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**SUBSTITUTE HOUSE BILL 1503**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Conway, McCoy, Wood, Campbell, Williams, Green, Kenney, Moeller, Ormsby and Chase)

READ FIRST TIME 02/28/07.

1            AN ACT Relating to injured worker medical rights; amending RCW  
2 51.04.050, 51.36.060, 51.32.110, 51.36.070, and 51.32.112; adding a new  
3 section to chapter 51.52 RCW; adding a new section to chapter 51.36  
4 RCW; creating a new section; recodifying RCW 51.32.112; repealing RCW  
5 51.32.114; and prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7            **Sec. 1.** RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended  
8 to read as follows:

9            In all (~~hearings, actions or~~) proceedings before the department  
10 (~~or the board of industrial insurance appeals, or before any court on~~  
11 ~~appeal from the board,~~) any physician or licensed advanced registered  
12 nurse practitioner having theretofore examined or treated the claimant  
13 may be required to (~~testify fully~~) make reports requested by the  
14 department or self-insurer regarding such examination or treatment, and  
15 shall not be exempt from (~~so testifying~~) making reports by reason of  
16 the relation of the physician or licensed advanced registered nurse  
17 practitioner to patient. In all hearings, actions, or proceedings  
18 before the board of industrial insurance appeals, or before any court  
19 on appeal from the board of industrial insurance appeals, the claimant

1 shall be deemed to waive the physician-patient privilege under RCW  
2 5.60.060, subject to the limitations imposed pursuant to court rules  
3 and section 3 of this act.

4 **Sec. 2.** RCW 51.36.060 and 1991 c 89 s 3 are each amended to read  
5 as follows:

6 (1) Physicians or licensed advanced registered nurse practitioners  
7 examining or attending injured workers under this title shall comply  
8 with rules and regulations adopted by the director, and shall make such  
9 reports as may be requested by the department or self-insurer upon the  
10 condition or treatment of any such worker, or upon any other matters  
11 concerning such workers in their care. Except under RCW 49.17.210  
12 ((and)), 49.17.250, and section 3 of this act, all medical information  
13 in the possession or control of any person and relevant to the  
14 particular injury in the opinion of the department pertaining to any  
15 worker whose injury or occupational disease is the basis of a claim  
16 under this title shall be made available ((at any stage of the  
17 proceedings)) to the employer, the claimant's representative, and the  
18 department upon request, and no person shall incur any legal liability  
19 by reason of releasing such information. In all hearings, actions, or  
20 proceedings before the board of industrial insurance appeals, or before  
21 any court on appeal from the board of industrial insurance appeals,  
22 requests for medical information under this subsection are subject to  
23 limitations imposed pursuant to court rules and section 3 of this act.

24 (2) Any time that an examining or attending physician or licensed  
25 advanced registered nurse practitioner is contacted by the employer, or  
26 a representative of the employer, a written report must be generated by  
27 the person or entity initiating contact which fully discloses all  
28 subjects discussed and responses given. This report must be completed  
29 within five days of the meeting, and a copy must be mailed to the  
30 worker no later than the fifth day. Failure to comply with this  
31 section constitutes a violation of RCW 51.48.080 and the penalty shall  
32 be paid to the worker.

33 (3) When an attorney, vocational counselor, nurse case manager, or  
34 other representative of the employer seeks to meet with an examining or  
35 attending physician or licensed advanced registered nurse practitioner  
36 to discuss an injured worker's physical capacities, medical treatment,

1 permanent partial disability, ability to work, or other issues  
2 pertaining to the claim:

3 (a) The attorney, vocational counselor, nurse case manager, or  
4 other representative of the employer shall give at least seven days'  
5 prior written notice to the worker or the worker's designated  
6 representative;

7 (b) The worker and the worker's representative have the right to  
8 attend and participate in the meeting;

9 (c) The party scheduling the meeting shall make reasonable efforts  
10 to coordinate the scheduling of the appointment for the convenience of  
11 all parties;

12 (d) The employer or representative of the employer, within five  
13 days of the completion of the meeting, shall create a complete report  
14 of the meeting, including all questions asked and information provided,  
15 and mail a copy to the worker and the worker's designated  
16 representative.

17 NEW SECTION. Sec. 3. A new section is added to chapter 51.52 RCW  
18 to read as follows:

19 (1)(a) Except as provided in (b) of this subsection, after notice  
20 of an appeal under RCW 51.52.060(2), the department, the employer, and  
21 the representatives of each, shall not have ex parte contact, to  
22 discuss the facts or issues in question in the appeal, with any medical  
23 provider who has examined or treated the claimant at the request of the  
24 claimant or a treating medical provider, unless written authorization  
25 for such contact is given by the claimant or the claimant's  
26 representative.

27 (b) Written authorization is not required if the claimant fails to  
28 identify or confirm the examining or treating medical provider as a  
29 witness as required by the board.

30 (2)(a) Except as provided in (b) of this subsection, after notice  
31 of an appeal under RCW 51.52.060(2), the claimant and the  
32 representative for the claimant, if any, shall not have ex parte  
33 contact, to discuss the facts or issues in question in the appeal, with  
34 any medical provider who examined the claimant pursuant to RCW  
35 51.36.070, unless written authorization for such contact is given by  
36 the department or self-insured employer.

1 (b) Written authorization is not required if the department or  
2 self-insurer fails to identify or confirm the medical provider as a  
3 witness as required by the board.

4 (3) This section only applies to issues set forth in a notice of  
5 appeal under RCW 51.52.060(2).

6 (4) Nothing in this section shall be construed to limit reporting  
7 requirements under RCW 51.04.050 and 51.36.060 for issues not set forth  
8 in a notice of appeal.

9 **Sec. 4.** RCW 51.32.110 and 1997 c 325 s 3 are each amended to read  
10 as follows:

11 (1) Any worker entitled to receive any benefits or claiming such  
12 under this title shall, if requested by the department or self-insurer,  
13 submit himself or herself for medical examination, (~~at a time and from~~  
14 ~~time to time, at a place reasonably convenient for the worker and as~~  
15 ~~may be provided by the rules of the department. An injured worker,~~  
16 ~~whether an alien or other injured worker, who is not residing in the~~  
17 ~~United States at the time that a medical examination is requested may~~  
18 ~~be required to submit to an examination at any location in the United~~  
19 ~~States determined by the department or self-insurer)) as authorized in  
20 RCW 51.36.070.~~

21 (2) If the worker refuses to submit to medical examination, or  
22 obstructs the same, or, if any injured worker shall persist in  
23 unsanitary or injurious practices which tend to imperil or retard his  
24 or her recovery, or shall refuse to submit to such medical or surgical  
25 treatment as is reasonably essential to his or her recovery or refuse  
26 or obstruct evaluation or examination for the purpose of vocational  
27 rehabilitation or does not cooperate in reasonable efforts at such  
28 rehabilitation, the department or the self-insurer upon approval by the  
29 department, with notice to the worker may suspend any further action on  
30 any claim of such worker so long as such refusal, obstruction,  
31 noncooperation, or practice continues and reduce, suspend, or deny any  
32 compensation for such period: PROVIDED, That the department or the  
33 self-insurer shall not suspend any further action on any claim of a  
34 worker or reduce, suspend, or deny any compensation if a worker has  
35 good cause for refusing to submit to or to obstruct any examination,  
36 evaluation, treatment or practice requested by the department or  
37 required under this section.

1 (3) If the worker necessarily incurs traveling expenses in  
2 attending the examination pursuant to the request of the department,  
3 such traveling expenses shall be repaid to him or her out of the  
4 accident fund upon proper voucher and audit or shall be repaid by the  
5 self-insurer, as the case may be.

6 (4)(a) If the medical examination required by this section causes  
7 the worker to be absent from his or her work without pay:

8 (i) In the case of a worker insured by the department, the worker  
9 shall be paid compensation out of the accident fund in an amount equal  
10 to his or her usual wages for the time lost from work while attending  
11 the medical examination; or

12 (ii) In the case of a worker of a self-insurer, the self-insurer  
13 shall pay the worker an amount equal to his or her usual wages for the  
14 time lost from work while attending the medical examination.

15 (b) This subsection (4) shall apply prospectively to all claims  
16 regardless of the date of injury.

17 **Sec. 5.** RCW 51.36.070 and 2001 c 152 s 2 are each amended to read  
18 as follows:

19 (1) Whenever a medical examination is conducted under this title,  
20 the worker may be accompanied by a person who may observe the  
21 examination. This section does not limit the department or self-  
22 insurer's obligation to provide necessary interpreter services.

23 (2) Subject to subsection (3) of this section, whenever the  
24 director or the self-insurer deems it necessary in order to resolve any  
25 medical issue, the department or self-insurer may, at a time and from  
26 time to time at a place reasonably convenient for the worker and as may  
27 be provided by department rules, request a worker ((shall)) to submit  
28 to examination ((by a physician or physicians selected by the director,  
29 with the rendition of a report to the person ordering the  
30 examination)). An injured worker, whether an alien or other injured  
31 worker, who is not residing in the United States at the time that a  
32 medical examination is ordered may be required to submit to an  
33 examination at any location in the United States determined by the  
34 department or self-insurer.

35 (3)(a) When requesting a medical examination under this section,  
36 the department or self-insurer must first request in writing, with a  
37 copy of the request submitted to the worker and the worker's

1 representative, if any, that the worker's attending physician or  
2 treating provider conduct an examination and make a report on the  
3 medical issue in question.

4 (b) If the medical issue is not resolved by the requested  
5 examination and report, the department or self-insurer shall request  
6 the attending physician or treating provider to make a consultation  
7 referral to a provider approved by the director and, where appropriate,  
8 licensed to practice in the same field or specialty as the worker's  
9 attending physician or treating provider, where appropriate. The  
10 consulting provider shall conduct an examination and make a report on  
11 the medical issue in question.

12 (4)(a) A provider conducting a medical examination under this  
13 section must submit a report to the department or self-insurer and, on  
14 the same day that the report is submitted, submit a copy of the report  
15 to the worker, the worker's representative, and the worker's attending  
16 physician.

17 (b) If the department or self-insurer relies on the examination  
18 report to deny, limit, or terminate benefits to a worker, the  
19 department or self-insurer must give the workers' attending physician  
20 or treating provider no less than thirty days from the physician's or  
21 provider's receipt of the report to provide a written response to the  
22 report.

23 (5) The department or self-insurer shall provide the physician  
24 performing an examination with all relevant medical records from the  
25 worker's claim file.

26 (6) The director, in his or her discretion, may charge the cost of  
27 such examination or examinations to the self-insurer or to the medical  
28 aid fund as the case may be. The cost of said examination shall  
29 include payment to the worker of reasonable expenses connected  
30 therewith.

31 **Sec. 6.** RCW 51.32.112 and 1993 c 515 s 4 are each amended to read  
32 as follows:

33 (1) The department shall ~~((develop standards for))~~ adopt rules  
34 governing the conduct of ~~((special))~~ medical examinations ~~((to~~  
35 ~~determine permanent disabilities))~~ under this title, including, but not  
36 limited to:

1 (a) The qualifications of persons conducting the examinations. To  
2 conduct an examination, a provider must, at a minimum, be licensed to  
3 practice, at the time of the examination, medicine or surgery under  
4 chapter 18.71 RCW, osteopathic medicine and surgery under chapter 18.57  
5 RCW, podiatric medicine and surgery under chapter 18.22 RCW, dentistry  
6 under chapter 18.30 RCW, chiropractic under chapter 18.25 RCW, or  
7 psychology under chapter 18.83 RCW;

8 (b) The criteria for removing examiners from the list of approved  
9 examiners, including but not limited to the department determining,  
10 after reasonable investigation, that the provider:

11 (i) Committed professional or other misconduct, including a  
12 violation of RCW 51.48.280, or demonstrated incompetency in connection  
13 with providing medical examinations under this title;

14 (ii) Exceeded the limits of his or her professional competence in  
15 conducting medical examinations or made materially false statements  
16 regarding his or her qualifications in his or her application as an  
17 examiner;

18 (iii) Failed to transmit copies of medical reports, or failed to  
19 submit full and truthful medical reports of his or her findings, as  
20 required by this title;

21 (iv) Knowingly made a false statement or representation as to a  
22 material fact in any medical report made under this title or in  
23 testifying or otherwise providing information for the purposes of this  
24 title; or

25 (v) Refused to submit to deposition, appear before, testify, or  
26 answer a material question of the department, or board of industrial  
27 insurance appeals, or produce a material document concerning his or her  
28 provision of services under this title;

29 ~~((b))~~ (c) The criteria for conducting the examinations, including  
30 guidelines for the appropriate treatment of injured workers during the  
31 examination; and

32 ~~((e))~~ (d) The content of examination reports, including a  
33 requirement that examination reports contain a signed statement  
34 certifying that the report is a full and truthful representation of the  
35 examiner's professional opinion with respect to the injured worker's  
36 condition.

37 (2) Within the appropriate scope of practice, chiropractors  
38 licensed under chapter 18.25 RCW may conduct special medical

1 examinations to determine permanent disabilities in consultation with  
2 physicians licensed under chapter 18.57 or 18.71 RCW. The department,  
3 in its discretion, may request that a special medical examination be  
4 conducted by a single chiropractor if the department determines that  
5 the sole issues involved in the examination are within the scope of  
6 practice under chapter 18.25 RCW. However, nothing in this section  
7 authorizes the use as evidence before the board of a chiropractor's  
8 determination of the extent of a worker's permanent disability if the  
9 determination is not requested by the department.

10 (3) The department must examine the credentials of providers  
11 conducting medical examinations ordered under this title and must  
12 monitor the quality and objectivity of the examinations and examination  
13 reports obtained by the department and self-insured employers. The  
14 department's rules must ensure that examinations ordered under this  
15 title are performed only by qualified providers meeting department  
16 standards.

17 (4) The department shall investigate the amount of examination fees  
18 received by persons conducting (~~special~~) medical examinations (~~to~~  
19 ~~determine permanent disabilities~~) under this title, including total  
20 compensation received for examinations of department and self-insured  
21 claimants, and establish compensation guidelines and compensation  
22 reporting criteria.

23 (~~(4)~~) (5) The department shall investigate the level of  
24 compliance of self-insurers with the requirement of full reporting of  
25 claims information to the department, particularly with respect to  
26 medical examinations, and develop effective enforcement procedures or  
27 recommendations for legislation if needed.

28 NEW SECTION. Sec. 7. RCW 51.32.112 is recodified as a section in  
29 chapter 51.36 RCW.

30 NEW SECTION. Sec. 8. RCW 51.32.114 (Medical examination--  
31 Department to monitor quality and objectivity) and 1988 c 114 s 3 are  
32 each repealed.

33 NEW SECTION. Sec. 9. This act applies to all medical examinations

1 ordered under Title 51 RCW on or after the effective date of this act.

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