

Assembly Bill No. 2619

Passed the Assembly August 12, 2008

Chief Clerk of the Assembly

Passed the Senate July 14, 2008

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 2034.420 and 2034.430 of the Code of Civil Procedure, relating to civil actions and proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2619, Charles Calderon. Civil actions and proceedings.

Existing law sets forth numerous provisions governing discovery in civil actions and proceedings. Existing law requires the deposition of any expert witness, as described, to be taken at a place that is within 75 miles of the courthouse where the action is pending. Existing law requires the party desiring to depose an expert witness, as described, other than a party or an employee of a party, to pay the expert's fee for any time spent at the deposition, as specified.

This bill would correct an erroneous cross-reference in these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 2034.420 of the Code of Civil Procedure is amended to read:

2034.420. The deposition of any expert described in subdivision (b) of Section 2034.210 shall be taken at a place that is within 75 miles of the courthouse where the action is pending. On motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

SEC. 2. Section 2034.430 of the Code of Civil Procedure is amended to read:

2034.430. (a) Except as provided in subdivision (f), this section applies to an expert witness, other than a party or an employee of a party, who is any of the following:

- (1) An expert described in subdivision (b) of Section 2034.210.
- (2) A treating physician and surgeon or other treating health care practitioner who is to be asked during the deposition to express opinion testimony, including opinion or factual testimony regarding

the past or present diagnosis or prognosis made by the practitioner or the reasons for a particular treatment decision made by the practitioner, but not including testimony requiring only the reading of words and symbols contained in the relevant medical record or, if those words and symbols are not legible to the deponent, the approximation by the deponent of what those words or symbols are.

(3) An architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which that person is asked to express an opinion within the person's expertise and relevant to the action or proceeding.

(b) A party desiring to depose an expert witness described in subdivision (a) shall pay the expert's reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena, or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is dismissed from the deposition, regardless of whether the expert is actually deposed by any party attending the deposition.

(c) If any counsel representing the expert or a nonnoticing party is late to the deposition, the expert's reasonable and customary hourly or daily fee for the time period determined from the time noticed in the deposition subpoena until the counsel's late arrival, shall be paid by that tardy counsel.

(d) Notwithstanding subdivision (c), the hourly or daily fee charged to the tardy counsel shall not exceed the fee charged to the party who retained the expert, except where the expert donated services to a charitable or other nonprofit organization.

(e) A daily fee shall only be charged for a full day of attendance at a deposition or where the expert was required by the deposing party to be available for a full day and the expert necessarily had to forgo all business that the expert would otherwise have conducted that day but for the request that the expert be available all day for the scheduled deposition.

(f) In a worker's compensation case arising under Division 4 (commencing with Section 3201) or Division 4.5 (commencing with Section 6100) of the Labor Code, a party desiring to depose any expert on another party's expert witness list shall pay the fee under this section.

Approved _____, 2008

Governor