

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 examina-
tion procedure act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "adversarial medical examination procedure act".
3 S 2. The legislature hereby finds and declares that the conducting of
4 physical and mental examinations in the course of civil litigation and
5 other civil proceedings has evolved in a manner inconsistent with the
6 civil practice law and rules and fundamental notions of due process.
7 Indeed, a commonly used term for such examinations, an "independent
8 medical examination," is itself a misnomer because the physician
9 conducting such examination is not at all independent, but is in fact
10 being compensated by a party or insurer whose interests are typically
11 adverse to those of the party being examined. Further, parties being
12 examined are frequently required to provide written responses to ques-
13 tions outside the discovery process prescribed in the civil practice law
14 and rules or relevant claims process and without the opportunity to
15 obtain advice of counsel, even though such written responses can and are
16 being used as admissions and/or to later impeach the examined party in
17 the course of such proceeding. Accordingly, the name by which such an
18 examination is called needs to be changed to reflect the true adver-
19 sarial nature of such examination; the process for obtaining information
20 from the party to be examined which is necessary to the proper conduct-
21 ing of the examination needs to be brought within the carefully consid-
22 ered discovery process which already exists in the civil practice law
23 and rules or claims process.

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

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

4 S 3121. [Physical or mental] ADVERSARIAL MEDICAL examination. (a)
5 Notice of AN ADVERSARIAL MEDICAL examination. After commencement of an
6 action in which the mental or physical condition or the blood relation-
7 ship of a party, or of an agent, employee or person in the custody or
8 under the legal control of a party, is in controversy, any party may
9 serve notice on another party to submit to a physical, mental or blood
10 [examination] "ADVERSARIAL MEDICAL EXAMINATION" by a designated physi-
11 cian, or to produce for such ADVERSARIAL MEDICAL examination his OR HER
12 agent, employee or the person in his OR HER custody or under his OR HER
13 legal control. The notice may require duly executed and acknowledged
14 written authorizations permitting all parties to obtain, and make copies
15 of, the records of specified hospitals relating to such mental or phys-
16 ical condition or blood relationship; where a party obtains a copy of a
17 hospital record as a result of the authorization of another party, he OR
18 SHE shall deliver a duplicate of the copy to such party. A copy of the
19 notice shall be served on the person SUBJECT to [be examined] THE ADVER-
20 SARIAL MEDICAL EXAMINATION. It shall specify the time, which shall be
21 not less than twenty days after service of the notice, and the condi-
22 tions and scope of the ADVERSARIAL MEDICAL examination, AND IT SHALL
23 INFORM THE PERSON SUBJECT TO THE EXAMINATION THAT HE OR SHE HAS THE
24 RIGHT TO HAVE A REPRESENTATIVE PRESENT DURING SUCH EXAMINATION, AND
25 SHALL HAVE THE RIGHT TO RECORD OR TAPE SUCH EXAMINATION IN A MANNER SUCH
26 AS NOT TO UNREASONABLY IMPEDE SUCH EXAMINATION. THE PERSON SUBJECT TO
27 THE ADVERSARIAL MEDICAL EXAMINATION SHALL NOT BE REQUIRED TO PRODUCE ANY
28 DOCUMENTS OR SUPPLY ANY WRITTEN ANSWERS TO QUESTIONS PUT TO HIM OR HER
29 AT SUCH EXAMINATION EXCEPT AS IN RESPONSE TO PROPERLY SERVED DISCOVERY
30 DEMANDS MADE PURSUANT TO THE CIVIL PRACTICE LAW AND RULES.

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

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

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

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

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

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

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

19 (b) Upon receipt of the notice provided for by paragraph (a) of this
20 subdivision, the employer, the carrier, and the claimant each shall be
21 entitled to have the claimant examined by a physician authorized by the
22 chair in accordance with sections thirteen-b and one hundred thirty-sev-
23 en of this chapter, at a medical facility convenient to the claimant and
24 in the presence of the claimant's physician, and refusal by the claimant
25 to submit to such [independent] ADVERSARIAL medical examination at such
26 time or times as may reasonably be necessary in the opinion of the
27 board, shall bar the claimant from recovering compensation for any peri-
28 od during which he or she has refused to submit to such examination. No
29 hospital shall be required to produce the records of any claimant with-
30 out receiving its customary fees or charges for reproduction of such
31 records.

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

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

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

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

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

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

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

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

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

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

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

16 No such authorization shall be made in the absence of a recommendation
17 of the appropriate society or board or of a review and recommendation by
18 the medical appeals unit. No person shall render medical care or conduct
19 [independent] ADVERSARIAL medical examinations under this chapter with-
20 out such authorization by the chair, provided, that:

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

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

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

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

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

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

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

1 in accordance with paragraph (b) of subdivision four of section thir-
2 teen-a and section one hundred thirty-seven of this chapter shall file
3 an application for authorization under this chapter with the medical
4 society in the county in which his or her office is located, or with a
5 board designated by such society, or with a board designated by the
6 chair as provided in this section. In such application the applicant
7 shall state his or her training and qualifications, and shall agree to
8 limit his or her professional activities under this chapter to such
9 medical care and [independent] ADVERSARIAL medical examinations, as his
10 or her experience and training qualify him or her to render. The appli-
11 cant shall further agree to refrain from subsequently treating for
12 remuneration, as a private patient, any person seeking medical treat-
13 ment, or submitting to an [independent] ADVERSARIAL medical examination,
14 in connection with, or as a result of, any injury compensable under this
15 chapter, if he or she has been removed from the list of physicians
16 authorized to render medical care or to conduct [independent] ADVER-
17 SARIAL medical examinations under this chapter, or if the person seeking
18 such treatment, or submitting to an [independent] ADVERSARIAL medical
19 examination, has been transferred from his or her care in accordance
20 with the provisions of this chapter. This agreement shall run to the
21 benefit of the injured person so treated or examined, and shall be
22 available to him or her as a defense in any action by such physician for
23 payment for treatment rendered by a physician after he or she has been
24 removed from the list of physicians authorized to render medical care or
25 to conduct [independent] ADVERSARIAL medical examinations under this
26 chapter, or after the injured person was transferred from his or her
27 care in accordance with the provisions of this chapter. The medical
28 society or the board designated by it, or the board as otherwise
29 provided under this section, if it deems such licensed physician duly
30 qualified, shall recommend to the chair that such physician be author-
31 ized to render medical care and/or conduct [independent] ADVERSARIAL
32 medical examinations under this chapter, and such recommendation and
33 authorization shall specify the character of the medical care or [inde-
34 pendent] ADVERSARIAL medical examination which such physician is quali-
35 fied and authorized to render under this chapter. Such recommendations
36 shall be advisory to the chair only and shall not be binding or conclu-
37 sive upon him or her. The licensed physician may present to the medical
38 society or board, evidences of additional qualifications at any time
39 subsequent to his or her original application. If the medical society or
40 board fails to recommend to the chair that a physician be authorized to
41 render medical care and/or to conduct [independent] ADVERSARIAL medical
42 examinations under this chapter, the physician may appeal to the medical
43 appeals unit. The medical society or the board designated by it, or the
44 board as otherwise provided under this section, may upon its own initi-
45 ative, or shall upon request of the chair, review at any time the quali-
46 fications of any physician as to the character of the medical care or
47 [independent] ADVERSARIAL medical examinations which such physician has
48 theretofore been authorized to render under this chapter and may recom-
49 mend to the chair that such physician be authorized to render medical
50 care or to conduct [independent] ADVERSARIAL medical examinations there-
51 after of the character which such physician is then qualified to render.
52 On such advisory recommendation the chair may review and after reason-
53 able investigation may revise the authorization of a physician in
54 respect to the character of medical care and/or to conduct [independent]
55 ADVERSARIAL medical examinations which he or she is authorized to
56 render. If the medical society or board recommends to the chair that a

1 physician be authorized to render medical care and/or to conduct [inde-
2 pendent] ADVERSARIAL medical examinations under this chapter of a char-
3 acter different from the character of medical care or [independent]
4 ADVERSARIAL medical examinations he or she has been theretofore author-
5 ized to render, such physician may appeal from such recommendation to
6 the medical appeals unit.

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

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

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

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

27 (g) has directly or indirectly requested, received or participated in
28 the division, transference, assignment, rebating, splitting or refunding
29 of a fee for, or has directly or indirectly requested, received or prof-
30 ited by means of a credit or other valuable consideration as a commis-
31 sion, discount or gratuity in connection with the furnishing of medical
32 or surgical care, an [independent] ADVERSARIAL medical examination,
33 diagnosis or treatment or service, including X-ray examination and
34 treatment, or for or in connection with the sale, rental, supplying or
35 furnishing of clinical laboratory services or supplies, X-ray laboratory
36 services or supplies, inhalation therapy service or equipment, ambulance
37 service, hospital or medical supplies, physiotherapy or other therapeu-
38 tic service or equipment, artificial limbs, teeth or eyes, orthopedic or
39 surgical appliances or supplies, optical appliances, supplies or equip-
40 ment, devices for aid of hearing, drugs, medication or medical supplies,
41 or any other goods, services or supplies prescribed for medical diagno-
42 sis, care or treatment, under this chapter; except that reasonable
43 payment, not exceeding the technical component fee permitted in the
44 medical fee schedule, established under this chapter for X-ray examina-
45 tions, diagnosis or treatment, may be made by a physician duly author-
46 ized as a roentgenologist to any hospital furnishing facilities and
47 equipment for such examination, diagnosis or treatment, provided such
48 hospital does not also submit a charge for the same services. Nothing
49 contained in this paragraph shall prohibit such physicians who practice
50 as partners, in groups or as a professional corporation or as a univer-
51 sity faculty practice corporation from pooling fees and moneys received,
52 either by the partnership, professional corporation, university faculty
53 practice corporation or group by the individual members thereof, for
54 professional services furnished by any individual professional member,
55 or employee of such partnership, corporation or group, nor shall the
56 professionals constituting the partnerships, corporations, or groups be

1 prohibited from sharing, dividing or apportioning the fees and moneys
2 received by them or by the partnership, corporation or group in accord-
3 ance with a partnership or other agreement.

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

8 2. An employee injured under circumstances which make such injury
9 compensable under this article, when care is required for an injury to
10 the foot which injury or resultant condition therefrom may lawfully be
11 treated by a duly registered and licensed podiatrist of the state of New
12 York, may select to treat him or her any podiatrist authorized by the
13 chair to render podiatry care, as hereinafter provided. If the injury or
14 condition is one which is without the limits prescribed by the education
15 law for podiatry care and treatment, or the injuries involved affect
16 other parts of the body in addition to the foot, the said podiatrist
17 must so advise the said injured employee and instruct him or her to
18 consult a physician of said employee's choice for appropriate care and
19 treatment. Such physician shall thenceforth have overall supervision of
20 the treatment of said patient including the future treatment to be
21 administered to the patient by the podiatrist. If for any reason during
22 the period when podiatry treatment and care is required, the employee
23 wishes to transfer his or her treatment and care to another authorized
24 podiatrist he or she may do so, in accordance with rules prescribed by
25 the chair, provided however that the employer shall be liable for the
26 proper fees of the original podiatrist for the care and treatment he or
27 she shall have rendered. A podiatrist licensed and registered to prac-
28 tice podiatry in the state of New York who is desirous of being author-
29 ized to render podiatry care under this section and/or to conduct [inde-
30 pendent] ADVERSARIAL medical examinations in accordance with paragraph
31 (b) of subdivision three of this section shall file an application for
32 authorization under this section with the podiatry practice committee.
33 In such application he or she shall agree to refrain from subsequently
34 treating for remuneration, as a private patient, any person seeking
35 podiatry treatment, or submitting to an [independent] ADVERSARIAL
36 medical examination, in connection with, or as a result of, any injury
37 compensable under this chapter, if he or she has been removed from the
38 list of podiatrists authorized to render podiatry care or to conduct
39 [independent] ADVERSARIAL medical examinations under this chapter, or if
40 the person seeking such treatment has been transferred from his or her
41 care in accordance with the provisions of this section. This agreement
42 shall run to the benefit of the injured person so treated or examined,
43 and shall be available to him or her as a defense in any action by such
44 podiatrist for payment for treatment rendered by a podiatrist after he
45 or she has been removed from the list of podiatrists authorized to
46 render podiatry care or to conduct [independent] ADVERSARIAL medical
47 examinations under this section, or after the injured person was trans-
48 ferred from his or her care in accordance with the provisions of this
49 section. The podiatry practice committee if it deems such licensed
50 podiatrist duly qualified shall recommend to the chair that such podia-
51 trist be authorized to render podiatry care and/or to conduct [independ-
52 ent] ADVERSARIAL medical examinations under this section. Such recommen-
53 dation shall be advisory to the chair only and shall not be binding or
54 conclusive upon him or her. The chair shall prepare and establish a
55 schedule for the state, or schedules limited to defined localities, of
56 charges and fees for podiatry treatment and care, to be determined in

1 accordance with and to be subject to change pursuant to rules promulgat-
2 ed by the chair. Before preparing such schedule for the state or sched-
3 ules for limited localities the chair shall request the podiatry prac-
4 tice committee to submit to him or her a report on the amount of
5 remuneration deemed by such committee to be fair and adequate for the
6 types of podiatry care to be rendered under this chapter, but consider-
7 ation shall be given to the view of other interested parties. The
8 amounts payable by the employer for such treatment and services shall be
9 the fees and charges established by such schedule.

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

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

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

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

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

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

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

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

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

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

51 The podiatry practice committee shall investigate, hear and make find-
52 ings with respect to all charges as to professional or other misconduct
53 of any authorized podiatrist as herein provided under rules and proce-
54 dures to be prescribed by the chair and shall report evidence of such
55 misconduct, with their findings and recommendation with respect thereto,
56 to the chair. The findings, decision and recommendation of such podiatry

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

8 (g) has directly or indirectly requested, received or participated in
9 the division, transference, assignment, rebating, splitting or refunding
10 of a fee for, or has directly or indirectly requested, received or prof-
11 ited by means of a credit or other valuable consideration as a commis-
12 sion, discount or gratuity in connection with the treatment, or [inde-
13 pendent] ADVERSARIAL medical examination, of a workers' compensation
14 claimant. Nothing contained in this paragraph shall prohibit such
15 podiatrists who practice as partners, in groups or as a professional
16 corporation from pooling fees and moneys received, either by the part-
17 nership, professional corporation or group by the individual members
18 thereof, for professional services furnished by any individual profes-
19 sional member, or employee of such partnership, corporation or group,
20 nor shall the professionals constituting the partnership, corporation,
21 or group be prohibited from sharing, dividing or apportioning the fees
22 and moneys received by them or by the partnership, corporation or group
23 in accordance with a partnership or other agreement.

24 S 9. Subdivisions 2 and 3, and the opening paragraph and paragraph (g)
25 of subdivision 10 of section 13-1 of the workers' compensation law, as
26 amended by chapter 473 of the laws of 2000, are amended to read as
27 follows:

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

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

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

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

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

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

54 (e) In order to qualify as admissible chiropractic evidence, for
55 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-

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

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

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

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

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

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

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

3 (i) a signed statement certifying that the report is a full and truth-
4 ful representation of the [independent] ADVERSARIAL psychological exam-
5 iner's professional opinion with respect to the claimant's condition,
6 (ii) such examiner's board issued authorization number,
7 (iii) the name of the individual or entity requesting the examination,
8 (iv) if applicable, the registration number as required by section
9 thirteen-n of this article, and
10 (v) such other information as the chair may require by regulation.

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

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

27 S 13-n. Mandatory registration of entities which derive income from
28 [independent] ADVERSARIAL medical examinations. 1. Any entity which
29 derives income from [independent] ADVERSARIAL medical examinations
30 performed in accordance with subdivision four of section thirteen-a,
31 subdivision three of section thirteen-k, subdivision three of section
32 thirteen-1 and subdivision four of section thirteen-m of this article,
33 whether by employing or contracting with [independent] ADVERSARIAL exam-
34 iners to conduct such [independent] ADVERSARIAL medical examinations or
35 by acting as a referral service or otherwise facilitating such examina-
36 tions, shall register with the chair by filing a statement of registra-
37 tion containing such information prescribed by the chair in regulation.
38 A fee may be imposed in accordance with regulations promulgated by the
39 chair. Any such fees collected shall be used for the purpose of adminis-
40 tering this section.

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

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

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

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

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

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

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

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

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

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

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

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

1 substantially from the professional opinion of the examining practition-
2 er. Such an action shall be considered within the jurisdiction of the
3 workers' compensation fraud inspector general and may be referred as a
4 fraudulent practice.

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

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

17 9. A practitioner is not eligible to perform an [independent] ADVER-
18 SARIAL medical examination of a claimant if the practitioner has treated
19 or examined the claimant for the condition for which the [independent]
20 ADVERSARIAL medical examination is being requested or if another member
21 of a preferred provider organization or managed care provider to which
22 the practitioner belongs has treated or examined the claimant for the
23 condition for which the [independent] ADVERSARIAL medical examination is
24 being requested.

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

28 11. At the time of the [independent] ADVERSARIAL medical examination
29 the claimant shall receive a notice from the entity performing the
30 [independent] ADVERSARIAL medical examination, on a form which shall be
31 approved and promulgated by the chair, stating the rights and obli-
32 gations of the claimant and the practitioner with respect to such exam,
33 and such notice shall include but not be limited to a statement that the
34 claimant's receipt of benefits could be denied, terminated, or reduced
35 as a result of a determination which may be based upon the medical eval-
36 uation made after such [independent] ADVERSARIAL medical examination,
37 and the claimant's rights to challenge or appeal such a determination.

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

43 1. Wherever a notice of claim is filed against a city, county, town,
44 village, fire district, ambulance district [or], school district OR
45 PUBLIC AUTHORITY the city, county, town, village, fire district, ambu-
46 lance district [or], school district OR PUBLIC AUTHORITY shall have the
47 right to demand an examination of the claimant relative to the occur-
48 rence and extent of the injuries or damages for which claim is made,
49 which examination shall be upon oral questions unless the parties other-
50 wise stipulate and may include [a physical] AN ADVERSARIAL MEDICAL exam-
51 ination of the claimant by a duly qualified physician. If the party to
52 be examined desires, he or she is entitled to have such examination in
53 the presence of his or her own personal physician and such relative or
54 other person as he or she may elect. THE PERSON SUBJECT TO THE ADVER-
55 SARIAL MEDICAL EXAMINATION SHALL NOT BE REQUIRED TO PRODUCE ANY DOCU-
56 MENTS OR SUPPLY ANY WRITTEN ANSWERS TO QUESTIONS PUT TO HIM OR HER AT

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

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

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

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

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

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

5 2. The demand for examination as provided in subdivision one of this
6 section shall be made by the attorney for the defendant or by such offi-
7 cer, agent or employee as may be designated by him for that purpose. The
8 demand shall be in writing and shall be served personally or by regis-
9 tered or certified mail upon the claimant unless the claimant is repres-
10 ented by an attorney, when it shall be served personally or by mail upon
11 his or her attorney. The demand shall give reasonable notice of the
12 examination. It shall state the person before whom the examination is to
13 be held, the time, place and subject matter thereof and, if [a physical]
14 AN ADVERSARIAL MEDICAL examination is to be required, it shall so state.
15 No demand for examination shall be effective against the claimant for
16 any purpose unless it shall be served as provided in this subdivision
17 within ninety days from the date of service of the notice of intention
18 to file a claim.

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

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