

**NJ Department of Labor
Division of Workers' Compensation**

**Task Force on Medical and Temporary Benefits
FINAL REPORT**

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**Task Force on Medical and Temporary Benefits
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TASK FORCE ON MEDICAL AND TEMPORARY BENEFITS ISSUES

FINAL REPORT

THE PROBLEM: A worker unable to work because of injury often has no income and, without medical treatment, no prospect of going back to work. No situation affects a petitioner and petitioner's family more dramatically. This is a real emergency. The most persistent complaint about the current system is its sluggishness in responding to these emergent situations. This is its chief weakness and the chief source of dissatisfaction among injured workers.

THE TASK FORCE: The Commissioner of Labor created this Task Force to respond to concerns as to the efficiency and effectiveness of the current method of handling motions for medical and temporary disability benefits. The Task Force members represent the entire state with judges from north, south and central New Jersey and attorneys equally divided between petitioner and respondent representation.

THE TASK FORCE FINDINGS: The Task Force began its inquiry by considering whether there really is a problem and, if so, its exact dimensions. To investigate the anecdotal impression, the Task Force requested statistical information from the Division. Initially, the Division was unable to assist, as data regarding medical and temporary motions were not regularly compiled or maintained. At our request, a staff programmer generated statistics. As a result of that investigation and the accumulated experience of the task force members, we were able to make the following findings:

1. The current system of respondent control of medical treatment is generally efficient and cost-effective and should be retained.
2. Last year 3,904 motions for medical and temporary benefits were filed in a docket of over 150,000 open cases. (See attached Statistical Report)
3. There is an uneven distribution of medical and temporary motions compared to the caseload across the state. Counties south of the Raritan River generate almost double the ratio of the northern counties. Southern counties account for 38% of all claim petitions, but produce 57% of the medical and temporary motions.
4. Not all motions for medical treatment and temporary disability benefits are emergent.
5. By requiring evidence that petitioner is temporarily totally disabled and/or in need of current medical treatment, the court may remove less pressing motions from the motion for medical and temporary category. More resources can then be dedicated to genuinely critical situations.

6. A motion defined as “emergent” should receive immediate attention. Experience dictates, and the statistics confirm, that in an overwhelming number of cases, conferences with the judge can relieve the problem. Both petitioner and respondent gain from a rapid response to an emergent motion. For the respondent, early control of medical helps avoid excessive expenditure. For the petitioner, the certainty of status allows for proper planning.
7. Accelerated hearing dates and a close tracking of matters will lead to their prompt resolution.

THE TASK FORCE RECOMMENDATIONS:

1. **Full implementation of the new rule R.12:235-3.2 governing motions for medical and temporary benefits.** The rule changes that became effective this October added the following language to rule 12:235-3.2: *Motions for temporary disability and/or medical benefits must evidence that petitioner is currently temporarily totally disabled and/or in need of current medical treatment. Where only past periods of temporary total disability and/or medical expenses are claimed by petitioner, such issues should be presented at pretrial for resolution or trial and not by motion under this section.* The Task Force believes that this will greatly enhance the response of the Division to emergent matters. Identifying which motions were emergent proved difficult under the former rule because it did not require any showing of urgency. The new rule goes far to address this. By requiring evidence that petitioner is temporarily totally disabled and/or in need of current medical treatment and by specifically relegating past periods of temporary benefits and medical expenses to the pretrial or trial stage, the court may remove less pressing motions from the medical and temporary category. More resources can then be dedicated to genuinely critical situations.
2. **Administrative Supplementation of the New Rule.** The Task Force urges the Division to adopt the following concepts administratively to implement the new rule:
 - a. Identifying Emergent Motions: The Task Force suggests that the Supervising Judge or his/her designee act as a clearinghouse and review each medical and temporary motion submitted in the vicinage to determine whether it warrants emergent status. An emergent motion is not identified by any one factor. A number of factors, usually in combination, make a motion emergent. The Task Force recommends that all concerned (petitioner’s attorney, respondent’s

attorney and the bench) address a series of questions to identify emergent motions, such as:

- i. What efforts has petitioner's attorney made to obtain authorization for treatment from respondent?
- ii. Is the injury denied?
- iii. Is the petitioner working?
- iv. Is petitioner receiving any type of wage replacement?
- v. Has petitioner received any medical treatment? If so, by whom? Was it authorized?
- vi. Was any treatment cut off? If so, by whom and why?
- vii. When was the last treatment?
- viii. What treatment is now recommended and by whom?
- ix. If diagnostic testing is being recommended, to what end?
- x. Do the circumstances dictate an immediate hearing?

b. Reviewing Judge: Using the suggested questions, the reviewing judge shall determine whether the motion is emergent or not. If the submitted papers do not contain enough information to answer the questions, the reviewing judge should contact the submitting attorney to obtain such information. If the motion is deemed emergent, the reviewing judge shall alert the hearing judge and the matter listed for the very next date the respondent is scheduled before the hearing judge.

c. Hearing Judge: Upon assignment of an emergent motion, the hearing judge shall contact both parties to set up a telephone conference to discuss the problems presented. If an emergent motion involves a denied claim, it should be tried as soon as possible using afternoon listings and continuous trial procedures. The hearing judge shall regularly apprise the reviewing judge of the status of all emergent motions. Non-emergent motions shall be listed in due course.

d. Tracking of Motions: The Division must identify and track emergent motions. This will require the efforts of the Administrative Supervising Judges, Supervising Judges and Hearing Judges to monitor the progress of the motions. As a result of the Task Force's dialogue with the Division, the Data Processing staff is devising a regular report to track emergent motions by filing date, answer date, first hearing date and close of motion date. These reports will give us the tools we need to assess the efficacy of the new rule and to pinpoint problem areas in the future.

3. **Education of Bench, Bar and Carriers**: The Task Force unanimously concurred that initial and ongoing education is the key element here. The focus on emergent situations occasioned by the new rule should be accompanied by an educational campaign directed to the bench, bar and carriers to familiarize them with the new requirements.

- a. The Bench: In particular, the Task Force would like to meet with the Supervising Judges who will, for the most part, review the motions and make the decisions regarding emergency status. Education as to the appropriate procedure should be an important part of initial judicial training and at the meetings of untenured judges.
- b. The Bar: Fortunately, the Division has many avenues to educate the bar. In addition to the Bench-Bar meeting, the Task Force could address ICLE Seminars, bar and section meetings, and Inns of Court.
- c. The Carriers: The bar will likely provide the chief means of educating the carriers, supplemented by insurance and self-insured groups. In some instances, it may be helpful for the Director of the Division, accompanied by a representative of the Compensation Rating Bureau, to meet with carriers directly to stress the importance of prompt responses and resolution of these difficulties. To this end, the Task Force recommends that every carrier doing business within the State have available a designated individual with whom to communicate in dealing with these problems.
- d. Forms: The Task Force recommends the creation of a model form of Motion for Medical and Temporary Benefits which would address the questions alluded to earlier as constituting an emergent motion. This model should be posted on the Division's Web Site and sufficient copies be provided to each vicinage to be handed out to all attorneys either upon request or on a "Please Take One" basis. This form would, of course, be a standard handout at all Bench-Bar, ICLE, judicial seminars and Inns of Court meetings.