

HOUSE BILL REPORT

HB 2227

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to ex parte contact with physicians or medical providers regarding industrial insurance matters.

Brief Description: Limiting ex parte contact with physicians or medical providers regarding industrial insurance matters.

Sponsors: Representatives Heavey, G. Cole, King, Conway and Campbell.

Brief History:

Reported by House Committee on:
Commerce & Labor, January 21, 1994, DP.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 6 members:
Representatives Heavey, Chair; G. Cole, Vice Chair; Conway;
King; Springer; and Veloria.

Minority Report: Do not pass. Signed by 3 members:
Representatives Lisk, Ranking Minority Member; Chandler,
Assistant Ranking Minority Member; and Horn.

Staff: Chris Cordes (786-7117).

Background: In 1988, the Washington Supreme Court held that contact between the defense counsel and the plaintiff's treating physician without notice to the plaintiff was prohibited in a personal injury action. The court limited the contact to situations where formal discovery, such as a deposition, was used or where the parties agreed to attend informal interviews. The court based its decision on several policy grounds, including the potential "chilling effect" on physician-patient relationships and the concern that irrelevant, privileged medical information might be disclosed.

Another case before the Washington Supreme Court in 1992 raised the issue of whether this rule applied to industrial insurance cases on appeal before the Board of Industrial Insurance Appeals. The court held that the rule does not apply, distinguishing industrial insurance appeals from personal injury cases.

In its decision, the court reasoned that the legislature had eliminated civil causes of action for workplace personal injuries and had abolished the physician-patient privilege under industrial insurance law. The court relied on legislative intent to provide an easier, less formal, and more economical means of obtaining information in the industrial insurance setting and the legislative determination that free flow of information is necessary for efficient and proper resolution of the claims. The court noted that the industrial insurance law permits contact with the treating physician while the claim is being adjudicated by the Department of Labor and Industries. Under the industrial insurance law, a physician who treats an injured worker is required to make reports to the department or self-insured employer on request about the condition or treatment of the worker under the physician's care.

Summary of Bill: When a worker's industrial insurance case is appealed to the Board of Industrial Insurance Appeals, the Department of Labor and Industries or the employer is prohibited from contacting the worker's treating physician, or other medical provider who has consulted on the case at the request of the worker or worker's physician, about specific issues in the appeal unless prior notice is given to the worker and the contact is made under the civil rules of discovery.

The worker's medical provider may be contacted to request medical records without using formal discovery if five days' written notice is given to the worker and the notice is submitted at least 60 days before the first scheduled hearing or any discovery cut-off date, whichever is earlier. The board may adjust the time period for good cause. The worker may make appropriate challenges to the scope of a request for medical records or raise other discovery issues.

The information or medical records must be available for inspection and copying at the worker's request. Material received by a self-insured employer is considered part of the worker's claim file.

The requirement that medical information relevant to the injury must be made available to the department, claimant, or employer, without incurring legal liability, does not apply when the issue is on appeal to the board and subject to limits on contacting the worker's medical provider.

Fiscal Note: Requested January 12, 1994.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Once an injured worker's claim is appealed, the parties become legal adversaries. It then becomes necessary to apply civil litigation rules to protect worker rights. Without these protections, medical facts not relevant to the worker's case can be revealed. The bill provides a less formal method when the information requested is medical records. The bill is a compromise because it allows the Department of Labor and Industries and employers to contact the worker's medical provider while the claim is being adjudicated at the department and before a formal appeal is filed. The cost that has been suggested as a result of this bill fails to account for existing costs related to gathering information about a claim.

Testimony Against: This bill would complicate resolution of workers' compensation claims and add to the time burden of medical providers. It fails to answer questions about contacting the worker's medical provider when that provider is a witness for the department or the employer. Requiring formal procedures in the workers' compensation system will be costly, will add delay, and will increase litigation tactics. It is not clear whether medical providers would be subject to liability for unauthorized release of information. This adds disincentives for medical providers to treat injured workers. The parties in an appeal can request protective orders from the Board of Industrial Insurance Appeals if there are concerns about confidential information.

Witnesses: (In favor) Wayne Lieb, Washington State Trial Lawyers Association; Allan Darr, Washington State Building & Construction Trades Council and International Union of Operating Engineers; Robbie Stern, Washington State Labor Council; and Bill Hochberg, Washington State Trial Lawyers Association. (Opposed) Mike Watson, Department of Labor and Industries; Mike Hall, Washington Self-Insurers Association; Rick Slagle, Washington Defense Lawyers Association; Clif Finch and Bobbie Hanna, Association of Washington Business; Krista Eichler, Seattle Chamber of Commerce; Gary Keehn; Cliff Webster, Washington State Medical Association; Jan Gee, Washington Retail Association; and Gary Smith, Independent Business Association.