

2021 Regular Session

HOUSE BILL NO. 478

BY REPRESENTATIVE STAGNI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WORKERS COMPENSATION: Provides relative to additional medical opinions for worker's compensation claims

1 AN ACT

2 To amend and reenact R.S. 23:1123 and 1317.1 and to repeal R.S. 23:1124.1, relative to  
3 worker's compensation; to provide for additional medical opinions; to provide for  
4 medical examinations; to provide for the procedure of selecting and appointing a  
5 physician; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1123 and 1317.1 are hereby amended and reenacted to read as  
8 follows:

9 §1123. Disputes as to condition or capacity to work; additional medical opinion  
10 regarding an examination under supervision of the secretary

11 If A. Before a disputed claim for compensation is filed, if any dispute arises  
12 as to the condition of the employee, or the employee's capacity to work, the assistant  
13 secretary, upon application of any party, shall order an additional medical opinion  
14 regarding an examination of the employee to be made by a medical practitioner  
15 selected and appointed by the assistant secretary. The medical examiner shall report  
16 his conclusions from the examination to the assistant secretary and to the parties and  
17 such report shall be prima facie evidence of the facts therein stated in any subsequent  
18 proceedings under this Chapter. may file with his local worker's compensation  
19 district office, as determined by R.S. 23:1310.4, an application requesting an

1 additional medical opinion regarding an examination of the employee to be made by  
2 a physician selected and appointed by that office, which shall grant the request.

3 B. After a disputed claim for compensation is filed, any party may file with  
4 a worker's compensation judge a request for an additional medical opinion regarding  
5 an examination of the employee to be made by a physician selected and appointed  
6 by the worker's compensation judge who may do any of the following:

7 (1) Grant the request, if made at the scheduling conference.

8 (2) Deny the request, if made after that time except for good cause shown or  
9 if it is found to be in the best interest of justice to order the examination.

10 (3) On his own motion, order any claimant appearing before him to be  
11 examined by another physician.

12 C. If both parties agree on a choice of the physician to conduct the additional  
13 medical examination, the parties may present the choice to the appropriate office or  
14 to the judge and that physician shall be selected to conduct the examination.

15 D. The physician selected to conduct the examination shall report his  
16 conclusions from the examination to the appropriate office or to the judge. The  
17 office will provide a copy of the report to the parties and the report shall be prima  
18 facie evidence of the facts stated in any subsequent proceedings under this Chapter.

19 E. Neither the claimant nor the respondent in a hearing before the worker's  
20 compensation judge shall be permitted to introduce the testimony of more than two  
21 physicians where the evidence of any additional physician would be cumulative  
22 testimony.

23 F. Under no circumstance shall an additional medical opinion address  
24 causation or shall an opinion regarding causation be requested.

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26 §1317.1. Additional medical opinion regarding medical examinations

27 ~~A. Any party wishing to request an additional medical opinion regarding a~~  
28 ~~medical examination of the claimant pursuant to R.S. 23:1123 and 1124.1 shall be~~  
29 ~~required to make its request at or prior to the pretrial conference. Requests for~~

1 ~~additional medical opinions regarding medical examinations made after that time~~  
2 ~~shall be denied except for good cause or if it is found to be in the best interest of~~  
3 ~~justice to order such examination.~~

4 B.A. An examiner performing additional medical opinion exams pursuant  
5 to R.S. 23:1123 shall be required to prepare and send to the office a certified report  
6 of the examination within thirty days after its occurrence.

7 E.B. The report of the examination shall contain the following, when  
8 applicable:

9 (1) A statement of the medical ~~and legal~~ issues the examiner was asked to  
10 address.

11 (2) A detailed summary of the basis of the examiner's opinion, including but  
12 not limited to a listing of reports or documents reviewed in formulating that opinion.

13 (3) The medical treatment and physical rehabilitative procedures which have  
14 already been rendered ~~and the treatment, if any, which the examiner recommends for~~  
15 ~~the future, together with reasons for the recommendation.~~

16 (4) Any other conclusions required by the scope of the additional medical  
17 opinion regarding a medical examination, together with reasons for the conclusion  
18 reached.

19 (5) A curriculum vitae of the examiner.

20 (6) A written certification personally signed by the examiner that the report  
21 is true. The substance of the certification shall be : "I certify that I have caused this  
22 report to be prepared, I have examined it, and to the best of my knowledge and  
23 belief, all statements contained herein are true, accurate, and complete."

24 D.C. If a physical examination of the claimant was conducted, the certified  
25 report shall contain all of the following additional information:

26 (1) A complete history of the claimant, including all previous relevant or  
27 contributory injuries with a detailed description of the present injury.

28 (2) The complaints of the claimant.

1 (3) A complete listing of tests and diagnostic procedures conducted during  
2 the course of the examination.

3 (4) The examiner's findings on examination, including but not limited to a  
4 description of the examination and any diagnostic tests and X-rays.

5 E.D. When the additional medical opinion medical examiner's report is  
6 presented within thirty days as provided in this Section:

7 (1) The examiner shall be protected from subpoena except for a single trial  
8 deposition. However, upon a proper motion for cause, the workers' compensation  
9 judge may order further discovery of the additional medical opinion by a medical  
10 examiner as deemed appropriate.

11 (2) Except to schedule the deposition or further discovery as described  
12 above, the office of the additional medical opinion medical examiner shall not be  
13 contacted regarding the claimant by any party, attorney, or agent.

14 F.E. Objections to the additional medical opinion regarding a medical  
15 examination shall be made on form LDOL-WC-1008, and shall be set for hearing  
16 before a workers' compensation judge within thirty days of receipt. No mediation  
17 shall be scheduled on disputes arising under this Section.

18 Section 2. R.S. 23:1124.1 is hereby repealed in its entirety.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 478 Original

2021 Regular Session

Stagni

**Abstract:** Provides relative to additional medical opinions for worker's compensation claims.

Present law provides that if any dispute arises as to the condition of an employee, or the employee's capacity to work, the assistant secretary, upon application of any party, shall order an additional medical opinion and select and appoint a medical practitioner to perform an examination on the employee.

Present law provides that the medical examiner shall report his conclusions to the assistant secretary and to the parties and the report shall be prima facie evidence of the facts.

Proposed law provides that before a disputed claim for compensation is filed, any party may file with his local worker's compensation district office, an application requesting an

additional medical opinion. Proposed law further provides that the local worker's compensation district office shall select and appoint the physician to perform an examination on the employee.

Proposed law provides that after a disputed claim for compensation is filed, any party may file with a worker's compensation judge a request for an additional medical opinion. Proposed law further provides that the worker's compensation judge shall select and appoint a physician to perform an examination on the employee.

Proposed law provides that the worker's compensation judge may do any of the following when a party has file a request for an additional medical opinion:

- (1) Grant the request if made at the scheduling conference.
- (2) Deny the request if made after that time except for good cause shown or if it is found to be in the best interest of justice to order the examination.
- (3) On his own motion, order any claimant appearing before him to be examined by another physician.

Proposed law provides that if both parties agree on a physician to conduct the additional medical examination, the parties may present the choice to the appropriate office or to the judge and that physician will be selected to conduct the examination.

Proposed law provides that the physician conducting the exam shall report his conclusions to the appropriate office or to the judge.

Proposed law provides that neither the claimant nor the respondent in a hearing before the worker's compensation judge shall be permitted to introduce the testimony of more than two physicians where the evidence of any additional physician would be cumulative.

Present law provides that neither the claimant nor the respondent in a hearing before the workers' compensation judge shall be permitted to introduce the testimony of more than two physicians where the evidence of any additional physician would be cumulative. Present law further provides the hearing officer, on his own motion, may order that any claimant appearing before it be examined by other physicians.

Proposed law repeals present law.

(Amends R.S. 23:1123 and 1317.1; Repeals R.S. 23:1124.1)