S T A T E O F N E W Y O R K

5373

2011-2012 Regular Sessions

I N S E N A T E

May 13, 2011

Introduced by Sen. DeFRANCISCO -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, the insurance law, the workers' compensation law, the general municipal law and the court of claims act, in relation to enacting the "adversarial medical examination procedure act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "adversarial medical examination procedure act".

S 2. The legislature hereby finds and declares that the conducting of physical and mental examinations in the course of civil litigation and other civil proceedings has evolved in a manner inconsistent with the civil practice law and rules and fundamental notions of due process. Indeed, a commonly used term for such examinations, an "independent medical examination," is itself a misnomer because the physician conducting such examination is not at all independent, but is in fact being compensated by a party or insurer whose interests are typically adverse to those of the party being examined. Further, parties being examined are frequently required to provide written responses to questions outside the discovery process prescribed in the civil practice law and rules or relevant claims process and without the opportunity to obtain advice of counsel, even though such written responses can and are being used as admissions and/or to later impeach the examined party in the course of such proceeding. Accordingly, the name by which such an examination is called needs to be changed to reflect the true adversarial nature of such examination; the process for obtaining information from the party to be examined which is necessary to the proper conducting of the examination needs to be brought within the carefully considered discovery process which already exists in the civil practice law and rules or claims process.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD01389-02-1

S 3. Section 3121 of the civil practice law and rules, subdivision (a) as amended by chapter 294 of the laws of 1984, is amended to read as follows:

S 3121. [Physical or mental] ADVERSARIAL MEDICAL examination. (a) Notice of AN ADVERSARIAL MEDICAL examination. After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent, employee or person in the custody or under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a physical, mental or blood [examination] "ADVERSARIAL MEDICAL EXAMINATION" by a designated physician, or to produce for such ADVERSARIAL MEDICAL examination his OR HER agent, employee or the person in his OR HER custody or under his OR HER legal control. The notice may require duly executed and acknowledged written authorizations permitting all parties to obtain, and make copies of, the records of specified hospitals relating to such mental or physical condition or blood relationship; where a party obtains a copy of a hospital record as a result of the authorization of another party, he OR SHE shall deliver a duplicate of the copy to such party. A copy of the notice shall be served on the person SUBJECT to [be examined] THE ADVERSARIAL MEDICAL EXAMINATION. It shall specify the time, which shall be not less than twenty days after service of the notice, and the conditions and scope of the ADVERSARIAL MEDICAL examination, AND IT SHALL INFORM THE PERSON SUBJECT TO THE EXAMINATION THAT HE OR SHE HAS THE RIGHT TO HAVE A REPRESENTATIVE PRESENT DURING SUCH EXAMINATION, AND SHALL HAVE THE RIGHT TO RECORD OR TAPE SUCH EXAMINATION IN A MANNER SUCH AS NOT TO UNREASONABLY IMPEDE SUCH EXAMINATION. THE PERSON SUBJECT TO THE ADVERSARIAL MEDICAL EXAMINATION SHALL NOT BE REQUIRED TO PRODUCE ANY DOCUMENTS OR SUPPLY ANY WRITTEN ANSWERS TO QUESTIONS PUT TO HIM OR HER AT SUCH EXAMINATION EXCEPT AS IN RESPONSE TO PROPERLY SERVED DISCOVERY DEMANDS MADE PURSUANT TO THE CIVIL PRACTICE LAW AND RULES.

(b) Copy of report. A copy of a detailed written report of the examining physician setting out [his] THE findings and conclusions OF THE ADVERSARIAL MEDICAL EXAMINATION shall be delivered by the party seeking the ADVERSARIAL MEDICAL examination to [any] EACH party [requesting to exchange therefor a copy of each report in his control of an examination made with respect to the mental or physical condition in controversy] WITHIN THIRTY DAYS OF SUCH EXAMINATION.

(C) FAILURE TO EXCHANGE. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT THE RIGHTS OF ANY PARTY FROM MOVING TO PRECLUDE OR FOR SEEKING OTHER SANCTIONS PURSUANT TO RULE 3124 OR SECTION 3126 FOR FAILURE TO EXCHANGE A DETAILED WRITTEN REPORT OF AN "ADVERSARIAL MEDICAL EXAMINATION" UPON OTHER PARTIES TO AN ACTION.

S 4. Section 5102 of the insurance law is amended by adding a new subsection (n) to read as follows:

(N) "ADVERSARIAL MEDICAL EXAMINATION" MEANS ANY PHYSICAL EXAMINATION REQUESTED BY AN INSURER MADE IN RESPONSE TO A CLAIM MADE PURSUANT TO BENEFITS UNDER THIS ARTICLE. THE PERSON SUBJECT TO EXAMINATION SHALL HAVE THE RIGHT TO HAVE A REPRESENTATIVE PRESENT DURING SUCH EXAMINATION AND SHALL HAVE THE RIGHT TO RECORD OR TAPE SUCH EXAMINATION IN A MANNER SUCH AS NOT TO UNREASONABLY IMPEDE SUCH EXAMINATION. THE PERSON TO BE EXAMINED SHALL BE INFORMED OF SUCH RIGHTS AT LEAST TWENTY DAYS PRIOR TO SUCH EXAMINATION. IF SUCH EXAMINATION SHALL BE USED TO DENY, IN WHOLE OR IN PART, ANY BENEFITS UNDER THIS SECTION, A COPY OF THE DETAILED WRITTEN REPORT OF SUCH EXAMINATION, WRITTEN BY THE EXAMINING PHYSICIAN OR HEALTH CARE PROFESSIONAL, SHALL BE PROVIDED TO THE INJURED PARTY AND ANY THIRD-PARTY MEDICAL PROVIDER TO WHOM THE INJURED PARTY MAY HAVE

ASSIGNED HIS OR HER CLAIM OR CLAIMS FOR BENEFITS ALONG WITH ANY DENIAL OF BENEFITS. IN THE EVENT SUCH REPORT IS NOT SO PROVIDED BY THE INSURER OR SELF-INSURER ALONG WITH THE DENIAL, THE INSURER SHALL BE PRECLUDED FROM USING SUCH REPORT TO SUPPORT ANY DENIAL OF SUCH CLAIM.

S 5. Subdivision 4 of section 13-a of the workers' compensation law, as amended by chapter 473 of the laws of 2000, is amended to read as follows:

(4) (a) No claim for medical or surgical treatment shall be valid and enforceable, as against such employer, or employee, unless within forty-eight hours following the first treatment the physician giving such treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports if requested in writing by the chair, board, employer or insurance carrier at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a physician authorized by the chair in accordance with sections thirteen-b and one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's physician, and refusal by the claimant to submit to such [independent] ADVERSARIAL medical examination at such time or times as may reasonably be necessary in the opinion of the board, shall bar the claimant from recovering compensation for any period during which he or she has refused to submit to such examination. No hospital shall be required to produce the records of any claimant without receiving its customary fees or charges for reproduction of such records.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an [independent] ADVERSARIAL medical examination by an authorized physician, the employer or carrier shall arrange for such examination to be performed by a qualified physician in a medical facility convenient to the claimant.

(d) The [independent] ADVERSARIAL medical examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an [independent] ADVERSARIAL medical examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the [independent] ADVERSARIAL medical examiner's professional opinion with respect to the claimant's condition:

(ii) such examiner's board issued authorization number;

(iii) the name of the individual or entity requesting the examination;

(iv) if applicable, the registration number as required by section thirteen-n of this article; and

(v) such other information as the chair may require by regulation.

Any report by an [independent] ADVERSARIAL medical examiner who is not authorized, and who performs an [independent] ADVERSARIAL medical examination in accordance with paragraph (c) of this subdivision, which is to be used as medical evidence under this chapter, shall include in the report such information as the chair may require by regulation.

S 6. Subdivisions 1 and 2 of section 13-b of the workers' compensation law, as amended by chapter 473 of the laws of 2000, are amended to read as follows:

1. Upon the recommendation of the medical society of the county in which the physician's office is located or of a board designated by such county society or of a board representing duly licensed physicians of any other school of medical practice in such county, the chair may authorize physicians licensed to practice medicine in the state of New York to render medical care under this chapter and to perform [independent] ADVERSARIAL medical examinations in accordance with subdivision four of section thirteen-a of this article. If, within sixty days after the chair requests such recommendations the medical society of such county or board fails to act, or if there is no such society in such county, the chair shall designate a board of three outstanding physicians, who shall make the requisite recommendations.

No such authorization shall be made in the absence of a recommendation of the appropriate society or board or of a review and recommendation by the medical appeals unit. No person shall render medical care or conduct [independent] ADVERSARIAL medical examinations under this chapter without such authorization by the chair, provided, that:

(a) Any physician licensed to practice medicine in the state of New York may render emergency medical care under this chapter without authorization by the chair under this section; and

(b) A licensed physician who is a member of a constituted medical staff of any hospital may render medical care under this chapter while an injured employee remains a patient in such hospital; and

(c) Under the active and personal supervision of an authorized physician medical care may be rendered by a registered nurse or other person trained in laboratory or diagnostic techniques within the scope of such person's specialized training and qualifications. This supervision shall be evidenced by signed records of instructions for treatment and signed records of the patient's condition and progress. Reports of such treatment and supervision shall be made by such physician to the chair on such forms and at such times as the chair may require.

(d) Upon the referral which may be directive as to treatment of an authorized physician physical therapy care may be rendered by a duly licensed physical therapist. Where physical therapy care is rendered records of the patient's condition and progress, together with records of instruction for treatment, if any, shall be maintained by the physical therapist and physician. Said records shall be submitted to the chair on such forms and at such times as the chair may require.

(e) Upon the prescription or referral of an authorized physician occupational therapy care may be rendered by a duly licensed occupational therapist. Where occupational therapy care is rendered records of the patient's condition and progress, together with records of instruction for treatment, if any shall be maintained by the occupational therapist and physician. Said records shall be submitted to the chair on forms and at such times as the chair may require.

(f) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an [independent] ADVERSARIAL medical examination by an authorized physician, the employer or carrier shall arrange for such examination to be performed by a qualified physician in a medical facility convenient to the claimant.

2. A physician licensed to practice medicine in the state of New York who is desirous of being authorized to render medical care under this chapter and/or to conduct [independent] ADVERSARIAL medical examinations

in accordance with paragraph (b) of subdivision four of section thirteen-a and section one hundred thirty-seven of this chapter shall file an application for authorization under this chapter with the medical society in the county in which his or her office is located, or with a board designated by such society, or with a board designated by the chair as provided in this section. In such application the applicant shall state his or her training and qualifications, and shall agree to limit his or her professional activities under this chapter to such medical care and [independent] ADVERSARIAL medical examinations, as his or her experience and training qualify him or her to render. The applicant shall further agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking medical treatment, or submitting to an [independent] ADVERSARIAL medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of physicians authorized to render medical care or to conduct [independent] ADVERSARIAL medical examinations under this chapter, or if the person seeking such treatment, or submitting to an [independent] ADVERSARIAL medical examination, has been transferred from his or her care in accordance with the provisions of this chapter. This agreement shall run to the benefit of the injured person so treated or examined, and shall be available to him or her as a defense in any action by such physician for payment for treatment rendered by a physician after he or she has been removed from the list of physicians authorized to render medical care or to conduct [independent] ADVERSARIAL medical examinations under this chapter, or after the injured person was transferred from his or her care in accordance with the provisions of this chapter. The medical society or the board designated by it, or the board as otherwise provided under this section, if it deems such licensed physician duly qualified, shall recommend to the chair that such physician be authorized to render medical care and/or conduct [independent] ADVERSARIAL medical examinations under this chapter, and such recommendation and authorization shall specify the character of the medical care or [independent] ADVERSARIAL medical examination which such physician is qualified and authorized to render under this chapter. Such recommendations shall be advisory to the chair only and shall not be binding or conclusive upon him or her. The licensed physician may present to the medical society or board, evidences of additional qualifications at any time subsequent to his or her original application. If the medical society or board fails to recommend to the chair that a physician be authorized to render medical care and/or to conduct [independent] ADVERSARIAL medical examinations under this chapter, the physician may appeal to the medical appeals unit. The medical society or the board designated by it, or the board as otherwise provided under this section, may upon its own initiative, or shall upon request of the chair, review at any time the qualifications of any physician as to the character of the medical care or [independent] ADVERSARIAL medical examinations which such physician has theretofore been authorized to render under this chapter and may recommend to the chair that such physician be authorized to render medical care or to conduct [independent] ADVERSARIAL medical examinations thereafter of the character which such physician is then qualified to render. On such advisory recommendation the chair may review and after reasonable investigation may revise the authorization of a physician in respect to the character of medical care and/or to conduct [independent] ADVERSARIAL medical examinations which he or she is authorized to render. If the medical society or board recommends to the chair that a

physician be authorized to render medical care and/or to conduct [independent] ADVERSARIAL medical examinations under this chapter of a character different from the character of medical care or [independent] ADVERSARIAL medical examinations he or she has been theretofore authorized to render, such physician may appeal from such recommendation to the medical appeals unit.

S 7. The section heading and the opening paragraph and paragraphs (b) and (g) of subdivision 2 of section 13-d of the workers' compensation law, the section heading, the opening paragraph and paragraph (g) of subdivision 2, as amended by chapter 473 of the laws of 2000, paragraph (b) of subdivision 2, as amended by chapter 6 of the laws of 2007, are amended to read as follows:

Removal of physicians from lists of those authorized to render medical care or to conduct [independent] ADVERSARIAL medical examinations.

The chair shall remove from the list of physicians authorized to render medical care under this chapter, or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision four of section thirteen-a of this article, the name of any physician who he or she shall find after reasonable investigation is disqualified because such physician:

(b) has exceeded the limits of his or her professional competence in rendering medical care or in conducting [independent] ADVERSARIAL medical examinations under the law, or has made materially false statements regarding his or her qualifications in his or her application for the recommendation of the medical society or board as provided in section thirteen-b of this article; or

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical or surgical care, an [independent] ADVERSARIAL medical examination, diagnosis or treatment or service, including X-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory services or supplies, X-ray laboratory services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, under this chapter; except that reasonable payment, not exceeding the technical component fee permitted in the medical fee schedule, established under this chapter for X-ray examinations, diagnosis or treatment, may be made by a physician duly authorized as a roentgenologist to any hospital furnishing facilities and equipment for such examination, diagnosis or treatment, provided such hospital does not also submit a charge for the same services. Nothing contained in this paragraph shall prohibit such physicians who practice as partners, in groups or as a professional corporation or as a university faculty practice corporation from pooling fees and moneys received, either by the partnership, professional corporation, university faculty practice corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnerships, corporations, or groups be

prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.

S 8. Subdivisions 2 and 3, and the opening paragraph and paragraph (g) of subdivision 10 of section 13-k of the workers' compensation law, as amended by chapter 473 of the laws of 2000, are amended to read as follows:

2. An employee injured under circumstances which make such injury compensable under this article, when care is required for an injury to the foot which injury or resultant condition therefrom may lawfully be treated by a duly registered and licensed podiatrist of the state of New York, may select to treat him or her any podiatrist authorized by the chair to render podiatry care, as hereinafter provided. If the injury or condition is one which is without the limits prescribed by the education law for podiatry care and treatment, or the injuries involved affect other parts of the body in addition to the foot, the said podiatrist must so advise the said injured employee and instruct him or her to consult a physician of said employee's choice for appropriate care and treatment. Such physician shall thenceforth have overall supervision of the treatment of said patient including the future treatment to be administered to the patient by the podiatrist. If for any reason during the period when podiatry treatment and care is required, the employee wishes to transfer his or her treatment and care to another authorized podiatrist he or she may do so, in accordance with rules prescribed by the chair, provided however that the employer shall be liable for the proper fees of the original podiatrist for the care and treatment he or she shall have rendered. A podiatrist licensed and registered to practice podiatry in the state of New York who is desirous of being authorized to render podiatry care under this section and/or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision three of this section shall file an application for authorization under this section with the podiatry practice committee. In such application he or she shall agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking podiatry treatment, or submitting to an [independent] ADVERSARIAL medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of podiatrists authorized to render podiatry care or to conduct [independent] ADVERSARIAL medical examinations under this chapter, or if the person seeking such treatment has been transferred from his or her care in accordance with the provisions of this section. This agreement shall run to the benefit of the injured person so treated or examined, and shall be available to him or her as a defense in any action by such podiatrist for payment for treatment rendered by a podiatrist after he or she has been removed from the list of podiatrists authorized to render podiatry care or to conduct [independent] ADVERSARIAL medical examinations under this section, or after the injured person was transferred from his or her care in accordance with the provisions of this section. The podiatry practice committee if it deems such licensed podiatrist duly qualified shall recommend to the chair that such podiatrist be authorized to render podiatry care and/or to conduct [independent] ADVERSARIAL medical examinations under this section. Such recommendation shall be advisory to the chair only and shall not be binding or conclusive upon him or her. The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities, of charges and fees for podiatry treatment and care, to be determined in

accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the podiatry practice committee to submit to him or her a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of podiatry care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule.

3. (a) No claim for podiatry care or treatment shall be valid and enforceable as against the employer or employee unless within forty-eight hours following the first treatment the podiatrist giving such care or treatment furnish to the employer and directly to the chair a preliminary notice of such injury and treatment, within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier and the claimant each shall be entitled to have the claimant examined by a qualified podiatrist authorized by the chair in accordance with subdivision two of this section and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's podiatrist, and refusal by the claimant to submit to such [independent] ADVERSARIAL medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation for any period during which he or she has refused to submit to such examination.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an [independent] ADVERSARIAL medical examination by an authorized podiatrist, the employer or carrier shall arrange for such examination to be performed by a qualified podiatrist in a medical facility convenient to the claimant.

(d) The [independent] ADVERSARIAL podiatric examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an [independent] ADVERSARIAL podiatric examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the [independent] ADVERSARIAL podiatric examiner's professional opinion with respect to the claimant's condition,

(ii) such examiner's board issued authorization number,

(iii) the name of the individual or entity requesting the examination,

(iv) if applicable, the registration number as required by section thirteen-n of this article, and

(v) such other information as the chair may require by regulation.

The podiatry practice committee shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized podiatrist as herein provided under rules and procedures to be prescribed by the chair and shall report evidence of such misconduct, with their findings and recommendation with respect thereto, to the chair. The findings, decision and recommendation of such podiatry

practice committee shall be advisory to the chair only, and shall not be binding or conclusive upon him or her. The chair shall remove from the list of podiatrists authorized to render podiatry care under this chapter or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision three of this section the name of any podiatrist who he or she shall find after reasonable investigation is disqualified because such podiatrist

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the treatment, or [independent] ADVERSARIAL medical examination, of a workers' compensation claimant. Nothing contained in this paragraph shall prohibit such podiatrists who practice as partners, in groups or as a professional corporation from pooling fees and moneys received, either by the partnership, professional corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnership, corporation, or group be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.

S 9. Subdivisions 2 and 3, and the opening paragraph and paragraph (g) of subdivision 10 of section 13-l of the workers' compensation law, as amended by chapter 473 of the laws of 2000, are amended to read as follows:

2. An employee injured under circumstances which make such injury compensable under this article, when care is required for an injury which consists solely of a condition which may lawfully be treated by a chiropractor as defined in section sixty-five hundred fifty-one of the education law may select to treat him or her, any duly registered and licensed chiropractor of the state of New York, authorized by the chair to render chiropractic care as hereinafter provided. If the injury or condition is one which is outside the limits prescribed by the education law for chiropractic care and treatment, the said chiropractor must so advise the said injured employee and instruct him or her to consult a physician of said employee's choice for appropriate care and treatment. Such physician shall thenceforth have supervision of the treatment of said condition including the future treatment to be administered to the patient by the chiropractor. A chiropractor licensed and registered to practice chiropractic in the state of New York, who is desirous of being authorized to render chiropractic care under this section and/or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision three of this section shall file an application for authorization under this section with the chiropractic practice committee. In such application he or she shall agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking chiropractic treatment, or submitting to an [independent] ADVERSARIAL medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of chiropractors authorized to render chiropractic care or to conduct [independent] ADVERSARIAL medical examinations under this chapter, or if the person seeking such treatment has been transferred from his or her care in accordance with the provisions of this section. This agreement shall run to the benefit of the injured person so treat-

ed, or examined, and shall be available to him or her as a defense in any action by such chiropractor for payment rendered by a chiropractor after he or she has been removed from the list of chiropractors authorized to render chiropractic care or to conduct [independent] ADVERSARIAL medical examinations under this section, or after the injured person was transferred from his or her care in accordance with the provisions of this section. The chiropractic practice committee if it deems such licensed chiropractor duly qualified shall recommend to the chair that such be authorized to render chiropractic care and/or to conduct [independent] ADVERSARIAL medical examinations under this section. Such recommendations shall be advisory to the chair only and shall not be binding or conclusive upon him or her. The chair shall prepare and establish a schedule for the state, or schedules limited to defined localities of charges and fees for chiropractic treatment and care, to be determined in accordance with and to be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the chiropractic practice committee to submit to him or her a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of chiropractic care to be rendered under this chapter, but consideration shall be given to the view of other interested parties, the amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule.

3. (a) No claim for chiropractic care or treatment shall be valid and enforceable as against the employer or employees unless within forty-eight hours following the first treatment the chiropractor giving such care or treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, and within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified chiropractor authorized by the chair in accordance with subdivision two of this section and section one hundred thirty-seven of this chapter at a medical facility convenient to the claimant and in the presence of the claimant's chiropractor, and refusal by the claimant to submit to such [independent] ADVERSARIAL medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an [independent] ADVERSARIAL medical examination by an authorized chiropractor, the employer or carrier shall arrange for such examination to be performed by a qualified chiropractor in a medical facility convenient to the claimant.

(d) The [independent] ADVERSARIAL chiropractic examiner shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible chiropractic evidence, for purposes of adjudicating any claim under this chapter, any report

submitted to the board by an [independent] ADVERSARIAL medical examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the [independent] ADVERSARIAL chiropractic examiner's professional opinion with respect to the claimant's condition,

(ii) such examiner's board issued authorization number,

(iii) the name of the individual or entity requesting the examination,

(iv) if applicable, the registration number as required by section thirteen-n of this article, and

(v) such other information as the chair may require by regulation.

The chiropractic practice committee shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized chiropractor as herein provided under rules and procedure to be prescribed by the chair and shall report evidence of such misconduct, with their findings and recommendations with respect thereto, to the chair. The findings, decision and recommendation of such chiropractic practice committee shall be advisory to the chair only, and shall not be binding or conclusive upon him or her. The chair shall remove from the list of chiropractors authorized to render chiropractic care under this chapter or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision three of this section the name of any chiropractor who he or she shall find after reasonable investigation is disqualified because such chiropractor,

(g) has directly or indirectly requested, received or participated in the division, transference, assignment, rebating, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or otherwise valuable consideration as a commission, discount or gratuity, in connection with the treatment, or [independent] ADVERSARIAL medical examination, of a workers' compensation claimant. Nothing contained in this paragraph shall prohibit such chiropractors who practice as partners, in groups or as a professional corporation, or as a university faculty practice corporation from pooling fees and moneys received, either by the partnership, professional corporation, university faculty practice corporation or group by the individual members thereof, for professional services furnished by any individual professional member, or employee of such partnership, corporation or group, nor shall the professionals constituting the partnership, corporation, or group be prohibited from sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or group in accordance with a partnership or other agreement.

S 10. Subdivisions 3 and 4 and the opening paragraph of subdivision 11 of section 13-m of the workers' compensation law, as amended by chapter 473 of the laws of 2000, are amended to read as follows:

3. A psychologist, licensed and registered to practice psychology in the state of New York, who is desirous of being authorized to render psychological care under this section and/or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision four of this section shall file an application for authorization under this section with the psychology practice committee. The applicant shall agree to refrain from subsequently treating for remuneration, as a private patient, any person seeking psychological treatment, or submitting to an [independent] ADVERSARIAL medical examination, in connection with, or as a result of, any injury compensable under this chapter, if he or she has been removed from the list of psychologists authorized to render psychological care under this chapter. This agree-

ment shall run to the benefit of the injured person so treated, and shall be available as a defense in any action by such psychologist for payment for treatment rendered by such psychologist after being removed from the list of psychologists authorized to render psychological care or to conduct [independent] ADVERSARIAL medical examinations under this section. The psychology practice committee if it deems such licensed psychologist duly qualified shall recommend to the chair that such person be authorized to render psychological care and/or to conduct [independent] ADVERSARIAL medical examinations under this section. Such recommendations shall be only advisory to the chair and shall not be binding or conclusive. The chair shall prepare and establish a schedule for the state or schedules limited to defined localities of charges and fees for psychological treatment and care, to be determined in accordance with and be subject to change pursuant to rules promulgated by the chair. Before preparing such schedule for the state or schedules for limited localities the chair shall request the psychology practice committee to submit to such chair a report on the amount of remuneration deemed by such committee to be fair and adequate for the types of psychological care to be rendered under this chapter, but consideration shall be given to the view of other interested parties. The amounts payable by the employer for such treatment and services shall be the fees and charges established by such schedule.

4. (a) No claim for psychological care or treatment shall be valid and enforceable as against the employer or employees unless within forty-eight hours following the first treatment the psychologist giving such care or treatment furnishes to the employer and directly to the chair a preliminary notice of such injury and treatment, and within fifteen days thereafter a more complete report and subsequent thereto progress reports as requested in writing by the chair, board, employer or insurance carrier, at intervals of not less than three weeks apart or at less frequent intervals if requested on forms prescribed by the chair. The board may excuse the failure to give such notices within the designated periods when it finds it to be in the interest of justice to do so.

(b) Upon receipt of the notice provided for by paragraph (a) of this subdivision, the employer, the carrier, and the claimant each shall be entitled to have the claimant examined by a qualified psychologist, authorized by the chair in accordance with subdivision three of this section and section one hundred thirty-seven of this chapter, at a medical facility convenient to the claimant and in the presence of the claimant's psychologist, and refusal by the claimant to submit to such [independent] ADVERSARIAL medical examination at such time or times as may reasonably be necessary in the opinion of the board shall bar the claimant from recovering compensation, for any period during which he or she has refused to submit to such examination.

(c) Where it would place an unreasonable burden upon the employer or carrier to arrange for, or for the claimant to attend, an [independent] ADVERSARIAL medical examination by an authorized psychologist, the employer or carrier shall arrange for such examination to be performed by a qualified psychologist in a medical facility convenient to the claimant.

(d) The [independent] ADVERSARIAL psychological examiner licensed by the state of New York shall provide such reports and shall submit to investigation as required by the chair.

(e) In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to

the board by an [independent] ADVERSARIAL psychological examiner licensed by the state of New York shall include the following:

(i) a signed statement certifying that the report is a full and truthful representation of the [independent] ADVERSARIAL psychological examiner's professional opinion with respect to the claimant's condition,

(ii) such examiner's board issued authorization number,

(iii) the name of the individual or entity requesting the examination,

(iv) if applicable, the registration number as required by section thirteen-n of this article, and

(v) such other information as the chair may require by regulation.

The psychology practice committee shall investigate, hear and make findings with respect to all charges as to professional or other misconduct of any authorized psychologist as herein provided under rules and procedures to be prescribed by the chair and shall report evidence of such misconduct, with their findings and recommendations with respect thereto, to the chair. The findings, decision and recommendation of such psychology practice committee shall be advisory to the chair only, and shall not be binding or conclusive upon him or her. The chair shall remove from the list of psychologists authorized to render psychological care under this chapter or to conduct [independent] ADVERSARIAL medical examinations in accordance with paragraph (b) of subdivision four of this section the name of any psychologist who he or she shall find after reasonable investigation is disqualified because such psychologist:

S 11. Section 13-n of the workers' compensation law, as added by chapter 473 of the laws of 2000 and subdivision 3 as added by chapter 6 of the laws of 2007, is amended to read as follows:

S 13-n. Mandatory registration of entities which derive income from [independent] ADVERSARIAL medical examinations. 1. Any entity which derives income from [independent] ADVERSARIAL medical examinations performed in accordance with subdivision four of section thirteen-a, subdivision three of section thirteen-k, subdivision three of section thirteen-l and subdivision four of section thirteen-m of this article, whether by employing or contracting with [independent] ADVERSARIAL examiners to conduct such [independent] ADVERSARIAL medical examinations or by acting as a referral service or otherwise facilitating such examinations, shall register with the chair by filing a statement of registration containing such information prescribed by the chair in regulation. A fee may be imposed in accordance with regulations promulgated by the chair. Any such fees collected shall be used for the purpose of administering this section.

2. The chair shall assign a registration number to the entity upon registration. If an entity operates under more than one name, or in more than one location, the chair may assign a series of registration numbers which would differentiate each such sub-entity. In order to qualify as admissible medical evidence, for purposes of adjudicating any claim under this chapter, any report submitted to the board by an [independent] ADVERSARIAL medical examiner who is employed by, or has contracted with, an entity as described in subdivision one of this section for the purpose of performing [independent] ADVERSARIAL medical examinations, must include the registration number of such entity.

3. The chair, upon finding that an entity that derives income from [independent] ADVERSARIAL medical examinations has materially altered an [independent] ADVERSARIAL medical examination report, or caused such a report to be materially altered, may revoke the registration of such entity, impose a penalty not exceeding ten thousand dollars and refer the matter to the attorney general for prosecution.

S 12. Section 137 of the workers' compensation law, as added by chapter 473 of the laws of 2000, is amended to read as follows:

S 137. [Independent] ADVERSARIAL medical examinations. 1. (a) A copy of each report of [independent] ADVERSARIAL medical examination shall be submitted by the practitioner on the same day and in the same manner to the board, the insurance carrier, the claimant's attending physician or other attending practitioner, the claimant's representative and the claimant.

(b) If a practitioner who has performed or will be performing an [independent] ADVERSARIAL medical examination of a claimant receives a request for information regarding the claimant, including faxed or electronically transmitted requests, the practitioner shall submit a copy of the request for information to the board within ten days of receipt of the request. Nothing in this subdivision shall be construed to abrogate the attorney-client privilege.

(c) Copies of all responses to such requests for information as are described in paragraph (b) of this subdivision, including all materials which are provided in response to such a request, shall be submitted by the responding practitioner to the board within ten days of submission of the response to the requestor. Nothing in this subdivision shall be construed to abrogate the attorney-client privilege.

2. In any open case where an award has been directed by the board for temporary or permanent disability at an established rate of compensation and there is a direction by the board for continuation of payments, or any closed case where an award for compensation has been made for permanent total or permanent partial disability, a report of an [independent] ADVERSARIAL medical examination shall not be the basis for suspending or reducing payments unless and until the rules and regulations of the board regarding suspending or reducing payments have been met and there is a determination by the board finding that such suspension or reduction is justified.

3. (a) Only a New York state licensed and board certified physician, surgeon, podiatrist or any other person authorized to examine or evaluate injury or illness by the board shall perform such [independent] ADVERSARIAL medical examination. Where a claimant resides out of state a practitioner qualified to examine or evaluate injury or illness by the board shall perform such [independent] ADVERSARIAL medical examination.

(b) Any practitioner performing the [independent] ADVERSARIAL medical examinations shall be paid according to the fee schedule established pursuant to section thirteen of this chapter.

4. All [independent] ADVERSARIAL medical examinations shall be performed in medical facilities suitable for such exam, with due regard and respect for the privacy and dignity of the injured worker as well as the access and safety of the claimant. Such facilities must be provided in a convenient and accessible location within a reasonable distance from the claimant's residence.

5. All [independent] ADVERSARIAL medical examinations shall be performed by a practitioner competent to evaluate or examine the injury or disease from which the injured worker suffers. Such examination shall be performed by a practitioner who is licensed and board certified in the state of New York or any other person authorized to examine or evaluate injury or illness by the board.

6. No practitioner examining or evaluating a claimant under this chapter nor any supervising authority or proprietor nor insurance carrier or employer may cause, direct or encourage a report to be submitted as evidence in workers' compensation claim adjudication which differs

substantially from the professional opinion of the examining practitioner. Such an action shall be considered within the jurisdiction of the workers' compensation fraud inspector general and may be referred as a fraudulent practice.

7. The claimant shall receive notice by mail of the scheduled [independent] ADVERSARIAL medical examination at least seven business days prior to such examination. Such notice shall advise the claimant if the practitioner intends to record or video tape the examination, and shall advise the claimant of their right to video tape or otherwise record the examination. Claimants shall be advised of their right to be accompanied during the exam by an individual or individuals of their choosing.

8. [Independent] ADVERSARIAL medical examinations shall be performed during regular business hours except with the consent and for the convenience of the claimant. Claimants subject to such examination shall be notified at the time of the exam in writing of the available travel reimbursement under law.

9. A practitioner is not eligible to perform an [independent] ADVERSARIAL medical examination of a claimant if the practitioner has treated or examined the claimant for the condition for which the [independent] ADVERSARIAL medical examination is being requested or if another member of a preferred provider organization or managed care provider to which the practitioner belongs has treated or examined the claimant for the condition for which the [independent] ADVERSARIAL medical examination is being requested.

10. The ability of a claimant to appear for an exam or hearing shall not be dispositive in the determination of disability, extent of disability or eligibility for benefits.

11. At the time of the [independent] ADVERSARIAL medical examination the claimant shall receive a notice from the entity performing the [independent] ADVERSARIAL medical examination, on a form which shall be approved and promulgated by the chair, stating the rights and obligations of the claimant and the practitioner with respect to such exam, and such notice shall include but not be limited to a statement that the claimant's receipt of benefits could be denied, terminated, or reduced as a result of a determination which may be based upon the medical evaluation made after such [independent] ADVERSARIAL medical examination, and the claimant's rights to challenge or appeal such a determination.

S 13. Subdivisions 1, 2 and 3 of section 50-h of the general municipal law, subdivision 1 as amended by chapter 24 of the laws of 1988, subdivision 2 as amended by chapter 254 of the laws of 1990 and subdivision 3 as added by chapter 393 of the laws of 1958, are amended to read as follows:

1. Wherever a notice of claim is filed against a city, county, town, village, fire district, ambulance district [or], school district OR PUBLIC AUTHORITY the city, county, town, village, fire district, ambulance district [or], school district OR PUBLIC AUTHORITY shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, which examination shall be upon oral questions unless the parties otherwise stipulate and may include [a physical] AN ADVERSARIAL MEDICAL examination of the claimant by a duly qualified physician. If the party to be examined desires, he or she is entitled to have such examination in the presence of his or her own personal physician and such relative or other person as he or she may elect. THE PERSON SUBJECT TO THE ADVERSARIAL MEDICAL EXAMINATION SHALL NOT BE REQUIRED TO PRODUCE ANY DOCUMENTS OR SUPPLY ANY WRITTEN ANSWERS TO QUESTIONS PUT TO HIM OR HER AT

SUCH ADVERSARIAL MEDICAL EXAMINATION. Exercise of the right to demand a physical examination of the claimant as provided in this section shall in no way affect the right of a city, county, town, village, fire district, ambulance district [or], school district OR PUBLIC AUTHORITY in a subsequent action brought upon the claim to demand [a physical] AN ADVERSARIAL MEDICAL examination of the plaintiff pursuant to statute or court rule.

2. The demand for examination as provided in subdivision one of this section shall be made by the chief executive officer or, where there is no such officer, by the chairman of the governing body of the city, county, town, village, fire district [or], school district OR PUBLIC AUTHORITY or by such officer, agent or employee as may be designated by him OR HER for that purpose. The demand shall be in writing and shall be served personally or by registered or certified mail upon the claimant unless the claimant is represented by an attorney, when it shall be served personally or by mail upon his OR HER attorney. The demand shall give reasonable notice of the examination. It shall state the person before whom the examination is to be held, the time, place and subject matter thereof and, if [a physical] AN ADVERSARIAL MEDICAL examination is to be required, it shall so state. If the place of examination is located outside the municipality against which the claim is made, the claimant may demand, within ten days of such service, that the examination be held at a location within such municipality. Such location shall be determined by the municipality. If [a physical] AN ADVERSARIAL MEDICAL examination is to be required and there is no appropriate place for such an examination within the municipality, such examination shall be given at a location as close to such municipality as practicable. No demand for examination shall be effective against the claimant for any purpose unless it shall be served as provided in this subdivision within ninety days from the date of filing of the notice of claim.

3. In any examination required pursuant to the provisions of this section the claimant shall have the right to be represented by counsel. The examination shall be conducted upon oath or affirmation. The officer or person before whom the examination is had shall take down or cause to be taken down every question and answer unless the parties consent that only the substance of the testimony be inserted. The testimony so taken, together with the report of the examining physician where [a physical] AN ADVERSARIAL MEDICAL examination is required, shall constitute the record of the examination. The transcript of the record of an examination shall not be subject to or available for public inspection, except upon court order upon good cause shown, but shall be furnished to the claimant or his OR HER attorney upon request.

S 14. Subdivisions 1, 2 and 3 of section 17-a of the court of claims act, as added by chapter 189 of the laws of 1990, are amended to read as follows:

1. Wherever a notice of intention to file a claim is served, the defendant shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, which examination shall be upon oral questions unless the parties otherwise stipulate and may include [a physical] AN ADVERSARIAL MEDICAL examination of the claimant by a duly qualified physician. If the party to be examined desires, he or she is entitled to have such [physical] AN ADVERSARIAL MEDICAL examination in the presence of his or her own personal physician and such relative or other person as he or she may elect. Exercise of the right to demand [a physical] AN ADVERSARIAL MEDICAL examination of the claimant as provided in this

section shall in no way affect the right of a defendant in a subsequent claim brought upon the notice of intention to file a claim to demand [a physical] AN ADVERSARIAL MEDICAL examination of the claimant pursuant to statute or court rule.

2. The demand for examination as provided in subdivision one of this section shall be made by the attorney for the defendant or by such officer, agent or employee as may be designated by him for that purpose. The demand shall be in writing and shall be served personally or by registered or certified mail upon the claimant unless the claimant is represented by an attorney, when it shall be served personally or by mail upon his or her attorney. The demand shall give reasonable notice of the examination. It shall state the person before whom the examination is to be held, the time, place and subject matter thereof and, if [a physical] AN ADVERSARIAL MEDICAL examination is to be required, it shall so state. No demand for examination shall be effective against the claimant for any purpose unless it shall be served as provided in this subdivision within ninety days from the date of service of the notice of intention to file a claim.

3. In any examination required pursuant to the provisions of this section the claimant shall have the right to be represented by counsel. The examination shall be conducted upon oath or affirmation. The officer or person before whom the examination is held shall take down or cause to be taken down every question and answer unless the parties consent that only the substance of the testimony be inserted. The testimony so taken, together with the report of the examining physician where [a physical] AN ADVERSARIAL MEDICAL examination is required, shall constitute the record of the examination. The transcript of the record of an examination, including a copy of the report of the examining physician shall not be subject to or available for public inspection, except upon court order upon good cause shown, but shall be furnished to the claimant or his or her attorney upon request.

S 15. This act shall take effect immediately and shall apply to all currently pending actions and proceedings, and to proceedings commenced subsequent to such date.