

RULE 62

INDEPENDENT MEDICAL EXAMINERS APPOINTMENT

Words in italics are defined in Rule 49.

A. Qualifications. To be eligible for appointment by the court to the list of qualified *independent medical examiners* the *physician* must:

1. be licensed and in good standing in Nebraska or the state in which he or she practices;
2. be highly experienced and competent in his or her specific field of expertise and in the treatment of work-related injuries; and
3. be knowledgeable of workers' compensation principles and the workers' compensation system in Nebraska, as demonstrated by prior experience and/or education.

B. Appointment. Appointment of *physicians* to the list of qualified *independent medical examiners*, and maintenance and periodic validation of such list shall be by a majority vote of the judges of the court.

C. Application for Appointment. To request appointment to the list of qualified *independent medical examiners* a *physician* shall complete and forward to court an application form provided by the court, and shall also verify that the *physician*, if appointed, will:

1. provide independent, impartial and objective medical findings in all cases that come before him or her;
2. decline a request to serve as an *independent medical examiner* only for good cause shown;
3. conduct an examination, if necessary, in order to render findings on the questions and issues submitted, within the time frame established in Rule 64,C;
4. submit a written report to the parties and the court within the time frame established in Rule 64,E;
5. accept as payment in full for services rendered as an *independent medical examiner* the fees established pursuant to Rule 65;
6. submit to a review pursuant to Rule 62,E; and
7. comply with all of the other provisions of Rule 62 through Rule 67 and section 48-134.01.

- D. Disclosure.** As part of the application the *physician* shall identify any employer, insurer, attorney, employee group, *managed care plan*, or representatives of any of the above to whom the *physician* is under contract or who regularly uses the services of the *physician*.
- E. Review.** The court may at its discretion review the performance of any *physician* appointed to the list of qualified *independent medical examiners*. Such review may include, but not be limited to, the timeliness of submission of medical findings, the quality of the reports submitted, and any other aspects of the performance of the examiner as determined by the court.

Sections 48-120.02, 48-134.01, 48-173, R.R.S. 2010, and 48-120, R.S. Supp., 2014..

Effective date: December 1, 1999.

RULE 63
INDEPENDENT MEDICAL EXAMINERS
SELECTION

Words in italics are defined in Rule 49.

- A.** Once a dispute regarding medical, surgical, or hospital services furnished or to be furnished under the Nebraska Workers' Compensation Act has arisen any party or the court on its own motion may submit the dispute for a medical finding by an *independent medical examiner*.
- B.** If the parties to a dispute cannot agree on an *independent medical examiner* of their own choosing, the court shall assign one from the list of qualified *independent medical examiners* maintained by the court. Assignments by the court from the list shall be made by means of a revolving selection process established by the court, and may take into account the specialty and location of the examiner. The requesting party may express a preference with regard to the specialty of the *physician* when submitting a request for assignment, but the court shall not be bound by such preference when making an assignment.
- C.** In order to be eligible for assignment, a qualified *independent medical examiner*:
1. shall not be the employee's treating *physician* with respect to the injury for which the claim is being made, and shall not have treated the employee with respect to such injury; and
 2. shall not have previously examined the employee at the request of any party with respect to the injury for which the claim is being made.
- D.** To request assignment of a qualified *independent medical examiner* the requesting party shall complete and forward to the court an application form developed by the court setting out any questions or issues that they wish to submit to the *independent medical examiner*. At the same time, the requesting party shall serve a copy of the application on all other parties and shall file proof of service with the court. Service shall be made by regular mail, and proof of service shall be made by certificate of the party causing the service to be made. Within 10 business days of being served the other parties shall submit to the court in writing any questions or issues that they wish to submit to the *independent medical examiner*. The court shall assign a qualified *independent medical examiner* within five business days thereafter, and shall issue a notification by regular mail to the examiner and the parties to include:
1. the name, address and telephone number of the assigned examiner;
 2. an identification of the disputed issues upon which the *independent medical examiner* shall render a finding;

3. the obligation of the insurer, risk management pool, or self insured employer to provide copies of records and information pursuant to Rule 63,E;
 4. the obligation of any party, other than the insurer, risk management pool, or self insured employer, to provide copies of records and information pursuant to Rule 63,F; and
 5. any other information as determined by the court.
- E.** Following notice of assignment by the court, or notice of agreement by the parties pursuant to Rule 67,A, the insurer, risk management pool, or self insured employer shall send to the examiner copies of all records and information in its possession that are relevant to the disputed issues, and shall send to all other parties and to the court a description of all such records and information. Such copies, information and description shall be sent by regular mail within 10 business days of receipt of the notification of assignment or agreement, at no cost to the examiner, the court or any other party.
- F.** Following receipt of the description of records and information from the insurer, risk management pool, or self insured employer, any other party shall send to the examiner copies of any relevant records and information in its possession that were not previously provided by the insurer, risk management pool, or self insured employer, and shall send to all other parties and to the court a description of all such records and information. Such copies, information and description shall be sent by regular mail within 10 business days of receipt of the description from the insurer, risk management pool, or self insured employer, at no cost to the examiner, the court or any other party.
- G.** If no records or information are in the possession of the insurer, risk management pool, or self insured employer as provided in Rule 63,E or any other party as provided in Rule 63,F, then a letter to this effect shall be sent to the examiner with copies to all other parties and the court, together with information as to the location of any records or information of which they are aware but which are not in their possession. Necessary records not in the possession of any party, including any records requested by the examiner, shall be obtained by the party most able to do so, with the cost to be paid by the insurer, risk management pool, or self insured employer.
- H.** All records and information provided pursuant to Rule 63,E and 63,F shall be in chronological order by provider, and shall be accompanied by an index to the submitted records and information.
- I.** An *independent medical examiner* assigned by the court or agreed to by the parties pursuant to Rule 67 to render a medical finding shall not refer the employee for treatment, nor shall the examiner treat the employee with respect to the injury for which the claim is being made unless the examiner:

1. has completed his or her duties as the *independent medical examiner*;
2. agrees to treat the employee; and
3. either becomes the *primary treating physician* as agreed to by the employee and employer, or is selected by the employee to do surgery when the injury involves dismemberment or a *major surgical operation*.

- J.** An *independent medical examiner* may decline assignment by the court only for good cause shown.
- K.** If an *independent medical examiner* has submitted a written report pursuant to Rule 64,E stating findings on the questions or issues raised, no party may request court assignment of another *independent medical examiner* on the same questions or issues.
- L.** Disputes relating to treatment provided or to be provided through a *managed care plan* shall be processed through the internal dispute resolution procedures of the *managed care plan* prior to the filing with the court of a request for assignment of an *independent medical examiner*.

Sections 48-120.02, 48-134.01, 48-173, R.R.S. 2010, and 48-120, R.S. Supp., 2014.

Effective date: April 24, 2008.

RULE 64

INDEPENDENT MEDICAL EXAMINERS PROCEDURES BEFORE THE INDEPENDENT MEDICAL EXAMINER

Words in italics are defined in Rule 49.

- A.** An *independent medical examiner* shall render medical findings in any dispute submitted to the examiner on the medical condition of the employee and related issues, including, but not limited to:
1. whether the employee is able to perform any gainful employment temporarily or permanently;
 2. what physical restrictions, if any, would be imposed on the employee's employment;
 3. whether the employee has reached maximum medical improvement;
 4. the existence and extent of any permanent physical impairment;
 5. the reasonableness and necessity of any medical treatment previously provided or to be provided to the employee; and
 6. any other medical question(s) as may pertain to the causality and relatedness of the medical condition to the employment.
- B.** In addition to the review of records and information, the *independent medical examiner* may examine the employee as often as the examiner determines necessary in order to render medical findings on the questions and issues submitted. The examiner may also perform any necessary tests and may also arrange for any necessary tests, evaluations and examinations to be performed by other *health care providers*, but shall not refer the employee to any facility in which the examiner has an ownership or similar financial or investment interest, unless the type of facility or services are not otherwise available within 60 miles of the residence or place of employment of the employee.
- C.** If it is determined by the *independent medical examiner* that it is necessary to examine the employee in order to render medical findings on the disputed issues, then the examiner shall contact the employee to schedule the appointment. Such contact may be by telephone or in writing, and shall occur within 10 business days from receipt of records from all parties pursuant to Rule 63. The examiner shall immediately notify all parties and the court, in writing by regular mail, of the date, time, location, and purpose of the examination. If the employee fails to appear for a scheduled examination, or if an examination is cancelled within 48 hours of the scheduled time by the employee, then the ex-

amination shall not be rescheduled unless approved by the employer or insurance carrier or by order of the court.

- D. All contact between the examiner and the parties, other than for the scheduling of an appointment for an examination and the examination, shall be in writing with copies to all other parties and the court.
- E. After review of the records and information, and completion of any necessary examinations and/or additional tests, evaluations or examinations, the *independent medical examiner* shall submit a written report to the court and to all parties, stating the examiner's medical findings on the questions or issues raised and providing a description of the findings sufficient to explain the basis of those findings. Where only a review of records and information is required, such report shall be submitted within 10 business days of receipt of all necessary records and information. If an examination and/or additional tests, evaluations or examinations are required, such report shall be submitted within 10 business days of the completion of the examinations, additional tests or evaluations. The court may approve extension of time upon good cause shown by the examiner.
- F. Requests for clarification of the *independent medical examiner's* findings must be submitted to the court, not to the *independent medical examiner*. Clarification will be permitted only with approval of a medical services specialist of the court. No request for clarification will be permitted if it is determined by the specialist to be overly burdensome to the examiner. Any party may depose the examiner in accordance with the Nebraska Discovery Rules for all Civil Cases.
- G. The written report of the *independent medical examiner's* findings shall be admissible in a proceeding before the court, and may be received into evidence by the court on its own motion.
- H. Once the *independent medical examiner* has submitted a written report stating findings on the questions or issues raised, no party may request court assignment of another *independent medical examiner* on the same questions or issues.
- I. No petition may be filed with the court solely on the issue of reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an *independent medical examiner*, but such finding shall not thereafter preclude the filing of a petition. A petition may be filed with the court for the purpose of avoiding the running of the applicable statute of limitations in which case the petition shall be deemed filed with the court for purposes of the statute of limitations but will be held in abeyance until the medical finding on the issue has been received from the *independent medical examiner*.
- J. Any *physician* acting without malice and within the scope of the provider's duties as an *independent medical examiner* shall be immune from civil liability for making any report or other information available to the court or for assist-

ing in the origination, investigation, or preparation of the report or other information so provided.

Sections 48-134.01, 48-173, R.R.S. 2010, and 48-120, R.S. Supp., 2014.

Effective date: April 24, 2008.

RULE 65

INDEPENDENT MEDICAL EXAMINERS FEES AND COSTS

Words in italics are defined in Rule 49.

- A. All fees with respect to services performed by an *independent medical examiner* shall be paid by the employer according to the following schedule.
1. The *independent medical examiner* shall bill his or her usual fees for services rendered as a medical examiner. Payment shall be the examiner's usual fee or the amount allowed under Rule 65,A,2, whichever is lower. The number of hours required shall be included with the bill, as well as a statement that the services were rendered as a court assigned or agreed to *independent medical examiner*.
 2. The *independent medical examiner* shall receive up to \$400 per hour up to a maximum of four hours for review of records and information, the performance of any necessary examinations, and the preparation of the written report. In a *complex case* an additional fee of up to \$400 per hour for up to two additional hours may be allowed.
 3. If additional diagnostic tests are required, payment for such tests whether performed by the *independent medical examiner* or by another *health care provider* at the request of the examiner, shall be in accordance with the court's Schedule of Fees for Medical Services or Schedule of Fees for Hospitals and Ambulatory Surgical Centers, as applicable. If additional evaluations or examinations are required and performed by another *health care provider* at the request of the examiner, payment shall be in accordance with the above schedules.
 4. An *independent medical examiner* may require prepayment from the employer of up to \$400 prior to submitting a report on the issues submitted. Any additional amounts owed to the examiner are payable upon submission of the examiner's written report.
 5. If an employee fails to appear for a scheduled examination, or if an examination is cancelled by the employee or the employer within 48 hours of the scheduled time, the *independent medical examiner* may charge and receive up to \$400, to be paid initially by the employer, subject to the right of the employer to be reimbursed by the employee if the failure to appear or the cancellation by the employee was without good cause.
- B. Any dispute regarding payment for services rendered by an *independent medical examiner* that cannot otherwise be resolved by the examiner and the parties themselves shall be submitted for informal dispute resolution.

- C. The employer shall pay all necessary and reasonable expenses of the employee incident to such examination, such as transportation, lodging, meals, and loss of wages, and when required, shall advance necessary costs. If the employee fails to appear for the scheduled examination, such expenses shall not be paid again if the examination is rescheduled.

Sections 48-134.01, 48-168, R.R.S. 2010, and 48-120, R.S. Supp., 2014.

Effective date: May 9, 2012.

RULE 66

INDEPENDENT MEDICAL EXAMINERS REMOVAL

- A.** Removal of physicians from the list of qualified independent medical examiners shall be by request of the physician or by a majority vote of the judges of the court.
- B.** Grounds for removal include, but are not limited to:
 - 1. a material misrepresentation on the application for appointment to the list; or
 - 2. refusal or substantial failure to comply with the provisions of Rule 62 through Rule 66 or section 48-134.01.
- C.** In arriving at a determination as to whether to remove a physician from the list, the court may consider the character of the alleged violation and all of the attendant circumstances, and may confer with public or private medical consultants.

Sections 48-134.01, R.R.S. 2010, and 48-120, R.S. Supp., 2014.

Effective date: July 1, 1997.

RULE 67

INDEPENDENT MEDICAL EXAMINERS SELECTED BY AGREEMENT OF THE PARTIES

Words in italics are defined in Rule 49.

- A. Nothing in Rule 62 through Rule 66 shall prohibit the parties from agreeing to the use of an *independent medical examiner* who is not on the list of qualified *independent medical examiners* established by the court. If the parties agree to the use of an *independent medical examiner*, whether from the list of qualified *independent medical examiners* established by the court or otherwise, Rules 63 through 65 shall apply. Written notice of any such agreement shall be provided by the parties to the examiner and to the court on a form developed by the court. If the agreed upon examiner is not on the list of qualified *independent medical examiners* established by the court, the parties shall also obtain written agreement from the examiner that he or she will comply with Rules 63 through 65, and shall provide a copy of such agreement to the court.
- B. Any agreement between the parties to the use of an *independent medical examiner* shall specify the questions and issues to be submitted to the examiner for a finding.
- C. If the parties agree to the use of a particular named *independent medical examiner* and the *independent medical examiner* has submitted a written report stating findings on the questions or issues raised, no party may request court assignment of an *independent medical examiner* on the same questions or issues.

Sections 48-134.01, 48-163, 48-164, R.R.S. 2010, and 48-120, R.S. Supp., 2014.

Effective date: July 1, 1997.