

House Bill 3591; LC 2232

Relating to medical services provided in workers' compensation claims
Sponsored by Representative Rosenbaum (at the request of IWC)

Insurer Medical Examinations, also known as an Independent Medical Examination (IME), are institutionalized second-guessing or micro-management of the injured worker's attending physician. Insurance companies would never admit it, but the effect of IMEs upon injured workers is to delay or deny rightful benefits.

Because no traditional physician/patient relationship exists in regard to them, limited protection from harm is provided for workers who are required to attend by law. Injury claims can be closed due to non-cooperation in the eyes of the examiner or for failure to attend. Nobody knows for sure how often insurance companies and Managed Care Organizations order IMEs, but there are probably at least 10,000 each year (one for every 10 claims).

Oregon Workers' Compensation Statutes and Administrative Rules do not govern the conduct of those performing these adversarial examinations and the evaluators themselves determine the conditions under which the examinations are conducted, according to DCBS memorandum. Witnesses and recordings are not permitted unless approved by the examiner.

Memos from DCBS and the Oregon Board of Medical Examiners have discussed reports of, among other things, highly inaccurate "fill in the blanks" canned reports, insensitivity and rudeness to examinees, significant discomfort during and following examinations, and sexual boundary violations yet nothing has changed in regard to shielding workers from unscrupulous examiners.

House Bill 3591 will provide some protection to injured workers attending IMEs, as no oversight exists today in workers' compensation OAR's and ORS's.

Although the IME system needs a complete overhaul, House Bill 3591 will:

- Require the Director of DCBS to compile and maintain a list of physicians medically qualified to conduct IMEs, something presently done for arbiter exams. Examiners will have to be board certified and have unrestricted professional licenses;
- Require the Director to provide a list of three physicians or panels of physicians to workers so they can select one when an insurer, self-insured employer, or DCBS requests an IME;
- Provide insurance companies the same number of IMEs as workers get changes of physician. This is only fair, righting the current imbalance where insurers get 3 IMEs every claim opening and workers get 2 changes for the length of their claim;
- Count exams ordered by a Managed Care Organization (MCO) as IMEs. "Disability Prevention Consultation" and the like are just other names for IMEs.

¹ www.injuredworker.org/IWC/2003_bills.htm

- Allow workers to be accompanied to the examination by one individual of their choice, and to audio record the examination. If the IME doctor declines, the worker will be allowed to refuse to attend or to discontinue the examination with no penalty incurred.
- If a worker or attending physician is dissatisfied with the results of an IME, insurers will be required to pay for a third opinion, arranged by the Director.
- Doctors performing examinations will be subject to cross-examination as they often refuse now. They are making medico-legal decisions and should be accountable for their opinions.
- Require DBCS, through administrative rule, to develop criteria for temporary and permanent exclusion from the list and to provide civil penalties when misbehavior by those involved in the IME process is proven.