§ 50-h. Examination of claims. 1. Wherever a notice of claim is filed against a city, county, town, village, fire district, ambulance district or school district the city, county, town, village, fire district, ambulance district or school district 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 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. 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 in a subsequent action brought upon the claim to demand a physical 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 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 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 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 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, or if service of the notice of claim is made by service upon the secretary of state pursuant to section fifty-three of this article, within one hundred days from the date of such service.

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 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 attorney upon request.

4. A transcript of the testimony taken at an examination pursuant to the provisions of this section may be read in evidence by either party, in an action founded upon the claim in connection with which it was taken, at the trial thereof or upon assessment of damages or upon motion. In an action by an executor or administrator to recover damages for a wrongful act, neglect or default by which a decedent's death was caused, the testimony of such decedent taken pursuant to the provisions of this section in respect of such wrongful act, neglect or default may be read in evidence.

5. Where a demand for examination has been served as provided in subdivision two of this section no action shall be commenced against the city, county, town, village, fire district or school district against which the claim is made unless the claimant has duly complied with such demand for examination, which compliance shall be in addition to the requirements of section fifty-e of this chapter. If such examination is not conducted within ninety days of service of the demand, the claimant may commence the action. The action, however, may not be commenced until

compliance with the demand for examination if the claimant fails to appear at the hearing or requests an adjournment or postponement beyond the ninety day period. If the claimant requests an adjournment or postponement beyond the ninety day period, the city, county, town, village, fire district or school district shall reschedule the hearing for the earliest possible date available.