§ 141. Action to annul marriage on ground of incurable mental illness for five years; procedure; support. 1. If the marriage be annulled on the ground of the mental illness of a spouse, the court may include in the judgment an order providing for his or her suitable support, care and maintenance during life from the property or income of the other spouse. The court shall specify the amount of such support, care and maintenance and, before rendering judgment, may exact security for such support, care and maintenance during life and shall order the filing and recording of the instrument creating such security in the office of the clerk of the county in which the action is brought and the filing of two certified copies thereof with the office of mental health at its Albany office. The provisions of the judgment relating to support, care and maintenance of the spouse with a mental illness during his or her life and to security therefor may be modified or amended at any time by the court upon due notice to the other party and other interested parties as the court may direct and in proper case the value of the suitable support, care and maintenance to such spouse during the balance of his or her life based upon appropriate mortality tables may be adjudged and determined by the court in which the estate of a deceased spouse is being administered and the same may be recovered on behalf of the spouse with a mental illness from the estate of the deceased spouse. If the spouse with a mental illness is maintained in an institution or otherwise under the jurisdiction of the office of mental health, the suitable support, care and maintenance as required in the judgment, unless otherwise directed by the court, shall be the charge established by the commissioner of mental health and such charge may be recovered in the manner provided by law. Such amount shall continue to be so required for the support of the spouse with a mental illness in the event of his or her removal from the custody of the office of mental health unless thereafter otherwise directed by the court. Any security exacted for the suitable support, care and maintenance during life of the spouse with a mental illness shall be available to that spouse or any person on his or her behalf or to any person or agency providing support, care and maintenance for such spouse in the event that the required payments for such support, care and maintenance have not been made and upon application to the court the other spouse shall be ordered and directed to provide additional or further security.

2. Judgment annulling a marriage on such ground shall not be rendered until, in addition to any other proofs in the case, a thorough examination of the alleged party with a mental illness shall have been made by three physicians who are recognized authorities on mental disease, to be appointed by the court, all of whom shall have agreed that such party has an incurable mental illness and shall have so reported to the court. In such action, the testimony of a physician attached to a state hospital in the department of mental hygiene as to information which he acquired in attending a patient in a professional capacity at such hospital, shall be taken before a referee appointed by a judge of the court in which such action is pending if the court in its discretion shall determine that the distance such physician must travel to attend the trial would be a great inconvenience to him or the hospital, or that other sufficient reason exists for the appointment of a referee for such purpose; provided, however, that any judge of such court at any time in his discretion, notwithstanding such deposition, may order that a subpoena issue for the attendance and examination of such physician upon the trial of the action. In such case a copy of the order shall be served together with the subpoena.

3. Except as provided in paragraph five of this section, when the person alleged to have an incurable mental illness is confined in a state hospital for persons with a mental illness of this state, one, and one only, of the physicians so appointed shall be a member of the resident medical staff of such hospital designated by the director thereof. If the alleged incurably person with a mental illness is not confined in a state hospital for persons with a mental illness of this state, one of the examining physicians named in pursuance of this section shall be the director of a state hospital for persons with a mental illness if the alleged person with a mental illness is within this state, or the superintendent or comparable officer of a state hospital for persons with a mental illness of the state or country where the alleged person with a mental illness is present if the alleged person with a mental illness is outside of this state. The report of such superintendent or comparable officer of a state hospital for persons with a mental illness of such other state or country shall not

be received in evidence or considered by the court unless he shall be a well educated physician with at least five years of training and experience in the care and treatment of persons suffering from mental disorders.

4. When the plaintiff has been permitted to bring such action or prosecute the same as a poor person and the alleged incurably defendant with a mental illness is present within this state, the court shall appoint three physicians who are examining physicians, as defined by section 1.05 of the mental hygiene law, in the employment of the department of mental hygiene. If the alleged person with a mental illness be outside of this state, the court may, upon proof thereof, appoint three examining physicians who are qualified under the laws or regulations of the foreign state or country where the alleged person with a mental illness is present and who have qualifications comparable to those specified in section 1.05 of the mental hygiene law of the state, provided, however, that one of such examining physicians shall be the superintendent or comparable officer of a state hospital for persons with a mental illness of such foreign state or country with qualifications as specified in paragraph four. Such examiners shall make the examination of the alleged party with a mental illness present in this state and file with the court a verified report of their findings and conclusions without costs to such plaintiff when the plaintiff is a poor person. Examination of an alleged party with a mental illness present outside of this state shall be made at the expense of the plaintiff. Such report shall be received in evidence upon the trial of the action without the personal appearance or testimony of such examiners. If the court shall deem it necessary that the testimony of any such examiners be taken, the court may order the taking of such testimony by deposition only. The examiners so appointed by the court may be members of the resident medical staff of any state hospital, whether or not the alleged person with a mental illness is being confined there.