

HOUSE No. 1826

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to impartial medical examiners.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1826 OF .]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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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 Edition, is hereby
2 amended by adding after section 9B, the following section:-

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

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

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

15 Whether or not a disabling condition exists, (ii) whether or not any such disability is total or
16 partial and permanent or temporary in nature, and (iii) whether or not a personal injury alleged or found to

17 have been arising out of and in the course of the employee's employment probably caused or was a
18 contributing cause of said disabling condition. Said report shall also indicate the examiner's opinion as to
19 whether or not a medical end result has been reached and what permanent impairments or losses of function
20 have been discovered, if any. Where the injury claimed is mental or emotional in nature, such report shall
21 contain the said examiner's opinion as to whether or not any disabling mental or emotional condition has as
22 its significant or predominant contributing cause, an event or series of events within the employment.

23 Failure of an employee to report to an impartial medical examination after due notice and without
24 cause, and failure to submit to such examiner all relevant medical records, medical reports, medical
25 histories, and any other relevant information requested which are in the possession of control of the
26 employee without good reason, shall constitute sufficient cause for suspension of benefits pursuant to
27 section forty five. The report of the impartial medical examiner shall be admitted into evidence at the
28 hearing. Either party shall have the right to engage the impartial medical examiner to be deposed for
29 purpose of cross-examination. The fact that the impartial examiner has not treated the employee shall not
30 constitute sufficient reason for finding any report of an impartial examiner inadequate. The fee for the
31 provision of a deposition by any impartial medical examiner engages under this section shall be a
32 reasonable amount proved by the commissioner, and shall be paid by the deposing party directly to the
33 physician promptly upon receipt of the report; provided, however, that if the decision of the administrative
34 judge is in favor of the employee, the cost of such deposition shall be added to the amount awarded to the
35 employee and be paid by the insurer under the provisions of this chapter. In reviewing and updating said
36 roster, the senior judge shall utilize the criteria developed by the health care services board pursuant to
37 section thirteen.