

**BEST TOOLS FOR DEFENSE:  
INDEPENDENT MEDICAL EXAM  
RECORDS REVIEW  
UTILIZATION REVIEW  
AMA IMPAIRMENT RATING**

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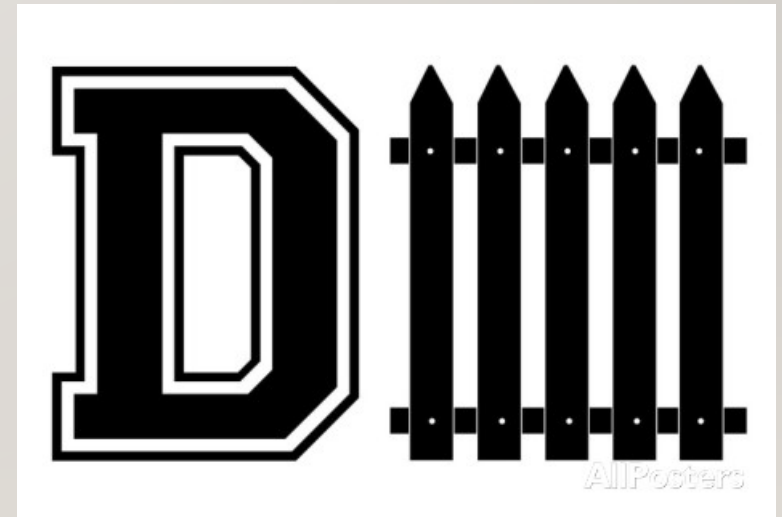
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# OVERVIEW

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- Defense Tools
  - IME, Records Review, Utilization Review, and Impairment Rating
- Applicable Statutes and Requirements
- Options for Use in Defense
- Benefits/Drawbacks of Tools



## DEFENSE TOOL: IME

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- Statutory provision
- The Language of Section 12 of the Act:

An Employee entitled to receive disability benefit payments shall be required, if requested by the Employer, to submit himself/herself for an examination by a duly qualified medical practitioner or surgeon selected by the employer.

# DEFENSE TOOL: IME

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- Requirements set forth in Section 12:
  - Time/Place reasonable to employee
  - In state or out of state
  - With a duly qualified practitioner
  - Costs paid by Employer:
    - Examination costs
    - Travel (including mileage, meals, lost wages)

# DEFENSE TOOL: IME

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- Refusal to Attend or Obstruction
  - Terminations of benefits (temporarily suspend until examination takes place)
  - Dealing with no shows: Typically ER will face the costs or penalties of no-show or late cancellation.



# IME: AT TRIAL

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- Is testimony of IME physician necessary?
- IME admissible into evidence
- Arbitrator/Commission will weigh credibility of treating physician vs. IME physician

## IME: AT TRIAL

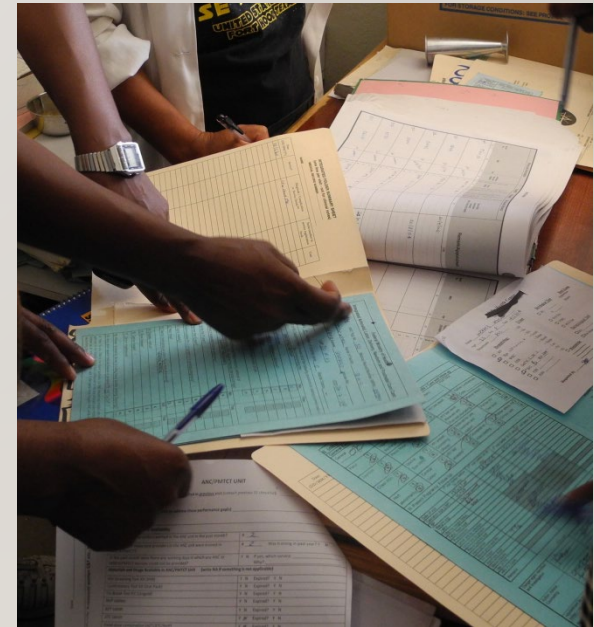
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- Strategic considerations for choosing IME physician
  - Credibility
  - Availability for exam and deposition
  - Turn around time for receipt of report (is case set for hearing?)
  - Value of case

# DEFENSE TOOL: RECORDS REVIEW

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- What is a Records Review?
  - Evaluation and review of records by a physician, typically retained by employer, to assess medical treatment and respond to questions regarding past/prospective medical treatment.

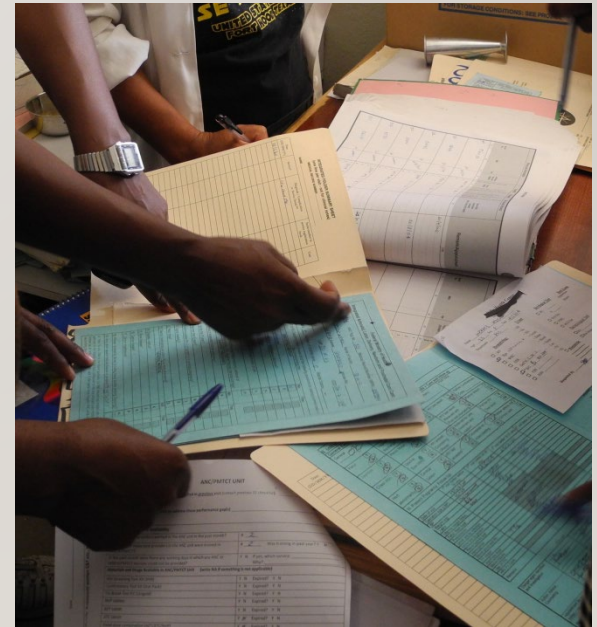




# DEFENSE TOOL: RECORDS REVIEW

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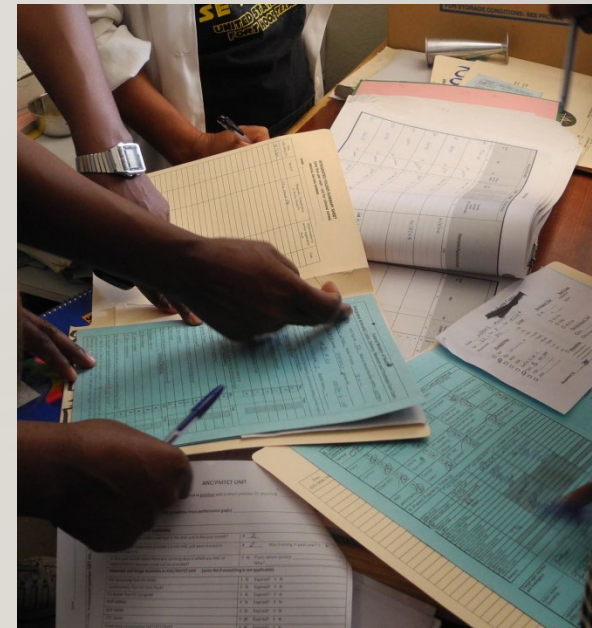
- Statutory provision
  - No provisions in the Act for use of Records Reviews



# RECORDS REVIEW: AT TRIAL

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- Not often used a trial :
  - Credibility issue (No in person exam)
  - Opposing counsel will likely object to admission into evidence
  - If ER receives a favorable report, schedule IME to boost credibility



# DEFENSE TOOL: UTILIZATION REVIEW

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- Statutory provision
  - Section 8.7: A “utilization review” is an evaluation of proposed or provided health care services to determine the appropriateness of both the level of health care services **medically necessary** and the quality of health care services provided, including evaluation of their **efficiency, efficacy, and appropriateness of treatment ... based on medically accepted standards.**
- Evaluates reasonableness and necessity.



# DEFENSE TOOL: UTILIZATION REVIEW (UR)

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- What does Utilization Review Include?
  - Prospective Reviews
  - Second Opinions
  - Retrospective review (excluding emergency treatment or first aid)



# UR: REQUIREMENTS

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- Subject to guidelines required that the reviewer evaluate the treatment based on standards of care of nationally recognized peer review guidelines and nationally recognized treatment guidelines and evidence-based medicine.
  - Reviewer must be registered with the Department of Insurance every 2 years.
- If payment denied or authorization is refused per UR, the EE and his/her provider have burden of proof to show, by a preponderance of the evidence, that the variance from the standards of care was reasonably required to cure/treat the patient.



## UR: HOW CAN I USE IT?

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- Can deny payment or refuse authorization if *extent and scope of medical treatment is excessive and unnecessary*
- Legitimate defense to petition for penalties
- Good for evaluating ongoing treatment (e.g., extensive therapy, ongoing pain medication use)
- Provides findings fairly quickly (in comparison to obtaining IME) to advance litigation of claim

# UTILIZATION REVIEW: AT TRIAL

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- UR professional can be deposed
- UR admissible into evidence
- Report must be addressed along with all other evidence in the determination of reasonableness and necessity

# UTILIZATION REVIEW

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- Benefits:
  - An efficient way to get a medical opinion on the reasonableness and necessity of treatment with respect to procedure or volume (number of PT visits/injections)
  - Allows ER to advance litigation of claim with relatively low expenses
  - Short turn around time for receipt of report (in comparison to IME)

# UTILIZATION REVIEW

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- Drawbacks
  - Does not address causation (different than an IME)
  - Does not address impairment or permanent partial disability
  - Does not address return to work status/entitlement to TTD benefits
  - Requires consent and cooperation from petitioner to allow respondent to contact treating physician for information needed to complete the UR

# UTILIZATION REVIEW

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- Case law?
- ***Centeno v. Illinois Workers' Compensation Commission***, 2016 IL App (2nd) 150575WC-U (this order was filed under Supreme Court Rule 23 and cannot be cited as precedent), the claimant suffered a back injury and visited his chiropractor 88 times. The employer sent the bills to utilization review, which found that only 6 visits were medical necessary. Based on the UR denial, the Illinois Workers' Compensation Commission found that the employer was not required to pay \$30,461.68 in medical bills.
- These unpaid bills do not disappear and they remain the responsibility of the injured worker to pay. **820 ILCS 305/8.2(e-20)** ("Payment for services deemed not covered or not compensable under this Act is the responsibility of the employee unless a provider and employee have agreed otherwise in writing.")



# DEFENSE TOOL: AMA IMPAIRMENT RATINGS

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- In 2011, the Illinois legislature joined several other states in the country by adopting the use of AMA impairment ratings to be used in determining PPD
  - Not a conclusive means of establishing PPD
  - Measures “impairment” versus “disability”



# DEFENSE TOOL: AMA IMPAIRMENT RATINGS

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- Statutory provision
  - Section 8.1b states the IWCC shall consider in its determination of PPD the medically reported level of impairment as well as the occupation of the employee, the age of the employee at the time of injury, the employee's future earning capacity and "evidence of disability corroborated by the treating medical records," with no sole factor being determinative of disability.
- For accidents occurring on or after 9/1/2011, Section 8.1b applies
  - When requested, a physician is to give an impairment rating using objective clinical findings along with the most current AMA Guidelines.
    - IWCC Chairman's memo states that an AMA rating is not required for settlements, and Arbitrators may enter PPD award without an impairment report.
  - The Arbitrator or IWCC must explain how these factors weighed in the decision.



# DEFENSE TOOL: AMA IMPAIRMENT RATINGS

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- Nuances of weight given to impairment ratings
  - “Shall consider” along with the other factors listed
  - The “impairment” rating is not a “disability rating,” but *a factor* in determining the disability

# IMPAIRMENT VS. DISABILITY

## IMPAIRMENT

-Is the limits on an individual's body functions in acts of daily living.

-Requires Medical evaluation and opinion

## BOTH

-Both are "factual findings."

-Compromise Legislation:

The IWCC must find PPD based on AMA rating, if presented, as well as several other factors leaving the ultimate finding—extent of PPD—on the IWCC

## DISABILITY

-Is the impact of such functional limitations on the performance of work duties and the future earning capacity as a result.

-A finding of fact left to the IWCC



# HOW IS SECTION 8.1 (b)(I) APPLIED?

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- MMI must occur prior to AMA impairment rating.
- Report must be prepared by a physician licensed to practice medicine in all of its branches
- Act does not require that physician be certified to perform an AMA rating, but greater weight presumably given to “certified” physician
- AMA Guides indicate that treating doctors should *not* be doing AMA impairment ratings as they are not independent (but they can...)
  - Respondent/Carrier cannot request rating from treating physician without prior written approval from Petitioner or his/her attorney
- IME physician can provide an impairment rating
- Once obtained, other factors must still be considered



# OBTAINING AN AMA IMPAIRMENT RATING

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- When should I obtain an AMA impairment rating for a claim?
  - A. In every case when the claimant has reached MMI?
  - B. When the employer requests one
  - C. When the employee requests one
  - D. When the IWCC requests one
  - E. When there is a good reason to request one



# STRATEGIC USE OF IMPAIRMENT RATINGS

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- Generally use only in special or high value PPD cases where savings will exceed the cost of the AMA evaluation
- On a “case-by-case” basis determine whether the potential cost savings is worth the time, cost and risk of the AMA rating
- Always obtain an AMA impairment rating as a standard policy to, if nothing else, drive PPD values down and assist with negotiations
- Always obtain an AMA impairment rating and stand firmly by that rating even if it means trying every case, as the PPD value for the claim



# WHAT HAVE WE SEEN AT THE IWCC??

## Lohman v. State of Illinois 17 IWCC 0207

- Employee underwent C4-5 and C5-6 disc replacement with decompression
- AMA rating (Dr. Katz): 6% person as a whole
- Arbitration (Cellini) award: 17.5% MAW (Commission affirmed)

## Levandoski v. ISU 17 IWCC 625

- Employee suffered a right knee medical meniscal tear
- AMA rating (Dr. Verma): 13% loss of the right lower extremity
- Arbitration (Pulia) award: 16% loss of the right leg, inclusive of 4% credit (Commission affirmed)

## Rickgauer v. CNH 14 WC 1287

- Employee underwent right shoulder surgery
- AMA rating (Dr. Li): 3% loss of upper extremity or 2% of whole person
- Arbitration (Erbacci) award: 10% MAW (no Review)

# DEFENSE TOOL: BENEFITS AND DRAWBACKS

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- What are the Benefits/Drawbacks of using:
  - IMEs
  - Records Reviews
  - Utilization Reviews
  - Impairment Ratings



# QUESTIONS?

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Following the presentation, please feel free to contact us!

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