

**TEXAS DEPARTMENT OF INSURANCE
DIVISION OF WORKERS' COMPENSATION**

**PRACTICES AND PROCEDURES
RELATING TO
CONTESTED CASE HEARINGS**

The following practices and procedures are effective for all contested case hearings (CCHs). The purpose is to facilitate the orderly conduct of CCHs statewide through uniform practices and procedures. Some hearings will be conducted by telephone or videoconference. A separate section is included to set out the different procedures for those CCHs. A separate section concerning procedures for medical contested case hearings (MCCHs) is also included.

**I.
PRE-HEARING MATTERS**

MOTIONS FOR CONTINUANCE

Section 410.155 of the Act provides that the Division shall grant a continuance only if it determines that there is good cause for the same. For such reason, Motions for Continuance, *including those which are agreed to or unopposed*, shall be granted only upon a finding by the Hearing Officer that the grounds upon which the motion is based constitute good cause to continue the hearing.

Trial or Social Security Hearing Conflicts

When a continuance is requested due to counsel for one of the parties having been set for trial, the motion should provide the following information, to the extent known:

- Style, Cause Number and Court
- Coordinator's (or Clerk's) name and telephone number
- Date of trial setting (or date range of docket)
- Case position on the docket

With this information the Hearing Officer or docket clerk can verify the conflict if they choose to do so. If there is insufficient information provided to verify the court setting or assignment, the Hearing Officer may deny the continuance and request such additional information as necessary. In those instances where there is insufficient time to deny the continuance request in writing, an attempt will be made to contact the requesting party by telephone, fax or email with instructions to submit another written motion including the required information.

Continuances must be granted for docket conflicts in federal courts, state courts, county courts, city courts, and Social Security administrative hearings.

Early Requests for Continuance Encouraged

A request for continuance by a represented party prior to a hearing should be submitted to the Division in writing as early as possible. The Division has a limited capacity to conduct CCHs. If a continuance is granted 45 days or more before the scheduled CCH date, there is a reasonable chance for another CCH to be scheduled in its place. When a continuance is granted and another CCH cannot be scheduled in its place, the Division's capacity to conduct CCHs is diminished, compromising its ability to meet the requirement to schedule a CCH within 60 days after the date of the BRC.

Firms with Multiple Attorneys

Firms with multiple attorneys are not required to provide a substitute attorney if the motion contains a statement that no other attorney is reasonably available to handle the CCH.

All Parties Agree to Continuance

If all parties agree to a continuance, it will be granted as constituting good cause if another CCH can be scheduled at the same time, date and place. Otherwise, a continuance may be granted only for good cause on other grounds.

DISCOVERY REQUESTS

Hearing Officers will normally review and act on pre-hearing motions and subpoena requests on a daily basis. In the case of depositions on written questions or other pre-hearing matters which the Hearing Officer does not deny and in which there is reason to believe the opposing party may file an objection, response or cross-questions to be propounded to a witness, the Hearing Officer will cause such opposing party to be contacted to determine whether a response will be filed. If the opposing party indicates a response will be filed, the Hearing Officer will delay ruling on the request until receipt of the objection, response or cross-questions or the expiration of five days, whichever first occurs.

MOTIONS TO COMPEL ANSWERS TO INTERROGATORIES

If a party fails to answer an interrogatory, that party may be prohibited from presenting evidence pertaining to the unanswered interrogatory. Alternatively, the party propounding the unanswered interrogatory may file a motion to compel the opposing party to answer. Such a motion should be filed no later than 10 days prior to the CCH. Unless a motion to compel answers to interrogatories is filed, continuances to obtain information due to the opposing party's failure to answer interrogatories will not be granted. A motion to compel is not a substitute for acquiring information that could be obtained through subpoena.

PRE-HEARING CONFERENCES AND DISCOVERY

With the current limitation of two BRCs, it is critical that parties thoroughly evaluate their cases so that issues are fully developed at the BRC.¹ In the event further development of the evidence or issues is necessary to a complete resolution of the matter at the CCH, such as seeking clarification from a designated doctor, the parties are encouraged to timely take such action as necessary to ensure full development of the case so that the CCH will not be delayed. Such action may include a request that the Hearing Officer conduct a pre-hearing conference, either by telephone or with parties present in the Field Office, or submit questions to the designated doctor. Such requests should be made as soon as possible following the BRC so that (1) the Hearing Officer may consider clarification/addition of issues or obtain answers to questions submitted to the designated doctor far enough in advance of the CCH that such hearing may be held as scheduled; or (2) the case may be continued for further development sufficiently early that another CCH may be scheduled in its place. (When a replacement hearing cannot be scheduled, it diminishes the capacity of the Division to hear the disputes of other system participants and may cause a delay in hearings beyond the statutory 60-day limit.)

Pre-Hearing motions and discovery requests should be submitted with a proper order and subpoena form, if applicable, attached. Subpoenas should be submitted in completed form ready for signing by the Hearing Officer. Copies of approved or suggested forms for such documents are attached for the convenience of CCH participants, although use of any legally sufficient form is appropriate and nothing herein should be construed as requiring the exclusive use of the attached forms.

¹ To help parties completely develop their case, Hearing Officers are now authorized to approve subpoena requests so parties can completely prepare their cases to resolve disputes before requesting a BRC and before filing a medical dispute. When submitting these request parties should use Rules 142.12 and 142.13 as a guide.

II.
HEARINGS IN THE FIELD OFFICE
WITH PARTIES PRESENT

TIME ALLOCATED FOR CCHs

The time allocated for CCHs is two hours; however, where deemed reasonable and necessary, additional time for the hearing will be allowed by the Hearing Officer.

APPEARANCE SHEET

A completed Appearance Sheet (Attachment 1) shall be provided the receptionist at the DWC Field Office where the CCH is being held when the parties check-in for the hearing. In the event the CCH is held at a location other than a DWC Field Office, the completed Appearance Sheet should be presented to the Hearing Officer when the parties enter the hearing room.

MARKING EXHIBITS

All exhibits which may be offered into evidence shall be appropriately marked prior to the time scheduled for the CCH. Each exhibit for Claimants and Subclaimants shall be identified with the party designation, exhibit number and page number while those for Carriers and Employers shall be identified with the party designation, exhibit letter and page number. Each page of each exhibit should be marked in the lower right hand corner as indicated below:

Claimant Exhibits

The exhibit identifier for Claimants is the letter 'C'. The exhibit identifier, exhibit number and page number shall be placed in the lower right hand corner of each page of the exhibit.

Example: C-1 Pg 1.

Subclaimant Exhibits

The exhibit identifier for Subclaimants is the letter 'S'. The exhibit identifier, exhibit number and page number shall be placed in the lower right hand corner of each page of the exhibit.

Example: S-1 Pg 1.

Carrier Exhibits

The exhibit identifier for carriers is 'CR'. The exhibit identifier, exhibit number and page number shall be placed in the lower right hand corner of each page of the exhibit.

Example: CR-A Pg 1.

If there are more exhibits than there are letters in the alphabet, the alphabet shall be repeated as necessary using the same letter twice.

Example: CR-Z Pg 1, then CR-AA Pg 1, then CR-BB Pg 1, etc.

In the event more than one Carrier is appearing at the CCH, each Carrier should identify its exhibits by adding the first letter of its name to the Carrier exhibit identifier.

Example: CRL-A Pg 1.

Employer Exhibits

The exhibit identifier for employers is 'E'. The exhibit identifier, exhibit number and page number shall be placed in the lower right hand corner of each page of the exhibit.

Example: E-A Pg 1.

If there are more exhibits than there are letters in the alphabet, the alphabet shall be repeated as necessary using the same letter twice.

Example: E-Z Pg 1, then E-AA Pg 1, then E-BB Pg 1, etc.

In the event more than one Employer is appearing at the CCH, each Employer should identify its exhibits by adding the first letter of its name to the Employer exhibit identifier.

Example: EK-A Pg 1.

For a CCH on remand from the Appeals Panel, add an 'R' to the mark placed on each exhibit offered. Official notice should be taken of the record of the prior CCH and there is no need to re-mark, re-offer and re-admit evidence admitted at the prior CCH.

EXHIBIT TABS

Exhibits should be separated with tabs extending beyond the right side of the exhibits. The tab markings should be consistent with the exhibit markings.

EXHIBIT LIST

Each party shall attach and offer as its first exhibit a list of all exhibits that the party intends to offer into evidence at the CCH. The Exhibit List shall be in substantially the same form as that included below as Attachment 2 and shall list each exhibit in its numeric or alphabetical order, include a brief description of the exhibit and the number of pages comprising the exhibit.

Example:

- A. Exhibit List
- B. Dr Jones, 3-3-96 DWC 69, 8 pgs.
- C. Dr Jones, 8-10-94 letter
- D. Dr Hays, records, 10 pgs.
- E. Dr Hays, 12-25-94 report
- F. Dr Hays, Surgical report, 2 pgs.
- G. Oaks Hospital, records, 5 pgs.
- H. Riggs' statement, 8 pgs.
- I. Off work note, 9-22-96
- J. DWC 73, 9-22-96
- K. Return to work note, 12-31-96
- L. DWC 73, 12-31-96

EXCHANGE OF EXHIBITS

At least 15 minutes before the CCH is scheduled to begin, the parties should meet and exchange exhibits. To the extent practical, duplicate exhibits should be removed. To revise the exhibit list for any deleted exhibits, merely line through the exhibit description and add, "NOT OFFERED".

FOREIGN LANGUAGE EXHIBITS

Exhibits in a language other than English will not be admitted or considered unless accompanied by an English translation.

EVIDENCE SUMMARIES

Where they will enhance the understanding of the facts, summaries are encouraged. Summaries in accounting formats are particularly helpful regarding financial matters such as wages and establishing regular support for dependents.

ELECTRONIC EVIDENCE

Evidence in electronic form must be in a format that is compatible with electronic players available to the Hearing Officer and the Appeals Panel. At this time Hearing Officers and the Appeals Panel have video tape players and compact disc players.

The party offering electronic evidence should identify relevant portions by, for example, time and/or counter number display so that such portions may be easily accessed and identified.

OFFERING EXHIBITS INTO EVIDENCE

Normally exhibits will be offered into evidence all at once. The exhibit list eliminates any need to read into the record or otherwise identify the exhibits being offered.

Copies of documents offered into evidence must be clearly legible. Relevant portions of handwritten and other not clearly legible documents may be read aloud for the record by the offering party. The interpretation of those documents read into the record will be weighed by the Hearing Officer. Otherwise, hand written and other not clearly legible portions of documents offered into evidence will not be considered. If a Hearing Officer finds all or parts of the hand written information to be sufficiently legible to be easily read, the Hearing Officer will waive this requirement on the record and identify the legible portions of the hand written documents.

Portions of documents deemed important to the parties should be highlighted with a yellow highlighter. For highlighting only a yellow highlighter should be used. Although highlighted portions are given no more weight, it makes it much easier to find portions of documents deemed important to the parties.

WITNESS TESTIMONY

Redirect and re-cross examination of witnesses should be limited to new matters raised in cross examination, redirect examination and questions posed by the Hearing Officer.

Parties and participants shall conduct themselves with dignity, shall show courtesy and respect for one another and for the Hearing Officer, and shall follow the decorum prescribed by the Hearing Officer.

SPEAKER TELEPHONE USE AT CCHs

Parties may request to have a witness testify by speaker telephone. Whenever possible, parties should request approval for telephone testimony for a specified witness or witnesses before the CCH with notice to the other parties. See Rule 142.4.

STIPULATIONS

Parties should be ready and willing to stipulate to facts not in dispute that are required to be established to support any CCH issue.

OPENING STATEMENTS

Usually, in the opening statement the party with the burden of proof should briefly cover each legal element (requirement) for each disputed issue. Where there is a question of law it is appropriate for the parties to address it in the opening statement and give references to applicable portions of the Act, Rules, appeals court decisions and Appeals Panel Decisions.

The party having the burden of proof will normally open first. The opposing party may then offer its opening statement or may reserve the same until its case in chief.

Where the case involves issues upon which more than one party has the burden of proof, the Hearing Officer shall determine, within his or her discretion, the order in which opening statements will be offered.

CLOSING ARGUMENT

Closing arguments, if offered, shall normally be limited to two minutes per party, although, depending on the nature and complexity of the case, the Hearing Officer may, upon request, grant additional time for closing as he or she deems reasonable and appropriate.

The party having the burden of proof will normally offer its closing first and, if all time allotted to such party for closing has not been used, shall be allowed a final closing in rebuttal following the opposing parties' arguments.

Where the case involves issues upon which more than one party has the burden of proof, the Hearing Officer shall determine, within his or her discretion, the order in which closing statements will be offered.

III. MEDICAL CONTESTED CASE HEARINGS

The following practices and procedures are effective for all medical contested case hearings (MCCH's). The purpose is to facilitate the orderly conduct of MCCH's statewide through uniform practices and procedures.

REQUESTING MCCH FOR MEDICAL FEE DISPUTES AND IRO DISPUTES

Under Rule 133.307 (f) and Rule 133.308 (r) which are expected to be amended, the request should be filed with the Chief Clerk of Proceedings in the Central Office in Austin, Texas, within 20 days of the Requestor's receipt of the "Medical Fee Dispute Resolution Findings and Decision" (MR-04) or Independent Review Organization Decision.

REQUESTING MCCH BY GROUP HEALTH INSURER

Under Section 409.0091 of the Act, health care insurers and their authorized representatives seeking reimbursement can request a Benefit Review Conference or Medical Contested Case Hearing by following the same procedures as any other party. If the sub-claimant is an authorized representative, assignee, or both, the Carrier is required to make any objections thereto; otherwise, the objection is waived.

VENUE

Under Section 410.005 of the Act, "Unless the division determines that good cause exists for the selection of a different location, . . . a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury."

JURISDICTION

Under Section 413.0311 of the Act, MCCH's will be held by DWC for the following:

1. A medical fee dispute not exceeding \$2,000;
2. An appeal of an independent review organization (IRO) decision regarding retrospective medical necessity for a health care service not exceeding \$3000; or
3. An appeal of an IRO decision regarding concurrent or prospective medical necessity for a health care service.

MEDICAL PREHEARING (MPH), MCCH AND DISCOVERY

Initially, a prehearing (MPH) will be held. All documents must be exchanged prior to the MPH;

primarily, documents should be limited to those exchanged for the MDR and IRO processes. The parties should arrive at least 15 minutes prior to the scheduled time to review and exchange documents. All objections must be made and will be ruled on at the MPH. Prior to the MPH, all witnesses will be disclosed along with summary of their expected testimony. At the MPH, the parties may waive appearance of any witness and stipulate that, if present, a witness would testify as set forth in the summary. Witness testimony may be in any form including, but not limited to, deposition, affidavit, letter, medical record or similar document. All objections to the appearance of any witness must be made at the MPH. The *Curriculum Vitae* of any witness must be exchanged at the MPH. Summary procedures including witness statements, summaries, and similar measures to expedite the proceedings are encouraged. Copies of documents offered into evidence must be clearly legible. If documents are not clearly legible, they may be read aloud into the record by the offering party. If a Hearing Officer finds all or parts of the hand written information to be sufficiently legible to be easily read, the Hearing Officer will waive this requirement on the record and identify the legible portions of the hand written documents. Exhibits not admitted or witnesses not allowed at the MPH will not be admitted or allowed at the MCCH unless the party can demonstrate good cause. In accordance with § 410.165 of the Texas Workers' Compensation Act, "Conformity to legal rules of evidence is not necessary."

At the MPH, the Requestor (Petitioner) and Respondent may agree, subject to the discretion of the Hearing Officer, that the MCCH be closed; and the hearing officer will issue a decision. If the hearing is not closed at the MPH, each party shall make an estimate of the time required to present case, and the MCCH is scheduled preferably within 20 days from the MPH. If a party fails to attend a MPH or MCCH, the hearing officer shall have the discretion to reschedule the hearing or to issue a final Decision and Order. No 10-day letter will be sent. Agreements may either be on the record or on a DWC-24 pursuant to agreement of the parties and within the discretion of the presiding hearing officer.

MARKING EXHIBITS

All exhibits which may be offered into evidence shall be appropriately marked prior to the time scheduled for the MCCH. Each exhibit for Petitioner (the party requesting the MCCH) shall be identified with the party designation, exhibit number and page number while those for the Respondent shall be identified with the party designation, exhibit letter and page number. Each page of each exhibit should be marked in the lower right hand corner as indicated below:

Petitioner Exhibits

The exhibit identifier for Petitioners is the letter 'P'. The exhibit identifier, exhibit number and page number shall be placed in the lower right hand corner of each page of the exhibit.

Example: P-1 Pg 1.

Respondent Exhibits

The exhibit identifier for Respondent s is the letter 'R'. The exhibit identifier, exhibit number and page number shall be placed in the lower right hand corner of each page of the exhibit.

Example: R-1 Pg 1.

EVIDENCE BASED MEDICINE

Healthcare providers must provide treatment in accordance with the current edition of the Official Disability Guidelines - Treatment in Workers' Comp, excluding the return to work pathways, (ODG), published by Work Loss Data Institute. Evidence based medical standards for use in the delivery of care are required. Treatment and services included in the ODG are presumed to be healthcare reasonably required. Evidence based documentation may outweigh the presumption of reasonableness.

**IV.
TELEPHONE AND
VIDEOCONFERENCE HEARINGS**

Contested Case Hearings in which the parties appear by telephone or videoconference equipment shall be conducted pursuant to the practices and procedures set out above, except as provided below:

TELEPHONE CCH

Telephone CCHs are available in the following four situations:

1. The parties agree to a telephone CCH at the benefit review conference. This procedure will be offered by the Benefit Review Officer only under the following circumstances:
 - a) the claimant is represented by an attorney;
 - b) no interpreter is needed;
 - c) no witness other than the claimant is expected to offer testimony;
 - d) the evidence is not voluminous; and
 - e) contentious litigation is not anticipated.
2. Disputes which proceed directly to CCH (spinal surgery and attorney fee cases) will be automatically set for a telephone CCH.
3. Telephone CCHs may be set by a Hearing Officer on his or her own motion when an upcoming case has been resolved by agreement or involves any of the following issues:
 - a) maximum medical improvement and/or impairment rating
 - b) supplemental income benefits
 - c) extent of injury
 - d) an issue of law
4. The Benefit Review Officer may schedule a telephone CCH upon agreement of the parties in the event no Hearing Officer is assigned to the field office where venue is proper or because no hearing date is available within the 60-day statutory timeframe in the field office where venue is proper.

HEARING NOTICES

Hearing notices for telephone CCHs will indicate that the parties need not attend in person. Telephone CCH instructions advising the parties of the name, address, telephone number and facsimile number of the assigned Hearing Officer and docket clerk together with direction concerning placement of the conference call, shall be provided to the parties either at the BRC or with the notice of hearing.

PROVIDING INFORMATION FOR THE TELEPHONE CCH

Parties shall ensure that their respective exhibits, including exhibit lists and appearance sheets (for expected attendees) are received by the hearing officer and all other parties at least two working days prior to the date of the CCH. Additionally, other parties shall submit to the appropriate carrier representative contact telephone and facsimile numbers for such parties and any witnesses who will testify.

TELEPHONE CALL FOR THE CCH

The Carrier representative will set up the conference call between the parties and the hearing officer. If more than one carrier is involved, responsibility for the conference call will rest with the carrier on the earliest date of injury unless otherwise directed by the Hearing Officer. Witnesses will not be joined until called to testify, and will be added to the conference by the Hearing Officer using his or her

speakerphone. Unless the conference call is handled by a telephone company employee, the hearing officer will be the last person added to the conference. Parties may participate by cellular telephone but must have a landline available should the cellular transmission be unsatisfactory.

CONFIDENTIALITY

The right of the Claimant to confidentiality of claim file information is not waived by a telephone hearing, and only persons entitled to attend a hearing may be present for the teleconference. Each party shall announce on the record the names of all persons in his or her respective office. If the rule is invoked, all witnesses other than the Claimant, Claimant's spouse and an employer representative must be excluded from the telephone CCH until they are called to testify.

PROCEDURES DURING THE HEARING

Each party shall present its case in the same manner as it would if the hearing were conducted with the Hearing Officer and parties in the same room. All parties must have a facsimile machine available for use during the hearing. If additional exhibits are offered during the hearing, a recess will be taken so that such documents may be faxed to the hearing officer and the other parties. If any situation arises that cannot be resolved by electronic means at the time of the hearing, the hearing officer may continue the hearing to another date, by either teleconference or hearing in the field office with the parties in attendance, or may leave the record open for submission of additional materials.

VIDEOCONFERENCE CCH

CCHs may be conducted by videoconference. However, equipment, space and support personnel are limited making this an option of last resort. The foregoing provisions pertaining to telephone CCHs shall also apply to a videoconference CCH.

ATTACHMENTS

1. APPEARANCE SHEET FORM
2. EXHIBIT LIST FORM