

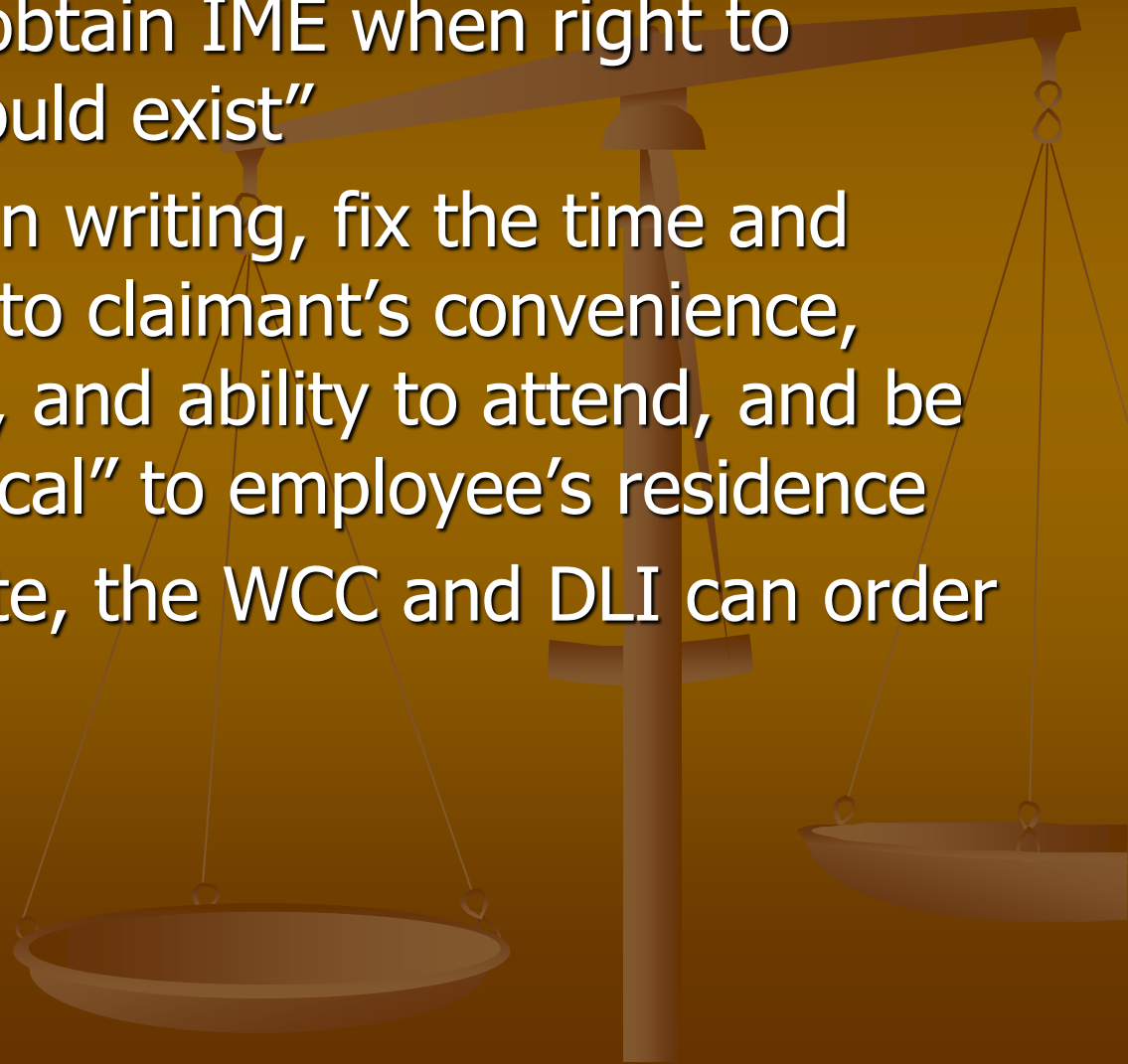
Issues with IMEs from the WCC's Perspective



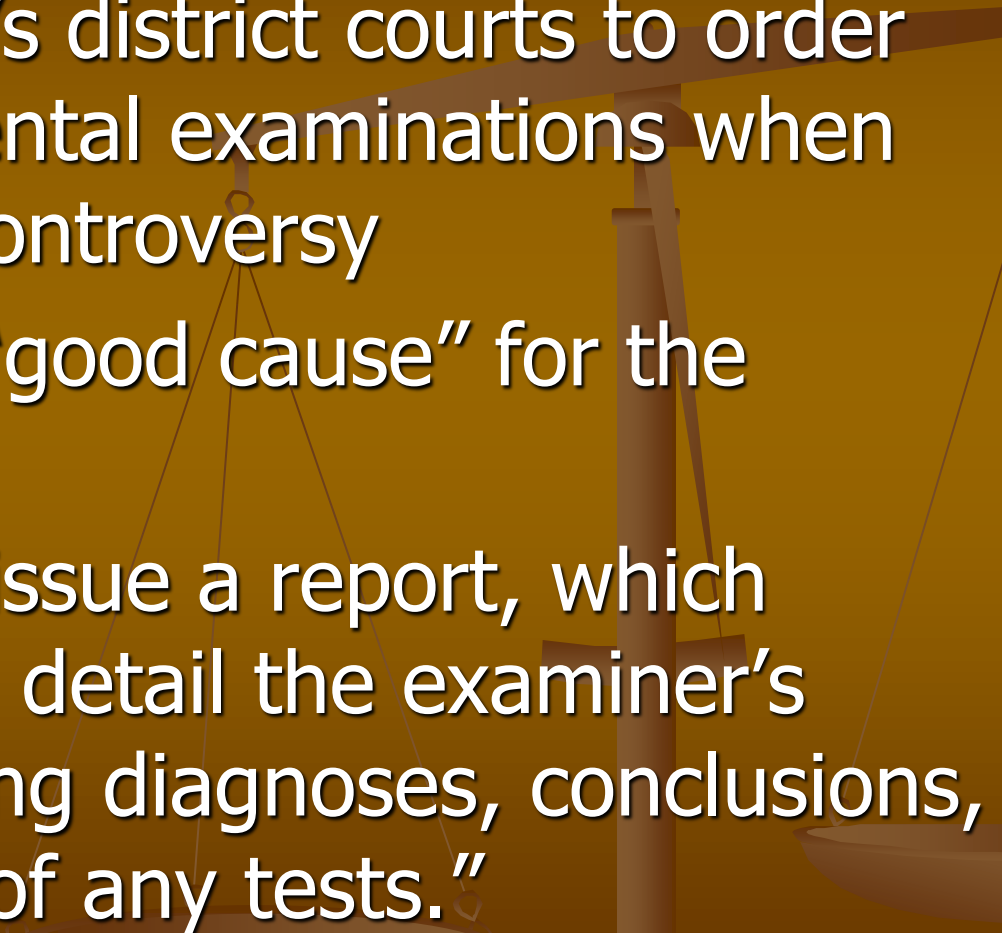
David M. Sandler
Judge, Montana Workers'
Compensation Court

Section 39-71-605, MCA

- Allows insurer to obtain IME when right to compensation “would exist”
- Request must be in writing, fix the time and place with regard to claimant’s convenience, physical condition, and ability to attend, and be “as close as practical” to employee’s residence
- If there is a dispute, the WCC and DLI can order an IME

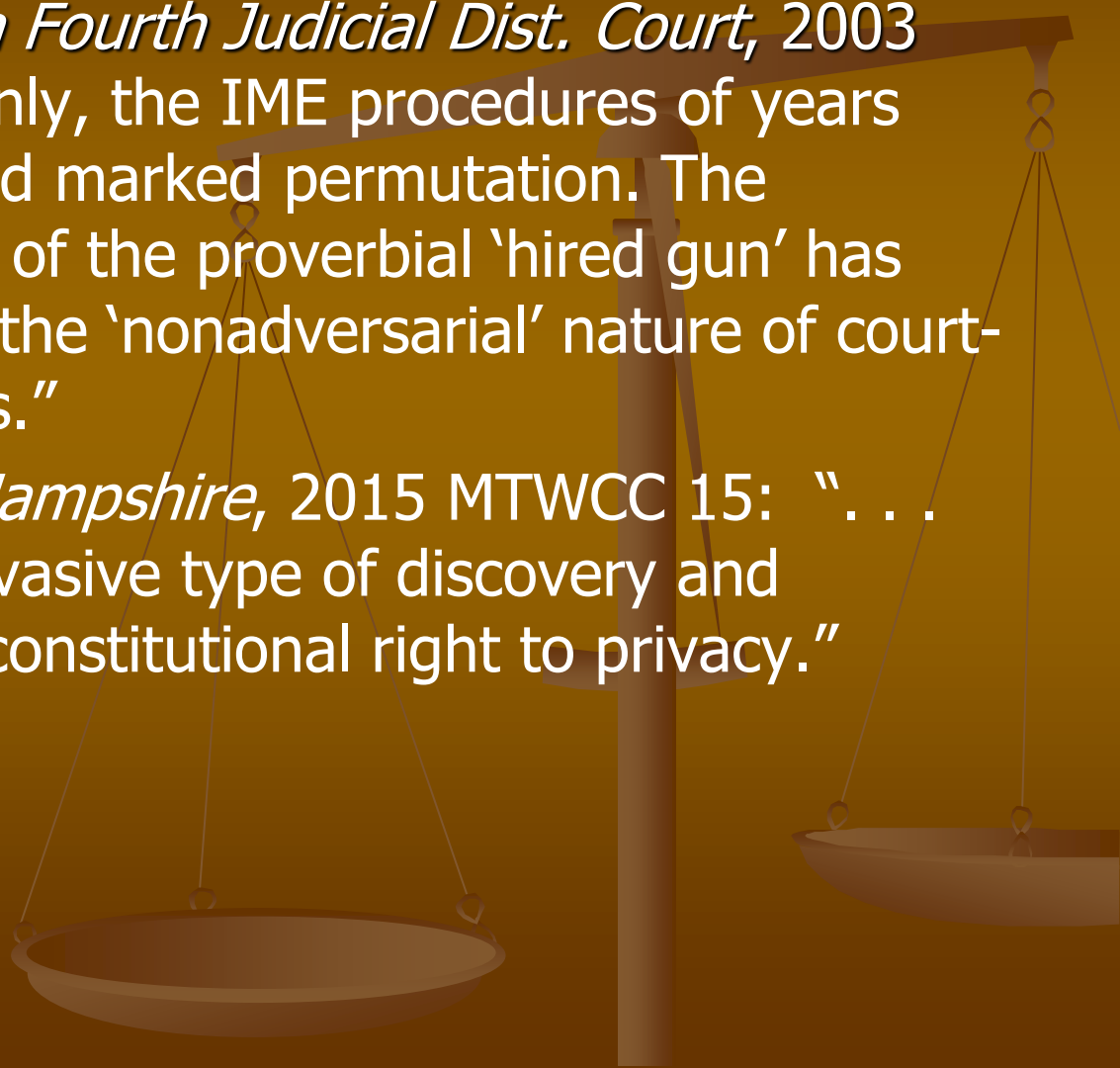


M.R.Civ.P. 35

- Allows Montana's district courts to order physical and mental examinations when condition is in controversy
 - There must be "good cause" for the examination
 - Examiner must issue a report, which "must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests."
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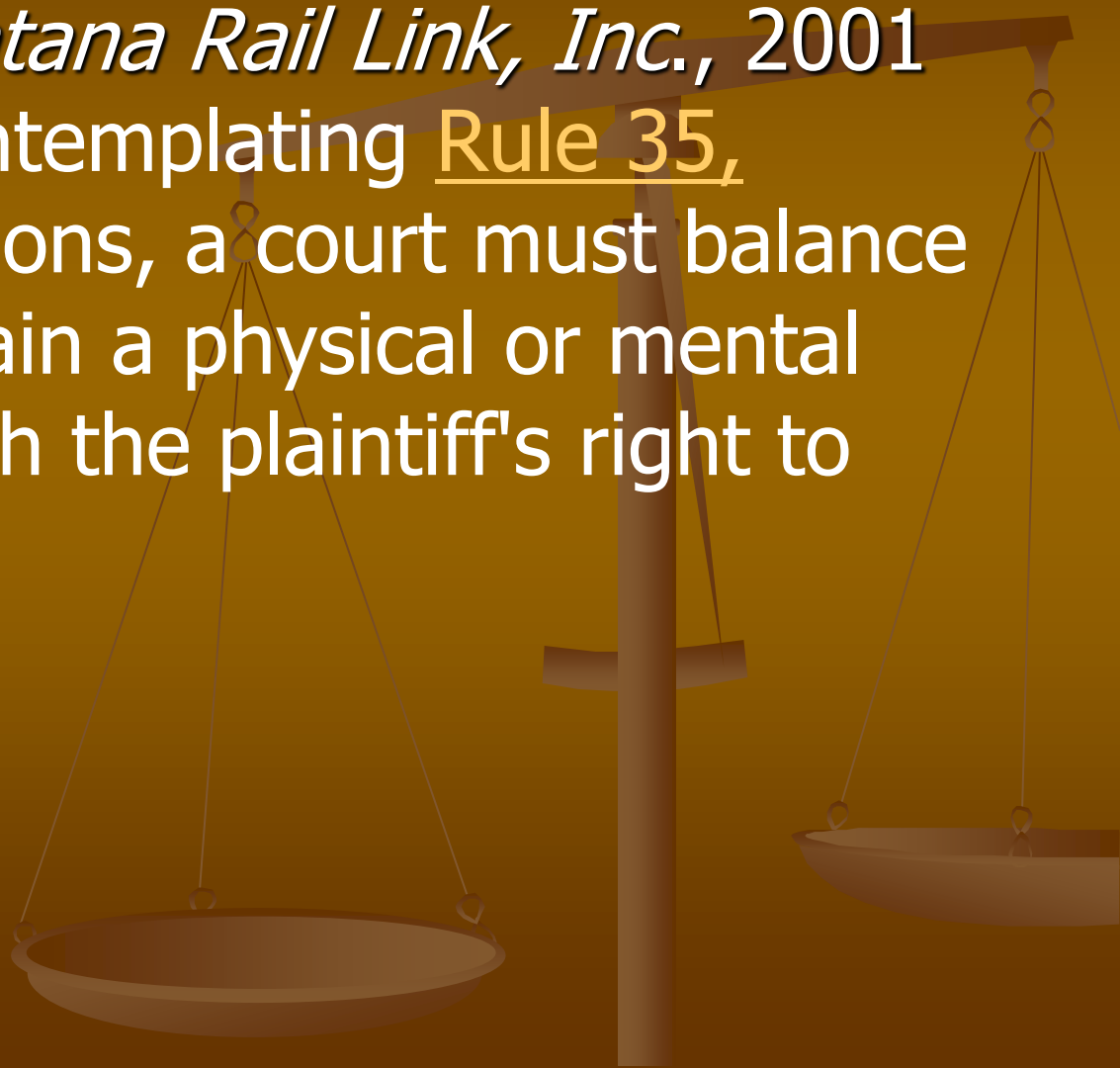
IMEs are different than other types of investigation and discovery

- *Hegwood v. Montana Fourth Judicial Dist. Court*, 2003 MT 200: “Most certainly, the IME procedures of years past have experienced marked permutation. The mounting prevalence of the proverbial ‘hired gun’ has increasingly strained the ‘nonadversarial’ nature of court-ordered examinations.”
- *Matejovsky v. New Hampshire*, 2015 MTWCC 15: “. . . IMEs are the most invasive type of discovery and implicate a person’s constitutional right to privacy.”



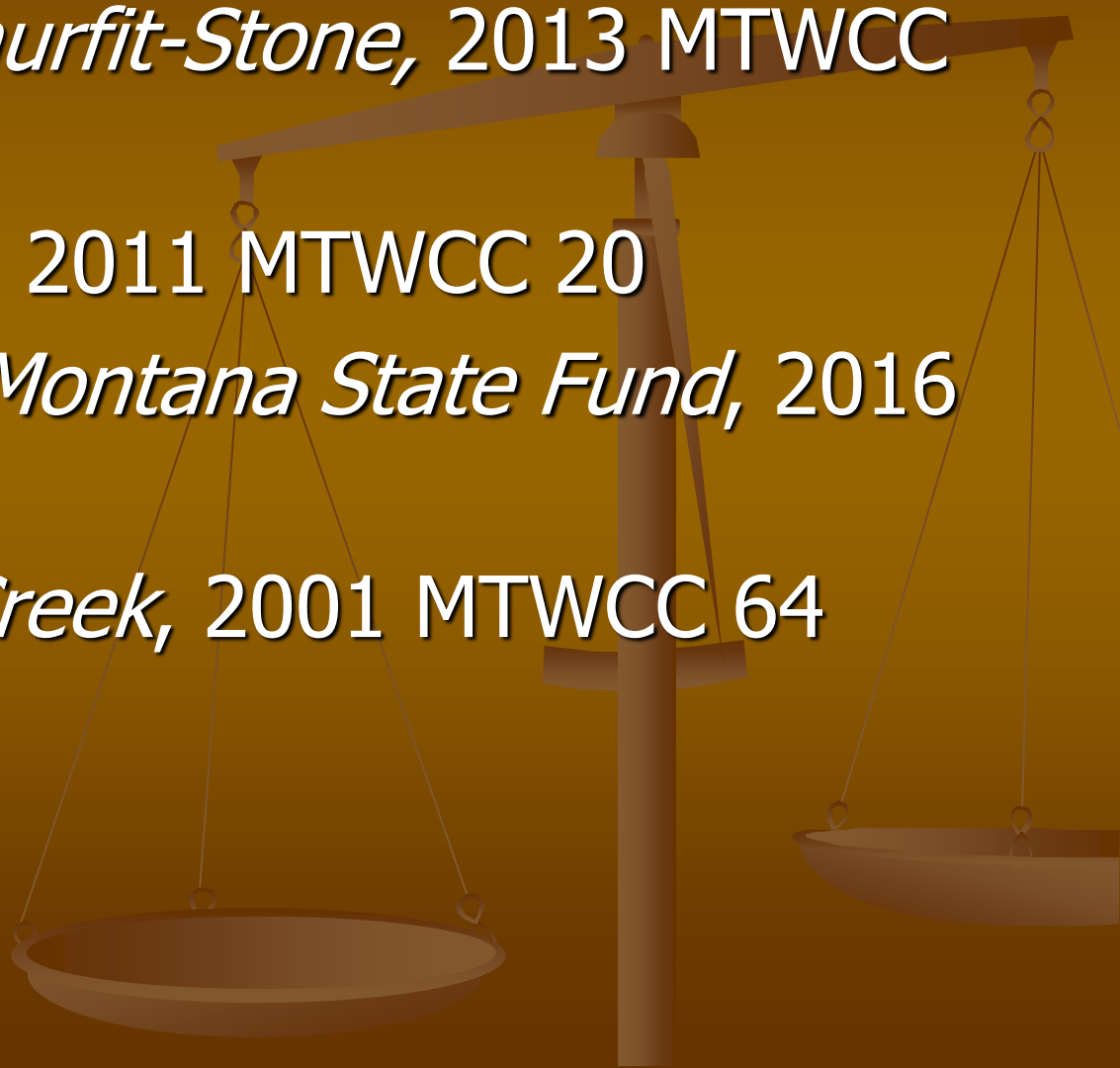
Is the insurer entitled to an IME?

- *Winslow v. Montana Rail Link, Inc.*, 2001 MT 269: “In contemplating Rule 35, M.R.Civ.P., motions, a court must balance the right to obtain a physical or mental examination with the plaintiff's right to privacy.”



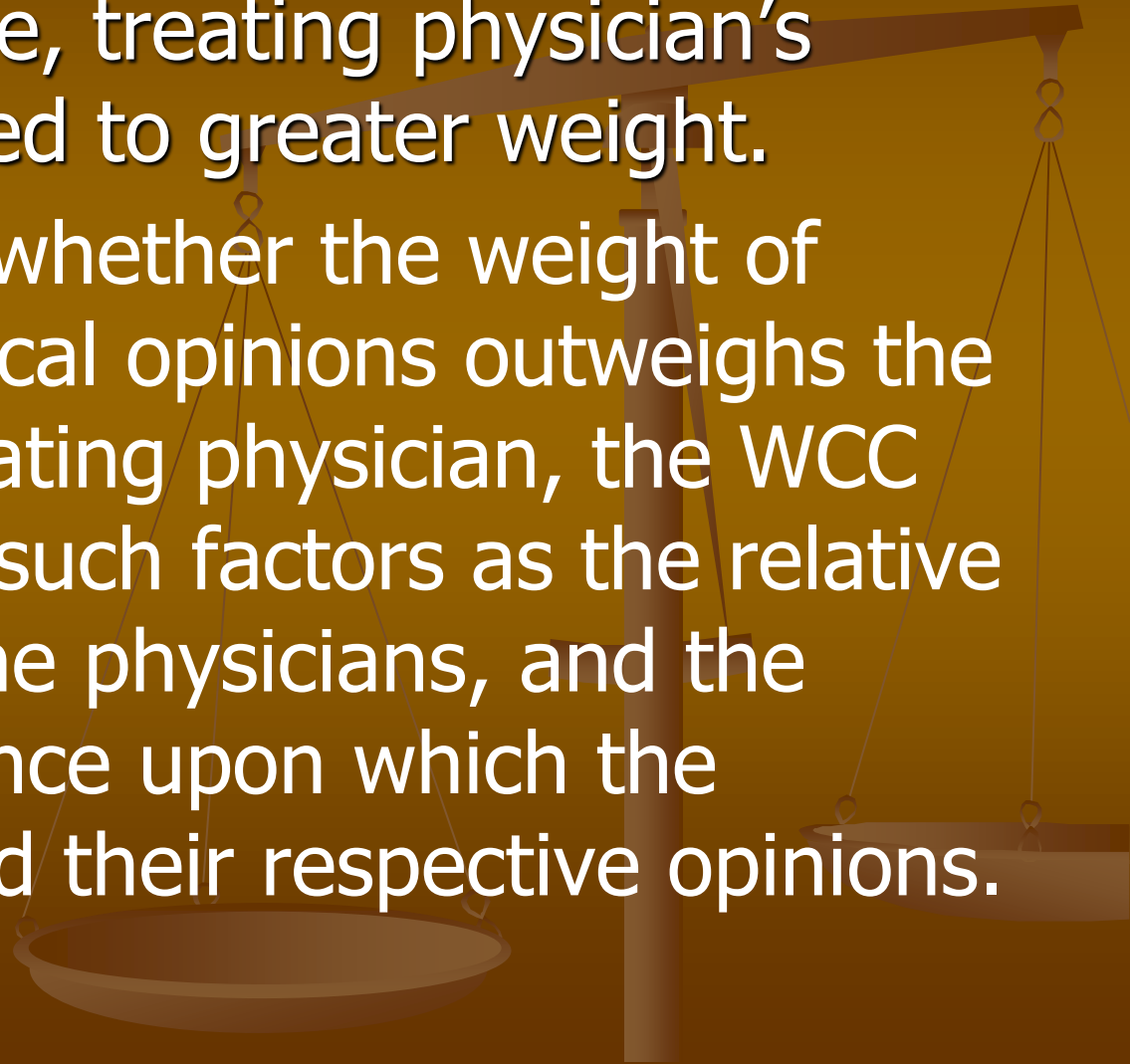
Multiple IMEs?

- *Chapman v. Smurfit-Stone*, 2013 MTWCC 12
- *Dodge v. MIGA*, 2011 MTWCC 20
- *MacGillivray v. Montana State Fund*, 2016 MTWCC 13
- *Stacy v. Plum Creek*, 2001 MTWCC 64



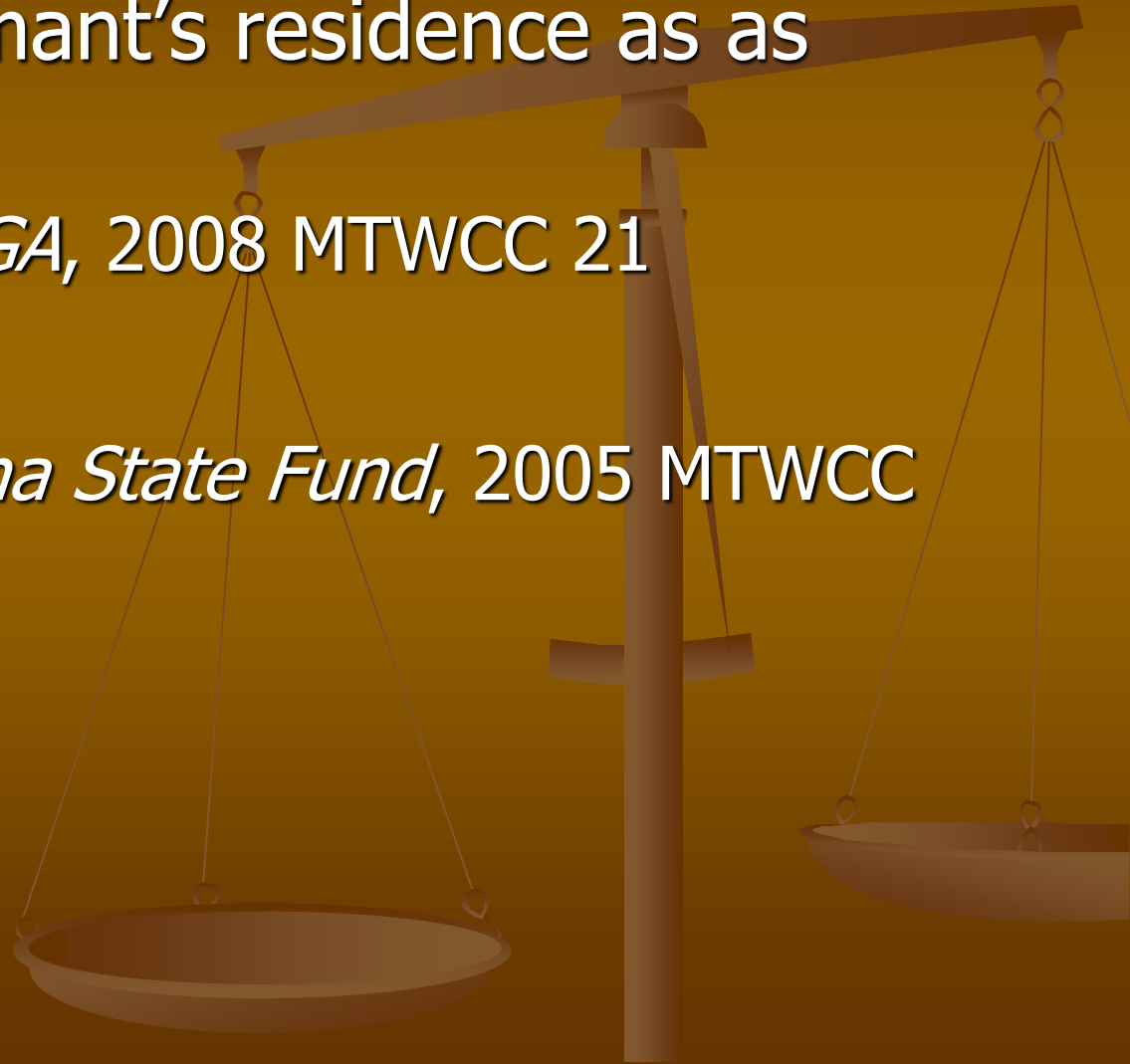
Is the IME physician the right physician?

- As a general rule, treating physician's opinion is entitled to greater weight.
- In determining whether the weight of conflicting medical opinions outweighs the opinion of a treating physician, the WCC has considered such factors as the relative credentials of the physicians, and the quality of evidence upon which the physicians based their respective opinions.



Location of IME

- As close to claimant's residence as as practical
 - *Challinor v. MIGA*, 2008 MTWCC 21
- Out-of-state
 - *Mack v. Montana State Fund*, 2005 MTWCC 28



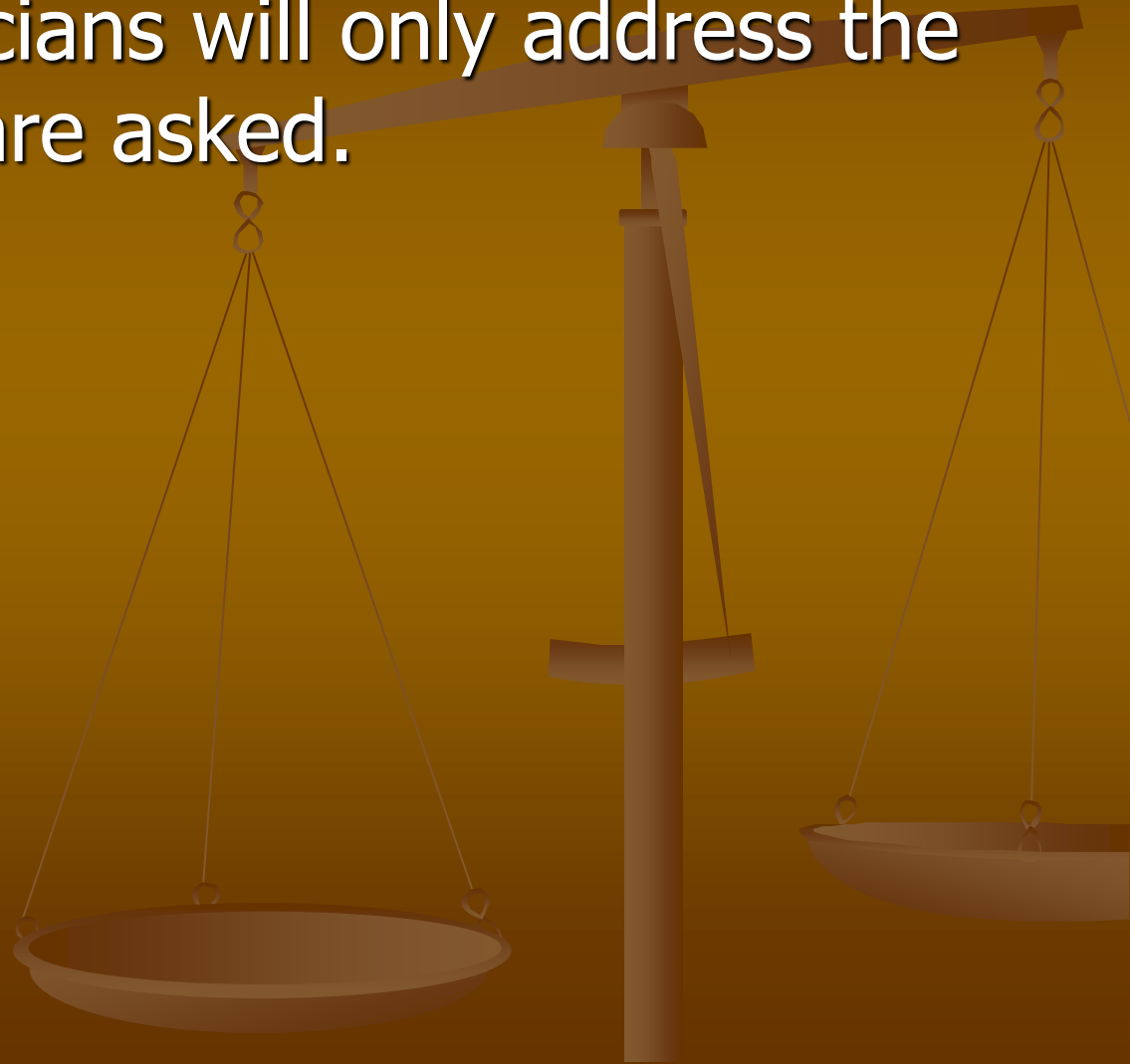
Providing the IME physician with information

- Cover letter
 - *Davis v. Credit General*, 2000 MTWCC 48
 - *Engle v. Hartford*, 2013 MTWCC 27
- Medical records
 - Complete set?



Questions to the IME physician

- Most IME physicians will only address the questions that are asked.



The DLI's authority to order IMEs and appeals to the WCC

- DLI's process
- ARM 24.5.350



Informing the claimant of the IME

- *Gryttenholm v. Fremont Industrial Indemnity*, 2002 MTWCC 24



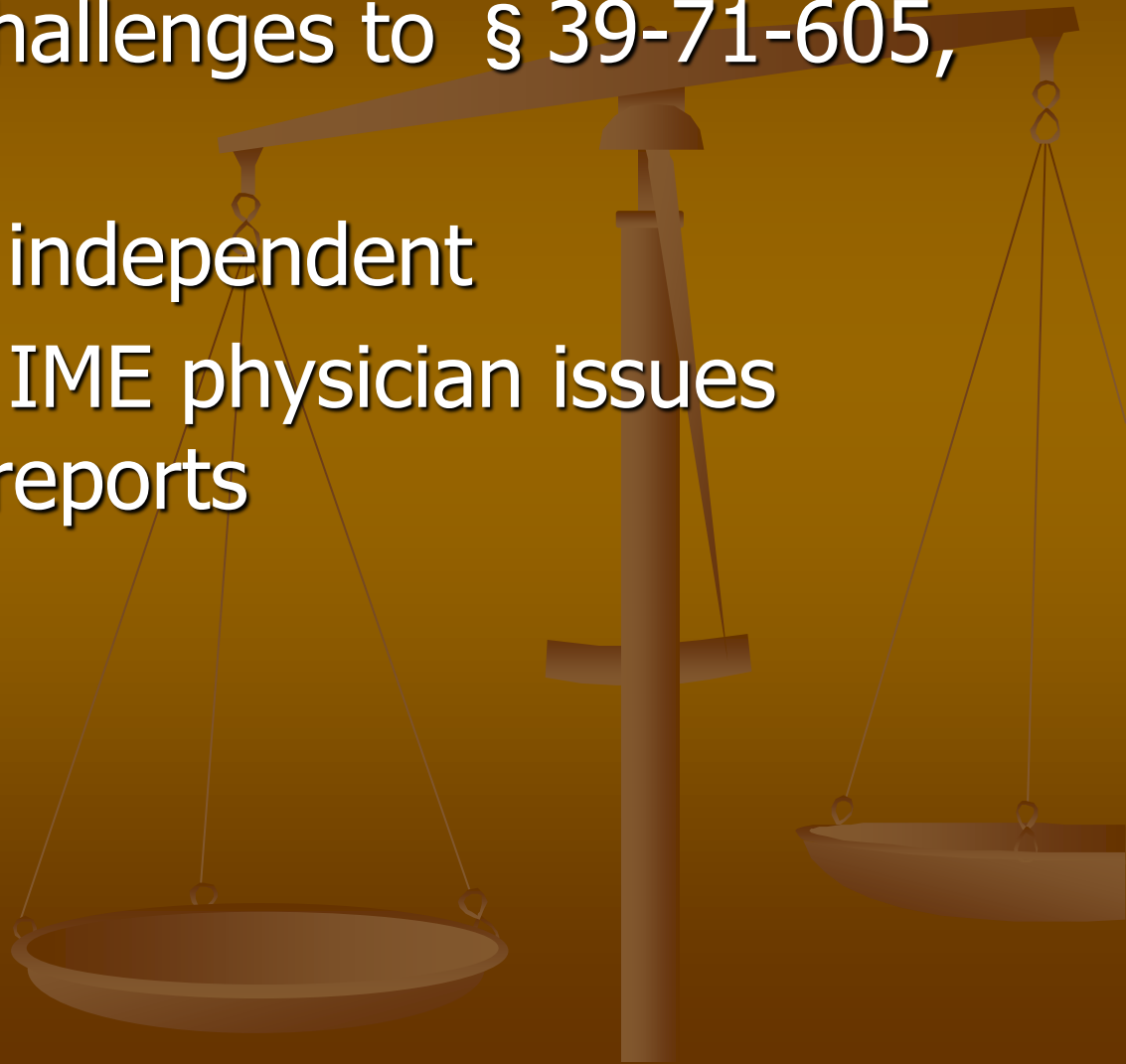
Protective Measures

- *Mohr v. District Court*, 2002 Mont. 423, 660 P.2d 88
- *Haman v. Wausau*, 2007 MTWCC 49
- *New Hampshire v. Matejovsky*, 2016 MTWCC 8



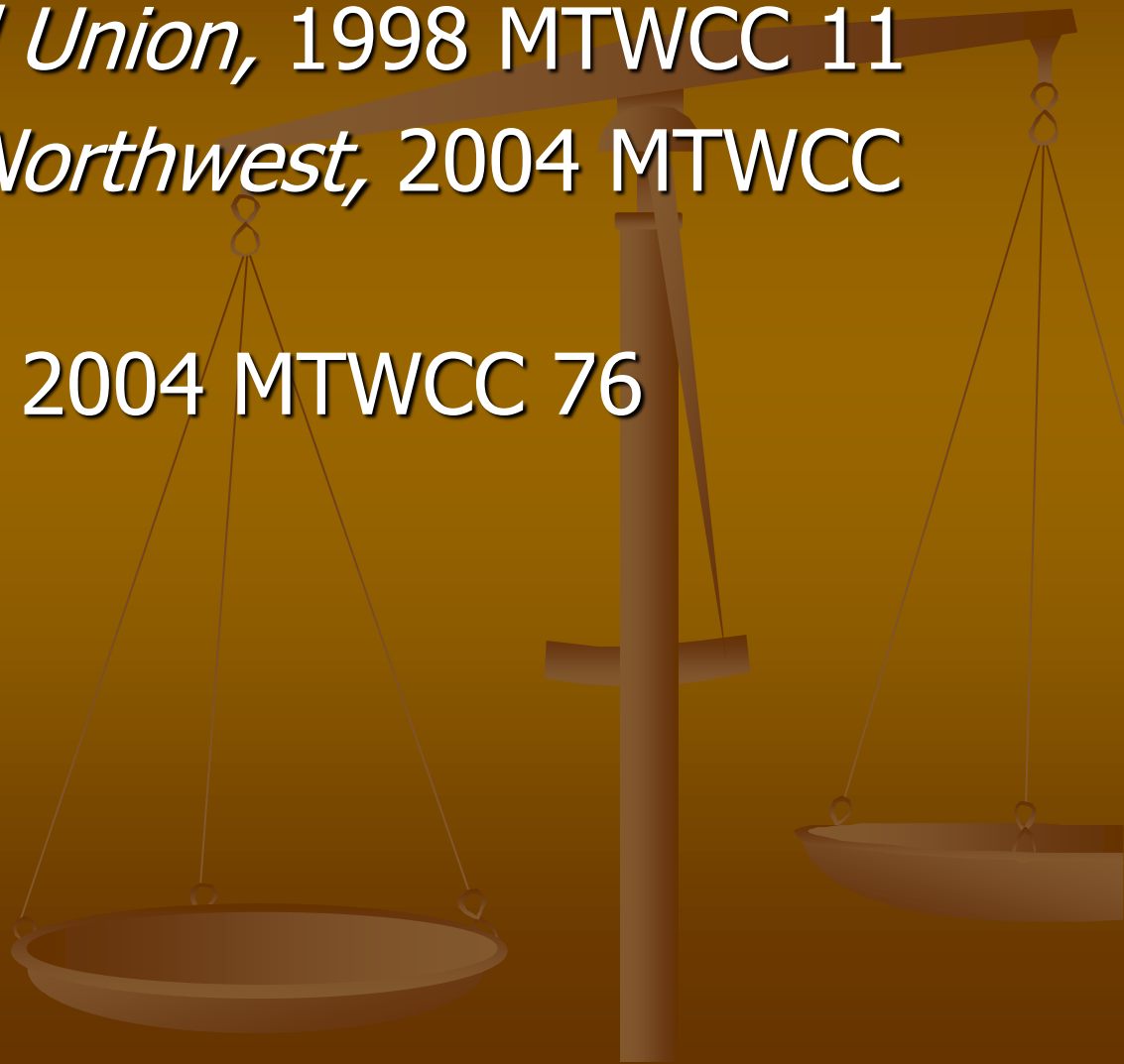
Other challenges to IMEs

- Constitutional challenges to § 39-71-605, MCA
- Physician is not independent
- In other states, IME physician issues “cookie cutter” reports



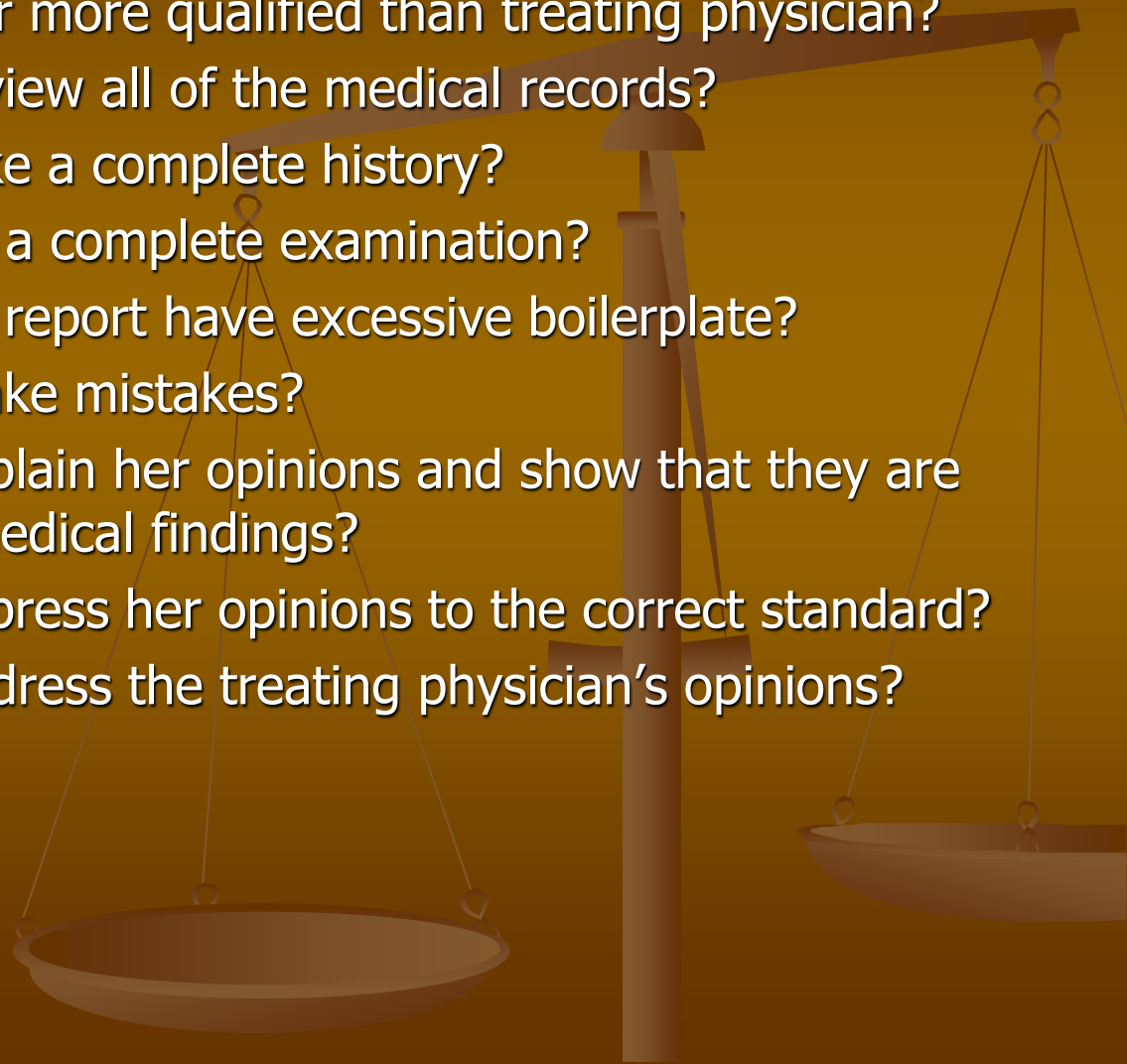
Relying upon IME Reports

- *Wall v. National Union*, 1998 MTWCC 11
- *Rice v. Liberty Northwest*, 2004 MTWCC 73
- *Doubek v. CNA*, 2004 MTWCC 76



Soundness of IME Report

- Is the IME physician as or more qualified than treating physician?
- Did the IME physician review all of the medical records?
- Did the IME physician take a complete history?
- Did the IME physician do a complete examination?
- Does the IME physician's report have excessive boilerplate?
- Did the IME physician make mistakes?
- Did the IME physician explain her opinions and show that they are supported by objective medical findings?
- Did the IME physician express her opinions to the correct standard?
- Did the IME physician address the treating physician's opinions?



Questions?

