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To be submitted by:
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New York Supreme Court

Appellate Division—Second Department

DAVID MILLER

Plaintiff-Appellant,

-versus-

CITY OF POUGHKEEPSIE

Defendant-Respondent.

BRIEF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION AND NEW YORK STATE PSYCHOLOGICAL ASSOCIATION AS AMICI CURIAE URGING REVERSAL

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INTEREST OF AMICI CURIAE

The American Psychological Association ("APA") has been the principal professional association of psychologists in the United States since 1892. It now has more than 100,000 members, including the vast majority of psychologists with doctoral degrees from accredited universities. More than 6,400 psychologists in the State of New York are APA members. APA has Divisions devoted to Clinical Psychology and other subjects germane to this case. The New York State Psychological Association ("NYSPA") is an APA affiliate. APA and NYSPA members treat many patients, including police officers, who are the victims of physical injuries and who seek and need psychological services as part of their rehabilitation. Thus, APA and NYSPA members have a substantial interest in ensuring that such patients have access to appropriate and cost-effective treatment.

QUESTION PRESENTED

Whether section 207-c of the General Municipal Laws of the State of New York -- which provides that when any member of a police force of any city of less than one million population is injured in the performance of his duties, the city shall be financially responsible for all "medical treatment and hospital care" necessitated by reason of such injury -- requires cities to pay for such services provided by licensed psychologists.

SUMMARY OF ARGUMENT

Defendant-Appellant City of Poughkeepsie has "admitted that Plaintiff David Miller is a psychologist and that Robert Holden is a police officer in the City of Poughkeepsie who suffered a duty-incurred injury and is covered by General Municipal Law, Section 207-c."[1] Section 207-c provides that if a police officer is injured in the line of duty, the City will pay the costs of "medical treatment and hospital care" thereby necessitated. Officer Holden was injured in a high speed car chase. He suffered serious physical injuries. He was in a coma for five days, and suffered subsequent memory loss, depression and other ills. For these injuries, he received services from David Miller, a licensed psychologist.[2] The City of Poughkeepsie has refused to pay for those services.

The New York State Legislature enacted Section 207-c in order to ensure that police officers who are injured in the line of duty while protecting society are not saddled with the costs of treatment for those injuries. The Defendant-Respondent City of Poughkeepsie argues, as the court below ruled, that "medical treatment" promised under the statute is limited only to care

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[1] Brief for Respondent City of Poughkeepsie at 3.

[2] To be licensed as a psychologist in New York State requires that the person complete doctoral level coursework and a two-year supervised internship, and pass an examination satisfactory to the board. N.Y. Education Law § 7603 (1985 & Supp. 1991). Thus, most licensed psychologists in New York State have an undergraduate degree, take comprehensive oral exams, prepare a doctoral dissertation, and pass a standardized national licensure examination. This process of education and training usually requires 7-8 years -- a period quite similar to that for the training of physicians.

directly provided by a medical doctor. This linguistic equivalency of "medical treatment" with treatment by a "medical doctor" is superficially appealing, but legally false. Its interpretation contradicts the Legislative intent, court decisions, and sound reason as applied to statutory interpretation. This Court should reverse the lower court.

Courts are obliged to give statutory terms such as "medical treatment" their common legal meaning, as clarified by any intent expressed by the Legislature. The usual legal meaning of the term "medical treatment" encompasses care furnished by various licensed health professionals -- not just physicians -- when provided for the purpose of preventing or alleviating a physical or mental defect or illness. Courts in several jurisdictions, including New York, have held that the term "medical" treatment, as used in similar statutes, as well as in insurance policies, divorce decrees, and other legal contexts, <u>includes</u> care furnished by psychologists.

This is so for sound practical reasons. If a police officer is shot in the head in the line of duty, he may need emergency surgery by a physician. But later he may also need therapy by a physical therapist to regain use of his limbs, therapy by a speech pathologist to regain his language ability, and assessment and treatment by a neuropsychologist to diagnose areas of brain impairment or to recover from pain and depression. Surely, it was not the intent of the Legislature to patch up the police officer surgically, but then deny him rehabilitative treatment simply because the next phase of treatment is provided by these non-

physicians. Such treatment was "necessitated" by the injury just as much as the initial surgical care. Thus, the City of Poughkeepsie's effort to say that "medical treatment" means only "treatment by a medical doctor" may be colloquially appealing but is legally false.

There is no relevant legislative history to Section 207-c itself. However, established rules of statutory construction, as well as common sense, demonstrate that psychologist services are intended to be covered under Section 207-c. First, Section 207-c is a remedial statute and must be liberally construed to the benefit of injured policemen. Second, the City of Poughkeepsie's argument is a hyper-technical one; it requires the Court to assume that the Legislature intended to invoke a technical distinction between "medical" care provided by an M.D., and other necessary health care needed to cure an injured police officer. But in fact, the Legislature used a variety of terms in Section 207-c ("medical or other lawful remedial treatment," "medical treatment and hospital care" and "medical, surgical and other treatment"). These different usages were not intended to create technical distinctions. Instead, they were simply various shorthand terms meant to refer to needed, remedial care.

The trial court's technical interpretation cannot be reconciled with common sense. For example, Section 207-c clearly covers the services of a psychologist if they are rendered as a part of "hospital care". It does not restrict the type of hospital care; and in fact, most hospitals have psychologists on their staffs. Thus, psychologist services are covered in the hospital,

and there is no statutory language that would warrant their exclusion in the outpatient context. It is illogical to suppose that the Legislature preferred that patients be kept in costly hospitals, and lose coverage of their psychological care if they could receive it in a less costly outpatient setting.

Had the Legislature desired, it could have clearly limited coverage to "physician services." But we submit that it did not do so because in enacting this particular statute, it was not concerned with parochial allocations of professionals' turf. It simply wanted to ensure that injured police officers received <u>needed care</u>.

Indeed, as the Legislature may have known, psychologists are experienced in treating personal injury victims. Often, in personal injury cases such as this one, a neuropsychologist is needed to administer sophisticated psychological test batteries to locate and diagnose organic brain damage. Psychologists also have special expertise in treating chronic pain, memory loss, and emotional results of injury such as depression. Several of these were the precise problems suffered by Officer Holden in this case. It would be unreasonable to conclude that the Legislature meant to deny police officers access to those standard treatments for duty-related injuries, simply because a portion of their treatment was not furnished by a physician.

These conclusions are supported by recent legislative amendments to the New York workers' compensation program. In 1989 and 1990, the New York Legislature amended that law specifically to provide coverage for treatment by psychologists. The legislative

history of the first of the recent amendments includes the drafter's Memorandum in Support of the bill, which informed the Legislature that psychologist services were already covered by essentially all other public and private health insurers operating in New York. This was the Legislature's desire and understanding.

APA does not contend that Section 207-c should be construed to require municipalities to pay for all kinds of personal or family psychotherapy, furnished for the rest of his life, to a police officer who has once been injured. Section 207-c provides a far more limited benefit. In order to be covered under section 207-c, psychologist services must meet the same standard as other services -- they must be necessary as a result of diagnosed injury or illness sustained in the line of duty. But if such necessity is established, treatment for the service should not be denied. The trial court in this case dismissed Plaintiff's claim even before he had an opportunity to show the necessity of the care provided to Officer Holden. APA respectfully urges this Court to reverse and remand for trial, in order to afford Plaintiff an opportunity to establish the necessity of that treatment.

ARGUMENT

POINT I

AS A MATTER OF LAW, THE TERM "MEDICAL TREATMENT" INCLUDES PSYCHOLOGISTS' SERVICES

The term "medical" treatment or care, as commonly used in a variety of legal contexts, means treatment "primarily for the prevention or alleviation of a physical or mental defect or

illness."[3] Many rulings in New York and other jurisdictions hold that terms such as "medical services," "medical care" or "medical treatment" as used in workers compensation statutes include the treatment of mental disorders by psychologists.[4] The same is true when those terms are used in separation/divorce decrees providing that a spouse will pay for "medical expenses."[5] Likewise, it is well-established that psychologists' services are expenses of "medical care" for purposes of tax deductions.[6] As the U.S. Tax Court has ruled, "certainly the definition of medical expenses is

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[3] Black's Law Dictionary 885 (5th ed. 1979).

[4] See, e.g., Champion International v. Nicholes, 773 P.2d 376, 377 (Okl. App. 1989) (as used in workers' compensation statute, term "medical care . . . clearly is not limited to that provided by a physician" and includes psychologist care); Miles v. Workers' Compensation Appeals Board, 67 Cal. App. 3d 243, 136 Cal. Rptr. 508, 511-12 (Cal. App. 3d Dist. 1977) (psychotherapy furnished by clinical psychologist is covered workers' compensation benefit "as a part of [plaintiff's] medical treatment").

[5] See, e.g., Bucy v. Bucy, 23 Conn. App. 98, 579 A.2d 483 (Conn. App. 1991) (term "medical expenses" in divorce decree includes psychologist services); Sterbling v. Sterbling, 519 N.E.2d 673, 676 (Ohio App. 1987) ("the term 'medical expenses' [used in divorce decree] . . . covers all expenses and treatment of the child's health and well-being, whether physical or mental"); Martin v. Martin, 538 So.2d 765 (Miss. 1989) (psychological services for drug addiction fall within definition of "medical expenses"); Engar v. Raizin, 525 So. 2d 470 (Fla. Dist. Ct. App. 1988) ("responsibility for a child's medical expenses includes expenses related to psychological care"); Sulman v. Sulman, 510 So. 2d 908 (Fla. Dist. Ct. App. 1987) ("extraordinary medical expenses" includes psychologists' services).

[6] See I.R.C. § 213; Treas. Regs. § 1.213.1 ("medical care" includes expenses for "prevention or alleviation of a . . . mental defect or illness."); Rev. Rul. 63-91, 1963-1 C.B. 54 (non-physician psychotherapists' services qualify for the deduction); Rev. Rul. 143, 1953-2 C.B. 129 (psychologists' services qualify for deduction); Fischer v. Commissioner, 50 T.C. 164 (1968)(same); Lichterman v. Commissioner, 37 T.C. 586 (1961).

sufficiently broad to include amounts paid to qualified psychologists."[7]

Psychologists' services also are recognized as within "medically necessary services" and similar terms as they are used in the vast majority of commercial health insurance policies and health benefit plans.[8] The New York Court of Appeals has recognized that the term "medical services," as used in a health insurance policy, includes services furnished by psychologists. In Moore v. Metropolitan Life Insurance Co.,[9] the Court considered the application of a mandated health benefits statute to an insurance policy that covered "medical services." The Court rejected as "specious" the insurer's attempt to restrict the term "medical services" to services furnished by a physician. Noting that "[t]here is no doubt that some services rendered by a physician may also be rendered by a psychologist," the Court went on to state that it would be "error to equate the 'practice of medicine' . . ., which is restricted to licensed physicians, with the furnishing of 'medical services,' which obviously may be performed by any of a number of professionals or paramedical personnel."[10]

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[7] Hendricks v. Commissioner, 35 T.C. 1223, 1237 (1961).

[8] See, e.g., Muszynski, Brady & Sharfstein, Coverage for Nervous and Mental Disorders: Summaries of 300 Private Sector Health Insurance Plans (1983) (Table 5 showing 84% of plans covered psychologists' services). Since this was published, coverage of psychologists' services has expanded still further.

[9] 33 N.Y.2d 304 (1973).

[10] Id., 33 N.Y.2d at 312-13. As the Supreme Court of Michigan has noted "an examination of the licensing jurisdiction of the various health professions reveals considerable overlapping authorization. Some of the activity which is included within the

Thus, in a variety of legal contexts analogous to the present one -- situations where a statute or contract is intended to provide payment for services needed to heal injuries -- the legislature and the courts have recognized that terms such as "medical treatment" or "medical services" do include services furnished by licensed psychologists.

POINT II

THE LEGISLATURE INTENDED SECTION 207-C TO PAY FOR SERVICES FURNISHED BY PSYCHOLOGISTS TO POLICE OFFICERS INJURED IN THE LINE OF DUTY

The City of Poughkeepsie' argument is basically an attempt to equate two terms with very different meanings. The City contends that "medical care" must mean only care by a "medical doctor." As we showed in Section I, this interpretation is contrary to established legal interpretations. The absurdity of this argument is shown by the fact that limiting payment for services to those provided by "medical doctors" would include only M.D.s -- and exclude even osteopathic physicians (D.O.s), podiatrists, and oral surgeons who, like psychologists, are routinely members of hospital medical staffs.

Even the language of the statute itself rebuts the City of Poughkeepsie's interpretation. Section 207-c provides, in essence, that a police officer "who is injured in the performance of his duties ... so as to necessitate medical or other lawful remedial treatment shall be paid [his regular salary] ... and such

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broad definition of the practice of medicine is also included within chiropractic, physical therapy, podiatry, [and other professions]." Attorney General v. Beno, 373 N.W.2d 544, 561 (1985).

municipality shall be liable for all medical treatment and hospital care necessitated by reason of such injury or illness," provided that the municipality may "attend any such impaired or sick policeman ... for the purpose of providing medical, surgical, or other treatment ..." [Emphasis supplied.]

The City urges this Court to adopt the hyper-technical and illogical interpretation that in using these different underscored phrases in the same paragraph of the statute, the Legislature was intending to make very fine technical distinctions among health care services. Clearly that was not its intent here. It was merely intending to ensure payment of needed ("necessitated") care. Indisputably, psychologists' services are within "medical or other lawful remedial treatment" and "medical, surgical or other treatment." Surely, the Legislature did not intend to say "If A is necessitated by injury, the City will pay for less than A." Yet that is the interpretation urged by the City.

In contrast, we urge the Court to adopt the more natural interpretation that the Legislature intended "medical or other lawful remedial treatment" and "medical treatment or hospital care" as essentially equivalent. Thus, if a service was "necessitated," it would be paid for -- and that includes psychologists' services.

Despite a lack of strong, direct legislative history, there is ample indirect support for this interpretation. There are no committee reports or other official legislative history to Section 207-c. The reports to the Governor from the various state agencies that reviewed the bill shed no light on what meaning the executive or the legislature ascribed to the term "medical

treatment."[11] However, the purpose of the New York legislature is easily gleaned from applying certain well-established rules of statutory construction.

A. Section 207-c Is a Remedial Statute and Must Be Liberally Construed to the Benefit of Injured Police Officers.

It is a well-established rule of statutory construction that a remedial statute is to be "liberally construed to spread its beneficial effects as widely as possible."[12] A remedial statute is one made to "correct some defect . . . in the former law, or . . . supply a remedy where none previously existed."[13] A liberal construction "is one which is in the interest of those whose rights are to be protected [and] if a case is within the beneficial intention of a remedial act, it is deemed within the statute."[14] Indeed, this would be so "[even] though actually it is not within the letter of the law."[15]

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[11] See, e.g., Memorandum for the Governor from Attorney General Louis J. Lefkowitz Re: Assembly Int. 4914, Pr. 5781 (April 18, 1961); Report to the Governor from State Comptroller Arthur Levitt (by first Deputy Comptroller Alfred U. Haight) Re: Assembly Int. 4914, Pr. 5781 (April 4, 1961); Report on Assembly Int. 4914, Pr. 5781 from Division of the Budget (April 14, 1961) (copies attached as Appendix A).

[12] Asman v. Ambach, 64 N.Y.2d 989,990 (1985). See also 1 McKinney's Consol. Laws of N.Y. § 321.

[13] Anderlohr v. City of New York, 201 Misc. 605, 607 (Sup. Ct. King's County 1952) (quoting 1 McKinney's Consol. Laws of N.Y. § 321).

[14] Id.

[15] Id.

Section 207-c is a remedial statute, "enacted for the benefit of . . . policemen injured in the line of duty and should be liberally construed in their favor."[16] As this Court stated in the Curley case, the statute was "[a]dopted by the Legislature in furtherance of public policy to protect policemen injured and disabled while in the performance of their duties."[17] Thus, it "should be liberally construed in their favor."[18] In Curley, the only issue was whether the injured officer was entitled to an evidentiary hearing on his eligibility for benefits on request, or only after his employer had suspended or terminated his employment for failure to return to duty. Despite the fact that section 207-c contains not a word concerning evidentiary hearings or their timing, this Court construed the statute so as to protect police officers, by requiring such a hearing even where the risk to the officer was only a temporary lapse in payments.

The risk to a police officer under the trial court's construction of the statute in this case is much greater than the risk this Court considered in Curley. In Curley, there was no doubt that payment eventually would be made. In contrast, the trial court's ruling here would deny injured officers payment of necessary psychological services forever. As in Curley, this Court should reject such a cramped, narrow reading of the statute and construe it reasonably as a protective remedial statute.

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16 Curley v. Dilworth, 96 A.D.2d 903, 904 (2d Dept. 1983).

17 Id.

18 Id.

B. The Trial Court's Ruling that Section 207-c Only Covers Services Furnished By Physicians Would Lead to Unreasonable Results.

It is also a well-recognized rule of statutory construction that a statute should not be construed in a way that would lead to absurd or unreasonable results.[19] The trial court's ruling would, in practice, lead to cruel and unreasonable results. Consider an example. Suppose that Officer Holden, having been seriously injured in his car while chasing escaping criminals, required surgery, hospitalization, podiatric care, physical therapy, and psychological therapy for residual pain from his accident. If the trial court's construction were upheld, Officer Holden would be entitled to payment for the first two services, but not the last these services, which are not provided by medical doctors. This is despite the fact that all these services were equally and directly "necessitated" by the physical injuries sustained in his accident. In Moore v. Metropolitan Life Ins. Co., the insurer advanced almost the same argument as the City of Poughkeepsie does here, as applied to an insurance policy -- and the court rejected it as "specious." It said: "Metropolitan also claims that since psychologists are not permitted to practice medicine, the statute is not applicable inasmuch as the policy merely covers 'medical services.' The argument is specious. There is no doubt that some services rendered by a physician may also be rendered by a psychologist."[20]

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[19] E.g., Zappone v. Home Insurance Co., 55 N.Y.2d 131, 137 (1982) (citing 1 McKinney's Consol. Laws of N.Y. § 143). See also 1 McKinney's Consol. Laws of N.Y. § 145.

[20] 33 N.Y.2d 304, 312 (1973).

Likewise, in this case, it is unreasonable and absurd to conclude that the Legislature intended that only immediate surgical services would be paid for as "medical treatment" -- but that the injured officer would be denied the equally "necessitated" rehabilitative services simply because they are provided by qualified non-physicians. In sum, whether a service is covered as "medical treatment" depends on whether the injured officer incurs needed health care services, and not on whether the professional who provides the needed service happens to be a physician.

Moreover, in providing payment for "hospital care," section 207-c plainly requires payment for the services of practitioners other than physicians -- including psychologists -- since psychologists serve on professional staffs of many hospitals, and hence their services are routinely furnished as part of "hospital care." Since the statute does not differentiate between inpatient and outpatient care, the services of a psychologist likewise should be covered if furnished through a hospital's "outpatient department." Yet under the trial court's ruling, the same services by the same psychologist would be covered on Monday when the patient was in the hospital -- but denied on Tuesday when the patient is discharged and told to see a psychologist twice a week for outpatient therapy.

This distinction is irrational. It is widely known that <u>outpatient</u> mental health treatment often is more effective and is consistently less costly than <u>inpatient</u> care. It is therefore unreasonable to argue that the New York Legislature specifically

intended that psychologist services would be covered by section 207-c only when rendered in the most expensive setting.

In fact, as the Legislature may well have known, psychologists are well recognized as qualified to furnish many of the same services to personal injury victims as physicians provide. The Court of Appeals specifically recognized this fact in the Moore case.[21] Other courts have recognized that psychologists' services are often properly incurred in work-related injury cases.[22]

In a leading case, the California Supreme Court recently rejected the contention that only physicians and not psychologists can treat the "medical" bases of mental disorders of hospitalized patients. Use of the term "medical", the court said, "appears to mistake the distinction between psychology and medicine. That distinction turns on the nature of the treatment each can provide, not the origin of the condition treated. Medical methods, especially medication, are commonly used to treat mental conditions of no known organic origin. Conversely, psychological methods, including testing, counselling, and psychotherapy, are commonly used to treat organic disorders. Psychological tests, for example, are frequently used to diagnose the existence and extent of brain damage resulting from physical injury or disease, and depending on the nature of the damage, psychological methods may be the best or only way to treat the condition. There is no bright line

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[21] Id.

[22] See supra note 5.

distinguishing conditions of physical from those of psychological origin. . . ."[23]

Likewise, the Chief of Psychology Services at the Syracuse, New York Veterans Administration Medical Center testified in hearings before the New York State Legislature, that "in all eleven VA medical centers in New York, psychologists routinely admit patients, order their treatments, and discharge them and write relevant discharge summaries."[24] He stressed that in these centers, psychologists function as independent, responsible professionals and do not have psychiatrists as supervisors.

As the New York State Department of Economic Development advised the Governor in 1989, in recommending the effectiveness of paying for psychologists' services to workers compensation claimants, "[t]he necessity for the expertise of a psychologist in the holistic treatment of injured employees has already been recognized by Medicare, Medicaid, the New York State Department of Vocational Rehabilitation and the New York State Department of Disability Determinations."[25] Likewise, the Governor's Office of Employee Relations commented that "[p]sychologists can perform a valuable function for injured employees. Indeed, the recovery time of certain employees could be shortened with the proper

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[23] California Ass'n of Psychology Providers v. Rank, 270 Cal. Rptr. 796, 807 (1990) (Emphasis supplied). See also Illinois Psychological Ass'n v. Falk, 818 F.2d 1337, 1339 (7th Cir. 1987).

[24] The Psychiatric Times (May 1988).

[25] Attached as Appendix B.

psychological care."[26] And the Worker's Compensation Board stated that "psychologists' possess unique skills, including but not limited to testing and diagnostic evaluations, therapy, training, etc. Injured workers should be permitted to avail themselves of these valuable services."[27]

In New York, becoming licensed as a psychologist requires a doctoral degree from an accredited program (usually calling for seven years of full-time study and a dissertation), completion of at least a two-year supervised internship, and passing an examination satisfactory to the licensing board.[28] Thereafter, some psychologists receive added training and practice in specialties such as neuropsychological testing or rehabilitation.

There are many kinds of personal injuries for which psychologists are actually the best qualified treatment professionals. A prominent example is the specialty of neuropsychology, in which psychologists employ specific batteries of tests of cognitive and emotional function that, by testing different kinds of brain activity, can locate or rule out definitively the possibility of organic damage to the brain.[29] The professional literature shows the importance of such testing in diagnosing mental disorders, including those of organic origin or resulting from traumatic injury. Indeed, "[s]ome questions can be

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[26] Attached as Appendix C.

[27] Attached as Appendix D.

[28] N.Y. Educ. Law § 7603 (1985 & Supp. 1991).

[29] See generally Golden, et al., Clinical Neuropsychology (1983).

answered only by psychological testing. . . . [P]sychological testing proves far more efficacious and is often crucial in the diagnosis and treatment for organic conditions. . . ."[30] The expertise of psychologists in this area is well-accepted even by psychiatrists.[31] Given psychologists' special competence in this field, it would be unreasonable to infer that the New York Legislature intended, in enacting a statute intended to help police officers injured in the line of duty, to deny them access to many of the best-qualified therapists who could help them.

C. Recent Amendments to the New York Workers' Compensation Program Show that the Legislature Intends Services Furnished By Psychologists to Be Covered Under Section 207-c.

Although there is no pertinent legislative history on Section 207-c itself, there is important indirect evidence of the intent of the New York Legislature on this subject. This is contained in the legislative history of recent amendments to the State workers'

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[30] Lothstein, "Role of the Clinical Psychiatrist and Psychologist in Primary Care Medicine," 4 Primary Care 343, 351 (1977).

[31] For example, the Chief of Medical Services at the California Youth Authority (a psychiatrist) has advised the California Supreme Court that:

> The expertise that clinical psychologists have in neuropsychological assessment in particular is invaluable in the treatment of organic mental disorders. . . . [I]t has been my experience that clinical psychologists are well trained and able to diagnose and treat organic mental disorders as independent professional practitioners.

Letter from Don Palmer, M.D. to California Supreme Court (July 8, 1988) filed in C.A.P.P. v. Rank, 51 Cal. 3d 1, 270 Cal. Rptr. 796, 793 P.2d 2 (Cal. 1990) (Attached as Appendix E).

compensation program.[32] In 1989, the Legislature amended the basic on-the-job injury provisions of the workers' compensation program to add psychologists' care as a compensable benefit.[33] In 1990, the Legislature made conforming amendments to other portions of the program.[34] Also in 1990, the Legislature made a parallel amendment to the disability benefit portion of the workers' compensation program, adding psychologists' services as a compensable benefit.[35]

At first blush, it might appear that this recent legislative expansion of benefits to include psychologists services in another injured worker program evidences a conscious Legislative decision to deny such care in programs not similarly amended. But this argument is clearly rebutted by the legislative history of the recent amendments.

The 1989 amendments that added psychologists' services as a compensable benefit under the workers' compensation program were proposed by Senator Levy. The Senator's Memorandum in Support of

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[32] The Workers' Compensation Board administers the basic Workers' Compensation Law, as well as the Volunteer Firefighters Law and Volunteer Ambulance Workers' Law. See 63 and 64 McKinney's Consol. Laws of New York. These are referred to collectively herein as "the workers' compensation program."

[33] See L. 1989, Ch. 589, § 1 (July 21, 1989) (codified at N.Y. Workers' Compensation Law § 13-m).

[34] See L. 1990, Ch. 353 (July 2, 1990) (codified at N.Y. Workers' Compensation Law §§ 13-f, 13-m, N.Y. Volunteer Firefighters Benefit Law § 16, N.Y. Volunteer Ambulance Workers' Benefit Law § 16). The Workers' Compensation Board itself made the proposal for the 1990 conforming amendments. See Letter from Olga C. Dais, General Counsel, Workers' Compensation Board, to Hon. Evan A. Davis, Counsel to the Governor (June 25, 1990) (copy attached as Appendix F).

[35] See L. 1990, Ch. 270, § 1 (codified at N.Y. Workers' Compensation Law § 205(2)).

his bill shows that those who considered the amendment, far from intending a different meaning in 207-c, believed that of all public and private health benefit programs operating in New York, only the workers' compensation program still denied coverage of psychologists.[36] In language repeated or paraphrased in virtually every other State agency report on the bill, the Memorandum states:

> Duly registered and licensed psychologists can render treatment in every area of mental health except under the workers' compensation program. Psychologists are reimbursed by Medicare, Medicaid, the New York State Department of Disability Determinations, the Department of Vocational Rehabilitation, all insurance carriers, No-Fault, GHI, HIP, etc.[37] (Emphasis added).)

The Memorandum's recitation of programs under which psychologist services are compensable obviously is a non-exhaustive list of all the public and private health insurance programs that the author could think of. While section 207-c is not mentioned specifically, this listing makes clear that the drafter of the statute believed that the only health benefit program in New York that denied coverage for psychologist services was the workers' compensation program. Amending the workers' compensation program to cover psychologists' services thus was intended simply to make it

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[36] Memorandum of Sen. N.J. Levy in Support of An Act to Amend the Workers' Compensation Law, S. 1367 (Jan. 25, 1989) (copy attached as Appendix G).

[37] Memorandum in Support, supra note 37. See also Memorandum from New York State Department of Economic Development to Evan A. Davis, Counsel to the Governor (July 13, 1989) (Attached as Appendix B); Memorandum from Governor's Office of Employee Relations to Hon. Evan A. Davis (July 12, 1989) (Attached as Appendix C); Letter from Olga C. Dais, General Counsel, Workers' Compensation Board to Evan A. Davis (July 3, 1989), (Attached as Appendix D).

consistent with what the sponsors regarded as an already-settled principle -- that psychologists' services were routinely covered.

The intent of the drafter of a statute, while not dispositive, has been held to be persuasive on the issue of legislative intent.[38] This rule should apply with particular force where, as here, the drafter's intent was clearly expressed in the Memorandum supporting the bill, and incorporated by the other state agencies that commented on its effect. The history of these amendments to the workers' compensation program thus shows that the Legislature believed psychologist services were already available under other state programs, and only this one change was needed to make such services fully available to injured workers in New York. This was clearly the Legislature's goal.

In its brief, the City of Poughkeepsie does not really offer any contrary facts. In discussing these Legislative provisions, it simply offers the weak assertion that "[t]he Legislature, for other reasons, has not chosen to include ... psychologists' services within the scope of Section 207-c."[39]

Moreover, an argument that the Legislature's having specifically included "psychological services" under one statute constitutes a careful decision not to include them elsewhere simply is inconsistent with the piecemeal way in which legislatures work. Individual legislators respond to the wishes of particular

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[38] See, e.g., Fisher v. New York State Employees' Retirement System, 279 A.D. 315, 318 (3d Dept. 1952), aff'd 304 N.Y. 899 (1953).

[39] Brief of Respondent City of Poughkeepsie at 12.

constituencies by introducing bills that will benefit those constituencies. It is exceedingly rare for a legislative body to undertake a comprehensive search of codified statutes to assure that all other provisions are updated to bring them into conformity with a new law in a different area. Courts should be reluctant to infer that legislative action on one statute is intended to be instantly correlated with and reflect legislative intent as to another statute. If that massive correlation process were required, legislative staffs would multiply and the process of enacting legislation would become even slower and more complex than it is now.

Professor Sutherland's leading treatise on statutory interpretation makes this very point. Based on its exhaustive survey of legislation and case law, it concludes that, "[i]t is unrealistic to assume that whenever the legislature passes a statute it has in mind all prior acts relating to the same subject matter."[40] Instead, "in the absence of some evidence that the legislators were cognizant of the other statutes, the presumption [of awareness of the related statute] should be ignored and the act not so construed in pari materia until all other means of determining the intent of the legislature have been exhausted."

As discussed above, there are ample other means of ascertaining the legislative intent in this case. The Legislature did not "fix" Section 207-c specifically by naming psychologists' services because it assumed that, like the other laws referred to

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[40] Singer, 2A Sutherland Statutory Construction § 51.01 at 450 (Sands 4th Ed. 1984).

in the sponsors' Memorandum, Section 207-c already covered psychologists' services.

In addition, the workers' compensation program amendments are clear evidence that the New York Legislature did not make a comprehensive search of related laws when enacting those provisions. All the recent amendments are located in books 63 and 64 of McKinney's Consolidated Laws of New York. Yet despite their proximity, and the fact that the provisions amended all are administered by the Workers' Compensation Board, different amendments were proposed in different legislative sessions, without coordination. Since the Legislature did not consider even other provisions of the same law when it added psychologist coverage as a workers' compensation benefit, it is obvious that it did simultaneously consider other statutes and the need to make conforming amendments to them.

The basic conclusion which is clear is that in enacting Section 207-c, the Legislature did not intend to make an endless series of specific decisions about whose services were covered. This Court should decline to adopt an interpretation that would require a Legislature always to write endless provisions saying, for example, that "the City will pay for the services of medical doctors, osteopaths, podiatrists, oral surgeons, psychologists, certified respiratory therapists [etc.]. . . ." Instead, the Court should ensure what the Legislature intended -- that police officers injured in the line of duty receive the health care services that are "necessitated" by the injury.

CONCLUSION

For the foregoing reasons, section 207-c of the New York General Municipal Law should be construed to require municipalities to pay for all necessary health care services, including psychologists' services, furnished to a police officer injured in the line of duty, and resulting from that injury. The judgment of the Supreme Court, Dutchess County, should be reversed and the case remanded for further proceedings.

Dated: New York, New York
December 11th, 1991

Respectfully submitted,

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Attorneys for Amici Curiae
The American Psychological Association and the New York State Psychological Association

OF COUNSEL:

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Thomas N. Bulleit, Jr.
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STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

MEMORANDUM FOR THE GOVERNOR

Re: Assembly Int. 4914, Pr. 5781

This bill adds a new section to the General Municipal Law, § 207-c, which applies to any member of a police force on any county, town, village, or of any district agency, board, body or commission thereof, or of a city of less than one million population. It is similar to the provisions of § 207-a of the General Municipal Law which provides for payment of salary, medical and hospital expenses for firemen who are injured or become ill in the performance of their duties. It provides for payment of full salary, together with hospital and medical expenses, for an injured or sick policeman who has become incapacitated as a result of his official duties but provides that he shall submit to treatment and medical inspection by a physician appointed by the municipality by which he is employed. That if he is found to be fully recovered payments to him shall cease.

Payments shall also cease if he is granted an accidental disability retirement allowance pursuant to the Retirement and Social Security Law. In this connection it permits the head of the police force or the chief executive officer to make application for such retirement allowance.

It provides that if the health authorities or physicians who examine him have the opinion that he may perform "light police duties" which are consistent with his status as a policeman, that he shall

accept the same or lose the payment of his regular salary and other expenses. If he accepts the light duty, the total amount of salary which he receives will be the same as his regular salary.

The bill also provides that the appropriate municipal officials may transfer him to another department with his consent.

The bill further becomes ineffective as far as the injured policeman is concerned when he reaches retirement age but he is thereafter entitled to medical treatment and hospital care by reason of his injuries or illness incurred before retirement. Retirement pay is then substituted for his regular salary.

The bill also contains a provision for subrogation of his rights against the third party in favor of the municipality. This provision is the same as now provided for firemen in General Municipal Law § 207-a.

I find no legal objection to this bill.

Dated April 13, 1961

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General

STATE OF NEW YORK
DEPARTMENT OF AUDIT AND CONTROL
ALBANY

ARTHUR LEVITT
STATE COMPTROLLER

April 4, 1961

IN REPLYING REFER TO

REPORT TO THE GOVERNOR ON LEGISLATION

TO: Hon. Robert MacCrate, Counsel to the Governor

RE: ASSEMBLY Int. 4914, Pr. 5781: Introduced by: Committee on Rules

RECOMMENDATION: No Recommendation

STATUTES INVOLVED: 207-c General Municipal Law
63 Retirement and Social Security Law

EFFECTIVE DATE: Immediately

DISCUSSION:

1. Purpose of bill: To amend the general municipal law, in relation to the payment of salary, medical and hospital expenses of members of the police force for injuries or illness incurred in the line of duty.

2. Summary of provisions of bill: This bill provides for payment of salary or wages and expenses for medical treatment and hospital care by a municipality to a policeman injured or taken sick in the performance of his duties. In addition, the bill provides for medical inspections and examinations, for discontinuance of salary upon the granting of a retirement allowance, for light police duty, for transfer to other departments and for continuation of medical treatment after retirement.

3. Prior legislative history of bill and similar proposals: Several similar bills amending General Municipal Law 207-a and 208-c have been introduced since at least 1949. Most have never passed either or both Houses. The following bills proposing similar legislation were vetoed by the Governor. 1960, Assembly Int. 1064, Pr. 1064; 1957, Assembly Int. 4154, Pr. 5042; 1955, Senate Int. 249, Pr. 249; 1954, Assembly Int. 1605, Pr. 1646; 1950, Assembly Int. 2500, Pr. 2649.

4. Known position of others respecting bill: The Police Conference of New York, Inc. urges approval of this bill.

5. Budget Implications: None to the State.

Re: Assembly Int. 4914, Pr. 5781

6. Arguments in support of bill: Members of the police department argue they assume as many risks as members of the fire department and should be accorded equal treatment.

Unlike section 207a, this bill provides for retirement of a permanently disabled policeman, and the application for retirement, if not initiated by the policeman, may be made by the head of the police force or as otherwise provided by the chief executive officer or local legislative body of the municipality.

The bill provides further for light police duty and for discontinuation of wages and salary if light police duty is available and offered to the policeman and refused by him.

7. Arguments in opposition to bill: This bill will impose additional financial burdens upon municipalites. It will give to a large group of employees a status not enjoyed by fellow employees.

8. Reasons for recommendation: See #7 above.

ARTHUR LEVITT
State Comptroller

By

Alfred W. Haight
First Deputy Comptroller

JLM:mm

BUDGET REPORT ON BILLS Session Year: 1961

SENATE	Introduced by:	ASSEMBLY
Pr:	Committee on Rules	Pr: 5781
Int:		Int: 4914

Law: General Municipal Sections: 207-c

Subject and Purpose: Adds a new section to the general municipal law providing for the payment of salary, medical and hospital expenses of policeman with injuries or illness incurred in the performance of duties.

Division of the Budget recommendation on the above bill:

Approve:_____ Veto:_____ No Objection:_____ No Recommendation: X

Reasons:

2. Summary of provisions of bill: This bill provides that policemen, injured or taken sick in the line of duty, will receive from the municipality which employs them full salary or wages until their disability ceases and that the municipality is liable for all medical care and hospital treatment necessitated by such injury or illness including the period after such policemen have retired. The municipality is empowered to make application for accident disability retirement allowance when such policemen have been permanently disabled, to authorize light police duty for such policemen who are not eligible for disability retirement allowance or to transfer such policemen to another agency where they can meet applicable civil service requirements.

3. Prior legislative history: A similar bill, Assembly Intro. 1064, was vetoed by the Governor in 1960.

4. Arguments in support of bill: Section 207-a of the General Municipal Law, which was last amended in 1951, already provides the benefits contained in this bill to firemen. This bill extends the same provision to policemen.

5. Possible objections to bill: This bill increases the fiscal liability of local units of government.

6. Other state agencies interested: The Office for Local Government and Department of Audit and Control are preparing memoranda on this bill.

7. Known position of others respecting bill: No comment.

8. Budget implications: This bill increases the scope of circumstances under which applications would be made for accident disability pension allowances. It would increase the number of such pensions to be processed by the Employees' Retirement System but the extent of such increased activity probably would be slight.

Date: April 14, 1961 Examiner: T. Nixland Paul O'Brien (POB)

Disposition: Chapter No: Veto Date:

ND C-589 S. 1367

New York State Department of Economic Development

Lesley Douglass Webster

Deputy Commissioner and Counsel
One Commerce Plaza
Albany, New York 12245 518-474-4102

TEN-DAY BILL MEMORANDUM

July 13, 1989

TO: EVAN A. DAVIS
COUNSEL TO THE GOVERNOR

FROM: Lesley Douglass Webster

SUBJECT: S. 1367 (N. Levy)

RECOMMENDATION: Approval

Summary of Provisions:

This bill would amend the Worker's Compensation Law to provide workers' compensation coverage to an employee, injured under circumstances already compensable under the law, to be treated by a duly licensed and registered psychologist, upon the referral of an authorized physician, provided such services are within the scope of such psychologists's specialized training and qualifications. The bill would also direct the Chairman of the Workers' Compensation Board (the "Chairman") to appoint a psychology practice committee to review and approve the applications of psychologists who are desirous of rendering care under this legislation and to advise the Chairman on the minimum charges and fees that should be set for such psychological treatment and care.

Discussion:

This bill would assist in maintaining quality in the workplace by permitting injured employees eligible for care under the statute to avail themselves of the specialized psychiatric services of a duly licensed and registered psychologist, upon referral from an authorized physician. This increase in employment benefits appears to be reasonable. Although there will

undoubtedly be some increase in mental stress claims, it would be offset by the increased rate at which recipients of such services return to work.

The necessity for the expertise of a psychologist in the holistic treatment of injured employees has already been recognized by Medicaid, Medicare, the New York State Department of Vocational Rehabilitation and the New York State Department of Disability Determinations. Therefore the Department of Economic Development recommends approval of this bill.

LDW

L.D.W.

LDW/JS:sw

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STATE OF NEW YORK
GOVERNOR'S OFFICE OF EMPLOYEE RELATIONS
AGENCY BUILDING NO 2
ALBANY, NEW YORK 12223

ELIZABETH D MOORE
DIRECTOR

NANCY L HODES
EXECUTIVE DEPUTY DIRECTOR

MEMORANDUM

July 12, 1989

TO: Hon. Evan A. Davis

FROM: Walter J. Pellegrini WJP

SUBJECT: S.1367

This bill would amend the Workers' Compensation Law by adding a new Section 13-m to provide Workers' Compensation coverage for treatment of an injured worker by a licensed psychologist.

Presently, registered and licensed psychologists are reimbursed for rendering treatment by almost all health insurance programs such as Medicare, Department of Vocational Rehabilitation, Medicaid, No-Fault, and other health insurance plans, etc. However, the Workers' Compensation Board does not reimburse psychologists for treating injured workers.

This bill would permit an employee, whose injury is compensable under the Workers' Compensation Law, to be treated upon the referral of an authorized physician, by a duly registered and licensed psychologist. The psychologist would then be reimbursed by the Workers' Compensation Board. This legislation would establish a Psychology Practice Committee to review applications by psychologists who seek authorization to render care. This bill further provides that the psychological care provided must be within that psychologist's specialized training and qualifications as defined in the Education Law. Psychologists are required to submit proper reports and documents and keep proper records

as is required of other medical providers under the Workers' Compensation Law.

Psychologists can perform a valuable function for injured employees. Indeed, the recovery time of certain employees could be shortened with the proper psychological care. This bill corrects an inequity in the Workers' Compensation Law by including psychologists as authorized providers.

Because of the foregoing reasons, the Governor's Office Office of Employee Relations has no objection to this subject legislation.

WJP:RLC:tb

D

S.1367

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD
180 LIVINGSTON STREET
BROOKLYN, NY 11248

(718) 802-6671

BARBARA PATTON
CHAIRWOMAN

OLGA C. DAIS
GENERAL COUNSEL

July 3, 1989

Evan A. Davis
Counsel to the Governor
Executive Chamber, State Capitol
Albany, New York 12224

RE: S.1367

Dear Mr. Davis:

We are in receipt of your request for our analysis, comments and recommendations regarding the legislation noted above. We appreciate the opportunity to present our opinion on this proposal.

This proposal amends the Workers' Compensation Law by adding a new Section 13-m which provides that an employee who is injured under circumstances which makes that injury compensable under the Workers' Compensation Law may be treated upon the referral of an authorized physician by a psychologist duly registered and licensed by the State of New York, authorized by the Chair to render psychological care pursuant to Section 13-m of the Workers' Compensation Law. The services rendered by the authorized psychologist must be within the scope of such psychologist's specialized training and qualifications as defined in Article 153 of the Education Law. The Chair is directed to appoint a single psychology practice committee composed of one duly licensed physician and two duly registered and licensed psychologists. A psychologist who wants to render care under this Section must file an application for authorization with the psychology practice committee. The Chair shall with the advice of the psychology practice committee, prepare and establish schedules outlining the minimum charges and fees for such psychological treatment and care.

Duly registered and licensed psychologists can render treatment in every area of mental health. They are reimbursed for services by Medicare, Medicaid, the New York State Department of Disability Determinations, the Department of Vocational Rehabilitation, No Fault, GHI, HIP and by insurance carriers. Since they can provide a valuable service to claimants by diagnosing and treating mental, nervous, emotional and behavioral disorders and ailments, the Board recommends that they be authorized to treat Workers' Compensation

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claimants upon referral from an authorized physician. Psychologists possess unique skills, including but not limited to testing and diagnostic evaluations, therapy training, etc. Injured workers should be permitted to avail themselves of these valuable services. Psychologists should be permitted to be reimbursed for treating injured workers in New York State. We recommend that the Governor approve this proposal.

Very truly yours,

OCD:ms

Olga C. Dais
General Counsel

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STATE OF CALIFORNIA — YOUTH AND ADULT CORRECTIONAL AGENCY GEORGE DEUKMEJIAN Gov

DEPARTMENT OF YOUTH AUTHORITY
4241 Williamsbourgh Drive
Sacramento, California 95823

July 8, 1988

The Honorable Malcolm Lucas, Chief Justice
and Honorable Associate Justices
California Supreme Court
3580 Wilshire Boulevard, Room 213
Los Angeles, CA 90010

Dear Chief Justice Lucas and Honorable Associate Justices:

Regarding the CAPP v. RANK ruling, I have some comments on the scope of practice of psychologists in the diagnosis and treatment of organic mental disorders.

I, Dan Palmer, M.D., am the Chief of Medical Services at the California Youth Authority. My 29 years of practice have included working in State Hospitals and Community Mental Health Centers as well as private practice. Upon completion of my Residency in Psychiatry, I became Director of New Mexico State Hospital. This was followed by my service as a consultant and director of county mental health programs in Colorado and California. Prior to my present position, I worked in a psychiatric treatment unit at the California Youth Authority.

In each setting, I have found the diagnosis and treatment of organic mental disorders to require the teamwork of several professional disciplines. Because the treatment of organic mental disorders overlaps medicine and psychology, professional skills from both disciplines are necessary. While medical diagnosis can clarify the structural condition of the nervous system, neuropsychological assessment can identify the functional condition of the nervous system. The expertise that clinical psychologists have in neuropsychological assessment in particular, is invaluable in the treatment of organic mental disorders.

The diagnosis and treatment of organic mental disorders is not an either-or situation; instead the degree to which either medicine and/or psychology are used is dependent upon the individual situation. There are times when medical efforts may dominate for physical restoration; times when both medicine and psychology contribute simultaneously; and still yet other times when neuro-psychological efforts would be the sole mode of treatment.

Examples of the need for such valuable expertise include: 1) the frequent discovery of the presence of neuropathology by clinical psychologists, which then are referred for medical treatment; 2) subclinical deficits which are not observable in a physician's neurological examination but become evident in a neuropsychological assessment; and 3) the fact that very few physicians and psychiatrists are trained in either the Halstead-Reitan or Luria-Nebraska neuropsychological methods which are structured according to psychological test standards.

In correctional facilities such as the Youth Authority, we rely on both staff and consultant psychologists for assessment of functional deficits in organic mental disorders. In their absence we would have to extensively train psychiatrists in the skills that psychologists now have in neuropsychological assessment. The shortage of psychiatrists makes this unlikely.

Also important is the ability for a patient to wisely select a practitioner, physician or psychologist, appropriate to the diagnosis or treatment needed. A well informed patient can do so and participate in the treatment process in their own best interest.

In summary, it has been my experience that clinical psychologists are well trained and able to diagnose and treat organic mental disorders as independent professional practitioners.

Respectfully submitted,

Dan Palmer, M.D.
Chief of Medical Services
Institutions and Camps Branch
Department of Youth Authority
4241 Williamsbourgh Drive
Sacramanto, CA 95823

cc: David S. Ettinger, Esq.
Thomas T. Johnson
Richard McCracken
Charleton G. Holland, Esq.
Charles E. Jones
Michele Licht, Esq.
Clifford Stromberg, Esq.

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STATE OF NEW YORK
WORKERS' COMPENSATION BOARD
180 LIVINGSTON STREET
BROOKLYN, NY 11248

(718) 802-6671

BARBARA PATTON
CHAIRWOMAN

OLGA C. DAIS
GENERAL COUNSEL

June 25, 1990

Hon. Evan A. Davis
Counsel to the Governor
Executive Chamber, State Capitol
Albany, N.Y. 12224

Re: S7352

Dear Mr. Davis:

We are in receipt of your request for our analysis, comments and recommendations regarding the legislation noted above. We appreciate the opportunity to present our opinion on this proposal which is our legislative proposal #4.

This proposal amends sections 13-f(1), 13-m(3), 13-m(7)(a) of the Workers' Compensation Law, and sections 16 of the Volunteer Firefighters' Benefit Law and the Volunteer Ambulance Workers' Benefit Law to make corrections necessitated by the enactment of a new section 13-m of the Workers' Compensation Law authorizing psychologists to treat workers' compensation claimants.

The law as now written authorizes psychologists to treat injured workers pursuant to section 13-m of the Workers' Compensation Law but does not authorize them to treat injured volunteer firefighters or injured volunteer ambulance workers. Section 13-f(1) of the W.C.L. does not prohibit authorized psychologists from charging fees to injured workers for treatment rendered pursuant to such law. The law does not specifically permit authorized psychologists to receive fees for treatment rendered under its provisions from employers or injured workers.

Section 13-m provides for a minimum fee schedule for authorized psychologists. However the law for all other types of health care providers who treat injured workers has eliminated the word "minimum" from the phrase "minimum fee schedule" to emphasize that there is only one fee schedule for health provider services.

In 1989, Chapter 589 was enacted to amend the Workers' Compensation Law to authorize psychologists to care for and treat injured employees. At the same time other 1989 chapters were enacted such as Chapter 363, which amended the Workers' Compensation Law to change the phrase "minimum fee schedule" to "fee schedule" in sections 13(a), 13-f(1), 13-g(2) and 13-1(2) of

the W.C.L. and Chapter 451 which amended the Workers' Compensation Law to impose an assessment upon awards for unpaid medical, podiatric and chiropractic bills. Because of these new laws and because of existing law relating to all health care providers in general this proposal has become a necessity. The existing statute section 13-(f)(1) of the W.C.L. dealing with the manner in which a health care provider collects his or her fee must be amended to include psychologists. The new statutes must be brought into conformity with each other to ensure that all health care providers are treated equally under the law. The Volunteer Firefighters' Benefit Law and the Volunteer Ambulance Workers' Benefit Law must be amended to reflect the fact that psychologists may now treat injured volunteer firefighters and ambulance workers.

For all of these reasons we urge the Governor to approve this legislation.

Very truly yours,

Olga C. Dais

Olga C. Dais
General Counsel

OCD:eb

cc: Thomas W. Gleason

G

CHAPTER 589

LAWS OF 1989

SENATE BILL 1367

ASSEMBLY BILL

1367

1989-1990 Regular Sessions

IN SENATE

January 25, 1989

Introduced by Sen. N. LEVY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to authorizing psychologists to care for and treat injured employees

IN THE ASSEMBLY BY: A. 2488-A BARBARO

Bill compared by

DATE RECEIVED BY GOVERNOR 7/14/89

ACTION MUST BE TAKEN BY 7/26/89

GOVERNOR'S ACTION:

DATE JUL 21 1989

Memorandum No

C00001

000002

SENATE VOTE 57 Y 0 N

Date 3/22/89

ASSEMBLY VOTE 135 Y 2 N

Date 6/26/89

HOME RULE MESSAGE ___ Y ✓ N

Bill is disapproved

Counsel to Governor

1989

SENATE JOURNAL
MAR 2 2 1989
PAGE 23

SENATE

The Senate Bill
by Mr. N. LEVY Calendar No. 156 Senate No. 1367
Entitled: "

S. 1367 LEVY, N.

An act to amend the workers' compensation law, in relation to authorizing psychologists to care for and treat injured employees

" was read the third time

The President put the question whether the Senate would agree to the final passage of said bill, the same having been printed and upon the desks of the members in its final form at least three calendar legislative days, and it was decided in the affirmative, a majority of all the Senators elected voting in favor thereof and three-fifths being present, as follows:

YE	Dist.		NAY	AYE	Dist.		NAY
	17	Mr. Babbush			58	Mr. Masiello	
	33	Mr. Bernstein			46	Mr. McHugh	
	43	Mr. Bruno			23	Mr. Mega	
	25	Mr. Connor			30	Mrs. Mendez	
	40	Mr. Cook			22	Ms. Montgomery	
	61	Mr. Daly			42	Mr. Nolan	
	47	Mr. Donovan			27	Mr. Ohrenstein	
	6	Mr. Dunne			14	Mr. Onorato	
	44	Mr. Farley			36	Mrs. Oppenheimer	
	31	Mr. Galiber			11	Mr. Padavan	
	13	Mr. Gold			29	Mr. Paterson	
	37	Mrs. Goodhue	EXCUSED		54	Mr. Perry	
	26	Mr. Goodman			58	Mr. Present	
	39	Mr. Gray			55	Mr. Quattrociocchi	
	18	Mr. Halperin			41	Mr. Rolison	EXCUSE
	48	Ms. Hoffmann			32	Mr. Ruis	
	10	Mr. Jenkins			50	Mr. Seward	
	4	Mr. Johnson			60	Mr. Sheffer	
	53	Mr. Kehoe			9	Mr. Skelos	
	52	Mr. Kuhl			20	Miss Smith	
	2	Mr. Lack			19	Mr. Solomon	EXCUS
	1	Mr. LaValle			35	Mr. Spano	
	28	Mr. Leichter			57	Mr. Stachowski	
	38	Mr. E. Levy			45	Mr. Stafford	
	8	Mr. N. Levy			12	Mr. Stavisky	
	51	Mr. Libous			3	Mr. Trunzo	
	49	Mr. Lombardi			7	Mr. Tully	
	15	Mr. Maltese			34	Mr. Velella	
	24	Mr. Marchi			59	Mr. Volker	
	5	Mr. Marino			16	Mr. Weinstein	
	21	Mr. Markowitz					

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AYES 57
NAYS 0

Ordered, that the Secretary deliver said bill to the Assembly and request its concurrence therein

NEW YORK STATE ASSEMBLY
TWO HUNDRED TWELFTH SESSION

REPRINT
DATE: 06/26/89

DATE: 06/26/1989
TIME: 04:02:34 PM

BILL: S1367 (A2488-A) R.R. NO: 544 SPONSOR: LEVY N.

Authorizes psychologists to care for and treat injured employees under workers' compensation

Y	Abbate PJ	Y	Graber VJ	Y	O'Shea CJ
EOR	Abramson E	Y	Grannis A	Y	Parment WL
Y	Anderson RR	Y	Green RL	Y	Parola FE
Y	Barbaro FJ	EOR	Greene A	ABS	Passannante WF
Y	Barnett HW	Y	Griffith E	Y	Pataki GE
NAY	Barraga TF	Y	Hannon K	Y	Pheffer AI
Y	Becker GR	Y	Hareaberg PE	EOR	Pillittere JT
EOR	Behan JL	Y	Harris GH	Y	Pordum FJ
Y	Bennett LE	Y	Hasper J	Y	Powell J
Y	Boyland WF	Y	Hawley RS	Y	Prescott DW
Y	Bragman MJ	Y	Healey PB	Y	Proskin AW
Y	Brennan JF	Y	Hevesi AG	Y	Proud G
Y	Brodsky RL	Y	Hikind D	Y	Rappleyea CD
Y	Brown HC	Y	Hill EH	Y	Reynolds TM
Y	Bush WE	Y	Hillman MC	Y	Robach RJ
Y	Butler DJ	Y	Hinchey MD	Y	Saland SM
Y	Canestrari RJ	Y	Holland JR	Y	Sanders S
Y	Casale AJ	Y	Hoyt WB	Y	Sawicki J
Y	Catapano TF	Y	Jacobs RS	Y	Schimminger RL
NAY	Chesbro RT	Y	Jenkins C	Y	Schmidt FD
Y	Clark EM	ABS	Kaufman SB	Y	Seabrook L
Y	Cochrane JC	Y	Keane RJ	EOR	Sears WR
Y	Colman S	Y	Kelleher NW	Y	Seminerio AS
Y	Connelly EA	Y	King RL	Y	Serrano JE
Y	Conners RJ	Y	Koppell GO	Y	Siegel MA
Y	Conte JD	Y	Lafayette IC	Y	Silver S
Y	Cooke AT	Y	Larkin WJ	Y	Singer CD
Y	Coombe RI	Y	Lasher BL	Y	Straniere RA
Y	Crowley J	Y	Leibell VL	Y	Sullivan EC
Y	D'Andrea RA	Y	Lentol JR	Y	Sullivan PM
Y	Daniels GL	Y	Lopez VJ	Y	Sweeney RK
Y	Davidsen DR	Y	Luster MA	Y	Tallon JR
Y	Davis G	Y	Madison GH	Y	Talomie FG
ABS	Dearie JC	Y	Marshall HM	Y	Tedisco J
Y	Del Toro A	Y	Martinez I	Y	Tocci RC
Y	Diaz HL	Y	Mayersohn N	Y	Tokasz P
Y	DiNapoli TP	Y	McCann JW	Y	Tonko PD
Y	Dugan EC	Y	McGee PK	Y	Vann A
Y	Eannace RJ	Y	McPhillips MM	Y	Vitaliano EN
Y	Eve AO	EOR	Miller RH	EOR	Warren GE
Y	Farrell HD	Y	Murphy MJ	Y	Weinstein HE
Y	Faso JJ	Y	Murtaugh JB	Y	Weisenberg H
Y	Feldman D	Y	Nadler J	Y	Wepria S
Y	Flanagan JJ	Y	Nagle JP	Y	Wertz RC
Y	Friedman G	Y	Nolan CT	Y	Winner GH
Y	Frisa D	ABS	Norman C	Y	Yevoli LJ
Y	Gaffney RJ	Y	Nortz HR	Y	Young GP
Y	Gantt DF	Y	Nozzolio MF	Y	Zaleski TM
Y	Genovesi AJ	Y	O'Neil JG	EOR	Zimmer MN
Y	Gottfried RN	Y	Ortloff C		Mr. Speaker

YEAS: 135 NAYS: 2

CONTROL: 15504732 CERTIFICATION: /S/ FRANCINE M. MISASI
CLERK OF THE ASSEMBLY

LEGEND: Y=YES, NAY=NO, NV=ABSTAIN, ABS=ABSENT,
ELB=EXCUSED FOR LEGISLATIVE BUSINESS, EOR=EXCUSED FOR OTHER REASON

MEMORANDUM IN SUPPORT

1367
156

S._____ N. J. Levy

A._____

AN ACT to amend the workers' compensation law, in relation to authorizing psychologists to care for and treat injured employees

PURPOSE

This bill would, under appropriate circumstances, provide workers' compensation coverage for injured employees who wish to receive treatment from a licensed psychologist.

SUMMARY OF PROVISIONS

The Workers' Compensation Law is amended by adding a new section 13-m which provides that an employee who is injured under circumstances which make such injury compensable under this article may lawfully be treated, upon the referral of an authorized physician, by a duly registered and licensed psychologist who is authorized by the Chairman of the Workers' Compensation Board to render psychological care pursuant to this section. Such services shall be within the scope of such psychologist's specialized training and qualifications as defined in Article 153 of the Education Law. The Chairman is directed to appoint a single psychology practice committee composed of 1 duly licensed physician and 2 duly registered and licensed psychologists. A psychologist who wants to render care under this section must file an application for authorization with the psychology practice committee. The Chairman shall, with the advice of the psychology practice committee, prepare and establish schedules outlining the minimum charges and fees for such psychological treatment and care.

JUSTIFICATION

Duly registered and licensed psychologists can render treatment in every area of mental health except under the workers' compensation program. Psychologists are reimbursed for services by Medicare, Medicaid, the New York State Department of Disability Determinations, the Department of Vocational Rehabilitation, all insurance carriers, No-Fault, GHI, HIP, etc. Ironically enough, the fee schedule used by the New York State Department of Insurance to pay psychologists for their participation in the No-Fault program was prepared and established by the Chairman of the Workers' Compensation Board. Yet the Workers' Compensation Board, as a policy, does not permit psychologists to be reimbursed for assisting injured workers in New York State. Psychologists have unique skills, including but not limited to testing and diagnostic evaluations, therapy training, etc. Injured workers should be permitted to avail themselves of these valuable services.

FISCAL IMPLICATIONS

Unknown

EFFECTIVE DATE

This act shall take effect on the first day of January next succeeding the date on which it shall have become a law, provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing section of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CINDY KINSCHERF, being duly sworn, deposes and says:

I am over the age of eighteen years and am not a party to this action. On the 16th day of December, 1991, I served two true copies of the attached brief of amici curiae on:

Peter Cordovano, Esq.
ANTHONY BARRACO, P.C.
Attorneys for Plaintiff-
Appellant
P.O. Box 1220
669 Route 9 West
Highland, New York 12528

MARILYN D. BERSON, ESQ.
Assistant Corporation Counsel
City of Poughkeepsie
Attorney for Defendant-Respondent
201 South Avenue
P.O. Box 300
Poughkeepsie, New York 12602

the addresses designated for that purpose, by depositing it enclosed in a postpaid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the state of New York.

CINDY KINSCHERF

Sworn to before me this
16th day of December, 1991

Notary Public

IRA G. GREENBERG
NOTARY PUBLIC, State of New York
No. 31-4525781
Qualified in New York County
Commission Expires April 30, 1992