

## Expert Witness Fees

### Witness and Interpreters Fees Regulations 1974

#### 1. Introduction

Medical practitioners are often called to appear as expert witnesses. We have recently been asked to provide information on the fees payable for this.

#### 2. Who is responsible for the payment of my fee ?

Responsibility for payment of expert witness fees for the Crown is determined by the mode of trial. The trial may be in front of a judge alone, or a jury. For all summary hearings before a judge alone, the Police are responsible for payment of fees. If the case is to be heard before a jury in the High Court or District Court the Crown Law Office is responsible for payment of fees. Generally where the matter is serious enough to involve expert testimony from a medical practitioner, it will involve a jury trial. In these cases the Crown Solicitor is responsible for applying to the Court Registrar for payment of your expert witness fees.

#### 3. What does it involve?

Preparation for the trial can often take more time than the actual giving of the evidence. You will most probably be briefed by the lawyer as to what will be required of you. You may be asked:

- To indicate to the court why you have been called;
- how you qualify as an expert in the field;
- to explain any technical terms; and
- your opinion on the relevant medical issue.

Be aware that last minute cancellations and postponements are not unusual. The courts do recognise the burden of providing evidence and generally arrange to call the expert at the arranged time.

#### 4. The Witnesses and Interpreters Fees Regulations 1974

These Regulations and subsequent amendments outline the basic fees and allowances you are eligible for. To some extent the amount payable is at the discretion of the paying authority, which will either be the Police or the Crown Law Office.

##### 4.1 Fees

The classes of expert witnesses are divided into four groups comprising :

1. Related trades (i.e. electricians);
2. professional (i.e. dentists and accountants);
3. general medical practitioners; and
4. consultants (i.e. medical specialists, psychiatrists and consultant engineers).

The fees payable for time spent giving evidence as an expert witness are:

	1. Trade	2. Professional	3. Medical Practitioners	4. Specialists
For the first hour	\$26.00	\$48.00	\$58.00	\$68.00
For additional hours (not exceeding 5 hours)	\$21.00	\$34.00	\$42.00	\$48.00
For a period that exceeds 5 hours	\$132.00	\$217.00	\$244.00	\$305.00

In addition to these fees you are eligible for payments for time spent in preparation, such as analysis, preparation of reports or other work necessary to prepare your evidence. This amount is at the discretion of the Court or the paying officer. It cannot, however, exceed \$33.00 for the first hour and \$24.50 for every subsequent hour.

You may be eligible for payment at the above rates for the travel time if you will suffer a loss of earnings as a result of travelling from your practice to the court for the purpose of giving evidence. The Court or paying officer must be satisfied that this loss of earnings will occur.

#### 4.2 Allowances and travelling expenses

If you are absent overnight from your usual place of residence, you are eligible for the following allowances:

Total period of absence does not exceed 24 hours	\$55.00
Total period of absence exceeds 24 hours, for each 6 hours of part thereof	\$13.00

In addition, you are entitled to:

- A \$7.00 meal allowance if you are unable to return to your 'usual place of residence' before 7 p.m. and;
- to be paid 38 cents a kilometre if you use your own motor vehicle.

The Secretary for Justice, or as the case may require, the Commissioner of Police, may authorise increased payments in exceptional circumstances. Similarly, the Court can disallow or increase the amounts payable under these Regulations.

#### 5. Summary

We have written to the Department for Courts outlining our concern with the low level of remuneration offered, particularly where a medical practitioner arranges to appear as a witness in court, and the trial is cancelled at the last minute. The medical practitioner is most likely liable for any locum payment, but is only eligible for payment for preparation time. Medical practitioners cannot directly charge the patient for the provision of expert witness evidence where this is given for the Crown, as the patient is

not responsible for calling the medical practitioner as a witness and is therefore not liable for such payment.

The Department for Courts appreciate our concerns but advise that their current budgetary constraints do not allow for any increase in fee levels.

## Need more help?

Contact the NZMA:

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