

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 499

S.P. 155

In Senate, February 6, 2001

**An Act to Clarify the Qualifications for Health Care Providers  
Conducting Employer-requested Examinations.**

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator NUTTING of Androscoggin.  
Cosponsored by Representative JACOBS of Turner and  
Senators: EDMONDS of Cumberland, ROTUNDO of Androscoggin, Representatives:  
BERRY of Livermore, LaVERDIERE of Wilton, PINEAU of Jay.

**Be it enacted by the People of the State of Maine as follows:**

2

4       **Sec. 1. 39-A MRSA §207, first ¶** as amended by PL 1999, c. 365, §1, is further amended to read:

6

8       An employee being treated by a health care provider of the  
10       employee's own choice shall, after an injury and at all  
12       reasonable times during the continuance of disability if so  
14       requested by the employer, submit to an examination by a  
16       physician, surgeon or chiropractor authorized to practice as such  
18       under the laws of this State, to be selected and paid by the  
20       employer. The physician, surgeon or chiropractor must have an  
22       active practice of treating patients or have discontinued an  
24       active practice not more than 2 years before the date of the  
26       examination. For purposes of this section, "active practice" may  
28       be demonstrated by having treating privileges at a hospital and  
30       also by maintaining a practice in which at least 50% of the  
32       physician's time is committed to the active treatment of  
34       patients, not including insurance consulting examinations. A  
36       physician or surgeon must be certified in the field of practice  
38       that treats the type of injury complained of by the employee.  
40       Certification must be by a board recognized by the American Board  
42       of Medical Specialties or the American Osteopathic Association or  
44       their successor organizations. A chiropractor licensed by the  
46       Board of Chiropractic Licensure, who has an active practice of  
      treating patients or who discontinued an active practice not more  
      than 2 years before the examination, may provide a 2nd opinion  
      when the initial opinion was given by a chiropractor. Once an  
      employer selects a health care provider to examine an employee,  
      the employer may not request that the employee be examined by  
      ~~mere--than--one--other--health--care--provider,~~ other than by an  
      independent medical examiner appointed pursuant to section 312,  
      ~~without prior approval from the employee or a hearing officer.~~  
      ~~This provision does not limit an employer's right to request that~~  
      ~~the employee be examined by a specialist upon referral by the~~  
      ~~health care provider.~~ ~~Once the employee is examined by the~~  
      ~~specialist, the employer may not request that the employee be~~  
      ~~examined by a different specialist in the same specialty, other~~  
      ~~than an independent medical examiner appointed pursuant to~~  
      ~~section 312, without prior approval from the employee or the~~  
      board. The employee has the right to have a physician, surgeon  
      or chiropractor of the employee's own selection present at such  
      an examination, whose costs are paid by the employer. The  
      employer shall give the employee notice of this right at the time  
      the employer requests an examination.

46

48       **Sec. 2. 39-A MRSA §207,** as amended by PL 1999, c. 365, §1, is  
      further amended by adding after the first paragraph a new  
      paragraph to read:

2       The physician examining an employee under this section  
3       shall, prior to commencing the examination, advise the employee  
4       fully and in writing of all records, documents and other  
5       communications that the physician has available in conducting the  
6       examination. The physician shall also advise the employee and  
7       the employee's physician of the scope and purpose of the  
8       requested examination and all persons with whom the physician has  
9       communicated in preparation for the examination. The physician  
10       may not rely on any documentation or information in any way  
11       received subsequent to the examination in preparing a report or  
12       opinion regarding the employee's medical condition.  
13       Simultaneously with providing an oral or written report to the  
14       employer, the physician shall provide the same information to the  
15       employee and the employee's physician.

## 18                               SUMMARY

20               This bill ensures that health care providers conducting  
21       examinations under the Maine Revised Statutes, Title 39-A,  
22       section 207 are properly qualified and are truly involved in the  
23       active treatment of patients in their specialty and to ensure  
24       that employees are fully advised of the background material on  
      which the health care provider relies.