

[J-71-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

MARILYN KNECHTEL,	:	No. 3 WAP 2007
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered August 24,
v.	:	2006 at No. 140 CD 2006, affirming the
	:	Order of the Workers' Compensation
	:	Appeal Board entered December 22, 2005
WORKERS' COMPENSATION APPEAL	:	at No. A04-1410.
BOARD (MARRIOTT CORPORATION),	:	
	:	
	:	
Appellees	:	ARGUED: September 10, 2007

CONCURRING STATEMENT

MR. JUSTICE BAER

FILED: NOVEMBER 20, 2007

Today the Court affirms by *per curiam* order the Commonwealth Court's construction regarding the legislature's enactment of 77 P.S. § 651(b),¹ allowing a claimant's healthcare provider to "participate" in the examination conducted by an employer's physician. In so doing, we affirm the court's holding that the legislature intended to afford the opposing expert a first-hand view of the examination process, through attendance and observation,

¹ This section provides, in relevant part:

In the case of a physical examination, the employe shall be entitled to have a health care provider of his own selection, to be paid by him, participate in such examination requested by his employer or ordered by the workers' compensation judge.

77 P.S. § 651(b).

but did not intend to permit such expert to engage in any active conduct which might disturb the examining physician. I write to express my opinion that nothing in our affirmance of the Commonwealth Court's opinion, limiting a healthcare provider to attending and observing an employer's physician's examination, should be seen as precluding such a provider from engaging in other passive, non-disruptive activity during the exam. Specifically, I believe that a workers' compensation judge retains the discretion to grant a claimant's reasonable request to take notes and/or audio or videotape the examination, so long as such activity will not interfere with an employer's physician's ability to conduct an examination.

Madame Justice Baldwin joins this concurring statement.