



# Oregon

Kate Brown, Governor

## Department of Consumer and Business Services

Workers' Compensation Division

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### MLAC Independent Medical Examination Review

#### History

The topic of independent (formerly called insurer) medical examinations (IMEs) has been a fairly frequent discussion item in the past fifteen years. In 2001, the issue was raised during the discussions on a major reform bill, Senate Bill 485. The early versions of the bill included provisions for certification of IME physicians and a selection process involving the department. The final version of the bill did not include those items, but did create the related worker-requested medical examination process.

In 2004, the Department of Consumer and Business Services conducted a study on independent medical examinations at the request of the Management-Labor Advisory Committee. The full report is [here](#). The extensive project included surveys of seven key system stakeholders, an analysis of existing data, and a review of insurer notices and information. The study highlighted the following issues:

- Widespread perceptions of examining physician bias.
- The need for a dispute or complaint process.
- A lack of ethical standards for physicians conducting independent medical exams.
- Workers with physical disabilities being required to travel long distances to attend exams.
- Worker misunderstanding or lack of knowledge about independent medical exams.
- Original diagnostic tests not being available to examining physicians.
- Workers not showing up for their examinations.

The study recommended a series of changes, including random selection of providers; director-scheduling of exams; setting ethical standards for providers; education and information for injured workers; establishing complaint processes; addressing distance of travel to exams; and other related changes.

MLAC convened a subcommittee to discuss the study and make recommendations. Based on those discussions and additional public input, MLAC recommended Senate Bill 311 to the 2005 legislature. Though the selection process and director scheduling of exams were not part of the final recommendation, most of the other areas highlighted in the study were addressed by the bill. A summary of SB 311 and related administrative rule changes is in appendix A. The bill took effect July 1, 2006.

Among many changes, the bill required DCBS to develop a certification process, training requirements, and educational materials for independent medical examination physicians. Only certified providers would be allowed to conduct exams. The bill and associated rules also allowed a worker to dispute the location of the exam. The department also instituted an ongoing survey of workers about the exam process.

In 2009, the department did a smaller follow up study to analyze the impact of SB 311. The report looked at worker responses to the IME survey, an analysis of complaint data, quantified the number and type of providers that became authorized by the department, and an analysis of IME payments made system wide. The report is [here](#). No recommendations for changing the current processes were made as a result of the 2009 study.

### **Current Situation**

Two 2015 legislative proposals (SB 701 and HB 2581) raised issues of bias in the IME provider and the concern that examinations are not independent from the requestor. Both bills proposed changes to the IME processes, with SB 701 proposing DCBS perform the selection of the provider and HB 2581 proposing more limited IMEs and introducing the concept of a file review from a provider selected by DCBS. Neither of the bills passed during the session, but MLAC agreed to look at IME issues in the interim. Separately, the department received a suggestion from the Oregon State Bar about possibly adding cultural sensitivity training for IME physicians (see appendix B). The department reviewed existing provider requirements and determined to not change the training curriculum, but has highlighted the issue for future consideration. The department has also heard that the IME list has some deficiencies, especially relating to certain types of specialty providers.

To help describe the current situation, the department has data on:

- The number of IMEs performed and the reported cost of those exams (based on billing data, so there are some caveats and limitations)
- The number of IME complaints made to the department and resulting regulatory actions
- The number and outcome of IME location disputes that come to the department (some of these are resolved at the insurer or service company)
- IME survey results (electronic info since about 2011)
- The number and type of providers who have certified with the department to provide IMEs
- A recent IAIABC survey of other states' IME programs

### **Possible MLAC review topics**

IMEs are directed by a specific party (insurer) for a specific purpose (to help process a workers' compensation claim). The concerns raised about bias appear to fall in two areas – the exam itself and the resulting report from the provider to the insurer. Both of these areas are hard to quantify. First, the nature of the exam – a provider examining a worker in a private medical situation – creates a “he said/she said” situation and it is difficult to determine bias based on subjective responses without an observer or third party account. Second, the department does not analyze the quality or possible bias of the resulting provider reports. This is not to say that the parties that have expressed concern about bias are incorrect, only that from their perspective they believe bias exists.

The department does not have the resources to repeat the 2004 study process with the intensive survey process. However we think there is merit in reviewing current data about the IME process and getting input from the public about where improvements could be made.

- **Update and review 2009 data report.** There may be trends or additional information that could inform the MLAC review.
- **Review current certification requirements and ethical standards.** The certification requirements are set in rule and have not been modified since 2005. At least one suggestion for improvement (cultural sensitivity training) has been made to the department, there may be others.
- **Review training requirements.** Conduct a similar review of the training required to get on the department's list.
- **Review worker survey and update questions.** A 2012 internal WCD staff group looked at the questions on the worker survey and recommended they be changed to gather more meaningful data.
- **Solicit public input about problems and opportunities for improvement.** Provide the public opportunity to comment and provide specifics. The department may also have some suggested improvements.

### **Appendix A: Summary of SB 311 (2005) and related rule changes**

*Excerpted from "Workers' Compensation Independent Medical Examination Study Update" by Nathan Johnson and Rhonda Thomson, August 2009*

The 2005 Legislature unanimously passed SB 311. The bill does the following:

- Requires health care providers to be authorized by the director of the Department of Consumer and Business Services (DCBS) to conduct IMEs for workers' compensation claims in Oregon.
- Requires worker requested medical examination providers to be selected from IME list of authorized providers.
- Provides the worker an opportunity to request review by the director of the reasonableness of the location selected for the IME.
- Imposes a monetary penalty against a worker who fails to attend an IME without prior notification or without justification for not attending.
- Imposes a sanction against a health care provider who unreasonably fails to timely provide diagnostic records required for an IME.
- Provides the director of DCBS authority to investigate complaints and exclude a health care provider if the provider violates standards of professional conduct.
- Requires DCBS to develop or approve any training curriculum for claims examiners used by insurers, self-insurers, or third-party administrators related to interactions with IME providers.

In addition to the legislation, administrative rules were developed that:

- Require health care providers to receive training to be on the authorized list of health care providers.
- Require a quality assurance statement at the end of the IME report.
- Require the insurer to send a brochure with the appointment letter to the worker providing information about IMEs.
- Require the insurer to send the IME survey to the worker with the appointment letter.
- Allow a worker to have an observer present during an IME without the doctor's permission, except for psychological exams, as long as an observer form is completed. The observer form is included in the brochure sent to workers with the appointment letter.
- Require the IME provider to give the IME survey to the worker after the exam.

In order for a health care provider to become authorized, the provider must:

- Be licensed and in good standing with the applicable licensing board.
- Attend a three-hour training about Oregon workers' compensation.
- Sign and submit an application.
- Agree to abide by applicable workers' compensation laws and rules and the standards of professional conduct established by rule for independent medical exams.

Both the bill's statute changes and Oregon administrative rule (OAR 436-009 and OAR 436-010) changes went into effect July 1, 2006.

**Appendix B**

**From:** Bin Chen [<mailto:BinC@rwwcomplaw.com>]

**Sent:** Monday, April 06, 2015 9:53 AM

**To:** DELATORRE Ryan S \* DCBS

**Cc:** [WCD.medicalquestions@state.or.us](mailto:WCD.medicalquestions@state.or.us)

**Subject:** re: proposed training for IME physicians on the topic of cultural sensitivity

**Importance:** High

Hi Ryan:

I am a defense attorney with Reinisch Wilson Weier PC. I am writing you on behalf of the Access to Justice Committee of the Workers Compensation Section, Oregon State Bar. Our committee is deeply concerned with the lack of cultural sensitivity training as part of the curriculum requirements of IME physicians. Attorney Steve Schoenfeld discussed the issue with Myra Aichlmayr early this year, and was informed that we should address our concern by writing to [WCD.medicalquestions@state.or.us](mailto:WCD.medicalquestions@state.or.us). I was recently told I should touch base with you as you may be help us in your position as the Legal Issues Coordinator at WCD.

As you probably know, a study performed by the WCD (in early 2000s I believe) found there was perceived bias in the IME system. It is not clear whether cultural bias was an object of that study, however. Nevertheless, our committee believes cultural bias, to some extent, exists in the IME system. I had the pleasure of presenting with ALJ Bruce Smith and attorney Lourdes Sanchez at the Bench Bar Forum in 2013 concerning the potential impact of cultural differences on workers' compensation. The presentation was well received by members of the Section. One concern arose from the presentation was that IME physicians' perceptions of claimants may be influenced by claimants' race and socio-economic status. For instance, Lourdes explained the expression of pain varies by culture. A Hispanic claimant may feel nonverbal symptoms or expressions are sufficient to describe pain and verbalization is unnecessary; yet, moaning or wincing on examination may be interpreted by IME physicians as symptom magnification and/or functional overlay. We also discussed the issue of stereotype application—when individuals are mentally assigned to a particular class or group, the characteristics assigned to that group are unconsciously and automatically applied to the individual.

I did some follow-up research and discovered that many articles have been written in support of the hypothesis medical provider behavior has contributed to race/ethnicity disparities in medical care. Michelle van Ryn, Ph.D. has done great work in studying how patient race/ethnicity is associated with physicians' perceptions of patients' personality, abilities, behavioral tendencies and role demands. Attached are two articles written by Dr. Ryn, which we propose to be included as required reading for IME physicians as part of the IME training curriculum requirements. Currently, neither the IME training requirements nor IME professional standards address the issue of cultural sensitivity. Member Matthew U'ren identified the following books which also address potential barriers to the use of health services among ethnic minorities: 1) *Medicine & Culture*; Lynn Payer; Henry Holt & Co. © 1996; 2) *Caring for Patients from Different Cultures*; Geri-Ann Galanti; University of Pennsylvania Press, © 2008; 3) *Culture, Health and Illness, 5<sup>th</sup> Edition*; Cecil Helman; Hodder Arnold; © 2007.

Ryan, I understand any IME training program must be approved by the Director. I am not sure if our proposed change to the training requirements of IME physicians will necessitate a rule change. I would greatly appreciate any insight, guidance and assistance you may be able to offer.

Thank you for your attention to this request, and for your professional courtesies.

**Bin Chen**  
**Attorney at Law**



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