

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2297

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2297

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2297**

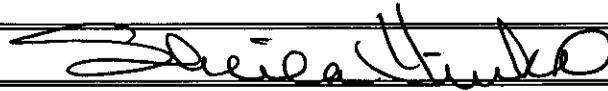
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 22, 2007**

Recorder Job Number: **1563**

Committee Clerk Signature



Minutes:

Senator Dave Nething, Jamestown - Sponsor - In Favor

Discussed the independent medical exam of the injured worker. The meat of the bill is found on the top of page 3. Lines 2-6 what we have is a rewrite of what current law is in changing some things to read better. New language is on line 7, new language runs through 9-10. The doctor selection is from 3 doctors, doctor preference, the "klinker" is that the State Board of Medical Examiners provide the list. Medical Association is a trade association and the Medical Examiners are a statutory determination. What we're trying to get at is to have a selection process out of house, away from the agency itself.

Second part, new language is 12-15 which provides the employees request the agency to designate and pay for a registered nurse to be present at the examination for purposes of having an independent witness.

S Potter: line 4, page 3, it's changing from a duly quailed to one who specializes in treatment review.

S Nething: You would want specialized.

Dave Kemnitz, ND AFLCIO In Favor

TESTIMONY # 1 Covered Testimony

Looked up terms: Independent, adverse: imposed, opposing interest. Explained the terms.

Examples of IME's. Used another state's input.

TESTIMONY #2 In support, told of the examiner's role and responsibilities

TESTIMONY #3 Examples Washington and New York and how IME's compare. They have a panel. [see testimony 1330m] In state of Washington they have a handbook and a process for the bill.

S Klein: Do you feel the current system is biased?

D Kemnitz: Some

Sebald Vetter – CARE In Favor

[400 injured workers, 11,200 supporting workers]

Independent doctors, are they specialized?

Leroy Volk – In Favor

[Explained his experience. Doctor had him do steps for his exam and said there was nothing wrong with him, yet at the Mayo Clinic they said he had nerve damage and he was disabled, his personal doctor and his surgeon said he was impaired and the independent doctor said he was fine.]

Don Schmalenberger - In Favor

Talked about his exam. Was a negative experience in exam room. WSI doctor was not licensed in the state of ND.

Q?

Kevin Schmalenberger - Cousin of Don Schmalberger - In Favor

[explains story] Believes they are predetermined before they go to them. Exam was 8-10 minutes and had a 16 pg. report. Billed for 45 inutes. Have no rights to report. Believes he

was smeared. IME have paid assassins. Had a Diskogram with dye in the disks and received surgery. IME's have a personal cash stash. Felt WC has more power than state government.

Brenda Paulson – wife – In Favor

Said the doctors were reckless and hurtful. Doctors write the report.

Doug Gronsford – In Favor [31:00m]

Had IME '96-'97

Nancy Guestve - In Favor [32:34m]

Went to Doctor Litman. There was no information on the doctor. Spent 30 minutes in the office. Had rough action to here. Her experience was not good. She was called a drug addict. Said her injuries were not work related. Spent 1-2 minutes on the table. Was on disability, likes to work, wants to work.

Daniel Gronsberg – In Favor [37:00m]

Brothers case, injured in '96. Went to doctor with sprained back. Had gone to the chiropractor for 5 months. Tried medical doctor, went to physical therapist, then had to go to IME, Dr. Melissa Rae. [described the experience] In Jan. '97 had a CAT scan. [explained system and experience with Doug, his brother] Law says he can't go in to any other doctor. [44:20m]

Deb Behl[?] Jamestown - In Favor [45:30m]

Changed doctors. Have been able to change the Primary Care physician by using a form, or you can have your primary care physician refer you to another physician in the state and have it say, "please treat." That next physician can accept your care at that time. WSI has to pay for the first consultation. You have rights, you're just not informed. I have survived 3 of them. [shares experience 46:25m] He could not spell or write correctly.

From this report I've been dropped for counseling, they took the IME's opinion, overruled my counselor in Bismarck who has 12 years of experience. Threatened to be dropped.

F?

OPPOSITION?

Duane Houdek – Medical Board - In Opposition

Cannot endorse the doctors. Provided a list of doctors. Have full job, limited staff with licensing, renewals and investigations. We have nothing to do with the board of specialists. The board has to maintain complete independence. This bill would require us to provide a list that would diagnose a particular treatment would be asking us to do just that. We will have a conflict.

S Klein: We have heard that we have docs practicing without licenses.

D Houdek: I did hear most of the testimony. The one Doctor in Minnesota, I called and that Doctor has been licensed in ND since the mid-'80s. His license currently lapsed at the end of Dec., a renewal issue.

S Klein: I'll ask those who said the doctor they saw did not have a license, and pass them on.

D Houdek: That would be great.

S Potter: If not you, who is the Health Council, have the specialties, do they know who the specialists are, or who would know.

D Houdek: Effort is not in who makes the list, but the set of guidelines.

NEUTRAL?

Rob Forward – Staff Attorney WSI – Neutral

TESTIMONY # 3 [55:456m]

They would like to review the products of an independent product that is currently being conducted using IME. [covered testimony]

S Klein: How readily available are docs who want to participate. Is it difficult to find them?

R Forward: That's correct.

S Hacker: How many IME's take place in a year.

R Forward: Less than 100. July 1, 2005 – July 30, 2006, 13 months we had 94. That included 37 different doctors and chiropractors.[60:00m explains]

S Klein: Heard about bias questions, how do you address that. How can you say the independent buys aren't paid by you and aren't biased.

R Forward: Can't address anyone. The last 5 claims, 3 indicated IME show a pay for the claim.

S Hacker: Doctors in ND need to be licensed. Heard some didn't have a license. What are the requirements for these doctors. If they weren't licensed, can the case be reopened?

R Forward: IME doctors hired are not required to have a ND license from other states.

S Andrist: Medical Examiner does not share the report, true: Can you supply the report?

R Forward: Person doing exam may have indicated they haven't done the report yet

S Andrist: IME – comes after the claim has been adjudicated for awhile. Is it possible to offer a 2nd evaluation? [Refers to using dirty needles, only giving 5 minutes]; tell me what you do next.

R Forward: Yes. We try to verify what happened.

S Heitkamp: Is it the belief that we have some doctors that are corrupted? Can't be trusted?

R Forward: No, if you're aware of that, I certainly would like to speak to you and talk about the person you may be referring to.

S Heitkamp: If you were injured, do you think you should have the right to go see and get the advice from any doctor that you see fit?

R Forward: No. If I avail myself to the insurance company or workman's compensation, I understand in order to get coverage and payment for the medical bills, I understand it's part of

the bargain I have to go by the system. Understand the injured worker still has the right to see another doctor, but it will not be covered by WSI.

S Heitkamp: They can't afford to buy bread if they're not working, how can they pay for a doctor?

R Forward: The treating physician, if the treating physician feels IME doctor is all wet, the treating physicians are the evidence that carries the day for the injured worker.

S Potter: Question on Doctor Littman. Aren't there requirements for IME's.

R Forward: We can't speak for specific incidents.

S Klein: If you want to speak further on the issue, we can arrange that.

S Behm: Seems wrong you can't go to your own doctor.

R Forward: No, if you're hurt, you go to the doctor you want to treat you, you want to make sure you're getting the best care. IME is a 2nd opinion.

Q? Opposition? CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2297 B**

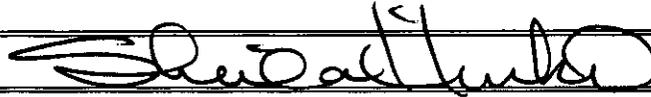
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1749**

Committee Clerk Signature



Minutes:

S Klein: ... which would be provided by the ND State Board of Medical Examiners. They were opposed to that language.

S Andrist: I rather like this bill, according to the word I'm getting. If the medical team in ND won't cooperate, they don't want to do these independent exams, it put the bill between a rock and a hard place in some instances, for that reason. I don't think it's a very workable document. I wish we had a different vehicle.

S Wanzek: It's my understanding that the board of medical examiners said it basically would be a conflict. They'd have to select or single out...

S Hacker:... Do not pass? I need to hear more about this.

S Potter: If the concern is about the conflict at BME, I understand that point, conflict of interest in recommending someone who they may be jerking the license from later. It seems to me there's got to be some agency that could be providing this list, the Health council, the Health department must have a list of specialists.

S Klein: Have we asked the medical providers how that works.

S Potter: Good question.

S Klein: I've asked the question, but they can't get anybody. None of the docs want to oversee or make any decision over someone else's decision. My question was how come they're going to Minnesota? We're struggling to find doctors in the field who want to do this. Moorhead being docs being licensed in MN, come as far as Moorhead. That's a problem, and I don't know that how we will be able to address that. It's a concern I think.

S Andrist: Thing that troubled me, some physicians have the practice of having another person present during the examination. I wish we could protect that right, because I think it's an important right. Maybe we could look for another vehicle to do that.

S Hacker: In it's current format, it will not pass.

S Andrist: I second it.

Motion made by Hacker

Second by Andrist

For a DO NOT PASS on 2297. 5 y, 2 n

Carrier – Wanzek

FISCAL NOTE
Requested by Legislative Council
01/18/2007

Bill/Resolution No.: SB 2297

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relating to doctor selection process for workers compensation independent medical examinations.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2297

BILL DESCRIPTION: IME Doctor Selection

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires WSI to select a doctor for an independent medical examination from a list of three doctors provided by the State Board of Medical Examiners; requires the State Board of Medical Examiners to give preference to in-state doctors unless the employee expresses a preference for an out-of-state doctor; and at the employee's request requires WSI to pay the costs of a register nurse to be present at the examination.

FISCAL IMPACT: Not quantifiable. Independent Medical Examinations (IMEs) are requested sparingly and in only a limited number of cases. To the extent the proposed IME doctor selection process results in lengthened claim processing timeframes and potentially limit willing, qualified doctors that would otherwise be eligible, it may result in increased costs associated with these claims. Given the relatively few cases where IMEs are utilized, we would not anticipate the proposal having a material impact on statewide premium rate and reserve levels.

DATE: January 20, 2007

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/20/2007

REPORT OF STANDING COMMITTEE

SB 2297: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2297 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2297

Why are fair, unbiased reports so important?

Labor and Industries, employers, the labor community and the legislature all want IME examiners to make a special effort to provide fair, unbiased reports.

This is partly because biased reports may create significant problems for all parties involved. For example, biased reports may lead to litigation, which can result in costly delays and high legal expenses, not to mention the effect on the health of the worker and the operation of the employer's business. Protests create administrative problems for claim managers, so adjudicators prefer reports that neither overstate nor understate the worker's impairment.

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Workers' Compensation

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Insurance Carriers and Their Doctors (IME)

The goal of most insurance companies is to keep their money, not to pay you. When they call and/or visit your house, ask them to call your attorney. If you are represented by an attorney or licensed representative, you do not have to talk to insurance company representatives — refer them to your legal representative. Do not sign any papers without your attorney.

Be aware, they may try to videotape or photograph you at home.

"Independent Medical Evaluation"

The insurance company usually has the right to require you to go to their doctor for an evaluation (not treatment). This is called an IME, but it is not really "independent" because it is the insurance company's doctor. There have been many criticisms of the practices of IME doctors. Tell your doctor and legal representative as soon as you get the appointment. [In rare cases, you do not have to go; consult your attorney.]

It is critical to see your doctor after the IME appointment and before your next hearing.

Your legal representative *may or may not* want you to take information with you. Call the lawyer's office to ask if you should bring:

- copies of all C-4's including a recent one;
- copies of medical tests results;
- a letter from your doctor describing your history and medical problems.

If the doctor asks you to move body parts, cooperate, but do not aggravate the injury or injure yourself. You do not have to volunteer any additional information.

Women

Women have the right to be examined by a female doctor *or* to bring a female to the examination. Before the appointment, ask if the doctor will be a man or a woman.

After the insurance doctor evaluates you:

- see your own doctor as soon as possible.
- tell your doctor and legal representative if the insurance doctor actually examined you, and how long the appointment took, and where the appointment took place.
- If you have already been receiving any compensation checks, you may notice that the amount of your check is *cut* after the insurance doctor sees you. They can also stop paying for your treatment. Request a new hearing.

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Initiation of statute

*Independent review of Medical Necessity

This remedy was enacted in Illinois and upheld by the United States Supreme Court

This remedy does not exist in North Dakota.

First.

Medical Necessity of Independent Review

A Statute to create and enact a new section to Chapter 26.1-36 of the North Dakota Century Code relating to insurance companies independent review grievance procedures.

Section 1. A new section to chapter 26.1-36 of the North Dakota Century Code is enacted as follows:

Medically Necessary Services of Independent Review Grievance procedure. An insurance

- Company as defined in section 26.1-02-01, a, shall provide an independent review grievance procedure to address disputes between a primary care physician and the insurer regarding the medical necessity of a covered service proposed by that primary care physician. In the case of a grievance under this section, a physician shall review the question and if the reviewing physician determines the covered service is medically necessary, the insurer shall provide the covered service under the contract. A reviewing physician shall hold the same class of license as the primary care physician; must not be affiliated with the insurer; and must be jointly selected by the primary care physician, insurer and the patient. If the patient is unable to act, the patient's next of kin or legal representative shall participate in the physician selection process. The grievance procedure under this selection is in addition to any other procedure. An insurer may not retaliate against a physician or medical provider for patient advocacy under this section. The insurer contract must contain a statement of the independent review grievance procedure under this section.

Section 2. Cost of this review is born by patient. If the parties do not agree on an external reviewing physician, the patient and her primary care physician shall choose a reviewing physician from a list (required to be prepared by the Insurance Commissioner) of three physicians in the appropriate specialty. A violation of this statute is an unfair insurance practice under NDCC Chapter 51-10 et. seq., under NDCC 26.1-04-03.

**SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SENATE BILL NO. 2297**

**TESTIMONY OF DUANE HOUDEK
EXECUTIVE SECRETARY
NORTH DAKOTA STATE BOARD OF MEDICAL EXAMINERS**

JANUARY 22, 2007

Chairman Klein, members of the Committee, my name is Duane Houdek, Executive Secretary of the North Dakota State Board of Medical Examiners. On behalf of the Board, I am testifying in opposition to that part of SB No.2297 that would require the Board of Medical Examiners to maintain and provide lists of in-state and out-of-state doctors for individual claimant's independent medical examinations.

The Board of Medical Examiners opposes this proposal for two reasons: First, it is fundamentally inconsistent and, in fact, conflicting with the Board's primary duty of licensing physicians and making sure they practice medicine according to North Dakota law; and second, it imposes a duty that we have neither the staff nor the resources to fulfil.

The North Dakota State Board of Medical Examiners is the arm of state government that investigates and disciplines physicians who breach North Dakota's standards of medical practice. As such, it must maintain complete independence from the physicians it regulates. The Board does not—and cannot—endorse any physician, or his or her practice or specialty. This bill would require the Board to provide lists of doctors who would be appropriate to provide a particular medical diagnosis or treatment. That

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would make it impossible for the Board to then, independently and objectively, respond to a patient's complaint that the physician, in some way, breached North Dakota's standard of medical practice.

As to out-of-state physicians, not only would the Board have a potential licensing conflict, it does not have any special knowledge of the practices of those doctors.

Secondly, the Board does not have the staff to perform this function. We have 4.5 FTE's at the Board, each with a full job relating to the board's public mission: initial evaluation and licensing of physicians and physician's assistants; license renewals; investigating complaints against physicians and physician's assistants and providing appropriate discipline; and ensuring the continuing medical education of physicians and physician's assistants.

We do not have the resources to review all doctors' practices and provide meaningful lists for each individual claimant's situation.

Thank you for this opportunity to testify. I will be glad to try to answer any questions you may have.

Independent Medical Examinations (IME)

In your WC case, did the insurance carrier send you to their doctor (an IME)? yes no

Were you examined in a: private medical office medical center
 residence other (describe)

How many minutes approximately did the doctor spend with you?

1-5 6-10 11-15 16-20 21-25

Did the doctor actually do a physical examination? yes no

Did you bring reports of prior examinations, x-rays (CT, MRI) or other tests with you? yes no

Did the IME doctor review them in your presence? yes no

If you are female, was the examining doctor: male female

If you are female and the doctor was male was a female nurse or assistant present during the examination? yes no

Did the WC insurance carrier refuse you further treatment after your visit to the IME doctor? yes no

Were your wage payments lowered or cut off after you had your IME examination? yes no

Please describe any other problems you had regarding the visit to the insurance company doctor (IME).

provide a complete IME report as described in Chapter 3. If you are not on the Approved Examiner's List, you should use the standard "evaluation and management" consultation codes (CPT 99241, etc.). See also "Limited License Providers" on this page.

If you are a consultant and become an approved examiner, you do NOT need to be affiliated with an IME panel, and you are NOT obligated to accept referrals for IMEs.

Agreed exams: An agreed exam may be scheduled when the worker is represented by legal counsel. The claim manager and legal counsel of a worker may arrange for an IME by certain examiner(s) and agree that each will abide by the findings and conclusions. The agreed exam must be approved or authorized by the employer when the employer is active in the claim. Doctors must be on the department's Approved Examiners List to perform agreed exams. Agreed exams are paid according to the IME fee schedule. Doctors must use the same billing procedures used for other IMEs.

Limited license providers: Limited license providers (for example, dentists, podiatrists, and chiropractors) may only provide ratings for regions or conditions within their scope of practice. Chiropractors must be on the Approved Examiners List.

Examiner's Roles and Responsibilities

Performing IMEs requires considerable judgment and understanding of specialized terms. You also are called on to have mastery of skills that may not be part of your original training. This guidebook can help you understand Washington state's industrial insurance system and the requirements for high-quality IMEs. Keep in mind that other disability systems—private, federal and other state systems—may use different definitions and rules for determining impairment and disability.

As an approved examiner for Washington state, you have agreed that you will be evaluated on the quality of your examination and report, not on whether your recommendations are perceived as favorable or unfavorable to the parties involved.

You have further agreed to treat workers you examine with dignity and respect. To accomplish this, please be sure to:

- Introduce yourself to the worker. You are also encouraged to wear a name tag. The worker has a right to know his or her examiner's name and specialty.
- Explain the examination procedures.
- Answer the worker's questions about the examination process. (Refer the worker to his or her claim manager for questions about the claim, and to the attending doctor for medical advice outside the scope of your examination.)
- Provide adequate draping and privacy if the worker needs to remove clothing for the examination. The worker must be fully dressed while you take the history.
- Allow a friend or family member to attend non-psychiatric portions of the examination. (See Accompaniment During Examinations on page 8.)
- Refrain from derogatory comments, such as comments about the worker, the employer, the worker's motivations or the worker's choice of attending doctor.
- Refrain from comments about the care the worker has received. While Labor and Industries may solicit your opinions later, please don't express opinions during the examination process. If you do not feel the worker has had adequate care, suggest a change of attending doctor in your written comments. (See Recommending Change of Provider, page 19.)
- Close the examination by telling the worker that the examination is over and ask if there is further information the worker would like to add or questions he/she would like to ask. A worker who feels an important point was not addressed in the examination is likely to feel dissatisfied and believe the examination was incomplete.

2007 Senate Bill No. 2297
Testimony before the Senate Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
January 22, 2007

Mr. Chairman and Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). The WSI Board of Directors has taken a neutral position on SB 2297. Their position is currently neutral because they would like to review the results of an independent audit that is currently being conducted regarding WSI's use of independent medical examinations (IMEs). WSI is due to receive a draft version of the report today. Even though WSI is currently neutral, we would like to point out several problematic areas of the bill.

First, the proposed legislation would lengthen the time it takes to adjudicate a claim. This is primarily because a layer of bureaucracy would be added to existing WSI procedures. Each time an IME is requested, the State Board of Medical Examiners or WSI would be required to contact the injured worker to inquire about the in-state or out-of-state doctor preference, contact a number of doctors in the appropriate specialty to inquire about the doctors' availability and willingness to perform an IME, and finally attempt to compile a list of three to use to schedule the exam. This procedure would be necessary each and every time an IME was requested.

This procedure would lengthen a claim's adjudication time even if the complex process operated efficiently. Unfortunately, our analysis indicates it will not operate efficiently. This is because many doctors in North Dakota are not interested in performing IMEs. The medical community in North Dakota is small and doctors do not wish to review, and possibly be critical of, the work of colleagues they know and from whom they might receive referrals. Our experience has shown the State Board of Medical Examiner's attempts to comply with this law would be greatly aggravated by a lack of willing doctors.

WSI already knows this frustration. WSI is routinely required to use doctors from outside the state to conduct IMEs because of the lack of willing, qualified choices from North Dakota. WSI would rather utilize doctors from North Dakota, but WSI, like the population it serves, cannot always find adequate resources within the state.

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Next, we would like to turn your attention to the part of the bill that requires WSI to send registered nurses to the examinations if requested by injured workers. This is puzzling. Under the change, a nurse would be chosen and paid by WSI, but have no specific function in the IME process. The way the bill is written, the nurse would have no professional responsibilities to anyone other than WSI. This would not benefit anyone in the process.

In addition, the bill addresses the allowance of friends and family of the injured worker into the exam room. WSI does not prohibit friends and family from entering the exam room, instead, this issue is left up to the doctor performing the exam. Some doctors do not mind this practice, and some doctors do. What we have heard from the doctors on occasion is that injured workers will bring a person with them and the person is disruptive during the exam. In fact, there was a situation last summer where a doctor discontinued an IME because he felt physically threatened by the friend accompanying the injured worker, and he could not persuade the friend to leave. This does not happen often, but it does happen. It is possible that the proposed change would tie doctors' hands and not allow them to control their own exam rooms.

For the above reasons, WSI requests that the committee closely review SB 2297. I would be happy to answer any questions at this time.

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