

HOUSE No. 1826

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to impartial medical examiners..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 152 of the General Laws, as appearing in the 2004 Official
2 Edition, is hereby amended by adding after section 9B, the following section:-

3 Section 9C. An administrative judge or administrative law judge before whom
4 a conference or hearing is scheduled, may appoint a duly qualified impartial physician to
5 examine and make a report of the injured employee. The fee paid to the impartial medical
6 physician for this service shall be a reasonable amount set by the division, and the insurer shall
7 remit payment directly to the impartial physician promptly upon receipt of the approved fee. The
8 report of the impartial physician shall be admissible as evidence in any proceeding before the
9 department or a member thereof, provided that the employee and the insurer have seasonably
10 been furnished with copies thereof.

11 SECTION 2. Section 11A of said chapter, as so appearing, is hereby amended by
12 striking out subsection 2 and by inserting in place thereof the following subsection:-

13 (2) Wherever an impartial medical examiner is appointed under section nine, the
14 impartial examiner shall examine the employee and make a report. The report of the impartial
15 medical examiner shall, where feasible, contain a determination of the following:

16 Whether or not a disabling condition exists, (ii) whether or not any such
17 disability is total or partial and permanent or temporary in nature, and (iii) whether or not a
18 personal injury alleged or found to have been arising out of and in the course of the employee's
19 employment probably caused or was a contributing cause of said disabling condition. Said
20 report shall also indicate the examiner's opinion as to whether or not a medical end result has
21 been reached and what permanent impairments or losses of function have been discovered, if
22 any. Where the injury claimed is mental or emotional in nature, such report shall contain the
23 said examiner's opinion as to whether or nor any disabling mental or emotional condition has as
24 its significant or predominant contributing cause, an event or series of events within the
25 employment.

26 Failure of an employee to report to an impartial medical examination after due
27 notice and without cause, and failure to submit to such examiner all relevant medical records,
28 medical reports, medical histories, and any other relevant information requested which are in the
29 possession of control of the employee without good reason, shall constitute sufficient cause for
30 suspension of benefits pursuant to section forty five. The report of the impartial medical
31 examiner shall be admitted into evidence at the hearing. Either party shall have the right to
32 engage the impartial medical examiner to be deposed for purpose of cross-examination. The fact
33 that the impartial examiner has not treated the employee shall not constitute sufficient reason for
34 finding any report of an impartial examiner inadequate. The fee for the provision of a deposition
35 by any impartial medical examiner engages under this section shall be a reasonable amount

36 proved by the commissioner, and shall be paid by the deposing party directly to the physician
37 promptly upon receipt of the report; provided, however, that if the decision of the administrative
38 judge is in favor of the employee, the cost of such deposition shall be added to the amount
39 awarded to the employee and be paid by the insurer under the provisions of this chapter. In
40 reviewing and updating said roster, the senior judge shall utilize the criteria developed by the
41 health care services board pursuant to section thirteen.