

SENATE BILL NO. 121

BY SENATOR WARD

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact Code of Civil Procedure Articles 1421 and 1464, R.S. 23:1123, 1124, 1203(E), 1221(4)(s)(ii), 1307 and 1317.1, R.S. 39:1952(14)(e), and R.S. 46:2136(A)(4), relative to court-ordered and other mandatory physical and mental examinations; to provide relative to such examinations in certain civil and administrative matters, procedures, and claims; to provide for consistency in terminology and nomenclature, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Civil Procedure Articles 1421 and 1464 are hereby amended and reenacted to read as follows:

Art. 1421. Discovery methods

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations, **including additional medical opinions under Article 1464**; request for release of medical records; and requests for admission. Unless the court orders otherwise under Article 1426, the frequency of use of these methods is not limited.

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Art. 1464. Order for **an additional medical opinion for** physical or mental examination of persons

A. When the mental or physical condition of a party, or of a person in the

1 custody or under the legal control of a party, is in controversy, the court in which the
 2 action is pending may order the party to submit to a **an additional medical opinion**
 3 **regarding** physical or mental examination by a physician or to produce for
 4 examination the person in his custody or legal control, except as provided by law. In
 5 addition, the court may order the party to submit to an **additional medical opinion**
 6 **regarding an** examination by a vocational rehabilitation expert or a licensed clinical
 7 psychologist who is not a physician, provided the party has given notice of intention
 8 to use such an expert. The order may be made only on motion for good cause shown
 9 and upon notice to the person to be examined and to all parties and shall specify the
 10 time, place, manner, conditions, and scope of the examination and the person or
 11 persons by whom it is to be made.

12 **B. Regardless of the number of defendants, a plaintiff shall not be**
 13 **ordered to submit to multiple examinations by multiple physicians within the**
 14 **same field of specialty for the same injury except for good cause shown.**

15 **C. A minor subject to examination under the provisions of this Article**
 16 **shall have the right to have a parent, tutor, or legal guardian present during the**
 17 **examination. If such person cannot be present, the court shall order the**
 18 **examination to be videotaped at the expense of the party being examined. The**
 19 **court shall consider the best interests of the minor and may impose conditions**
 20 **upon videotaping, including that it be done in a manner least harmful to the**
 21 **minor and without disclosure to the minor.**

22 Section 2. R.S. 23:1123, 1124, 1203(E), 1221(4)(s)(ii), 1307 and 1317.1 are hereby
 23 amended and reenacted to read as follows:

24 §1123. Disputes as to condition or capacity to work; **additional medical opinion**
 25 **regarding an** examination under supervision of the director

26 If any dispute arises as to the condition of the employee, or the employee's
 27 capacity to work, the director, upon application of any party, shall order an
 28 **additional medical opinion regarding an** examination of the employee to be made
 29 by a medical practitioner selected and appointed by the director. The medical
 30 examiner shall report his conclusions from the examination to the director and to the

1 parties and such report shall be prima facie evidence of the facts therein stated in any
2 subsequent proceedings under this Chapter.

3 §1124. Refusal to submit to **an additional medical opinion regarding an**
4 examination; effect on right to compensation

5 If the employee refuses to submit himself to **an additional medical opinion**
6 **regarding** a medical examination at the behest of the employer or an examination
7 conducted pursuant to R.S. 23:1123, or in anywise obstructs the same, his right to
8 compensation and to take or prosecute any further proceedings under this Chapter
9 may be suspended by the employer or payor until the examination takes place. Such
10 suspension of benefits by the employer or payor shall be made in accordance with
11 the provisions of R.S. 23:1201.1(A)(4) and (5). When the employee has filed a
12 disputed claim, the employer or payor may move for an order to compel the
13 employee to appear for an **additional medical opinion regarding an** examination.
14 The employee shall receive at least fourteen days written notice prior to the
15 **additional medical opinion regarding an** examination. When a right to
16 compensation is suspended no compensation shall be payable in respect to the period
17 of suspension.

18 * * *

19 §1203. Duty to furnish medical and vocational rehabilitation expenses; prosthetic
20 devices; other expenses

21 * * *

22 E. Upon the first request for authorization pursuant to R.S. 23:1142(B)(1),
23 for a claimant's medical care, service, or treatment, the payor, as defined in R.S.
24 23:1142(A)(1), shall communicate to the claimant information, in plain language,
25 regarding the procedure for requesting an ~~independent~~ **additional medical opinion**
26 **regarding a** medical examination in the event a dispute arises as to the condition of
27 the employee or the employee's capacity to work, and the procedure for appealing
28 the denial of medical treatment to the medical director as provided in R.S. 23:1203.1.
29 A payor shall not deny medical care, service, or treatment to a claimant unless the
30 payor can document a reasonable and diligent effort in communicating such

1 information. A payor who denies medical care, service, or treatment without making
2 such an effort may be fined an amount not to exceed five hundred dollars or the cost
3 of the medical care, service, or treatment, whichever is more.

4 * * *

5 §1221. Temporary total disability; permanent total disability; supplemental earnings
6 benefits; permanent partial disability; schedule of payments

7 Compensation shall be paid under this Chapter in accordance with the
8 following schedule of payments:

9 * * *

10 (4) Permanent partial disability. In the following cases, compensation shall
11 be solely for anatomical loss of use or amputation and shall be as follows:

12 * * *

13 (s)(i) * * *

14 (ii) In any claim for an injury, it must be established by clear and convincing
15 evidence that the employee suffers an injury and that such resulted from an accident
16 arising out of and in the course and scope of his employment. Nothing herein shall
17 limit the right of any party to obtain a second medical opinion or, in appropriate
18 cases, the opinion of an ~~independent~~ **additional medical opinion** medical examiner
19 pursuant to R.S. 23:1123.

20 * * *

21 §1307. Information to injured employee

22 Upon receipt of notice of injury from the employer or other indication of an
23 injury reportable under R.S. 23:1306, the office shall mail immediately to the injured
24 employee and employer a brochure which sets forth in clear understandable language
25 a summary statement of the rights, benefits, and obligations of employers and
26 employees under this Chapter, together with an explanation of the operations of the
27 office, and shall invite the employer and employee to seek the advice of the office
28 with reference to any question or dispute which the employee has concerning the
29 injury. Such brochure shall specifically state the procedure for requesting an
30 ~~independent~~ **additional medical opinion regarding a** medical examination in the

1 event a dispute arises as to the condition of the employee or the employee's capacity
 2 to work and the procedure for appealing the denial of medical treatment to the
 3 medical director as provided in R.S. 23:1203.1. If such brochure has previously been
 4 mailed to an employer within the calendar year, the office shall not mail ~~such~~ the
 5 employer an additional brochure unless the employer specifically requests ~~such~~ it.

6 * * *

7 §1317.1. ~~Independent~~ Additional medical opinion regarding medical
 8 examinations

9 A. Any party wishing to request an ~~independent~~ additional medical opinion
 10 regarding a medical examination of the claimant pursuant to R.S. 23:1123 and
 11 1124.1 shall be required to make its request at or prior to the pretrial conference.
 12 Requests for ~~independent~~ additional medical opinions regarding medical
 13 examinations made after that time shall be denied except for good cause or if it is
 14 found to be in the best interest of justice to order such examination.

15 B. An examiner performing ~~independent~~ additional medical opinion exams
 16 pursuant to R.S. 23:1123 shall be required to prepare and send to the office a
 17 certified report of the examination within thirty days after its occurrence.

18 C. The report of the examination shall contain the following, when
 19 applicable:

20 (1) A statement of the medical and legal issues the examiner was asked to
 21 address.

22 (2) A detailed summary of the basis of the examiner's opinion, including but
 23 not limited to a listing of reports or documents reviewed in formulating that opinion.

24 (3) The medical treatment and physical rehabilitative procedures which have
 25 already been rendered and the treatment, if any, which the examiner recommends for
 26 the future, together with reasons for the recommendation.

27 (4) Any other conclusions required by the scope of the ~~independent~~
 28 additional medical opinion regarding a medical examination, together with
 29 reasons for the conclusion reached.

30 (5) A curriculum vitae of the examiner.

1 (6) A written certification personally signed by the examiner that the report
2 is true. The substance of the certification shall be: "I certify that I have caused this
3 report to be prepared, I have examined it, and to the best of my knowledge and
4 belief, all statements contained herein are true, accurate, and complete."

5 D. If a physical examination of the claimant was conducted, the certified
6 report shall contain all of the following additional information:

7 (1) A complete history of the claimant, including all previous relevant or
8 contributory injuries with a detailed description of the present injury.

9 (2) The complaints of the claimant.

10 (3) A complete listing of tests and diagnostic procedures conducted during
11 the course of the examination.

12 (4) The examiner's findings on examination, including but not limited to a
13 description of the examination and any diagnostic tests and X-rays.

14 E. When the ~~independent~~ **additional medical opinion** medical examiner's
15 report is presented within thirty days as provided in this Section:

16 (1) The examiner shall be protected from subpoena except for a single trial
17 deposition. However, upon a proper motion for cause, the workers' compensation
18 judge may order further discovery of the ~~independent~~ **additional medical opinion**
19 **by a** medical examiner as deemed appropriate.

20 (2) Except to schedule the deposition or further discovery as described above,
21 the office of the ~~independent~~ **additional medical opinion** medical examiner shall not
22 be contacted regarding the claimant by any party, attorney, or agent.

23 F. Objections to the ~~independent~~ **additional medical opinion regarding a**
24 medical examination shall be made on form LDOL-WC-1008, and shall be set for
25 hearing before a workers' compensation judge within thirty days of receipt. No
26 mediation shall be scheduled on disputes arising under this Section.

27 Section 3. R.S. 39:1952(14)(e) is hereby amended and reenacted to read as follows:
28 §1952. Definitions

29 Unless the context requires otherwise, the following words shall have the
30 following meanings:

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(14) "Minority" means a person who is a citizen or permanent resident of the United States residing in Louisiana and who is any of the following:

* * *

(e) Person with a disability: a person who has a permanent physical impairment which includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, speech organs, skin, and endocrine, which substantially limits at least one major life activity of an individual, as defined in R.S. 28:477(3)(a), as verified by two physicians or as certified by the United States Department of Veterans Affairs as meeting the qualifications and approved by the division. The division may require an additional ~~independent~~ **medical opinion regarding a** medical examination by a physician chosen by the division, at the applicant's expense, prior to approval of an application. For the purpose of this Subparagraph, "disability" shall not mean mental impairment, temporary impairment, alcohol or drug addiction, sexual or behavioral disorders, or substantially limiting illnesses including human immunodeficiency virus.

* * *

Section 4. R.S. 46:2136(A)(4) is hereby amended and reenacted to read as follows:
§2136. Protective orders; content; modification; service

A. The court may grant any protective order or approve any consent agreement to bring about a cessation of domestic abuse as defined in R.S. 46:2132(3), or the threat or danger thereof, to a party, any minor children, or any person alleged to be incompetent, which relief may include but is not limited to:

* * *

(4)(a) Ordering **an additional medical opinion regarding** a medical evaluation of the defendant or the abused person, or both, to be conducted by an independent court-appointed evaluator who qualifies as an expert in the field of domestic abuse. The evaluation shall be conducted by a person who has no family, financial, or prior medical relationship with the defendant or abused person, or their

1 attorneys of record.

2 (b) If the **additional medical opinion** medical evaluation is ordered for both
3 the defendant and abused person, two separate evaluators shall be appointed.

4 (c) After ~~an independent~~ **an additional medical opinion** medical evaluation
5 has been completed and a report issued, the court may order counseling or other
6 medical treatment as deemed appropriate.

7 * * *

8 Section 5. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____