

SB 37 – AS INTRODUCED

2015 SESSION

15-0364
09/04

SENATE BILL **37**

AN ACT limiting the requirements for live testimony by medical professionals in civil actions.

SPONSORS: Sen. Cataldo, Dist 6

COMMITTEE: Judiciary

ANALYSIS

This bill limits the requirements for live testimony by medical professionals in civil actions.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT limiting the requirements for live testimony by medical professionals in civil actions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Finding and Purpose.

2 I. The general court finds that:

3 (a) In the trial of lawsuits alleging bodily injury, requiring live testimony from
4 physicians and other medical professionals, either in court or by way of video depositions, adds
5 significantly to the cost of litigation for all parties. Such costs represent by far the largest share of
6 the out-of-pocket costs incurred by the parties to such litigation.

7 (b) Requiring live medical testimony adds significantly to the cost of the judicial system
8 of conducting such trials, as introducing such testimony is time consuming.

9 (c) Requiring live medical testimony takes physicians and other medical professionals
10 away from their already busy medical practices for hours or even days at a time, reducing their
11 ability to provide needed attention and care to their patients.

12 (d) Requiring live medical testimony can often strain the physician-patient relationship,
13 possibly affecting the quality of care. Many physicians refuse to give testimony; some refuse to treat
14 patients for whom later testimony might be needed.

15 (e) Live medical testimony is often unnecessary, as the information contained within the
16 medical provider's medical records and reports adequately addresses the issues to be decided.

17 (f) Live medical testimony is not required, and typically is not offered, in hearings held
18 pursuant to RSA 281-A:43 with regard to workers' compensation claims, with no ill consequences in
19 terms of the department of labor's ability to reach fair and equitable decisions efficiently.

20 II. The purpose of this legislation is to reduce the costs to the parties and to the judicial
21 system, and to reduce the burdens on medical practitioners and their patients, of requiring live
22 medical testimony in trials of tort claims seeking damages on account of bodily injury.

23 2 New Section: Medical and Hospital Records, Bills, and Reports; Evidence in Certain Civil
24 Cases. Amend RSA 516 by inserting after section 29-b the following new section:

25 516:29-c Medical and Hospital Records, Bills, and Reports; Evidence in Certain Civil Cases.

26 I. Subject to the provisions of paragraphs II - VI of this section, in any civil proceeding in any
27 court, commission, or agency, hospital medical records and physician's and dentist's medical records,
28 and reports relating to medical, dental, or hospital services, prescriptions, or orthopedic appliances
29 rendered to or prescribed for an injured person, reports of any medical or dental examination of such
30 injured person, and itemized medical or hospital bills reflecting the amounts charged for such

SB 37 – AS INTRODUCED
- Page 2 -

1 services, prescriptions, or appliances, which such records, reports, or bills are subscribed and sworn
2 to under the penalties of perjury by the physician, dentist, authorized agent of the hospital or health
3 maintenance organization rendering such services, or the pharmacist or retailer of orthopedic
4 appliances, shall, subject to the court’s discretion, be admissible as evidence of:

5 (a) The fair and reasonable charge for such services and the necessity of such services or
6 treatments;

7 (b) The diagnosis and prognosis of the physician or dentist;

8 (c) The opinion of such physician or dentist as to the proximate cause of the diagnosed
9 condition; and

10 (d) The opinion of such physician or dentist as to disability or incapacity, if any,
11 proximately resulting from the diagnosed condition.

12 II. Written notice of the intention to offer such record, report, or bill as evidence, together
13 with a copy of the hospital medical record or other medical record, report, or bill, shall be given to the
14 opposing party or parties, or to their attorneys, on or before the date established for disclosure of
15 expert testimony pursuant to RSA 516:29-b.

16 III. Nothing contained in this section shall be construed to limit the right of any party to the
17 action or proceeding to summon, at his or her own expense, such physician, dentist, pharmacist,
18 retailer of orthopedic appliances, or agent of such hospital or health maintenance organization, or
19 the records of such physician, dentist, hospital, or health maintenance organization, for the purpose
20 of cross-examination with respect to such record, report, or bill, or to rebut the contents thereof, or
21 for any other purpose, nor to limit the right of any party to the action or proceeding to summon any
22 other person to testify in respect to such record, report, or bill, or for any other purpose.

23 IV. Nothing in this section shall be construed to render admissible any facts, opinions, or
24 information that would not be admissible if testified to by a live witness.

25 V. This section shall not apply to any action for medical injury as defined in RSA 507-E:1.

26 VI. In this section:

27 (a) “Physician” and “dentist” shall include any person who is licensed to practice as such
28 under the laws of the jurisdiction within which services were rendered, and shall include medical
29 doctors, chiropodists, chiropractors, optometrists, osteopaths, physical therapists, podiatrists,
30 psychologists, and other medical personnel licensed to practice under the laws of the jurisdiction
31 within which services were rendered.

32 (b) “Hospital” means any hospital licensed under RSA 151:2, or licensed or regulated by
33 the laws of any other state, or by the laws and regulations of the United States of America, including
34 hospitals of the Veterans Administration or similar type institutions, whether incorporated or not.

35 (c) “Health maintenance organization” shall have the same meaning as defined in
36 RSA 151-C:2, XVI.

37 3 Effective Date. This act shall take effect January 1, 2016.