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**IME Procedures Attacked in Two Recent Court of Appeals Cases**

In two recent cases, Minnesota plaintiff attorneys have attacked the independent medical examination process. In both cases, the Court of Appeals rejected the claims.

In *Pugh v. Westreich, et al.* (File A04-657, January 4, 2005, 2005WL14922), an unpublished Court of Appeals decision, Pugh sued the IME doctor and the IME service provider alleging fraud, among other claims, after Pugh's no-fault benefits were denied based on the results of the IME conducted by the insurer. The Court found no fraud involved in the IME process, even if the IME was not truly "independent." By statute, an insurer has the right to request a physician of its choice to examine a claimant, and the claimant has an obligation to cooperate and attend. Whether the examination is "independent or a complete sham" does not, in the statutory sense, affect a claimant's obligation to attend the examination. Moreover, because there is no fiduciary relationship between the IME doctor or the vendor and the claimant, there can be no reasonable reliance on the claimant's part, which is required to sustain fraud allegations. The Court affirmed the District Court decision, holding that all of Pugh's allegations failed to state claims upon which relief could be granted.

In *Newman v. Brendel and Zinn*, 691 N.W.2d480, the Court held a law firm defending a client in a personal injury action, where a plaintiff puts his or her medical condition in controversy, is allowed to retain a medical expert to inspect plaintiff's medical records obtained by the law firm. In the case, the medical authorization executed by Newman stated permission was given to the law firm, its representatives or employees to view the records, but it did not authorize the re-release of information to a third party. The Court of Appeals affirmed the District Court decision to dismiss the claim, because Minnesota Rule of Civil Procedure 35 requires a plaintiff who puts his or her medical condition into controversy to permit the inspection of all hospital and other medical records related to the condition. "Common sense" the Court said, "dictates that only an expert witness can conduct a meaningful inspection of such medical records." Therefore, Rule 35 specifically authorizes the expert to inspect medical records obtained under the rule, and a lawyer or law firm does not violate Minnesota privacy laws by giving such records to the expert. The fact the authorization did not authorize the re-release to a third party is irrelevant. The expert examiner performs, on behalf of the law firm, an inspection of the records. In that sense, the examiner is the law firm's representative, as the term is used in the authorization.

We will follow these cases in the event of an appeal. If you have any questions regarding these cases or other automobile-related issues, please contact any member of our Motor Vehicle Practice Group at (952) 831-6544.

Sincerely,

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