

UTAH LABOR COMMISSION AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Ed P. Mayne

This act amends the Utah Labor Code to address use of medical panel, medical director, or medical consultant reports in workers' compensation cases including making the appointment of a medical panel in occupational disease cases permissive. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34A-2-601, as last amended by Chapter 183, Laws of Utah 2000

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-2-601** is amended to read:

**34A-2-601. Medical panel, director, or consultant -- Findings and reports --
Objections to report -- Hearing -- Expenses.**

(1) (a) [~~Upon the filing of a claim for compensation for injury by accident, or for death, arising out of and in the course of employment, and if the employer or its insurance carrier denies liability, the~~] The Division of Adjudication may refer the medical aspects of [the] a case described in this Subsection (1)(a) to a medical panel appointed by an administrative law judge[-]:

(i) upon the filing of a claim for compensation arising out of and in the course of employment for:

(A) disability by accident; or

(B) death by accident; and

(ii) if the employer or the employer's insurance carrier denies liability.

(b) [~~When a claim for compensation based upon disability or death due to an occupational disease is filed with the Division of Adjudication, an~~] An administrative law judge [shall, except upon stipulation of all parties,] may appoint [an impartial] a medical panel appointed by an administrative law judge upon the filing of a claim for compensation based upon disability or death due to an occupational disease.

(c) A medical panel appointed under this section shall consist of one or more physicians specializing in the treatment of the disease or condition involved in the claim.

(d) As an alternative method of obtaining an impartial medical evaluation of the medical aspects of a controverted case, the division may employ a medical director or one or more medical consultants:

(i) on a full-time or part-time basis; and

(ii) for the purpose of:

(A) evaluating the medical evidence; and

(B) advising an administrative law judge with respect to the administrative law judge's ultimate fact-finding responsibility.

(e) If all parties agree to the use of a medical director or one or more medical consultants, the medical director or one or more medical consultants shall be allowed to function in the same manner and under the same procedures as required of a medical panel.

(2) (a) ~~[The] A~~ A medical panel, medical director, or medical ~~[consultants shall make such study, take such X-rays, and perform such tests, including post-mortem examinations if authorized by the administrative law judge, as it may determine to be necessary or desirable]~~ consultant may do the following to the extent the medical panel, medical director, or medical consultant determines that it is necessary or desirable:

(i) conduct a study;

(ii) take an x-ray;

(iii) perform a test; or

(iv) if authorized by an administrative law judge, conduct a post-mortem examination.

(b) ~~[The] A~~ A medical panel, medical director, or medical ~~[consultants]~~ consultant shall make:

(i) a report in writing to the administrative law judge in a form prescribed by the Division of Adjudication; and

(ii) additional findings as the administrative law judge may require.

(c) In an occupational disease ~~[cases]~~ case, in addition to the requirements of Subsection (2)(b), ~~[the]~~ a medical panel, medical director, or medical consultant shall certify to the

administrative law judge:

(i) the extent, if any, of the disability of the claimant from performing work for remuneration or profit;

(ii) whether the sole cause of the disability or death, in the opinion of the medical panel, medical director, or medical consultant results from the occupational disease; and

(iii) (A) whether any other causes have aggravated, prolonged, accelerated, or in any way contributed to the disability or death~~[-];~~; and

(B) if ~~[so]~~ another cause has contributed to the disability or death, the extent in percentage to which the other ~~[causes have so]~~ cause has contributed to the disability or death.

(d) (i) The administrative law judge shall promptly distribute full copies of ~~[the]~~ a report submitted to the administrative law judge under this Subsection (2) by certified mail with return receipt requested to:

(A) the applicant;

(B) the employer; and

(C) the employer's insurance carrier.

(ii) Within 15 days after the report described in Subsection (2)(d)(i) is deposited in the United States post office, the ~~[applicant, the employer, or its insurance carrier]~~ following may file with the administrative law judge written objections to the report~~[-];~~:

(A) the applicant;

(B) the employer; or

(C) the employer's insurance carrier.

(iii) If no written objections are filed within ~~[that]~~ the period described in Subsection (2)(d)(ii), the report is considered admitted in evidence.

(e) (i) The administrative law judge may base the administrative law judge's finding and decision on the report of ~~[the]~~:

(A) a medical panel[-];

(B) the medical director[-]; or

(C) one or more medical consultants[-but].

(ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by [the] a report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case supports a contrary finding.

(f) (i) If [~~objections to the~~] an objection to a report [are] is filed under Subsection (2)(d), the administrative law judge may set the case for hearing to determine the facts and issues involved.

(ii) At [~~the~~] a hearing held pursuant to this Subsection (2)(f), any party [~~so desiring~~] may request the administrative law judge to have [~~the chair of the medical panel, the medical director, or the medical consultants~~] any of the following present at the hearing for examination and cross-examination[-]:

(A) the chair of the medical panel;

(B) the medical director; or

(C) the one or more medical consultants.

(iii) For good cause shown, the administrative law judge may order [~~other members of the panel, with or without the chair or the medical director or medical consultants,~~] the following to be present at the hearing for examination and cross-examination[-]:

(A) a member of a medical panel, with or without the chair of the medical panel;

(B) the medical director; or

(C) a medical consultant.

(g) (i) The written report of [~~the~~] a medical panel, medical director, or one or more medical consultants may be received as an exhibit at the hearing[~~, but~~] described in Subsection (2)(f).

(ii) Notwithstanding Subsection (2)(g)(i), a report received as an exhibit under Subsection (2)(g)(i) may not be considered as evidence in the case except as far as [it] the report is sustained by the testimony admitted.

(h) For any claim referred under Subsection (1) to a medical panel, medical director, or medical consultant before July 1, 1997, the commission shall pay out of the Employers' Reinsurance Fund established in Section 34A-2-702:

(i) expenses of the study and report of the medical panel, medical director, or medical consultant; and

(ii) the expenses of the medical panel's, medical director's, or medical consultant's appearance before the administrative law judge.

(i) (i) For any claim referred under Subsection (1) to a medical panel, medical director, or medical consultant on or after July 1, 1997, the commission shall pay out of the Uninsured Employers' Fund established in Section 34A-2-704 the expenses of:

(A) the study and report of the medical panel, medical director, or medical consultant; and

(B) the medical panel's, medical director's, or medical consultant's appearance before the administrative law judge.

(ii) Notwithstanding Section 34A-2-704, the expenses described in Subsection (2)(i)(i) shall be paid from the Uninsured Employers' Fund whether or not the employment relationship during which the industrial accident or occupational disease occurred is localized in Utah as described in Subsection 34A-2-704(20).