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Workmen's Compensation—Chairman's Authority—Minimum Fees for Medical Care

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WORKMEN'S COMPENSATION

Chairman's Authority—Minimum Fees for Medical Care

Workmen's Compensation Law, section 13(a) provides in substance that the chairman of the workmen's compensation board is empowered to fix minimum fees which an employer must pay for the medical care of his employees. In addition, no physician may charge a larger fee for his services unless such increased amount is authorized by the employer.

In *Brooklyn Hospital v. Donlon,*[1] the Court held, reversing the Appellate Division,[2] that this section does not thereby authorize the chairman to fix minimum fees for hospital care. This was a petition under Civil Practice Act, article 78[3] seeking to prevent the enforcement of an order by the chairman which not only fixed minimum hospital charges but also provided that in no case would the charge for services exceed the charge which would be made to a self-paying patient.

The chairman of an administrative board has no power other than that given him by virtue of an express statute.[4] The statute involved nowhere expressly confers such power.[5] However, in construing a statute it is necessary to look, not only to the express language, but to the statute as a whole, to its purpose, and to its legislative history.[6]

Looking at section 13(a) as a whole it may be noted that in the first paragraph hospital service is referred to.[7] In the paragraph authorizing a minimum fee schedule the word "hospital" is omitted; furthermore, this latter paragraph expressly puts a limitation on physicians with respect to fees.[8] It would seem that where the Legislature intended to include hospital services it said so specifically.

1. 309 N. Y. 520, 132 N. E. 2d 489 (1956).
2. *Brooklyn Hospital v. Donlon,* 286 App. Div. 997, 144 N. Y. S. 2d 922 (1st Dep't. 1956).
3. N. Y. CIV. PRAC. ACT, art. 78, 1283 et. seq.
4. *Cherry v. Board of Regents,* 289 N. Y. 148, 44 N. E. 2d 405 (1942).
5. N. Y. WORKMEN'S COMPENSATION LAW, §13(a) . . . (T)he chairman shall prepare and establish a schedule . . . of minimum charges and fees for such medical treatment and care . . .
6. *Wiley v. Solvay Process Co.,* 215 N. Y. 584, 109 N. E. 606 (1915).
7. N. Y. WORKMEN'S COMPENSATION LAW, §13(a): The employer shall promptly provide . . . hospital service . . .
8. N. Y. WORKMEN'S LAW, §13(a): . . . (T)he chairman shall prepare and establish a schedule . . . of minimum charges and fees for such medical treatment and care . . . (N)o physician rendering medical treatment or care may receive payment in any higher amount unless such increased amount has been authorized by the employer . . .

The paragraph authorizing minimum fee schedules was enacted[9] in response to a message of the Governor[10] outlining the many abuses by physicians in the field of workmen's compensation. No mention was made of similar abuses by hospitals. Further substantiation for this construction may be implied from an opinion of the Attorney General of New York wherein it was stated that the amendments were directed toward existing practices of physicians.[11] Since the time of that opinion no chairman has ever attempted to set minimum fees for hospitals.

In light of this history it is apparent that the decision of the Court was the only correct one. As a further support for the decision the extra-legal argument of the petitioners is well taken. A charitable or private hospital, in order to continue its operation, must charge higher fees to those who can afford them in order to offset the loss sustained in caring for the needy. If they are unable to charge a person with workmen's compensation benefits any more than their minimum charge they would soon find it difficult to operate without state aid. This latter alternative of course would put the burden upon the taxpayers of providing hospital care for persons who are fully capable of paying their own way. As there is no evidence of widespread abuse by hospitals of their power to arbitrarily fix fees in relation to their patients' pocketbooks, there is no need for control by the workmen's compensation board.

Test for Occupational Disease

In *Detenbeck v. General Motors Corporation,*[12] the Court was faced with the question of whether an award should be made for an occupational disease under section 3 of the Workmen's Compensation Law[13] where there was no showing that the disease was incidental to the employment although there was no doubt but that the employment had caused the disease. The employee, suffering from a congenital back defect, complained that his defect had been aggravated by his

9. L. 1935, c. 258.

10. 49 N. Y. STATE DEP'T. REP. 1, 4 (1934): ". . .(U)nscrupulous physicians . . . have operated in a way to exploit worker, employer and insurance carriers through prolonged treatment, padded bills and inferior professional service . . . (U)nder the proposed bill, . . . (T)he Commissioner is empowered . . . to establish uniform minimum fees for . . . medical care. Payment to physicians of amounts larger than those permitted by the schedule will not be allowed unless voluntarily authorized by the employer . . ."

11. 1936 OPS. ATTY. GEN. 282: ". . . (T)he purposes of the amendments to section 13 of the Workmen's Compensation Law is (*sic*) best summarized by the special message of the Governor of the State of New York dated March 19, 1934 . . . (F)rom it we obtain the true intent and purpose of the enactments of the amendments, . . . namely to permit the employee freedom of action in choosing his *physician* . . ." (Emphasis added).

12. 309 N. Y. 558, 132 N. E. 2d 840 (1956).

13. WORKMEN'S COMPENSATION LAW §3: 2. Compensation shall be payable for . . . 29. Any and all occupational diseases.