*Minor Injury Regulations*” (Alberta). This memo explains the process, and what you should do.

Firstly, the insurance company is almost always the one setting this up, and they will be paying for it. The injured person does not have the right to refuse it (without potentially dire consequences for their claim). Your lawyer and you do have a limited right to participate in the selection of the doctor who will do it, and we make every effort to ensure that the doctor who examines our client is one we consider “fair”. The doctor’s office will make arrangements with the injured person directly for the time and place for you to attend - we do not participate in making the arrangements.

The doctor who will examine you is a qualified medical doctor (and often is a specialist) but is not, strictly speaking, “working for the insurance company”. He or she usually has their own regular medical practise (sometimes they are retired from active practise). They have put their name down on the list of available medical doctors who have indicated they are willing to perform “Certified Medical Exams” (CME’s) for a fee; however, they are not NOT there to treat you, nor to give you medical advice. This doctor has but ONE purpose when doing the CME, and that is to determine whether some or all of the injuries you suffered in the motor vehicle collision are “minor” in their opinion, as that term is defined in the “*Minor Injury Regulations*”. While this doctor’s opinion is not final, it is significant. If the CME doctor makes a determination that you do have a minor injury, that opinion may be very difficult to overcome in future. If one or more of the injuries are found ultimately (by a Court) to be minor, your claim for compensation for pain and suffering for those injuries is “capped”; (you may still have other injuries that are not capped, and these can co-exist. For example, you might have a “minor injury” to your neck, and a “non-minor” injury to your back).

“Minor Injury” is defined as:

“minor injury”, in respect of an accident, means
(i) a sprain,
(ii) a strain, or
(iii) a WAD injury
caused by that accident that does not result in a serious impairment;

“Sprain” and “strain” are defined as:

(k) “sprain” means an injury to one or more tendons or ligaments, or to both;
(l) “strain” means an injury to one or more muscles;

“WAD injury” is defined as:

“WAD injury” means a whiplash-associated disorder other than one that exhibits one or both of the following:
(i) objective, demonstrable, definable and clinically relevant neurological signs;
(ii) a fracture to or a dislocation of the spine.

Even if you have “only” suffered a sprain, strain or whiplash, it is not necessarily a capped injury if it nevertheless eventually results in a serious impairment. A “serious impairment” is defined as:

(j) “serious impairment”, in respect of a claimant, means an impairment of a physical or cognitive function:
(i) that results in a substantial inability to perform the

- (A) essential tasks of the claimant's regular employment, occupation or profession, despite reasonable efforts to accommodate the claimant's impairment and the claimant's reasonable efforts to use the accommodation to allow the claimant to continue the claimant's employment, occupation or profession,
- (B) essential tasks of the claimant's training or education in a program or course that the claimant was enrolled in or had been accepted for enrolment in at the time of the accident, despite reasonable efforts to accommodate the claimant's impairment and the claimant's reasonable efforts to use the accommodation to allow the claimant to continue the claimant's training or education, or
- (C) normal activities of the claimant's daily living,

- (ii) that has been ongoing since the accident, and
- (iii) that is expected not to improve substantially;

You can see that it is not merely an enquiry into what injuries you suffered, but how those injuries may be affecting your life. Therefore, when you attend the CME, it is important for you to remember the following:

1. It is perfectly okay to speak with the doctor or any of his/her assistants (they will be contacting you about booking), but do not discuss anything with the insurer directly. Refer the adjuster back to us if they attempt to contact you.
2. It is very important to review the attached selection from the the "*Minor Injury Regulations*", so that you understand the process and the potential problems that can arise from a non-compliance.
3. The doctor cannot be someone who has treated you before. If you think that you have been seen by this doctor at some time in the past, please inform me immediately.
4. Make sure you get to the appointment on time. Make proper arrangements for time off work, child care and parking, etc., so you are not distracted. The appointment should be completed in 1 hour, but it might be shorter or longer. You may be asked to put on a hospital gown (remember, this is a real doctor).
5. During the Certified Medical Examination,
 - a. Answer every question fully, truthfully and honestly;
 - b. Do not do anything to "obstruct" the assessment; you are required to co-operate;
 - c. Neither exaggerate nor under-play your injury or problems;
 - d. The doctor may enquire both as to your injuries and the effects they are having on your life, whether they are causing you any disability (problems); be prepared to answer;
 - e. The doctor can ask you any "relevant question", and you should answer; if you do not understand the relevance, or do not agree that the question is relevant, you are entitled to challenge it;
 - f. If you don't understand a question, ask the doctor to explain it;
 - g. If you are having injury-related problems with work, school or daily activities (sleeping, eating, housekeeping, yard-work, recreational, etc.) and you are asked about these things, you must fully inform the doctor of the problems. Feel free to volunteer information about any difficulties you are having with functioning due to the injuries;
 - h. The doctor has the right to ask that you sign forms authorizing the release of other medical information s/he may need (prior charts); you should sign this if requested to;
 - i. The doctor does not have the right at this time to ask that you submit to any invasive tests (such as X-rays, CT scans, blood tests, etc.); if this is requested, politely refuse and refer the doctor to our office. If we determine that you should submit to such testing, that can always be done later.

6. Make notes afterwards about what the doctor did and what body parts he or she examined, what testing was done (squatting, reaching, range of motion, etc.), how long the examination took, what questions you were asked, what answers you gave, and so forth. If the doctor reports that your injuries are “minor”, your notes will give us a basis upon which to challenge the validity of the opinion later if we do not agree (for example, he wasn’t thorough, or didn’t ask the right questions, or didn’t write down what you told him). This is especially true if you feel that the examination did not properly investigate what you feel your injuries or problems are. If something was missed, make a note of that in particular.
7. You should be keeping a detailed diary or journal of your experience from the collision in any event. If you have not been doing this, start one now. Bring it up to date and make entries from here on in.
8. It is VERY important to ensure that your own family doctor and other treating professionals (chiropractor, physiotherapist, etc.) fully understand everything about your injuries and the effects these are having on your life as well. Make sure you inform your own treatment providers regularly about all this, and make sure they are noting it down.

Please ensure that you attend the CME appointment once it is booked. Failing to attend without adequate excuse, or failing to co-operate with the doctor at the CME, can result in your injuries being deemed “minor”.

Thank you. Please call if you have any questions, and please send me a copy of the notes you make after the appointment so I can put them on your file.

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Minor Injury Regulations, Part 3

- 8(1)** If a claimant and a defendant disagree as to whether an injury sustained by the claimant as a result of an accident is or is not a minor injury, either party may give notice to the other party in the prescribed form
- (a) stating that the party giving notice desires to have a certified examiner assess the claimant for the purpose of giving an opinion as to whether the injury is or is not a minor injury, and
 - (b) specifying the name of the proposed certified examiner.
- (2)** If, on receipt of a notice under subsection (1), the other party
- (a) accepts the certified examiner proposed under subsection (1)(b), that party must, within 14 days, so notify the party giving notice under subsection (1), or
 - (b) does not accept the certified examiner proposed under subsection (1)(b), that party must, within 14 days, so notify the party giving notice under subsection (1) and provide the name of a certified examiner that the party is willing to accept.
- (3)** If a party fails to provide notice under subsection (2), that party is considered to have accepted the certified examiner proposed under subsection (1)(b).
- (4)** If the parties cannot agree on a certified examiner to assess the claimant, either party may apply to the Superintendent in the prescribed form to select a certified examiner to assess the claimant.
- (5)** The Superintendent must, within 5 business days after receiving an application under subsection (4), select a certified examiner from the certified examiners register.
- (6)** The Superintendent may not select a certified examiner who was proposed by either party under this section.
- (7)** Notwithstanding anything in this section,
- (a) neither the claimant nor the defendant may give notice under subsection (1) until at least 90 days have passed since the accident;
 - (b) only one assessment of the claimant in respect of the accident may be carried out under this section;
 - (c) a certified examiner is not eligible to assess a claimant under this section if the certified examiner
 - (i) has diagnosed or treated the claimant, or
 - (ii) has been consulted with respect to the diagnosis or treatment of the claimant in respect of any injury arising from the accident.

Scheduling of assessment

- 9(1)** The certified examiner must make reasonable efforts to schedule the assessment of the claimant for a time that is convenient for the claimant and that is within 30 days of the referral to the certified examiner.
- (2)** For the purpose of subsection (1), the certified examiner must give notice in writing to the claimant of the date, time and location of the assessment.

Assessment by certified examiner

- 10(1)** For the purpose of giving an opinion as to whether the claimant's injury is or is not a minor injury, the certified examiner must assess the claimant to determine in accordance with section 4
- (a) whether the claimant's injury is a sprain, strain or WAD injury, and
 - (b) if the claimant's injury is determined to be a sprain, strain or WAD injury, whether the sprain, strain or WAD injury results in a serious impairment.
- (2)** For the purpose of conducting an assessment of the claimant, the certified examiner may
- (a) request the claimant to authorize in writing the release of any relevant diagnostic, treatment or care information in

respect of the claimant that is in the possession of a physician or other person, including a regional health authority, and

(b) receive from the claimant or the defendant any information that either party considers relevant to the assessment.

(3) If the claimant, without reasonable excuse,

(a) fails to attend an assessment for which notice has been given under section 9 or 11(3),

(b) refuses to answer any relevant questions of the certified examiner about

(i) the claimant's medical condition or medical history, or

(ii) matters referred to in section 1(j)(i) that relate to the claimant,

(c) fails to authorize the release of any relevant diagnostic, treatment or care information in respect of the claimant

pursuant to subsection (2)(a), or

(d) in any other way obstructs the certified examiner's assessment,

the claimant's injury shall be considered to be a minor injury.

Opinion of certified examiner

11(1) The certified examiner must, within 30 days of the certified examiner's assessment of the claimant, prepare an opinion in the prescribed form as to whether the claimant's injury is or is not a minor injury and provide a copy of that opinion to each party.

(2) Notwithstanding subsection (1), if the certified examiner is not able to provide an opinion under subsection (1) without further assessing the claimant, the certified examiner may, on written notice to the parties, require the claimant to attend a further assessment, in which case the certified examiner must provide an opinion under subsection (1) within 30 days of that further assessment.

(3) A notice under subsection (2) must contain

(a) the reason for the further assessment of the claimant, and

(b) the date, time and location of the further assessment.

(4) A further assessment of the claimant under subsection (2) must be completed within 6 months of the first assessment of the claimant.

Prima facie evidence

12 The opinion of the certified examiner is prima facie evidence that the claimant's injury is or is not a minor injury, as the case may be.

Note: "**Prima facie**" is Latin; it is a legal presumption which means "on the face of it" or "at first sight". If something is *prima facie*, it creates a "rebuttable presumption"; further information can always change the initial presumption.