

Subdivision (a) of Section 300.1 of Part 300 of 12 NYCRR is amended to renumber paragraph (10) as paragraph (11) and to add a new paragraph (10) to read as follows:

(10) “Third party administrator” means an individual or entity licensed to represent self-insured employers, including self-insured groups, or insurance carriers pursuant to subdivisions (3-b) or (3-d) of Workers’ Compensation Law section 50.

The title of Section 300.2 of Part 300 of 12 NYCRR is amended to read as follows:

§300.2 Independent medical examinations, examiners, [and] entities, and reports made without physical examination.

Paragraphs (1), (2) and (4) of subdivision (b) of section 300.2 of Title 12 NYCRR are amended to read as follows:

(1) Attending physician [provider] or other attending practitioner means [the] those providers or practitioners who [has] have primary responsibility for treating the claimant for the injury or illness for which such claimant is being examined.

(2) Authorized [provider] examiner means a physician, [surgeon,] podiatrist, chiropractor, or psychologist who possesses a current, valid, and unrestricted professional license granted by the New York State Board of Regents, that is without any limitation imposed by the New York State Department of Health, Board of Professional Medical Conduct or the New York State Department of Education, Office of Professional Discipline, is not subject to any restriction on or suspension or revocation of a professional license granted by any other state, and meets the following requirements for authorization by the Chair of the Workers’ Compensation Board to conduct independent medical examinations and review of records:

(i) Requirements for all professions. Each applicant must complete the application process for independent medical examiners required for the applicant's licensed profession under Workers' Compensation Law [s]Section 13-b, 13-k, 13-l, or 13-m [of the Workers' Compensation Law] and paragraph (c)(2) of this section. A physician, [surgeon,] podiatrist, chiropractor, or psychologist who is currently authorized to provide treatment to persons in accordance with the Workers' Compensation Law, Volunteer Ambulance Workers' Benefits Law, and Volunteer Firefighters' Benefits Law must apply for and receive a separate or additional authorization in order to conduct independent medical examinations under such laws.

(ii) Requirements specific to professions.

(a) A physician [or surgeon] must have a degree of doctor of medicine, M.D., or doctor of osteopathy, D.O., or an equivalent degree in accordance with the regulations of the Commissioner of Education, and must satisfactorily meet all other licensing requirements of the State Board of Medicine and Commissioner of Education, and must be board certified as defined in paragraph (3) of this subdivision.

(b) A podiatrist must have received a doctoral degree in podiatry in accordance with the regulations of the Commissioner of Education, and must satisfactorily meet all other licensing requirements of the State Board for Podiatry and the Commissioner of Education.

(c) A chiropractor must have completed [2] two years of [preprofessional] pre-professional college study and a [4] four-year resident program in chiropractic in accordance with the regulations of the Commissioner of Education, and must satisfactorily meet all other licensing requirements of the State Board for Chiropractic and the Commissioner of Education.

(d) A psychologist must have received a doctoral degree in psychology from a program of psychology registered with the State Education Department or the substantial equivalent thereof in accordance with the regulations of the Commissioner of Education, and must satisfactorily meet all other licensing requirements of the State Board for Psychology and the Commissioner of Education.

(e) An authorized examiner does not include the insurance carrier or Special Fund's medical professional as that term is defined in subdivision (c) of section 324.1 of Subchapter C herein.

(4) Independent medical examination means an examination performed by an authorized or qualified independent medical examiner, pursuant to section 13-a, 13-k, 13-l, 13-m or 137 of the Workers' Compensation Law, for purposes of evaluating or providing an opinion with respect to schedule loss, degree of disability, validation of treatment plan or diagnosis, causal relationship, diagnosis or treatment of disability, maximum medical improvement, ability to return to work, permanency, appropriateness of treatment, necessity of treatment, proper treatment, extent of disability, second opinion or any other purpose recognized or requested by the board. An examination that is conducted for any of the purposes described in this section, other than an examination conducted at a clinic that is a member of the occupational health clinics network established pursuant to subdivision (3) of section 151 of the Workers' Compensation Law, shall be deemed an independent medical examination and shall be subject to the requirements governing the conduct and reports of such examinations as set forth under sections 13-a, 13-b, 13-d, 13-k, 13-l, 13-m, 13-n and 137 of the Workers' Compensation Law and this Part. An examination conducted at the request of the chair or the Board in accordance with section 13(e) or 19 of the Workers' Compensation Law shall not constitute an independent medical examination for purposes of this Part, or for purposes of sections 13-b, 13-k, 13-l, 13-m and 137 of the Workers' Compensation Law.

Paragraph (6) of subdivision (b) of section 300.2 of Title 12 NYCRR is repealed and a new paragraph (6) is added to read as follows:

(6) IME entity means an individual or entity that derives income from independent medical examinations performed in accordance with Workers' Compensation Law Sections 13-a, 13-k, 13-l, or 13-m and this section

or review of records, whether by employing or contracting with independent medical examiners to conduct such independent medical examinations or review of records, or by acting as a referral service or otherwise facilitating such examinations or review of records and is registered with the Chair in accordance with Workers' Compensation Law Section 13-n and this section.

Paragraphs (9) and (11) of subdivision (b) of section 300.2 of Title NYCRR are amended and a new paragraph (12) of subdivision (b) is added to read as follows:

(9) Qualified means, with respect to independent medical examiners, a physician,[surgeon,] podiatrist, chiropractor or psychologist who holds a current, valid and unrestricted professional license in the state in which he or she performs the subject independent medical examination or record review, and is found to meet additional professional standards as may be required in the discretion of a Workers' Compensation Law judge or the chair or board based upon the particular facts of a case. A qualified examiner does not include the insurance carrier or Special Fund's medical professional as that term is defined in subdivision (c) of section 324.1 of Subchapter C herein.

(11) "Request for information," for purposes of Workers' Compensation Law Section 137 [(B)(1)] (1)(b) [of the Workers' Compensation Law], except as limited under Civil Practice Laws and Rules Section 4503 [of the Civil Practice Law and Rules], means any substantive communication with an independent medical examiner, or his or her office, regarding the claimant from any person or entity, including a claimant , an insurance carrier, or a third party administrator, that takes place or is initiated outside of the independent medical examination, including a request or referral for examination and any communication related thereto, questions or inquiries related to the claimant or the examination, and the provision of information to the examiner for review in connection with a request for the examiner's professional opinion with regard to the claimant or the

examination. When any substantive communication consists of documents, records, reports, and items that are part of the official Board file and available to all parties at the time they are provided to the independent medical examiner, or his or her office, the documents, records, reports, and items or copies thereof shall not be filed with the Board.

(12) "Review of records," "records review" or "report made without physical examination" means the evaluation of a claimant without physical examination, by a medical provider authorized by the Chair to treat claimants or to conduct independent medical examinations or both, or a medical provider qualified within the meaning of paragraph (9) of this subdivision, based on the review of reports and records, including treatment notes, diagnostic test results, depositions or hearing testimony, exhibits, and other records or reports from medical providers or independent medical examiners or both in the electronic case file maintained by the Board. A review of records does not include reviews conducted by the insurance carrier or Special Fund's medical professional as that term is defined in subdivision (c) of section 324.1 of Subchapter C herein.

Paragraph (3) of subdivision (c) of Section 300.2 of Title 12 NYCRR is amended to read as follows:

(3) Retaining authorization privileges. (i) An authorized examiner [provider] may retain authorization privileges to conduct independent medical examinations and reviews of records only so long as such [provider] examiner continues to comply with the laws and regulations governing such authorization and the [provider's] examiner's profession, and submits to such reports and investigation as may be required by the [c]Chair. The Chair may remove an independent medical examiner's name from the list of authorized examiners, upon notice to the affected examiner, if:

(a) the independent medical examiner is not in compliance with any of the laws and regulations authorizing him or her to conduct independent medical examinations and reviews of records, including any failure by an examiner to possess a required board certification in accordance with paragraph (3) of subdivision (b) of this

section, or the presence of a restriction or restrictions placed by the regulating New York state agency or any agency in any other state charged with oversight of medical licensure compliance and professional conduct, on the examiner's license to practice medicine, podiatry, chiropractic, or psychology; or

(b) the independent medical examiner has engaged in professional or other misconduct or incompetence, or fails to comply with the laws and regulations governing his or her conduct.

(ii) When an independent medical examiner receives notice of the Chair's intent to remove his or her name from the list of authorized examiners for one or more of the reasons in subparagraph (i) of this paragraph, the examiner may be heard, on his or her own behalf or through legal counsel, by offering written proof that he or she is in compliance with the laws and regulations governing authorization to conduct independent medical examinations as a defense to the Chair's intended actions. [Otherwise, his or her]

(iii) When an independent medical examiner receives notice of the Chair's intent to remove his or her name from the list of authorized examiners for one or more of the reasons in subparagraph (i) of this paragraph, his or her name may be removed from the [c]Chair's list of authorized [providers] examiners in accordance with Workers' Compensation Law [s]Section 13-d, 13-k, 13-l, or 13-m [of the Workers' Compensation Law]. Professional and other misconduct shall have the same meaning as set forth in Education Law Sections 6509, 6509-a, 6530, and 6531 and include any violation of the Workers' Compensation Law or Chapter V of this Title or both, and any violation of the laws or regulations under the jurisdiction of the Centers for Medicare and Medicaid Services.

(iv) The Chair shall have the authority to designate a representative to represent him or her in the determinations pursuant to subparagraphs (ii) and (iii) of this paragraph.

Paragraph (1) of subdivision (d) of Section 300.2 of Title 12 NYCRR is amended to read as follows:

(1) Notice. The claimant shall receive notice [posted by United States mail] of the scheduled independent medical examination at least [7] seven business days prior to the date of such examination. The notice shall be printed on [Workers' Compensation Board form IME-5 or such other] the form prescribed by the [c]Chair for such purpose, [and] which shall include all information required thereon, as set forth under Workers' Compensation Law [s]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 [7] seven business days prior to the date of the examination and upon request by the [b]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 [of the Civil Practice Law and Rules] that the notice was posted by United States mail at least [12] twelve 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 [8] 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, [surgical operations] surgery, [physiotherapeutic or occupational therapy procedures]physical or occupational therapy, [x-ray examinations or special diagnostic laboratory tests]imaging studies or special diagnostic or laboratory tests in accordance with Workers' Compensation Law [s]Section 13-a (5)[of the Workers' Compensation Law], 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] twelve business days from the date of the request for the examination, the claimant may, by written consent waive the requirement of [7] seven business days' notice of the examination. However, in case of such a waiver by the claimant of [7] 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 [s]Section 137 [of the Workers' Compensation Law] 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 [7] seven business days after the request, the notice required under [s]Section 137 need not be received [7] 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.

Paragraph (3) of subdivision (d) of Section 300.2 of Title 12 NYCRR is repealed, paragraphs (4), (5), (6), (7), (8), (9), (10), (11) and (12) of subdivision (d) are renumbered as (7), (8), (9), (10), (11), (12), (13), (14) and (15), and new paragraphs (3), (4), (5), and (6) are added to read as follows:

(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 (i) 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 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 [6] six months for the condition that is the subject of the independent medical examination. If no provider has treated the claimant in the last [6] 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).

(iv) Copies of written reports of medical experts, made on behalf of any party without physical examination of the claimant (a review of records), to be used for reference at a hearing, must be filed with the Board and submitted to all other parties or their representatives, if any, three business days prior to the hearing.

(5) Request for information and response. Requests for information and responses to such requests shall be provided as required under Workers' Compensation Law Section 137(1)(b) and (c) and subdivision (b) (11) of this Part. Such requests and responses to such requests should be provided on or attached to the form prescribed

by the Chair for such purpose. The failure to provide such requests or responses to such requests by the independent medical examiner in accordance with Workers' Compensation Law Section 137 and this section shall be considered in determining whether the report of any related independent medical examination substantially complies with Workers' Compensation Law Section 137 and this section.

(6) Reports filed by an IME entity. An independent medical examiner may retain the administrative services of an IME entity. Such IME entity may provide administrative support to the independent medical examiner, including but not limited to those responsibilities described in subdivisions (1) and (7) of Workers' Compensation Law Section 137, under the following circumstances:

(i) the IME entity retained shall be duly registered and in full compliance with Workers' Compensation Law Section 13-n and this section;

(ii) the IME entity retained, in addition to the examiner, shall be responsible for the work of any subcontractors performing ancillary services for the examiner and the IME entity. These services may include, but are not limited to, translation and transcription services. The examiner or IME entity may not retain the services of an organization that is not licensed as an IME entity to perform functions central to the examination such as identifying and retaining the services of an examiner, scheduling of the examination, mailing of the report of independent medical examination and any related notices or Board forms, and negotiation of payment for the examination;

(iii) the independent medical examiner is solely responsible for the content and certification of the written report and for ensuring that the written report is distributed in compliance with Workers' Compensation Law Section 137 and these regulations;

(iv) the signed certification on the written report shall be an original signature of the independent medical examiner made by the examiner after reviewing the report and shall not be a stamp or other method of

reproducing a signature, except that it may be an electronic signature as provided in paragraph (4) of this subdivision;

(v) the content of the written report may not be derived by the independent medical examiner completing a checklist or circling or checking or otherwise marking provisions on a form, letter or any other writing or document prepared by another individual or entity;

(vi) such IME entity, or any officer, servant, or employee of such IME entity, may not cause, direct or encourage the independent medical examiner to submit a report that differs substantially from the professional opinion of the independent medical examiner;

(vii) the IME entity and independent medical examiner do not engage in the splitting of fees in violation of Workers' Compensation Law Section 13-d (2) (g), 13-k (10) (g), 13-l (10) (g), or 13-m (11) (g) and Education Law section 6530 (18) and (19);

(viii) the IME entity shall act on behalf of and at the convenience of the independent medical examiner and may not require that an independent medical examiner use any or all of its services nor may an insurance carrier or third party administrator require that an independent medical examiner use a particular IME entity; and

(ix) the IME entity shall disclose in writing to the Board if it is owned by, shares common ownership with, owns or is affiliated with the insurance carrier, as defined in section 300.1(a) (7) of this Part, or third party administrator, as defined in section 300.1 (a) (10) of this Part, that requested the independent medical examination or review of records. The notice required by subparagraph (ix) of this paragraph shall include the name of the IME entity, the name of claimant who underwent the independent medical examination or review of records, the name of the insurance carrier or third party administrator and whether the IME entity is owned by, shares common ownership with, owns or is affiliated with the insurance carrier or third party administrator.

Newly renumbered paragraphs (7), (8), (10), (12) and (14) of subdivision (d) of Title 12 NYCRR are amended to read as follows:

(7) Conduct at examination. The claimant or the examiner may videotape or otherwise record the examination. [, and t]An independent medical examiner may not refuse to conduct an independent medical examination because the claimant intends to videotape or otherwise record such examination when the claimant has appeared for such examination as scheduled. The claimant and the independent medical examiner and their agents shall not alter or misrepresent the content of the recording and shall not distribute publicly the recording beyond its use in a hearing of the Board. The claimant may be accompanied to the examination by an individual or individuals of his or her own choosing. However, neither the examiner nor the claimant may disrupt or interfere with the examination by such recording or as a result of the presence to such companion or companions.

(8) Relationship between examiner and claimant. The independent medical examiner shall not provide treatment to the claimant, shall not be a partner, member, or employee of the claimant's attending physician's or practitioner's practice, and only a limited [no] patient-physician or patient-provider relationship is established by conducting an independent medical examination in accordance with Workers' Compensation Law [s]Section 13-a, 13-k, 13-l, or 13-m [of the Workers' Compensation Law] or this [Part]section. The limited patient-physician or patient-provider relationship established requires the physician or provider to administer an objective medical evaluation but not to monitor claimants' work related injury or illness over time, treat claimants, or fulfill the other duties traditionally held by attending physicians or providers. However, all laws and regulations governing the confidentiality of medical records and workers' compensation records shall apply to records of an independent medical examination or review of records. Notwithstanding the limitations set forth under Workers' Compensation Law [s]Section 137(9) [of the Workers' Compensation Law], an

independent medical examiner who has evaluated a claimant at the request of the employer, carrier or claimant may conduct a subsequent independent medical examination of the claimant for the same injury or illness.

(10) Unreasonable burden. Where an insurance carrier, [employer]third party administrator or claimant finds that it would place an unreasonable burden [upon him, or her]to arrange for an independent medical examination or review of records, or to attend an independent medical examination by an authorized [provider] examiner, the employer, [or] carrier or claimant shall arrange for such examination or review of records to be performed by a qualified provider. Upon request by the [b]Board, the person or entity requesting such examination or review of records by a qualified provider must demonstrate the existence of the unreasonable burden to the satisfaction of the [b]Board. Where a [party] person or entity is unable to demonstrate to the satisfaction of the [b]Board that an unreasonable burden existed which required the examination or review of records to be conducted by a qualified provider rather than an authorized [provider] examiner, the report based upon such examination or review of records by a qualified provider shall not be admissible as evidence in a workers' compensation proceeding.

(12) No waiver of claimant's rights. Except as otherwise provided, a claimant may not waive any of the rights provided under Workers' Compensation Law [s]Section 137 [of the Workers' Compensation Law] in relation to independent medical examinations. A report of an examination that does not substantially comply with the requirements of Workers' Compensation Law [s]Section 137 [of the Workers' Compensation Law] and this [Part]section, shall not be admissible as evidence for any of the purposes described in [paragraph] subdivision (b) (4) of this section in a workers' compensation proceeding, unless the party raising an objection to the admissibility of the report does not raise such objection in a timely manner. Except for a waiver that is expressly authorized by the Workers' Compensation Law or this [Part]section or by a Workers' Compensation Law judge, and is knowingly executed by the claimant, no agreement between an employee and employer, or employee and carrier shall be binding upon the [b]Board; nor shall any such agreement in any way excuse

compliance with said [s]Section 137 or this [Part]section. In no event shall a collective bargaining agreement be binding upon the [b]Board or excuse compliance with respect to said [s]Section 137 or this [Part]section; nor shall a claimant be required or permitted to waive any of the requirements of [s]Section 137 or this [Part]section pursuant to such agreement.

(14) A written report of an independent medical examination, duly sworn to, shall be filed with the [b]Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within [10] ten business days after the independent medical examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within [20] twenty business days after the independent medical examination. A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.

Paragraph (1) of subdivision (e) is repealed and a new paragraph (1) is added; paragraphs (2), (3), (4) and (5) are amended; and new paragraphs (6) and (7) are added, as follows:

(e) Registration of entities. (1) Mandatory registration. (i) Any entity that derives income from independent medical examinations performed in accordance with Workers' Compensation Law sections 13-a, 13-k, 13-l or 13-m and 137 or review of records, whether by employing or contracting with independent medical examiners or by contracting with insurance carriers, third party administrators, the Uninsured Employers' Fund or Reopened Case Fund or by acting as a referral service by arranging or otherwise facilitating or providing administrative services for such examinations or review of records, shall register with the Chair by filing the following requested documents. Such entity shall meet the definition of IME entity.

(ii) The IME entity shall provide the following information:

(a) the name or names under which it is registered with the Department of State and a copy of the organizational documents for the entity, such as Articles of Incorporation or Articles of Organization,

(b) the name or names under which it conducts business,

(c) the address or addresses of its administrative office and each of the offices where it conducts any business,

(d) the telephone numbers of each business location,

(e) the entity's tax identification number,

(f) the name, title and telephone number of the contact person for the entity,

(g) the names, addresses and telephone numbers of each of the entity organization's officers, owners, or partners, identify if any of the officers, owners, or partners have been convicted of any criminal offenses and if so, detailed information about such conviction, and certify under penalties of perjury that all such officers, owners, or partners are of good moral character,

(h) the name or names and address or addresses of all organizations that are affiliated with, share common ownership with, own or are owned by the IME entity, including but not limited to other entities required to register pursuant to Workers' Compensation Law section 13-n, insurance carriers as defined in section 300.1 (a) (7) of this Part, or third party administrators as defined in section 300.1 (a) (10) of this Part,

(i) a statement as to whether the IME entity subcontracts or contracts with an organization that is not a registered IME entity to perform any ancillary services related to independent medical examinations or review of records, and if the IME entity does so subcontract or contract, the IME entity shall provide a statement that such ancillary services performed by a subcontractor do not require registration as an IME entity as they are not functions central to the examination or review of records such as identifying and retaining the services of an examiner, scheduling of the examination, mailing of the report of independent medical examination or review of records and any related notices or Board forms, and negotiation of payment for the examination or review of records,

(j) description of the services provided by the IME entity and its employees or independent contractors,

(k) a description of the relationship between the IME entity and its owners, officers or partners and the independent medical examiners it employs or with whom it contacts to conduct independent medical examinations and reviews of records,

(l) the affirmation as set forth in paragraph (2) of this section, and

(m) such other information as the Chair finds to be necessary and relevant.

(iii) The Chair may audit any contract between a carrier and an IME entity or examiner, or any contract between an IME entity and an examiner or subcontractor, to ensure compliance with this section and sections 13-n and 137 of the Workers' Compensation Law.

(iv) If there are any material changes to the information supplied in subdivisions (a),(b), (c), (d), (e) or (f) of subparagraph (i) of this paragraph, the IME entity shall notify the Chair in writing within thirty business days that the information has changed and provide the updated information. The IME entity shall notify the Chair in writing by March 31 of each year of any material changes to the information supplied in subdivisions (g),(h), (i), (j), (k) (l) (m), (n) or (o) of subparagraph (i) of this paragraph.

(v) Entities must register every [3] three years by submitting the form required in subparagraph (1) of this paragraph and paying the registration fee set forth in paragraph (5) of this subdivision.

(2) Compliance with laws. An officer of each such entity registering with the [c]Chair shall affirm under penalty of perjury upon registration that the entity is organized under the laws of New York State or in the state in which it incorporated in a corporate form that is recognized by the laws of the State of New York, is duly registered with the Department of State, and is in full compliance with the laws of the State of New York, its state of incorporation if outside New York, and the United States, including but not limited to any laws or regulations under the Public Health Law, the Education Law and the Workers' Compensation Law governing the practice of medicine, podiatry, chiropractic and psychology, treatment of injured or ill workers, solicitation and fee-splitting, and any laws or regulations under the jurisdiction of the State Insurance Department, the

Federal [Health Care Financing Administration] Centers for Medicare and Medicaid Services, the State Department of Taxation and Finance or the Federal Internal Revenue Service. The officer shall further affirm that he or she has read or is familiar with the fee-splitting and anti-solicitation provisions of the Workers' Compensation Law under sections 13-d, 13-i, 13-k, 13-l₂ and 13-m, and the entity is not in violation of any such section.

(3) Additional information. The [c]Chair or his or her designee reserves the right to request any and all [additional] information or documentation necessary from [the registering] any IME entity for the purpose of administering and ensuring compliance with Workers' Compensation Law sections 13-a, 13-b, 13-d, 13-i, 13-k, 13-l, 13-m, 13-n, 137 and other related provisions of [the Workers' Compensation Law] such law and this section. All IME entities must cooperate in any investigation and produce for review by the Chair or his or her designee any relevant documents, reports or notes.

(4) Acceptance of registration not a defense. The acceptance of a registration statement by the [c]Chair in accordance with Workers' Compensation Law section 13-n [of the Workers' Compensation Law] and these regulations shall not be construed as authorization, approval or endorsement of the registering entity, or its services, corporate organization or business practices by the [c]Chair or [b]Board, and the acceptance of a registration statement by the [c]Chair shall not be a defense to any investigation, action or proceeding by any government agency or official enforcing the laws of this State or the United States.

(5) Registration fee. The registering entity shall pay a registration fee of \$250 to the [c]Chair for the purpose of administering the registration and ensuring compliance of such entities in accordance with Workers' Compensation Law [s]Section 13-n [of the Workers' Compensation Law].

(6) Removal from List of Registered IME Entities.

The Chair or his or her designee may remove an IME entity from its list of such registered IME entities for failure to comply with Workers' Compensation Law Sections 13-n or 137 or this section. The following procedure shall apply to such removal:

(i) Written notice. (a) The registered IME entity shall be given written notice of the proposed rescission of registration containing the following information:

(1) A concise statement of the grounds or the nature of the misconduct upon which the proposed rescission of registration is based; and

(2) A recitation of the statute(s), regulation(s), or order(s) allegedly violated by the registered IME entity.

(b) The written notice of proposed rescission of registration may be sent in any manner that provides proof of delivery to the registered IME entity or to the registered IME entity's legal counsel, if known.

(c) The written notice shall inform the registered IME entity of the opportunity to have the Chair or his or her designee administratively review the proposed rescission of registration.

(ii) Responses to the written notice. (a) Answer. A registered IME entity that wishes to dispute the allegations contained in the notice of proposed rescission of registration, must serve an answer to the notice of proposed rescission.

(1) The registered IME entity must serve any answer to the notice of proposed rescission on the Board within twenty days of receipt of the notice.

(2) Any answer must set forth responses to the grounds or nature of the misconduct alleged, the statutes, regulations or orders allegedly violated, and any defenses.

(3) Failure to provide an answer. Failure to provide an answer within twenty days will result in the allegations in the notice being deemed admitted and the registered IME entity will be prohibited from raising any defenses or any argument in opposition to the allegations set forth in the notice. If the registered IME entity does not submit an answer and request a timely administrative review, then the registered IME entity will be

deemed to have waived all rights, all allegations set forth in the notice will be deemed admitted, the registered IME entity will be prohibited from raising any affirmative defenses or any arguments in opposition to the allegations set forth in the notice or from submitting any evidence in its defense, an administrative review will not be held, and the IME entity's registration will be automatically rescinded. A determination of this nature shall be deemed administratively final.

(b) Voluntary Resignation. At the Chair's or his or her designee's discretion, a written statement may be executed at the option of the registered IME entity which affords it the opportunity to voluntarily resign as a registered IME entity without admitting or denying the allegations contained in the notice. If the registered IME entity voluntarily resigns after requesting an administrative review of the allegations, such administrative review shall not be held and will not be rescheduled.

(iii) Administrative review. If the registered IME entity submits an answer and requests an administrative review of the allegations:

(a) Administrative review of the registered IME entity's authorization shall be scheduled not less than thirty days from the date of receipt of the notice. The administrative review shall be held at the executive offices of the Board in Albany, New York.

(1) The registered IME entity shall appear with counsel at the administrative review, provide testimony, and cross-examine witnesses. The registered IME entity may also submit documents or other materials for review by the Chair or his or her designee either prior to or at the administrative review itself.

(2) The Chair or his or her designee shall not be bound by common law or statutory rules of evidence in conducting the administrative review and may conduct such investigation or inquiry in a manner which, in his or her discretion, is appropriate, including the preparation of a record of the proceedings or the admission of non-documentary evidence.

(3) The registered IME entity shall receive a written decision containing findings of fact and conclusions of law within thirty days of the conclusion of the administrative review.

(iv) Notification of Decision to Rescind Registration. After providing written notification to the registered IME entity of the registration rescission, the Chair or his or her designee shall notify or direct the registered IME entity to notify any and all appropriate public or private agencies, entities or organizations that the registered IME entity's registration has been rescinded. A decision to rescind an IME entity's registration shall be administratively final.

(7) Penalties for materially altering or causing a report to be materially altered. If the chair or his or her designee finds that an IME entity that derives income from independent medical examinations has materially altered an independent medical examination report, or caused such a report to be materially altered, then in addition to revoking or rescinding the registration of such IME entity through the process set forth in paragraph (6) of this subdivision, the Chair or his or her designee shall: (i) refer the matter to the attorney general for prosecution; and (ii) impose a penalty not to exceed \$10,000 payable to the Chair. In determining the amount of the penalty, the Chair or his or her designee shall consider: (i) the extent of the alteration to the report; (ii) the nature of the alteration; (iii) how the IME entity caused the report to be altered; and (iv) the impact of the altered report on the decision of the Board.