

JAN 15 2014

A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 386-79, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§386-79 [Medical examination by employer's physician.]~~
4 Requested mutual examination. [~~After an injury and during the~~
5 ~~period of disability, the employee, whenever ordered by the~~
6 ~~director of labor and industrial relations, shall submit to~~
7 ~~examination, at reasonable times and places, by a duly qualified~~
8 ~~physician or surgeon designated and paid by the employer. The~~
9 ~~employee shall have the right to have a physician or surgeon~~
10 ~~designated and paid by the employee present at the examination,~~
11 ~~which right, however, shall not be construed to deny to the~~
12 ~~employer's physician the right to visit the injured employee at~~
13 ~~all reasonable times and under all reasonable conditions during~~
14 ~~total disability.~~

15 ~~If an employee refuses to submit to, or in any way~~
16 ~~obstructs such examination, the employee's right to claim~~
17 ~~compensation for the work injury shall be suspended until the~~
18 ~~refusal or obstruction ceases and no compensation shall be~~



1 ~~payable for the period during which the refusal or obstruction~~
2 ~~continues.~~

3 ~~In cases where the employer is dissatisfied with the~~
4 ~~progress of the case or where major and elective surgery, or~~
5 ~~either, is contemplated, the employer may appoint a physician or~~
6 ~~surgeon of the employer's choice who shall examine the injured~~
7 ~~employee and make a report to the employer. If the employer~~
8 ~~remains dissatisfied, this report may be forwarded to the~~
9 ~~director.~~

10 ~~Employer requested examinations under this section shall~~
11 ~~not exceed more than one per case unless good and valid reasons~~
12 ~~exist with regard to the medical progress of the employee's~~
13 ~~treatment. The cost of conducting the ordered medical~~
14 ~~examination shall be limited to the complex consultation charges~~
15 ~~governed by the medical fee schedule established pursuant to~~
16 ~~section 386-21(e).] (a) Following an injury and after a claim~~
17 ~~is filed by the injured employee, the employer, upon mutual~~
18 ~~agreement of the parties, may appoint a qualified physician,~~
19 ~~paid by the employer, to conduct an independent medical~~
20 ~~examination or a permanent impairment rating examination of the~~
21 ~~injured employee and make a report to the employer.~~



1 (b) The cover letter to the physician selected to perform
2 the examination under this section shall notify the physician
3 that the physician has been mutually selected to conduct an
4 independent examination by the parties. The cover letter shall
5 be transmitted to the injured worker at least five working days
6 before the appointment. The employee or the employee's
7 representative shall be promptly provided with a copy of the
8 report of the independent medical examination or permanent
9 impairment rating examination.

10 (c) A physician selected pursuant to this section to
11 perform an independent medical examination or permanent
12 impairment rating examination shall be willing to undertake the
13 examination and paid for by the employer. The selected
14 physician shall be currently licensed pursuant to chapter 453 or
15 442 to practice in Hawaii; except that upon approval by the
16 director, a physician who resides outside of the State of Hawaii
17 and is licensed in another state as a physician equivalent to a
18 license under chapter 453 or 442, may be selected if there is no
19 State of Hawaii-licensed physician available in a specialty to
20 conduct the examination. Further, if the employee does not
21 reside in Hawaii, a physician who resides outside the State of
22 Hawaii and is licensed in the state of the out-of-state



1 employee's residence as a physician equivalent to a license
2 under chapter 453 or 442 may be selected.

3 If the parties are unable to reach a mutual agreement, the
4 parties shall jointly prepare a list of five physicians. The
5 employer shall appoint the first physician, the employee shall
6 appoint the second, and the process shall continue until there
7 is a list of five physicians. The parties shall alternatively
8 strike a physician from the list. The employee shall strike
9 first, the employer shall strike next, and the process shall
10 continue until only one physician remains who shall conduct the
11 examination and prepare a report.

12 Any physician mutually selected by the employer and
13 employee shall examine the employee within forty-five calendar
14 days of the selection or appointment process or as soon as
15 practicably possible.

16 (d) In no event shall an independent medical examination
17 and a permanent impairment rating examination be combined into a
18 single medical examination unless the employee consents in
19 writing prior to the scheduling of the examination of the final
20 independent selected physician.

21 In no event shall the director, appellate board, or court
22 order more than one requested independent medical examination



1 and one permanent impairment rating examination per case, unless
2 valid reasons exist with regard to the medical progress of the
3 employee's treatment or where major surgery and elective
4 surgery, or either, is contemplated. In such case, the process
5 of selecting a physician by mutual agreement under this section
6 shall apply.

7 (e) If an employee refuses to submit to, or in any way
8 unreasonably interferes with the examination, the employee's
9 right to claim compensation for the work injury shall be
10 suspended until the refusal or obstruction ceases and no
11 compensation shall be payable for the period during which the
12 unreasonable interference continues. The cost of conducting the
13 ordered independent medical examination or permanent impairment
14 rating examination shall be limited to the complex consultation
15 charges governed by the medical fee schedule established
16 pursuant to section 386-21(c).

17 (f) When an employee has attained medical stability as
18 determined by the injured employee's attending physician, the
19 employer may appoint a physician, paid by the employer and
20 selected by agreement of the parties, who shall conduct a
21 permanent impairment rating examination of the injured employee
22 pursuant to subsection (c).



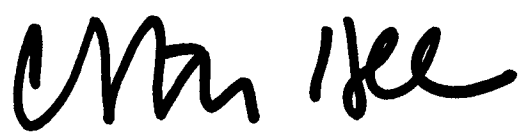
1 For the purposes of this subsection, "medical stability"
2 means that no further improvement in the employee's work-related
3 condition can reasonably be expected from curative health care
4 or the passage of time."

5 SECTION 2. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on July 1, 2014;
11 provided that this Act shall be repealed on June 30, 2018, and
12 section 386-79, Hawaii Revised Statutes, shall be reenacted in
13 the form in which it read on the day before the effective date
14 of this Act.

15

INTRODUCED BY: 

S.B. NO. 2123

Report Title:

Workers' Compensation; Medical Examinations; Mutual Agreement

Description:

Requires independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees. Allows for the use of an out-of-state physician under certain conditions. Repeals on 06/30/2018.

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