

34:15-64

LEGISLATIVE HISTORY CHECKLIST
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(Medical witnesses)

NJSA: 34:15-64

LAWS OF: 1995 **CHAPTER:** 303

BILL NO: A206

SPONSOR(S): Solomon and Catania

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY** Labor; Business & Industry

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
Senate Committee Substitute denoted by superscript
(1R) enacted numbers

DATE OF PASSAGE: **ASSEMBLY:** June 12, 1995

SENATE: October 19, 1995

DATE OF APPROVAL: January 5, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 2-7-94 & 11-20-95

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 206

STATE OF NEW JERSEY

ADOPTED SEPTEMBER 28, 1995

Sponsored by Assemblymen SOLOMON, CATANIA and Foley

1 AN ACT concerning medical witnesses in workers' compensation
2 cases and amending R.S.34:15-64.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. R.S.34:15-64 is amended to read as follows:

7 34:15-64. a. The commissioner, director and the judges of
8 compensation may make such rules and regulations for the
9 conduct of the hearing not inconsistent with the provisions of this
10 chapter as may, in the commissioner's judgment, be necessary.
11 The official conducting any hearing under this chapter may allow
12 to the party in whose favor judgment is entered, costs of witness
13 fees and a reasonable attorney fee, not exceeding 20% of the
14 judgment; and a reasonable fee not exceeding \$250 for any one
15 witness, [but not more than \$150 for a medical witness who does
16 not appear in court but prepares a written report or \$750 in any
17 one case, for medical witnesses residing in the State] except that
18 the following fees may be allowed for a medical witness:

19 (1) (a) A fee of not more than \$200 paid to an evaluating
20 physician for an opinion regarding the need for medical treatment
21 or for an estimation of permanent disability, if the physician
22 provides the opinion or estimation in a written report; and

23 (b) An additional fee of not more than \$250 paid to the
24 evaluating physician who makes a court appearance to give
25 testimony; or

26 (2) (a) A fee of not more than \$250 paid to a treating
27 physician for the preparation and submission of a report including
28 the entire record of treatment, medical history, opinions
29 regarding diagnosis, prognosis, causal relationships between the
30 treated condition and the claim, the claimant's ability to return
31 to work with or without restrictions, what, if any, restrictions are
32 appropriate, and the anticipated date of return to work, and any
33 recommendations for further treatment; and

34 (b) (i) An additional fee of not more than \$250 per hour, with
35 the total amount not to exceed \$1,500, paid to the treating
36 physician who gives testimony concerning causal relationship,
37 ability to work or the need for treatment; or

38 (ii) An additional fee of not more than \$250 per hour, with the
39 total amount not to exceed \$750, paid to the treating physician
40 who gives a deposition concerning causal relationship, ability to
41 work or the need for treatment.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALA committee amendments adopted November 20, 1995.

1 b. (1) No fee for an evaluating physician pursuant to this
2 section shall be contingent on whether a judgment or award is or
3 is not made in favor of the petitioner.

4 (2) No evaluating or treating physician shall charge any fee
5 ¹[in excess of the amount permitted]¹ for a report, testimony or
6 deposition ¹[provided] in excess of the amount permitted¹
7 pursuant to the provisions of this section.

8 c. A fee shall be allowed at the discretion of the judge of
9 compensation when, in the official's judgment, the services of an
10 attorney and medical witnesses [were] are necessary for the
11 proper presentation of the case. In determining a reasonable fee
12 for medical witnesses, the official shall consider [(a)] (1) the
13 time, personnel, and other cost factors required to conduct the
14 examination; [(b)] (2) the extent, adequacy and completeness of
15 the medical evaluation; [(c)] (3) the objective measurement of
16 bodily function and the avoidance of the use of subjective
17 complaints; and [(d)] (4) the necessity of a court appearance of
18 the medical witness. When, however, at a reasonable time, prior
19 to any hearing compensation has been offered and the amount
20 then due has been tendered in good faith or paid within 26 weeks
21 from the date of the notification to the employer of an accident
22 or an occupational disease or the employee's final active medical
23 treatment or within 26 weeks after the employee's return to
24 work whichever is later or within 26 weeks after employer's
25 notification of the employee's death, the reasonable allowance
26 for attorney fee shall be based upon only that part of the
27 judgment or award in excess of the amount of compensation,
28 theretofore offered, tendered in good faith or paid. When the
29 amount of the judgment, or when that part of the judgment or
30 award in excess of compensation, offered, tendered in good faith
31 or paid as aforesaid, is less than \$200, an attorney fee may be
32 allowed not in excess of \$50.

33 d. All counsel fees of claimants' attorneys for services
34 performed in matters before the Division of Workers'
35 Compensation, whether or not allowed as part of a judgment,
36 shall be first approved by the [division] judge of compensation
37 before payment. Whenever a judgment or award is made in favor
38 of a petitioner, the judges of compensation or referees of formal
39 hearings shall direct amounts to be deducted for the petitioner's
40 expenses and to be paid directly to the persons entitled to the
41 same, the remainder to be paid directly to the petitioner.

42 (cf: P.L.1981, c.414, s.1)

43 2. This act shall take effect immediately.

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49 Increases fees for medical witnesses in workers' compensation
cases.

1 pulmonary function studies or urinalysis. No evaluating or
2 treating physician shall charge any fee in excess of the amount
3 permitted for a report, testimony or deposition provided pursuant
4 the provisions of this section.

5 c. A fee shall be allowed at the discretion of the court when,
6 in the official's judgment, the services of an attorney and
7 medical witnesses [were] are necessary for the proper
8 presentation of the case. In determining a reasonable fee for
9 medical witnesses, the official shall consider (1) the time,
10 personnel, and other cost factors required to conduct the
11 examination; (2) the extent, adequacy and completeness of the
12 medical evaluation; (3) the objective measurement of bodily
13 function and the avoidance of the use of subjective complaints;
14 and (4) the necessity of a court appearance of the medical
15 witness. When, however, at a reasonable time, prior to any
16 hearing compensation has been offered and the amount then due
17 has been tendered in good faith or paid within 26 weeks from the
18 date of the notification to the employer of an accident or an
19 occupational disease or the employee's final active medical
20 treatment or within 26 weeks after the employee's return to
21 work whichever is later or within 26 weeks after employer's
22 notification of the employee's death, the reasonable allowance
23 for attorney fee shall be based upon only that part of the
24 judgment or award in excess of the amount of compensation,
25 theretofore offered, tendered in good faith or paid. When the
26 amount of the judgment, or when that part of the judgment or
27 award in excess of compensation, offered, tendered in good faith
28 or paid as aforesaid, is less than \$200, an attorney fee may be
29 allowed not in excess of \$50.

30 d. All counsel fees of claimants' attorneys for services
31 performed in matters before the Division of Workers'
32 Compensation, whether or not allowed as part of a judgment,
33 shall be first approved by the division before payment. Whenever
34 a judgment or award is made in favor of a petitioner, the judges
35 of compensation or referees of formal hearings shall direct
36 amounts to be deducted for the petitioner's expenses and to be
37 paid directly to the persons entitled to the same, the remainder
38 to be paid directly to the petitioner.

39 (cf: P.L.1981, c.414, s.1)

40 2. This act shall take effect immediately.

41 42 STATEMENT

43
44 This bill amends R.S.34:15-64 to increase the fees which may
45 be allowed for medical witnesses in workers' compensation
46 cases. Under the present law, a judge conducting a workers'
47 compensation hearing may allow a fee not exceeding \$150 for a
48 written report by a medical witness or \$750 for a court
49 appearance by a medical witness. This bill would permit, at the
50 discretion of the court, the following fees for medical witnesses
51 who reside in this State:

52 1. A fee of not more than \$250 for a written report by an
53 evaluating physician; an additional fee of not more than \$1,000
54 for a court appearance and testimony by an evaluating physician

1 and an additional fee of not more than \$750 if an evaluating
2 physician gives a deposition.

3 2. A fee of not more than \$500 for a written report by a
4 treating physician; an additional fee of not more than \$2,500 if
5 the treating physician appears in court and testifies and an
6 additional fee of not more than \$1,000 if the treating physician
7 gives a deposition.

8 By establishing this fee structure, this bill attempts to
9 distinguish between fees paid to those medical witnesses who
10 regularly conduct evaluation examinations and appear in workers'
11 compensation cases from those paid to physicians who provide
12 treatment in particular cases.

13 The purpose of the bill is to enable a petitioner to obtain
14 competent medical evidence in the form of reports or testimony
15 on a more equitable basis by providing for reasonable fees for the
16 petitioner's medical witnesses. By raising the fees, the bill
17 recognizes current economic realities and equalizes access to
18 medical expertise, which was previously unaffordable to many
19 petitioners, without altering the present practice regarding the
20 apportionment of fees for a petitioner's medical witness between
21 the petitioner and the respondent.

22 In addition, this bill prohibits an evaluating physician from
23 charging fees in excess of the permitted amount and limits the
24 charges the physician may make at the time of examination.

25 The maximum fee amount set by present law has not been
26 changed since 1979.

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31 _____
32 Increases fees for medical witnesses in workers' compensation
cases.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 206

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 1994

The Assembly Labor Committee reports favorably Assembly, No. 206.

This bill amends R.S.34:15-64 to increase the fees which may be allowed to the party in whose favor judgment is entered for medical witnesses in workers' compensation cases. Under the present law, a judge conducting a workers' compensation hearing may allow a fee not exceeding \$150 for a written report by a medical witness or \$750 for a court appearance by a medical witness. This bill would permit, at the discretion of the court, the following fees for medical witnesses who reside in this State:

1. A fee of not more than \$250 for a written report by an evaluating physician; and an additional fee of not more than \$750 for a court appearance and testimony or a deposition by an evaluating physician.

2. A fee of not more than \$500 for a written report by a treating physician; and an additional fee of not more than \$2,000 for a court appearance and testimony by the treating physician or an additional fee of not more than \$1,000 for a deposition given by the treating physician.

By establishing this fee structure, this bill distinguishes between fees paid to those medical witnesses who regularly conduct evaluation examinations and appear in workers' compensation cases from those paid to physicians who provide treatment in particular cases.

The purpose of the bill is to enable a petitioner to obtain competent medical evidence in the form of reports or testimony on a more equitable basis by providing for reasonable fees for the petitioner's medical witnesses. By raising the fees, the bill recognizes current economic realities and equalizes access to medical expertise, which was previously unaffordable to many petitioners, without altering the present practice regarding the apportionment of fees for a petitioner's medical witness between the petitioner and the respondent.

In addition, this bill prohibits an evaluating physician from charging fees in excess of the permitted amount and limits the charges the physician may make at the time of examination.

The maximum fee amount set by present law has not been changed since 1979.

This bill was pre-filed for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY LABOR, BUSINESS AND INDUSTRY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

ASSEMBLY, No. 206

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 20, 1995

The Assembly Labor, Business and Industry Committee reports favorably Assembly, No. 206(SCS) with committee amendments.

As amended, this bill, amends the workers' compensation law, R.S.34:15-1 et seq., to increase the fees which may be allowed for medical witnesses in workers' compensation cases. Under the present law, a judge conducting a workers' compensation hearing may allow a fee not exceeding \$150 for a written report by a medical witness or \$750 for a court appearance by a medical witness. This bill permits, at the discretion of the court, the following fees for medical witnesses:

a. A fee of not more than \$200 for a written report by an evaluating physician; and an additional fee of not more than \$250 for a court appearance to give testimony by an evaluating physician.

b. A fee of not more than \$250 for a written report by a treating physician; and an additional fee of not more than \$250 per hour, with the total amount not to exceed \$1,500, for a court appearance to give testimony by the treating physician or an additional fee of not more than \$250 per hour, with the total amount not to exceed \$750, for a deposition given by the treating physician.

In addition, this bill, as amended, prohibits the fees of an evaluating physician from being contingent on the outcome of the workers' compensation case and provides that no evaluating or treating physician may charge a fee in excess of the amount permitted for a report, testimony or deposition provided pursuant to the provisions of this bill. The committee amendments clarify that this prohibition of excess fees applies only to fees charged for those reports, testimony, or depositions made under provisions of the bill.

The maximum medical witness fees set by current law have not been changed since 1979.

SENATE COMMERCE COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 206
STATE OF NEW JERSEY

DATED: SEPTEMBER 28, 1995

The Senate Commerce Committee reports favorably Senate Committee Substitute for Assembly Bill No. 206.

This bill, Senate Committee Substitute for Assembly, No. 206, amends the workers' compensation law, R.S.34:15-1 et seq., to increase the fees which may be allowed for medical witnesses in workers' compensation cases. Under the present law, a judge conducting a workers' compensation hearing may allow a fee not exceeding \$150 for a written report by a medical witness or \$750 for a court appearance by a medical witness. This bill permits, at the discretion of the court, the following fees for medical witnesses:

a. A fee of not more than \$200 for a written report by an evaluating physician; and an additional fee of not more than \$250 for a court appearance to give testimony by an evaluating physician.

b. A fee of not more than \$250 for a written report by a treating physician; and an additional fee of not more than \$250 per hour, with the total amount not to exceed \$1,500, for a court appearance to give testimony by the treating physician or an additional fee of not more than \$250 per hour, with the total amount not to exceed \$750, for a deposition given by the treating physician.

In addition, this bill prohibits the fees of an evaluating physician from being contingent on the outcome of the workers' compensation case and provides that no evaluating or treating physician may charge a fee in excess of the amount permitted for a report, testimony or deposition provided pursuant to the provisions of this bill.

The maximum medical witness fees set by current law have not been changed since 1979.

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STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1994 SESSION

By Assemblymen SOLOMON and CATANIA

1 AN ACT concerning medical witnesses in workers' compensation
2 cases and amending R.S.34:15-64.

3
4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. R.S.34:15-64 is amended to read as follows:

7 34:15-64. a. The commissioner, director and the judges of
8 compensation may make such rules and regulations for the
9 conduct of the hearing not inconsistent with the provisions of this
10 chapter as may, in the commissioner's judgment, be necessary.
11 The official conducting any hearing under this chapter may allow
12 to the party in whose favor judgment is entered, costs of witness
13 fees and a reasonable attorney fee, not exceeding 20% of the
14 judgment; and a reasonable fee not exceeding \$250 for any one
15 witness, [but not more than \$150 for a medical witness who does
16 not appear in court but prepares a written report or \$750 in any
17 one case, for medical witnesses residing in the State] except that
18 the following fees may be allowed for a medical witness:

19 (1) (a) A fee of not more than \$250 paid to an evaluating
20 physician for an opinion regarding the need for medical treatment
21 or for an estimation of permanent disability, if the physician
22 provides the opinion or estimation in a written report; and

23 (b) An additional fee of not more than \$750 paid to the
24 evaluating physician, if the physician resides in the State and
25 makes a court appearance to give testimony or provides a
26 deposition in lieu of an appearance; or

27 (2) (a) A fee of not more than \$500 paid to a treating
28 physician for the preparation and submission of a report including
29 the entire record of treatment, medical history, opinions
30 regarding diagnosis, prognosis, causal relationships between the
31 treated condition and the claim, the claimant's ability to return
32 to work with or without restrictions, what, if any, restrictions are
33 appropriate, and the anticipated date of return to work, and any
34 recommendations for further treatment; and

35 (b) (i) An additional fee of not more than \$2,000 paid to the
36 treating physician, if the physician resides in the State and makes
37 an appearance to give testimony; or

38 (ii) An additional fee of not more than \$1,000 paid to the
39 treating physician if the physician resides in the State and gives
40 a deposition.

41 b. An evaluating physician shall not charge a fee at the time
42 of examination except for the payment for blood work, x-rays,

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.