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April 15, 2015

Management/Labor Advisory Committee:

Thank you for giving me the opportunity to submit written testimony. My name is Stephen Fuller, M.D. I am a board certified orthopedic surgeon since 1977. I have performed independent medical evaluations in Oregon since 1988 and am familiar with the Workers' Compensation law as it pertains to independent examinations. I also have similar experience in other jurisdictions, in fact, in six other jurisdictions. Based on that experience, it is my firm opinion that the Oregon Workers' Compensation system functions very well and does not need to be changed in any way.

Representative Phil Barnhart, per recent testimony, indicated that he was a practicing psychologist in Eugene, implying he had experience with biased reports. According to his bio, however, he apparently stopped his practice in 2001, so his perception of biased reports in 2001 may not pertain to 2015. He is also an attorney who knows that a legal case cannot be presented without supporting facts versus unfounded perception. Yet, to my knowledge, no biased IME reports have been presented for the committee's review.

Representative Barnhart's bias concerns have been addressed by the 2005 law change, which allows the WCD director to sanction or remove IME physicians who provide erroneous information or biased reports. Therefore, the current law does not need to be changed.

Senator Beyer, in his recent testimony, cites his experience with his brother-in-law, who went through the Workers' Compensation system and felt like he was getting run around. His attorney apparently lost the case, and blamed this loss on physician bias. Senator Beyer concluded, "That may not be accurate, but it is the perception."

Bias accusations generally stem from claimant's attorneys and/or treating physicians.

Claimants' attorneys claim physician bias when the claim is not successful. Thus, there is a ready excuse to obscure the real reasons for losing a case, and so they claim the IME physician is biased.

This accusation is not correct because IME physicians are required to practice evidence-based medicine. If a medical conclusion is reached, then the physician has to provide a scientific medical basis for the conclusion – medical facts need to be produced, not legal smoke and mirrors or perceptions.

Perception is not an accurate way to approach legal matters. Law courts do not convict on the basis of perception but convict on the basis of evidence and facts, because perception is very inaccurate. If Senator Beyer wants to produce his brother-in-law's file, then it can be factually examined by the WCD director, aided by expert medical input. If there is bias, then the director can sanction the biased physician in question.

Please also be aware that IME physicians have to undergo three hours of WCD training and pass a test. Thus, they are familiar with Oregon's Workers' Compensation standards and are aware that they are under threat of sanction if they are biased. A recent call to WCD reveals that no specific bias complaints or sanctions could be remembered over the past several years.

However, no such rigorous standard applies to treating physicians - who are the second source of bias accusations. For the most part, they do not fully understand Workers Compensation law based on my 25 year experience of reading comp files. Thus, treating physicians, frequently, are mistaken in attributing medical conditions to occupation. Neither are they under threat of sanction for their own bias, which is financial loss since they do not get paid if a claim is successfully denied.

In closing, there is no need to change the law based on the non-factual perceptions of Representative Barnhart and Senator Beyer, because the law already contains means to handle the "perception", if not the fact, of a biased independent medical evaluation.

Thank you again for this opportunity.

Sincerely,

A handwritten signature in black ink that reads "Stephen Fuller M.D." with a stylized flourish at the end.

Stephen Fuller, M.D.  
Orthopedic Surgeon