

CHAPTER 75

RULES RELATING TO PRACTICE AND PROCEDURE BEFORE THE NEW JERSEY VICTIMS OF CRIME COMPENSATION BOARD

Authority

N.J.S.A. 52:4B-9.

Source and Effective Date

R.1999 d.157, effective April 21, 1999.
See: 31 N.J.R. 739(b), 31 N.J.R. 1360(c).

Executive Order No. 66(1978) Expiration Date

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Victims of Crime Compensation Board, expires on April 21, 2004.

Chapter Historical Note

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as R.1972 d.261, effective December 21, 1972. See: 4 N.J.R. 277(a), 5 N.J.R. 53(a).

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was repealed and Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as new rules by R.1984 d.342, effective August 20, 1984. See: 16 N.J.R. 846(a), 16 N.J.R. 2291(a).

Pursuant to Executive Order No. 66(1978), Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was readopted as R.1989 d.340, effective June 5, 1989. See: 21 N.J.R. 881(b), 21 N.J.R. 1832(b). Pursuant to Executive Order No. 66(1978), Chapter 75 expired on June 5, 1994.

Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Violent Crimes Compensation Board, was adopted as new rules by R.1994 d.364, effective July 5, 1994. See: 26 N.J.R. 1491(a), 26 N.J.R. 2805(b).

Chapter 75 was renamed as "Rules Relating to Practice and Procedure before the New Jersey Victims of Crime Compensation Board" by an administrative change, effective November 6, 1995. See: 27 N.J.R. 4441(a).

Pursuant to Executive Order No. 66(1978), Chapter 75, Rules Relating to Practice and Procedure before the New Jersey Victims of Crime Compensation Board, was readopted as R.1999 d.157, effective April 21, 1999. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PRACTICE AND PROCEDURE

13:75-1.1 Scope of rules
13:75-1.2 Liberal construction of provisions
13:75-1.3 Practice where rules do not govern
13:75-1.4 Definitions
13:75-1.5 Filing of claims
13:75-1.6 Eligibility of claims
13:75-1.7 Compensable damages
13:75-1.8 Investigation of claims
13:75-1.9 Request for hearings
13:75-1.10 Conduct of hearings
13:75-1.11 Attorneys
13:75-1.12 Attorney fees

13:75-1.13 Subpoenas
13:75-1.14 Manner of payments
13:75-1.15 Decisions by the board
13:75-1.16 Judicial review
13:75-1.17 Publication of claims
13:75-1.18 Availability of forms and rules
13:75-1.19 Moneys received from other sources
13:75-1.20 Validity of rules if any portion declared invalid
13:75-1.21 Loss of earnings or support
13:75-1.22 Domestic help/child care/day care
13:75-1.23 (Reserved)
13:75-1.24 Transportation costs
13:75-1.25 Emergency award
13:75-1.26 Subrogation
13:75-1.27 Counseling fees
13:75-1.28 Secondary victim eligibility
13:75-1.29 Procedure to request Board action to promulgate, amend or repeal rules
13:75-1.30 Determinations, presumptions and burdens of proof
13:75-1.31 Eligibility of claimants for personal injury resulting from the crime of burglary
13:75-1.32 Catastrophic claims

SUBCHAPTER 1. PRACTICE AND PROCEDURE

13:75-1.1 Scope of rules

The following rules shall constitute the practice to be followed in all proceedings before the Victims of Crime Compensation Board.

Administrative change.
See: 27 N.J.R. 4441(a).

Changed the name of the board.

13:75-1.2 Liberal construction of provisions

These rules shall be liberally construed by the Board to permit it to discharge its statutory function and secure equitable determinations in all matters before the Board.

13:75-1.3 Practice where rules do not govern

The Board may rescind, amend or expand these rules from time to time, provided the same is effected in accordance with the provisions of the New Jersey Administrative Procedure Act, and N.J.S.A. 52:4B-1 et seq. In any manner not expressly governed by these rules or by statute, the Board shall exercise its discretion.

13:75-1.4 Definitions

The definitions set forth in N.J.S.A. 52:4B-2 are hereby adopted by this Board and incorporated by reference in these rules.

13:75-1.5 Filing of claims

(a) For claim applications submitted prior to November 30, 1981, all claims must have been filed within one year of the date of the incident upon which the claim is based. For claim applications submitted on or after November 30, 1981,

all claims must be filed within two years after the date of the incident upon which the claim is based or, if after that date, upon determination by the Board that good cause exists for the delayed filing.

(b) The incident must have been reported to the police within three months of its occurrence or the date from which the claimant had knowledge or reason to believe that a crime had occurred.

(c) All claims must be filed on official forms which include an authorization for securing medical and other necessary records and a subrogation agreement. Having been completed and notarized, these should be forwarded to the office of the New Jersey Victims of Crime Compensation Board at either 50 Park Place, 5th floor, Newark, New Jersey 07102 or 225 State Street, Trenton, New Jersey 08625, either in person or by mail. The official forms may be obtained by requesting them at the stated addresses, pursuant to the provisions of N.J.S.A. 52:4B-22 or through the Board's official Internet website at <http://www.state.nj.us/victims> and email address, njvictims@yahoo.com. All forms should be returned within 30 days of the date original notification is given this office.

(d) If a claim is made by a minor, as defined under New Jersey law, the forms shall be signed by his parent or guardian unless New Jersey statutory provisions require otherwise. If a claim is made by a person who is mentally incompetent, the forms shall be signed by his guardian or such other individual who is authorized to administer his estate.

(e) At the time of filing the claim, the Board's Victims Counseling Service shall provide, to the victim, counseling referral services as provided by N.J.S.A. 52:4B-25.

Amended by R.1985 d.630, effective December 16, 1985.

See: 17 N.J.R. 2010(b), 17 N.J.R. 2998(a).

(a) substantially amended.

Amended by R.1995 d.216, effective May 1, 1995.

See: 27 N.J.R. 307(a), 27 N.J.R. 1808(a).

Administrative change.

See: 27 N.J.R. 4441(a).

Changed the name of the board.

Administrative change.

See: 29 N.J.R. 150(a).

In (c), amended address.

Amended by R.2001 d.331, effective September 17, 2001.

See: 33 N.J.R. 1498(a), 33 N.J.R. 3339(a).

Rewrote (b); in (c), amended the address in the second and rewrote the third sentence; in (e), substituted "Board's Victims Counseling Service" for "Board's Counseling Unit".

Case Notes

One year limit for filing a compensation claim, as a substantive limitation period, may be tolled in a particular set of circumstances if the legislative purpose underlying the statutory scheme will thereby be effectuated; claim not barred. *White v. Violent Crimes Compensation Bd.*, 76 N.J. 368, 388 A.2d 206 (1978).

13:75-1.6 Eligibility of claims

(a) The Board shall make an award solely to eligible victims of violent crimes as said crimes are defined by N.J.S.A. 52:4B-11.

(b) In instances where the victim of the crime has died as a direct result thereof, the Board may award compensation to the following persons:

1. A surviving spouse, parent, or child of the deceased victim who has suffered economic loss;

2. Any relative of the deceased victim as defined in N.J.S.A. 52:4B-2 who was dependent upon the victim for support, or any person who has cohabitated with the victim/decedent and who can establish by a preponderance of evidence that a dependency existed at the time of death of the victim. In examining the issue of loss of support as it relates to this paragraph, the Board shall consider any factor it deems relevant;

3. The relative, estate of, or other natural persons who have demonstrated out-of-pocket unreimbursed and unreimbursable medical and funeral expenses for which they have become responsible on behalf of the decedent due to the incident upon which the claim is based.

(c) For all incidents occurring on or after January 1, 1999, the Board may award compensation for loss of support to any victim or claimant who can establish by a preponderance of the evidence that, at the time of the incident, a dependency existed, upon the income or other economic contributions of the victim's assailant or offender, and which is no longer available to or accessible by the victim.

1. In computing the loss of support of the victim or claimant dependent, the Board shall only consider the assailant/offender's earnings and/or the amount of money or economic contributions the assailant/offender was actually contributing to the victim and victim's household at the time of the injury of the victim.

2. Where the dependents have received or are receiving a greater sum of money from other sources by reason of the incident giving rise to the claim for compensation than the sum contributed to their support by the assailant/offender at the time of incident, no compensation for loss of support shall be awarded to the dependents.

3. The Board, however, reserves the right to review its determination should the victim's dependency, marital or earning status be altered, and to modify its award accordingly.

4. Where a dependency upon the assailant/offender has been established, loss of support may be compensated only:

i. For a period not to exceed 48 months;

ii. During a period of incarceration of the assailant/offender for a minimum period of at least two weeks;

iii. Where the assailant/offender is deceased or remains a fugitive from prosecution and/or his or her whereabouts remain unknown for a minimum period of at least two weeks;

iv. Where the assailant/offender has ceased providing support to the victim, in total or in part, due to the incident giving rise to the claim for a minimum period of at least two weeks;

v. Where compensation paid to the victim does not result in a substantial unjust enrichment to the assailant/offender as provided by (d)1 below;

vi. Where compensation paid to the victim does not relieve the assailant/offender from any monetary obligation imposed by the court or other legal document, prior to, as a direct result of or subsequent to the incident giving rise to the claim for compensation, as the assailant/offender's legal duty toward the victim, the victim's family or a member of the assailant/offender's family;

vii. Where the victim and/or claimant cooperates in the prosecution of the offender, including the filing and prosecution of a criminal complaint against the offender, unless a compelling health or safety reason is shown for a failure to so cooperate; and

viii. Where the victim has been determined to be eligible for compensation under N.J.S.A. 52:4B-1 et seq. and this chapter.

5. A victim and/or claimant shall not receive compensation for loss of support under this subsection for more than two separate incidents involving the same assailant/offender, nor receive more than one such award within a period of 12 consecutive months.

6. The victim and/or claimant shall inform the Board whether the assailant/offender continues, or commences again, to provide support, in total or in part, in any form, to the victim and/or family and whether the assailant/offender resides with the victim at any time subsequent to the incident giving rise to the claim for compensation. Failure to provide the Board with said information shall be a basis for denial or cessation of the payment of compensation and good cause for the Board to seek reimbursement for any award paid in the claim.

7. The Board reserves the right to seek reimbursement from the offender as provided by N.J.S.A. 52:4B-20 for any payments made to the victim and/or claimant under this chapter.

(d) Any claimant who is held by the Board to be responsible for the crime upon which a claim is based, or is held to have been an accomplice or conspirator of the offender is not eligible for compensation. For incidents occurring after March 3, 1983 and continuing through July 17, 1990, a relative of the offender or a victim living with the offender

as a member of the offender's family relationship group may recover; if subsequent to the incident giving rise to the claim, the claimant no longer resides in the same household as the offender and the claimant cooperated in the prosecution of the offender.

1. For incidents and injuries occurring on or after July 17, 1990, the Board will apply the same standards that are applied to claims filed by victims of other violent crimes regardless of the familial relationship of the offender and the victim or the fact that they share a residence. However, no award will be made if compensation to the victim proves to be substantial unjust enrichment to the offender. Where the enrichment is inconsequential or minimal, compensation shall not be denied nor reduced. The factors to be considered in determining whether the unjust enrichment is substantial include, but are not limited to:

i. The amount of the award and whether it is made directly to the victim;

ii. Whether the offender has access to any cash payments coming into the household on behalf of the victim;

iii. Whether the award is essential to the well-being of the victim and other innocent and dependent family members;

iv. The amount of living expenses paid by the offender before and during the pendency of the claim;

v. If a significant portion of the award will be used directly by the offender for living expenses;

vi. The legal responsibilities of the offender to the victim;

vii. Collateral resources available to the victim from the offender which resources include, but are not limited to, court-ordered restitution or support and insurance and pension benefits. In evaluating collateral resources the Board may consider whether the offender has a legal responsibility to pay, whether the offender has resources to pay, and whether payment is likely. The victim will not be penalized for failure of the offender to meet his or her obligation to pay for the costs of the victim's recovery; and

viii. The offender's cooperation in providing the Victims of Crime Compensation Board with information concerning medical insurance coverage and any other information necessary for the Board to make a determination.

(e) The Board reserves the right to consider any circumstances it deems to be relevant, including, but not limited to, provocation, consent, participation in an illegal activity or behavior on the part of the victim which directly, or indirectly, contributed to his or her injury or death, the prior case history of the victim which may also include matters pertaining to the victim's medical history, and whether the victim cooperated with reasonable requests of law enforcement authorities or showed a compelling health or safety reason why they could not cooperate.

(f) No compensation shall be awarded if the victim is injured as a result of the operation of a motor vehicle, boat, vessel or airplane unless the same was used as a weapon in the deliberate attempt to run the victim down, or the victim was injured in the commission of a violation of N.J.S.A. 39:4-50, 39:3-10.13 or 12:7-46, operating a motor vehicle, vessel, airplane or commercial vehicle while under the influence of an intoxicating liquor or drugs as provided in N.J.A.C. 13:75-1.7(i). The Board may further order the payment of compensation to a victim who sustains injury or death as a result of an offender eluding a law enforcement officer in pursuit of that offender.

1. For incidents occurring on or after June 26, 1995, compensation shall be awarded which involve the theft of a motor vehicle wherein an offender with purpose to withhold temporarily from the owner or legal operator, takes, operates or exercises control over a motor vehicle without the consent of the owner or other person authorized to give consent and causes injury or death to a victim due to the unlawful use of said motor vehicle.

2. Unrelated to its normal operation, where a motor vehicle, vessel, airplane or commercial vehicle is used as a weapon, including, but not limited to, as a vehicle to carry explosives with intent to detonate the same to inflict a deliberate injury, the Board shall consider such use as a compensable "crime involving violence" as set forth in N.J.S.A. 52:4B-11(b)(10).

3. For incidents occurring on or after January 1, 1996, where the operator of a motor vehicle, vessel, airplane or commercial vehicle leaves the scene of an accident in violation of N.J.S.A. 39:4-129(a) or 12:7-34 and the circumstances surrounding the incident cannot be established by a preponderance of the credible evidence, it shall be presumed that the victim was injured as a result of the operation of a motor vehicle, vessel or airplane that was either unlawfully taken from its owner, used as a weapon in a deliberate attempt to run the victim down, driven while under the influence of alcohol or a controlled dangerous substance or in an attempt to elude a law enforcement officer.

(g) "Eligible victims" shall include:

1. Non-residents and Federal crime victims on the same basis as State residents who are victims of a crime committed in the State;

2. Residents of the State injured in a foreign jurisdiction where said jurisdiction is without a victim compensation program; and

3. Residents of the State who have received a final determination from a foreign jurisdiction as to a claim filed with a victim's compensation program which determination has not fully compensated the victim or claimant for all out-of-pocket and unreimbursed and unreimbursable expenses.

4. However, where residents of the State are injured in a foreign state, said foreign state has primary jurisdiction and the State will not entertain a claim for compensation until victim or claimant has fully exhausted all available procedures for victim's compensation in said foreign state.

Amended by R.1988 d.108, effective March 7, 1988.

See: 19 N.J.R. 1967(b), 20 N.J.R. 543(b).

Added text in (d) " , and whether the . . . "

Amended by R.1989 d.599, effective December 18, 1989.

See: 21 N.J.R. 2910(a), 21 N.J.R. 3929(a).

Added new (f), "Eligible victims."

Amended by R.1991 d.117, effective March 4, 1991.

See: 22 N.J.R. 3690(a), 23 N.J.R. 703(a).

Amendments bring rule into compliance with P.L. 1990 c.64 and the 1988 amendments to 42 U.S.C.A. 10601 et seq.

Amended by R.1991 d.116, effective March 4, 1991.

See: 22 N.J.R. 3691(a), 23 N.J.R. 704(a).

Establish guidelines for payment of compensation to victims of drunk driving.

Amended by R.1992 d.155, effective April 6, 1992.

See: 24 N.J.R. 54(a), 24 N.J.R. 1373(a).

Revised (c), (c)1 and (d).

Amended by R.1995 d.217, effective May 1, 1995.

See: 27 N.J.R. 307(b), 27 N.J.R. 1808(b).

Administrative change.

See: 27 N.J.R. 4441(a).

Changed the name of the board.

Amended by R.1996 d.73, effective February 5, 1996.

See: 27 N.J.R. 4131(a), 28 N.J.R. 886(a).

Rewrote (e).

Amended by R.1999 d.149, effective May 17, 1999.

See: 31 N.J.R. 590(a), 31 N.J.R. 1361(a).

Inserted a new (c); and recodified former (c) through (f) as (d) through (g).

Amended by R.1999 d.301, effective September 7, 1999.

See: 31 N.J.R. 1461(a), 31 N.J.R. 2625(a).

In (f), inserted a reference to vessels and a reference to airplanes in the introductory paragraph, and added 2.

Amended by R.2001 d.173, effective June 4, 2001.

See: 33 N.J.R. 764(a), 33 N.J.R. 1921(a).

In (c), deleted " , as a result of the assailant/offender's incarceration" preceding "is no longer available" in the introductory paragraph, and inserted "is deceased or" preceding "remains a fugitive" in 4iii.

Amended by R.2004 d.168, effective May 3, 2004.

See: 36 N.J.R. 409(a), 36 N.J.R. 2199(b).

In (f), added 3.

13:75-1.7 Compensable damages

(a) The Board may enter an Order of Payment where the claimant has suffered a minimum out-of-pocket loss of \$100.00 as defined by N.J.S.A. 52:4B-18(d), or has lost at least two continuous weeks' earnings or support.

1. The minimum out-of-pocket loss required of (a) above shall not apply for incidents occurring upon or after December 6, 1982 where the applicant is 60 years of age or older, or is "disabled" as defined by 42 U.S.C. § 416(i), the Federal Social Service Act. Those to be categorized as "disabled" for the purposes of the Criminal Injuries Compensation Act of 1971 are people who, because of a previously determined physical or mental impairment, including blindness, can not engage in any substantial activity. In addition, their disability must be expected to result in death or have lasted, or potentially can last, for a continuous period of not less than 12 months.

2. For incidents of crime occurring on or after June 26, 1995, the minimum out-of-pocket loss requirements as stated in paragraph (a) above shall not be applicable.

3. Where the Board determines that because of the victim's conduct, the victim contributed to the infliction of his or her injury, the Board may limit the amount of the award, reduce it or deny compensation altogether. Where an award is to be limited or reduced due to contribution or other circumstances relating to the victim's behavior or action, said award shall not exceed \$12,500 in the aggregate.

(b) The Board may order the payment of compensation for expenses incurred as a result of the personal injury or death of the victim. These expenses must represent a pecuniary loss to the claimant as defined by N.J.S.A. 52:4B-1 et seq., and these rules consisting of, but not limited to, work and earnings loss, dependents' loss of support, other reasonable pecuniary loss incurred by claimant due to victim's death.

1. Except for claims of catastrophically injured crime victims (N.J.A.C. 13:75-1.32), subject to the availability of State appropriated funds the Board may also award payment for such allowable expenses which the Board determines to be reimbursable within these rules, such as reasonable charges for reasonably needed products and services, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care.

2. The Board may order the payment of compensation for the loss of earning power as a result of the total or partial incapacity of the victim. Said loss includes work loss or loss of income the injured person would have performed if he had not been injured, and expenses reasonably incurred by him in obtaining services in lieu of those he or she would have performed for income. In computing the earnings loss, the Board may consider any income received from substitute work actually performed by the claimant or any income that would have been earned through available appropriate substitute work he or she was capable of performing but unreasonably failed to undertake, and reduce the award, accordingly.

3. In computing the earnings loss of the victim/claimant or in the case of death, the loss of support of the claimant/dependent, the Board shall only consider the victim's earnings and/or the amount of money the decedent was contributing to the household at the time of the injury or death of the victim. Where the dependents of a decedent have received or are receiving a greater sum of money from other sources by reason of the decedent's death than the sum contributed to their support by the decedent at the time of death, no compensation for loss of support shall be awarded to the dependents. The Board, however, reserves the right to review its determination should the claimant's dependency, marital or earnings status be altered, and to modify its award accordingly.

i. Notwithstanding the date of the incident, for any application filed after April 6, 1992, the maximum reimbursement for loss of earnings shall not exceed a total of 104 weeks. For a victim who has been rendered permanently disabled as defined by 42 U.S.C. § 1381 et seq., loss of earnings may be awarded for a period of 260 weeks (five years). In either case, the victim shall enroll in a retraining or rehabilitation program or establish that the victim's disability prevents participation in such a program or participation in gainful employment. Maximum reimbursement for loss of support in death claims shall not exceed that of 48 months.

ii. The weekly maximum reimbursement for loss of earnings shall not exceed the amount set forth for each of the calendar years listed below:

2005	.....	\$600.00
2004	.....	\$575.00
2003	.....	\$550.00
2001-2002	.....	\$525.00
1999-2000	.....	\$500.00
1998	.....	\$475.00
1993-1997	.....	\$431.00
1992	.....	\$409.00
1991	.....	\$385.00
1990	.....	\$370.00
1989	.....	\$342.00
1988	.....	\$320.00
1987	.....	\$302.00
1986	.....	\$269.00
1982-1985	.....	\$217.00

(c) Every claimant making application to the Board for compensation is required to produce verification for and provide evidence of all losses and injuries claimed as compensable items in said application, and the Board shall consider solely those losses and injuries for which such verification and evidence is so produced.

(d) In making its award the Board shall make no allowance for pain and suffering.

(e) In claims involving the death of a victim, the maximum reimbursement for funeral expenses shall be as follows:

1. For incidents occurring before January 10, 1980, \$750.00;
2. For incidents occurring on or after January 10, 1980, \$2,000;
3. For incidents occurring on or after March 10, 1990, \$3,000;
4. For incidents occurring on or after January 1, 1999, \$3,500; and
5. For incidents occurring on or after July 1, 2001, \$5,000.

(f) Unless otherwise permitted by these rules and the provisions of N.J.A.C. 13:75-1.25(e), the Board shall limit

its award to losses incurred as a result of personal injury or death resulting from a violent crime as defined by N.J.S.A. 52:4B-11. All property damage is specifically excluded except as provided for bedding and clothing pursuant to (p) below and funds stolen pursuant to N.J.S.A. 13:75-1.25(e).

(g) Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, for injuries resulting from incidents occurring on or after December 7, 1982, no compensation shall be awarded in an amount in excess of \$25,000. For incidents occurring in an amount prior to December 6, 1982, the maximum compensation shall not exceed \$10,000. These limitations shall remain in effect until statutory law provides otherwise.

1. Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, for incidents occurring on or after June 26, 1995, any claim for compensation shall expire five years after the entry of an initial determination order. No further order is to be entered with regard to the claim except for requests for payment of specific out-of-pocket expenses received by the Board prior to the expiration of the five year period or for expenses for which the Board had notice or should reasonably have known existed prior to the expiration of the stated five year period.

(h) Unless otherwise provided for by N.J.S.A. 52:4B-1 et seq. and these rules, an award for compensation may be made whether or not any person is prosecuted or convicted for the crime giving rise to the claim before the Board.

(i) No passenger in a motor vehicle, vessel or commercial vehicle who knew or reasonably should have known that the driver was operating the vehicle or vessel while under the influence of alcohol or drugs is eligible for compensation.

1. In order for a victim to be eligible for compensation, it is not necessary that the offender is convicted of a violation under N.J.S.A. 39:4-50, 39:3-10.13 or 12:7-46 nor that a blood alcohol test be administered to the offender. However, the victim or claimant must demonstrate by a preponderance of the credible evidence that the incident involved driving a vehicle or operating a vessel while under the influence of alcohol or drugs.

i. "Under the influence" as used in this subsection means a substantial deterioration or diminution of mental faculties or physical capabilities of a person whether due to intoxicating liquor, narcotic, hallucinogenic or habit-producing drugs.

ii. In any matter involving a violation of N.J.S.A. 39:4-50 or 12:7-46 relating to driving a vehicle or operating a vessel while under the influence of intoxicating liquor, the following factors will be taken into account:

(1) A blood alcohol reading of .10 percent is prima facie evidence of a violation of N.J.S.A. 39:4-50;

(2) A blood alcohol reading in excess of 0.05 percent but less than 0.10 percent shall not give rise to any presumption that the offender was or was not under the influence of intoxicating liquor, but such fact may be considered with any other competent evidence;

(3) A blood alcohol reading of 0.05 percent or less shall give rise to the presumption that the offender was not under the influence of intoxicating liquor; and

(4) A blood alcohol reading of .04 percent is prima facie evidence of a violation of N.J.S.A. 39:3-10.13, operating a commercial vehicle while under the influence.

2. The Board may deny or reduce an award if the Board finds the victim was not wearing protective equipment such as a safety belt or if the victim is the operator of a second vehicle and does not have automobile insurance as required by law.

(j) Except as provided by N.J.A.C. 13:75-1.32 for cases determined to be catastrophic in nature, the Board shall award no compensation for chiropractic or physical therapy services for a period of greater than 30 visitations for treatments and visits. When direct victims, claimants or secondary victims have been compensated for or attended more than 30 such visitations (as of October 7, 1991), the Board shall award no compensation for chiropractic or physical therapy services for an additional period greater than six sessions beyond the date of the last service.

(k) The Board may deny compensation to a claimant unless the claimant has satisfied any and all Violent Crimes Compensation Board assessments imposed pursuant to N.J.S.A. 2C:43-3.1 and restitution ordered by the courts to be paid specifically to the Board until such time as proper proof is submitted verifying satisfaction of said obligations.

1. Where possible the Board may forward the amount of the outstanding assessment and/or restitution directly to the proper collection authority from any proceeds of the award of compensation the Board may make to or on behalf of the victim or claimant.

(l) The Board shall make no award for compensation to or on behalf of a victim or claimant and may close the claim without prejudice during any period of their incarceration or where a court ordered bench warrant for the victim or claimant's arrest remains active or where criminal charges are pending against the victim or claimant due to the filing of a criminal complaint and/or return of an indictment. Upon release from any period of incarceration or submission to the Board of verification from the court that the bench warrant, criminal complaint or indictment has been dismissed or otherwise disposed of, the victim or claimant may petition the Board to reopen the claim.

1. No compensation shall be awarded for incidents occurring on or after December 23, 1991 if the victim sustained injuries while incarcerated for the conviction of a crime. Factors to be considered in determining incarceration shall include, but not be limited to, restraints placed on personal liberty; freedom from mobility; and whether the individual is under the care, custody and control of any penal institution or similar institution.

2. Where a victim is injured while serving a non-custodial sentence or while incarcerated for reasons other than conviction of a crime, or injured while incarcerated prior to December 23, 1991, the Board shall take all relevant matters into consideration including, but not limited to, the following:

- i. The provisions of N.J.S.A. 52:4B-9 requiring the Board to consider the availability of funds as appropriated by the State in awarding compensation;
- ii. Whether the victim assumed a reasonable risk of injury under all the circumstances of the case;
- iii. Whether the victim had reason to believe that his or her actions would result in arrest, conviction, sentence and incarceration;
- iv. The likelihood of the victim's conviction for the allegations serving as the basis for the victim's incarceration;
- v. The nature of the offense and the sentence imposed; and
- vi. The disposition of the charges by the criminal justice system.

(m) The Board shall award compensation for expenses incurred as a result of the relocation of a victim and/or his or her family with the victim, due to the incident forming the basis of the victim's claim before the Board where the Board determines there is a need to protect the health and safety of the victim and/or his or her family and that all other statutory requirements for eligibility are met.

1. In determining the need, the Board shall take into consideration:

- i. The nature of the crime;
- ii. The amount of danger the offender poses to the victim and/or his or her family;
- iii. The degree of injury the victim sustained;
- iv. The criminal case history of the offender and the offender's record while incarcerated;
- v. Prior acts of the offender;
- vi. What efforts the victim and/or his or her family have undertaken in order to protect themselves from further harm;
- vii. The offender's sentence and period of incarceration whether for the crime forming the basis of the

claim filed with the Board or through a plea bargain on related or unrelated charges;

viii. Any other relevant factors; and

ix. Upon receipt of verification in the form of a medical report or evidence, the emotional and psychological impact caused by the requirement to live on the premises of the specific crime scene forming the basis of the claim filed with the Board.

2. Compensation for moving expenses shall be paid for relocation of victim's family solely where the victim resided with the family at the time of the incident and, except where the crime resulted in the death of the victim, the victim relocated to the new premises with the family.

3. Maximum reimbursement for moving expenses shall be \$1,000. Related moving expenses may include truck rental, moving services, and monthly rental and mortgage cost differential for a period of no more than three months between vacated and new premises and, subject to any limitations set forth in (o) below, the cost of no more than five days shelter or lodging in a location other than the residence wherein the crime scene is located and which has been vacated due to the need to clean the crime scene.

4. A victim or claimant may only seek compensation for moving expenses once for each claim filed with the Board.

5. In the case of an arson fire, compensation may be awarded pursuant to this section, solely where the Board determines that there is a need to protect the health and safety of the victim and victim's family members from further acts of violence perpetrated intentionally and specifically directed at the victim and victim's family by the offender.

(n) Where a criminal act has caused injury or death to a service animal trained and certified for the specific purpose of assisting an individual who is disabled or who requires the service of such an animal to perform day-to-day routine functions, the injured animal's crime related medical treatment and replacement cost incurred due to the animal's injury are compensable up to a maximum of \$5,000. Funeral expenses for the animal shall not be compensated by the Board. Counseling to the animal's owner shall be limited to no more than 15 sessions, payment to be made pursuant to fee schedule in N.J.A.C. 13:75-1.27.

(o) Except in the case of arson, the Board shall award compensation for the reasonable and necessary costs for cleaning the scene, wherein criminally injurious conduct occurred, which costs have become the financial responsibility of the direct victim or claimant and for which reimbursement from other sources, as defined by N.J.A.C. 13:75-1.19, is not available including, but not limited to, homeowner's or other property insurance and funding from law enforce-

ment and other governmental entities. Awards of compensation made by the Board shall not supplant existing State and Federal funding sources for crime scene cleanup.

1. Cleaning a crime scene means to remove, or attempt to remove, from the crime scene, blood, dirt, stains or debris which requires hauling and dumping as a result of the crime or the processing of the crime scene and may include the reasonable out-of-pocket cost of cleaning supplies, equipment rental and labor purchased as a direct result of the crime.

2. Compensation awarded for crime scene cleanup costs shall not include replacement and/or repair expenses for personal property, other than as allowed pursuant to (p) below, and furniture which has been rendered damaged or useless as a result of the crime or the collection of evidence for purposes of investigating the crime.

3. A crime scene, for purposes of compensation, shall be considered solely as a residence, leased or otherwise, where the injurious conduct occurred, of either a direct victim of a crime, a family member of the victim or person in close relationship to a victim as the terms "family" and "person in close relationship" are defined by N.J.A.C. 13:75-1.28(a). Places of employment, a vehicle or public access not considered part of the residence premises are excluded unless the victim or claimant has become financially responsible for the cleanup costs.

4. Cleanup services compensated by the Board may only be performed by a professional cleaning agency or service which specializes in crime scene cleanup. However, the Board may authorize compensation for cleanup services performed by the victim or claimant or by an individual or agency of their choosing where the need for such services is immediate or, under all the circumstances of the incident, preferred by the victim or claimant or where the crime is not an indictable offense.

5. Compensation for crime scene cleanup shall be awarded solely through an eligible claim for compensation filed with the Board by, or on behalf of, a direct victim of a crime who has suffered an injury or death. Claims seeking exclusively reimbursement for crime scene cleanup shall not be eligible for an award of compensation, but may be merged with and compensated through a crime related eligible claim as described in this paragraph.

6. Compensation awarded for crime scene cleanup shall not exceed \$1,500 in the aggregate.

(p) The Board shall award compensation for the reasonable replacement value of bedding and clothing, solely, which has been removed from a crime scene as defined in (o)3 above, and held for evidentiary purposes, but not returned to the victim or claimant within a reasonable amount of time and, if returned, rendered useless or damaged by forensic processes used to collect evidence.

1. Bedding, as defined in this subsection, shall include solely a mattress, box spring, linen and pillows. The bed frame and headboard are excluded.

2. Compensation shall not be awarded for the clothing or bedding of a deceased victim which is held as evidence unless it is verified that such items were not personal to the decedent alone, but were items shared by the decedent within the claimant's household.

3. Compensation for evidence replacement may be awarded solely through an eligible claim for compensation filed with the Board by, or on behalf of, a direct victim of a crime.

4. Compensation awarded for evidence replacement, which has not been reimbursed from other sources as defined by N.J.A.C. 13:75-1.19, shall not exceed \$500.00 in the aggregate.

(q) The Board may award compensation for the reasonable replacement value of carpeting, doors, windows and locks. The total amount which may be awarded under this section shall not exceed \$2,000 in the aggregate.

(r) The Board may allow payment up to a maximum of \$1,000 at an hourly rate of \$125.00 per hour to an attorney who provides legal assistance to a victim in explaining and enforcing the victim's rights in the criminal justice system provided the attorney has successfully completed an attorney training program sponsored by the Board.

(s) The Board may, within its discretion, prioritize the various items of payment for any claim, in the event it determines that the maximum amount of \$25,000 payable by the Board will be or is likely to be reached.

Amended by R.1991 d.116, effective March 4, 1991.

See: 22 N.J.R. 3691(a), 23 N.J.R. 704(a).

Establish guidelines for payment of compensation to victims of drunk driving.

Amended by R.1991 d.492, effective October 7, 1991.

See: 23 N.J.R. 2269(b), 23 N.J.R. 3034(b).

In (a), added text limiting the total award made to a claimant.

In (b), deleted "replacement service loss (defined below)" and "accommodations, replacement tuition costs"; added "The Board may also award payment for".

Deleted (b)2.

Added (j).

Amended by R.1992 d.156, effective April 6, 1992.

See: 24 N.J.R. 54(b), 24 N.J.R. 1373(b).

Revised (b); added (b)2i.

Amended by R.1992 d.301, effective July 20, 1992.

See: 24 N.J.R. 1862(a), 24 N.J.R. 2628(a).

Added new (k) and (l).

Amended by R.1993 d.133, effective March 5, 1993.

See: 24 N.J.R. 4491(a), 25 N.J.R. 1224(a).

Revised (a).

Amended by R.1993 d.250, effective June 7, 1993.

See: 24 N.J.R. 674(a), 25 N.J.R. 2488(c).

Amended by R.1994 d.364, effective July 5, 1994.

See: 26 N.J.R. 1491(a), 26 N.J.R. 2805(b).

Amended by R.1995 d.374, effective July 17, 1995.

See: 27 N.J.R. 1527(a), 27 N.J.R. 2700(b).

Amended by R.1995 d.453, effective August 21, 1995.

See: 27 N.J.R. 2372(a), 27 N.J.R. 3202(a).

Added (5) regarding compensation for arson fire victims.
Amended by R.1996 d.74, effective February 5, 1996.
See: 27 N.J.R. 4133(a), 28 N.J.R. 887(c).

In (i), added vessels and commercial vehicles, added references to N.J.S.A. 39:3-10.13 and 12:7-46, and added lii(4).
Amended by R.1996 d.75, effective February 5, 1996.
See: 27 N.J.R. 4132(b), 28 N.J.R. 887(b).

Added (g)1.
Amended by R.1996 d.76, effective February 5, 1996.
See: 27 N.J.R. 4132(a), 28 N.J.R. 887(a).

Added (a)2 and 3.
Amended by R.1996 d.77, effective February 5, 1996.
See: 27 N.J.R. 4134(b), 28 N.J.R. 888(b).

In (f) added N.J.A.C. 13:75-1.25(e).
Amended by R.1996 d.78, effective February 5, 1996.
See: 27 N.J.R. 4134(a), 28 N.J.R. 888(a).

Added (a)2.
Amended by R.1997 d.307, effective August 4, 1997.
See: 29 N.J.R. 1481(a), 29 N.J.R. 3458(a).

Added (n).
Amended by R.1997 d.476, effective November 17, 1997.
See: 29 N.J.R. 3596(b), 29 N.J.R. 4860(a).

Amended by R.1999 d.240, effective August 2, 1999.
See: 31 N.J.R. 1292(a), 31 N.J.R. 2225(a).

In (e), added 4.
Amended by R.2000 d.3, effective January 3, 2000.
See: 31 N.J.R. 3226(a), 32 N.J.R. 61(a).

In (b), (g) and (j), inserted exceptions relating to N.J.A.C. 13:75-1.32 throughout.
Amended by R.2000 d.78, effective March 6, 2000.
See: 31 N.J.R. 4223(a), 32 N.J.R. 813(b).

Inserted (b)2ii.
Amended by R.2001 d.174, d.175, d.176, effective June 4, 2001.
See: 33 N.J.R. 764(b), 33 N.J.R. 765(a), 33 N.J.R. 766(a), 33 N.J.R. 1922(a), 33 N.J.R. 1923(a), 33 N.J.R. 1923(b).

Rewrote the section.
Amended by R.2001 d.332, effective September 17, 2001.
See: 33 N.J.R. 1499(a), 33 N.J.R. 3340(a).

Added (e)5.
Amended by R.2003 d.61, effective February 3, 2003.
See: 34 N.J.R. 1326(a), 35 N.J.R. 620(a).

Added 2002 to the weekly reimbursement table.
Amended by R.2004 d.89, effective March 1, 2004.
See: 35 N.J.R. 507(a), 36 N.J.R. 1197(a).

In (b)3ii, added 2003 to the reimbursement table.
Amended by R.2004 d.169 and d.170, effective May 3, 2004.
See: 36 N.J.R. 410(a), 36 N.J.R. 410(b), 36 N.J.R. 2200(a), 36 N.J.R. 2200(b).

In (b), amended the N.J.S.A. reference in the introductory paragraph, and added entries for the years 2003 through 2005 in the weekly reimbursement table in 3ii; added (q) through (s).

13:75-1.8 Investigation of claims

All claimants under the law creating the Board must fully cooperate with investigators, agents, and/or representatives of the Board in order to be eligible for any award. The claimant shall advise the Board of any and all changes of address and residence to permit the Board to properly process the claim petition. In the event that such cooperation is refused or denied, the Board may in its discretion deny such claim.

13:75-1.9 Request for hearings

(a) After investigation of a claim has been completed, the claimant shall be informed of the Board's recommendation in the matter and of his right to request a hearing by giving written notice to the Board within 20 days of receipt of the recommendation. After receipt of the claimant's response to said recommendation or where claimant fails to respond

within 20 days, the Board may render a decision in writing or schedule a hearing pursuant to N.J.S.A. 52:4B-7.

(b) The Board may within its discretion make a determination whether further action concerning the application is necessary.

13:75-1.10 Conduct of hearings

(a) When a hearing is ordered, the claimant, his or her attorney, and all material and necessary parties, shall be notified in writing of the time, place and purpose of any such hearing. This notice shall be mailed not less than 15 days before the date of hearing, unless waived by the claimant. At the discretion of the Board, any issue may be considered and determined although not indicated in the notice of the hearing, if the administration of N.J.S.A. 52:4B-1 et seq. will thereby be substantially served.

(b) Hearings shall be held at a time and place designated by the Board.

(c) The claimant has the right to be present at the hearing, however, the claimant may be excused at his request. Claimant shall be allowed to present testimony or cross-examine witnesses personally or by counsel. Failure of the claimant to appear at the time of the hearing may be excused and a new hearing scheduled if the Board finds that good cause has been shown.

(d) Any person having a substantial interest in a proceeding may appear, produce evidence and cross-examine witnesses personally or by counsel. However, said appearance must be based upon a valid application or claim petition before the Board, submitted by an eligible victim, and in full compliance with N.J.A.C. 13:75-1.8.

(e) All hearings shall be conducted in an orderly manner so as to ascertain the rights of all parties. All witnesses shall testify under oath and a record of the proceedings shall be made. Any member of the Board may administer oaths and/or affirmations and may question the claimant and witnesses.

(f) The parties or their representatives shall be allowed a reasonable time for presentation of oral argument or for the filing of briefs or other statements as to the facts and questions of law. The claimant shall have the burden of proof by the preponderance of the credible evidence.

(g) The Board shall not be bound by common law or statutory rules of evidence or by any technical or formal rules of procedure other than as provided for in these rules. Any statement, document, or information necessary to afford the parties a fair hearing may be received as evidence. The Board may also accept hospital records or reports and physician's reports as proof of the injuries sustained without requiring the presence of the attending physician at the hearing.

(h) The Board may require a medical examination of the claimant by a physician selected from a panel of impartial medical experts. The claimant shall present himself to the physician selected at the time and place designated. A written report of such examination shall be filed with the Board by the examining physician and a copy mailed by the Board to the claimant or his attorney. The physician's fee shall be paid by the Board.

(i) Hearings shall be open to the public except that the Board in its discretion may hold private hearings in accordance with applicable legal requirements if the interest of the victim and/or claimant will be best served. In the following instances the Board may exercise its discretion:

1. Where prosecution against the alleged perpetrator of the crime is pending and/or the Board determines that there is a continuing or ongoing investigation of the crime;
2. In an alleged sexual offense where the welfare and interest of the victim or dependents may be adversely affected;
3. In the interest of public morality;
4. Where prosecution has resulted in an acquittal or a dismissal on technical grounds;
5. Where the Board determines that because of a public hearing one or more of the parties will be subjected to public ridicule or personal mental anguish or embarrassment.

(j) Upon application of the claimant or his attorney submitted in affidavit or motion form, a case may be reopened for further investigation, and, if the Board finds it necessary, for further testimony. Approval of a motion to reopen proceedings shall not be deemed a matter of right but rather a matter within the Board's discretion. The Board may, on its own motion, reopen or reinvestigate cases at any time it deems necessary.

13:75-1.11 Attorneys

(a) Claimants have the right to be represented before the Board or any member, thereof, at all stages of proceedings, by an attorney-at-law duly licensed to practice in the State of New Jersey, or qualified to make such appearance pursuant to the Rules Governing the Courts of New Jersey, Rule 1:21-1(a).

(b) The attorney shall file a notice of appearance, or when appropriate, a notice of substitution prior to or at the time of his first appearance before the Board.

(c) If any party designates an attorney to represent said party and such attorney has executed and filed with the Board the appropriate notice, such notice shall remain in effect until:

1. The party represented files with the Board a written revocation of the attorney's authorization; or
2. The attorney files with the Board a written statement of his withdrawal from the case; or
3. The attorney states on the record at a Board hearing that he is withdrawing from the case; or
4. The Board received notice of the attorney's death or disqualification, and
5. The Board approved said attorney's removal from participation in the matter.

(d) After the filing of a notice of appearance or substitution in accordance with this section and as long as such notice may remain in effect, copies of all written communications or notices to the party shall be sent to such attorney in lieu of the party so represented or to both the party and his attorney at the Board's discretion. Service upon the attorney shall be service upon the party he represents.

13:75-1.12 Attorney fees

(a) Attorney's fees shall be approved by the Board. Whenever an award is made, the claimant's attorney shall receive an hourly fee as outlined in (b) below, which fee shall not exceed 15 percent of the amount awarded as compensation. An attorney shall not ask for, contract for, or receive from the claimant any sum other than the fee set by the Board.

(b) Where an Order of Denial is entered by the Board, the Board shall make no award of a legal fee to the attorney for the claimant. Where an appearance is made pursuant to N.J.A.C. 13:75-1.10(d), and a subsequent Order of Denial is entered, the Board shall make no award of a legal fee.

(c) For all claim applications filed prior to July 1, 1990, attorney's fees shall be computed on an hourly basis and shall not exceed a maximum of \$50.00 an hour.

1. For all claim applications filed on or after July 1, 1990, attorney's fees shall be computed on an hourly basis at the rate of \$75.00 per hour. For all applications filed on or after October 1, 2003, attorney's fees shall be computed on an hourly basis at the rate of \$125.00 per hour. Where an appearance is made at a Board hearing pursuant to N.J.A.C. 13:75-1.10(d) which results in an Order of Payment, the Board shall award a fee of up to \$300.00 for said appearance notwithstanding the amount of time spent in attending said hearing so long as the aggregate of the hourly and hearing attendance fee shall not exceed 15 percent of the amount awarded as compensation.

2. The Board shall require an affidavit of service where attorney's fees exceed \$1,500. Said affidavit must include an hourly accounting of work completed by the attorney in direct relation to the claim before the Board.

(d) All records of public agencies that are necessary to the investigation of a claim shall, whenever possible, be obtained by the Board. Therefore, no payment will be made to an attorney for obtaining such reports unless the Board had made a specific request of the claimant and or of his attorney for such reports.

Amended by R.1990 d.501, effective October 15, 1990.
See: 22 N.J.R. 2260(a), 22 N.J.R. 3237(a).

Added new (c)1. and 2., provisions for \$75.00 per hour computation of fees and requirement of affidavit of service where fees exceed \$500.00.

Amended by R.1993 d.251, effective June 21, 1993.
See: 24 N.J.R. 674(b), 25 N.J.R. 2489(a).

Amended by R.2001 d.330, effective September 17, 2001.
See: 33 N.J.R. 1499(b), 33 N.J.R. 3340(b).

Rewrote (c)1.

Amended by R.2004 d.171, effective May 3, 2004.
See: 36 N.J.R. 411(a), 36 N.J.R. 2200(c).

In (c), added the second sentence in 1.

13:75-1.13 Subpoenas

(a) The Board shall issue subpoenas and subpoenas duces tecum, either at its own instance or upon written application of any party made not less than 10 days prior to the hearing. The 10 days provision may be waived at the discretion of the Board.

(b) The claimant may file an application for the issuance of a subpoena and the Board may issue the same upon the showing of necessity that the evidence sought constitutes an element of the claim. The claimant’s application for subpoena shall be in writing designating the names and addresses of witnesses and the locations of documents, books, payrolls, personal records, correspondence, papers or any other evidence necessary to the claim being heard.

(c) Where a subpoena is issued pursuant to (b) above or at the instance of the Board or any member thereof, service and witness mileage fees shall be borne by the Board. The mileage fee shall be the prevailing rate on the date of the appearance as established by the State Department of Treasury.

(d) The Board, at its own instance or on application in writing of the claimant, shall take or cause to be taken affidavits or depositions of witnesses residing within or without the State, whenever it deems such procedures necessary. The Board may set appropriate terms and conditions pertaining to the taking of affidavits or depositions.

The requesting party shall bear the expense, however, where the Board enters an Order of Payment the Board may consider said expense as a reasonable expense incurred for reimbursement purposes.

13:75-1.14 Manner of payments

(a) All payments made by the Board shall be made in a lump sum amount, except in instances of death or protracted disability the Board shall exercise its discretion in determining whether payments are to be made in a lump sum or periodically.

1. Where periodic payments have been ordered in a death case, the Board shall verify the dependency and financial status of the claimant at least every six months. Upon discovering a change in circumstances, either by marriage or otherwise, the Board may adjust the award and payments accordingly.

2. Where periodic payments have been ordered in a protracted disability case, the Board may at least every six months verify the disability of the claimant to determine whether the claimant is entitled to continue to receive payments either in the amount awarded or in such amount as the Board deems appropriate.

3. Where periodic payments have been ordered the maximum period for said payments shall not exceed 60 months.

13:75-1.15 Decisions by the board

(a) In order to be eligible for review by the Board, all evidence must have been filed with the Board. If the procedure listed herein is not followed, the Board may in its discretion delay its decision or a hearing until the foregoing prerequisite has been completed with.

(b) The Board shall render its decision regarding the application within six months of receipt by the Board of all information necessary for it to render a final judgment in the matter.

13:75-1.16 Judicial review

Appeals from the Board shall be taken directly to the Appellate Division of the Superior Court pursuant to the rules set forth by the Supreme Court of the State of New Jersey in Rule 2:2-3.