

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS
5 RELATING TO EVIDENTIARY STANDARDS; PROVIDING THAT THE CLAIMANT HAS A BURDEN OF
6 PROOF; PROVIDING EVIDENTIARY STANDARDS FOR OPINIONS OF TREATING PHYSICIANS;
7 ALLOWING FOR CERTAIN INDEPENDENT MEDICAL EXAMINATIONS BY THE INSURER; AND AMENDING
8 SECTION 39-71-605, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 NEW SECTION. **Section 1. Evidentiary standard.** (1) The claimant has the burden of proof on a
13 more probable than not basis for all matters at issue.

14 (2) Opinions of the treating physician are not entitled to deference.

15 (3) Testimony of a health care professional must be weighed based on the individual's education,
16 training, experience, expertise in the medical field in question, and credibility.

17 (4) Rule 30(b)(6) of the Montana Rules of Civil Procedure relating to depositions and discovery
18 may not be permitted under this title.

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

23 (6) Discovery requests regarding the independent examiner's personal finances are prohibited.

24
25 **Section 2.** Section 39-71-605, MCA, is amended to read:
26 **"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination**
27 **-- report and testimony of physician -- cost.** (1) (a) Whenever in case of injury the right to compensation
28 under this chapter would exist in favor of any employee, the employee shall, ~~upon~~on the written request of the

1 insurer, submit ~~from time to time~~ to examination by a physician, psychologist, or panel that must be provided
2 and paid for by the insurer and shall likewise submit to examination ~~from time to time~~ by any physician,
3 psychologist, or panel selected by the department or as ordered by the workers' compensation judge. The
4 insurer is entitled to an independent medical examination on a change in condition, expiration of 90 days, or a
5 new issue of medical causation arising.

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

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

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

26 (4) A claimant is required, ~~upon~~ on a written request of an insurer, to submit to a functional
27 capacities evaluation conducted by a licensed physical or occupational therapist."
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1 NEW SECTION. Section 3. Codification instruction. [Section 1] is intended to be codified as an
2 integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 1].

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