

CHAPTER 684

S.B. No. 1043

AN ACT

relating to medical examinations ordered by the association under the Workers' Compensation Act.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 4, Article 8307, Revised Statutes, is amended to read as follows:

Sec. 4. Rules: Physical examination; suspension of compensation; procedure and powers. The Board may make rules not inconsistent with this law for carrying out and enforcing its provisions, and may require any employee claiming to have sustained injury to submit himself for examination before such Board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the Board to a physician or physicians, a chiropractor or chiropractors authorized to practice under the laws of this State. If the employee or the association requests, he or it shall be entitled to have a physician or physicians, chiropractor or chiropractors of his or its own selection present to participate in such examination. Refusal of the employee to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment, chiropractic service or other remedial treatment recognized by the State, as is reasonably essential to promote his recovery, the board may in its discretion order or direct the association to reduce or suspend the compensation of any such injured employee. No compensation shall be reduced or suspended under the terms of this Section without reasonable notice to the employee and an opportunity to be heard.

The [When authorized by the Board, the] Association shall have the privilege of having any injured employee examined by a physician or physicians, chiropractor or chiropractors of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employee and convenient and accessible to him. The Board shall authorize the examination only after the Association has attempted and failed to receive the permission and concurrence of the claimant or his attorney or representative. The Association shall pay for such examination and the reasonable expense incident to the injured employee in submitting thereto. The Association shall only be entitled to the examination once in a 180-day period. Subsequent exams shall be by the same

physician. The injured employee shall have the privilege to have a physician or chiropractor of his own selection present to participate in such examination. Provided, when such examination is directed by the Board at the request of the Association, the Association shall pay the fee of the physician or chiropractor selected by the employee, such fee to be fixed by the Board. *If the report of the examining physician indicates the claimant can return to work immediately, the Board shall schedule a prehearing conference on the next available docket. The Association shall not suspend medical or compensation payments pending the prehearing conference.*

Provided further, the independent medical examination reports shall not be admissible in a trial de novo unless the insurance carrier tenders the independent medical examiner for deposition in the county where the case is pending. The independent examiner remains the witness of the party who requested the examination.

Process and procedure shall be as summary as may be under this law. The Board or any member thereof shall have the power to subpoena witnesses, administer oaths, inquire into matters of fact, examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute, punish for contempt in the same manner and to the same extent as a District Court may do, and to bar persons guilty of unethical or fraudulent conduct from practicing before the Board. All rulings and decisions of the board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law.

SECTION 2. This Act takes effect September 1, 1987.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 8, 1987, by a viva-voce vote. Passed the House on May 29, 1987, by a non-record vote.

Approved June 19, 1987.

Effective Sept. 1, 1987.