

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1096

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10-18-84
DATE FOR REVIEW 10-27-84
DATE DUE 11-1-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 10.31.84 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 11/1/84 Revisor approved 10/19/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 10.18.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 5.28.84 + comments.

✓ Order for rulemaking
N/A date of Hearing

? Certificate of Board's Authorizing Resolution minutes of MSRB + RRP meetings

✓ Notice of rulemaking
? Sufficiency no clear small biz statement

✓ Affidavit of Mailing Notice or rulemaking
8.23.84 At least 30 days prior to hearing/adoption

✓ Mailing list Certificate

✓ Publication in State Register minimal small biz
8.27.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

? Certificate of Board's Resolution Adopting Rules copy of minutes of MSRB + RRP meeting

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT

ATTORNEY GENERAL

Office Memorandum

RECEIVED
OCT 18 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

TO:

LARRY D. STARNS
Special Assistant
Attorney General

DATE: 10/18/84

FROM:

LESLIE M. ALTMAN LMA
Special Assistant
Attorney General

PHONE: 297-2972

SUBJECT:

Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

The Rehabilitation Review Panel and Medical Services Review Board have adopted Joint Rules of Procedure pursuant to authority conferred on them by Minn. Stat. §§ 176.102, subd. 3(a) and 176.103, subd. 3(d). Having received no requests for a public hearing, the Panel and Board have proceeded under the noncontroversial rulemaking provisions, Minn. Stat. §§ 14.21-14.28 (as amended by Minn. Laws 1984, ch. 640, §§ 12-15). The Panel and Board are now submitting the rules to the Attorney General for approval pursuant to Minn. Stat. § 14.26.

As the following documents demonstrate, the Panel and Board have fully complied with all requirements imposed by law or rule:

1. A Notice of Intent to Solicit Outside Opinion soliciting data and views from interested persons or groups was published in the State Register at 8 S.R. 2575 on May 28, 1984. Data and views received in response to this notice were considered in the drafting of the rules as reflected in the enclosed letter of July 5, 1984.

2. Resolutions authorizing the initiation of rulemaking proceedings by the Manager of Public Affairs were executed by the Panel on May 17, 1984, and by the Board on June 13, 1984.

3. An Order for Notice of Intent to Adopt Rules Without a Public Hearing and for Publication was issued by the Manager of Public Affairs on August 14, 1984. It directed the publication of the Notice in the State Register and the mailing of the Notice to all persons on the lists maintained by the agencies.

4. A Certificate verifying the accuracy and completeness of the agencies' mailing lists of persons and groups requesting notice of proposed adoption of rules was prepared on August 23, 1984.

5. An Affidavit of Mailing the Notice of Intent to Adopt Rules without a Public Hearing on August 23, 1984, to persons and groups on the certified list described in #4 was executed.

6. The Notice of Intent to Adopt Rules Without a Public Hearing was published in the State Register at 9 S.R. 415 on August 27, 1984, together with the rules as proposed. The Notice contained all of the elements required by Minn. Rules, part 2000.0400, subpart 2.

7. A Statement of Need and Reasonableness describing the reasons, arguments, and evidence supporting a finding of need for and reasonableness of each proposed rule was drafted and made available to the public.

8. No requests for hearing were received by the Panel or Board during the 30 days ending on September 26, 1984. Only one comment letter was received in that time. The Panel and Board reviewed the comments and incorporated them as described in the Findings of Fact in #10.

9. Adopting resolutions were executed by the Board on October 10, 1984, and by the Panel on October 11, 1984.

10. Findings of Fact were issued on October 18, 1984, by the Manager of Public Affairs. These findings explain the need for and reasonableness of the rules as modified. The modifications are not substantial changes because they merely clarify the intent of the rules as originally proposed without affecting the rights of any parties.

11. An Order Adopting the Rules was issued by the Manager of Public Affairs on October 18, 1984. It states that proper notice of the proposed rulemaking was effected, fewer than 25 requests for public hearing were received, and that the rules are needed and reasonable.

12. The proposed rules as modified were approved as to form by the revisor of statutes on October 15, 1984.

13. A Notice of Submission to the Attorney General was prepared by the agencies on October 18, 1984. A free copy of the final rules as adopted was attached to this Notice.

14. A certificate verifying the accuracy and completion of the agencies' mailing lists of persons and groups requesting notice of submission to the Attorney General was completed on October 18, 1984.

15. An Affidavit of Mailing Notice of Submission to the Attorney General was executed on October 18, 1984.

16. A Certificate of Compliance with Rulemaking Procedures was signed on October 18, 1984, by Leslie M. Altman, Special Assistant Attorney General.

In all respects, then, the Rehabilitation Review Panel and Medical Services Review Board have complied with the requirements for noncontroversial rulemaking contained in Minn. Stat. §§ 14.21-14.28 (Supp. 1983) and in Minn. Rules, part 2000.0400 (1983).

LMA:pmk

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Cynthia Thompson
Manager of Public Affairs

DATE: November 1, 1984

ATTN: Leslie Altman
Special Assistant Attorney General

FROM : Martha J. Casserly MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

MJC:slz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG COPY

Department of Labor and Industry
Workers' Compensation Rehabilitation Review Panel; and
Workers' Compensation Medical Services Review Board

Adopted Rules Governing Workers' Compensation Rules of Practice for the Medical Services Review Board and Rehabilitation Review Panel

Rules as Adopted

5217.0010 DEFINITIONS.

Subpart 1. **Scope.** The following terms have the meanings given when used in parts 5217.0010 to 5217.0270 unless the context clearly indicates a different meaning.

Subp. 2. **Board.** "Board" means the Medical Services Review Board created by Minnesota Statutes, section 176.103, subdivision 3.

Subp. 3. **Chairperson.** "Chairperson" means the member selected by the panel or board to accomplish or delegate the administrative tasks of the panel or board and to take action as directed by parts 5217.0010 to 5217.0270.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 5. **Executive secretary.** "Executive secretary" means the person assigned to the panel or board to communicate with the parties concerning the procedural aspects of cases and to receive documents filed by the parties.

Subp. 6. **Panel.** "Panel" means the Rehabilitation Review Panel created by Minnesota Statutes, section 176.102, subdivision 3.

Subp. 7. **Party.** "Party" means each person named as a party by the panel or board in the notice of hearing or later intervening as a party by order of the panel or board. Interested party, as used in Minnesota Statutes, section 176.102, subdivision 3a, has the same meaning as party.

Subp. 8. **Person.** "Person" means an individual, business entity, or governmental unit.

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Subp. 9. **Presiding officer.** "Presiding officer" means the panel or board member assigned on a rotating basis to preside at the hearing.

Subp. 10. **Rehabilitation and medical services.** "Rehabilitation and medical services" means the Rehabilitation and Medical Services Section of the Workers' Compensation Division of the Department of Labor and Industry.

5217.0020 SCOPE AND PURPOSE.

Parts 5217.0010 to 5217.0270 govern all proceedings before the panel and the board. The panel's rulemaking authority arises from Minnesota Statutes, section 176.102, subdivision 3a. The board's rulemaking authority arises from Minnesota Statutes, section 176.103, subdivision 3.

5217.0030 COMMENCEMENT OF APPEAL.

Subpart 1. **Notice of appeal.** An appeal to the panel or the board is commenced by the filing of a notice of appeal of the rehabilitation and medical services decision. The notice must include:

A. the name of the appellate body, either the panel or the board;

B. the employee's name, social security number, and date of injury;

C. the insurer's name and claim number;

D. the name of the employer;

E. the name of the person who issued the rehabilitation and medical services decision;

F. the date the decision was served and filed;

G. the specific findings and determinations appealed from and the grounds for the appeal;

H. an affidavit of service; and

I. the name, address, and telephone number of the appellant.

Subp. 2. **Time for appeal.** A party wishing to appeal a rehabilitation and medical services decision must file the notice of appeal within 30 days of service of the decision. The

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date of service is established by the date stamped on the decision by the Department of Labor and Industry.

Subp. 3. **Notice to potential intervenors.** Within 15 days after filing its notice of appeal, the appellant shall serve notice of the right to intervene on any persons whose interests may be determined or affected by the case, including the special compensation fund.

Subp. 4. **Acknowledgment of appeal.** The executive secretary shall acknowledge the filing of the appeal in writing. } FF

5217.0040 NOTICE OF HEARING.

The notice of hearing must be served by the executive secretary on the parties at least 30 days before the hearing, unless the parties consent to a shorter time period or a continuance has been granted, and must contain:

more than period called for in statute - 10 days - but O.K.

when is a cont granted

A. the names of the parties to the appeal;

B. the social security number of the employee;

C. the date of injury;

D. the date, time, and place of the hearing;

E. the name, address, and telephone number of the executive secretary;

F. notification of the right of the party to be represented by an attorney or another person of the party's choosing;

G. notification that failure of the appellant to attend the hearing may result in the dismissal of the appeal under part 5217.0140 and failure of a respondent to attend may result in an award by default under part 5217.0150; and

H. Notification that a petition for continuance must conform to part 5217.0220.

5217.0050 REPRESENTATION.

A party may appear in person or through a representative. A representative of a party need not be an attorney. A nonattorney representative must not engage in the unauthorized practice of law under Minnesota Statutes, section 481.02. If a party notifies the panel or board that the party will be

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represented, all documents required to be served on the party will also be served on the party's representative.

5217.0060 FILING.

All documents required under parts 5217.0010 to 5217.0270 shall be filed with the executive secretary. Filing is complete when received by the executive secretary. The date received is established by the date stamped on the document by the Department of Labor and Industry. An affidavit of service stating that the document has been served on all other parties must be attached to the document filed.

5217.0070 SERVICE.

All documents filed with the board or panel must be served on all other parties and their representatives, if any. Service may be made by personal delivery or by postage prepaid, first class mail to the party's last known address. Service is complete at the time of mailing or personal delivery.

5217.0080 TIME.

In computing any period of time in parts 5217.0010 to 5217.0270, the first day of the time period will not be included. The last day of the period will be included unless it is a Saturday, Sunday, or a state or federal holiday. If the last day is a Saturday, Sunday, or holiday, the next day which is not a Saturday, Sunday, or holiday will be the last day of the period. All references to days are to calendar days unless otherwise specified in parts 5217.0010 to 5217.0270.

5217.0090 EXAMINATION OF PANEL OR BOARD FILES.

Access to files maintained by the panel or board is allowed under the same conditions set forth in part 1415.0600.

5217.0100 PREHEARING PROCEDURES.

Subpart 1. **Time for filing statement of position and witness list.** An appellant shall file a statement of position and a witness list within ~~30~~ 15 days after ~~filing the notice of~~ the date of service of the executive secretary's acknowledgment of the appeal. The executive secretary is not required to

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schedule a hearing before the appellant files a statement of position and witness list. The respondent must file a statement of position and witness list within ten days after filing of the appellant's statement of position and witness list.

Subp. 2. **Witness list.** The witness list shall contain the names and addresses of all potential witnesses and a summary of the substance of the testimony of each witness. All witnesses unknown at the time of filing of the witness list must be disclosed as they become known. Witnesses not included on the witness list or disclosed to opposing parties at least ten days before the hearing date may testify at the hearing only upon agreement of the parties.

Subp. 3. **Statement of position.** A party filing a statement of position with the panel must file the original and five copies; a party filing a statement of position with the board must file the original and three copies. The statement of position must contain:

A. a concise statement of the issues;

B. a brief statement of the party's position on each issue; and

C. legal authority in support of the party's position.

5217.0110 SUBPOENAS.

Subpart 1. **Form; service; and fees.** Subpoenas for the attendance of witnesses or the production of documents must be in writing. The subpoena shall contain a brief statement demonstrating the materiality of the testimony or documents sought. The subpoena must specifically identify any documents or witnesses sought.

A subpoena shall be personally served. The person serving the subpoena shall prove service by filing the subpoena with the executive secretary, together with an affidavit of service. Notwithstanding part 5217.0060, the filing party is not required to serve copies of the subpoena and affidavit on other parties.

The cost of service, fees pursuant to Minnesota Statutes, section 357.22, and expenses of any witnesses subpoenaed and any documents produced, shall be paid by the party requesting the

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subpoena.

Subp. 2. **Petition to quash.** Upon the petition of a party, the presiding officer shall quash or modify the subpoena if it is unreasonable or oppressive.

5217.0120 PETITIONS.

All petitions filed under parts 5217.0010 to 5217.0270 must conform to the requirements of this part. The petition must state with particularity its grounds and the order sought. If the petition is supported by briefs, affidavits, or other papers, they must be filed with the petition. Any party may file a response within ten days after filing of the petition. Any reply must be filed within five days after filing of a response. Petitions must be filed at least five days before the hearing. If the petition is to the board, an original and three copies of all documents filed under this part must be filed. If the petition is to the panel, an original and five copies of all documents filed under this rule must be filed.

5217.0130 INTERVENTION.

The presiding officer shall grant a petition to intervene if:

A. the petition shows how the ~~moving~~ petitioning party's interests may be determined or affected by the case as prescribed by Minnesota Statutes, section 176.361, states the reasons for which intervention is sought, and indicates the ~~moving~~ petitioning party's statutory right to intervene; and

B. the presiding officer determines that the rights of the existing parties will not be materially prejudiced and that the existing parties are not likely to adequately protect the rights of the ~~moving~~ petitioning party.

Notwithstanding the requirements of items A and B, the commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding.

5217.0140 DISMISSAL.

The panel or board shall dismiss an appeal with prejudice

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when:

A. a stipulation for settlement has been approved by a settlement or compensation judge;

B. a written withdrawal of the appeal signed by the appellant or a representative has been filed;

C. an appeal is filed after the expiration of the appeal period;

D. the appellant has not within one year of the time deadlines of these rules filed the documents required by these rules, and the appellant has failed to respond to requests for information or documents by the panel or board within the time period specified in the requests for information or documents; or

E. the appellant or a representative fails to appear at the hearing and a continuance under part 5217.0220 has not been granted.

5217.0150 DEFAULT.

If a respondent fails to attend a hearing and the appellant has established a right to the relief requested, the presiding officer shall serve upon the parties written notice of a proposed default order, including the reasons for the order, unless a continuance is granted under part 5217.0220. Within eight days after service of a proposed default order, the party against whom the default is sought may file a written response detailing the reasons a default order should not be granted. The presiding officer shall either issue a default order promptly after expiration of the response period or continue the matter to a future hearing date if the requirements of part 5217.0220, subpart 2 are met. The future hearing date shall be scheduled as provided in part 5217.0220, subpart 4.

5217.0160 CONSOLIDATION.

The chairperson shall grant a petition for consolidation of two or more related cases if the cases present substantially the same issues, the consolidation would not prejudice the rights of any party and consolidation is administratively practical.

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Separate findings and decisions will be made in each case consolidated for hearing. In addition, the chairpersons of the panel and board may, upon agreement of the parties, consolidate matters before the panel and board into one hearing where the appeals involve the same parties. In those cases, evidence will be presented to the panel and board simultaneously and the panel and board will issue their respective decisions.

5217.0170 SETTLEMENT.

Subpart 1. **Settlement conferences.** The board and panel shall refer matters on appeal to a settlement judge after the parties have filed their statements of position. If a settlement conference is appropriate, it shall be scheduled within 30 days of referral of the matter by the board or panel. Otherwise the matter shall be immediately referred back to the panel or board.

Written notice must be served on the parties at least ten working days before the conference. The notice shall indicate whether attendance of an intervenor is requried. All parties, including intervenors, shall attend unless otherwise excused. If a party fails to attend a settlement conference, the matter may be stricken from the active hearing calendar, a penalty for delay may be imposed under Minnesota Statutes, section 176.225, or the failure to attend may be considered as an additional factor in awarding attorney fees.

? typo

All parties shall be prepared to engage in meaningful settlement negotiations and must have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement. At the settlement conference:

A. Parties shall state the issues.

B. Parties shall identify witnesses not listed on the witness list.

C. Parties shall file copies of all medical reports not already on file. If a party plans to introduce medical or hospital records into evidence, the party shall provide written authorizations allowing the opposing party to examine those

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records if the authorizations have not previously been provided.

D. Each party shall state what exhibits are intended to be used at the hearing.

E. If a party is claiming medical or other treatment expenses, the party shall state those expenses at the conference and shall furnish the opposing party with copies of itemized bills for the expenses.

F. The parties shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation disability carrier, and whether the Division of Vocational Rehabilitation has provided rehabilitation services. If payment has been made, the name and address of the party making payment must be furnished, together with any identifying claim or policy numbers.

Subp. 2. **Approval of settlements.** Parties may enter into stipulations for settlement of all or some of the issues in dispute. Stipulations for settlement must be in writing and signed by the parties. They are subject to approval under Minnesota Statutes, section 176.521. If the stipulation is approved, an order shall be issued which confirms those matters agreed upon.

5217.0180 PRESIDING OFFICERS.

Subpart 1. **Assignment and duties.** The panel or board members shall serve as presiding officers on a rotating basis as assigned by the chairperson. The presiding officer shall administer oaths or direct another member to do so, rule on the admissibility of evidence according to part 5217.0210, and ensure the orderly process of the hearing.

Subp. 2. **Communication with panel or board.** Parties and their representatives shall not communicate with members of the panel or board concerning a pending case except during the hearing.

Subp. 3. **Disqualification.** A panel or board member who is in any way prejudiced or biased with respect to a party, or who has an interest in the matter pending before the panel or board,

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shall disqualify himself or herself from any involvement in the case. A party may file a request for disqualification which states the reason for the request. The request must be in writing and filed no later than 15 days before the hearing.

HEARING

5217.0190 RIGHTS OF PARTIES.

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect only to the issues listed on the notice of appeal and to cross-examine witnesses.

5217.0200 WITNESSES.

Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing must be under oath or affirmation. At the request of a party, the presiding officer may exclude witnesses, except for parties testifying as witnesses, from the hearing room so that they cannot hear the testimony of other witnesses.

5217.0210 RULES OF EVIDENCE.

Subpart 1. **General rules.** The presiding officer shall admit all relevant, competent evidence that is not unduly repetitious, including hearsay, if it is the type of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence relating to issues not included in the notice of appeal may be admitted only if the parties and the presiding officer agree to its admission. The presiding officer shall apply the rules of privilege recognized by law.

Subp. 2. **Evidence must be offered to be considered.** All evidence to be considered in the case, including all records and documents in the possession of the commissioner, or a true and accurate photocopy, must be offered and made a part of the record in the case. Only factual information or evidence entered into the record shall be considered in the determination of the case.

Subp. 3. **Documentary evidence.** Documentary evidence may be submitted at the hearing or after the hearing as provided in

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part 5217.0230, item I. To be received into evidence it must be marked as an exhibit and identified by a witness who has personal knowledge of it. The parties may agree to waive personal identification of a document. A party must provide an original and six copies of documents to be offered into evidence before the panel and an original and four copies of documents to be offered into evidence before the board. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

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Subp. 4. **Deposition of unavailable witness.** A party wishing to present a deposition of an unavailable witness shall depose the witness before the hearing except where the presiding officer orders otherwise.

Subp. 5. **Deposition prior to close of record.** Where a party has not submitted all of its testimony during the time allotted for the hearing, the presiding officer, at the request of a party, may order the taking of a deposition for inclusion in the record. The deposition may include questions asked by the panel or board. The questions of the panel or board shall be set forth on the record at the hearing or by written interrogatory.

Subp. 6. **Notice of facts.** The presiding officer may take notice of general, technical, or scientific facts within the special knowledge of the panel or board. A noticed fact must be one not subject to reasonable dispute in that it is either generally known within the profession, or is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. Notice shall be taken on the record after any party has had the opportunity to contest the facts to be noticed.

Subp. 7. **Burden and standard of proof.** Issues of fact shall be proven by a preponderance of the evidence as defined in Minnesota Statutes, section 176.021, subdivision 1a. Questions of law shall be determined on an even-handed basis in accordance with the principles of Minnesota Statutes, section 176.021,

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subdivision 1a.

5217.0220 CONTINUANCES.

A petition for continuance must be in writing, and must fully set forth all facts tending to establish good cause.

A. A petition for continuance filed 15 or more days before the hearing shall be granted upon a showing of good cause. The presiding officer shall consider the ability of the party requesting a continuance to effectively proceed without a continuance.

B. A petition for continuance filed less than 15 days before the hearing shall be granted by the presiding officer only if good cause for a continuance is shown, no prejudice will result from the continuance, and the petition could not have been made at an earlier time.

C. During a hearing, if it appears in the interest of justice that further testimony should be received, the presiding officer shall continue the hearing to a future date. If continued, it shall be either continued to a certain time and day, announced at the hearing and made a part of the record; or continued to a date to be determined after the hearing. If a time is not set at the hearing, written notice must be served on the parties at least eight days before the hearing is reconvened.

D. Where a continuance has been granted under item A or B, the executive secretary shall schedule the case for hearing on the back-up calendar when calendar openings occur due to the cancellation or continuation of other scheduled hearings. Written notice of the back-up hearing dates shall be served on the parties at least ten working days prior to the dates available for hearing on the back-up calendar. The executive secretary shall provide at least one-day telephone notice to the parties of the date selected.

E. Good cause does not include:

(1) the unavailability of counsel assigned to the case where an insurer retains more than one counsel on its own payroll who practices workers' compensation law, unless all other workers' compensation counsel of the insurer are committed

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elsewhere;

(2) the unavailability of counsel assigned to the case where a law firm consists of more than one member who practices workers' compensation law, unless all other workers' compensation counsel in the firm are committed elsewhere;

(3) the unavailability of an individual law practitioner because of engagement in another court, if counsel has failed to notify the judge in charge of the trial court calendar of that court that counsel has been assigned to a date and time certain in a workers' compensation case; or

(4) the unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

5217.0230 HEARING PROCEDURE.

The hearing will be conducted substantially in the following manner:

A. After opening the hearing, the presiding officer shall inquire whether the parties have any questions regarding the rules governing the hearing and shall state the following:

(1) The scope of issues under the jurisdiction of the panel or board.

(2) The parties may present oral and written evidence and cross-examine witnesses. The presiding officer shall make rulings necessary to ensure that only relevant, competent evidence is admitted.

(3) The parties have a right to be represented by an attorney or other representative at the hearing.

B. Any stipulations or settlement agreements entered into by the parties before the hearing concerning the issues before the panel or board will be entered into the record.

C. The appellant may make an opening statement. All other parties may follow with their statements in a sequence determined by the presiding officer. Opening statements are limited to five minutes, unless additional time is allowed by the presiding officer, in which case all other parties are

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allowed equivalent additional time.

D. After opening statements, the appellant shall present evidence, followed by the other parties in a sequence determined by the presiding officer.

E. Cross-examination of witnesses will be conducted in a sequence determined by the presiding officer.

F. When all parties and witnesses have been heard, the parties may present final argument. The appellant shall present final argument last. Arguments are limited to five minutes, unless additional time is allowed by the presiding officer, in which case all parties are allowed equivalent additional time.

G. A party may submit a brief, or proposed findings of fact with proposed decision and order, subsequent to the hearing if a request to do so is made before the hearing is concluded. The presiding officer shall fix a reasonable period of time for such filing.

H. After final argument, the hearing will be concluded.

I. The record will be closed upon conclusion of the hearing or upon receipt of the final briefs, findings, transcript, post hearing depositions, or late filed exhibits, if any, which the parties and the presiding officer have agreed or the presiding officer has ordered should be received into the record, whichever occurs later.

5217.0240 RECORD.

Subpart 1. **Contents.** The panel or board shall establish the official record in each case. After the conclusion of the case, the record shall be returned to the commissioner. The record consists of:

A. correspondence received by the panel or board in connection with the case;

B. orders issued by the presiding officer or chairperson;

C. evidence received;

D. the panel or board's findings of fact, decision,

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and order;

E. depositions, briefs, proposed findings, or other data submitted by a party in connection with the case;

F. a verbatim record of the hearing; and

G. a transcript of the hearing, if one was prepared.

Subp. 2. **Transcript.** The verbatim record shall be transcribed if requested by a party or other person. The requesting party and other persons who request copies of the transcript shall pay a reasonable fee to cover the cost of the transcript.

5217.0250 DECISION.

Subpart 1. **Basis for decision.** Only factual information or evidence which is contained in the record may be considered by the panel or board in the determination of a case.

The panel or board may take notice of general, technical, or scientific facts within their specialized knowledge as described in part 5217.0210, subpart 6.

Subp. 2. **Findings of fact, decision, and order.** Following the close of the record, the panel or board shall promptly issue its written findings of fact, decision, and order. The presiding officer or the officer's designee shall write the decision of the panel or board. A copy of the findings, decision, and order must be served on the parties and their representatives.

Subp. 3. **Contents.** The panel or board's decision must include:

A. the date and location of the hearing and the names of the panel or board members who heard the case;

B. appearances by parties or their representatives, with the full name and mailing address of each;

C. the date the record of the hearing was closed;

D. a notice of the right of parties to appeal and how the appeal can be perfected;

E. findings, made pursuant to part 5217.0210, subpart 7, describing all facts relied upon in the decision, including those made under part 5217.0210, subpart 6;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

F. an order containing a determination of each contested issue of fact or law; and

G. a memorandum explaining the reasons for the decision.

5217.0260 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 5217.0010 to 5217.0270, the panel or board may, upon petition of a party, or upon its own petition five days after serving notice on the parties, suspend any requirements of parts 5217.0010 to 5217.0270. Parts 5217.0030, subpart 2; and 5217.0220, subpart 4, and other rules implementing requirements imposed by law, shall not be suspended even upon a clear showing of extraordinary circumstances.

5217.0270 SEVERABILITY.

If any provision of parts 5217.0010 to 5217.0270 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the part shall in no manner be affected.

EFFECTIVE DATE. Parts 5217.0010 to 5217.0270 are effective on the date specified in Minnesota Statutes, chapter 14, and govern all proceedings pending or commenced on or after that date.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

APPROVED AS TO FORM AND LEGALITY

October 31 1984

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
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Joan Anderson Growe
Secretary of State

(7) the lack of available child care necessary for children in the person's assistance unit; or

(8) evaluation by a vocational specialist which finds the person unable to obtain or retain suitable employment; or

(9) an individual or family crisis.

B. The recipient has been certified by the commissioner of the Department of Economic Security as lacking work skills or training, or as being unable to obtain work skills or training necessary to secure employment.

Subp. 4. Period of exemption. A recipient exempt from the registration and work requirements in subpart 3, item A, subitems (1) to (8), is exempt for a period of 12 months, or until the local agency determines that the recipient no longer meets or will no longer meet the conditions of subpart 3, item A, whichever is earlier. A recipient exempt from the registration and work requirements in subpart 3, item A, subitem (9), is exempt for a period of 30 days. A recipient exempt from the registration and work requirements in subpart 3, item B, is exempt for a period of 12 months.

Subp. 5. Annual reassessment. A recipient's exemption from the general assistance registration and work requirements under subpart 3 shall be reassessed annually or at the expiration of a shorter exemption period.

The local agency shall reassess the recipient exempted under subpart 3, item A during the final month of exemption. The reassessment must be completed by the end of the final month of exemption. If, at the time of the reassessment of exemption status, the local agency determines that the recipient meets the provisions of subpart 3, item A, the recipient shall be exempt for the period specified in subpart 4. If the recipient does not meet the exemption provisions of subpart 3, item A or B, the recipient shall be subject to the registration and work requirements of part 9555.3403 [Emergency].

B. Upon expiration of the recipient's exemption under subpart 3, item B, the local agency shall refer the recipient to the commissioner of economic security as in part 9555.3403 [Emergency]. If the commissioner of the Department of Economic Security subsequently certifies in writing that the recipient lacks work skills or training or is unable to obtain work skills or training necessary to secure employment, the recipient shall be exempt under subpart 3, item B for another 12-month period.

Subp. 6. Referral to supportive service programs. A recipient who is exempt from the registration and work requirements in subpart 3, items A, subitems (1), (2), (7), (8), and (9); and B, shall be offered referral to supportive service programs for assistance in overcoming the barrier to employment.

Department of Labor and Industry Workers' Compensation Rehabilitation Review Panel; and Workers' Compensation Medical Services Review Board

Proposed Rules Governing Workers' Compensation Rules of Practice for the Medical Services Review Board and Rehabilitation Review Panel

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Rehabilitation Review Panel and the Medical Services Review Board propose to adopt the above-captioned rules without a public hearing. The panel and board have determined that the proposed adoption of these rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 12-15).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed rules are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the panel and board and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the panel and board will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 7-11). Any person requesting a

public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Cynthia Thompson
Manager of Public Affairs
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 297-3467

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.102, subd. 3(a) and 176.103, subd. 3 (Supp. 1983) (as amended by Minn. Laws 1984, ch. 432, §§ 13 and 15). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small business and on local public bodies has been prepared and is available from the Manager of Public Affairs upon request at the above address.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agencies' authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material, including modifications to the rules as originally proposed, to the Attorney General, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Manager of Public Affairs at the above address.

The text of the proposed rules follows this notice in the *State Register*. The rules prescribe the procedures for appealing workers' compensation rehabilitation decisions and medical decisions to the Rehabilitation Review Panel and Medical Services Review Board pursuant to Minn. Stat. §§ 176.102 and 176.103 (Supp. 1983) (as amended by Minn. Laws 1984, ch. 432, §§ 13-15). These rules govern all aspects of procedure before the panel and board, including prehearing, hearing, and posthearing requirements.

One free copy of the proposed rules may be obtained by contacting the Manager of Public Affairs at the above address or by calling (612) 297-4373.

August 14, 1984

Cynthia Thompson
Manager of Public Affairs

Rules as Proposed (all new material)

5217.0010 DEFINITIONS.

Subpart 1. Scope. The following terms have the meanings given when used in parts 5217.0010 to 5217.0270 unless the context clearly indicates a different meaning.

Subp. 2. Board. "Board" means the Medical Services Review Board created by Minnesota Statutes, section 176.103, subdivision 3.

Subp. 3. Chairperson. "Chairperson" means the member selected by the panel or board to accomplish or delegate the administrative tasks of the panel or board and to take action as directed by parts 5217.0010 to 5217.0270.

Subp. 4. Commissioner. "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 5. Executive secretary. "Executive secretary" means the person assigned to the panel or board to communicate with the parties concerning the procedural aspects of cases and to receive documents filed by the parties.

Subp. 6. Panel. "Panel" means the Rehabilitation Review Panel created by Minnesota Statutes, section 176.102, subdivision 3.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 7. Party. "Party" means each person named as a party by the panel or board in the notice of hearing or later intervening as a party by order of the panel or board. Interested party, as used in Minnesota Statutes, section 176.102, subdivision 3a, has the same meaning as party.

Subp. 8. Person. "Person" means an individual, business entity, or governmental unit.

Subp. 9. Presiding officer. "Presiding officer" means the panel or board member assigned on a rotating basis to preside at the hearing.

Subp. 10. Rehabilitation and medical services. "Rehabilitation and medical services" means the Rehabilitation and Medical Services Section of the Workers' Compensation Division of the Department of Labor and Industry.

5217.0020 SCOPE AND PURPOSE.

Parts 5217.0010 to 5217.0270 govern all proceedings before the panel and the board. The panel's rulemaking authority arises from Minnesota Statutes, section 176.102, subdivision 3a. The board's rulemaking authority arises from Minnesota Statutes, section 176.103, subdivision 3.

5217.0030 COMMENCEMENT OF APPEAL.

Subpart 1. Notice of appeal. An appeal to the panel or the board is commenced by the filing of a notice of appeal of the rehabilitation and medical services decision. The notice must include:

A. the name of the appellate body, either the panel or the board;

B. the employee's name, social security number, and date of injury;

C. the insurer's name and claim number;

D. the name of the employer;

E. the name of the person who issued the rehabilitation and medical services decision;

F. the date the decision was served and filed;

G. the specific findings and determinations appealed from and the grounds for the appeal;

H. an affidavit of service; and

I. the name, address, and telephone number of the appellant.

Subp. 2. Time for appeal. A party wishing to appeal a rehabilitation and medical services decision must file the notice of appeal within 30 days of service of the decision. The date of service is established by the date stamped on the decision by the Department of Labor and Industry.

Subp. 3. Notice to potential intervenors. Within 15 days after filing its notice of appeal, the appellant shall serve notice of the right to intervene on any persons whose interests may be determined or affected by the case, including the special compensation fund.

5217.0040 NOTICE OF HEARING.

The notice of hearing must be served by the executive secretary on the parties at least 30 days before the hearing, unless the parties consent to a shorter time period or a continuance has been granted, and must contain:

A. the names of the parties to the appeal;

B. the social security number of the employee;

C. the date of injury;

D. the date, time, and place of the hearing;

E. the name, address, and telephone number of the executive secretary;

F. notification of the right of the party to be represented by an attorney or another person of the party's choosing;

G. notification that failure of the appellant to attend the hearing may result in the dismissal of the appeal under part 5217.0140 and failure of a respondent to attend may result in an award by default under part 5217.0150; and

H. notification that a petition for continuance must conform to part 5217.0220.

5217.0050 REPRESENTATION.

A party may appear in person or through a representative. A representative of a party need not be an attorney. A nonattorney representative must not engage in the unauthorized practice of law under Minnesota Statutes, section 481.02. If a

party notifies the panel or board that the party will be represented, all documents required to be served on the party will also be served on the party's representative.

5217.0060 FILING.

All documents required under parts 5217.0010 to 5217.0270 shall be filed with the executive secretary. Filing is complete when received by the executive secretary. The date received is established by the date stamped on the document by the Department of Labor and Industry. An affidavit of service stating that the document has been served on all other parties must be attached to the document filed.

5217.0070 SERVICE.

All documents filed with the board or panel must be served on all other parties and their representatives, if any. Service may be made by personal delivery or by postage prepaid, first class mail to the party's last known address. Service is complete at the time of mailing or personal delivery.

5217.0080 TIME.

In computing any period of time in parts 5217.0010 to 5217.0270, the first day of the time period will not be included. The last day of the period will be included unless it is a Saturday, Sunday, or a state or federal holiday. If the last day is a Saturday, Sunday, or holiday, the next day which is not a Saturday, Sunday, or holiday will be the last day of the period. All references to days are to calendar days unless otherwise specified in parts 5217.0010 to 5217.0270.

5217.0090 EXAMINATION OF PANEL OR BOARD FILES.

Access to files maintained by the panel or board is allowed under the same conditions set forth in part 1415.0600.

5217.0100 PREHEARING PROCEDURES.

Subpart 1. Time for filing statement of position and witness list. An appellant shall file a statement of position and a witness list within 30 days after filing the notice of appeal. The executive secretary is not required to schedule a hearing before the appellant files a statement of position and witness list. The respondent must file a statement of position and witness list within ten days after filing of the appellant's statement of position and witness list.

Subp. 2. Witness list. The witness list shall contain the names and addresses of all potential witnesses. All witnesses unknown at the time of filing of the witness list must be disclosed as they become known. Witnesses not included on the witness list or disclosed to opposing parties at least ten days before the hearing date may testify at the hearing only upon agreement of the parties.

Subp. 3. Statement of position. A party filing a statement of position with the panel must file the original and five copies; a party filing a statement of position with the board must file the original and three copies. The statement of position must contain:

A. a concise statement of the issues;

B. a brief statement of the party's position on each issue; and

C. legal authority in support of the party's position.

5217.0100 SUBPOENAS.

Subpart 1. Form; service; and fees. Subpoenas for the attendance of witnesses or the production of documents must be in writing. The subpoena shall contain a brief statement demonstrating the materiality of the testimony or documents sought. The subpoena must specifically identify any documents or witnesses sought.

A subpoena shall be personally served. The person serving the subpoena shall prove service by filing the subpoena with the executive secretary, together with an affidavit of service. Notwithstanding part 5217.0060, the filing party is not required to serve copies of the subpoena and affidavit on other parties.

The cost of service, fees pursuant to Minnesota Statutes, section 357.22, and expenses of any witnesses subpoenaed and any documents produced, shall be paid by the party requesting the subpoena.

Subp. 2. Petition to quash. Upon the petition of a party, the presiding officer shall quash or modify the subpoena if it is unreasonable or oppressive.

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5217.0120 PETITIONS.

All petitions filed under parts 5217.0010 to 5217.0270 must conform to the requirements of this part. The petition must state with particularity its grounds and the order sought. If the petition is supported by briefs, affidavits, or other papers, they must be filed with the petition. Any party may file a response within ten days after filing of the petition. Any reply must be filed within five days after filing of a response. If the petition is to the board, an original and three copies of all documents filed under this part must be filed. If the petition is to the panel, an original and five copies of all documents filed under this rule must be filed.

5217.0130 INTERVENTION.

The presiding officer shall grant a petition to intervene if:

A. the petition shows how the moving party's interests may be determined or affected by the case, states the reasons for which intervention is sought, and indicates the moving party's statutory right to intervene; and

B. the presiding officer determines that the rights of the existing parties will not be prejudiced and that the existing parties are not likely to adequately protect the rights of the moving party.

Notwithstanding the requirements of items A and B, the commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding.

5217.0140 DISMISSAL.

The panel or board shall dismiss an appeal with prejudice when:

A. a stipulation for settlement has been approved by a settlement or compensation judge;

B. a written withdrawal of the appeal signed by the appellant or a representative has been filed;

C. an appeal is filed after the expiration of the appeal period;

D. the appellant has failed to respond to requests for information or documents by the panel or board within the time period specified in the requests for information or documents; or

E. the appellant or a representative fails to appear at the hearing and a continuance under part 5217.0220 has not been granted.

5217.0150 DEFAULT.

If a respondent fails to attend a hearing and the appellant has established a right to the relief requested, the presiding officer shall serve upon the parties written notice of a proposed default order, including the reasons for the order, unless a continuance is granted under part 5217.0220. Within eight days after service of a proposed default order, the party against whom the default is sought may file a written response detailing the reasons a default order should not be granted. The presiding officer shall either issue a default order promptly after expiration of the response period or continue the matter to a future hearing date if the requirements of part 5217.0220, subpart 2 are met. The future hearing date shall be scheduled as provided in part 5217.0220, subpart 4.

5217.0160 CONSOLIDATION.

The chairperson shall grant a petition for consolidation of two or more related cases if the cases present substantially the same issues, the consolidation would not prejudice the rights of any party and consolidation is administratively practical. Separate findings and decisions will be made in each case consolidated for hearing. In addition, the chairpersons of the panel and board may, upon agreement of the parties, consolidate matters before the panel and board into one hearing where the appeals involve the same parties. In those cases, evidence will be presented to the panel and board simultaneously and the panel and board will issue their respective decisions.

5217.0170 SETTLEMENT.

Subpart 1. Settlement conferences. The board and panel shall refer matters on appeal to a settlement judge after the parties have filed their statements of position. If a settlement conference is appropriate, it shall be scheduled within 30 days of referral of the matter by the board or panel. Otherwise the matter shall be immediately referred back to the panel or board.

Written notice must be served on the parties at least ten working days before the conference. The notice shall indicate whether attendance of an intervenor is required. All parties, including intervenors, shall attend unless otherwise excused. If a party fails to attend a settlement conference, the matter may be stricken from the active hearing calendar, a penalty for delay may be imposed under Minnesota Statutes, section 176.225, or the failure to attend may be considered as an additional factor in awarding attorney fees.

All parties shall be prepared to engage in meaningful settlement negotiations and must have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement. At the settlement conference:

A. Parties shall state the issues.

B. Parties shall identify witnesses not listed on the witness list.

C. Parties shall file copies of all medical reports not already on file. If a party plans to introduce medical or hospital records into evidence, the party shall provide written authorizations allowing the opposing party to examine those records if the authorizations have not previously been provided.

D. Each party shall state what exhibits are intended to be used at the hearing.

E. If a party is claiming medical or other treatment expenses, the party shall state those expenses at the conference and shall furnish the opposing party with copies of itemized bills for the expenses.

F. The parties shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation disability carrier, and whether the Division of Vocational Rehabilitation has provided rehabilitation services. If payment has been made, the name and address of the party making payment must be furnished, together with any identifying claim or policy numbers.

Subp. 2. Approval of settlements. Parties may enter into stipulations for settlement of all or some of the issues in dispute. Stipulations for settlement must be in writing and signed by the parties. They are subject to approval under Minnesota Statutes, section 176.521. If the stipulation is approved, an order shall be issued which confirms those matters agreed upon.

5217.0180 PRESIDING OFFICERS.

Subpart 1. Assignment and duties. The panel or board members shall serve as presiding officers on a rotating basis as assigned by the chairperson. The presiding officer shall administer oaths or direct another member to do so, rule on the admissibility of evidence according to part 5217.0210, and ensure the orderly process of the hearing.

Subp. 2. Communication with panel or board. Parties and their representatives shall not communicate with members of the panel or board concerning a pending case except during the hearing.

Subp. 3. Disqualification. A panel or board member who is in any way prejudiced or biased with respect to a party, or who has an interest in the matter pending before the panel or board, shall disqualify himself or herself from any involvement in the case. A party may file a request for disqualification which states the reason for the request. The request must be in writing and filed no later than 15 days before the hearing.

HEARING

5217.0190 RIGHTS OF PARTIES.

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect only to the issues listed on the notice of appeal and to cross-examine witnesses.

5217.0200 WITNESSES.

Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing must be under oath or affirmation. At the request of a party, the presiding officer may exclude witnesses, except for parties testifying as witnesses, from the hearing room so that they cannot hear the testimony of other witnesses.

5217.0210 RULES OF EVIDENCE.

Subpart 1. General rules. The presiding officer shall admit all relevant, competent evidence that is not unduly repetitious, including hearsay, if it is the type of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence relating to issues not included in the notice of appeal may be admitted only if the parties and the presiding officer agree to its admission. The presiding officer shall apply the rules of privilege recognized by law.

Subp. 2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the commissioner, or a true and accurate photocopy, must be offered and made a part of the record in the case. Only factual information or evidence entered into the record shall be considered in the determination of the case.

Subp. 3. Documentary evidence. Documentary evidence may be submitted at the hearing or after the hearing as provided in part 5217.0230, item I. To be received into evidence it must be marked as an exhibit and identified by a witness who has

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personal knowledge of it. The parties may agree to waive personal identification of a document. A party must provide six copies of documents to be offered into evidence before the panel an four copies of documents to be offered into evidence before the board. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

Subp. 4. Deposition of unavailable witness. A party wishing to present a deposition of an unavailable witness shall depose the witness before the hearing except where the presiding officer orders otherwise.

Subp. 5. Deposition prior to close of record. Where a party has not submitted all of its testimony during the time allotted for the hearing, the presiding officer, at the request of a party, may order the taking of a deposition for inclusion in the record. The deposition may include questions asked by the panel or board. The questions of the panel or board shall be set forth on the record at the hearing or by written interrogatory.

Subp. 6. Notice of facts. The presiding officer may take notice of general, technical, or scientific facts within the special knowledge of the panel or board. A noticed fact must be one not subject to reasonable dispute in that it is either generally known within the profession, or is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned. Notice shall be taken on the record after any party has had the opportunity to contest the facts to be noticed.

Subp. 7. Burden and standard of proof. Issues of fact shall be proven by a preponderance of the evidence as defined in Minnesota Statutes, section 176.021, subdivision 1a. Questions of law shall be determined on an even-handed basis in accordance with the principles of Minnesota Statutes, section 176.021, subdivision 1a.

5217.0220 CONTINUANCES.

A petition for continuance must be writing, and must fully set forth all facts tending to establish good cause.

A. A petition for continuance filed 15 or more days before the hearing shall be granted upon a showing of good cause. The presiding officer shall consider the ability of the party requesting a continuance to effectively proceed without a continuance.

B. A petition for continuance filed less than 15 days before the hearing shall be granted by the presiding officer only if good cause for a continuance is shown, no prejudice will result from the continuance, and the petition could not have been made at an earlier time.

C. During a hearing, if it appears in the interest of justice that further testimony should be received, the presiding officer shall continue the hearing to a future date. If continued, it shall be either continued to a certain time and day, announced at the hearing and made a part of the record; or continued to a date to be determined after the hearing. If a time is not set at the hearing, written notice must be served on the parties at least eight days before the hearing is reconvened.

D. Where a continuance has been granted under item A or B, the executive secretary shall schedule the case for hearing on the back-up calendar when calendar openings occur due to the cancellation or continuation of other scheduled hearings. Written notice of the back-up hearing dates shall be served on the parties at least ten working days prior to the dates available for hearing on the back-up calendar. The executive secretary shall provide at least one-day telephone notice to the parties of the date selected.

E. Good cause does not include:

(1) the unavailability of counsel assigned to the case where an insurer retains more than one counsel on its own payroll who practices workers' compensation law, unless all other workers' compensation counsel of the insurer are committed elsewhere;

(2) the unavailability of counsel assigned to the case where a law firm consists of more than one member who practices workers' compensation law, unless all other workers' compensation counsel in the firm are committed elsewhere;

(3) the unavailability of an individual law practitioner because of engagement in another court, if counsel has failed to notify the judge in charge of the trial court calendar of that court that counsel has been assigned to a date and time certain in a workers' compensation case; or

(4) the unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

5217.0230 HEARING PROCEDURE.

The hearing will be conducted substantially in the following manner:

A. After opening the hearing, the presiding officer shall inquire whether the parties have any questions regarding the rules governing the hearing and shall state the following:

(1) The scope of issues under the jurisdiction of the panel or board.

(2) The parties may present oral and written evidence and cross-examine witnesses. The presiding officer shall make rulings necessary to ensure that only relevant, competent evidence is admitted.

(3) The parties have a right to be represented by an attorney or other representative at the hearing.

B. Any stipulations or settlement agreements entered into by the parties before the hearing concerning the issues before the panel or board will be entered into the record.

C. The appellant may make an opening statement. All other parties may follow with their statements in a sequence determined by the presiding officer. Opening statements are limited to five minutes, unless additional time is allowed by the presiding officer, in which case all other parties are allowed equivalent additional time.

D. After opening statements, the appellant shall present evidence, followed by the other parties in a sequence determined by the presiding officer.

E. Cross-examination of witnesses will be conducted in a sequence determined by the presiding officer.

F. When all parties and witnesses have been heard, the parties may present final argument. The appellant shall present final argument last. Arguments are limited to five minutes, unless additional time is allowed by the presiding officer, in which case all parties are allowed equivalent additional time.

G. A party may submit a brief, or proposed findings of fact with proposed decision and order, subsequent to the hearing if a request to do so is made before the hearing is concluded. The presiding officer shall fix a reasonable period of time for such filing.

H. After final argument, the hearing will be concluded.

I. The record will be closed upon conclusion of the hearing or upon receipt of the final briefs, findings, transcript, post hearing depositions, or late filed exhibits, if any, which the parties and the presiding officer have agreed or the presiding officer has ordered should be received into the record, whichever occurs later.

5217.0240 RECORD.

Subpart 1. Contents. The panel or board shall establish the official record in each case. After the conclusion of the case, the record shall be returned to the commissioner. The record consists of:

A. correspondence received by the panel or board in connection with the case;

B. orders issued by the presiding officer or chairperson;

C. evidence received;

D. the panel or board's findings of fact, decision, and order;

E. depositions, briefs, proposed findings, or other data submitted by a party in connection with the case;

F. a verbatim record of the hearing; and

G. a transcript of the hearing, if one was prepared.

Subp. 2. Transcript. The verbatim record shall be transcribed if requested by a party or other person. The requesting party and other persons who request copies of the transcript shall pay a reasonable fee to cover the cost of the transcript.

5217.0250 DECISION.

Subpart 1. Basis for decision. Only factual information or evidence which is contained in the record may be considered by the panel or board in the determination of a case.

The panel or board may take notice of general, technical, or scientific facts within their specialized knowledge as described in part 5217.0210, subpart 6.

Subp. 2. Findings of fact, decision, and order. Following the close of the record, the panel or board shall promptly issue its written findings of fact, decision and order. The presiding officer or the officer's designee shall write the decision of the panel or board. A copy of the findings, decision, and order must be served on the parties and their representatives.

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Subp. 3. Contents. The panel or board's decision must include:

A. the date and location of the hearing and the names of the panel or board members who heard the case;

B. appearances by parties or their representatives, with the full name and mailing address of each;

C. the date the record of the hearing was closed;

D. a notice of the right of parties to appeal and how the appeal can be perfected;

E. findings, made pursuant to part 5217.0210, subpart 7, describing all facts relied upon in the decision, including those made under part 5217.0210, subpart 6;

F. an order containing a determination of each contested issue of fact or law; and

G. a memorandum explaining the reasons for the decision.

5217.0260 SUSPENSION OF RULES.

Upon a clear showing of extraordinary circumstances not contemplated by parts 5217.0010 to 5217.0270, the panel or board may, upon petition of a party, or upon its own petition five days after serving notice on the parties, suspend any requirements of parts 5217.0010 to 5217.0270. Parts 5217.0030, subpart 2; and 5217.0220, subpart 4, and other rules implementing requirements imposed by law, shall not be suspended even upon a clear showing of extraordinary circumstances.

5217.0270 SEVERABILITY.

If any provision of parts 5217.0010 to 5217.0270 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be valid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the part shall in no manner be affected.

EFFECTIVE DATE. Parts 5217.0010 to 5217.0270 are effective on the date specified in Minnesota Statutes, chapter 14, and govern all proceedings pending or commenced on or after that date.

Department of Public Service Weights and Measures Division

Proposed Rule Governing Licensing Fees for Weights and Measures Inspectors

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Public Service proposes to adopt the above-entitled rules without a public hearing. The Director of the Department has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes section 14.21 to 14.28 (1983 Supp.), except that pursuant to Minnesota Statutes section 16A.128, subd. 2(a) (1984 Supp.), no public hearing will be held.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Persons submitting comments should identify the portion of the rule addressed, the reason for the comment, and any change proposed.

Persons who wish to submit comments should submit such comments to:

Michael Blacik
Regional Supervisor
Department of Public Service
Weights and Measures Division
Minneapolis, Minnesota 55403
Telephone: (612) 341-7200

Authority for the adoption of these rules is contained in Minnesota Statutes section 239.10 (1984 Supp.). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Blacik upon request.

STATE OF MINNESOTA

WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

ORDER ADOPTING RULES WITHOUT A PUBLIC HEARING

Notice of intent to adopt the above-captioned rules without a public hearing was published in the State Register on August 27, 1984 and was sent by United States mail to all persons on the list maintained by the Rehabilitation Review Panel and Medical Services Review Board pursuant to Minn. Stat. § 14.22 (1982) (as amended by Minn. Laws 1984, ch. 640, § 12) on August 23, 1984. After affording interested persons and groups an opportunity to submit comments and requests for a hearing for 30 days after notice, receiving fewer than 25 written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that the Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board are adopted pursuant to authority vested in the Panel and Board by Minn. Stat. §§ 176.102, subd. 3 (a) and 176.103, subd. 3 (d).

STATE OF MINNESOTA

Cynthia Thompson

Cynthia Thompson
Manager of Public Affairs

Dated: October 18, 1984.

Resources, Inc. for Health Care Costs. However, pursuant to Senate File 1234, Article 5, Section 9 (1983), the HCI is subjected to the legislatively imposed limit of 5%. Consequently, the HCI is 5% for hospitals whose fiscal years begin during the calendar quarter beginning July 1, 1984.

Board of Investment
Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, June 6, 1984 at 9:00 A.M. in Room 112, State Capitol.

The Investment Advisory Council will meet at 7:30 A.M. on Tuesday, June 5, 1984 in the MEA Building Conference Room, 41 Sherburne Avenue, Saint Paul.

Department of Labor and Industry
Prevailing Wage Division

Notice of Prevailing Wage Rates for Highway and Heavy Construction

On June 1, 1984 the commission will certify prevailing wage rates for the following Minnesota counties: Olmstead, St. Louis, Itasca, Goodhue, Ramsey, Pennington, Roseau, Ottertail, Washington, Carlton, Lake, Pine, Stearns, Kandiyohi, Lincoln, Lyon, Mower, Washington and Traverse.

A copy of the determined wage rates for Minnesota counties may be obtained by writing to the State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155. The charges for the cost of copying and mailing are $.50 for the first county and $.30 for any subsequent copies of the same or other counties. For all 87 counties the charge is $25.00. A $1.50 handling charge must be included for each order. Minnesota sales tax of 6% must be added to all orders.

A check or money order payable to the State of Minnesota must accompany each request.

Steve Keefe, Commissioner
Department of Labor and Industry

Department of Labor and Industry
Worker's Compensation Division
Rehabilitation Review Panel
and Medical Services Review Board

Outside Opinion Sought Concerning Proposed Joint Rules of Procedure of the Rehabilitation Review Panel and Medical Services Review Board

Notice is hereby given that the Rehabilitation Review Panel and Medical Services Review Board are seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing Joint Rules of Procedure of the Rehabilitation Review Panel and the Medical Services Review Board. The promulgation of these workers' compensation rules is authorized by Minn. Laws of 1984, Chapter 432, Sections 13 and 15, which authorize the adoption of joint rules of procedure by the Panel and the Board.

The Rehabilitation Review Panel and the Medical Services Review Board request information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit written or oral information. Written statement should be addressed to:

Cynthia Thompson
Office of Public Affairs
Fifth Floor, Space Center
444 Lafayette Road
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 297-3467 and in person at the above address.

Information will be accepted until June 12, 1984. Any written material submitted in response to this notice will become part of the record in the event that the rules are promulgated.

Minnesota State Agricultural Society Minnesota State Fair

Meeting Notice

The board of managers of the Minnesota State Agricultural Society, governing body of the Minnesota State Fair, will conduct a general business meeting at 10 a.m. Thursday June 14 at the Administration Building on the fairgrounds, St. Paul. Preceding the general meeting will be a meeting of the board's space rental committee at 9:30 a.m.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is June 19, 1984.

ADVISORY COUNCIL TO THE MEDICAL SERVICES REVIEW BOARD has 12 vacancies open immediately for health professionals other than physicians or chiropractors who are involved in the clinical care of injured workers receiving compensation, including but not limited to physical therapists, nurses, qualified rehabilitation consultants, psychologists, dentists and vocational rehabilitation consultants. The advisory council will assist the Workers' Compensation Medical Services Review Board in developing rules and procedures for a medical monitoring system which will monitor both medical fees and clinical outcomes. Also assist in looking at individual Workers' Compensation cases to possibly discover providers whose fees are excessive and/or whose clinical results are substandard. Members are appointed by the Commissioner of Labor and Industry. Members receive $35 per diem. For specific information contact the Advisory Council to the Medical Services Review Board, Cynthia Thompson, 444 Lafayette Road, St. Paul 55101; (612) 297-3467.

BOARD OF PRIVATE DETECTIVE AND PROTECTIVE AGENCY SERVICES has 2 vacancies open immediately for 1 public member and 1 licensed protective agent. The board licenses private detectives and protective agents. Members are appointed by the Governor. Members must file with EPB. Monthly meetings; members receive $35 per diem plus expenses. For specific information contact the Board of Private Detective and Protective Agent Services, 1246 University Avenue, St. Paul 55104; (612) 296-8399.

CHARITABLE GAMBLING CONTROL BOARD has 11 vacancies open immediately. Members must have been Minnesota residents for at least 5 years, not more than 6 members may belong to the same political party. At least 4 members must reside outside of the seven-county metropolitan area. The board shall regulate legal forms of gambling to prevent their commercialization, to insure integrity of operations and to provide for the use of net profits only for lawful purposes. Members are appointed by the Governor; members teams' are staggered. Members receive $35 per diem plus expenses. For specific information contact Charitable Gambling Control Board, Roberta Schneider, 130 Capitol, St. Paul 55155; (612) 296-0055.

ADVISORY COUNCIL ON BARGAINING IMPASSE RESOLUTION has 6 vacancies open for public members. The advisory council shall study collective bargaining as it relates to public schools. Members are appointed by the Governor. Members receive $35 per diem plus expenses. For specific information contact the Advisory Council on Bargaining Impasse Resolution, Dan Loritz, Assistant Commissioner, Dept. of Education, 709 Capitol Square Bldg., St. Paul 55101; (612) 296-3271.

MINNESOTA MANUFACTURING GROWTH COUNCIL has 18 vacancies open for the following: 7 members who represent manufacturing labor; 7 members who represent manufacturing management; 1 economist; 2 public members and at least one member representing manufacturing businesses owned or managed by women. The council shall recommend objectives and goals for manufacturing growth; monitor plant closings, relocations, out of state expansions by firms with headquarters or significant facilities in Minnesota; identify and promote Minnesota's competitive position in the national and international marketplace and to create a center for productivity. Members are appointed by the Governor. For specific information contact the Minnesota Manufacturing and Growth Council, David Reed, Dept. of Energy and Economic Development, 900 American Center Bldg.; 150 E. Kellogg Blvd., St. Paul 55101; (612) 296-8341.

MINNESOTA CONVENTION FACILITY COMMISSION has 15 vacancies open immediately for 1 member from each

STATE OF MINNESOTA
WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Joint Rules of Procedure of the Rehabilitation Review Panel and Medical Services Review Board	**ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND FOR PUBLICATION**

IT IS ORDERED this 14 day of August, 1984, that a Notice of Intent to Adopt Rules Without a Public Hearing in the above-captioned matter be published in the State Register and be given to all persons and groups who have requested that their names be placed on the list maintained by the Rehabilitation Review Panel and Medical Services Review Board for that purpose pursuant to Minn. Stat. § 14.22 (1982) (as amended by Minn. Laws 1984, ch. 640, § 12).

STATE OF MINNESOTA

Cynthia Thompson

Cynthia Thompson
Manager of Public Affairs

REHABILITATION REVIEW PANEL

May 17, 1984

MINUTES

The regular business meeting of the Rehabilitation Review Panel was held May 17, 1984, in Conference Rooms A & B on the 6th Floor of the Space Center Building. The meeting came to order at 3:20 p.m. with Dr. Joseph Sweere, Chair, presiding.

Members Present:	Members Excused:	Staff Present:
Art Berens	Dr. James Anderson	Leslie Altman
Dr. John Dowdle	Dennis Ballinger	Doug Brown
Art Dyson	William DouVille	Win Ehlmann
Shirley Friberg	Jayne Hetchler	Stephen Serkland
Marshall Johnson		Cynthia Thompson
Barbara Kelley		Joan Volz
Gail Salas		
Ruth Stillman		
Dr. Joseph Sweere		

The minutes of the previous business meeting held March 15, 1984, were approved as mailed.

Panel's Authorizing Resolution:

Dr. John Dowdle moved and Shirley Friberg seconded that the attached Resolution be adopted giving Cynthia Thompson the authority to begin the rule-making process. The motion carried.

Proposed Rehab Rules:

Joan Volz, Acting Director of Rehabilitation and Medical Services and the Department's Chief Counsel, explained the motivating factors behind the proposed Rehab rules changes. One factor is to implement an event-based reporting system rather than the monthly R-3 system now used; another factor is to bring the rules into compliance with recent law changes. Currently, the QRC fills out the Rehabilitation Assessment Form; the proposed rules would permit an "approved claims handler" to fill out such reports. A draft of the proposed rules is being circulated for comment, and Ms. Volz is talking to as many groups as possible hoping to have the rules passed noncontroversial rather than going to a public hearing. Panel members were asked to review the draft carefully and give Ms. Volz a call with any comments or suggestions. She will be working on the draft for another 3 or 4 weeks.

Introduction of Doug Brown, Law Clerk:

Panel members were introduced to Doug Brown who will serve as the Panel's law clerk. Doug's responsibilities will include sitting in on the Panel deliberations, drafting decisions for review and being responsible for getting the decisions finalized within 30 days after the hearing. Doug will prepare a chronological summary on each case prior to the hearing which should also be advantageous to Panel members. A request was made to have the Department file in chronological order at the time it is submitted to the Hearing Officer. Doug is also writing for the Medical Services Review Board as well; he can be reached at 297-4374 for Rehab Review Panel matters and 297-4373 for Medical Review Board matters.

Proposed RRP/MSRB Rules of Procedure:

Following authorization by the 1984 Legislature to adopt joint rules of procedure, a joint committee of the Rehabilitation Review Panel and the Medical Services Review Board has drafted the document being discussed. Joan Volz, in her capacity as Chief Counsel for the Department of Labor and Industry, is responsible for all rule making that goes on within the Department. Leslie Altman from the Attorney General's office will be working with Cynthia Thompson in the actual promulgation of the RRP/MSRB rules. Ms. Altman explained the rule-making procedure in detail. The subcommitte gave its approval of the rules. At this time there are no significant changes in the document presented at this meeting--just a cleanup of language. Ms. Volz said that the Department is looking at probably a 6-month period before the rules are effective. If a public hearing is required, it might take 9 months. When the rules are finalized, staff will go through all forms, correspondence, and documents and make the appropriate changes.

COA Decision RE: Ron Bergstrom:

Cynthia Thompson and Win Ehlmann discussed the Bergstrom decision with the Panel. In its decision, the COA reprimanded the Rehabilitation Review Panel for rendering a decision that was incomplete in that the decision contained no "findings of fact." Ms. Thompson feels that the combination of bringing a law clerk on board, as well as covering the specific issue of Panel decisions in the RRP/MSRB rules, should address the COA's concerns quite nicely.

A reminder was introduced here by Ms. Thompson that Panel decisions should be considered confidential until served and filed, hence, should not be shared outside the Panel. Another reminder (ex parte communication) was not to discuss the merits of a case outside the Panel and staff.

Hearing Process (1984 Legislation):

1984 Legislation allowed for a change in the structure of the hearing panel. There can be 1 labor representative (instead of the present 2) as long as there is only 1 managerial representative on the same panel. In discussing how to clean up the backlog of pending cases, it has been considered to try dual hearings on the scheduled hearing days until the backlog is under control. As soon as the administrative details can be worked out, dual hearings will be put in place. The process of involving Settlement Judges in the prehearing procedures should also help with the backlog. Settlement Judges are going to be looking at all cases AFTER we get the statement of position and witness list to see if there is any way the parties would be likely to settle; if so, a settlement conference will be called in the hopes of settlement. This process should weed out cases that have the potential to settle before (or the day of) the hearing.

Marshall Johnson proposed and Shirley Friberg seconded a motion that all future business meetings be held first thing in the morning with dual hearings to follow. The motion was tabled temporarily.

Opening Remarks and Hearing Format (Rev. 2-84):

There was a motion to table this revised form, continuing to use the existing form, until such time as the laws and rules have been adopted. This form will then be revised to conform with the new rules.

The meeting adjourned at approximately 5:00 p.m.

Deloris S. Askew
Executive Secretary

CERTIFICATE OF PANEL'S AUTHORIZING RESOLUTION

I, Joseph Sweere, do hereby certify that I am a member and the Chairperson of the Rehabilitation Review Panel, a panel duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Rehabilitation Review Panel duly and properly called and held on the 17th day of May, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Cynthia Thompson, Manager of Public Affairs, be and hereby is granted the authority and directed to sign an Order of the Panel directing that Notice be given of the Panel's intent to adopt without a public hearing joint rules with the Medical Services Review Board governing procedure before the Rehabilitation Review Panel and the Medical Services Review Board, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, she hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules and to perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing, as well as acting as the Panel's representative at all hearings.
>
> "RESOLVED FURTHER, that any actions taken by Cynthia Thompson in connection with these rules prior to the date of this resolution including the submission of a Notice of Intent to Solicit Outside Opinion to the State Register are hereby ratified and adopted by the Panel as if fully authorized prior to their undertaking."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of May, 1984.

Joseph J. Sweere DC
Joseph Sweere
Chairperson
Rehabilitation Review Panel

Attest: Shirley Fruberg

MEDICAL SERVICES REVIEW BOARD

June 13, 1984

MINUTES

The Medical Services Review Board met on June 13, 1984, at 1:30 p.m., at the Space Center Building, Room 574.

Members Present: Dr. Donald Jensen, Ann Tewart, Dr. Alexander Webb, Robert Llewellyn, Gordon Spielman, Dr. W. Richard Marsh, Sally Graven, Dr. Leonard Lamberty, Dr. Lawrence Schut, Dr. Jimmy Anderson.

Members Excused: Frank Larkin, Dr. John Quast.

Others Present: Steve Keefe, Leslie Altman, Cynthia Thompson, Nancy Blumstein, Ron Larsen, Gladys Westberg, Joan Volz, Sen. William Diessner, Jay Benanav.

The meeting was called to order at approximately 1:30 p.m. Dr. Schut welcomed the newest member of the Board, Dr. W. Richard Marsh of Rochester, Minnesota.

The first order of business was the approval of the minutes of the Board's May 9, 1984 meeting. Sally Graven made a motion to approve the minutes as written. Ann Tewart seconded the motion, and motion passed unanimously.

Steve Keefe updated the members on the Department's staffing situation. The job of Department Physician has been offered to a doctor, and the Department is awaiting his answer. The duties of this position were also explained to the members. Denise Fluery is the new Director of State Claims. A law clerk has been hired for the summer to help the members write decisions on appeals and to do legal research.

Mr. Keefe explained the "Statement of Economic Interest" that the members are required to file with the Ethical Practices Board. If the members have any further questions, Steve Keefe or Cynthia Thompson are available to assist.

Cynthia Thompson asked the members for recommendations for possible members on the Advisory Council to the Medical Services Review Board. Steve Keefe also asked the members for suggestions on health groups or individuals who can be contacted regarding membership on this advisory council.

Rules Update:

Joan Volz informed the members that there will be a public hearing on the proposed Medical Fee Rules on June 29, 1984.

Ms. Volz told the members that essentially the proposed permanent rules are the same as the temporary rules. The only major change was in the monetary figures used; 1983 data is used in the new rules. The rulemaking process must be completed by October 1, 1984, and the rules will be in effect for one year. The Department is meeting with concerned groups now. Sen. Diessner explained the history and background of the development of the medical fee schedule, and answered other questions from the members. There was further discussion of what continued development of the medical fee schedule requires of the Medical Services Review Board and the Department. The members told Sen. Diessner that they are having real problems trying to obtain aggregate cost data. Joan Volz asked the members to review the rules and give their suggestions for changes to either herself or Gladys Westberg.

Ms. Volz explained that the proposed rules for the Rehabilitation Review Panel and Medical Services Review Board were developed with the rules subcommittee which was comprised of members of both bodies. A task force of practicing attorneys will examine the draft next week. Leslie Altman explained the rulemaking process the rules will have to go through before they become effective. It is hoped that the rules will be in place by fall, 1984. Joan Volz asked the members to approve a resolution authorizing Cynthia Thompson to begin the rulemaking process. Gordon Spielman asked if there was a way to address the problem of injured workers having to travel to St. Paul from outstate areas for hearings and being forced to pay for their own expenses in the rules. This issue was discussed at length. Mr. Spielman made a motion that the injured worker would be reimbursed for "reasonable expenses" if he prevails at the hearing. The motion was seconded by Dr. Webb. Discussion then took place on what constitutes "reasonable expenses". Sally Graven offered an amendment to Mr. Spielman's motion that would provide $35 per day plus travel expenses to the employee only. At this point, Leslie Altman said the Work Comp law does not provide the Board with the authority to grant reimbursement to any party. Mr. Spielman then asked the staff to look into the possibility of reimbursement for employees. The original motion and its second were withdrawn.

Dr. Schut read the resolution, and Joan Volz clarified its meaning for the members. Dr. Anderson made a motion that the Board adopt the resolution authorizing Cynthia Thompson to begin the rulemaking process. The motion was seconded by Dr. Lamberty, and the motion passed unanimously. There was further discussion about the rules. The members will see the final draft before it is published in the State Register. The staff will be sure all members are contacted for comments on the final draft before publication. (Attached: Certificate of Board's Authorizing Resolution)

At this point, Gordon Spielman made a motion to refer the reimbursement issue to the state legislature. Dr. Webb seconded the motion, and the motion passed unanimously.

Dr. Webb gave the report of the Quality Assurance Subcommittee.

He distributed a sample letter to doctors treating patients with questionable outcomes in carpal-tunnel syndrome and back injuries. The subcommittee is proposing that the Department's staff look at the responses. Discussion took place on how to implement this idea. Ann Tewart asked if there is a way to collect cost data along with this letter. A suggestion was made to ask insurance companies for information on charges as they would have data on total costs for Work Comp cases. Steve Keefe suggested the Board refrain from getting involved in the monitoring of cases, and leave that responsibility to the Department.

The subcommittee heard from Dr. Diedrich of Brainerd, Dr. Dowdle, and Dr. Hubbard on thermography. These doctors presented the negative and positive aspects of the method. The subcommittee members expressed their personal views on thermography. Steve Keefe told the members that he is looking for advice that the rehabilitation specialists can use when they are deciding disputes involving thermography.

Gladys Westberg told the members that California also is investigating thermography and its applications in Work Comp cases. She also told the members that Rehab and Medical Services has received a case involving a dispute over payment for thermography. She will check with Joan Volz to see what the status of this case is at present. A motion was made by Dr. Jensen that the Board recommend to the Commissioner that insurers not be forced to pay for thermography procedures at this time because not enough is known about the method as yet. Gordon Spielman seconded the motion, and motion passed unanimously. Gordon Spielman made a motion that the Board recommend to the Commissioner that thermography be struck from the fee schedule. Dr. Webb seconded the motion, and motion passed unanimously.

Ann Tewart gave the report from the Cost Containment Subcommittee. She handed out copies of the amended claims adjustors' form, and asked for comments or suggestions. She said that this form would only be required if the insurer is receiving nothing but bills from a provider. Dr. Schut suggested putting this information directly on the form so the provider knows why he/she is being asked to submit it. Dr. Schut also handed out copies of the physicians' narrative report form that he had distributed at a MMA class. Discussion followed regarding both forms. A suggestion was made that Dr. Webb's and Ann Tewart's forms be combined. Dr. Schut will meet with representatives from the Quality Assurance and Cost Containment Subcommittees, the Department, and insurers to work on form. Ms. Tewart reiterated that the Cost Containment Subcommittee has reservations about coming up with aggregate cost data; there are too many variables and a severe lack of information. Gladys Westberg said there might be a way of incorporating "costs to date" in an interim medical report from doctors. She and Robert Llewellyn will follow-up on this.

Gladys Westberg reported that the Medical Fees Task Force has finished their meetings. The task force was primarily a communications vehicle for clinic managers and insurers to work out

problems between the two groups.

Brochures on the Workers' Compensation system were given to the members for their own information. Steve Keefe explained how the brochures are being used.

The final version of the medical report forms was given to the members for their information.

The next meeting of the Medical Services Review Board will be on Wednesday, July 11, 1984, at 1:30 p.m., in Room 574, of the Space Center Building.

The meeting adjourned at approximately 5:00 p.m.

Respectfully submitted,

Susan Zappa

Susan Zappa
Executive Secretary

CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, Lawrence Schut, do hereby certify that I am a member and the Chairperson of the Medical Services Review Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Medical Services Review Board duly and properly called and held on the 13th day of June, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that Cynthia Thompson, Manager of Public Affairs, be and hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing joint rules with the Rehabilitation Review Panel governing procedure before the Medical Services Review Board and the Rehabilitation Review Panel, to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, she hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules and to perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing, as well as acting as the Board's representative at all hearings.

"RESOLVED FURTHER, that any actions taken by Cynthia Thompson in connection with these rules prior to the date of this resolution including the submission of a Notice of Intent to Solicit Outside Opinion to the State Register are hereby ratified and adopted by the Board as if fully authorized prior to their undertaking."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of June, 1984.

Lawrence J. Schut M.D.

Lawrence Schut, M.D.
Chairperson
Medical Services Review Board

Attest: Sally L. Graden

STATE OF MINNESOTA
WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed
Adoption of Joint Rules of Procedure
of the Rehabilitation Review Panel
and Medical Services Review Board

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Rehabilitation Review Panel and the Medical Services Review Board propose to adopt the above-captioned rules without a public hearing. The Panel and Board have determined that the proposed adoption of these rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minn. Stat. §§ 14.21 - 14.28 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 12-15).

Persons or groups interested in these rules shall have 30 days to submit comments on the proposed rules. Comments in support of or in opposition to the proposed rules are encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Panel and Board and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period. If a public hearing is required, the Panel and Board will proceed according to the provisions of Minn. Stat. §§ 14.131 - 14.20 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 7 -11). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Cynthia Thompson
Manager of Public Affairs
5th Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 297-3467

Authority for the adoption of these rules is contained in Minn. Stat. §§ 176.102, subd. 3(a) and 176.103, subd. 3 (Supp. 1983) (as amended by Minn. Laws 1984, ch. 432, §§ 13 and 15). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules, identifies the data and information relied upon to support the proposed rules and assesses the impact of the proposed rules on small business and on local public bodies has been prepared and is available from the Manager of Public Affairs upon request at the above address.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final rules as adopted, will be delivered to the Attorney General. The rules will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agencies' authority to adopt the rules and the existence of a rational basis for the need for and reasonableness of the proposed rules. Persons who wish to be notified of the submission of this material, including modifications to the rules as originally proposed, to the Attorney General, or who wish to receive a free copy of the final rules as adopted, should submit a written request to the Manager of Public Affairs at the above address.

The text of the proposed rules follows this notice in the State Register. The rules prescribe the procedures for appealing workers' compensation rehabilitation decisions and medical decisions to the Rehabilitation Review Panel and Medical Services Review Board pursuant to Minn. Stat. §§ 176.102 and 176.103 (Supp. 1983) (as amended by Minn. Laws 1984, ch. 432, §§ 13 - 15). These rules govern all aspects of procedure before the Panel and Board, including prehearing, hearing, and posthearing requirements.

One free copy of the proposed rules may be obtained by contacting the Manager of Public Affairs at the above address or by calling (612) 297-4373.

STATE OF MINNESOTA

Cynthia Thompson

Cynthia Thompson
Manager of Public Affairs

Dated: August 14, 1984

In the Matter of the Proposed Adoption of Joint Rules of Procedure of the Rehabilitation Review Panel and Medical Services Review Board

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) §§
COUNTY OF RAMSEY)

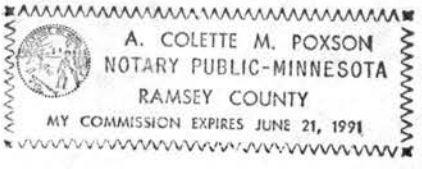
Penny Howard, being first duly sworn, deposes and says:

That on the 23rd day of August, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and groups who have requested that their names be placed on the lists maintained by the Minnesota Workers' Compensation Rehabilitation Review Panel and Workers' Compensation Medical Services Review Board for the purpose of receiving notice of the proposed adoption of rules by this panel and board.

Penny Howard
PENNY HOWARD

Subscribed and sworn to before me this 28th day of August, 1984.

A. Colette M. Poxson



STATE OF MINNESOTA)
) §§
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of Joint Rules of Procedure of the Rehabilitation Review Panel and Medical Services Review Board

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I hereby certify that the list of interested persons and groups who have requested, pursuant to Minn. Stat. § 14.22, (1982), that their names be placed on the lists maintained by the Minnesota Workers' Compensation Rehabilitation Review Panel and Workers' Compensation Medical Services Review Board for the purpose of receiving notice of the proposed adoption of rules by this panel and board is accurate and complete as of 12:00 noon, this 23rd day of August, 1984.

Penny Howard

PENNY HOWARD

STATE OF MINNESOTA

WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed
Adoption of Joint Rules of Procedure
for the Rehabilitation Review Panel and
Medical Services Review Board

FINDINGS OF FACT AND CONCLUSIONS

The above-captioned rules were published in the State Register, together with a Notice of Intent to Adopt Rules Without a Public Hearing, on the 27th day of August, 1984. Proper notice was served upon all interested persons or groups registered with the Workers' Compensation Rehabilitation Review Panel and the Workers' Compensation Medical Services Review Board for that purpose as required by Minn. Stat. § 14.22 (as amended by Minn. Laws 1984, ch. 640, § 12).

After affording interested persons and groups an opportunity to present written and oral data, statements and arguments, and having considered all of the evidence adduced upon the records, files, and proceedings herein, I make the following:

FINDINGS OF FACT

1. During the 30 day comment period following publication of the proposed rules, comments were received which are the basis for the changes to the proposed rules described at finding 2 below.

2. The rationale for the changes, all of which are nonsubstantial, are as follows:

5217.0030 COMMENCEMENT OF APPEAL.

Subp. 4. The executive secretary shall in writing acknowledge the filing of the appeal.

This added subpart recognizes the current administrative practice of acknowledging appeals. The acknowledgment is an important step in establishing communication with the parties and informing them of the subsequent steps in the processing of the appeal. It is thus appropriate to recognize this procedure in the rules. The change is not substantial because it places no additional burdens or duties on the parties in a proceeding. p.3

5217.0100 PREHEARING PROCEDURES.

Subpart 1. Time for filing statement of position and witness list. An appellant shall file a statement of position and a witness list within ~~30~~ 15 days after ~~filing the notice of appeal.~~ the date of service of the executive secretary's acknowledgment of the appeal. The executive secretary is not required to schedule a hearing before the appellant files a statement of position and witness list. The respondent must file a statement of position and witness list within ten days after filing of the appellant's statement of position and witness list. p.4

Subp. 2. Witness list. The witness list shall contain the names and addresses of all potential witnesses and a summary of the substance of the testimony of each witness. All witnesses unknown at the time of filing of the witness list must be disclosed as they become known. Witnesses not included on the witness list or disclosed to opposing parties at least ten days before the hearing date may testify at the hearing only upon agreement of the parties. p.5

The 30 day time provision in subpart 1 is changed to reflect the executive secretary's administrative practice of acknowledging appeals. The time period for filing the statement of position and witness list should begin to run when the acknowledgment letter is sent because the acknowledgment letter informs the appellant of these filing requirements. While attorneys can be expected to know filing requirements, pro se parties may not be aware of them until receipt of the acknowledgment letter. The change would thus make application of the rules easier for non-attorneys.

The 15 day time period is approximately equal to the 30 day period in the rule as originally proposed. The acknowledgment letter is generally sent about two weeks after filing of the appeal. The statement of position and witness list are due 15 days later, or 30 days after the filing of the notice of appeal. The modification is thus not a substantial change.

The added summary of testimony in Subpart 2 will assist the opposing party in its preparation and compensate for the lack of discovery in proceedings before the panel and board. The summary will also assist the presiding officer in expediting the hearing and making evidentiary rulings. This requirement imposes no new burdens on parties. In naming witnesses for the witness list, parties must clearly have considered the substance of the prospective witnesses' testimony. It is thus not a substantial change.

5217.01010 SUBPOENAS.

This part appears to be misnumbered in the rules as proposed. As an editorial correction, the change is not substantial.

5217.0120 PETITIONS.

> All petitions filed under parts 5217.0010 to 5217.0270 must conform to the requirements of this part. The petition must state with particularity its grounds and the order sought. If the petition is supported by briefs, affidavits, or other papers, they must be filed with the petition. Any party may file a response within ten days after filing of the petition. Any reply must be filed within five days after filing of a response. Petitions must be filed at least five days before the hearing. If the petition is to the board, an original and three copies of all documents filed under this part must be filed. If the petition is to the panel, an original and five copies of all documents filed under this rule must be filed.

The added sentence makes the procedure consistent with the procedure elsewhere in the workers' compensation system. See Minn. Rules, Part 9800.1400, Subp. 3. It is intended to reduce confusion and to avoid delays at the hearing caused by unexpected filing of petitions. As the modification places no additional burdens on the parties, it is not a substantial change.

5217.0130 INTERVENTION.

The presiding officer shall grant a petition to intervene if:

> A. the petition shows how the ~~moving~~ petitioning party's interests may be determined or affected by the case as prescribed by Minn. Stat. § 176.361, states the reasons for which intervention is sought, and indicates the ~~moving~~ petitioning party's statutory right to intervene; and

B. the presiding officer determines that the rights of the existing parties will not be materially prejudiced and that the existing parties are not likely to adequately protect the rights of the ~~moving~~ petitioning party.

Notwithstanding the requirements of items A and B, the commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding.

Changing "moving" to "petitioning" makes this part consistent with the use of the term "petition" rather than "motion" throughout these rules. This is an editorial clarification and not a substantial change.

The reference to Minn. Stat. §176.361 and the insertion of the word "materially" explicitly acknowledges that proceedings before the Panel and Board are governed by the same standard for intervention as proceedings before other workers' compensation tribunals. The intervention standard is prescribed by Minn. Stat. §176.361, and subdivision 7 of that statute requires material prejudice. These modifications merely clarify the intent of the rule and are not substantial changes.

5217.0140 DISMISSAL.

The panel or board shall dismiss an appeal with prejudice when:

A. a stipulation for settlement has been approved by a settlement or compensation judge;

B. a written withdrawal of the appeal signed by the appellant or a representative has been filed;

C. an appeal is filed after the expiration of the appeal period;

D. the appellant has not within one year of the time deadlines of these rules filed the documents required by these rules, and the appellant has failed to respond to requests for information or documents by the panel or board within the time period specified in the requests for information or documents; or

E. the appellant or a representative fails to appear at the hearing and a continuance under part 5217.0220 has not been granted.

The added language clarifies that this rule is not an available remedy where an appellant fails to file documents within the time limits specified by the rules. As indicated in the Statement of Need and Reasonableness, the rule is intended as an extraordinary remedy where an appellant not only has failed to file documents but also has failed to file in response to specific requests to do so by the Panel or Board. The change is not substantial because it clarifies the intent of the rule without placing additional burdens on other parties.

5217.0210 RULES OF EVIDENCE.

> **Subp. 3. Documentary evidence.** Documentary evidence may be submitted at the hearing or after the hearing as provided in part 5217.0230, item 1. To be received into evidence it must be marked as an exhibit and identified by a witness who has personal knowledge of it. The parties may agree to waive personal identification of a document. A party must provide an original and six copies of documents to be offered into evidence before the panel and an original and four copies of documents to be offered into evidence before the board. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the presiding officer or upon agreement of the parties.

P-11

The number of copies specified in Subpart 3 should be increased so that copies are available for the opposing party, as well as for the panel or board members and the official file. The change is not substantial because it merely clarifies that the original document becomes part of the official record.

Based upon these Findings of Fact, I make the following:

CONCLUSIONS

1. That the Panel and Board gave proper notice of the hearing in this matter.

2. That the Panel and Board fully complied with all procedural requirements of law or rule in adopting the proposed rules.

3. That the Panel and Board have acted within their statutory authority in adopting these proposed rules.

4. That the proposed rules as amended are needed and reasonable and fully comply with substantive requirements imposed by law or rule.

STATE OF MINNESOTA

Cynthia Thompson

Cynthia Thompson
Manager of Public Affairs

Dated: October 18, 1984

MEDICAL SERVICES REVIEW BOARD

October 10, 1984

MINUTES

The Medical Services Review Board met on Wednesday, October 10, 1984, at 1:30 p.m., in Room 574 of the Space Center Building, St. Paul.

Members Present: Mr. Robert Llewellyn, Ms. Pamela Tibbitts, Ms. Ann Tewart, Ms. Sally Graven, Dr. J.G. Anderson, Dr. Donald Jensen, Dr. Leonard Lamberty, Dr. John Quast, Dr. Lawrence Schut, Dr. Lynn Ault.

Members Excused: Dr. Alexander Webb, Mr. Gordon Spielman and Dr. Richard Marsh.

Others Present: Ms. Joan Volz, Ms. Leslie Altman, Ms. Cynthia Thompson, Mr. Winston Elhmann.

The meeting was called to order at approximately 1:40 p.m. with Dr. Lawrence J. Schut, Chairman, presiding.

Dr. Schut introduced and welcomed Ms. Pamela Tibbitts to the Medical Services Review Board. Ms. Tibbitts is the newest member filling the Hospital Administrator vacancy created by the resignation of Mr. Frank Larkin.

Dr. Lamberty moved that the minutes of the September 12, 1984 Medical Services Review Board meeting be corrected to read: (1st paragraph, page 2) "With four in favor and seven opposed, the amended motion, regarding thermography, was defeated." and approved as corrected. Dr. Ault seconded the motion and the minutes were approved unanimously as corrected.

Copies of the final version of the Joint Rules of Procedure for the Rehabilitation Review Panel and the Medical Services Review Board were distributed to Board members. Previous to the meeting, Board members received a draft of the Findings of Fact and Conclusions, setting forth minor clarifications in the Joint Panel and Board Rules. Cynthia Thompson briefly discussed these changes. There was brief discussion regarding the Witness Lists and who prepares this list. Ms. Joan Volz explained that each respective attorney prepares their own witness list and a summary of the substance of the testimony of each witness. This will help attorneys and board members prepare for the case.

There being no further discussion, the following resolution was read:

> "RESOLVED, that the Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board be and hereby are approved and adopted as amended by the Findings of Fact and Conclusions pursuant to authority vested in us by Minn. Stat. §176.103, Subd. 3(d) and that Cynthia Thompson, Manager of Public Affairs, be and hereby is authorized to sign Findings of Fact and Conclusions and an Order Adopting Rules, and further, is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

Dr. Donald Jensen moved and Ms. Sally Graven seconded that the Resolution be adopted, giving Cynthia Thompson the authority to begin the final phase of the rule-making process. The motion carried unanimously. (Copy of Resolution is attached).

Cynthia Thompson went on to explain that the final rule-making phase involves the Revisor's office, the Attorney General's office, the Secretary of State's office, and the final printing in the State Register. The Rules are expected to be in place by the end of November.

Regarding the Medical Fee Schedule, Dr. Anderson raised the issue that if a specific fee was not listed in the Medical Fee Schedule, some insurance companies were assuming that those services did not have to be paid. After some discussion, Ms. Joan Volz offered to contact the insurance companies Dr. Anderson referred to, and explain how the Fee Schedule should be interpreted.

There was also concern expressed regarding the one-year time period allowed in which insurance companies can ask to be reimbursed for any overpayments. Mr. Llewellyn stated that because the insurance companies are required to make payment within a short period of time (21 days) they need additional time allotted to scrutinize each individual bill for any overpayments. Dr. Schut mentioned that physicians need to know that this procedure exists and the Board may need to discuss this further at a later date.

The Board recessed for 10 minutes.

Ms. Joan Volz, the Department's Chief Counsel, and Leslie Altman, Special Assistant Attorney General, were invited to attend this business meeting to provide training to Board members on the Joint Panel and Board Rules of Procedure.

To facilitate discussion, Board members received a copy of a chart showing the dispute resolution system, a copy of the Joint Panel/ Board Rules, as adopted, and a copy of an Outline for Presiding Officer.

Ms. Volz discussed with Board members how they fit into the Workers' Compensation litigation system and covered intervention, dismissal, consolidation, settlement, continuance, and disqualification. She stressed that the Rules will ensure a fair hearing and provide parties with due process which should prevent the decisions of the Board from being overturned. Board members asked many questions concerning these areas. Ms. Volz then referred to the Outline for Presiding Officer as a discussion tool to cover areas such as:the importance of determining the specific issues on appeal, marking exhibits, and creating a good record.

Ms. Leslie Altman from the Attorney General's Office, discussed the rest of the Outline, covering areas such as: opening statements, testimony, objections, burden and standard of proof, ex parte communications and confidentiality of decisions. It was also discussed that

if medical evidence relevant to the Workers' Compensation case is offered, the doctor/patient privilege is lost. Again, excellent questions were raised by Board members. Ms. Altman stressed that the Rules are intended to provide fairness and objectivity in the hearing process.

Dr. Schut thanked Ms. Altman and Ms. Volz for their time and expertise.

The next meeting of the Medical Services Review Board is scheduled for Wednesday, November 14, 1984, at 1:30 p.m. in Room 574 of the Space Center Building, St. Paul.

The meeting adjourned at approximately 4:50 p.m.

Respectfully submitted,

Cheryl Malkowski

Cheryl Malkowski
Exeuctive Secretary

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Attachments

STATE OF MINNESOTA
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

I, Lawrence J. Schut, do hereby certify that I am a member and the chairperson of the Medical Services Review Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Medical Services Review Board, duly and properly called and held on the 10th day of October, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board be and hereby are approved and adopted as modified by the Findings of Fact and Conclusions pursuant to authority vested in us by Minn. Stat. §176.103, subd. 3(d) and that Cynthia Thompson, Manager of Public Affairs, be and hereby is authorized to sign Findings of Fact and Conclusions and an Order Adopting Rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of October, 1984.

Lawrence J. Schut M.D.
Lawrence J. Schut, M.D.
Chairperson, Medical Services Review Board

John E. Quast, M.D.
Attest by one other Board member

REHABILITATION REVIEW PANEL

October 11, 1984

MINUTES

The regular business meeting of the Rehabilitation Review Panel was held October 11, 1984, in Conference Rooms A & B on the 6th Floor of the Space Center Building. The meeting was called to order at 8:10 a.m. with Dr. Joseph Sweere, Chair, presiding.

Members Present:

Marshall Johnson	Gail Salas
Art Berens	James Anderson, M.D.
Art Dyson	John Dowdle, M.D.
Jayne Hetchler	Joseph Sweere, D.C.
Barbara Kelley	Dennis Ballinger
Bill DouVille	Sandra Wahlberg
Shirley Friberg	

Staff Present:

Cynthia Thompson, Manager, Office of Public Affairs
Joan Volz, Chief Counsel
Leslie Altman, Special Assistant Attorney General
Dale Sauer, Rehabilitation Specialist
Jim Brennan, Law Clerk
Nancy Doyle, Secretary
Mary Jo Glumack, Director of Rehab and Medical Services

The minutes of the August 16, 1984, business meeting were approved as mailed.

The ongoing appeals statistics relating to the hearings of the Panel were discussed. The statistics show that the backlog of cases pending is coming down and with the continued hard work of the Panel, the backlog should be manageable shortly after the first of the year.

Copies of the final version of the Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board were distributed to Panel members. Previous to the meeting, Panel members received a draft of the Findings of Fact and Conclusions setting forth minor clarifications in the Joint Panel and Board Rules. Cynthia Thompson briefly discussed these changes and there being no objections raised, the following resolution was read:

> "RESOLVED, that the Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board be and hereby are approved and adopted as amended by the Findings of Fact and Conclusions pursuant to authority vested in us by Minn. Stat. §176.102 subd. 3(a) and that Cynthia Thompson, Manager of Public Affairs, be and hereby is authorized to sign Findings of Fact and Conclusions and an Order Adopting Rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

Dr. John Dowdle moved and Dr. James Anderson seconded that the Resolution be adopted giving Cynthia Thompson the authority to begin the final phase of the rule-making process. The motion carried unanimously. (copy of Resolution attached) Since the rules will not have to go through a public hearing, the final phase involves the Revisor's Office, the Attorney General's Office, the Secretary of State's Office, and the final printing in the State Register. The Rules are expected to be in place by the end of November.

Dr. Sweere introduced Sandra Wahlberg, the newest member of the Panel, who replaced Ruth Stillman as Insurance Representative. Ms. Wahlberg gave a thumbnail description of her work background.

Cynthia Thompson introduced Ms. Mary Jo Glumack the new Director of Rehabilitation and Medical Services. Ms. Glumack has been with the Department approximately 4 weeks. Ms. Glumack, too, gave a brief history of her work background.

Ms. Joan Volz, the Department's Chief Counsel, and Leslie Altman, Special Assistant Attorney General, were invited to attend this business meeting to provide training to Panel members on the Joint Panel and Board Rules of Procedure.

To facilitate discussion, Panel members received a copy of a chart showing the dispute resolution system, a copy of the Joint Panel/ Board's rules as adopted and a copy of an Outline for Presiding Officer.

Ms. Volz discussed with Panel members how they fit into the workers' compensation litigation system and covered intervention, dismissal, consolidation, settlement, continuance, and disqualification. She stressed that the rules will ensure a fair hearing and provide parties with due process which should prevent the decisions of the Panel from being overturned. Panel members asked many questions concerning these areas. Ms. Volz then referred to the Outline for Presiding Officer as a discussion tool to cover areas such as the importance of determining the specific issues on appeal, marking exhibits, and creating a good record.

Ms. Leslie Altman from the Attorney General's Office discussed the rest of the outline covering areas such as, opening statements, testimony, objections, burden and standard of proof, ex parte communications and confidentiality of decisions. She stressed that the rules are intended to provide fairness and objectivity in the hearing process. Again, excellent questions were raised by Panel members.

The next business meeting will be held Thursday, December 20, 1984.

The meeting adjourned at 10:30 a.m.

Deloris S. Askew
Executive Secretary

STATE OF MINNESOTA
WORKERS' COMPENSATION REHABILITATION REVIEW PANEL

In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

CERTIFICATE OF PANEL'S RESOLUTION ADOPTING RULES

I, Joseph J. Sweere, do hereby certify that I am a member and the chairperson of the Rehabilitation Review Panel, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Rehabilitation Review Panel, duly and properly called and held on the 11th day of October, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board be and hereby are approved and adopted as amended by the Findings of Fact and Conclusions pursuant to authority vested in us by Minn. Stat. § 176.102, subd. 3(a) and that Cynthia Thompson, Manager of Public Affairs, be and hereby is authorized to sign Findings of Fact and Conclusions and an Order Adopting Rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of October, 1984.

Joseph J. Sweere D.C.
Joseph J. Sweere, D.C.
Chairperson, Rehabilitation Review Panel

Marshall J. Johnson
Attest by one other Panel member

STATE OF MINNESOTA
WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

STATEMENT OF NEED AND REASONABLENESS

Introduction

In 1984, the legislature amended Minn. Stat. § 176.102, subd. 3(a) (Supp. 1983) to permit the Rehabilitation Review Panel to promulgate rules of procedure jointly with the Medical Services Review Board.[1] Minn. Stat. § 176.103, subd. 3 (Supp. 1983) was also amended to allow the Board to adopt joint rules of procedure with the Panel.[2] Incorporated into these rules are the suggestions of the Commissioner's Advisory Task Force, an ad hoc committee of attorneys representing the plaintiff and defense workers' compensation bar, and the Department of Labor and Industry.

The rules use language which is easily understood by the average person, as nonlawyers sit on the Panel and Board and appear before the Panel and Board. To facilitate the speedy disposition of cases, only procedures which are necessary to a fair and complete resolution of disputes consistent with the requirements of due process are included. Wherever possible the procedures prescribed by these rules are intended to be consistent with those used by other workers' compensation tribunals so as to minimize confusion among litigants. See Minn. Rules, ch. 1415 and 9800.

Part 5217.0010/Definitions.

Subpart 1. Subpart 1 is necessary to set out the applicability of the definitions. The exception for a contextually different meaning is necessary and reasonable so that the basic purpose of the relevant rule is achieved.

Subpart 2. "Board" is defined to avoid the repetition throughout the rules of the full title "Medical Services Review Board." This definition is needed and reasonable for ease of use of the rules.

Subpart 3. It is reasonable and necessary to select a "chairperson" of the deciding body as its spokesperson and administrative leader to coordinate the efficient handling of business and technical matters.

Subpart 4. "Commissioner" is defined to eliminate repetition throughout these rules of the phrase "of the Department of Labor and Industry." The definition is needed and reasonable for ease of use of the rules.

Subpart 5. An "executive secretary" is appointed with whom litigants may communicate before and after the hearing, when it is improper to communicate directly with the Panel or Board members. See part 5217.0180, subp. 2. As the administrator, the executive secretary is the appropriate person to receive documents on behalf of the Board or Panel. This definition is necessary and reasonable to apprise parties of the liaison for filing and for pre- or post-hearing communications.

Subpart 6. "Panel" is defined to avoid repetition throughout the rules of the full title "Rehabilitation Review Panel." This definition is needed and reasonable for ease of use of the rules.

Subpart 7. The definition of "party" is necessary to clarify that "interested party" has the same meaning as "party." Because party status presupposes an interest in a case, the two terms are interchangeable. The notice of hearing will accurately identify the parties in a case unless a petition to intervene is later granted pursuant to part 5217.0130.

Subpart 8. "Person" is defined broadly, thereby reducing the need for further description in each instance in which it is used. The definition is needed and reasonable for clarification and ease of use of the rules.

Subpart 9. The Panel and Board hear cases in five and three member panels of the Panel and Board respectively. The definition of "presiding officer" is needed to distinquish the member chosen to preside over the panel at a hearing from the chairperson who is the administrative head of the entire Panel or Board. Other rules concerning presiding officers are contained in part 5217.0180.

Subpart 10. "Rehabilitation and Medical Services" is defined to eliminate use of the full title "Rehabilitation and Medical Services Section of the Workers' Compensation Division of the Department of Labor and Industry" throughout these rules. The definition is needed and reasonable for economy and ease of use of the rules.

Part 5217.0020/Scope and Purpose.

The scope and purpose section simply states the applicability of and authority for these rules. It is necessary as a guideline for determining when these rules apply. For consistency and fairness to all parties, the rules apply to all cases appealed to the Panel or Board.

Part 5217.0030/Commencement of Appeal.

Subpart 1. Subpart 1 outlines procedures for filing the notice of appeal. The items listed in A.-I. are necessary to identify the parties as well as the specific decision and issues appealed. They are consistent with the requirements for initiating other workers' compensation proceedings. See Minn. Rules, part 1415.1000 and Minn. Stat. § 176.421 (Supp. 1983). Proof of service is required to show that all parties have received proper notice of the commencement of the action. The name, address, and telephone number of the appellant is required for communication among the parties, and between the executive secretary and the appellant.

Subpart 2. The time for appealing a rehabilitation and medical services decision to the Panel is prescribed by Minn. Stat. § 176.102, subd. 6 (Supp. 1983). The same appeal period applies to the Board under Minn. Stat. § 176.103, subd. 3(b) (Supp. 1983), which requires the Board to conduct hearings in the same manner, giving the same notice, and following the same procedures as the Panel under Minn. Stat. § 176.102, subd. 3(a) (Supp. 1983). This part is needed and reasonable for completeness of the rules.

Subpart 3. To protect the rights of interested persons who are not parties, the appellant must notify potential intervenors of the pending action. Prompt notice to potential intervenors is necessary to promote fair and complete dispositions and settlements, and to avoid administrative delays caused by the failure to notify interested persons.

Part 5217.0040/Notice of Hearing.

The Panel and Board are required by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) to give at least ten working days notice of a hearing. To provide adequate time for preparation and scheduling, notice will be served 30 days before the hearing. However, where a continuance has been granted, ten working days is sufficient notice. Parties may consent to a shorter notice period if they wish to expedite their hearing.

Items A.-H. specify the contents of the notice of hearing. The information necessary to identify the case, the names of the parties, the date of injury, and the social security number is listed in items A.-C. Item D. is essential to notify the parties of the date, time, and place of the hearing. The executive secretary's name, address, and telephone number in item E. is needed and reasonable to facilitate communication regarding the administrative aspects of the case.

Under Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) the notice of hearing must inform parties of the right to be represented by an attorney at the hearing, as in item F. Item F. also notifies the parties that they may select any person to represent them, such as a union official. Further explanation of the right of representation appears in part 5217.0050.

Item G. is necessary and reasonable to underscore the importance of attendance at the hearing. Full disclosure of the consequences of failing to attend protects parties from unknowingly foregoing their rights under these rules and the Workers' Compensation Act.

Item H. is necessary to apprise the parties of the procedure for requesting a continuance of a scheduled hearing. Without encouraging continuances, prompt notice of the procedure for obtaining a continuance permits immediate rescheduling of the hearing and minimizes delays.

Part 5217.0050/Representation.

Part 5217.0050 provides for representation at the hearing by an attorney or another person chosen by the party. Representation by nonattorneys is consistent with the limitations imposed by Minn. Stat. § 481.02 (Supp. 1983) and is reasonable and necessary to encourage cost containment and informal resolution of disputes. Service on both the employee and the representative is required in conformity with part 5217.0070.

Part 5217.0060/Filing.

Part 5217.0060 is necessary so that the parties are informed of the filing procedures. Consistent with Minn. Stat. § 176.275 (1982), filing is complete on the date the document is received by the Panel or Board. Glasgow v. Sheehy Construction Co., 34 W.C.D. 615 (1981). Filing deadlines are made certain by this rule because the Panel and Board can easily verify the date of receipt. As required elsewhere in the workers' compensation system, an affidavit of service must be attached to ensure compliance with service requirements. See Minn. Rules, parts 1415.0700 and 9800.1400.

Part 5217.0070/Service.

Part 5217.0070 requires service of filed documents on parties and is needed to ensure adequate notice. Under Minn. Stat. § 176.285 (Supp. 1983), service is complete upon mailing or personal delivery. Both parties and their representatives must be served, as in proceedings before the workers' compensation court. See Minn. Rules, part 1415.0700. Consistent with the practice in the workers' compensation system, three days are not added when service is by mail.

Part 5217.0080/Time.

The rule governing time is modeled after Rule 6.01 of the Minnesota Rules of Civil Procedure and Minn. Stat. § 645.15 (1982), and its requirements are therefore reasonable. The rule is necessary to add certainty to time period computations.

Part 5217.0090/Examination of Panel or Board Files.

Minn. Rules, part 1415.0600 defines the requirements for access to workers' compensation division files in proceedings before the workers' compensation division and the workers' compensation court. Because the Panel and Board may utilize the Division files, and the Division later maintains Panel and Board files under part 5217.0240, subp. 1, it is reasonable to allow access under the same conditions. Staff members of the workers' compensation division are also available to advise parties regarding existing rules.

Part 5217.0100/Prehearing Procedures.

Subpart 1. Early submission of the statements of position and witness list is necessary to narrow the issues, identify witnesses and facilitate preparation for the hearing by the parties and by Panel and Board members. The executive secretary also requires these documents in order to properly allocate time for the hearing. Because the Panel and Board have limited time for hearings, the efficient use of available time is essential.

Subpart 2. Subpart 2 requires advance disclosure of witnesses so that opposing parties may adequately prepare their case. Parties may, however, consent to the testimony of undisclosed witnesses not included in the witness lists. Additionally, the Panel and Board need to know the approximate number of witnesses in order to allot an appropriate amount of time for the hearing.

Subpart 3. Subpart 3 states that copies of statements of position must be provided for each Panel or Board member. The budgets of the Panel and Board are insufficient to cover copying costs. Further, this requirement is consistent with that of other tribunals.

The statement of position must accurately state the issues and explain the party's position on each issue, including any authority which supports that position. This information is needed to facilitate settlement discussions, the preparation of rebuttal arguments, and even the dismissal of some cases on preliminary procedural grounds. Where a case proceeds to hearing, a completed statement of position will assist the presiding officer in efficiently conducting the hearing.

Part 5217.0110/Subpoenas.

The subpoena rule is based in part on Minn. Rules, part 1400.7000, the subpoena rule governing contested cases, and on Minn. Stat. § 176.351, subd. 2 (1982). The subpoena rule is necessary so that all material documents and testimony are obtainable. The nonrequesting party may seek to modify or quash the subpoena if it is inappropriate. Allowable fees are those set by statute and are therefore reasonable. Witness fees, expenses and other costs are paid by the requesting party to avoid overuse of the subpoena authority.

Part 5217.0120/Petitions.

Part 5217.0120 establishes uniform procedures for the filing of petitions and responses to petitions to the Panel and Board. The short deadlines ensure that procedural matters will be promptly resolved without delay of a substantive disposition. The Panel and Board do not wish to encourage the filing of unnecessary petitions by this rule, but are merely providing orderly procedures where petitions are appropriate, such as petitions for default, dismissal, or intervention. A general petition rule is necessary in the event that appropriate relief has not been anticipated in these rules. The petition must be sufficiently specific for the opposing party to respond and for the Panel or Board to make a determination.

Part 5217.0130/Intervention.

Part 5217.0130 prescribes the prerequisites for intervention. It is consistent with Minn. Stat. § 176.361 (Supp. 1983). See Gran v. Bituminous Consulting and Contracting Co., File No. 468-80-5245 (served and filed Feb. 7, 1984). Persons must be permitted to participate where their rights may be affected by a decision to the extent that the interests of existing parties are not substantially prejudiced. Intervention also promotes judicial economy, as the rights of all interested persons are adjudicated in a single, rather than in multiple proceedings. Needless disruption is avoided, however, by the preclusion of intervention where existing parties adequately represent the petitioner.

The Commissioner of the Department of Labor and Industry is specifically granted intervention rights by Minn. Laws 1984, ch. 432, § 45 when a rule or law he administers is attacked. He is authorized by Minn. Stat. §§ 175.101, subd. 1 (Supp. 1983) and 175.17(1) (1982) to administer the workers' compensation system. Where a workers' compensation law or rule is challenged before the Panel or Board, the Commissioner is thus entitled to intervene. Contrary to Rule 24.02 of the Minnesota Rules of Civil Procedure, the Commissioner's intervention is of right, not permissive.

Part 5217.0140/Dismissal.

Dismissal of cases expedites the scheduling of appropriate cases for hearing and the prompt disposition of others which need not be examined on their merits. Dismissal is appropriate where the parties have reached agreement (item A.); the appellant has withdrawn the appeal (item B.); or has failed to initiate a timely appeal (item C.). Failure to timely respond to requests for information will rarely, if ever, warrant dismissal of cases as it is intended to apply only where the information is at least one year overdue (item D.). The rule thus provides a needed and reasonable mechanism for managing the caseload of the Panel and Board.

Part 5217.0150/Default.

Part 5217.0150 establishes authority for the issuance of default orders for failure of the respondent to appear at the hearing. A proposed default order is first served on the parties. If the respondent remains in default, the default order will be issued. The matter will be rescheduled for a future date, however, if the respondent shows that a default should not be granted and also meets the requirements for a continuance. Delay in issuance of the actual order until the

service of the proposed order is needed to ensure fairness to the parties. This procedure is used by the workers' compensation court under Minn. Rules, part 1415.1500.

Because this "second chance" is routinely given, there is no need to create procedures to vacate default orders. As in contested hearings, the rule also provides that the appellant must prove a right to the relief requested. Because parties are not automatically entitled by the Workers' Compensation Act to the benefits or action requested, it is reasonable to require them to establish their entitlement to that relief.

Part 5217.0160/Consolidation.

Part 5217.0160, allowing consolidation of related cases, is necessary for the convenience of the parties and for the efficient administration of the caseload of the Panel and Board. Consolidation conserves available hearing time, thereby reducing the waiting period before a hearing may be held. Consolidation is not permitted, however, when parties are prejudiced, or when consolidation causes scheduling or other administrative problems.

The rule also allows the consolidation of two claims when one claim is before the Panel and the other is before the Board. To avoid duplication of testimony, it is reasonable to consolidate both appeals for hearing. At the conclusion of the hearing, the Panel and Board then adjourn to separately consider the respective issues before them.

Part 5217.0170/Settlement.

Subpart 1. This part establishes a procedure for the settlement of appropriate cases before the Panel and Board. It is necessary and reasonable to refer these cases to settlement judges who have expertise assisting parties in reaching settlements.

The settlement judge has 30 days in which to schedule a conference or the matter must be referred back to the Panel or Board. Cases are thus minimally delayed if they are not suitable for settlement. To date, a large percentage of cases have been settled prior to hearing through the assistance of settlement judges, thereby reducing the time spent waiting for a hearing in the remaining cases.

To promote consistency in the workers' compensation system, the settlement rule is patterned after the settlement conference rule used in other workers' compensation cases. See Minn. Rules, part 1415.1800. The parties and intervenors are required to attend the settlement conference unless excused by

the judge, and must come prepared to discuss the issues and reach agreement. Items A., C., E. and F. contain information necessary for settlement negotiations. If the parties are unable to reach an agreement, the conference is then intended to serve as a pretrial conference. Accordingly, items B. and D. are designed to aid in the preparation for trial.

Subpart 2. This subpart restates the requirements under Minn. Stat. § 176.521 (Supp. 1983) regarding approval of stipulations for settlement. It is included for completeness.

Part 5217.0180/Presiding Officers.

Subpart 1. Subpart 1 is needed to prescribe the method of selecting presiding officers and of conducting hearings. Minn. Stat. § 176.102, subd. 3(a) (Supp. 1983) requires the Panel to permit the presentation of relevant, competent, oral or written evidence, and the cross-examination of opposing evidence. Minn. Stat. § 176.103, subd. 3(b) (Supp. 1983) mandates the use of the same hearing procedures by the Board. Because the presiding officer has the primary responsibility for conducting the hearing, it is reasonable and necessary to specify this duty in the rule.

Subpart 2. This prohibition of ex parte communication with Panel and Board members is necessary to ensure that all parties are treated fairly. Neutrality is best preserved when contact with the litigants is limited to the hearing at which each party is prepared to present its position and defend against the opposing party's claims. The rule does not prohibit communication with the executive secretary or other designee of the Panel or Board regarding procedural matters.

Subpart 3. Biased Panel and Board members are required to disqualify themselves under this subpart. This is essential to the integrity of the Panel and Board. Requests for disqualification must be filed no later than fifteen days before the hearing so that a substitute hearing panel member may be assigned if necessary. Parties also have ample time from service of the notice of hearing (part 5217.0040) to determine whether to request a disqualification.

Part 5217.0190/Rights of Parties.

As required by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983), parties may present evidence, argument, and cross-examine witnesses. However, they must limit their argument and evidence to the issues appealed. Parties and Panel and Board members thus have advance notice of issues that will be raised at the hearing. The same rule applies to the workers' compensation court of appeals. See Minn. Stat. § 176.421, subd. 6 (Supp. 1983).

Subject to approval of the Panel and Board, however, parties can agree to waive this requirement. This restriction also provides Panel and Board members with a standard for determining when evidence is relevant and competent, as required by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983).

Part 5217.0200/Witnesses.

Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) authorize parties to present witnesses at the hearing. To preserve the integrity of the hearing, testimony must be under oath or affirmation. Under Minn. Stat. § 176.351, subd. 1 (1982), testimony taken in other workers' compensation proceedings is to be under oath or affirmation. The seclusion of witnesses is allowed where testimony may be tainted by the testimony of other witnesses as in the workers' compensation court. See Minn. Rules, part 1415.2900, subp. 5.

Part 5217.0210/Rules of Evidence.

Subpart 1. This subpart is necessary to provide guidelines to the presiding officer regarding the acceptance and exclusion of evidence. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) specify that evidence must be relevant and competent. As in other workers' compensation and administrative proceedings, few other rules of evidence are necessary. Minn. Rules, part 1415.2900, subp. 6; Minn. Stat. § 14.60 (1982). The restriction of evidence relating to issues in the notice of appeal was described in part 5217.0190 as a means of ensuring fairness to parties, permitting adequate preparation, and controlling hearings. Accordingly, even if the parties consent to the admission of evidence unrelated to the issues on appeal, the presiding officer may, nevertheless, exclude the evidence.

Subpart 2. This subpart, limiting the evidence considered to that which has been offered by the parties into evidence, is necessary so that parties do not assume that documents previously filed with the workers' compensation division will be considered by the Panel and Board members. The rule also precludes Panel and Board members from considering evidence which the opposing party has not had an opportunity to rebut.

Subpart 3. Subpart 3 requires the authentication of documentary evidence unless its authenticity is undisputed. This provision is consistent with standard litigation practice. To enable the Panel and Board members to review the evidence as it is introduced, the parties must provide copies of exhibits for each Panel or Board member.

Subpart 4. Depositions of unavailable witnesses may be introduced into evidence, but must ordinarily be taken before the hearing. Post-hearing depositions are rarely permitted because of the difficulty of excluding improper evidence, and of adding evidence based on the deposition. Further, post-hearing depositions delay the disposition of the case. Special circumstances that would justify a post-hearing deposition would include late cancellation of a deposition by a medical witness, precluding its rescheduling prior to the scheduled hearing date.

Subpart 5. This subpart is needed to permit a party to complete the presentation of its case without rescheduling additional hearing time. Despite the disadvantages of post-hearing depositions described in part 5221.0210, subp. 4, they are sometimes needed for the efficient use of the Panel's and Board's limited hearing time. By submitting questions on the record or in writing to be addressed by the witness, the Panel and Board continues to serve as a neutral fact-finder.

Subpart 6. Panel and Board members may use their expertise in rehabilitation and health care in evaluating the case before them. The rule limits noticeable facts to those which are not disputed within the profession as defined by Minn. Stat. § 14.60, subd. 4 (1982) and by Rule 201(b) of the Minnesota Rules of Evidence. Due process requires that notice be taken on the record after parties have been permitted to respond.

Subpart 7. Minn. Stat. § 176.021, subd. 1(a) (Supp. 1983) governs the burden of proof in proceedings before the Panel and Board. This subpart is needed for completeness and ease of use of the rules.

Part 5217.0220/Continuances.

This rule is necessary to establish the procedure for obtaining a continuance of the case to another hearing date. The rule discourages requests for continuances by requiring petitions to be in writing and show good cause. Excess availability of continuances reduces the productivity of the Panel and Board and causes lengthy administrative delay.

The 15 day time period in item A. permits the executive secretary to schedule another case during the hearing time originally allocated to the continued case.

The higher standard for obtaining continuances in item B. reflects the administrative difficulties of scheduling replacement hearings less than 15 days before the hearing.

Item C. is reasonable and necessary to establish the procedure for granting a continuance of the hearing at the hearing itself. The eight day notice period is adequate for parties to prepare for the reconvening of the hearing and to clear their calendar without unduly delaying the disposition of the case. (The ten day notice period for hearings prescribed by Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) does not apply because the hearing is reconvened; not a new hearing.)

Because of the limited hearing times, cases continued upon motion of a party are placed on a backup calendar as described in item D. The backup calendar is used to fill hearing times left vacant due to continuances, settlements, or dismissed cases. The statutory ten day notice period is preserved by this rule. This procedure is reasonable and necessary to enable the Panel and Board to efficiently manage their case schedules.

Item E. lists frequently cited circumstances which do not constitute good cause. It is needed to apprise litigants of the strictly enforced restrictions on continuances. Item E. is a restatement of the parallel provision used by the workers' compensation court. See Minn. Rules, part 1415.2000, subp. 4.

Part 5217.0230/ Hearing Procedure.

The rule specifying the order of procedures at the hearing is necessary to facilitate the orderly progression of the hearing. Some flexibility regarding the sequence of events is necessary, however, to allow the presiding officer to control the hearing and expedite the disposition of the case.

Item A. requires the Panel and Board to begin the hearing by describing the general scope of the hearing, the hearing procedures and the parties' basic rights at the hearing. This announcement underscores the limited issues and evidence which the Panel and Board will accept, and is especially important information for unrepresented parties.

Item B. provides that stipulations must be made a part of the record to be considered. Stipulations must be introduced early in the hearing so that Panel or Board members are immediately informed of the undisputed issues, which need not be determined by the Panel or Board.

Item C. states that parties may make short opening statements, beginning with the appellant. It is standard legal procedure to allow the aggrieved party the first opportunity to state the issues and its position on them. The rule reasonably allows equal time to each party and limits the statements to five minutes unless additional time is needed and approved by the presiding officer.

Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) permit the parties to present evidence on their behalf at the hearing. Following standard litigation practice, item D. allows the appellant to present evidence first. Having once failed to prevail on the issue, the appellant is given the opportunity to make the first impression by characterizing the issues in its favor.

Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) permit the cross-examination of witnesses. Item E. is necessary to establish the cross-examination procedure where there are multiple opposing parties. It is reasonable to permit the presiding officer to determine the sequence in which opposing parties may cross-examine a witness.

Item F. is necessary to clarify the procedure for presenting final arguments. Item F. allows the parties to make short final arguments to summarize the issues and facts to be considered by the Panel and Board. The appellant, following standard litigation practice, is given the last opportunity to argue its case. The time limitations are the same as those for opening statements (item C), and are justified on the same grounds.

Item G. is necessary to describe the procedure for submitting post-hearing briefs or proposed findings. To assist the factfinders in their deliberation, parties may submit proposed findings and written legal or factual arguments. The rule directs the Panel and Board to set a reasonable deadline for the filing of briefs and proposed findings which will not unduly delay the resolution of the dispute.

Item H. is necessary to delineate the close of the hearing. Time periods for submission of post-hearing evidence commence at that time as specified in item I.

Item I. reasonably designates the close of the record as the date the last document or exhibit is filed, or where there are no late-filed exhibits, as the conclusion of the hearing. The close of the record is defined to mark the date by which evidence must be submitted to the Panel and Board.

Part 5217.0240/The Record.

Subpart 1. The record is described in subp. 1 so that parties are informed of the information which forms the basis of the Panel's and Board's deliberation. A complete record of all official communications related to the appeal must contain all items listed in items A.-G. Because the Panel and Board hear cases de novo, the record is devoid of information regarding the rehabilitation and medical services decision which is on appeal to the Panel or Board. A complete record is necessary to an informed decision by the Panel and Board and also by the workers' compensation court of appeals if the Panel or Board's decision is appealed.

Subpart 2. Pursuant to Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983), proceedings before the Panel and Board must be recorded. Subpart 2 provides that a transcript must be prepared upon request. Transcripts are necessary so that the hearing proceedings may be reviewed by the workers' compensation court of appeals. Persons requesting preparation of a transcript must pay the reasonable cost of preparation. It is reasonable to require the appellant to finance its own transcript. If that party's position is ultimately upheld, the prevailing party may seek reimbursement for the cost of the transcript.

Part 5217.0250/The Decision.

Subpart 1. Due process of law permits the Panel and Board to consider only that information which is a part of the record. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) also require that information considered by the Panel or Board be subject to cross-examination.

Subpart 2. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) require the Panel and Board to issue a written decision following the close of the record. The decision must be issued promptly to enable the employee to take the next appropriate step to returning to gainful employment or to physically recover from the injury. Appeals concerning qualified rehabilitation consultants or registered rehabilitation vendors also benefit from prompt decisions as their future employment options may be affected. Subpart 2 also reasonably designates the presiding officer to write the decision unless the duty is otherwise delegated. The rule is reasonable and necessary to eliminate confusion regarding decision writing and permits a rotation of these duties.

Subpart 3. Subpart 3 lists the necessary components of a decision. Minn. Stat. §§ 176.102, subd. 3(a) (Supp. 1983) and 176.103, subd. 3(b) (Supp. 1983) do not require recitation of the facts supporting the decision. However, the workers' compensation court of appeals recently recommended the inclusion in each decision of specific findings of the essential facts. Bergstrom v. Suburban Tires, Inc., and American Mutual Insurance Co., File No. 471-72-7950 (served and filed April 25, 1984). Complete decisions, including the facts, allow an appellate court to conduct a meaningful review of the decision. A memorandum explaining the basis for the decision is also essential to the appeal process and is authorized by Minn. Stat. §§ 176.102, subd. 3(a) and 176.103, subd. 3(b) (Supp. 1983).

The additional required information is necessary to identify key persons and dates. Notification of appeal procedures is a courtesy to the attorneys, but is essential information for unrepresented parties.

Part 5217.0260/Suspension of Rules.

This part permits the suspension of the rules upon a clear showing of extraordinary circumstances on the rare occasions when strict adherence to the rules would work great injustice on the parties. Suspension of the rules is prohibited, however, when contrary to law. To ensure proper notice and an opportunity to object, the rules may not be suspended without the filing and service of a petition under part 5217.0120 or upon notice if on petition of the Panel or Board.

A narrowly circumscribed provision for suspension of rules is reasonable to ensure that the rules operate fairly. Rules may be more readily suspended by the OSHA Review Board under Minn. Rules, part 5215.6000; and by the Minnesota Appellate Courts under Minn. R. Civ. App. 102.

Part 5217.0280/Severability.

Part 5217.0280 is a standard severability clause, added to preserve the enforceability of the remainder of these rules if any part is invalidated for any reason.

EFFECTIVE DATE.

Parts 5217.0010 - 5217.0280 are procedural in nature and therefore apply to all appeals commenced or pending on the effective date of these rules.

IMPACT ON SMALL BUSINESS

The Rehabilitation Review Panel and Medical Services Review Board have considered the potential impact of these rules on small businesses as required by Minn. Stat. § 14.115 (Supp. 1983). They have concluded that these rules accommodate the needs of small businesses. Insurers and self-insured employers do not qualify as small businesses under Minn. Stat. § 14.115, subd. 1 (Supp. 1983). Further, the health care and rehabilitation providers who may appear before the Panel and Board are regulated service businesses which are exempt. Minn. Stat. § 14.115, subd. 7 (c). As procedural rules which essentially codify present practice, these rules impose no new burdens on litigants; they merely prescribe with specificity proper procedures before the Panel and Board.

The needs of small businesses were considered as required by Minn. Stat. § 14.115, subd. 2 (Supp. 1983). The duties are clearly defined and do not require a legal education to be understood. Procedural requirements were simplified so as to expedite dispositions and to place minimal burdens on the parties.

It is not feasible to establish more lenient timelines or to otherwise create exceptions for small businesses in these rules. To do so would leave the employee at a disadvantage. The procedures are simple and fair as written; to alter them in favor of small businesses would jeopardize those characteristics.

The rules may be obtained from the Public Documents Division of the Department of Administration for a small fee. Assistance in applying the rules is available from the workers' compensation division and the staff members for the Panel and Board.

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

The Panel and Board have considered the fiscal impact of these rules on local public bodies pursuant to Minn. Stat. § 14.11, subd. 1 (1982) and have found none. The rules place no additional financial burden on local public bodies.

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[1]Minn. Laws 1984, ch. 432, § 13.

[2]Minn. Laws 1984, ch. 432, § 15.

STATE OF MINNESOTA

WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
and
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board.

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I hereby certify that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures; the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Leslie M. Altman
Special Assistant
Attorney General

Dated: October 18, 1984.

STATE OF MINNESOTA

WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
AND
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Cynthia Thompson, being first duly sworn, deposes and says:

That on the 18th day of October, 1984, in the City of St. Paul, County of Ramsey, State of Minnesota, she served a copy of the attached Notice of Submission to the Attorney General by depositing it in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, properly enveloped, with postage prepaid, on all persons and groups who requested notice that the above-captioned rules have been submitted to the Attorney General.

Cynthia Thompson

Subscribed and sworn to before me
this 18th day of October, 1984.

Cheryl J. Schaar

CHERYL J. SCHAAR
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES SEPTEMBER 21, 1988

STATE OF MINNESOTA

WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
AND
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption
of Joint Rules of Procedure for the
Rehabilitation Review Panel and
Medical Services Review Board

CERTIFICATE

I hereby certify that the lists of interested persons and groups who have requested that their names be placed on lists maintained by the Rehabilitation Review Panel and Medical Services Review Board for the purpose of receiving notice of the submission of the rules to the Attorney General by the Panel and Board pursuant to Minn. Stat. §14.26 (1982) is accurate and complete as of 2:00 PM, this 18th day of October, 1984.

Cynthia Thompson
Cynthia Thompson

STATE OF MINNESOTA

WORKERS' COMPENSATION REHABILITATION REVIEW PANEL
AND
WORKERS' COMPENSATION MEDICAL SERVICES REVIEW BOARD

In the Matter of the Proposed Adoption of Joint Rules of Procedure for the Rehabilitation Review Panel and Medical Services Review Board

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. §14.26 (as amended by Minn. Laws 1984, ch. 640, §15):

PLEASE TAKE NOTICE that the above-captioned rules, which have been modified, were submitted to the Office of the Attorney General on this date, October 18, 1984, for review as to legality. Pursuant to Minn. Rules, part 2000.0700, subp. 2, the Attorney General will not approve the rules for at least eight calendar days after receipt to allow any person or group time to comment on the legality of the rules. The Panel and Board will then have an opportunity to respond to comment, after which the Attorney General's Office will complete its review.

Comments on the legality of the above-captioned rules, should be directed to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue. St. Paul, Minnesota 55155, telephone (612) 296-1288. Please note that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to the Panel and Board.

A free copy of the final rules as adopted is enclosed with this notice.

STATE OF MINNESOTA

Cynthia Thompson
Manager of Public Affairs