

SENATE BILL NO. 345

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS RELATING TO MEDICAL PROVIDERS; PROVIDING FOR AN EVIDENTIARY STANDARDS FOR MEDICAL PROVIDERS; ALLOWING FOR CERTAIN INDEPENDENT MEDICAL EXAMINATIONS BY THE INSURER; AMENDING SECTION 39-71-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Evidentiary standard. (1) Opinions of the treating physician are not entitled to deference.

(2) Testimony of a health care professional must be weighed based on the individual's education, training, experience, expertise in the medical field in question, EXTENT OF INTERACTIONS WITH OR TREATMENT OF THE EMPLOYEE WITH REGARD TO THE MEDICAL CONDITION, and credibility.

(3) Discovery related to an independent medical examiner is limited to the provider's training, educational background, the number of independent medical exams performed each year, the number of independent medical exams for the particular insurer named as a respondent, and payments received from the particular insurer named as the respondent.

Section 2. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, ~~upon~~on the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, ~~and ability to attend at the time and place that is as close to the employee's residence as is practical.~~ AND ABILITY TO ATTEND AT THE DESIGNATED TIME. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) If a claimant submits to an examination under subsection (1) or (2) at the request of the insurer, the insurer shall pay the following reasonable expenses incurred due to attendance at the examination:

(a) travel, lodging, and meals;

(b) child care and pet care; and

(c) compensation for loss of wages, not to exceed the claimant's compensation benefit rate under 39-71-701.

(5) THE EXPENSES PURSUANT TO SUBSECTIONS (4)(B) AND (4)(C) DO NOT CONSTITUTE REIMBURSABLE EXPENSES UNDER 39-71-704(1)(D)(I)

1 ~~(4)(5)~~ (6) A claimant is required, ~~upon~~on a written request of an insurer, to submit to a functional
2 capacities evaluation conducted by a licensed physical or occupational therapist."

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4 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
5 integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 1].

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7 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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