**90-351 WORKERS' COMPENSATION BOARD**

**Chapter 4: INDEPENDENT MEDICAL EXAMINER**

**§ 1. Creation of Independent Medical Examiner System Pursuant to 39-A M.R.S.A. §312**

1. To be eligible to participate in the Board appointed independent medical examiner program, health care providers must meet the criteria of this subsection.

 A. The provider must be licensed/certified by the State of Maine.

 B. (1) The provider must have an active, treating practice, or have had an active treating practice within the twenty-four (24) months period preceding appointment as an examiner in an individual case;

 (2) Be Board certified; and

 (3) Demonstrate experience in the treatment of work-related injuries.

 For purposes of this chapter, “active, treating practice” means the provider has direct involvement in evaluation, diagnosis and treatment of patients on a frequent and regular basis in their specific field of expertise.

 C. The provider must demonstrate superior qualifications and experience in their particular fields of expertise.

2. Participation of health care providers in the independent medical examiner system is limited to those providers practicing in health care specialties most commonly used by injured employees. The Executive Director or the Executive Director’s designee may submit for the Board’s review and approval a breakdown of specialists within the 50 slots. Geography may also be a consideration for initial appointment.

3. All health care providers interested in participating in the independent medical examiner system must file an updated curriculum vitae with the Office of Medical/Rehabilitation Services, Workers’ Compensation Board, 27 State House Station, Augusta, Maine 04333. Examiner candidate applications are public information. The Board may request additional information from applicants.

4. The Executive Director or the Executive Director’s designee will annually review the performance of independent medical examiners for compliance with the criteria contained in this subsection and forward any concerns in a report to the Board. Failure by the examiner to adhere to the following criteria may result in their removal at any time from the independent medical examiner list. Affirmative action of the Board is necessary to remove an independent medical examiner from the panel.

 A. Reports must be submitted in a timely manner.

 B. Reports must contain the examiner’s findings on the medical issues raised by the case.

 C. Reports must provide a description of findings sufficient to explain the medical basis of those findings.

 D. Examiners must consider all of the medical evidence submitted by the parties.

 E. Examiners must act in compliance with the requirements of the law and these regulations.

**§ 2. Assignment of Independent Medical Examiners Pursuant to 39-A M.R.S.A. §312**

1. If the parties agree to the selection of a particular independent medical examiner, they shall file a form prescribed by the Board with the Office of Medical/Rehabilitation Services, Workers’ Compensation Board, 27 State House Station, Augusta, Maine 04333. If the employee is unrepresented by counsel, the independent medical examiner agreed upon must be chosen from the Board’s list of independent medical examiners or approved by the Executive Director or the Executive Director’s designee.

2. If the parties do not agree to the selection of a particular independent medical examiner, the requesting party shall file a Request for Independent Medical Examination (WCB M-2) with the Office of Medical/ Rehabilitation Services, Workers’ Compensation Board, 27 State House Station, Augusta, Maine 04333 and follow the procedures contained in section 3 of this rule. The Executive Director or the Executive Director’s designee shall assign an examiner from the list of qualified examiners. If the list does not contain a qualified examiner, the Executive Director or the Executive Director’s designee may select a qualified medical examiner of his/her choice. An Administrative Law Judge may also request an independent medical examination. The requesting party must:

 A. Complete Board Form M-2 and file it with the Office of Medical/ Rehabilitation Services, Workers’ Compensation Board, 27 State House Station, Augusta, Maine 04333.

 B. Attach to Board Form M-2 a joint medical stipulation containing all medical records and other pertinent information, including an index of all treating health care providers and examinations performed under 39-A M.R.S.A. §207 since the date of injury.

3. Assignment of a Board appointed independent medical examiner in a particular case will be performed by the Executive Director or the Executive Director’s designee from the list of Board approved independent medical examiners with possible input from the individual Administrative Law Judge. The assignment will be made from a relevant area of specialty for the medical issues in question. The time it takes to schedule an examination may be a consideration in the selection. If a particular provider on the independent medical examiner list is precluded by rule or statute from acting as an independent medical examiner in the parties’ case, the parties should notify the Board prior to the selection process.

4. A Board appointed independent medical examination under 39-A M.R.S.A. §312 may be requested only after an unsuccessful mediation or after a request for a provisional order has been acted on and the case must be proceeding to the formal hearing level.

5. Parties are limited to one Board appointed independent medical examiner per medical issue unless significant medical change can be shown.

6. **Disqualification and Disclosure in Individual Cases**

The independent medical examiner must disclose potential conflicts of interest that may result from a relationship(s) with industry, insurance companies, and labor groups. A potential conflict of interest exists when the examiner, or someone in their immediate family, receives something of value from one of these groups in the form of an equity position, royalties, consultantship, funding by a research grant, or payment for some other service. If the independent medical examiner performs equivalent examinations as an employee of another organization, potential conflicts of interest may arise from that organization’s contracts with industry, insurance companies, and labor groups. The Executive Director or the Executive Director’s designee shall determine whether any conflict of interest is sufficiently material as to require disqualification in the event of initial disclosure. In the event an undisclosed conflict of interest is revealed during the hearing process, the Administrative Law Judge may disqualify the independent medical examiner and order a new examiner which shall be assigned in accordance to this rule.

**§ 3. Procedures for Independent Medical Examinations Pursuant to 39-A M.R.S.A. §312**

1. Questions relating to the medical condition of the employee must be submitted by the requesting party at the same time the Request for Independent Medical Examination (WCB M-2) is filed. Opposing parties shall submit questions they wish to ask no later than fourteen (14) days after receipt of the requesting party’s questions. Except as provided in subsection 3 of this section, additional questions are not permitted.

2. Except in fatality cases, the independent medical examiner is required to perform at least one examination of the employee.

3. Contacts with the employee by the Board appointed independent medical examiner will be limited to the scheduling of examinations and actual examinations. All communication between the examiner and the parties must be in writing and except for questions which a party requests that the examiner address in the report, may only occur by agreement or with the permission of the Administrative Law Judge. Any such communication must be received by the Board and copied to all opposing parties not later than fourteen (14) days prior to any examination and must clearly and conspicuously state that the communication has been agreed to by the parties or approved by an Administrative Law Judge. Communications that comply with this sub-section will be forwarded to the examiner through the Office of Medical/Rehabilitation Services. Communications received by the Board on or after the date of the examination will only be forwarded to the examiner with prior approval of an Administrative Law Judge.

4. The parties shall confer, prepare, and file a joint medical stipulation containing all medical records and other pertinent information, including an index of all treating health care providers and examinations performed under 39-A M.R.S.A. §207 since the date of injury to the Office of Medical/Rehabilitation Services with the M-2. All medical records must be in chronological order, or chronological order by provider. The joint medical stipulation shall be submitted by the party requesting the examination and shall include a representation either that all parties conferred and prepared the joint medical stipulation or that, despite due diligence, the requesting party was unable to confer with an opposing party or parties. All medical information will be submitted to the selected physician by the Office of Medical/Rehabilitation Services.

5. Upon completion of the final examination and all pertinent and indicated testing, the examiner shall submit a written report to the Board no later than fourteen (14) days after completion of the examination. The Board will distribute copies of the report to the employer and the employee.

6. A party may set a deposition of the independent medical examiner only upon agreement of the parties or with permission of the Administrative Law Judge.

7. Pursuant to 39-A M.R.S.A. §312(6), all subsequent medical evidence submitted to the examiner must be exchanged with the opposing party no later than fourteen (14) days prior to the hearing, unless this timeframe is varied by order of the Administrative Law Judge. If the examiner issues a supplemental report, a supplemental deposition may be permitted at the discretion of the Administrative Law Judge.

**§ 4. Fees for Independent Medical Examinations under 39-A M.R.S.A. §312**

1. Independent medical examinations will have a maximum charge of $300.00 per hour up to a maximum of five hours for review of records and information, the performance of any necessary examinations, and the preparation of the written report. This charge does not include such diagnostic testing as may be necessary. Additional charges may be allowed with the consent of both parties or by the Executive Director or the Executive Director’s designee for good cause shown. The fee for the examination and report must be paid by the employer. In the event the exam is scheduled to determine apportionment of responsibility between employers, the employer/insurer that requested the exam shall pay for the examination and report, unless otherwise agreed to by the requesting employer/insurer and any other employer/insurer that is a party to the proceeding. If an employee requests the exam, all employers/insurers that are parties to the proceeding shall, unless they agree otherwise, split the cost equally.

 2. If additional diagnostic tests are required, payment for such tests whether performed by the independent medical examiner or by another health care provider at the request of the examiner, shall be in accordance with the Board’s Medical Fee Schedule and paid for by the employer.

 3. If the employee fails to attend the independent medical examination or if an examination is cancelled by the employee or employer within 48 hours of the scheduled time, the independent medical examiner may charge and receive up to $200. The independent medical examiner may also charge $200 per hour for up to three (3) hours of preparation time unless the examination is conducted at a later date. These charges shall be paid initially by the employer/insurer that requested the exam unless otherwise agreed to by the requesting employer/insurer and any other employer/insurer that is a party to the proceeding. If the employee requested the exam, all employers/insurers that are parties to the proceeding shall, unless they agree otherwise, split the cost equally. Payment of these charges is subject to the right of the employer(s)/insurer(s) to be reimbursed by the employee if the failure to appear or the cancellation by the employee was without good cause. This determination shall be made by the Administrative Law Judge.

 4. The reasonable costs of depositions of examiners, including the examiner’s fees, court reporter’s fees, and transcript costs, shall be borne by the requesting party.

**§ 5. Application**

These rules apply to all dates of injury. If any section, term, provision, or application of this Rule is adjudged invalid for any reason, such judgment shall not impair or invalidate any other section, term, provision, or application and the remainder of this Rule shall continue in full force and effect.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

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 January 13, 1996

EFFECTIVE DATE (ELECTRONIC CONVERSION):

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