



NEWS / PROFESSION

DCs Recognized as Expert Witnesses in California

GOVERNOR WILSON SIGNS CCA EXPERT WITNESS BILL -- RELIEF FROM DEPOSITION HARASSMENT EXPECTED

Editorial Staff



California Assembly member Martin Gallegos, DC (57th district), author of the expert witness bill: "I've experienced first-hand the harassment and intimidation from defense attorneys that chiropractors must endure during depositions."

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In what is a major legislative victory for the California chiropractic community, Governor Pete Wilson signed into law the expert witness bill (AB 1204) despite fierce opposition from the state's auto insurance carriers. The new law, which takes effect January 1, 1996, while not preventing

health care practitioners from being deposed as "percipient" witnesses, will severely limit the types of questions that can be asked of them without the necessity of paying expert witness fees.

First term California Assemblyman Martin Gallegos, DC, the author of AB 1204, and the Calif. Chiropractic Assoc., teamed up to push this bill through both houses of the legislature and onto the governor's desk.

"I've experienced first-hand the harassment and intimidation from defense attorneys that chiropractors must endure during depositions," said Assemblyman Gallegos, the first chiropractor elected to the Calif. state legislature.

While Governor Wilson was initially not expected to sign the bill, key legislators, united provider support, and political contacts of the Calif. Chiropractic Association provided the impetus for the governor to sign the bill into law. The bill's signing came with only two days remaining until the constitutional deadline for the governor to either sign or veto legislation passed in the 1995 legislative session.

"The new law doesn't guarantee providers expert witness fees for every deposition," CCA Executive Director Rebecca Berg said. "But the fact that the insurance industry lobbied so vehemently against AB 1204 tells you something. They've been getting away with hauling DCs out of their office for days at a time for \$35 while asking questions requiring an expert opinion. AB 1204 just corrects the situation and guarantees all providers fair reimbursement for their expertise."

The CCA sponsored the bill as a result of what they saw as a misguided Court of Appeals' decision in August 1994. In *Brun v. Bailey*, the court ruled that treating health care practitioners could be denied expert witness fees for deposition testimony about their patient diagnoses, prognoses and treatment decisions. The court held that questions which call for the practitioner's diagnosis or prognoses of a specific patient relate to the patient's medical history and, as such, are simply questions of fact, not opinion. As a result, the insurance industry was free to depose the treating practitioner, and in doing so could ask all innumerable questions about the doctor's diagnosis and prognosis without having to pay the doctor expert witness fees.

Under the new law, a treating health care practitioner who is asked during the deposition to express opinion testimony, including opinion of factual testimony regarding the past or present diagnosis or prognosis, must be considered an expert witness and paid appropriately. No longer will insurance companies be able to force doctors to answer questions which clearly call for the practitioner's expert opinion, unless they're willing to pay for it.

More importantly, AB 1204 could put an end to the "game-playing" that is often apparent in taking depositions of health care practitioners (e.g., deposing a doctor for days, out of spite, and effectively harming the doctor's practice). The provisions of this bill should also encourage litigants to reach equitable settlements without extensive deposing of various parties.

From the outset, the insurance industry was feverishly attempting to kill AB 1204. Now that California DCs enjoy expert witness status, the National Association of Chiropractic Attorneys (NACA) will take this legislation across the country.

For more information on how this bill could be introduced in your state, please call or fax:

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