

**UTAH LABOR COMMISSION AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ed P. Mayne**

**This act amends the Utah Labor Code to make the appointment of a medical panel in occupational disease cases permissive and to make 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 -- Medical director or medical consultants -- Discretionary authority of Division of Adjudication to refer case -- 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



28 due to an occupational disease.

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

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

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

35 (ii) for the purpose of:

36 (A) evaluating the medical evidence; and

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

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

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

47 (i) conduct a study;

48 (ii) take an x-ray;

49 (iii) perform a test; or

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

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

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

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

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

- 59 (i) the extent, if any, of the disability of the claimant from performing work for  
60 remuneration or profit;
- 61 (ii) whether the sole cause of the disability or death, in the opinion of the medical panel,  
62 medical director, or medical consultant results from the occupational disease; and
- 63 (iii) (A) whether any other causes have aggravated, prolonged, accelerated, or in any way  
64 contributed to the disability or death[-]; and
- 65 (B) if [~~so~~] another cause has contributed to the disability or death, the extent in percentage  
66 to which the other [~~causes have so~~] cause has contributed to the disability or death.
- 67 (d) (i) The administrative law judge shall promptly distribute full copies of [~~the~~] a report  
68 submitted to the administrative law judge under this Subsection (2) by certified mail with return  
69 receipt requested to:
- 70 (A) the applicant;
- 71 (B) the employer; and
- 72 (C) the employer's insurance carrier.
- 73 (ii) Within 15 days after the report described in Subsection (2)(d)(i) is deposited in the  
74 United States post office, the [~~applicant, the employer, or its insurance carrier~~] following may file  
75 with the administrative law judge written objections to the report[-]:
- 76 (A) the applicant;
- 77 (B) the employer; or
- 78 (C) the employer's insurance carrier.
- 79 (iii) If no written objections are filed within [~~that~~] the period described in Subsection  
80 (2)(d)(ii), the report is considered admitted in evidence.
- 81 (e) (i) The administrative law judge may base the administrative law judge's finding and  
82 decision on the report of [~~the~~]:
- 83 (A) a medical panel[-];
- 84 (B) the medical director[-]; or
- 85 (C) one or more medical consultants[-, but].
- 86 (ii) Notwithstanding Subsection (2)(e)(i), an administrative law judge is not bound by [~~the~~]  
87 a report described in Subsection (2)(e)(i) if other substantial conflicting evidence in the case  
88 supports a contrary finding.
- 89 (f) (i) If [~~objections to the~~] an objection to a report [are] is filed under Subsection (2)(d),

90 the administrative law judge may set the case for hearing to determine the facts and issues  
91 involved.

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

96 (A) the chair of the medical panel;

97 (B) the medical director; or

98 (C) the one or more medical consultants.

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

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

103 (B) the medical director; or

104 (C) a medical consultant.

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

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

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

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

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

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

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

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

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

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**Legislative Review Note**  
**as of 1-7-02 10:35 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**