

PROPOSED AMENDMENT TO 12 NYCRR § 300.2

12 NYCRR 300.2

Section 300.2. Independent medical examinations, examiners, entities, and reports made without physical examination

(d) Procedures for notice, conduct and reporting of independent medical examinations.

(1) Notice. (i) The claimant shall receive notice of the scheduled independent medical examination at least seven business days prior to the date of such examination. The notice shall be printed on the form prescribed by the Chair for such purpose, which shall include all information required thereon, as set forth under Workers' Compensation Law Section 137. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Where the claimant asserts that notice of the examination was not received at least seven business days prior to the date of the examination and upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets requirements for admissibility under Civil Practice Law and Rules Rule 4518 that the notice was posted by United States mail at least 12 business days prior to the date of the examination or deposited into the custody of an overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery at least eight business days prior to the date of the examination. In the event that an independent medical examination is required for the purpose of determining authorization for special services for specialist consultations, surgery, physical or occupational therapy, imaging studies or special diagnostic or laboratory tests in accordance with Workers' Compensation Law Section 13-a (5), and a delay in authorization for such special services would result in a worsening of the claimant's condition or irreparable harm, and the examination can be scheduled less than 12 business days from the date of the request for the examination, the claimant may, by written consent waive the requirement of seven business days' notice of the examination. However, in case of such a waiver by the claimant of seven business days' notice of the examination, for purposes of scheduling an examination

for authorization of such special services, a notice of the examination must be sent to the claimant as soon as possible after the scheduling of the examination in the same manner as otherwise required for notices of examinations under Workers' Compensation Law Section 137 and this Part. In no event may the right to such notice be waived pursuant to an employment agreement or a collective bargaining agreement. If a claimant requests that an examination be rescheduled, and the examination is rescheduled less than seven business days after the request, the notice required under Section 137 need not be received seven business days prior to the

examination, but must be sent to the claimant as soon as possible in the same manner as required for the original notice under said section and this section. A copy of such notice shall be sent to the Board on the same day it is sent to the claimant. Upon request by the Board, the party scheduling such examination shall provide proof in the form of an affidavit, or a business record that meets the requirements for admissibility under Civil Practice Law and Rules Rule 4518 that the notice was mailed as soon as possible.

(ii) Questionnaires to be completed by the claimant in connection with an independent medical examination shall be on the form prescribed by the Chair for such purpose. Only the form specifically prescribed by the Chair for a claimant's independent medical examination questionnaire shall be used, and a copy of the form must accompany the notice of independent medical examination as prescribed in subsection (i).

(2) Examination requested by claimant. A party requesting an independent medical examination from a provider, other than the attending provider, in accordance with subdivision 4(B) of section 13-a, subdivision 3(B) of section 13-k, subdivision 3(B) of section 13-l, or subdivision 4(B) of section 13-m of the Workers' Compensation Law, for a purpose described under paragraph (b)(4) of this section, shall be liable for all reasonable fees and costs associated with such examination. However, where a claimant can demonstrate to the satisfaction of the board that he or she made a good faith effort to obtain an opinion from his or her attending provider prior to seeking an independent medical examination for any of the purposes described under paragraph (b)(4) of this section, and that the attending provider was unable by reason of death or absence from the State, or unreasonably failed or refused to provide such opinion, the carrier shall be liable for all reasonable fees and costs associated with such examination. Where a claimant seeks an independent medical examination in accordance with subdivision 4(B) of section 13-a, subdivision 3(B) of section 13-k, subdivision 3(B) of section 13-l, or subdivision 4(B) of section 13-m of the Workers' Compensation Law, for a purpose described under paragraph (b)(4) of this section, the independent medical examiner shall inform the claimant in writing on the form prescribed by the chair for notice of such examination that the claimant may be responsible for payment of the cost of such examination, and shall state the actual fee or fee range for such examination.

(3) Provision of information. An independent medical examiner may be provided with information, such as documents, reports, records, and/or test results, for review in connection with an independent medical examination or a review of records. Information provided to an independent medical examiner in connection with an independent medical examination or review of records shall be part of the official Board file at the time it is provided to the independent medical examiner or his or her office so it is available to all parties. If the party requesting the examination wants to provide information to the independent medical examiner that is not part of

the official Board file, it shall submit the information to the Board for inclusion in the official file on the same day the information is first sent to the independent medical examiner or IME entity. The party requesting the examination or review of records may provide the information to an IME entity and such entity may then provide the information to the independent medical examiner who conducts the independent medical examination or review of records.

(4) Reports.

(i) The independent medical examiner shall prepare a complete and accurate report following an independent medical examination or review of records that at least shall contain:

(a) a description of the examination, if conducted;

(b) a list of all of the information, such as documents, reports, records, and/or test results, received and reviewed in preparation for the independent medical examination the report of such exam or the review of records;

(c) any test films or results, or other medical information provided by the claimant at the time of the independent medical examination that is related to the condition that is the subject of the independent medical examination;

(d) the independent medical examiner's professional opinion; and

(e) a signed statement certifying:

(1) that the report is a full and truthful representation of the independent medical examiner's professional opinion with respect to the claimant's condition in accordance with Workers' Compensation Law Sections 13-a(4)(e)(i), 13-k(3)(e)(i), 13-l(3)(e)(i) or 13-m(4)(e)(i), as appropriate;

(2) that no person or entity has caused, directed or encouraged the independent medical examiner to submit a report that differs substantially from the professional opinion of the independent medical examiner; and

(3) that the independent medical examiner has reviewed the report and attests to its accuracy.

(ii) A report that does not bear the signed certification required in subparagraph (ii) of this paragraph shall not be sufficient to meet the requirements of Workers' Compensation Law Section 137 or this section, and shall not be admissible as evidence in a workers' compensation proceeding. The signed certification shall contain an original signature of the independent medical examiner made by such examiner after reviewing the report and shall not be a stamp or other method of reproducing a signature. An electronic signature, as that term is defined in State Technology Law section 302(3) and that is affixed remotely by the independent medical examiner, may be used if its use complies with State Technology Law section 304 and section 540.4 of Title 9.

(iii) The independent medical examiner shall provide copies of the report of an independent medical examination as required under Workers' Compensation Law Section 137(1)(a) together

with any questionnaires ~~or intake sheets~~ completed by the claimant ~~at the request of the independent medical examiner~~ pursuant to paragraph (d)(1)(ii) of this section by filing such report and questionnaire with the form prescribed by the Chair for such purpose with the Board and providing copies of such form to the insurance carrier, the claimant's attending physician(s) or other primary attending practitioner(s), the claimant's attorney or licensed representative, and the claimant. Only the form specifically prescribed by the Chair for the reports of independent medical examinations shall be filed. The form prescribed by the Chair pursuant to paragraph (5) of this subdivision to submit a request for information or a response to such a request shall not be used for the reports of independent medical examinations. When a claimant treats with more than one attending physician or practitioner, the independent medical examiner shall provide a copy of the report of the independent medical examination to any attending physician or practitioner who has treated the claimant in the past six months for the condition that is the subject of the independent medical examination. If no provider has treated the claimant in the last six months, the report should be sent to the provider who last treated the claimant. A provider who has examined the claimant solely for the purpose of consultation or diagnostic examination or test is not an attending physician or other attending practitioner within the meaning of this section and section 137 of the Workers' Compensation Law. All such reports shall be sent on the same day and in the same manner as required by Workers' Compensation Law section 137(1)(a).