Texas Workers' Compensation Rules

28 TAC: Chapters 41 - 69
For injuries prior to January 1, 1991

The following rules are provided as a courtesy by the Division of Workers' Compensation (Division). While the Division makes every effort to ensure the accuracy and completeness of this information, the official version of proposed and adopted rules are those filed with the Secretary of State, which is the repository of official Division rules. Those rules can be accessed directly from the Texas Register, Office of Secretary of State, http://www.sos.texas.gov/texreg/index.shtml. With respect to the following document, or other documents available from this site or others to which it links, the Division and the State of Texas make no warranty as to their accuracy, completeness, reliability, timeliness, and/or usefulness.

For comments and/or questions please contact the Office of Workers' Compensation Council (OWCC) at 512-804-4703 or by e-mail at rulecomments@tdi.texas.gov.

Intentionally left blank

Table of Contents

Intentionally left blank

Intentionally left blank

28 Texas Administrative Code

Chapter 41 - Practice and Procedure: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 41 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=41

SUBCHAPTER A - COMMUNICATIONS

§41.1. ***Name Change*****.**

Pursuant to Senate Bill 1 (71st Legislature, 2nd Called Session, 1989), the following revisions are effective April 1, 1990.

(1) The state agency known since 1913 as the Industrial Accident Board is renamed the Texas Workers' Compensation Commission. Wherever the term "Industrial Accident Board," "Board," or "board," meaning the agency, appears in these rules, it shall mean "Texas Workers' Compensation Commission."

(2) The executive director of the Texas Workers' Compensation Commission exercises all authority necessary to administer Texas Civil Statutes, Articles 8306-8309-1. Wherever the terms "Industrial Accident Board" or "Board," meaning one or more members of Industrial Accident Board, appears in these rules, the terms shall mean the executive director or delegatee.

The provisions of this §41.1 adopted to be effective August 29, 1990, 15 TexReg 4701.

§41.5. ***Compliance and Suspension of Rules*****.**

All parties seeking any action of the board shall comply with these rules, unless in its judgment the board determines that compliance with any of the rules under particular circumstances will result in injustice to either or both parties. Accordingly, rules may be suspended at the discretion of the board and additional hearings held or cases scheduled for hearing out of their regular order (1968).

The provisions of this §41.5 adopted to be effective November 20, 1977, 2 TexReg 4315.

§41.8. ***Contents of Rule-making Petitions*****.**

(a) Changes to these rules may be petitioned by any party. Rule-making petitions shall contain the following:

(1) a brief statement summarizing the proposed section;

(2) the text of the proposed section:

(A) if an existing section, state the title and code number, and prepare the text to indicate the words and punctuation to be added, changed, or deleted;

(B) if a new section, prepare the text in the exact form proposed for adoption;

(3) a statement of the statutory source of the section;

(4) a suggested effective date;

(5) a cost-benefit analysis, estimating the public benefits to be expected as a result of adoption of the

proposed section, and the probable economic cost to persons who are required to comply with the section. This provision is optional;

(6) any other matter required by law;

(7) the petitioner's name, complete mailing address, and telephone number; and

(8) the petitioner's signature.

(b) Five copies of the petition shall be filed with the board by certified mail.

(c) Within 60 days after the petition is submitted, the board shall either initiate rule-making procedures, or notify the petitioner in writing, stating the reasons for denial.

The provisions of this §41.8 adopted to be effective November 6, 1986, 11 TexReg 4429.

§41.10. ***Definitions*****.**

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Health provider--Used in these board rules in a generic sense, having reference to licensed practitioners of medicine, osteopathic, chiropractic, and podiatry.

(2) Insurance carrier or carrier--Shall be synonymous with the term "association," as defined in Texas Civil Statutes, Article 8309, §1, to mean any insurance company authorized to insure payment of workers' compensation including political subdivisions according to Texas Civil Statutes, Article 8309h, §3(b).

(3) Medical expenses--Shall include health provider care by licensed medical doctors, osteopathic physicians, chiropractic physicians, and podiatrists, as well as hospital care, drugs and prescriptions, appliances, nursing care, psychological care, therapy and physical rehabilitation, where the same are prescribed by a health provider named under the Workers' Compensation Law, and rendered or provided by a licensed source.

(4) Medical report or medical treatment--Shall also include, where applicable, osteopathic, chiropractic, podiatric care, and the reports thereof.

(5) Subscriber and employer--Are synonymous.

The provisions of this §41.10 adopted to be effective November 11, 1983, 8 TexReg 4491; amended to be effective October 1, 1985, 10 TexReg 3506.

§41.15. ***Social Security Number*****.**

All forms, reports, and other documents filed with the board which pertain to a claim shall include the social security number of the injured employee.

The provisions of this §41.15 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.20. ***Adjuster Identification*****.**

Each adjuster employed by or on behalf of an insurance company, self-insured, insurance agent, or corporation or by an employer in connection with either the investigation or handling of a workers' compensation claim shall

provide the board with his/her license number as issued under the Insurance Code, Article 21.07-4. This shall be accomplished in each file as soon as practical.

The provisions of this §41.20 adopted to be effective November 11, 1983, 8 TexReg 4491; amended to be effective July 20, 1984, 9 TexReg 3732.

§41.25. ***Attorney Identification.***

Each attorney engaged by either a claimant, insurance carrier, or self-insured in connection with the handling of a workers' compensation claim shall provide the board with his/her permanent state bar identification number promptly upon retention in the claim.

The provisions of this §41.25 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.27. ***Employer's Identification.***

Each carrier and employer shall provide the employer's federal tax identification number on:

(1) the employer's first report of injury;

(2) the employer's supplemental report of injury;

(3) the wage statement;

(4) a Form A-1, A-2, and A-4 (initial filing only);

(5) a statement of controversion;

(6) a notice that employer has become subscriber, Form IAB-20;

(7) a cancellation or nonrenewal notice for workers' compensation insurance, Form IAB-9; and

(8) other forms as the board shall direct (effective 1987).

The provisions of this §41.27 adopted to be effective December 21, 1987, 12 TexReg 4528.

§41.30. ***Self-insureds.***

Unless otherwise specifically noted therein, whenever a board rule makes reference to an insurance carrier or association, this shall be interpreted to include also all self-insured entities as well.

The provisions of this §41.30 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.35. ***Designation of Insurance Carriers' Austin Representative.***

All insurance carriers writing and issuing workers' compensation insurance policies effective in Texas shall designate in writing to the board their Austin representative to the Industrial Accident Board for purposes of communication with the board. The name, business address, and phone number of such representative shall be supplied and kept current at all times. Written notification or communication by the board with such representative shall be deemed notification to the carrier for all purposes.

The provisions of this §41.35 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.40. ***General Policy Concerning Communications.***

The board hereby promulgates its general policy concerning communications to and from the Industrial Accident Board.

(1) The carrier shall send a copy of all written communications relating to a pending claim before the board to the claimant, or if claimant is represented by counsel, directly to his attorney and to the board. Without limiting the generality of the foregoing, the term "written communications" shall include board approved Form A-1, A-2, A-4, and A-2 Lump Sum Transmittal Letter, Statements of Controversion, and Notices of Intention to Appeal.

(2) The attorney representing the claimant shall send a copy of all written communications relating to a pending claim before the board to the insurance carrier and to the board. Without limiting the generality of the foregoing, the term "written communication" shall include written claim for compensation, affidavit of hardship, power of attorney, notice of appeal.

The provisions of this §41.40 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.45. ***Communication to Claimants.***

All notices and written communications to claimant will be mailed to the last address supplied, either on the employer's first report of injury or by claimant's letter. If the board is notified that claimant is represented by an attorney, copies of forms, notices, and correspondence will thereafter be mailed to his attorney and not to the claimant. However, copies of compromise approval notices, prehearing setting, and awards of the board will be mailed to the claimant and his attorney.

The provisions of this §41.45 adopted to be effective November 11, 1983, 8 TexReg 4491.

REPEALED - §41.50. ***Carrier's Address.***

REPEALED effective 1/5/2014.

§41.55. ***Communication to Employers.***

All notices and written communications to employers, including notice of conduct which may result in the imposition of a statutory penalty by the board, will be mailed to the last address supplied either on the employer's first report of injury form or on the notice that the employer has become a subscriber form.

The provisions of this §41.55 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.60. ***Communication to Insurance Carriers.***

Unless otherwise required by statute, or provided by a board rule, all notices and other communications to insurance carriers will be sent either to an address designated by the carrier as its principal Texas mailing address or to its designated Austin representative.

The provisions of this §41.60 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.65. ***Communication to Health Care Provider*****.**

A health care provider shall send a copy of all written communications relative to a pending claim for compensation and the treatment thereof or concerning a statement for professional services rendered to the insurance carrier and to the claimant or his attorney, if represented.

The provisions of this §41.65 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.70. ***Filing of Instruments*****.**

(a) The following shall be filed only with the board in Austin:

(1) notice of injury and claim for compensation (Texas Civil Statutes, Article 8307, §4a);

(2) employer's first report of injury (Texas Civil Statutes, Article 8307, §7);

(3) employer's response to board request for information (Texas Civil Statutes, Article 8307, §7);

(4) notice that employer has become subscriber (Texas Civil Statutes, Article 8308, §18a);

(5) response to request for notice that employer has become subscriber (Texas Civil Statutes, Article 8308, §18a);

(6) notice of cancellation or nonrenewal of compensation insurance (Texas Civil Statutes, Article 8308, §20a);

(7) form A-1, Report of Initial Payment of Compensation (Texas Civil Statutes, Article 8306, §3b);

(8) statement of controversion (Texas Civil Statutes, Article 8306, §18a(a));

(9) application to suspend compensation (Texas Civil Statutes, Article 8306, §12a and Article 8307, §4);

(10) formal statements of position (Texas Civil Statutes, Article 8307, §10);

(11) statement of position in death cases (Texas Civil Statutes, Article 8306, §18a(a));

(12) notice of intention to appeal (Texas Civil Statutes, Article 8307, §5);

(13) response to notice of possible violation (Texas Civil Statutes, Article 8306, §18a(a));

(14) carrier's designation of board representative (Texas Civil Statutes, Article 8306, §18a).

(b) All other correspondence and forms relating to claims arising under the Workers' Compensation Law must be filed with the proper regional office or the proper resident reviewer of the board in Austin.

(c) Forms and printed materials used by any person or state agency which incorporate the term "Industrial Accident Board" shall be modified to substitute the term "Texas Workers' Compensation Commission" after the present supply of forms and materials is exhausted. Parties are encouraged to use revised forms by June 1, 1990.

The provisions of this §41.70 adopted to be effective November 11, 1983, 8 TexReg 4491; amended to be effective August 29, 1990, 15 TexReg 4701.

§41.75. ***Timely Filing*****.**

Forms, reports, and other documents required to be filed before a specified time will be considered timely only if received by the board at Austin or at an appropriate regional office prior to or during business hours on the last permissible day of filing. When the last day for filing is a legal holiday, or is Sunday, then the time is extended so as to include the next succeeding business day.

The provisions of this §41.75 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.80. ***Filing Subsequent to Final Order or Award*****.**

In order for it to continue monitoring a claim for future medical and compensation benefits after a final award, carriers must continue filing with the board in Austin, and in accordance with existing board rules, the following documents: A-1, A-2, A-4, notice of suspension of medical benefits, a copy of the instruments reflecting final disposition of the case, whether by compromise, settlement agreement, court judgment, or dismissal without judgment entry, and upon request a copy of all available medical information.

The provisions of this §41.80 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.85. ***Translation of Documents*****.**

Whenever a party submits or files a medical report, witness statement, or other instrument written in a foreign language, a true and correct English translation shall be filed simultaneously.

The provisions of this §41.85 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.90. ***Responsibility of Translators*****.**

Whenever a non-English speaking party appears before the board or any member thereof at a prehearing conference or a formal hearing, a translator who is proficient in the English language must accompany the party. The responsibility for providing an interpreter rests with the party producing the non-English speaking witness.

The provisions of this §41.90 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.95. ***Wage Information*****.**

The board will accept in lieu of other wage information a stipulated wage agreement executed by the injured employee and the insurance carrier which establishes by mutual agreement an average weekly wage and a weekly compensation rate on a standard form approved by the board. Such stipulation may be considered by the Industrial Accident Board, along with any other evidence concerning the wage rate, but it will not necessarily be binding upon the board. No action by the board on the claim shall be taken as formal approval of such stipulation, and the same shall be regarded only as an informal waiver of proof for purposes of the hearing before the board.

The provisions of this §41.95 adopted to be effective November 11, 1983, 8 TexReg 4491.

REPEALED effective 1/5/2014 - SUBCHAPTER B - ACCESS TO BOARD RECORDS

REPEALED - §41.101. *Purpose*.

REPEALED effective 1/5/2014.

REPEALED - §41.105. *Definitions*.

REPEALED effective 1/5/2014.

REPEALED - §41.110. *Availability*.

REPEALED effective 1/5/2014.

REPEALED - §41.115. Inspection.

REPEALED effective 1/5/2014.

REPEALED - §41.120 *Duplication and Related Services*.

REPEALED effective 1/5/2014.

REPEALED - §41.125. *Duplicating Charges*.

REPEALED effective 1/5/2014.

REPEALED - §41.130. *Certified Copies*.

REPEALED effective 1/5/2014.

REPEALED - §41.135. *Subpoenas for Confidential Records*.

REPEALED effective 1/5/2014.

REPEALED - §41.140. *Record Checks*.

REPEALED effective 1/5/2014.

REPEALED - §41.150. *Publications*.

REPEALED effective 1/5/2014.

REPEALED - §41.160. *Annual Review of Charges*.

REPEALED effective 1/5/2014.

Intentionally left blank

Chapter 42 - Medical Benefits: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 42 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=42

SUBCHAPTER A - GENERAL MEDICAL PROVISIONS

§42.5. ***Applicability and Scope of Rules.***

(a) General. These sections govern all providers of health care services and supplies covered under the Texas Workers' Compensation Act (the Act).

(b) Out-of-state providers. Out-of-state providers of health care services and supplies covered under the Act are governed by these sections.

(c) Effective date. These sections shall be applicable to all services and supplies provided subsequent to November 1, 1988.

The provisions of this §42.5 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.10. ***Acceptance of Rules and Guidelines.***

The filing by a health care provider of a report, the submitting of a bill for services or supplies, or the rendering of treatment to an injured worker entitled to benefits under the Act constitutes acceptance of and agreement to comply with these sections.

The provisions of this §42.10 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.15. ***Definitions.***

The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accrual of medical benefits--The right to medical benefits for a compensable injury accrues as of the date of injury and continues for the life of the injured worker, or until terminated by agreement between the injured worker and the carrier, and is limited in amount only according to the reasonableness of the expense and the necessity of the treatment.

(2) Act--Texas Civil Statutes, Articles 8306-8309(i).

(3) Association--See carrier.

(4) Billing by report--The billing procedure to be used by a health care provider when:

(A) no procedural definition and/or dollar value is established in the board's fee guidelines for the treatment or service rendered; or

(B) when the provider determines that the procedural definition and/or dollar value established in the fee guidelines does not adequately describe the treatment or service rendered. (See §42.145 of this title (relating to Billing.))

(5) Board--The Industrial Accident Board of the State of Texas.

(6) Carrier--Shall be synonymous with "association," as defined in Texas Civil Statutes, Article 8309, §1, to mean any insurance company or entity authorized to insure payment of workers' compensation, including political subdivisions, the State of Texas, the University of Texas, Texas A&M University, and the State Department of Highways and Public Transportation.

(7) Carrier review and audit of individual provider's bills--

(A) Carrier review of individual provider's bill--A careful screening of a bill, as submitted, with minimal supporting medical documentation. Attention is given to relation of date of accident to date of treatment; relation of treatment to injury; proper itemization; correct/appropriate coding; duplicate charges; correct addition; and compliance with fee and utilization guidelines. May result in audit. Performed at the office of the carrier or carrier-audit representative.

(B) Carrier audit of individual provider's bill--A detailed, line-by-line examination of billed charges, comparing charges to services rendered, using maximum medical documentation such as daily PT, and progress and/or clinic notes. Performed at the office of the carrier or carrier-audit representative. Also known as a desk audit.

(8) Carrier review and audit of hospital bills--

(A) Carrier review of hospital's bill--A careful, selective screening of a hospital bill, as submitted, with minimal supporting medical documentation. Attention is given to correct/appropriate coding; computer errors; duplicate charges; potential unrelated charges; and compliance with fee and utilization guidelines. May result in audit. Performed at the office of the carrier or carrier-audit representative.

(B) Carrier audit of hospital's bill--A line-by-line examination of billed charges, comparing the doctor's orders with supporting medical documentation in the patient's chart. Performed either at the office of the carrier or carrier-audit representative (desk audit) or at the hospital (on-site audit).

(9) Claimant--The worker or health care provider making a claim. The health care provider may be a derivative or independent claimant.

(10) Compensable injury--Any injury having to do with and originating in the work, business, trade, or profession of the subscriber, received by an employee while engaged in or about the furtherance of the affairs or business of the subscriber, either upon the subscriber's premises or elsewhere.

(11) Consulting doctor--A licensed doctor who examines a worker, or the worker's medical record, at the request of the treating doctor to aid in diagnosis and/or treatment, and who may, at the request of the treating doctor, provide specialized treatment of the compensable injury or illness.

(12) Doctor--A licensed practitioner of medicine, osteopathy, chiropractic, or podiatry.

(13) Health care provider (provider)--A health care provider is:

(A) a doctor or other person duly licensed to practice one or more of the healing arts within the limits of the license of the licentiate;

(B) a health facility; and

(C) an entity providing health care which is covered under the Act.

(14) Health facility--A health facility is:

(A) a general or specialty hospital providing inpatient and outpatient services, whether licensed

by the Texas Department of Health or the Texas Department of Mental Health and Mental Retardation;

(B) an outpatient surgery center not covered by a hospital's license, other than a physician's office, and licensed by the Texas Department of Health; and

(C) an outpatient imaging center not covered by a hospital's license, other than a physician's office, which provides radiographic, computerized tomography, magnetic resonance imaging, or other diagnostic imaging services.

(15) Independent medical exam--See medical exam order.

(16) Injured worker's representative--Any person designated in writing by the injured worker to assist him or her in pursuing a claim for compensation.

(17) Liability for medical services--This is the sole responsibility of the carrier prior to final disposition of a claim to pay fair and reasonable charges for necessary medical services rendered to an injured worker. This is the responsibility of the injured worker:

(A) after final disposition of a claim for services that are not related to the compensable injury;

(B) for services not related to the compensable injury; and

(C) for services rendered after the liability of the carrier has been terminated.

(18) Maximum medical recovery--Exists when no further improvement in the injured worker's health is reasonably expected from additional medical treatment or the passage of time.

(19) Medical exam order (also known as independent medical exam)--An order of the board requiring a claimant to present him or herself to be examined by a physician or chiropractor. The board may enter a medical exam order either on its own motion, or at the carrier's request. The claimant has the right to have his or her doctor present during a carrier-requested examination, the cost of which shall be borne by the carrier.

(20) Medical report--A board-approved form or narrative letter that transmits medical information. Reports must include all relevant information.

(21) Small rural hospital--A general hospital licensed for less than 100 beds which is located in a county classified as rural by the Health Care Financing Administration for purposes of Medicare reimbursement.

(22) Subscriber--Any employer who has obtained workers' compensation insurance coverage. This includes all political subdivisions, the State of Texas, the University of Texas, Texas A&M University, and the State Department of Highways and Public Transportation.

(23) Treating doctor--A doctor who is primarily responsible for the treatment of a worker's compensable injury or illness.

The provisions of this §42.15 adopted to be effective October 20, 1988, 13 TexReg 4990; amended to be effective May 11, 1989, 14 TexReg 2082.

§42.20. ***Who May Treat.***

(a) Licensed doctors of medicine, osteopathy, chiropractic, and podiatry may act as treating doctors for injured workers entitled to benefits under the Act.

(b) Treating doctors may prescribe treatment to be rendered by other persons licensed to provide health care, or by persons not licensed to provide health care who work under the direct supervision and control of the treating doctor.

(c) Treating doctors may prescribe nursing care to be rendered by unlicensed persons, including, but not limited to, members of the injured worker's family.

The provisions of this §42.20 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.25. ***Prohibited Practices*****.**

(a) The following, when committed knowingly or willfully, shall be deemed prohibited practices by health care providers, and may result in action by the board, including referral to professional grievance committees, licensing agencies, or the attorney general's office:

(1) failing, neglecting, or refusing to observe and comply with the board's rules;

(2) failing, neglecting, or refusing to submit complete, adequate, and detailed reports, when required, or to respond to requests by the carrier, the claimant or claimant's representative, or the board for additional reports or other claim-related information. (See §42.33(c) of this title (relating to Health Care Providers' Reporting Requirements));

(3) submitting false or misleading reports, or colluding with other persons in the submission of false or misleading reports;

(4) submitting inaccurate or misleading bills;

(5) repeated overcharging;

(6) knowingly submitting a bill to an injured worker for treatment of a compensable injury or illness;

(7) charging or attempting to charge fees for required reports, handling fees, interest, or any surcharge whatsoever to an injured worker for treatment of a compensable injury or illness;

(8) persistently using contraindicated or hazardous treatment measures;

(9) repeated overutilization;

(10) using or prescribing narcotic, addictive, or dependency-inducing drugs for other than therapeutic purposes; or

(11) practicing after suspension or revocation of a provider's practice privilege by the appropriate licensing agency, after conviction in any court of any offense involving moral turpitude, or after a declaration of mental incompetency by a court of competent jurisdiction.

(b) Written allegations of repeated overcharging (see subsection (a)(5) of this section), or repeated overutilization (see subsection (a)(9) of this section) shall be referred to appropriate regulatory agencies, pursuant to Texas Civil Statutes, Article 8306, §7b(m). Allegations should be accompanied by appropriate documentation.

The provisions of this §42.25 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.28. ***Confirmation of Coverage*****.**

The carrier shall confirm medical benefits coverage upon the request of a health care provider when no bona fide

dispute exists as to liability.

The provisions of this §42.28 adopted to be effective December 6, 1988, 13 TexReg 5826.

§42.30. ***Written Communications*****.**

(a) A health care provider shall send copies of all written communications related to a claim, including reports, to the carrier and, except for bills, to the injured worker or his or her representative. The provider may require written evidence of representative capacity from the claimant's representative.

(b) A provider shall submit bills for services or supplies to the carrier only. A provider shall send copies of bills to the injured worker, or his or her representative, only upon request.

(c) A provider shall send copies of all written communications, including reports and bills, to the board upon the board's request.

(d) All written communications from providers shall contain the following identifying information, if known:

(1) the patient's full name, address, and social security number;

(2) the patient's IAB claim number;

(3) the date and nature of the injury or illness;

(4) the employer's name and address;

(5) the carrier's name;

(6) the provider's name, address, and federal tax identification number.

(e) A separate report or bill shall be filed for each injury.

(f) All written communications must be legible and reproducible.

The provisions of this §42.30 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.33. ***Health Care Providers' Reporting Requirements*****.**

(a) Providers shall prepare written reports according to the specifications set out in the sections of this subchapter relating to required reports, and shall submit them to the carrier and the injured worker, or his or her representative, as provided in §42.30 of this title (relating to Written Communications).

(b) All required reports shall contain the identifying information required by §42.30(d) of this title (relating to Written Communications).

(c) A provider who fails to comply with the reporting requirements, when applicable, as determined by the board, shall lose his or her right to payment for treatment or services rendered under the Act, pursuant to Texas Civil Statutes, Article 8306, §7.

(d) The board may prescribe forms for reporting purposes.

The provisions of this §42.33 adopted to be effective December 6, 1988, 13 TexReg 5826.

§42.35. ***Required Reports: First Report.***

(a) The treating doctor shall make an initial report, and submit it to the carrier and the injured worker, or his or her representative, as provided in §42.30 of this title (relating to Written Communications) no later than seven working days after the injured worker's first visit.

(b) The first report shall contain the following information:

(1) all identifying information required by §42.30(d) of this title (relating to Written Communications);

(2) complete history, as related by the claimant, of the occupational accident or illness;

(3) complete listing of positive physical findings;

(4) specific diagnosis with appropriate procedural and diagnostic code(s) and narrative definition(s) relating to the injury;

(5) type of treatment rendered;

(6) anticipated date the worker may achieve maximum medical recovery, if possible; and

(7) anticipated date of release to return to work, if possible.

The provisions of this §42.35 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.40. ***Required Reports: Subsequent Reports*****.**

(a) Subsequent reports shall be submitted to the carrier and the injured worker, or his or her representative, as provided in §42.30 of this title (relating to Written Communications), and shall contain the following information:

(1) all identifying information required by §42.30(d) of this title (relating to Written Communications);

(2) type of treatment rendered;

(3) anticipated date the worker will achieve maximum medical recovery, if possible; and

(4) anticipated date of release to return to work, if possible.

(b) If treatment continues, the provider shall submit a report:

(1) sixty days from the date treatment began; and

(2) one hundred and twenty days from the date treatment began.

The provisions of this §42.40 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.55. ***Required Reports: Change of Status Reports*****.**

(a) The treating doctor shall submit a change of status report to the carrier and the injured worker, or his or her representative, as provided in §42.30 of this title (relating to Written Communications) within seven days of:

(1) determining that the patient has achieved maximum medical recovery;

(2) releasing the patient to return to work; or

(3) receiving notice that the patient has changed treating doctors.

(b) If there is no permanent medical impairment, this shall be noted. If there is permanent impairment, the treating doctor may elect to perform an examination prior to writing the change of status report.

(c) The change of status report shall contain the following information:

(1) all identifying information required by §42.30(d) of this title (relating to Written Communications); and

(2) all pertinent objective findings such as loss of member, description of scars or deformities, visual acuity, measured ranges of motion, strength, measurable atrophy, muscle spasm, reflex changes, sensory changes, and physical and occupational restrictions.

The provisions of this §42.55 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.60. ***Required Reports: Special Reports*****.**

(a) All special reports shall contain all identifying information required by §42.30(d) of this title (relating to Written Communications).

(b) The provider shall submit special reports to the carrier and the injured worker, or his or her representative, as provided in §42.30 of this title (relating to Written Communications) under the following circumstances.

(1) Hospitalization. A report shall be submitted when the patient is discharged from a hospital.

(2) Amputation. When all or part of any limb or digit is amputated, the treating doctor shall submit a report and a chart showing the exact point of amputation.

(3) Vision loss.

(A) Loss of vision shall be calculated on the actual loss of vision as a result of an injury, and not on loss of vision after restoration of vision by proper fitting glasses.

(B) The board considers loss of an eye to have occurred when loss of vision reaches 90%.

(C) A change of status report for a patient who has suffered vision loss shall be based on the board's Table of Visual Losses of One Eye, published in the appendix to this chapter. (See §55.25 of this title (relating to Loss of an Eye.))

(4) Hearing impairment.

(A) Hearing tests for use in compensation ratings shall be derived from the pure-tone audiogram calculated to ANSI-S3.6-1969 standards. Examination should be performed by a medical specialist who does hearing evaluations or by an audiologist having the Certificate of Clinical Competence from the American Speech-Language-Hearing Association upon referral. Hearing handicap will be based on the functional state of both ears.

(B) A change of status report for a patient who has suffered hearing impairment shall be based on the board's Table of Monaural Hearing Impairment, published in the appendix to this chapter. (See §55.30 of this title (relating to Hearing Impairment.))

(5) Medical examination orders.

(A) The examining doctor shall submit a report within seven days of examining a claimant under board order.

(B) If the examination was ordered on the board's own motion, the original report and the bill shall be sent to the board. Copies shall be sent to the claimant, or claimant's representative, and the carrier.

(C) If the examination was ordered at the carrier's request, the original report and the bill shall be sent to the carrier. Copies shall be sent to the claimant, or claimant's representative, and the board. (See Chapter 69 of this title (relating to Medical Examination Orders.))

(6) Demand for surgery. The report accompanying a demand for surgery shall establish that, in all reasonable medical probability:

(A) the requested surgical procedure will either effect a cure, or materially and beneficially improve and relieve the patient's condition; and

(B) the surgery is medically advisable.

The provisions of this §42.60 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.65. ***Changing Treating Doctors*****.**

(a) When an injured worker elects to change treating doctors, the subsequent doctor shall make a diligent effort to secure from the prior doctor or from the carrier all available medical information. The prior doctor shall immediately forward, upon proper request, all requested information, including x-rays, to the new treating doctor.

(b) The carrier shall identify all prior treating doctors and provide all relevant medical records in its claim file to the subsequent doctor upon request.

(c) All reasonable costs incurred in transferring records under this section shall be borne by the carrier.

(d) The subsequent doctor is responsible for submitting all required reports.

The provisions of this §42.65 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.75. ***Excess Recovery from Third Party Actions*****.**

(a) When an injured worker has received an excess recovery in a third party action, pursuant to Texas Civil Statutes, Article 8307, §6a(c), the carrier shall immediately:

(1) notify all providers of the date of the judgment or agreed judgment, and the amount of the excess; and

(2) file a copy of the judgment or agreed judgment with the board.

(b) The provider shall continue to submit reports as required by these sections.

(c) Bills for services and supplies provided after the judgment date shall be sent to the injured worker, or his or her representative. Copies of such bills shall be filed with the carrier.

(d) The claimant shall notify the board, the carrier, and current health care providers when the amount of the excess has been reduced to zero. Upon receipt of such notice, the provider(s) shall resume billing only the carrier, pursuant to §42.30 of this title (relating to Written Communications).

The provisions of this §42.75 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.78. ***Reports To Be Filed by the Carrier.***

The carrier shall file current medical reports with the board under the following conditions:

(1) after the expiration of four weeks of disability;

(2) when filing a notice of controversion based on medical grounds;

(3) upon receipt of narrative reports submitted by the treating doctor pursuant to §42.40 of this subchapter (relating to Required Reports: Subsequent Reports);

(4) when filing an A-2 giving return to work date or release to return to work date;

(5) when filing an A-4 showing additional lost time;

(6) when requesting a prehearing conference;

(7) when filing a CSA;

(8) when filing an A-2 lump sum showing payment for permanent partial disability resulting from a specific injury; and

(9) when requested by the board.

The provisions of this §42.78 adopted to be effective December 6, 1988, 13 TexReg 5826.

§42.80. ***Assignment of Medical Benefits.***

A health or accident insurance company which has been assigned an injured worker's right to medical benefits under the Act shall file a true copy of the assignment with the carrier and the board within five days of said assignment.

The provisions of this §42.80 adopted to be effective October 20, 1988, 13 TexReg 4990.

§42.85. ***Voluntary Arbitration.***

The board shall establish procedures for selection of voluntary arbitration panels to assist the board in regulating fees and charges submitted by health care providers to the full extent authorized by Texas Civil Statutes, Article 8306, §7.

(1) The executive director of the board shall prepare bylaws subject to the final approval of the board governing the operation and functions of the various voluntary arbitration panels.

(2) The executive director of the board shall implement the procedures so adopted by the board. The executive director or designee shall supervise the arbitration panels established by the board, and shall serve as chairman of each panel. However, the executive director may from time to time designate the assistant executive director of the board or other person to act as chairman in his or her place.

(3) The procedures for selection of panels and the bylaws shall be available to all parties.

The provisions of this §42.85 adopted to be effective December 6, 1988, 13 TexReg 5826.

§42.90. ***Demand for Surgical Operation*****.**

Any written demand for a surgical operation under Texas Civil Statutes, Article 8306, §12e, or any application for reduction or suspension of compensation pursuant to Article 8307, §4, must be filed with the board at least seven calendar days prior to the date of hearing. However, where good cause for waiving strict compliance is approved by the board, parties may file demand for or tender of surgery on or before the scheduled date of hearing.

The provisions of this §42.90 adopted to be effective December 6, 1988, 13 TexReg 5826.

§42.95. ***Scars and Deformities*****.**

In all cases involving severe and disfiguring burns or lacerations, a descriptive medical report of the scars or deformity shall be submitted by either the carrier or the claimant. In all such cases involving scars to the face, arms, or hands, a color photograph taken after maximum healing has occurred must be submitted at or prior to any final board action on the claim.

The provisions of this §42.95 adopted to be effective December 6, 1988, 13 TexReg 5826.

Intentionally left blank

SUBCHAPTER B - MEDICAL COST EVALUATION

§42.101. *Purpose*.

The fee guidelines promulgated in this subchapter are intended to establish presumptively fair and reasonable charges for health care services and supplies which may be covered under the Act.

The provisions of this §42.101 adopted to be effective December 6, 1988, 13 TexReg 5827.

§42.105. *Medical Fee Guideline*.

(a) The maximum allowable charge under the Medical Fee Guideline for Services Rendered under the Texas Workers' Compensation Act is the lesser of:

(1) the provider's usual fees and charges; or

(2) the fees and charges established by use of a relative value scale adopted under subsection (b) of this section.

(b) The commission will publish and adopt by reference herein a relative value scale used in conjunction with the 1990 CPT (Physician's Current Procedural Terminology) as part of the Medical Fee Guideline for Services Rendered under the Texas Workers' Compensation Act. This guideline is published as the 1991 Texas Workers' Compensation Commission Medical Fee Guideline which is incorporated herein by reference. This shall be the same guideline adopted by the Texas Workers' Compensation Commission and incorporated into §134.201 of this title (relating to Medical Fee Guideline for Medical Services and Equipment Provided under the Texas Workers' Compensation Act) as it exists on the effective date of this section and as it may be amended thereafter by the commissioners. The guideline may be obtained from the Reprographics Department, Texas Workers' Compensation Commission, The Southfield Building, 4000 South I-H 35, Austin, Texas 78704.

(c) The allowable charge for the purchase or rental of durable medical equipment is the lesser of:

(1) the provider's usual fees and charges; or

(2) the fees and charges established in the durable medical equipment section of the Medical Fee Guideline, which is incorporated herein by reference.

(d) The guidelines established herein shall be used for services rendered, and durable medical equipment prescribed, on and after the effective date of this section.

The provisions of this §42.105 adopted to be effective September 1, 1988, 13 TexReg 4131; amended to be effective February 5, 1991, 16 TexReg 368; amended to be effective December 11, 1991, 16 TexReg 6922.

§42.115. *Pharmaceutical Fee Guideline*.

(a) The maximum allowable charge for pharmaceuticals under the Pharmaceutical Fee Guideline for Services Rendered Under the Workers' Compensation Law is the lesser of:

(1) the provider's usual charge; or

(2) the fees established by the formulas for brand-name and generic pharmaceuticals as described in subsection (c) of this section.

(b) This section applies to the dispensing of all pharmaceuticals on and after February 1, 1991, excluding the

inpatient health care facility setting.

(c) The formulas for establishing fair and reasonable fees and charges for brand-name and generic pharmaceuticals are:

(1) brand-name pharmaceutical formula: average wholesale price (AWP) times 1.09 plus $4.00;

(2) generic pharmaceutical formula: AWP times 1.38 plus $7.50.

(d) The AWP shall be determined with the monthly publication of Medispan. The publication that shall be used for the calculation shall be the same month that includes the date of service. When an AWP is changed during the month, the provider shall still use the AWP from the monthly publication. The two Medispan publications to be used are:

(1) Prescription Pricing Guide; or

(2) Generic Buying and Reimbursement Guide.

(e) When a generic pharmaceutical costs more than a brand-name pharmaceutical, according to the formulas described in subsection (c) of this section, the commission will consider the fair and reasonable price to be the brand-name equivalent, as calculated under subsection (c)(1) of this section.

(f) When there is no national drug code (NDC) number listed in the Medispan Generic Buying and Reimbursement Guide for a manufacturer, or when the provider fails to list the NDC number for each generic pharmaceutical on the bill submitted to the insurance carrier, the commission will determine the fair and reasonable reimbursement for generic pharmaceuticals by the following formula: generic equivalent average price (GEAP) times 1.38 plus $7.50.

The provisions of this §42.115 adopted to be effective September 1, 1988, 13 TexReg 4131; amended to be effective February 5, 1991, 16 TexReg 372.

§42.135. ***Liability for Covered Health Care*****.**

(a) The carrier is solely liable to pay a provider for health care which is covered under the Act.

(b) The injured worker shall not be billed for covered health care, nor for any amounts in excess of the amount adjudicated as fair and reasonable. The injured worker shall not be billed for reports, handling fees, interest, or any other surcharge related to the covered health care. The provider shall not refer the injured worker to a collection agency or a retail credit organization.

(c) This section does not apply if the injured worker has received an excess recovery from a third party, pursuant to Texas Civil Statutes, Article 8307, §6a, and §42.60 of this title (relating to Excess Recovery from Third Party Actions.)

The provisions of this §42.135 adopted to be effective October 20, 1988, 13 TexReg 4994.

§42.137. ***Utilization Review.***

(a) The claimant and the carrier may jointly request the board for an informal review and determination of the necessity or proposed medical treatment.

(b) The application shall be accompanied by supporting documentation from one or more health care providers.

(c) The determination of necessity shall be informal, for the purpose of resolving disputes, and shall not be

binding on either party.

(d) The carrier shall bear the cost of a review provided under this section.

The provisions of this §42.137 adopted to be effective January 1, 1990, 14 TexReg 6671.

§42.140. *Amount of Payment.*

(a) General. A provider will be paid an amount that is fair and reasonable. It shall be presumed that fair and reasonable amounts are those established in the fee guidelines. Any adjudication by the board as to fair and reasonable amount will be consistent with fee guidelines unless evidence has been properly filed with the board indicating that a different amount is fair and reasonable. The board will consider any request for payment in excess of the fee guidelines when filed by report.

(b) Payment for services billed by report. The carrier shall base payment for services billed by report upon review of the submitted documentation and recommendations from the carrier's medical consultant.

The provisions of this §42.140 adopted to be effective October 20, 1988, 13 TexReg 4994.

§42.145. *Billing.*

(a) General. All bills submitted to carriers shall:

(1) contain the identifying information required by §42.30(d) of this title (relating to Written Communications), if available;

(2) itemize services and goods provided; and

(3) after January 1, 1989, identify services and goods provided by appropriate procedural and diagnostic codes, with descriptions, as established in the fee guidelines.

(b) Billing by report.

(1) A provider shall bill by report when no procedural definition and/or dollar value is established for a procedure, or when a provider seeks payment in excess of that established in the fee guidelines.

(2) The report shall:

(A) describe the procedure in sufficient detail to permit evaluation;

(B) contain substantiating documentation to establish the fairness and reasonableness of the charge(s); and

(C) include correct diagnostic codes and descriptions, when appropriate.

(3) The report shall be attached to the bill.

(c) Billing requirements. Failure to comply with billing requirements shall suspend the carrier's obligation to review the bill. The carrier shall return a noncompliant bill to the provider within three working days of receipt.

(d) Billing forms. The board may prescribe forms for billing purposes.

The provisions of this §42.145 adopted to be effective October 20, 1988, 13 TexReg 4994.

§42.155. ***Carrier Review of Bills*****.**

(a) General. The carrier shall promptly date stamp each health care provider bill with the date the same was received by the carrier. Failure on the carrier's part to comply with this rule shall create a rebuttable presumption that such health care provider bill was received by the carrier within five business days of the date of such bill.

(b) Time for review.

(1) General. The carrier shall complete its review of a bill within 30 days of receipt. The review may include an audit, as described by §42.160 of this title (relating to Carrier Desk Audit of Bills). A bill may not be reduced unless the carrier conducts an audit.

(2) Pharmaceutical bills. The carrier shall complete its review of a pharmaceutical bill within 10 days of receipt.

(3) Hospital bills; on-site audit. If the carrier decides to conduct an on-site audit of a hospital bill, the carrier shall proceed according to the provisions of §42.165 of this title (relating to Carrier On-Site Audit of Hospital Bills). The time for review shall be extended until completion of the on-site audit.

(c) Completion of review. Within 10 days of completion of the review, or, if a pharmaceutical bill, within five days of completion of the review, the carrier shall:

(1) remit to the provider full payment of the bill as submitted; or

(2) remit to the provider the amount of payment the carrier has determined to be appropriate. If the carrier remits to the provider an amount less than the amount billed, or remits no payment, the carrier shall immediately send the provider and the claimant or claimant's representative copies of the appropriate medical audit summary sheet, as described in §42.160 and §42.165 of this title (relating to Carrier Desk Audit of Bills and Carrier On-Site Audit of Hospital Bills). The copies sent to the provider and the claimant or claimant's representative shall contain the following statement. "The insurance carrier and not the claimant/patient or employer, is solely liable for all reasonable and necessary medical treatment rendered in connection with the injury, and no billing for any unpaid amounts should be directed to the claimant/patient or employer, nor should any attempt be made to collect any unpaid amount from the claimant/patient or employer, unless the claim has been denied by the board or the court."

(d) Suspension of medical benefits. The carrier's failure to comply with the requirements of subsection (c) of this section within the time indicated constitutes suspension of medical benefits, pursuant to Texas Civil Statutes, Article 8306, §18a(b).

(e) Bill reduction. Forty days after posting, the health care provider may request assistance from the board in compelling the carrier to file reasons for reducing a bill.

The provisions of this §42.155 adopted to be effective October 20, 1988, 13 TexReg 4994; amended to be effective May 31, 1990, 15 TexReg 2803.

§42.160. ***Carrier Desk Audit of Bills*****.**

(a) During the audit, the carrier and the provider shall make reasonable attempts to resolve any questions or problems regarding the bill under audit. The provider shall submit to the carrier any additional information requested that is relevant to the audit. If a hospital bill is under review, the hospital shall submit the medical record at the carrier's request.

(b) Every audit shall be documented on the medical audit summary sheet, which shall include the following information:

(1) claimant's name;

(2) IAB claim number;

(3) provider's name, address, and federal tax identification number;

(4) health care provider-reviewer's report; and

(5) for each audited item, the following: applicable code; code description; amount billed; amount paid; and, if appropriate, amount reduced or denied, accompanied by a sufficient explanation for each reduction or denial.

The provisions of this §42.160 adopted to be effective October 20, 1988, 13 TexReg 4994.

§42.165. ***Carrier On-Site Audit of Hospital Bills.***

(a) The carrier may request an on-site audit of a hospital bill.

(b) The request shall:

(1) be made in writing;

(2) be made no later than 40 days after receipt of the bill; and

(3) be accompanied by payment of either 75% of the bill as submitted, or a $50 audit fee.

(c) The audit shall be conducted according to the Instructions for On-Site Audit of Hospital Charges by Workers' Compensation Carrier, hereby adopted by reference. Copies of this document will be made available upon written request to the Administrator, Medical Cost Evaluation Division, Industrial Accident Board, 200 East Riverside, First Floor, Austin, Texas 78704-1287.

(d) Every audit shall be documented on the medical audit summary sheet, which shall include the following information:

(1) claimant's name;

(2) IAB claim number;

(3) provider's name, address, and federal tax identification number;

(4) health care provider-reviewer's report; and

(5) for each audited item, the following: applicable code; code description; amount billed; amount paid; and, if appropriate, amount reduced or denied, accompanied by a sufficient explanation for each reduction or denial.

The provisions of this §42.165 adopted to be effective October 20, 1988, 13 TexReg 4994.

§42.175. ***Miscellaneous Covered Services.***

(a) Medical reports.

(1) The carrier shall pay the fair and reasonable charges of the provider for the preparation and submission of all required medical reports, records, and information. There shall be no additional charge

made to the patient or the patient's representative for copies of these documents except clinical reports (hospital) when a separate request is made. There shall be no additional charge made to the board for copies of any of these documents.

(2) The following shall serve as guidelines for fair and reasonable charges for required reports and records under this chapter:

Attached Graphic

(b) Travel expenses. Whenever it becomes reasonably necessary for an injured worker to travel outside the city or county of residence in order to obtain medical care covered under the Act, the reasonable costs thereof shall be reimbursed by the carrier. This would include, where appropriate, the reasonable costs of meals and lodging. All travel by private conveyance shall be based upon the mileage expense allowance then current for travel by state employees.

The provisions of this §42.175 adopted to be effective October 20, 1988, 13 TexReg 4994.

Intentionally left blank

SUBCHAPTER D - DISPUTE RESOLUTION

§42.305. *Requesting Dispute Review and Resolution*.

(a) Either the carrier or the provider may request board review and resolution of a dispute arising over a medical bill under the following conditions:

(1) the charge has been incurred; and

(2) the carrier has admitted liability for compensation.

(b) For the purposes of this chapter, as required by Texas Civil Statutes, Article 8306, §7b(q), the carrier will be deemed to have admitted liability for compensation until the carrier files with the board proper notice of a bona fide liability dispute.

The provisions of this §42.305 adopted to be effective October 20, 1988, 13 TexReg 4998.

§42.307. *Procedure for Requesting Dispute Review*.

(a) A request for dispute review shall be made in writing, and filed with the administrator of the Medical Cost Evaluation Division.

(b) The request shall be made no later than 365 days after the date the disputed bill was submitted to the carrier.

(c) The request shall include the following:

(1) all identifying information required by §42.30(d) of this title (relating to Written Communications);

(2) the bill as originally submitted to the carrier;

(3) copies of all written communications relating to the dispute; and

(4) written documentation that all reasonable efforts to resolve the dispute have been exhausted.

(d) The board may request additional information, and may compel production of documents, if necessary.

(e) A carrier requesting review shall:

(1) file the original request in person with the Medical Cost Evaluation Division;

(2) tender the review fee to the board at the time of filing, unless the provider is responsible for the fee, as provided in §42.309 of this title (relating to Payment for the Review); and

(3) send simultaneously, by certified mail, a copy of the request to the provider.

(f) A health care provider requesting review shall:

(1) file the original and one copy of the request by mail or in person with the Medical Cost Evaluation Division; and

(2) tender the review fee to the board, if responsible, as provided in §42. 309 of this title (relating to Payment for the Review).

(g) When a health care provider requests review, the board will notify the carrier's Austin board representative to

appear in person to accept the carrier's copy of the request and tender the review fee, unless the provider is responsible for the fee, as provided in §42.309 of this title (relating to Payment for the Review).

The provisions of this §42.307 adopted to be effective February 17, 1989, 14 TexReg 694.

§42.308. ***Procedure for Responding to a Request for Dispute Review.***

(a) The respondent may file a response with the administrator of the Medical Cost Evaluation Division no later than 30 days after receiving the request. A copy of the response shall be sent simultaneously to the requestor.

(b) The response shall include, but shall not be limited to, the items set out in subsection (c) of §42.307 of this title (relating to Procedure for Requesting Dispute Review).

(c) The board may request additional information, and may compel production of documents, if necessary.

(d) If the respondent is a health care provider who is responsible for the review fee, as provided in §42.309 of this title (relating to Payment for the Review), he or she shall tender the fee to the board when filing the response. If such provider fails or refuses to tender the fee, the board will notify the carrier to tender the fee or withdraw the request.

The provisions of this §42.308 adopted to be effective February 17, 1989, 14 TexReg 694.

§42.309. ***Payment for the Review.***

(a) The board shall set reasonable fees for reviewing fee and utilization disputes. The board may adjust these fees periodically, as necessary.

(b) The review fee shall be paid by check or money order, payable to Industrial Accident Board.

(c) The carrier, whether requester or respondent, shall be responsible to pay for the review, unless the board has found that the provider has overutilized the board's review system.

(d) A provider shall be found to have overutilized the board's review system after three separate disputes involving the provider have been presented to the board for review, and have been resolved by the board against the provider within a 12-month period. The board will notify a provider when such finding is made, and shall maintain a record of such findings. In all subsequent reviews of that provider's bills, the provider, whether requester or respondent, shall be responsible to pay for the review.

The provisions of this §42.309 adopted to be effective February 17, 1989, 14 TexReg 694.

§42.310. ***Board Review and Resolution.***

(a) After all required information has been filed, the board will commence to review the dispute.

(b) No later than 31 days after commencing the review, the executive director or designee shall issue findings and conclusions in writing to the disputing parties.

(c) If the merits of the injured worker's claim have not been previously resolved by final award, judgment, or settlement, the findings and conclusions of the executive director or designee will be issued as a recommendation, to be filed pending final resolution of the merits of the injured worker's claim.

(d) If the merits of the injured worker's claim have been previously resolved by final award, judgment, or settlement, or if the injured worker is entitled to lifetime benefits under Texas Civil Statutes, Article 8306, §10(b),

the board may, upon request of a disputing party, issue an award of medical benefits, based on the findings and conclusions of the executive director or designee.

(e) If the award is entered against the carrier on the issue of fees and charges only, it shall include an assessment of the statutory interest due.

The provisions of this §42.310 adopted to be effective October 20, 1988, 13 TexReg 4998.

§42.315. *Appeal*.

An award entered under this chapter may be appealed pursuant to the provisions of Texas Civil Statutes, Article 8307, §5.

The provisions of this §42.315 adopted to be effective October 20, 1988, 13 TexReg 4998.

Intentionally left blank

Intentionally left blank

Chapter 43 - Insurance Coverage: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 43 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=43&rl=Y

§43.5. ***Notice That Employer Has Become Subscriber*****.**

The notice that employer has become subscriber shall be filed with the board's Austin office by certified mail or in person within 30 days of the effective date of the policy and the notice must be completed in detail and shall include:

(1) name, address, and occupation of insured;

(2) effective date of the policy;

(3) signature of the insurance company representative;

(4) complete name of the insurance company;

(5) policy number, and if notice is a rewrite of an existing policy, this information must be included on the notice;

(6) area or location of the business;

(7) Form 154, which shall be filed for divided risk coverage; and

(8) the employer's federal tax identification number (effective 1987).

The provisions of this §43.5 adopted to be effective November 20, 1977, 2 TexReg 4316; amended to be effective September 25, 1979, 4 TexReg 3230; amended to be effective November 11, 1983, 8 TexReg 4492; amended to be effective October 1, 1985, 10 TexReg 3506; amended to be effective December 21, 1987, 12 TexReg 4529.

§43.10. ***Termination of Coverage*****.**

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Termination of coverage--Occurs when either party withdraws from a policy of workers' compensation insurance, either by canceling the policy in the middle of its term, or by declining to renew the policy on its anniversary date.

(2) Rejection of the workers' compensation system--Occurs when a subscriber terminates coverage and fails or refuses to purchase a policy of workers' compensation insurance.

(b) Carrier's notice to the Industrial Accident Board. The carrier shall notify the board when coverage is terminated by filing Board Form IAB-9, "Cancellation or Non-Renewal Notice." The notice shall be:

(1) filed in person or by certified mail; and

(2) filed on or before the effective date of termination.

(c) Carrier's notice to subscriber. The carrier shall notify the subscriber when the carrier terminates coverage. No notice is required when the subscriber terminates coverage. Notice to the subscriber shall be:

(1) in writing;

(2) sent by certified mail; and

(3) mailed no later than the 30th day before the effective date of termination; or

(4) mailed no later than the 10th day before the effective date of termination if termination is due to:

(A) fraud in obtaining coverage;

(B) failure to pay a premium when payment is due;

(C) an increase in the hazard for which the subscriber seeks coverage that results from an action or omission of the subscriber and that would produce an increase in the rate; or

(D) a determination by the commissioner of insurance that coverage would be illegal or hazardous to the interests of subscribers, creditors, or the general public.

(d) Effective date of termination of coverage.

(1) Termination by the carrier shall be effective on the latest of the following dates:

(A) on the 31st day after the carrier notifies the subscriber as provided in subsection (c) of this section, or, if the termination is due to one of the conditions set out in subsection (c)(4) of this section, on the 11th day after the carrier notifies the subscriber as provided in subsection (c) of this section;

(B) the day the carrier files notice of termination with the board, as provided in subsection (b) of this section; or

(C) the actual termination date recited on the notice.

(2) Termination by the subscriber shall be effective on the actual termination date recited on the notice.

(3) Termination shall be deemed effective on the date a subsequent carrier files notice of inception of coverage for the subscriber.

(e) Duties of a subscriber who terminates coverage and rejects the workers' compensation system.

(1) A subscriber who terminates coverage and rejects the workers' compensation system shall, on or before the effective date of termination:

(A) post copies of notice of noncoverage, on a board-prescribed form, in three places around each work site affected; and

(B) file a copy of the notice of noncoverage with the board.

(2) Failure to comply renders the subscriber liable for statutory benefits to injured employees.

The provisions of this §43.10 adopted to be effective December 21, 1989, 14 TexReg 6419.

REPEALED - §43.15. *Sanctions*.

REPEALED effective 12/8/2013.

REPEALED - §43.20. *Required Information to Insureds.*

REPEALED effective 12/8/2013.

Intentionally left blank

Intentionally left blank

Chapter 45 - Employer's Report of Injury or Disease: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 45 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=45&rl=Y

§45.5. ***Forms*****.**

The employer's first report of injury and supplemental report of injury shall be completed on standardized forms approved by the board for that purpose. Every insurance carrier writing workers' compensation coverage effective in Texas shall provide an adequate number of the current forms in use to each insured employer.

The provisions of this §45.5 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.10. ***Employer's Report of Injury and Disease*****.**

(a) Since the efficient operation of workers' compensation depends so greatly upon the insurance carrier and Industrial Accident Board receiving prompt notice of possible claims, the employer shall report injuries and occupational diseases by completing board Form E-1, Employer's First Report of Injury, and sending the original to the Industrial Accident Board and a copy to the employer's insurance carrier no later than eight days after:

(1) the employer has notice or knowledge of an injury to an employee resulting in absence from work for more than one day; or

(2) the employer receives notice from an employee of the manifestation of an occupational disease.

(b) The E-1 must be completed and filed regardless of the employer's position on the occurrence of the injury or occupational disease; it shall not be deemed an admission of liability for the claim. If the employer denies the injury or occupational disease, this position may be stated on the report.

(c) Noncompliance with this requirement may result in imposition of a civil penalty not to exceed $500.

The provisions of this §45.10 adopted to be effective November 11, 1983, 8 TexReg 4493; amended to be effective October 17, 1989, 14 TexReg 5260.

§45.13. ***Wage Statement*****.**

(a) When requested by the board or carrier, the employer shall immediately complete Board Form IAB-150, Employer's Wage Statement, and file the original with the board and a copy with the carrier.

(b) Noncompliance with this requirement may result in imposition of a civil penalty not to exceed $500.

The provisions of this §45.13 adopted to be effective October 17, 1989, 14 TexReg 5260.

§45.20. ***Board Request for Additional Information*****.**

When requested in writing by the board, the employer shall promptly furnish to the board the information requested if such information is either known to the employer or reasonably available to said employer and which is pertinent to the compensation claim in question.

The provisions of this §45.20 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.25. ***Employer's Supplemental Report of Injury*****.**

When the employee returns to work or is no longer incapacitated as a result of the injury or occupational disease, the employer shall file an employer's supplemental report of injury promptly with the board and shall simultaneously deliver a copy thereof to the insurance carrier.

The provisions of this §45.25 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.30. ***Sanctions*****.**

If the employer fails to timely submit any information to the board which the board is entitled to request under the authority of the Workers' Compensation Act, the board shall notify the employer by certified mail with a copy sent to the employer's insurance carrier to either file the requested information or request a hearing by the board within 10 days of notice. If the employer timely requests a hearing, the matter will be heard by the board in Austin within 10 days of the request. If the employer does not timely request a hearing and does not timely provide the requested information, the board may impose a penalty authorized by Texas Civil Statutes, Article 8307, §7. The employer will be promptly notified of any imposition of penalty by the board. The board may consider a request for extension of time to provide the requested information if the employer makes the request in writing and shows good cause therefore within 10 days of the receipt of notice from the board.

The provisions of this §45.30 adopted to be effective November 11, 1983, 8 TexReg 4493.

Intentionally left blank

Chapter 47 - Employee Notice of Injury or Death and Claim for Benefits: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 47 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=47&rl=Y

§47.5. ***Information Constituting Claim*****.**

The prescribed claim form, or any written communications from an injured employee, claiming either medical care or compensation payments, giving his name, the date and the general nature of injury, and the name of his employer shall constitute a claim (1970).

The provisions of this §47.5 adopted to be effective November 20, 1977, 2 TexReg 4317.

§47.10. ***Signature of Claimant*****.**

All claim forms must be personally signed by the injured employee and give his home address. If the employee is unable to write, he must make an "X" for his signature, and his mark must be witnessed by at least one credible witness (1978) (Rev. 1973).

The provisions of this §47.10 adopted to be effective November 20, 1977, 2 TexReg 4317.

§47.15. ***Employer Advances Compensation*****.**

Where an employer advances compensation in accordance with Texas Civil Statutes, Article 8309, §4b, it is necessary that IAB Form EAC-70 be completed and forwarded by the employer within 10 days to the board in Austin, and such form shall also be furnished within 10 days to the employee and the insurance carrier advising the date first payment was made (Rev. 1979).

The provisions of this §47.15 adopted to be effective November 20, 1977, 2 TexReg 4317; amended to be effective September 23, 1979, 4 TexReg 3231.

§47.20. ***Beneficiaries Filing Claim*****.**

In cases of injury resulting in death, the claim form or any written communication claiming compensation payments giving the employee's name, the employer's name, the date of the employee's death, and the name of the claimant shall constitute a claim. One of several beneficiaries may file claim for all beneficiaries. The names of all beneficiaries should be listed on the claim (1953).

The provisions of this §47.20 adopted to be effective November 20, 1977, 2 TexReg 4317.

Intentionally left blank

Intentionally left blank

Chapter 49 - Procedures for Formal Hearings by the Board: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 49 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=49

SUBCHAPTER - A FORMAL HEARINGS

§49.5. *Schedule of Hearings*.

Formal hearing before the board will be scheduled the first Friday following the expiration of 14 days from the date of prehearing conference. If the Friday upon which a hearing would otherwise be scheduled is a legal holiday or follows a legal holiday, the hearing will be scheduled for the following Monday. A claimant or his attorney must give the board and all parties seven days written notice if they intend to be present for such formal hearing. Hearings will begin at 9:30 a.m. in the board's Austin office and cases normally will be heard by the board in the order registered with the receptionist (1970) (Rev. 1977).

The provisions of this §49.5 adopted to be effective November 20, 1977, 2 TexReg 4317.

§49.10. *Timely Acceptance of Evidence*.

All interested parties required to file evidence with the board for consideration in a claim scheduled for a hearing must file this evidence not later than 5 p.m. on date of hearing. The board will consider requests for delayed evidence filing from any interested party. The request must be filed with the board in writing no later than 5 p.m. on the date of hearing and it must include a statement of the facts showing good cause and necessity for the delay. If delayed evidence is filed by any party after permission has been granted by the board, copies of such evidence must be simultaneously furnished to the opposing party (1970) (Rev. 1975).

The provisions of this §49.10 adopted to be effective November 20, 1977, 2 TexReg 4317.

§49.15. *Formal Statement of Position*.

The insurance carrier and attorney representing the claimant shall file their formal statement of position in the board's Austin office on or before the date of formal hearing.

The provisions of this §49.15 adopted to be effective September 22, 1979, 4 TexReg 3231.

§49.20. *Request for Cancellation*.

Upon written request by claimant or all claimant beneficiaries, the board, at its discretion, may at any time prior to the entry of an award, cancel a scheduled hearing when good cause is shown. Request for cancellation of a scheduled hearing shall be by written notice and filed with the board's Austin office (Rev. 1979).

The provisions of this §49.20 adopted to be effective November 20, 1977, 2 TexReg 4317; amended to be effective September 22, 1979, 4 TexReg 3231.

§49.25. *Delay or Postponement of Hearing*.

On the date of hearing, the board will review the case in accordance with the provisions of Article 8309a of the Act, the Industrial Accident Board may delay or postpone the hearing of the claim provided that within its discretion the board deems it to be the best interest of the injured employee that the case not be heard at that time;

and such hearing may be delayed or postponed until the carrier discontinues payment of compensation or the furnishing of hospitalization, chiropractic service or medical treatment or until the board deems it to the best interest of such employee for an award to be rendered (1968) (Rev. 1977).

The provisions of this §49.25 adopted to be effective November 20, 1977, 2 TexReg 4317.

§49.30. ***Filing of Medical Bills.***

All bills unpaid by the insurance carrier or copies of receipts for medical services for claim for reimbursement must be filed with the board at the prehearing conference or attached to the formal statement of position. There must be clear itemization of all prescriptions or incidentals, date of purchase, treatment rendered and physician prescribing same on items furnished (Rev. 1979).

The provisions of this §49.30 adopted to be effective November 20, 1977, 2 TexReg 4317; amended to be effective September 22, 1979, 4 TexReg 3231.

§49.35. ***Filing of Medical Reports and Records.***

If not previously filed pursuant to other board rules, all medical reports and records shall be filed at the time of formal hearing.

The provisions of this §49.35 adopted to be effective November 11, 1983, 8 TexReg 4495.

§49.40. ***Carrier Attendance.***

The carrier's designated Austin representative must be available to the board on the day a claim is scheduled for formal hearing. In the event the Industrial Accident Board needs a copy of the carrier's file, or a portion thereof, the carrier's designated Austin representative shall obtain the file, or portion thereof, as requested by the board, from the carrier by suitable overnight mail or delivery service.

The provisions of this §49.40 adopted to be effective November 11, 1983, 8 TexReg 4495.

§49.45. ***Contents of Formal Statement of Position.***

The formal statement of position shall be responsive to the prehearing officer's recommendations and shall be sufficiently detailed to apprise the board of all controverted issues. Legal contentions should be supported by citations to applicable authorities.

The provisions of this §49.45 adopted to be effective November 11, 1983, 8 TexReg 4495.

§49.50. ***Sanctions.***

Failure to file a formal statement of position or filing a formal statement of position that does not comply with the requirements of §49.45 of this title (relating to Contents of Formal Statement of Position) may be punishable by appropriate sanctions of the board.

The provisions of this §49.50 adopted to be effective November 11, 1983, 8 TexReg 4495.

SUBCHAPTER B - SPECIAL FORMAL AND OTHER INVESTIGATIVE HEARINGS

§49.105. ***Procedures.***

These hearings will only generally follow the Texas Rules of Civil Procedure. Evidence will be received in accordance with the Texas Rules of Evidence as generally applied in Texas judicial proceedings, although not with the same degree of strictness. The procedures used in these hearings shall generally follow that used in judicial proceedings in the courts of this state.

The provisions of this §49.105 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.110. ***Commencement of Hearings.***

Upon its own motion, or upon the written request or complaint of either a party or employer, the board may schedule a special formal hearing, fraud hearing, or investigative hearing to be conducted by the board or any member therefore under the authority of applicable provisions of the Workers' Compensation Law of Texas.

The provisions of this §49.110 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.115. ***Notice.***

All hearings shall be commenced by written notice, in accordance with the provisions of Chapter 41 of this title (relating to Communications and General Medical Provisions) to the individuals and businesses or agencies directly concerned with the subject of the hearing. Sufficiency of the notice shall be presumed unless the issue is raised by an interested party on or before the hearing date.

The provisions of this §49.115 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.120. ***Special Statutory Notice.***

In the event of hearings conducted by the board pursuant to the provisions of Texas Civil Statutes, Article 8306, §18, or Texas Civil Statutes, Article 8307, §7 and §9a, or Texas Civil Statutes, Article 8308, §18a, the notice requirements of those statutes will prevail whether same or inconsistent with any other provisions of these board rules pertaining to notice.

The provisions of this §49.120 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.125. ***Notice of Special Formal Hearing.***

In all other hearings except for those described in §49.120 of this title (relating to Special Statutory Notice), and unless waived by the board upon its own motion, or for good cause shown, no less than 14 days written notice of the date, time, and place of such hearing will be given to the parties concerned.

The provisions of this §49.125 adopted to be effective November 11, 1983, 8 TexReg 4494; amended to be effective June 16, 1988, 13 TexReg 2752.

§49.130. ***Personal Appearance Hearings in Austin.***

A party desiring to make a personal appearance hearing before the board on a claim which is scheduled for formal hearing by the board in Austin shall give the board and all other interested parties not less than seven days written

notice thereof. The claimant's attendance at such hearing is required unless waived by the board for good cause shown. Hearings will begin at 9:30 a.m. in the board's Austin office, and cases normally will be heard by the board in the order they are registered with the receptionist. Strict compliance with the notice provisions of this rule may be waived for good cause.

The provisions of this §49.130 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.131. *Withdrawal of Attorney*.

After a compensation claim has been scheduled for a special formal hearing, or other hearing as provided in §53.65 of this title (relating to Certification Procedures), et seq., an attorney may not voluntarily withdraw as counsel for a claimant, except upon written request therefore as approved by the Industrial Accident Board.

The provisions of this §49.131 adopted to be effective October 1, 1985, 10 TexReg 3506.

§49.135. *Use of Court Reporters*.

Testimony will be recorded under the direction and control of the board member conducting the hearing. It will be permissible for any party to have a court reporter record the proceedings, conditioned upon:

(1) notification thereof shall be made to the presiding board member not less than three days before the scheduled hearing; and

(2) the original of the transcript shall be promptly furnished by the court reporter to the board, without cost to the board; and

(3) a true copy of the transcript shall be made available to the opposing party or parties at the usual and customary charge therefore.

The provisions of this §49.135 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.140. *Continuance*.

After a hearing is scheduled and notice is given to the party or parties as herein provided, a postponement or cancellation may be had by any party only for good cause. A request for postponement or cancellation shall be first and promptly made by telephone or in person to the presiding board member. If the request is granted, the party shall confirm the request and the grounds therefore by letter to the board member, with a copy thereof being delivered to the opposing party/parties or counsel.

The provisions of this §49.140 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.145. *Recess*.

After a hearing has commenced, circumstances may develop which, in the best interest of equity and justice, require the presiding board member to recess the hearing until a later time or date. If this occurs, the parties and all subpoenaed witnesses shall be entitled to notice of the date, time, and place of the resumption of hearing, in accordance with the same provisions as herein before provided for in these rules for the initial notice, except not less than 10 days written notice thereof shall be given to the party or parties.

The provisions of this §49.145 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.150. *Complaint Specifications*.

For all hearings for which complaint and allegation of violation of any provision of the Workers' Compensation Law or of Industrial Accident Board rules, the written notice herein provided for shall describe in detail the areas of investigation or complaint so as to fairly inform the party under investigation.

The provisions of this §49.150 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.155. *Documentary Evidence*.

If documentary evidence is to be tendered at the hearing, true copies thereof shall be prepared in advance by the parties offering such evidence, sufficient in number for all interested parties to the hearing.

The provisions of this §49.155 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.160. *Filing of Formal Statement of Position*.

Although no formal statement of position is required to be filed in these types of hearings, any party may file a written brief concerning the facts, law, or argument which a party may desire to present in written form to the board.

The provisions of this §49.160 adopted to be effective November 8, 1983, 8 TexReg 4494.

§49.165. *Subpoenas and Subpoenas Duces Tecum*.

a subpoena for attendance of a witness or issue a subpoena duces tecum in order to examine any part of the books, files, and records of the parties or other witnesses as relate to the matters in dispute.

(b) It is urged that all requests for subpoenas be promptly made and correctly identify the name and address of the person to be subpoenaed, and a description of the books, record, etc., to be produced by subpoena duces tecum.

(c) Although the board will issue a subpoena upon request and in accordance with this rule, the requesting party should be aware the board is unable to enforce its subpoena authority unless the request is accompanied by $1.00 cash for each subpoena to be served, and, in addition, the party requesting the subpoena may be called upon to pay witness travel expense pursuant to Texas Civil Statutes, Article 3708.

(d) No subpoena will be directed to a witness residing more than 100 miles from the county courthouse in the county where the hearing is held.

(e) A true copy of the request for subpoena/subpoena duces tecum shall be promptly mailed by the requesting party to all other parties to the hearings.

(f) Any objection to a subpoena or to a subpoena duces tecum, or any portion thereof, shall be made in writing to the board member conducting the hearing and shall state with certainty the grounds of objection. If the written objection is presented to the board not less than seven days prior to the hearing, then a majority of the board shall rule upon the same. If presented less than seven days in advance of the hearing, or at the time of the hearing, the objection may be determined by the board member scheduled to conduct the hearing.

(g) Any subpoena duces tecum issued by the board, or any member thereof, shall be restricted in the documents, instruments, and other writings discoverable thereby, to the provisions of the Texas Rules of Civil Procedure, Rule 186a, as now written, or hereafter amended. In the event of an unresolved dispute concerning the applicability of a subpoena duces tecum to a particular document, instrument, or other writing, the board or board member conducting the hearing shall examine the instrument in camera to determine whether or not the same is

discoverable in whole or in part.

(h) Insofar as practicable, and also in conformity with the board rules herein provided, Rules 176, 177, 177a, 178, and 179 of the Texas Rules of Civil Procedure, as now written, or hereafter amended, shall be applicable to subpoena practice before the board.

The provisions of this §49.165 adopted to be effective November 8, 1983, 8 TexReg 4494.

Intentionally left blank

Chapter 51 -Award of the Board: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 51 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=49.

§51.10. ***Joint Payment of Award.***

Any payment by an insurance carrier of an award of the board to a claimant represented by counsel shall be made payable jointly to the claimant and to his attorney (1970).

The provisions of this §51.10 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.15. ***Periodic Installments.***

When an award is made for payment of compensation in periodic installments, the carrier will notify the board of payment of the award by filing Form A-1 (report of initial payment of compensation), or A-4 (report of resumption of compensation), whichever is appropriate. An A-2 (report of suspension of compensation) will be filed with the board when the carrier discharges its obligation (1974).

The provisions of this §51.15 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.20. ***Lump Sum Payment.***

When an award is made for payment of compensation in a lump sum the carrier will notify the board of payment of the award by filing Form A-2 (report of suspension of compensation) (1974).

The provisions of this §51.20 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.25. ***Request for Review.***

Requests for review shall be filed in writing with the board stating the reason for which the award is sought to be modified or set aside. The board in its discretion may set a date on which the request may be considered and will give notice of the hearing to all parties. As soon as possible after the hearing is held, the board will affirm, set aside, or modify the award on the basis of the information available to it at the time from any source. The board may on its own motion correct typographical errors at any time (1974).

The provisions of this §51.25 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.30. ***Review of Award.***

Review may be granted if any erroneous award was made because of fraud or mistake, or if a change has occurred in the physical condition of the injured employee requiring modification of the award as to amount or duration of payments (1974).

The provisions of this §51.30 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.50. ***Payments of Attorney's Fees.***

The parties may agree after the board's award, and with the approval of the board, to a different method of payment of attorney's fees as provided by law. Any such agreement shall be submitted to the board in writing, and when approved, shall be binding on all parties (1968).

The provisions of this §51.50 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.65. ***Attorney Fees.***

(a) As used in this section, executive director means the executive director of the Texas Workers' Compensation Commission, or designee.

(b) Attorneys representing claimants will be authorized to receive fees and expenses only when a power of attorney, contract of employment, or other document signed by the claimant is filed with the executive director. The attorneys' fees for representing the claimant shall be specified in the power of attorney, contract of employment, or other signed document, and the fees shall not exceed 25% of the total recovery. All attorneys' fees for representing claimants shall be subject to the approval of the executive director as provided in Texas Civil Statutes, Article 8306, §7(c). When a dispute arises as to the representation of the claimant by two or more attorneys, the executive director will require a signed and dated power of attorney or employment contract from each attorney, and the attorney first retained will be deemed to be the attorney of record, unless the executive director determines that the claimant has effected a change of attorneys.

(c) Payment for representation of multiple beneficiaries with adverse claims for benefits is not allowed.

The provisions of this §51.65 adopted to be effective June 1, 1993, 18 TexReg 3194.

Intentionally left blank

Chapter 53 - Carrier's Report of Initiation and Suspension of Compensation Payments: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 53 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=53&rl=Y

§53.5. ***Payment of Benefits Without Prejudice*****.**

It being the policy of the Industrial Accident Board to encourage the prompt delivery of compensation and medical benefits to an injured worker, neither the payment of periodic benefits nor of the health provider care shall be considered an admission of liability by the insurance carrier.

The provisions of this §53.5 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.10. ***Written Notice of Injury Defined*****.**

(a) Written notice of injury as used in Texas Civil Statutes, Article 8306, §18a, shall consist of either:

(1) an employer's first report of injury (IAB Form E-1); or

(2) any other instrument in writing, regardless of its source, which fairly informs the carrier of the name of the injured worker, the identity of the employer, the approximate date of injury, and facts showing compensable lost time or the probability of compensable lost time.

(b) Every carrier shall promptly and legibly date stamp every written notice of injury received by it, showing the date such notice was received.

The provisions of this §53.10 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.15. ***Board Notice to Carrier of Injury*****.**

The board shall furnish a dated written notification of any injury which may produce compensable lost time to the carrier's designated Austin representative. This notice shall begin the 20-day period for commencement of the payment of compensation, or the filing of the statement of controversion, as required in Texas Civil Statutes, Article 8306, §18a, unless the carrier has already received earlier written notice thereof from another source (effective January 1, 1984).

The provisions of this §53.15 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.20. ***Notice of Initiation of Compensation; Mode of Payment of Compensation*****.**

(a) Every insurance carrier shall report to the Industrial Accident Board and to the claimant or the claimant's attorney on Form A-1 the initial payment of compensation to the claimant within 10 days from the date of:

(1) issuance of a draft, check, or other evidence of payment; or

(2) transfer of funds electronically to the claimant's account.

(b) If such payment represents both initial and final payment, that fact shall be stated on the face of the Form A-1.

(c) Except as otherwise provided, all payments of compensation, whether periodic payments, advances, A-2 lump sum payments, or settlement payments, shall be by United States legal tender, checks, or negotiable drafts drawn

on a Texas financial institution.

(d) The claimant and the carrier may agree to payment of income benefits by electronic transfer of funds from any financial institution in the United States directly into an account designated by the claimant.

(e) A carrier which routinely pays benefits by instruments drawn on out-of-state financial institutions shall:

(1) arrange for negotiation of said instruments with a Texas financial institution having offices in the major Texas cities; and

(2) file the name and locations of this financial institution with the board.

(f) Whenever a payment of compensation is made through the use of a negotiable draft of a check drawn on an out-of-state bank, the carrier shall accompany the instrument with written advice to the claimant of the carrier's office location and phone number where the claimant may call, at carrier's expense, to obtain help if necessary in cashing the instrument.

The provisions of this §53.20 adopted to be effective November 11, 1983, 8 TexReg 4495; amended to be effective January 1, 1990, 14 TexReg 6671.

§53.22. ***Application To Change the Benefits Payment Period.***

(a) While a claim is pending before the board, the claimant and the carrier, with board authorization, may agree to change the weekly payment of benefits to one of the following payment periods: every two weeks, every four weeks, monthly, or quarterly.

(b) Application for board authorization shall be made in writing on a form approved by the board.

The provisions of this §53.22 adopted to be effective April 18, 1988, 13 TexReg 1539.

§53.25. ***Contents of Statement of Controversion or Statement of Position.***

A statement of position or a statement of controversion as provided for in Texas Civil Statutes, Article 8306, §18a(a), shall state fully and in writing the grounds for refusal to commence paying compensation. These grounds must be based on actual investigation of the claim and stated in sufficient detail so as to be compared with the position taken by the carrier at the prehearing conference. It is insufficient to simply state a conclusion, for example, "liability in question," "compensability in dispute," or "under investigation." When a carrier files an insufficient statement of controversion or statement of position, the board will issue a complaint report to the carrier through its designated Austin Industrial Accident Board representative. The carrier will have 30 days from the date of receipt of the complaint report to respond in writing to the charge. The board will evaluate the carrier's response. If a majority of the board members determine that a violation has occurred, the violation may be used to establish a record of general business practice, in accordance with Texas Civil Statutes, Article 8306, §18a(d). A failure to respond to the complaint report within 30 days will constitute an automatic violation.

The provisions of this §53.25 adopted to be effective July 20, 1984, 9 TexReg 3733; amended to be effective October 1, 1985, 10 TexReg 3507.

§53.30. ***Filing of Wage Statement.***

(a) In cases in which the reported weekly compensation rate is less than the maximum prescribed by law, the insurance carrier shall file with the board and the claimant or his attorney a wage statement reporting the wages upon which the compensation rate is based. The wage statement shall accompany the Form A-1, report of initial payment of compensation, or in the event a wage statement is not available at the time of filing Form A-1, the

carrier shall indicate on Form A-1 that a wage statement has been requested and shall file said form within a reasonable time, not to exceed 30 days from the date of initial payment of compensation.

(b) When an employer fails or refuses to promptly complete and return the wage statement to the carrier, the carrier shall notify the board of that fact and additionally shall supply the employer's current address to the board. The board will thereafter contact the employer pursuant to the provisions of Texas Civil Statutes, Article 8307, §7, and of these rules, and may impose appropriate sanctions against the employer for a continuing unexcused failure to respond to the request.

(c) If the carrier does not notify the board of the employer's failure to comply within 30 days of the carrier's first request for a wage statement, the board shall set the compensation rate based upon evidence in the file, and the carrier shall be required to pay the rate determined by the board beginning with the date that the initial payment of compensation was due and continuing until the wage statement is filed with the board or until the carrier is authorized to stop or suspend compensation.

The provisions of this §53.30 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.35. ***Notice of Suspension of Compensation*****.**

(a) In every instance in which an insurance carrier has paid compensation to a claimant, the carrier shall report to the board and to the claimant or his attorney on Form A-2 (notice of suspension of compensation payments) within 10 calendar days from the date of last payment. The reasons for suspension of payment shall be stated fully on the notice. When Form A-2 is filed stating compensation suspended because case settled with third party, the carrier shall accompany the notice with a copy of the judgment(s) or settlement papers.

(b) If a carrier suspends or stops the payments of indemnity compensation or medical benefits, and notifies the board in writing thereof pursuant to Texas Civil Statutes, Article 8306, §18a(b), and Article 8307, §11, such notice shall state fully the reason(s) for suspending or stopping such payments. This statement must contain sufficient substantive information to enable the board to evaluate the carrier's position on the claim. It is insufficient to simply state the carrier's position with such phrases as abandoned medical treatment, disability in dispute, etc. When a carrier files an insufficient statement of reasons for suspension of payment of benefits, the board will issue a complaint report to the carrier through its designated Austin Industrial Accident Board representative. The carrier will have 30 days from the date of receipt of the complaint report to respond in writing to the charge. The board will evaluate the carrier's response. If a majority of the board members determine that a violation has occurred, the violation may be used to establish a record of general business practice, in accordance with Texas Civil Statutes, Article 8306, §18a(d). A failure to respond to the complaint report within 30 days will constitute an automatic violation.

The provisions of this §53.35 adopted to be effective November 11, 1983, 8 TexReg 4495; amended to be effective July 20, 1983, 9 TexReg 3733; amended to be effective October 1, 1985, 10 TexReg 3507.

§53.40. ***Transmittal Letters*****.**

In cases where the carrier tenders a lump sum payment to claimant based upon medical disability, the carrier shall accompany the payment with the A-2 and a transmittal letter which shall read as follows:

> (1) Enclosed is our payment of compensation $_____ for injuries received on _____. This payment is based on the medical reports contained in our file. Your case remains open before the Industrial Accident Board. This payment does not represent a settlement of your compensation claim. However, there are certain requirements of the law and of the Industrial Accident Board rules with which you must comply in order to protect your claim in the future. Please call our office or the board if you require additional medical treatment or become further disabled as a result of your injury.
>
> (2) The insurance carrier shall file an amended A-2 not later than 10 days after the carrier has received a

rejected lump sum payment from the claimant or has itself cancelled for any reason the lump sum payment.

The provisions of this §53.40 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.45. Maximum Payment to Minor.

In cases of specific injury or injuries resulting in death, permanent total incapacity, or a high degree of permanent partial disability, where the injured employee is a minor, the compensation rate per week shall be fixed at the maximum allowed by the law unless the evidence clearly dictates the contrary.

The provisions of this §53.45 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.48. ***Payment of Partial Benefits for General Injuries.***

(a) When a carrier believes that a claimant is no longer entitled to temporary total benefits because the claimant has returned to work, or has been released to return to without restrictions, the carrier shall:

(1) initiate payment of partial benefits based on a determination of the claimant's lost wage earning capacity, either periodically or in a lump sum; and

(2) file the appropriate notice with the board.

(b) If the carrier fails or refuses to comply with this section, the claim shall be set for a hearing on the board's next available formal hearing docket.

The provisions of this §53.48 adopted to be effective January 1, 1990, 14 TexReg 6673.

§53.50. ***Resumption of Compensation.***

In the event the carrier shall, after reporting suspension of payment on Form A-2, subsequently resume the payment of compensation, it shall report such resumption on Form A-4 within 10 days from date of first payment after resumption, and a copy of such Form A-4 shall be furnished to the claimant or his attorney.

The provisions of this §53.50 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.55. ***Payment for Amputation.***

When an industrial injury occurring prior to September 1, 1973, results in the amputation or partial amputation of a finger, thumb, or toe, the insurance carrier shall file with the board, with copy to the claimant or his attorney, a signed medical report and a chart showing the exact point of amputation at the time a Form A-2, compromise or lump sum payment, is submitted.

The provisions of this §53.55 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.60. ***Application for Suspension of Compensation.***

Where application is made by the carrier for suspension of compensation pursuant to either Texas Civil Statutes, Article 8306, §12a, or Texas Civil Statutes, Article 8307, §4, the question of suspension will be set by the board for hearing within two weeks of said application. No suspension of compensation benefits will be approved by the board, under Texas Civil Statutes, Article 8307, §4a, unless statutory grounds exist for such suspension. No

suspension of compensation benefits will be approved by the board, under Texas Civil Statutes, Article 8306, §12a, unless:

(1) the injured employee has returned to work; or

(2) the injured employee refuses light duty work procured for him in the locality where he was injured or at a place agreeable to him; or

(3) the treating physician has released the employee to return to work without physical restrictions relating to the compensable injuries involved.

The provisions of this §53.60 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.63. ***Suspension of Weekly Compensation*****.**

(a) A carrier may not suspend payment of weekly or other periodic benefits pending final adjudication until there exists evidence justifying suspension. However, in no event, unless directed otherwise by the board, shall a carrier suspend benefits until:

(1) the injured employee returns to work;

(2) the injured employee is released by a physician to return to work without restrictions;

(3) the employee refused employment offered him or her consistent with any restrictions;

(4) the statutory maximum benefit has been paid;

(5) the claim is resolved by settlement, A-2 lump sum payment, or matured award;

(6) evidence exists showing that the carrier has no liability for the employee's injury; or

(7) there is a third-party settlement which relieves the carrier of its liability.

(b) Medical evidence indicating that a worker can perform work with restrictions or evidence existing showing that the injured employee has engaged in activities inconsistent with his or her impairment shall constitute good cause under §61.25 of this title (relating to Setting at Carrier's Request).

(c) Nothing in this section shall conflict with the provisions of Texas Civil Statutes, Article 8307, §4(b).

The provisions of this §53.63 adopted to be effective July 28, 1988, 13 TexReg 3512.

§53.64. ***Nonpayment of Compensation Based on Another Carrier's Liability*****.**

(a) When the carrier fails or refuses to initiate, or suspends, payment of income or medical benefits based on evidence that another carrier is liable for the claimant's disability, the carrier or the claimant's attorney, if any, shall immediately request a formal hearing before the board.

(b) The claim will be set for a hearing on the board's next available formal hearing docket.

The provisions of this §53.64 adopted to be effective December 13, 1989, 14 TexReg 6279.

§53.65. ***Certification Procedure*****.**

In cases where it appears that the carrier willfully fails, or refuses without justification to pay compensation, the following procedure will apply.

(1) If, on suspension or stoppage of workers' compensation payments, it appears to the board that the carrier has not fully discharged its obligation to the claimant, the board will notify the carrier through its Austin Industrial Accident Board representative of the deficiency, and copies of such notice shall be sent to the claimant or his attorney.

(2) The board will specify a reasonable period of time in which a carrier may either pay the deficiency and submit a correct report or submit information to the board justifying the amount of its payment.

(3) If the carrier fails to pay the deficiency or fails to submit information justifying the amount of its payment, the board shall set the case for formal hearing to be held by a majority of the board within 100 miles of the claimant's residence. The provision of §49.105 of this title (relating to Special Formal Hearing and Other Investigative Hearings), et seq., shall apply.

(4) At such hearing, if it determined that compensation benefits are due, the board shall so order. If the carrier fails to obey such order within 10 days the board may certify such fact to the commissioner of insurance for proceedings, according to Texas Civil Statutes, Article 8306, §18.

The provisions of this §53.65 adopted to be effective October 1, 1985, 10 TexReg 3507.

Intentionally left blank

Chapter 55 - Lump Sum Payments: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 55 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=55&rl=Y.

§55.3. ***Request for Advance Payment of Compensation*.**

(a) A claimant who suffers financial hardship because of loss of wages due to an uncontested injury may request of the carrier an advance payment of compensation ("advance") to be credited against future compensation benefits.

(b) A request for an advance shall be:

(1) prepared on a board-approved form;

(2) signed by the claimant unless waived for good cause; and

(3) submitted in the original to the carrier, with a copy filed with the board.

(c) If, within 10 days of receipt of the request, the carrier fails to tender an advance, the board may set a hearing and notify the parties in writing.

(d) If an advance is sought at a prehearing conference, in the absence of a formal request for an advance under this section, and the advance is either denied by the adjuster at that time or deemed inadequate by the claimant, the board may set a hearing on the first available formal hearing docket.

(e) After the hearing the board may direct the carrier to make an advance if the board determines that:

(1) an emergency or impending necessity exists; and

(2) the future compensation benefits due the claimant exceed the amount of the advance directed.

The provisions of this §55.3 adopted to be effective January 1, 1990, 14 TexReg 6674.

§55.5. ***Lump Sum Payments*.**

No lump sum payment of fatal benefits may be made without prior board approval. No lump sum payment of fatal benefits may be made to beneficiaries, unless there exists a bona fide dispute as to the liability of the insurance carrier, and no lump sum payment of benefits for injuries enumerated in Texas Civil Statutes, Article 8306, §11a, shall be made unless there is also a bona fide dispute as to the liability of the insurance carrier (Texas Civil Statutes, Article 8306, §8(d) and §10(d)).

(1) When authorized by statute, a lump sum payment for a minor's compensation in fatal cases will be considered by the board upon receipt of a certified copy of letters of guardianship. If the carrier requests an order of a probate court directing a lump sum payment, the cost thereof shall be borne by the carrier.

(2) All lump sum payment agreements submitted to the board must be submitted in four parts--the original must be white, the second copy pink, third copy yellow, and fourth copy white. The forms must either be on NCR paper or be submitted with carbon left intact. The board will mail a copy of the lump sum payment agreement to the claimant, claimant's attorney if one has been employed, and the carrier's Austin representative in lieu of a separate approval notice.

The provisions of this §55.5 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective November 11, 1983, 8 TexReg 4496; amended to be effective June 1, 1993, 18 TexReg 3194.

§55.10. ***Settlements Final When Approved.***

Compromise settlement agreements between insurance carriers and persons claiming benefits under the Texas Workers' Compensation Law are not final until approval by the board (1953).

The provisions of this §55.10 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.15. ***Compromise Settlement Agreements.***

A compromise settlement agreement must contain the following information:

(1) that the agreement is executed on a form approved by the board;

(2) that the agreement is accompanied by physician's signed report of the findings of a recent examination of the employee;

(3) that the employee has achieved maximum recovery, or that good reason exists for settlement prior to maximum recovery;

(4) that in the event of serious injury to claimant's eye, healing has occurred and the board furnished with a medical report on whether the other eye is or may be affected;

(5) that in all instances of severe and disfiguring burns or lacerations, a descriptive medical report of the scars will be submitted by either the association or claimant. In all such cases involving injury to the face, arms, or hands, a color photograph taken after maximum healing must be submitted to the board by either the claimant or carrier;

(6) all compromise settlement agreements submitted to the board must be submitted in four parts--the original must be white, the second copy pink, the third copy yellow, and fourth copy white. The forms must either be on NCR paper or be submitted with carbon left intact. The board will provide a copy of the compromise settlement agreement to the claimant, claimant's attorney if one has been employed, and the carrier's Austin representative in lieu of a separate approval notice.

The provisions of this §55.15 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective September 1, 1981, 6 TexReg 3274; amended to be effective June 1, 1993, 18 TexReg 3194.

§55.20. ***Execution of Compromise Settlement Agreement.***

A compromise settlement agreement must be signed by the claimant personally, unless sufficient good cause is found by the board to excuse strict compliance to this section. Only in extraordinary circumstances will the board approve a compromise settlement agreement in which the attorney signs the claimant's name under a power of attorney.

The provisions of this §55.20 adopted to be effective September 18, 1981, 6 TexReg 3274; amended to be effective November 11, 1983, 8 TexReg 4496.

§55.25. ***Loss of an Eye.***

The board considers "loss of an eye" when loss of vision reached 90%. Permanent partial loss of vision in an eye will be calculated on the actual loss of vision as a result of an injury, and not on loss of vision after restoration of vision by proper fitting glasses. The following table for the estimate of compensation to be paid workers who

have suffered partial or complete loss of vision in one eye, through accident or occupation, is adopted by the board (1961) (Rev. 1973).

Graphic

The provisions of this §55.25 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.30. ***Hearing Impairment.***

(a) Hearing tests for use in compensation ratings shall be derived from the pure-tone audiogram calculated to ANSI-S3.6-1969 standards. Examination should be performed by a medical specialist who does hearing evaluations or by an audiologist having the certificate of clinical competence from the American Speech-Language-Hearing Association upon referral. Hearing handicap will be based on the functional state of both ears.

(b) The average of the hearing threshold levels at 500 Hz, 1,000 Hz, 2,000 Hz, and 3,000 Hz should be calculated for each ear. The percent of impairment for each ear should be calculated by multiplying by 1.5 the amount by which the above average hearing threshold level exceeds 25 dB up to a maximum of 100% which is reached at 92dB. The hearing handicap, a bilateral assessment, should then be calculated by multiplying the smaller percentage (better ear), by five, adding this figure to the larger percentage (poorer ear), and dividing the total by six.

(c) Since there is no exact scientific test by which non-industrial hearing losses can be distinguished from induced impairment, the opinion as to the amount of loss due to such other causes shall be made by the examining medical specialist.

(d) No consideration shall be given to possible improvements through use of prosthesis. Where artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the employee, the insurer shall provide same, and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall be liable for replacing or repairing any artificial appliances so furnished.

(e) Such prosthesis shall be prescribed upon proper evaluation by a medical specialist who does hearing aid evaluations or by an audiologist having the certificate of clinical competence from the American Speech-Language-Hearing Association upon referral. Such hearing and speech centers shall have no commercial properties.

(f) The above formula should be used in calculating the percentage of loss of hearing, but the doctor giving the report shall state specifically the exact loss of hearing in percentage, and not decibels.

(g) See examples and chart.

Graphic

The provisions of this §55.30 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective September 18, 1981, 6 TexReg 3340; amended to be effective November 11, 1983, 8 TexReg 4496.

§55.35. ***Stipulation of Medical Payments.***

Where an insurance company agrees to pay accrued medical and hospital expenses in a compromise settlement agreement, any exceptions or special stipulations agreed upon by the parties must be clearly stated on the face of the compromise settlement or an attached affidavit (1970).

The provisions of this §55.35 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.40. ***Attorney's Signature.***

Settlement agreements entered into by claimants who are represented by an attorney must be signed by the attorney. The attorney's name and address shall be on the face of the agreement (1953) (Rev. 1973).

The provisions of this §55.40 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.45. ***Percent of Medical Impairment.***

Where the amount of compensation due is covered by Texas Civil Statutes, Article 8306, §12, the board may consider percentage of medical impairment as only one element in arriving at percentage of legal disability as distinguished from medical disability (1973).

The provisions of this §55.45 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.50. ***Attorneys Fees and Expenses.***

Sections 51.5, 51.7, 51.10, 51.35, 51.45, 51.50, 51.55, and 51.60 of this title (relating to Power of Attorney; Representation in Fatal Cases; Joint Payment of Award; Unauthorized Attorney's Fees; Attorney Fees and Expenses on Fatal Cases; Payments of Attorney's Fees; Attorney's Expenses; and Deductible Expenses) shall be applied by the board to claims disposed of by settlement agreement.

The provisions of this §55.50 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective April 18, 1988, 13 TexReg 1539.

§55.55. ***Compromise Settlement Agreement To Set Aside Award.***

A compromise settlement agreement, properly executed between or among all parties to the claim, when filed in any board office in the period after an award has been entered but before it becomes final, or suit is filed, will serve to set aside the award as of the date the compromise settlement agreement is filed. If the board subsequently fails to approve the compromise settlement agreement, then the original award will be immediately re-entered.

The provisions of this §55.55 adopted to be effective November 6, 1986, 11 TexReg 4430.

§55.60. ***Consent Withdrawn.***

The board's approval of a compromise settlement agreement shall be final at the time the approval is signed by the board unless the board has received a request in writing prior to entry of the approval order that one or more parties to the agreement wishes to withdraw their consent to the agreement, and the board permits the withdrawal of such consent. Any such written request to the board for permission to withdraw consent to an agreement must fully set out the reason or reasons for such request (1981).

The provisions of this §55.60 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective September 18, 1981, 6 TexReg 3274; amended to be effective October 1, 1985, 10 TexReg 3506.

§55.65. ***Withdrawal of Consent by Death.***

If the claimant has died after signing the compromise settlement agreement, but before the board approved the same, the claimant's death will be considered as effectively terminating claimant's continuing consent to the compromise settlement agreement (1981)

The provisions of this §55.65 adopted to be effective September 18, 1981, 6 TexReg 3274.

§55.75. ***Tender Payment Time Period.***

An insurance carrier shall have 20 days from and after the date of approval of a compromise settlement agreement in which to pay or tender payment to the injured employee of the amount approved by the board, and shall have 20 days from the receipt of bills in which to tender all accrued medical expenses resulting from the injury. Failure to tender payment within such time shall cause the board to immediately set such cause for formal hearing for the purpose of invoking proper sanctions (Rev. 1971).

The provisions of this §55.75 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.80. ***Waiving of Approval Appearance.***

Personal appearance of the claimant shall be required prior to recommendation by the board representative for approval of compromise settlement agreements, unless upon the showing of good cause said personal appearance is waived by the board representative (1970) (Rev. 1977).

The provisions of this §55.80 adopted to be effective November 20, 1977, 2 TexReg 4320.

Intentionally left blank

Intentionally left blank

Chapter 56 - Structured Compromise Settlement Agreements: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 56 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=56&rl=Y.

§56.5. *Definitions*.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annuity company--The company from which the carrier is purchasing an annuity for the claimant. The annuity company may be the carrier if the carrier meets the tests provided following for annuity companies (effective 1987).

(2) Structured settlement--Structured compromise settlement agreement.

The provisions of this §56.5 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.10. *Form*.

A structured settlement must:

(1) be submitted on a form approved by the board;

(2) be accompanied by a physician's signed report of the findings of a recent examination of the employee;

(3) be accompanied, in the event of serious injury to claimant's eye, by a medical report indicating that healing has occurred and whether the other eye is or may be affected;

(4) be accompanied, in the event of severe and disfiguring burns or lacerations, by a descriptive medical report of the scars. In all cases involving injury to the face, arms, or hands, a color photograph taken after maximum healing must be submitted to the board;

(5) be submitted in five parts. The original must be white, the second part pink, the third yellow, the fourth white, and the fifth white. The forms must be submitted with carbon left intact. The board will furnish the following parties with approved copies of the forms.

(A) The claimant will receive the pink copy.

(B) The attorney, if any, will receive the yellow copy.

(C) The Austin board representative will receive the final two copies (effective 1987).

The provisions of this §56.10 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.15. *Execution*.

A structured settlement must be signed by the claimant personally, unless the board finds good cause to excuse strict compliance to this section. Only in extraordinary circumstances will the board approve a structured settlement in which the attorney signs the claimant's name under a power of attorney (effective 1987).

The provisions of this §56.15 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.20. ***Personal Appearance by Claimant.***

A personal appearance of the claimant may be required by the board prior to approval. The personal meeting is to be set up by the board, not by the carrier. A carrier representative is required to be present (effective 1987).

The provisions of this §56.20 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.25. ***Medical Benefits.***

Where a carrier agrees to pay accrued medical and hospital expenses in a structured settlement, any exceptions or special stipulations must be clearly stated on the face of the structured settlement or on an attached affidavit (effective 1987).

The provisions of this §56.25 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.30. ***Consent of Parties--Withdrawal.***

The board's approval of a structured settlement shall be final at the time the approval is signed by the board unless the board has received a request in writing prior to entry of the approval order that one or more parties to the agreement wishes to withdraw their consent to the settlement, and the board permits the withdrawal of such consent. Any such written request to the board for permission to withdraw consent to a settlement must fully set out the reason or reasons for such request (effective 1987).

The provisions of this §56.30 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.35. ***Attorney's Signature.***

A structured settlement entered into by a claimant who is represented by an attorney must be signed by the attorney. The attorney's name and address must be on the face of the settlement (effective 1987).

The provisions of this §56.35 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.40. ***Attorney's Fees and Expenses.***

Sections 51.5, 51.7, 51.10, 51.35, 51.40, 51.45, 51.50, 51.55, and 51.60 of this title (relating to Power of Attorney; Representation in Fatal Cases; Joint Payment of Award; Unauthorized Attorney's Fees; Attorneys Not Licensed in Texas; Attorney's Fees and Expenses in Fatal Cases; Payments of Attorney's Fees; Attorney's Expenses; and Deductible Expenses) shall be applied by the board to claims disposed of by structured settlement (effective 1987).

The provisions of this §56.40 adopted to be effective December 21, 1987, 12 TexReg 4529; amended to be effective April 18, 1988, 13 TexReg 1539.

§56.45. ***Tender Payment Time Period.***

The carrier shall have 20 days after the date of approval of a structured settlement to pay or tender any approved lump sum payment to the injured employee or approved fees and expenses to any attorney(s), and shall have 20

days from the receipt of bills in which to tender all reasonable accrued medical expenses necessarily resulting from the injury. Failure to tender payment within such time shall cause the board to immediately set such case for formal hearing for the purpose of invoking proper sanctions (effective 1987).

The provisions of this §56.45 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.50. ***Final When Approved.***

A structured settlement is not final until the settlement is approved by the board. Board approval is deemed to have occurred at 5 p.m. of the day the approval is signed (effective 1987).

The provisions of this §56.50 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.55. ***Annuity Company.***

An annuity company providing an annuity under the terms of a structured settlement must be licensed to do business in Texas and must have a Best's rating of A+, with a financial size category of VII or above, according to the most recent information available (effective 1987).

The provisions of this §56.55 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.60. ***Payments Guaranteed.***

The workers' compensation carrier shall guarantee the payments provided by the annuity company in the event of default (effective 1987).

The provisions of this §56.60 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.65. ***Cost of the Annuity.***

(a) The carrier shall submit to the board with the structured settlement, in camera, the cost of the annuity.

(b) The cost of the annuity to a carrier that does not purchase an annuity from a third party is the discounted value of the periodic payments to be provided (effective 1987).

The provisions of this §56.65 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.70. ***Structured Settlement Agreement To Set Aside Award.***

A structured settlement, properly executed between or among all parties to the claim, when filed in the board's office in the period after an award has been entered but before it becomes final, or suit is filed, will serve to set aside the award as of the date the structured settlement is filed. If the board subsequently fails to approve the settlement, then the original award will be re-entered immediately (effective 1987).

The provisions of this §56.70 adopted to be effective December 21, 1987, 12 TexReg 4529.

Intentionally left blank

Intentionally left blank

Chapter 57 - Request for Case Folders and Certifications of Actions of the Board: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 57 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=57&rl=Y

§57.5. ***Request for Copies or Statistical Information.***

Written requests for public information by persons entitled thereto under Texas Civil Statutes, Article 8307, §9 and §9a, shall be mailed or presented in person to the board's Austin office. Copies and certified copies of files or portions thereof or statistical information will be furnished only upon receipt of the correct payment. Fees and charges for requested reproduced copies or statistical information may be obtained from the Industrial Accident Board. There will be no refund for less than $5.00 of monies paid by actual mistake in excess of the correct amount or for copies of instruments not in the board's file, unless specifically requested in writing. No copies or certified copies of instruments will be furnished between seven days prior to the date of formal hearing and the date of the board's award (1981).

The provisions of this §57.5 adopted to be effective November 20, 1977, 2 TexReg 4322; amended to be effective June 9, 1980, 5 TexReg 2111; amended to be effective September 18, 1981, 6 TexReg 3274.

§57.10. ***Written Request for Public Information.***

All written requests for public information under Texas Civil Statutes, Article 8307, §9a, from prospective employers must be accompanied by a written authorization from the prospective employee (1977).

The provisions of this §57.10 adopted to be effective November 20, 1977, 2 TexReg 4322.

§57.15. ***Telephone Request for Public Information.***

All telephone inquiries from prospective employers seeking public information under Texas Civil Statutes, Article 8307, §9a, must be directed to the board's Austin office. Written authorizations required under this statute must also be directed to the board's Austin office (1977).

The provisions of this §57.15 adopted to be effective November 20, 1977, 2 TexReg 4322.

Intentionally left blank

Intentionally left blank

Chapter 59 - Notices of Intention to Appeal: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 59 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=59&rl=Y

§59.5. ***Filing of Notice*****.**

Notices of intention to appeal from a final order or award of the board shall be filed with the board in Austin and must be in writing, clearly and accurately identify the compensation claim to which it pertains, including the board file number, and delivered to the board's office in Austin, either:

(1) in person; or

(2) by mail; or

(3) by wire or telegram; or

(4) by comparable means.

The provisions of this §59.5 adopted to be effective November 20, 1977, 2 TexReg 4323; amended to be effective November 11, 1983, 8 TexReg 4497.

§59.10. ***Receipt of Notice*****.**

Receipt of the Notice of Intention to Appeal shall be acknowledged by a board member, the executive director of the board or by persons duly designated by the board for such purpose, who shall immediately stamp and sign each such notice. Acknowledgment will subsequently be made by mail to all interested parties. (1970).

The provisions of this §59.10 adopted to be effective November 20, 1977, 2 TexReg 4323.

Intentionally left blank

Intentionally left blank

Chapter 61 - Prehearing Conferences: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 61 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=61&rl=Y

§61.5. ***Request for Prehearing Conference*****.**

(a) Except as otherwise provided, a request for a prehearing conference must be submitted on a board-approved form.

(b) Failure to provide the information requested may constitute grounds for rejecting the request.

(c) An unrepresented claimant may request a prehearing conference by contacting the board in any manner.

The provisions of this §61.5 adopted to be effective December 13, 1989, 14 TexReg 6279.

§61.7. ***Request of Prehearing Conference*****.**

(a) Except as otherwise provided, the board will give at least 30 days written notice of the prehearing conference date to all interested parties.

(b) If income or medical benefits are not being paid, the board may set a prehearing conference with less than 30 days notice.

The provisions of this §61.7 adopted to be effective December 13, 1989, 14 TexReg 6279.

§61.15. ***Setting under Texas Civil Statutes, Article 8306, §18a*****.**

(a) If the carrier, having received written notice of a compensable lost time injury as provided in Texas Civil Statutes, Article 8306, §18a, is not timely paying compensation, or ceases the payment of such benefits, the board shall set the claim for a prehearing conference on the first available docket.

(b) If a Texas Civil Statutes, Article 8306, §18a penalty (18a penalty) appears due, initiation or reinstatement of compensation shall not be grounds for cancellation of a prehearing conference set under this section. However, the board may waive the claimant's appearance at the prehearing conference upon request.

(c) In the event a dispute arises over the suspension of medical benefits as defined in these board rules, a health care provider may file with the board a written request to attend a prehearing conference, as a party and participant therein, and in such event the health care provider shall attend the prehearing conference, either in person or by a representative. In the request, the health care provider shall certify the charges have been itemized and that timely reports have been made in accordance with Texas Civil Statutes, Article 8306, §7, and these board rules.

The provisions of this §61.15 adopted to be effective November 11, 1983, 8 TexReg 4497; amended to be effective December 13, 1989, 14 TexReg 6280.

§61.20. ***Setting on Hardship*****.**

(a) If the board determines that financial hardship may exist and the carrier has failed to tender an adequate advance or acceleration of benefits within 10 days from the filing of a hardship affidavit with the board, the board shall schedule such case for prehearing conference on the next docket following 30 days from the date of the filing of the hardship affidavit.

(b) Hardship affidavits must contain sufficient factual information to support the allegations of hardship, and shall be signed and sworn by the claimant personally, unless otherwise waived by the board for good cause shown.

(c) A copy of the hardship affidavit shall be forwarded to the insurance carrier by the claimant, at the same time the original is filed with the board.

The provisions of this §61.20 adopted to be effective November 11, 1983, 8 TexReg 4497.

§61.25. ***Setting at Carrier's Request.***

Upon a showing of good cause, prehearing will be set by the board on the insurance carrier's request. It shall be presumed the payment of compensation benefits for a period of consecutive 52 weeks or longer constitutes a case of "extended disability," and in such cases the carrier, upon written request therefore, approved by the board, shall be entitled to a prehearing conference in order to review the claimant's physical and medical condition and the treatment thereof.

The provisions of this §61.25 adopted to be effective November 11, 1983, 8 TexReg 4497.

§61.30. ***Filing of Medical Information.***

All available medical information that has a bearing on the claim at hand must be filed with the board at or before the prehearing in accordance with Texas Civil Statutes, Article 8309a(b) (1970).

The provisions of this §61.30 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.35. ***Exchange of Medical Information.***

Claimant and carrier shall exchange all available medical information promptly after expiration of six weeks disability or earlier upon written request of either party. Thereafter, all medical information will be exchanged promptly upon receipt. If received less than seven days prior to a prehearing conference, it shall be brought to the prehearing conference for exchange. Both parties shall bring to the prehearing conference all available medical information (1981).

The provisions of this §61.35 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323; amended to be effective September 18, 1981, 6 TexReg 3274.

§61.40. ***Additional Medical.***

Where the hearing officer determines that additional medical examination will probably assist in settlement, he may order such additional medical examination at the expense of the board, provided no undue delay shall occur thereby, and the prehearing officer shall reset the prehearing conference (1970) (Rev. 1973).

The provisions of this §61.40 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.45. ***Charges for Reports.***

Reasonable charges shall be allowed by the board for narrative reports required under Texas Civil Statutes, Article 8306, §7, and such charges shall be considered necessary expenses to be paid by the carrier (1970) (Rev.

1977).

The provisions of this §61.45 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.50. ***Representatives Must Be Qualified.***

The success of the prehearing conference system depends upon a high level of expertise in workers' compensation matters by representatives of carriers and claimants. Carriers should be represented either by an attorney licensed to practice in this state, or by individuals who can demonstrate a continuing proficiency in compensation law and procedure. Negotiation of a settlement in a workers' compensation case constitutes the practice of law, and no attorney's fees or expenses will be authorized by the board to any representative of the claimant other than an attorney licensed to practice in this state.

The provisions of this §61.50 adopted to be effective November 11, 1983, 8 TexReg 4497.

§61.55. ***Supply of Forms.***

The carrier's representative shall have a sufficient supply of proper forms to enable him to complete settlements at the prehearing conference.

The provisions of this §61.55 adopted to be effective January 1, 1976; amended to be effective November 11, 1983, 8 TexReg 4497.

§61.60. ***Attendance at Conference.***

(a) The claimant and the claimant's attorney or authorized agent, if any, and the carrier's representative must attend all prehearing conferences pertaining to the claim under consideration.

(b) A request for a prehearing conference shall constitute an agreement by the requesting party to appear personally or arrange for substitute representation in the event of a scheduling conflict.

(c) Claimant's attendance may be waived for good cause.

The provisions of this §61.60 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323; amended to be effective December 13, 1989, 14 TexReg 6280.

§61.65. ***Request for Cancellation of Prehearing Conference.***

(a) The board may cancel a prehearing conference:

(1) at the request of the party who initially requested the prehearing conference;

(2) at the request of any party required to attend the prehearing conference, with the agreement of the party who initially requested the prehearing conference; or

(3) on the board's own motion.

(b) Cancellation shall be requested by notifying the resident reviewer or the prehearing office in writing within 10 days from the date notice of the setting is received. The date notice of the setting is received is deemed to be the third day after the date of the notice. Cancellation requests during this 10-day period are unrestricted unless a pattern of abuse is detected.

(c) Cancellation requests after the unrestricted cancellation period defined in subsection (b) of this section will be considered only for good cause. As used in this subsection, good cause for cancellation means the following:

(1) compensation has been initiated or reinstated, unless a §18a penalty may be due, as provided in §61.15 of this title (relating to Setting under Texas Civil Statutes, Article 8306, §18a);

(2) liability previously in dispute is accepted by the carrier, unless a §18a penalty may be due, as provided in §61.15 of this title (relating to Setting under Texas Civil Statutes, Article 8306, §18a);

(3) medical previously in dispute is provided, unless a §18a penalty may be due, as provided in §61.15 of this title (relating to Setting under Texas Civil Statutes, Article 8306, §18a);

(4) an adequate advance is tendered and accepted;

(5) the claim is set against the wrong carrier;

(6) the injured worker dies and no additional benefits appear due;

(7) the injured worker no longer desires to pursue the claim; or

(8) an A-2 lump sum payment or compromise settlement agreement is tendered and accepted by the parties.

(d) Failure to comply with the cancellation provisions of this section may result in sanctions as provided by §61.75 of this title (relating to Failure To Appear).

The provisions of this §61.65 adopted to be effective December 13, 1989, 14 TexReg 6279.

§61.70. ***Maintain Setting.***

Where the request for continuance or postponement is based upon the payment of compensation and furnishing of medical aid, the resident reviewer or the prehearing officer may still maintain the setting where there is a showing of hardship on the part of the claimant.

The provisions of this §61.70 adopted to be effective January 1, 1976; amended to be effective November 11, 1983, 8 TexReg 4497.

§61.75. ***Failure To Appear.***

(a) Where the claimant fails to make a personal appearance at the prehearing conference without good cause, such failure to appear shall result in postponement until the board is assured in writing of appearance.

(b) Where the attorney or carrier representative fails to comply with the cancellation requirements of §61.65 of this title (relating to Request for Cancellation of Prehearing Conference) or fails to attend a scheduled prehearing conference, the prehearing officer shall prepare a rule violation complaint report as provided by §65.10 of this title (relating to Actions by Carrier, Claimant's Attorney, and/or Agent). Violation of this rule may be grounds for sanctions, including reduction of fees, written reprimand, or suspension from practice before the board.

The provisions of this §61.75 adopted to be effective January 1, 1976; amended to be effective November 11, 1983, 8 TexReg 4497; amended to be effective December 13, 1989, 14 TexReg 6280.

§61.80. ***Participation at Conference*****.**

Although no testimony will be taken at a prehearing conference, nevertheless, the claimant, carrier's representative, and any other witnesses in attendance must, if called upon by the prehearing examiner or the adverse party, fully participate by responding to requests for information reasonably necessary in the evaluation or defense of the claim presented. A violation of this rule by claimant may result in a continuance of the prehearing conference until a subsequent date, and a violation of the rule by any other party or witness may result in appropriate sanctions by the board.

The provisions of this §61.80 adopted to be effective January 1, 1976; amended to be effective November 11, 1983, 8 TexReg 4487.

§61.85. ***Carrier Self-Audit of Prehearing Conference*****.**

A viable prehearing conference system is important to the efficient functioning of the workers' compensation program in this state. This necessarily includes a good faith effort on the part of both claimant or his/her attorney and of the carrier to negotiate in good faith. In order that the board might monitor the designed function of the prehearing conference in all claims which are the subject of a prehearing conference, except fatals, statutory total and permanent claims, and second injury fund claims, and where no A-2 payment is made or compromise settlement agreement is entered into at the prehearing conference:

(1) The carrier shall make and keep a written record of each compensation file which has been the subject of a prehearing conference, and an award recommendation has been made by the prehearing examiner, the following information: the name of the claimant; the name and permanent state bar number of the claimant's attorney, if known to the carrier; the board file number, the carrier file number; the date of the prehearing conference held on the claim; the amount of the final demand of the claimant or his/her attorney at the prehearing conference; the amount of the final offer made by the carrier; and the net award by the board.

(2) Such record shall also include the date of final disposition, the net amount thereof, and whether by way of compromise settlement agreement, judgment, or dismissal without judgment entry.

(3) The record described in this rule shall be retained by the carrier for not less than five years following its completion, and shall be made available to the board, upon its request therefore.

(4) Neither the carrier nor claimant's attorney shall ever be required to file such information as directed herein by the board, and such information shall never become a part of the records of the board. A carrier or an attorney shall, at the request of the board, make these records available to the carrier for the purpose of the board and carrier or attorney evaluating the negotiation record of the board or the attorney at prehearing conferences. No board member or officer or employee of the board shall ever disclose such information, or any part thereof, to any other person, corporation, or agency.

The provisions of this §61.85 adopted to be effective November 11, 1983, 8 TexReg 4497.

§61.90. ***Conduct at Prehearing Conference*****.**

Abusive, threatening, and vulgar language or gestures will not be tolerated at a prehearing conference. Violation of this board rule by any party or witness may result in a continuation of the hearing until a later date, sanctions, or, in appropriate instances, charges of unethical conduct under §65.5 of this title (relating to Practicing before the Board).

The provisions of this §61.90 adopted to be effective November 11, 1983, 8 TexReg 4497.

§61.95. ***Consular Officers*****.**

Consular officers and their attorneys shall comply with all board rules and shall attend any prehearing conference or board hearing set on any compensation claim where such consular officers or their attorneys shall purport to represent the interests of any resident or nonresident alien beneficiary in a workers' compensation claim under the workers' compensation laws of Texas. No attorney's fees or other expenses shall be deducted or withheld from any compensation paid without prior authorization of the board pursuant to the provisions of Texas Civil Statutes, Article 8306, §7c. The board shall be provided with proper documentation, as it may request, from time to time, of the remission of compensation benefits paid through any consular office pursuant to the provision of Texas Civil Statutes, Article 8306, §17.

The provisions of this §61.95 adopted to be effective January 1, 1976; amended to be effective November 11, 1983, 8 TexReg 4497.

Intentionally left blank

Chapter 63 - Promptness of First Payment: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 63 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=63&rl=Y

§63.5. ***Quarterly Report.***

The executive director of the Industrial Accident Board shall make a report, based on each quarter year's performance of all the insurance carriers writing workers' compensation insurance in Texas, which report will reflect the promptness of first payment of each such carrier of benefits due and payable under the Texas Workers' Compensation Act covering all cases occurring after May 18, 1969 (1970).

The provisions of this §63.5 adopted to be effective November 20, 1977, 2 TexReg 4324.

§63.10. ***Sanctions for Late Payment.***

Any insurance carrier writing workers' compensation insurance under the provisions of the Texas Workers' Compensation Act who, on the average, shall fail to make compensation payments due claimants within a reasonable length of time after the same become due and payable, but in no event later than 30 days on the average from the date of incapacity, shall be subject to appropriate sanctions to be invoked by the Texas Industrial Accident Board (1970) (Rev. 1973).

The provisions of this §63.10 adopted to be effective November 20, 1977, 2 TexReg 4324.

Intentionally left blank

Intentionally left blank

Chapter 64 - Representing Claimants Before the Board: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 64 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=64&rl=Y

§64.25. ***Discharged Attorney*****.**

(a) A claimant may discharge an attorney at any time. The claimant shall notify the board in writing, and explain the reasons for the discharge.

(b) When a dispute arises between or among two or more attorneys employed by a claimant, the attorney presenting the earliest executed attorney contract will be deemed the attorney of record unless the claimant or a subsequently retained attorney establishes good cause for discharge.

The provisions of this §64.25 adopted to be effective April 5, 1990, 15 TexReg 1629.

§64.30. ***Adverse Representation in Claims for Death Benefits*****.**

(a) An attorney may not represent two or more beneficiaries with adverse claims for death benefits, since such representation constitutes a conflict of interest.

(b) An attorney who violates this section will be ordered to withdraw entirely, and may be subjected to disciplinary action.

The provisions of this §64.30 adopted to be effective January 1, 1990, 14 TexReg 6280.

Intentionally left blank

Intentionally left blank

Chapter 65 - Unethical or Fraudulent Claims Practices: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 65 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=65&rl=Y

§65.5. ***Practicing before the Board.***

Whenever the board receives evidence that a person practicing before the board is guilty of unethical or fraudulent conduct, such person shall be cited by certified mail to appear before the board in person to show cause why he or she should not be barred from practicing before the board because of such conduct. In all such cases, the board's citation shall contain a detailed description of charges to be considered at such hearing and a reasonable time to secure and prepare evidence shall be given any such person as cited (November 14, 1955) (Rev. 1973).

The provisions of §65.5 adopted to be effective November 20, 1977, 2 TexReg 4324.

§65.10. ***Actions by Carrier, Claimant's Attorney, and/or Agent.***

The following willful acts shall be deemed unethical or fraudulent conduct by the board.

(1) Carrier representatives:

(A) misrepresenting to claimants, employers, or health providers the provisions of the Workers' Compensation Law of Texas;

(B) failing to submit to the board any settlement agreement executed by the parties;

(C) failing to immediately notify the board of the suspension or stopping of compensation and the reason for such suspension or stopping of compensation;

(D) stopping or suspending compensation without substantiating evidence that such action is authorized by law;

(E) misrepresenting that one is employed by the State of Texas or any agency thereof;

(F) instructing employers not to file Employer's First Reports of Injury with the board when such filing is required by statute;

(G) instructing employers to violate the claimant's rights guaranteed by Texas Civil Statutes, Article 8306, §7;

(H) failing to promptly tender full death benefits where no bona fide dispute exists as to the liability of the carrier;

(I) allowing an employer to dictate the methods by which and the terms on which a claim is handled and settled. Nothing in the foregoing shall prohibit the free discussion of a claim prior to prehearing conference, prohibit the employer's assistance in the investigation and evaluation of a claim prior to pre-hearing conference, or prohibit the employer's attendance at a pre-hearing conference and participation therein as a witness/observer;

(J) failing to confirm medical benefits coverage to any persons or facility providing medical treatment to a claimant where no bona fide dispute exists as to the liability of the carrier;

(K) failing, without good cause, to attend a pre-hearing conference;

(L) attending a pre-hearing conference without complete authority or failing to exercise authority to effectuate settlement;

(M) adjusting workers' compensation claims in any manner contrary to the provisions of the Adjusters Licensing Act or the rules and regulations of the State Board of Insurance;

(N) failing to promptly process claims in a reasonable and prudent manner;

(O) failing to initiate or reinstate compensation when due where no bona fide dispute exists as to the liability of the carrier;

(P) misrepresenting the reason for not paying compensation or for the suspension of compensation;

(Q) misdating the Form A-1 so as to distort the true date of the initial payment of compensation;

(R) making notations on drafts or other instruments so as to indicate that the draft or instrument represents a final settlement of a claim when in fact the claim is still open and pending before the board;

(S) failing and refusing to pay compensation from week to week as and when the same matures and accrues directly to the person entitled thereto;

(T) failing to pay an award of the board as directed by the board when no appeal is perfected;

(U) violating any rule of the board;

(V) controverting claims when evidence clearly indicates compensability;

(W) failing to file with the board, immediately upon receipt, originals of the E-1, Employer's First Report of Injury or Illness; E-2, Employer's Supplemental Report of Injury; and IAB-150, Employer's Wage Statement.

(2) Claimant's attorney and/or agents:

(A) failing, without good cause, to attend a pre-hearing conference;

(B) committing an act of barratry as defined by the laws of this state;

(C) withholding sums not authorized by the board from claimant's weekly compensation or from advancements;

(D) entering into a compromise settlement agreement without the knowledge, consent, and signature of the claimant or beneficiary;

(E) taking a fee or withholding expenses in excess of such sums authorized by the board;

(F) refusing or failing to make prompt delivery to claimant (client) of the funds belonging to claimant as a result of a compromise settlement agreement, A-2 payment or award;

(G) violating the Code of Professional Responsibility of the State Bar of Texas;

(H) violating any rule of the board. (Rev. 1979).

The provisions of §65.10 adopted to be effective November 20, 1977, 2 TexReg 4324; amended to be effective September 25, 1979, 4 TexReg 3232; amended to be effective September 18, 1981, 6 TexReg 3274; amended to be effective October 26, 1981, 6 TexReg 3819; amended to be effective November 11, 1983, 8 TexReg 4499; amended to be effective October 1, 1985, 10 TexReg 3506; amended to be effective October 17, 1989, 14 TexReg 5260.

§65.15. ***Filing of Violation Report.***

Whenever an authorized representative of the board believes any party to a compensation claim has been or is in violation of either the Workers' Compensation Act, or any part thereof, or of these board rules, a written violation report shall be sent to the executive director with a copy to the party concerned. Said party shall promptly report in writing and shall direct his reply to the executive director. This board may impose sanctions for failure of said party to respond to the violation report within 30 days from receipt thereof.

The provisions of §65.15 adopted to be effective November 11, 1983, 8 TexReg 4499.

Intentionally left blank

Intentionally left blank

Chapter 67 - Allegations of Fraud: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 67 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=67&rl=Y

§67.5. ***Referral to Attorney General*****.**

The board, upon its findings of probable cause, shall promptly refer any written allegation of fraud regarding an employer, employee, attorney, person or facility furnishing medical services, insurance company or its representative to the attorney general (Rev. 1979).

The provisions of §67.5 adopted to be effective November 20, 1977, 2 TexReg 4325; amended to be effective September 25, 1979, 4 TexReg 3232.

Intentionally left blank

Intentionally left blank

Chapter 69 - Medical Examination Orders: For injuries prior to January 1, 1991

Link to the Secretary of State for 28 TAC Chapter 69 (HTML):
http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=28&pt=2&ch=69&rl=Y

§69.5. ***Application of Chapter*****.**

(a) This chapter shall not apply to medical examinations ordered pursuant to Texas Civil Statutes, Article 8309b, §10, and Article 8309d, §10.

(b) Nothing in this chapter shall be construed to limit the rights of the parties to agree on treatment or an examination by a mutually agreed health care provider. The agreement must be in writing if either party intends to take advantage of the protections offered by this chapter.

The provisions of this §69.5 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.10. ***Definitions*****.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Carrier's prior choice of health care provider--A health care provider who has examined the claimant in regard to the injury in question as provided in Texas Civil Statutes, Article 8307, §4, because:

(A) the board ordered the claimant to be examined by a health care provider of the carrier's choice; or

(B) the claimant granted permission for an examination by a carrier's tendered choice of a health care provider.

(2) Health care provider--A physician, chiropractor, or podiatrist.

(3) 180-day period--The elapse of 180 days after an examination conducted by the carrier's choice of health care provider.

The provisions of this §69.10 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.15. ***Carrier May Apply for Order from Board*****.**

It shall be the policy of the board to issue an order for an examination by a health care provider of the carrier's choice within 30 days after initial date of filing with the board a combination form entitled carrier's request for permission or requested medical examination order.

(1) The carrier shall send the properly completed combination form to the claimant or his attorney by certified mail, with a copy to the board.

(2) The claimant or attorney is required to respond to the request for permission within 10 days from receipt of the request in the space provided at the bottom of the combination form. The response by claimant's attorney shall be returned to the carrier by certified mail with a copy forwarded to the board. An unrepresented claimant may use a return envelope provided by the carrier, and the carrier shall immediately file the claimant's response with the board.

(3) An order will not be necessary if the claimant or his attorney agrees to the examination. An

examination by agreement will have the same force and effect as a formal board order. If permission is neither granted nor refused within 10 days from receipt by the claimant or his attorney, the board shall enter a formal order directing the examination as requested by the carrier.

(4) All examinations available under this section must be scheduled as soon as possible, with at least 10 days notice to the claimant or his attorney.

(5) If the examiner of the carrier's choice finds that the claimant is able to return to work and compensation is being paid, the case will be set on the next available prehearing docket, but in no event will the scheduled prehearing conference be more than 30 days from receipt of the carrier's request for prehearing conference if the request is accompanied by the carrier's examiner's report.

The provisions of this §69.15 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.20. ***Application*****.**

The application for permission or order shall be made on a combination form approved by the board and shall contain all information required by the board as detailed on the form.

The provisions of this §69.20 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.25. ***Bases for Denial*****.**

(a) Time limit after injury. No examination shall be ordered if the combination form is signed or submitted 60 or fewer days after the date of an injury.

(b) Health care providers limited. No examination shall be ordered if the license of the health care provider is under suspension by the appropriate licensing agency on the date of application.

(c) Ability to travel. No examination will be ordered unless a statement is attached to the request setting out whether the claimant's condition will allow travel to and attendance at the examination. The statement shall affirm that travel expenses will be tendered to the claimant in advance of any travel.

(d) One hundred eighty-day period. No examination shall be ordered if the claimant has been examined by the carrier's prior choice of health care provider in a 180-day period.

(e) Same health care provider. No examination shall be ordered if the claimant has been examined for the injury by the carrier's choice of health care provider and the prior health care provider is not the same as the requested health care provider.

(f) Good cause. The board may waive any of the bases for denial in subsections (a)-(e) of this section or deny an application for a medical examination order if the board determines that good cause exists.

The provisions of this §69.25 adopted to be effective February 19, 1988, 13 TexReg 617; amended to be effective June 4, 1990, 15 TexReg 2852.

§69.30. ***Appeal*****.**

The carrier or the claimant may appeal a decision by the board staff in writing to the executive director or the full board. The appeal must be received no later than 10 days after the order or denial is mailed or delivered to the parties.

The provisions of this §69.30 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.33. ***Claimant's Medical Records*****.**

A claimant's health care provider shall timely release any and all medical records relating to the injury or disease in question, including x-rays and results of other diagnostic tests, when requested by the carrier pursuant to this chapter. A carrier shall report to the board the provider's name and the circumstances surrounding a refusal to release records.

The provisions of this §69.33 adopted to be effective June 8, 1988, 13 TexReg 2555.

§69.35. ***Claimant's Expenses*****.**

Prior to the date the claimant attends an examination ordered by the board or permitted by the claimant, the carrier shall tender to the claimant travel expenses in accordance with §41.155 of this title (relating to Transportation Costs as Medical Expenses).

The provisions of this §69.35 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.40. ***Attendance of Claimant's Health Care Provider*****.**

In accordance with Texas Civil Statutes, Article 8307, §4, the claimant shall have the right to have a health care provider of his or her choice present at the examination at the carrier's expense.

The provisions of this §69.40 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.45. ***Unreasonable Delay*****.**

The claimant shall be entitled to a prompt examination. Any examination that fails to commence within two hours after the claimant timely reports for the examination should be reported to the executive director.

The provisions of this §69.45 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.50. ***Reports of Examinations*****.**

The carrier's choice of health care provider shall immediately submit a written report of the results of the examination to all parties.

The provisions of this §69.50 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.55. ***Failure To Attend Examination*****.**

(a) A claimant who agrees or is ordered to submit to an examination as requested by the carrier under this chapter is required to attend the examination.

(b) When a claimant fails to attend an examination permitted or ordered under this chapter, the carrier may notify the board in writing on a board approved form and request a formal hearing. The board shall set the hearing on the first Friday following 10 days from receipt of the carrier's written request, and shall provide written notice to all parties.

(c) The claimant may be heard at this hearing by:

(1) making a personal appearance in Austin;

(2) appearing by telephone conference call; or

(3) filing a written brief.

(d) If a majority of the board determines there was no good cause for the claimant's failure to attend the medical examination, the board shall order the carrier to suspend compensation during the continuance of the claimant's refusal.

(e) The carrier may not terminate compensation because of the claimant's failure to attend a medical examination permitted or ordered under this chapter until ordered by the board.

The provisions of this §69.55 adopted to be effective February 19, 1988, 13 TexReg 617; amended to be effective June 16, 1988, 13 TexReg 2752.

Intentionally left blank