

CHAPTER 5220
DEPARTMENT OF LABOR AND INDUSTRY
RULES FOR VOCATIONAL REHABILITATION
SERVICES AND WORKERS' COMPENSATION

WORKERS' COMPENSATION REHABILITATION SERVICES

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WORKERS' COMPENSATION REHABILITATION SERVICES

5220.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 5220.0100 to 5220.1700, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Employer.** "Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by Minnesota Statutes, chapter 176 to this employer.

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Subp. 4. **Qualified employee.** "Qualified employee" means an employee who, because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability:

A. is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury; and

B. can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

Subp. 5. **Qualified rehabilitation consultant.** "Qualified rehabilitation consultant" means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under Minnesota Statutes, section 176.102.

Subp. 6. **Qualified rehabilitation consultant/affiliated.** "Qualified rehabilitation consultant/affiliated" means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

Subp. 7. **Qualified rehabilitation consultant/independent.** "Qualified rehabilitation consultant/independent" means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

Subp. 8. **Rehabilitation consultation.** "Rehabilitation consultation" means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

Subp. 9. **Rehabilitation plan.** "Rehabilitation plan" means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified employee may be returned to suitable, gainful employment through the use of rehabilitation service. The plan shall take into consideration the qualified employee's unique disabilities and assets.

Subp. 10. **Rehabilitation service.** "Rehabilitation service" means service required to determine an employee's eligibility as a qualified employee, and service designed to return an individual to suitable, gainful employment by returning the individual to a job with the former employer or to a job related to the individual's former employment, or by placing the individual in a job in another work field, or by placing the individual in a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, medically prescribed physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement, on-the-job training, or retraining.

Subp. 11. **Registered rehabilitation vendor.** "Registered rehabilitation vendor" means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

Subp. 12. **Review panel.** "Review panel" means the panel created by Minnesota Statutes, section 176.102, subdivision 3.

Subp. 13. **Suitable gainful employment.** "Suitable gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment which produces an economic status as close as possible

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to that which the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests, and skills.

Statutory Authority: *MS s 176.102 subd 12*

5220.0200 WORK STATUS REPORT.

Subpart 1. Reporting deadline. The employer shall report the work status of an employee to the commissioner on forms prescribed for that purpose within 30 days of receiving knowledge that the employee is permanently precluded or likely to be permanently precluded from returning to his preinjury occupation, or within 90 days after the date of the injury if the employee has not yet returned to work and the likelihood of return to work cannot yet be ascertained.

Subp. 2. Determination of qualification status. A work status report shall specify what is being done to determine the employee's eligibility as a qualified employee and the date when the commissioner will be notified of this determination. If the employee's condition does not then permit determination of the employee's qualification status, the report shall indicate this and the employer shall be required to submit a supplemental report every 60 days following submission of the initial report until such determination can be made.

If the employer believes that the employee is not a qualified employee, the work status report shall include documentation supporting the employer's determination. In this instance, the report also shall include a copy of the employer's advice to the employee that in the opinion of the employer, the provision of rehabilitation services is not necessary, the reasons therefor, and the following mandatory language: "If you have any questions regarding this explanation, you may contact the Workers' Compensation Division at (address). There is no charge for this service. If you have an attorney representing you in this matter, you should consult with that attorney."

Subp. 3. Supplemental report. If the employee's work status changes at any time subsequent to submission of a previous work status report, the employer shall file a supplemental report.

Statutory Authority: *MS s 176.102 subd 12*

5220.0300 INITIATION OF REHABILITATION SERVICE.

Subpart 1. Employer's duty. For the purpose of Minnesota Statutes, section 176.102, subdivision 4, the employer shall, in consultation with the employee, refer the employee to a qualified rehabilitation consultant. This shall be done within 30 days after an employer has medical information that an employee is unable, due to personal injury or occupational disease, to return to his preinjury occupation.

Subp. 2. Employee's objection. If the employer has made a selection, the employee may object to the employer's selection and shall make his own selection and notify the commissioner and the employer in writing. The employee has the final decision on which rehabilitation consultant is to be utilized.

Subp. 3. Delay by employer. When the commissioner receives information that the employee is qualified for rehabilitation benefits and the employer has not provided rehabilitation consultation within 30 days after receipt of similar information, the commissioner shall notify the employer that rehabilitation consultation shall be provided by the employer within 15 days of the notice or a qualified rehabilitation consultant within the division of vocational rehabilitation shall be authorized to provide that consultation.

Statutory Authority: *MS s 176.102 subd 12*

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5220.0400 REHABILITATION PLAN.

Subpart 1. **Submission of plan.** If the qualified rehabilitation consultant determines that rehabilitation would significantly reduce or eliminate the decrease in employability, the rehabilitation consultant shall develop and the employer shall submit a specific rehabilitation plan together with all related medical and vocational reports to the commissioner on forms prescribed for that purpose. The plan shall be signed by all interested parties. A labor market analysis is required in all plans which propose a change in the employee's occupation unless the requirement for such a plan is waived by the commissioner.

Subp. 2. **Approval or rejection of plan.** Within 30 days of submission of a properly documented plan, the commissioner shall approve or reject the plan. The commissioner may request additional information, confer with the parties, recommend modifications, and otherwise seek agreement concerning terms and conditions of the plan. If the vocational objective has not been determined, approval or rejection of the vocational objective may be deferred until 30 days following receipt by the commissioner of a plan progress report containing that objective and supporting rationale. Such a progress report shall be served on all interested parties and if no formal objection is received within ten days from the date of service, it shall be assumed that all parties are in agreement with the vocational objective and rationale.

If the commissioner does not approve or reject the plan within 30 days following its submission, a properly documented plan shall be deemed approved; provided, however, that the commissioner may extend the review period for an additional 30 days for good cause.

Implementation of the plan shall begin as soon as the qualified employee is capable of participating. Implementation may begin upon approval by the commissioner or on the date specified in the plan, whichever date is earlier. A plan shall be submitted to the commissioner before the implementation date. Commencement of a plan without objection from the commissioner shall not be deemed approval of the plan, nor shall it operate as a waiver or an estoppel of the commissioner's power over the plan.

Statutory Authority: *MS s 176.102 subd 12*

5220.0500 PLAN MODIFICATION.

Upon request of the employer or employee, the commissioner may suspend, terminate, or alter a rehabilitation plan for good cause, including, but not limited to:

- A. a new or continuing physical limitation that significantly interferes with the implementation of the plan;
- B. the employee's performance indicates that he is unlikely to complete the plan successfully; or
- C. the employee is not cooperating with the plan.

The commissioner may alter a plan on the request of an employee if the employee believes that the occupation for which he is being trained is not suited to him, provided that the employee's request shall be made within 90 days from the plan's implementation date and that no more than one change shall be permitted for this reason. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

Statutory Authority: *MS s 176.102 subd 12*

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5220.0600 COMPLETION OF PLAN.

The employer and qualified rehabilitation consultant shall report to the commissioner immediately upon the employee's completion of the rehabilitation plan, indicating the results and other pertinent information which the commissioner may require.

Statutory Authority: *MS s 176.102 subd 12*

5220.0700 CHANGE OF CONSULTANT OR VENDOR.

Any requests for change of a consultant or vendor shall be directed to the commissioner. The commissioner may schedule an administrative conference and may order a change of consultation or service if such is in the best interests of the parties. If the commissioner determines the consultant's work to be unsatisfactory or the consultant withdraws from the case, the commissioner shall make a referral to another consultant.

Statutory Authority: *MS s 176.102 subd 12*

5220.0800 DISPUTES.

Where questions exist concerning an employee's entitlement to rehabilitation services, or where a rehabilitation plan is not acceptable to the employee or to the employer, or in case of any other dispute involving rehabilitation, the commissioner, either on his own motion or upon request of the employer or employee, may schedule a conference to resolve the issues in dispute. The commissioner may require the parties to meet and confer informally prior to such a conference. The commissioner may order necessary and reasonable medical examinations and rehabilitation evaluations at the expense of the employer in preparation for such a conference. After allowing the parties an opportunity to be heard, the commissioner shall make a determination on the issues and serve copies on the parties. No determinations will be made with respect to rehabilitation entitlement until primary liability for the claim has been admitted or established.

Statutory Authority: *MS s 176.102 subd 12*

5220.0900 APPEAL TO REHABILITATION REVIEW PANEL.

Any person aggrieved by a decision of the commissioner may appeal the decision to the review panel within 30 days of the filing of and service of the decision on the interested parties. The appeal shall specify the grounds upon which the appeal is taken. The panel may approve or reject the commissioner's decision and may formulate its own rehabilitation plan.

Statutory Authority: *MS s 176.102 subd 12*

5220.1000 COMPENSATION DURING REHABILITATION.

Payment of rehabilitation compensation pursuant to Minnesota Statutes, section 176.102, subdivision 11, or, if the rehabilitation involves on-the-job training, pursuant to Minnesota Statutes, section 176.102, subdivision 5, shall commence on the day the employee begins the vocational rehabilitation phase of the rehabilitation plan designed to prepare the employee for suitable, gainful employment.

Statutory Authority: *MS s 176.102 subd 12*

5220.1100 LEGAL REPRESENTATION.

When an employee or employer is represented by an attorney in rehabilitation matters before the commissioner, the commissioner shall, at the earliest possible date, be notified in writing of the name, address, and telephone number of said representative. Any representative who has so advised the commissioner will be notified of any meetings, and will receive any reports.

Statutory Authority: *MS s 176.102 subd 12*

5220.1200 MANDATORY REHABILITATION SERVICES; SETTLEMENT AGREEMENTS.

Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees. A qualified employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. When a good faith dispute exists as to qualified employee status, however, the possible right to rehabilitation services may be converted into cash by settlement agreement. Any settlement agreement purporting to limit or compromise access to rehabilitation services must be approved by the commissioner. The value of rehabilitation services shall not be used in calculation of attorneys' fees. The legal fees shall be calculated in the same manner as in other types of cases.

Statutory Authority: *MS s 176.102 subd 12*

5220.1300 QUALIFIED REHABILITATION CONSULTANT AND REGISTERED REHABILITATION VENDOR.

Subpart 1. Provision of services. Rehabilitation services shall be provided each injured employee to the extent appropriate and which in the judgment of the commissioner will return the employee to suitable, gainful employment.

Subp. 2. Delivery of services. Policies and procedures as developed by the commissioner are the basic references for the delivery of rehabilitation services under the law. Adherence thereto shall be a criterion for continued registration as a qualified rehabilitation consultant or rehabilitation vendor.

Subp. 3. Approval as a vendor or consultant. An entity may be approved either to provide rehabilitation services as a vendor or to develop and monitor rehabilitation plans as a qualified rehabilitation consultant. These roles are distinct therefore a single entity shall not qualify for both functions. There shall be no ownership or financial relationships of any kind whatsoever between any vendor and consultant or organization approved for the employment of consultants. The rehabilitation vendor shall provide all physical rehabilitation and work evaluation and work adjustment services if they are included in a rehabilitation plan. Any number of vendors may provide services for a single rehabilitation plan.

With the written approval of the commissioner, an employer who would qualify as a vendor may hire a qualified rehabilitation consultant/affiliated to develop and monitor rehabilitation plans for their own employees. In such cases, the consultant shall certify that the employee has been advised of his right to object to the affiliated rehabilitation consultant. It is expected that the rehabilitation consultant/affiliated shall use outside vendor services if the employer cannot provide them.

Subp. 4. Dispute over charges. If a dispute arises with respect to charges for services performed by rehabilitation consultants or vendors, the commissioner shall make determinations as to the reasonable value of charges and the necessity for the services. All qualified rehabilitation consultants and registered rehabilitation vendors shall be bound by any such determination or shall seek recourse through the appellate procedure provided by Minnesota Statutes, chapter 176.

Subp. 5. Reports. The qualified rehabilitation consultant shall file all required reports with the commissioner and employer as they are received or created by the consultant. Reports shall also be furnished to the employee's attorney, if any, if he so requests.

The vendor shall make the required reports on a regular basis to the qualified rehabilitation consultant.

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Subp. 6. **Following the plan.** The services provided by the registered rehabilitation vendor shall be in accordance with the rehabilitation plan developed for the qualified employee by the qualified rehabilitation consultant. All services provided shall be in accord with the approved plan and no deviation shall be made from the plan without approval by the commissioner of an amendment to the plan. Time and cost estimates shall be adhered to.

Subp. 7. **Monitoring vendor performance.** Vendor performance shall be monitored by the qualified rehabilitation consultant.

Subp. 8. **Employee moves to other state.** Minnesota qualified employees who move to another state shall be serviced by that state's workers' compensation rehabilitation mechanism in coordination with a Minnesota qualified rehabilitation consultant.

Statutory Authority: *MS s 176.102 subd 12*

5220.1400 QUALIFYING ELIGIBILITY CRITERIA FOR REGISTRATION AS REHABILITATION CONSULTANT.

Subpart 1. **Requirement.** The following eligibility criteria and procedures shall be used by the commissioner in determining who is qualified for registration as a qualified rehabilitation consultant.

Subp. 2. **Criteria.** Qualified rehabilitation consultant/affiliated/independent:

A. Holder of a masters or doctorate degree in vocational rehabilitation or physical rehabilitation (occupational therapy, physical therapy, nursing) from an accredited institution, plus a current license as appropriate, plus one year of experience in vocational rehabilitation or physical rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases;

B. Holder of a baccalaureate degree in vocational rehabilitation or physical rehabilitation (occupational therapy, physical therapy, nursing) from an accredited institution, plus a current license as appropriate, plus two years of experience in vocational rehabilitation or physical rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases;

C. Diploma in nursing from an accredited institution, plus a current Minnesota R.N. license, plus three years of experience in physical rehabilitation or vocational rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases;

D. Holder of any baccalaureate degree other than listed in item B from an accredited institution, plus three years of experience in vocational rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases; or

E. High school diploma, plus continuing education in and five years experience in vocational rehabilitation, including counseling, evaluation, and direct case services. Two of the five years shall have been spent in rehabilitation of work related injuries and diseases.

Subp. 3. **Rehabilitation consultant intern.** An individual who meets the minimum educational requirements but does not meet the minimum experience requirements may be registered as a consultant intern. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work. The supervisor shall be considered to be directly responsible for the rehabilitation work on any case. The supervisor shall cosign all work being done by the intern. So that all parties are aware of the intern's status, he shall be designated as an "intern." The intern may make application for "qualified" status when the minimum requirements have been met.

In cases where an intern has been supervised by a qualified rehabilitation consultant/affiliated who leaves the organization with which he has been affiliated and no other qualified rehabilitation consultant is available to supervise

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the intern, the intern may, with the approval of the commissioner, temporarily sign all required documents in the capacity of a qualified rehabilitation consultant. Past performance and overall experience will be taken into consideration for this approval.

Subp. 4. Experience criteria. The burden of proof of experience shall be on the applicant. This shall include documentation of a history of employment in a position of physical rehabilitation or vocational rehabilitation of work related injuries and diseases. One year of experience in rehabilitation of work related injuries and diseases means one year of full time experience, two years of 50 percent of time experience, three years of 33-1/3 percent of time experience, or four years of 25 percent of time experience or any combination equal to 100 percent of one year's experience. The experience shall have been attained in not more than four consecutive years.

Supporting documents shall consist of signed statements by present and previous employers and insurers specifying the services, caseload, and amount of time spent in rehabilitation of work related injuries and diseases.

Subp. 5. General criteria. All persons who are qualified rehabilitation consultants shall be exclusively self-employed or exclusively employed by a single organization that is approved for the employment of qualified rehabilitation consultants or an employer/insurer.

All persons who are qualified rehabilitation consultants shall be residents of the state of Minnesota. An organization authorized for the employment of qualified rehabilitation consultants may request an exception for a consultant who lives contiguous to a Minnesota catchment area if the organization and any such consultant agrees, as a condition to approval, to appear at any hearing when requested, in the same manner as if they had been subpoenaed. Failure to do so shall result in automatic revocation of the individual consultant's approval.

Statutory Authority: *MS s 176.102 subd 12*

5220.1500 PROCEDURES FOR QUALIFYING AS REHABILITATION CONSULTANT.

Subpart 1. Application. An individual desiring to receive approval and registration as a qualified rehabilitation consultant shall submit to the commissioner a complete application consisting of the following:

- A. completed and signed application form (notarized); and
- B. copy of current license or certification; and
- C. supporting experience documentation; and
- D. transcripts of all schools attended beyond high school; and
- E. list of pertinent continuing education by title, location, and date;

and

F. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

The commissioner shall issue a notice of acceptance or rejection to the applicant within 45 days of receipt of the completed application.

Subp. 2. Appeal process. The appeal process provides a mechanism for applicants to request reconsideration of a rejected application for registration, renewal, and reinstatement. A written notice of appeal shall be filed with the commissioner within 15 days of mailing of notice of disapproval. The decision shall be reviewed by the review panel. The applicant shall be advised of the date, time, and place of the review at least ten days prior to the hearing date, and is encouraged to be present.

Subp. 3. Registration. The commissioner shall assign a registration number to each qualified rehabilitation consultant. The registration number shall be on all reports submitted by the consultant.

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To retain registration, the consultant must submit satisfactory evidence of approved continuing education pertinent to the workers' compensation rehabilitation field equivalent to 15 contact hours each year at the time registration is renewed.

Subp. 4. Renewal. Registration shall be renewed every two years.

Services and fee schedules shall be submitted to the commissioner whenever there is a change or no less than once each calendar year. This filing shall not constitute an approval or disapproval of the services or fees.

No later than 60 days prior to expiration of registration, the consultant shall request registration renewal on a form prescribed by the commissioner.

Subp. 5. Revocation. Qualified rehabilitation consultant approval and registration may be revoked by the commissioner for failure to comply with the rules or policies or for good cause. Notice of and reason for revocation shall be mailed to the consultant by the commissioner.

The consultant may appeal the revocation as provided in subpart 2.

A consultant whose registration has been revoked shall wait at least 180 days from the date of mailing of revocation to reapply for approval.

Statutory Authority: *MS s 176.102 subd 12*

5220.1600 PROCEDURE FOR APPROVAL AS ORGANIZATION REGISTERED FOR EMPLOYMENT OF QUALIFIED REHABILITATION CONSULTANTS/INDEPENDENT.

Subpart 1. Criteria. The organization shall be licensed to do business in the state of Minnesota and shall maintain an administrative office within the state. The management staff shall consist of at least one member who meets the qualifications of a rehabilitation consultant. Eighty percent of the nonclerical staff shall be eligible, qualified rehabilitation consultants or consultant interns. Management shall provide ongoing continuing education opportunities in workers' compensation rehabilitation for approval by the commissioner and to meet the criteria for registration renewal of rehabilitation consultants. The organization shall not provide the services designated only as rehabilitation vendor services.

Subp. 2. Application. A private or public entity desiring to be approved as an organization registered for the employment of qualified rehabilitation consultants shall submit to the commissioner a complete application consisting of the following:

- A. a completed and signed application (notarized); and
- B. any data or information attached to support application; and
- C. documentation of intent to provide opportunities for continuing education to meet requirements for registration renewal of rehabilitation consultants; and
- D. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

Subp. 3. Appeal process. The appeal process herein shall be conducted the same as that provided in part 5220.1500, subpart 2.

Subp. 4. Renewal. The renewal process herein shall be conducted the same as that provided in part 5220.1500, subpart 4.

Subp. 5. Revocation. The revocation process herein shall be conducted the same as that provided in part 5220.1500, subpart 5.

Statutory Authority: *MS s 176.102 subd 12*

5220.1700 PROCEDURE FOR APPROVAL AS A REGISTERED REHABILITATION VENDOR.

Subpart 1. **Application.** A private or public entity desiring to be approved as a registered rehabilitation vendor shall submit to the commissioner a complete application consisting of the following:

- A. a completed and signed application; and
- B. any data or information attached to support application; and
- C. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

Subp. 2. **Appeal process.** The appeal process herein shall be conducted the same as that provided in part 5220.1500, subpart 2.

Subp. 3. **Renewal.** The renewal process herein shall be conducted the same as that provided in part 5220.1500, subpart 4.

Subp. 4. **Revocation.** The revocation process herein shall be conducted the same as that provided in part 5220.1500, subpart 5.

Statutory Authority: *MS s 176.102 subd 12*

WORKERS' COMPENSATION RULES**5220.2500 PAYMENT OF COMPENSATION.**

Payment of compensation and reimbursement of reasonable medical or treatment expenses shall be made directly to the employee or dependent at his home address unless the employee or dependent, in writing, authorizes payment to be sent elsewhere. If the employee or dependent desires payments to be sent to a bank, savings and loan association, or other financial institution, the employee shall provide the employer or insurer with the name and address of such institution and any pertinent account number. The employer and insurer shall comply with such request upon receipt, without any necessity of a specific order from the Workers' Compensation Division; however, the employer and insurer shall file a copy of such request with the division. Upon request, the employer and insurer shall furnish proof of payment of past-due benefits and treatment expenses awarded pursuant to any determination or decision of the Workers' Compensation Division or Court of Appeals to the attorney representing the employee or dependent therein.

Statutory Authority: *MS s 175.17*

5220.2600 DISCONTINUANCE OF COMPENSATION PAYMENTS.

Subpart 1. **Notice.** In any case arising under Minnesota Statutes, section 176.241, notice of proposed discontinuance of compensation shall be given to the division on a form prescribed by the division. Such notice shall specifically set forth the periods and amounts of payments of temporary total, temporary partial, retraining, rehabilitation, permanent partial, permanent total, supplementary, or dependency benefits, and attorney fees paid or withheld, together with the applicable compensation rate or rates. The notice shall be accompanied by a statement of facts and medical reports in support of the discontinuance of compensation payments. If the basis for the discontinuance of compensation is not medical, the specific basis shall be stated. If the notice of discontinuance is filed without the appropriate and necessary information the division shall request the employer or insurer to file such required information within ten days of notice of the defect. Sufficient copies of the notice of discontinuance; the statement of facts; and the medical report, if applicable; shall be filed with the division so that service can be made upon the employee or dependent and his attorney, if any.

Subp. 2. **Burden of proof.** Whenever an employee or dependent files an objection to discontinuance of compensation, or a claim petition designated as an objection to discontinuance, because the employer or insurer has discontinued compensation payments without complying with the division's requirements, and

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a hearing is held thereon, the burden of establishing the right to discontinue payments on the date of last payment shall be on the party discontinuing, and proof shall be offered in the usual order by the one charged with sustaining the burden of proof.

Statutory Authority: *MS s 175.17*

5220.2700 NOTICE OF PAYMENTS TO DIVISION.

Subpart 1. **Times when notice is required.** The employer and insurer shall keep the division advised of all payments of compensation by the filing of interim status reports or the annual claim for reimbursement for supplementary benefits as required by the division. Where payments have been discontinued pursuant to the filing of a final receipt or notice of discontinuance of compensation, the employer or insurer shall immediately notify the division of any reinstatement of payments, and the date upon which additional payments commenced.

In all cases of payment of permanent partial disability, the employer and insurer shall immediately notify the Workers' Compensation Division and the employee of the amount of money being paid, the date of payment, and the rating of disability upon which such payment is based, and shall furnish the division with a copy of the medical report or reports upon which such payment is based.

Subp. 2. **Forms.** Employers and insurers shall use forms which conform in wording, size, design, and color to those prescribed by the Workers' Compensation Division for all purposes for which the division has prescribed forms. Such forms must be fully filled out, and the details required thereon must be furnished.

Statutory Authority: *MS s 175.17*

5220.2800 DENIAL OF LIABILITY.

A denial of liability shall be set forth on a form prescribed by the division, and shall specifically state the factual basis upon which the denial is made.

Statutory Authority: *MS s 175.17*

5220.2900 CLAIM FOR REFUNDS FROM EMPLOYEES OR DEPENDENTS.

All requests for refunds or reimbursements by an employer or insurer for payments made under a mistake of fact, which were allegedly not received by an employee or dependent in good faith, shall be made in writing to the employee with a copy immediately mailed to the attorney representing the employee or dependent, if any, and to the Workers' Compensation Division. All such requests shall clearly indicate the basis for believing said payments were not received in good faith, and shall set forth the following information:

- A. amount of alleged overpayment;
- B. what the original payment was made for;
- C. the date on which the payment was made;
- D. the mistake of fact or law which forms the basis for the claimed overpayment; and
- E. a statement informing the employee that, if he has any questions regarding his legal obligations to repay any such claims for overpayment, he should contact either his private attorney or an attorney at the Workers' Compensation Division.

Statutory Authority: *MS s 175.17*

5220.3000 MEDICAL REPORTS TO BE FILED WITH DIVISION.

Employees, employers, or their insurers shall promptly file or cause to be filed in the Saint Paul office of the Workers' Compensation Division all reports of doctors attending or examining injured employees that facilitate the statutory obligation of the division to keep itself fully informed as to the nature and extent of any injury to any employee arising under the Workers' Compensation Act.

Statutory Authority: *MS s 175.17*

5220.3100 MEDICAL AUTHORIZATIONS.

The employee shall provide the employer and insurer with appropriate signed medical authorizations within 15 days from receipt of written request for such authorizations. Failure to comply with a request for appropriate medical authorizations may result in the case being stricken from the active trial calendar until the authorizations are furnished.

Statutory Authority: *MS s 175.17*

5220.3200 CHANGE OF DOCTORS.

When an injured employee or his employer or insurer desires a change of doctors for the treatment of employee's injuries, the proponent may make application to the division for an order for a change of doctors. Such application shall be made on forms prescribed by the division, and shall state the reasons for the change, and shall name a doctor by whom the treatment is desired. Sufficient copies of the application shall be filed with the division at the Saint Paul office so that service can be made by the division upon the other parties. The division may grant such request ex parte, or may set the matter for hearing.

Statutory Authority: *MS s 175.17*

5220.3300 NOTICE OF REPRESENTATION BY AN ATTORNEY.

Written notice of representation by an attorney shall be filed with the Workers' Compensation Division and the employer or insurer. Such notice shall be signed by the client, and shall include the address and phone number of the attorney. Failure to file such notice may affect the determination of attorney fees. Thereafter all notices shall be served on the attorney.

Statutory Authority: *MS s 175.17*

5220.3400 APPEARANCE WITHOUT ATTORNEY.

When a party appears without attorney at a legal proceeding, the records shall show, before proceeding with the hearing, by interrogations by the presiding official, that the party has knowledge of his right to representation by an attorney and his wish to present his case without an attorney. In such case, the presiding official shall assist in the interrogation of witnesses in an endeavor to bring out all the material facts.

Statutory Authority: *MS s 175.17*

5220.3500 EXAMINATIONS OF FILES BY ATTORNEYS.

Attorneys desiring to examine a file in a compensation case shall present to designated personnel of the division a written authorization to inspect such file, signed by the employer, insurer, employee, or dependent. Such authorization shall be placed in and become part of the division's file.

Statutory Authority: *MS s 175.17*

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5220.3600 THIRD-PARTY RECOVERY.

Any employer or insurer, learning of a third-party recovery or settlement arising out of a personal injury for which such employer or insurer is or may be liable, shall inform the division of such possible, pending, or completed third-party action, indicating:

- A. name of the employee;
- B. employee's social security number, or division file number if known;
- C. name of employer;
- D. date of injury;
- E. name and address of the attorney, if any, representing the employee in the third-party action; and
- F. if the employee is not represented by an attorney in the third-party action, or if the name of the attorney is not known, the name and address of the insurer for the third party, together with the name of their insured, and any identifying file or claim numbers.

The parties shall furnish the division with the information necessary to issue its order determining the subrogation rights of the employer and insurer, and any credit to which the employer and insurer may be entitled against compensation liability.

Statutory Authority: *MS s 175.17*

5220.3700 LEGAL DOCUMENTS.

Pleadings, briefs, and other legal documents shall be printed or typewritten. Where a printed form prescribed by the division is used, it may be completed either in typewriting or with pen and ink. Typewritten documents shall use only one side of the paper.

Statutory Authority: *MS s 175.17*

5220.3800 DOCKET PROCEDURE.

All petitions in compensation matters and every instrument which is required to be served therein shall be promptly stamped to show the date of receipt, and shall be filed and docketed, together with any notice or order and proof of service thereof with record or docket number thereon in addition to the regular file number. All papers relating to the case shall be kept in the file jacket with the docketed papers, and all docketed papers shall be securely bound together with the report of injury, consecutively arranged according to the subject matter and the date of docketing.

Statutory Authority: *MS s 175.17*

5220.3900 SERVICE OF DOCUMENTS.

Notices of hearings, postponements, continuances, and other proceedings before the division or Court of Appeals, as well as orders or awards by the division, shall be served as directed by the division or the Court of Appeals on matters before it.

Statutory Authority: *MS s 175.17*

5220.4000 PETITION TO COMMENCE PROCEEDINGS.

All proceedings before the Workers' Compensation Division on claims for personal injuries or occupational diseases shall be instituted by petition addressed to the Workers' Compensation Division, and shall be on forms prescribed by the division. The petition shall certify that prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minnesota Statutes, section 176.271, subdivision 2, and the date of such notice. Supporting medical reports shall be attached to the petition. Sufficient copies of forms for filing a claim for compensation will be furnished by the division, upon request, and

without charge, to employees or their attorneys. If the action is brought against one employer and insurer, the original and two copies shall be filed with the division at its St. Paul office. If more than one employer and insurer, or the state treasurer, as custodian of the special compensation fund, are named as parties, the original petition and enough copies to serve all parties named must be filed.

Statutory Authority: *MS s 175.17*

5220.4100 ANSWER.

Subpart 1. **Contents.** The answer shall be set forth on a form prescribed by the division, and contain the following:

A. specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses, and any other necessary information;

B. any medical report upon which the answer is based, if available;
and

C. the date, time, and place for a medical examination by the employer or insurer's doctor. Any such medical examination shall be scheduled to take place within 75 days from the date of service of the claim petition. Any request for an extension in time for scheduling such an examination shall be subject to the approval of the assignment judge upon a showing of good cause.

Subp. 2. **Verification and filing.** The answer shall be verified and filed with the division within ten days after service of the petition. The party filing the answer shall serve a copy of the answer on the petitioner and his attorney.

Subp. 3. **Extensions.** Requests for an extension of time within which to answer shall be made to the assignment judge or, in his absence, the chief attorney within the ten-day period provided by law for answering.

Statutory Authority: *MS s 175.17*

5220.4200 JOINDER OF PARTIES.

Subpart 1. **Petition.** Any party requesting joinder of additional parties must petition for such joinder, serve a copy of the petition on all interested parties, and file the original with proof of service with the division no later than 30 days prior to the pretrial conference, unless the division, for cause, extends such time by order. When this petition is served on the parties to be joined, it shall be accompanied by copies of all pleadings including any notice of pretrial conference.

Subp. 2. **Extension.** Any request for extension of time in which to petition for joinder of additional parties must be in writing, filed with the division at least 30 days prior to the pretrial conference, and supported by an affidavit setting forth the reason for such request. Copies of this request shall be served upon the other parties by the party making the request.

Subp. 3. **Consent or order for extension.** In cases where no extension of time to petition for joinder has been granted by the division, no case set for pretrial or hearing shall be stricken, continued, or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents thereto, or unless the assignment judge orders otherwise.

Subp. 4. **Content of petitions.** All petitions for joinder shall contain, but not be limited to the following:

A. the party to be joined and its insurer, if any;

B. the date and nature of claimed personal injury or impairment;

C. the detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

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D. the supporting medical opinions relied upon; and

E. if the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment where applicable.

Subp. 5. **Contest of joinder.** A party contesting joinder under these rules may do so by objection filed with the division within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

Statutory Authority: *MS s 175.17*

TEMPORARY ORDERS

5220.4300 VOLUNTARY AGREEMENT TO PAY BENEFITS.

Subpart 1. **Procedural compliance.** Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minnesota Statutes, section 176.191, subdivision 1, shall comply with the following procedure.

Subp. 2. **Petition for temporary order.** File a formal petition for temporary order containing the following:

A. name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;

B. the dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for such employer; and

C. the beginning date of the employee's present disability, and the compensation rate that said insurer, self-insurer will voluntarily pay.

Subp. 3. **Filing and proof of service.** The original petition for temporary order, with proof of service on all necessary parties, shall be filed with the division.

Subp. 4. **Prepared formal order.** The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

"The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota Statutes, section 176.191, subdivision 1; NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minnesota Statutes, section 176.191 shall pay to (name), employee, compensation at the weekly rate of \$(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability. IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer(s) and/or insurer(s) are liable for all or part of the compensation paid pursuant to this temporary order, then the Division or Court of Appeals shall order the party(ies) held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which such other party(ies) is (are) held liable, including interest at the rate of five percent per annum. of compensation benefits pursuant to Minnesota Statutes, section 176.191 shall pay to (name), employee, compensation at the weekly rate of \$(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability. IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer(s) and/or insurer(s) are liable for all or part of the compensation paid pursuant to this temporary order, then the Division or Court of Appeals shall order the party(ies) held liable to reimburse (name of paying party) for all or part of the

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compensation paid pursuant to this temporary order, for which such other party(ies) is (are) held liable, including interest at the rate of five percent per annum.

Dated at St. Paul, Minnesota
this ____ day of _____

WORKERS' COMPENSATION DIVISION
or COURT OF APPEALS

By _____"

Subp. 5. **Filing the order.** The original and sufficient copies of said order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

Statutory Authority: *MS s 175.17*

5220.4301 BENEFITS FROM SPECIAL COMPENSATION FUND.

Subpart 1. **Procedural compliance.** An employee seeking payment of benefits by the special compensation fund pursuant to Minnesota Statutes, section 176.191, subdivision 2, shall comply with the following procedures.

Subp. 2. **Petition for temporary order.** File a formal petition for temporary order containing the following:

A. a statement that written demand for payment pursuant to Minnesota Statutes, section 176.191, subdivision 1 has been made against all employers and insurer party to the claim and that payments demanded have been refused;

B. the names and addresses of all employers and insurers (or self-insurers) who are parties to the claim;

C. a statement as to the dispute involved and the dates of all alleged injuries while working for each employer; and

D. the beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order.

Subp. 3. **Filing and proof of service.** The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the division.

Subp. 4. **Prepared formal order.** The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

"The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota Statutes, section 176.191, subdivision 2; NOW, THEREFORE, IT IS HEREBY ORDERED that the state treasurer, as custodian of the special compensation fund, shall, pursuant to Minnesota Statutes, section 176.191, subdivision 2 pay to (name), employee, compensation at the weekly rate of \$(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability. IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employer(s) and/or insurer(s) are liable for all or part of the compensation paid pursuant to this temporary order, then the division or Court of Appeals shall order the party(ies) held liable to reimburse the state treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which such other party(ies) is (are) held liable, including interest at the rate of 12 percent per

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annum.

Dated at St. Paul, Minnesota
this ____ day of _____.

WORKERS' COMPENSATION DIVISION
or COURT OF APPEALS

By _____"

Subp. 5. **Filing the order.** The original and sufficient copies of said order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

Statutory Authority: *MS s 175.17*

5220.4302 NECESSARY PARTIES.

For the purpose of this rule, the following shall be deemed necessary parties:

- A. the employee or dependents;
- B. all insurers or self-insured named in the petition for temporary order;
- C. any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown; and
- D. state treasurer, as custodian of the special compensation fund, if petition is made pursuant to Minnesota Statutes, section 176.191, subdivision 2.

Statutory Authority: *MS s 175.17*

5220.4303 VERIFIED ANSWER TO PETITION FOR TEMPORARY ORDER AND ORDER.

Within ten days after being served with a copy of the petition for temporary order and order, employers or their insurers (other than paying party) or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minnesota Statutes, section 176.321.

Statutory Authority: *MS s 175.17*

5220.4304 DISAPPROVAL OF TEMPORARY ORDERS.

Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minnesota Statutes, section 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minnesota Statutes, section 176.191 or 176.081, subdivision 8.

Statutory Authority: *MS s 175.17*

5220.4305 PLACEMENT OF MATTER ON CALENDAR.

The filing of a petition for temporary order shall not cause the matter to be placed on the calendar, unless accompanied by a petition for contribution or reimbursement.

Statutory Authority: *MS s 175.17*

5220.4800 PETITION FOR CONTRIBUTION OR REIMBURSEMENT.

Subpart 1. **Requirement for placement on calendar.** The filing of a petition for temporary order shall not cause the matter to be placed on the calendar, unless accompanied by a petition for contribution or reimbursement.

Subp. 2. **Contents.** Petitions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named therein, shall be supported by medical evidence, and shall be signed and verified.

Subp. 3. **Filing deadline and service.** The original petition shall be filed with the division together with proof of service upon the employee or his attorney and all additional employers or insurers named therein.

In all cases where a claim petition or other form of action is pending before the division, said petitions shall be filed no later than 30 days prior to the pretrial conference, and copies of all pleadings, including any notice of pretrial conference shall be served upon the additional employers or insurers by the party bringing said petition. In cases where no action is pending before the division, the filing of the petition for contribution or reimbursement shall initiate proceedings.

Subp. 4. **Verified answer to petition.** Within ten days after being served with a copy of the petition for reimbursement or contribution, employers or their insurers, other than the paying party, may file a verified answer to the petition in accordance with the provisions of Minnesota Statutes, section 176.321 and the matter shall be set for pretrial conference or hearing in accordance with the practice of the division.

Subp. 5. **Legal representation of necessary parties.** The employee shall be deemed a necessary party to all of the proceedings and should be represented by an attorney of his choice and a copy of all petitions or answers shall be duly served upon the employee and his attorney in accordance with Minnesota Statutes, section 176.321. Attorney fees for representation of the employee, and necessary costs and disbursements incurred by or on behalf of the employee may be awarded against the party held liable for payment of benefits pursuant to Minnesota Statutes, section 176.191 or Minnesota Statutes, section 176.081, subdivision 8.

Statutory Authority: *MS s 175.17*

5220.4900 INTERVENTION.

Subpart 1. **Application or petition.** Any application or petition to intervene shall be timely, verified, and specifically allege the grounds upon which the right of intervention is claimed. It shall be accompanied by the following information if applicable:

A. itemization of disability payments showing the period during which such payments were or are being made, the weekly or monthly rate of such payments, and the amount of reimbursement claimed;

B. a summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

C. copies of all medical or treatment bills on which some payment was made;

D. copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated; and

E. a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based.

Subp. 2. **Service.** Copies of the application or petition, plus accompanying information, must be served on all of the original parties to the proceedings and any other parties subsequently joined therein. The original with proof of service shall be filed with the Workers' Compensation Division.

Subp. 3. **Attorney for intervenor.** The attorney for the intervenor shall attend the pretrial, settlement conference, and the hearing unless a written stipulation, signed by all parties, is filed stating that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in this proceeding, and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that such sums shall be reimbursed to the intervenor.

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Subp. 4. **Hearing.** At the hearing on the claim petition, the intervenor shall present his evidence in support of his claim after the petitioner has rested, unless otherwise ordered by the division, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

Subp. 5. **Penalty for noncompliance.** Failure to comply with any provision of this part may result in a denial of the claim for reimbursement.

Statutory Authority: *MS s 175.17*

5220.5000 SECOND INJURY LAW.

Subpart 1. **Application form.** Application for registration of physically impaired employees shall be on forms prescribed by the Workers' Compensation Division and submitted in duplicate.

Subp. 2. **Impairments.** In addition to those impairments set forth in Minnesota Statutes, section 176.131, subdivision 8, the following additional impairments shall be registerable: brain tumors, Pott's disease, seizures, cancer of the bone, and leukemia.

Subp. 3. **Medical evidence.** Medical evidence of the physical impairment shall be contained on the application or attached to the application. Such evidence shall show the date of the last examination, the nature of the impairment, the doctor's signature, and the date of his signature. If not contained on the application, it shall be legible and suitable for microfilming.

Subp. 4. **Prima facie evidence and burden of proof.** The application for registration with satisfactory medical evidence when accepted by the division shall be prima facie evidence of the existence of the named physical impairment shown on the application, but shall not be determinative thereof, and the burden of proof upon this issue, if contested at any time prior to the subsequent injury, shall be upon the party asserting its existence.

Subp. 5. **Petition for hearing on rejected application.** Should the division deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following the receipt of notice of rejection, petition the division in writing for a hearing upon said application. A copy of said petition shall be served by the applicant upon the state treasurer, custodian of the special compensation fund, and upon the attorney general. Upon receipt of said petition, the division shall set the matter for hearing, which shall be conducted as provided by Minnesota Statutes, section 176.411, with right of appeal.

Subp. 6. **Notice of intention to claim reimbursement.** Notice of intention to claim reimbursement under Minnesota Statutes, section 176.131, subdivision 6, shall be on forms prescribed by the Workers' Compensation Division. In a claim under Minnesota Statutes, section 176.131, subdivision 1, such forms shall be filed within one year after the payment of sufficient weekly benefits and/or medical expenses to make claim against the special compensation fund. In a claim under Minnesota Statutes, section 176.131, subdivision 2, such forms shall be filed within one year from the first payment of weekly benefits or medical expense.

Subp. 7. **Application for reimbursement.** Reimbursement shall be made by an order of the division or Court of Appeals from the special compensation fund on a yearly basis upon application for reimbursement on forms prescribed by the division. The employer shall file the original and one copy with the division. Such application shall be verified, set out in detail expenditures made and expenditures for which reimbursement is claimed, and shall be supported by medical reports, showing the nature and extent of disability and relationship to the injury and physical impairment for which reimbursement is claimed. The employer shall file the original and one copy of notice of intention to claim

reimbursement and claim for reimbursement with the Workers' Compensation Division.

Statutory Authority: *MS s 175.17*

5220.5100 PRETRIALS.

Subpart 1. Requirements. All cases shall be pretried whenever possible, and all parties shall attend, unless the division orders otherwise. The attorneys who will actually appear at the hearing should attend the pretrial conference, and bring their appointment calendars with them.

Subp. 2. Settlement. Prior to pretrial, the parties shall discuss the possibility of settlement if they deem reasonable basis for settlement exists. The attorneys appearing at the pretrial shall be prepared to participate in a settlement conference at the time of the scheduled pretrial.

Subp. 3. Conference rules. At the pretrial conference:

- A. All parties shall be prepared to state the issues.
- B. All parties shall state the names, and addresses if known, of all witnesses they intend to call.
- C. All parties shall give notice of any amendments to pleadings that may still be necessary.
- D. All parties shall file copies of all medical reports not already on file. Up-to-date medical reports are most important when the employee's present medical status is in dispute; reports of medical examinations made after pretrial shall be filed as available prior to hearing.
- E. Each party shall state what exhibits, including but not limited to photographs, motion picture films, and documentary evidence intended to be used at the hearing, and copies of such exhibits shall be made available to opposing counsel no later than ten days prior to the date of the hearing; if any party requests showing of motion picture films before the hearing, they shall pay the expense for such showing and may tax this expense in the same manner as other costs and disbursements.
- F. If the employee plans to introduce into evidence his hospital records, the attorney for the employee shall bring to the pretrial conference written authorizations for opposing counsel to examine those records.
- G. If the employee is claiming medical or other treatment expenses, his attorney shall state those expenses at the time of pretrial, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the hearing.
- H. If the employee is claiming temporary total disability, his attorney shall state at pretrial the dates of time lost from work.
- I. If the employee is claiming temporary partial disability, his attorney shall state the dates of such claim, the approximate amount of such claim, and the names and addresses of the employers for whom the employee worked during the period of such claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall be furnished at pretrial; an itemized breakdown of the claim for temporary partial disability shall be submitted to the compensation judge and opposing counsel at the time of the hearing.
- J. The attorney for the petitioner shall state whether payment has been made by any party other than the workers' compensation carrier for disability benefits, on medical or treatment expenses, or on funeral expenses. If payment has been made, the name and address of the party making payment shall be furnished to the compensation judge at pretrial, together with any identifying policy or claim numbers.
- K. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at pretrial copies of the relevant wage records of the employee.

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L. Petitioner's attorney shall furnish to the compensation judge at pretrial a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney fees or costs, in accordance with Minnesota Statutes, section 176.081.

M. The assignment judge may refer appropriate cases to a compensation judge for a settlement conference.

The above rules shall control the subsequent course of action, unless modified in the interest of justice.

Statutory Authority: *MS s 175.17*

5220.5200 CALENDAR PROCEDURES.

Subpart 1. Setting the date and the notice of hearing. A date and time certain will be assigned to each case. A notice of hearing will be sent as soon as the calendar date is known, usually at least ten days in advance of the hearing. The notice will state the place of hearing and the amount of time allowed for the hearing. Usually cases will be set for one city only, the city most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting.

Subp. 2. Depositions. Parties will secure permission in advance from the division to take depositions. The testimony of witnesses that cannot be taken at the hearing shall be taken by deposition prior to the hearing unless, for good cause shown, the party taking such deposition has obtained the permission of the division to take such deposition subsequent to the hearing. Depositions shall be taken in accordance with the Rules of Civil Procedure for Minnesota District Courts. The original copy of any deposition taken in any case, including discovery depositions, shall be filed with the Workers' Compensation Division and shall be evidence in the case and a part of the record of the case.

Subp. 3. Medical witnesses. As soon as the attorney knows the date scheduled for hearing, he shall immediately notify his medical witnesses in writing and arrange for their presence. Submission of medical reports, by stipulation of the parties, in lieu of medical testimony is encouraged.

Subp. 4. Subpoenas. Subpoenas may be obtained without charge from the Workers' Compensation Division. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minnesota Statutes, section 357.22.

Subp. 5. Continuances. Where just cause for continuance exists, request for continuance must be made immediately. Any request for continuance prior to date of hearing shall be made directly to the assignment judge, chief attorney, or other designated person. Continuances shall be granted only for the most urgent cause. The following are not considered cause for continuance:

A. where an insurer retains counsel on its own payroll, unavailability of that counsel because of engagement in another court or otherwise;

B. where a law firm consists of more than one member, unavailability of the counsel assigned to the case because of engagement in another court or otherwise;

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

D. unavailability of a medical or other witness if his deposition could have been taken between the time the notice of hearing was sent and the time of the hearing; and

E. agreement of parties.

Subp. 6. **Failure to try a case.** Failure of a petitioner to try a case will be cause for dismissing or striking from the docket, at the discretion of the compensation judge. When a case is stricken from the calendar, it can be reinstated only by petition to the division showing just cause for reinstatement. Failure of the employer and insurer to appear at trial is cause for hearing the matter as a default, at the discretion of the compensation judge.

Subp. 7. **Notification of settlement.** When a case on the calendar is settled before trial, the attorneys shall immediately notify the assignment judge or, in his absence, the docket clerk.

Statutory Authority: *MS s 175.17*

5220.5300 FINDINGS OF COMPENSATION JUDGES.

In determining cases, compensation judges shall make findings of fact on all material issues, whether the compensation is allowed or disallowed, and obviate, as far as possible, the necessity of the Court of Appeals making original findings. In each case the compensation judge shall file a memorandum stating the rationale in support of the findings and determinations on each issue in dispute.

When a compensation judge has filed his findings and award or disallowance, his jurisdiction over the case shall end after the time in which to appeal to the Workers' Compensation Court of Appeals has expired, except for taxation of disbursements, unless the matter is re-referred to him by the Court of Appeals for supplemental findings, taking of additional testimony, rehearing, the correction of a clerical error, or other action.

Statutory Authority: *MS s 175.17*

5220.5400 STIPULATIONS FOR SETTLEMENT.

Subpart 1. **Approval or disapproval.** Compensation judges shall approve or disapprove stipulations for settlement of cases assigned to them except those involving death claims, the issue of permanent total disability, or full, final, and complete settlements, which settlements together with documents or exhibits shall be referred to the commissioner of the Department of Labor and Industry, or his designee, by the compensation judge, with a detailed memorandum of the facts and his recommendations.

Subp. 2. **Filing and contents.** Stipulations for settlement should be filed within 30 days of the date settlement was negotiated, and shall contain the following information:

- A. A brief statement of all the admitted material facts.
- B. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue.
- C. The weekly wage and compensation rate of the employee.
- D. An itemization of the sums, if any, previously paid by the employer and insurer.
- E. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of such expenses which have not been paid by the employer and insurer, indicating what payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any such expenses and, if such payments have been made, shall include the name and address of such third party together with any identifying claim or policy number.
- F. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based.
- G. Where applicable, the amount payable by the employer and insurer to the Workers' Compensation Division for the benefit of the special compensation fund.

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H. Where applicable, a statement that the employee has been fully advised of the provisions of Minnesota Statutes, sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

I. Where applicable, a statement that the employee is claiming or waiving his right to make application for an award of attorney fees against the employer or insurer pursuant to Minnesota Statutes, section 176.081, subdivision 7 or 8, or 176.191.

Subp. 3. Attorneys fees. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall contain a statement of the amount of attorney fees and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. It shall be accompanied by a written petition for attorney fees and costs providing sufficient information to show the reasonableness of the requested fees and costs in accordance with Minnesota Statutes, section 176.081. If no fees are requested, the stipulation shall so state.

Subp. 4. Medical reports. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed with the division.

Subp. 5. Drafting the order. The person or persons having jurisdiction over a case on which a settlement has been submitted may, at their discretion, require the parties involved in the settlement to draw the order approving stipulation and submit it to them in the number of copies they request.

Subp. 6. Copy for client. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his client at the time the client signs the stipulation.

Subp. 7. Signatures. Stipulations for settlement shall be signed by all parties as required by statute.

Subp. 8. Payments due. The employer and insurer shall make payments pursuant to an award on stipulation within 30 days from the date the award on stipulation is served.

Statutory Authority: *MS s 175.17*

5220.5500 ATTORNEY FEES.

Subpart 1. Withholding compensation. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minnesota Statutes, section 176.081. Written notice that such compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its St. Paul office.

Subp. 2. Application for award of attorney fees. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minnesota Statutes, section 176.081, subdivision 7.

Application for determination and approval of any claim for legal services or disbursements may be filed with the division by the employer or insurer, the employee or dependents, or the attorney. Application for attorney fees shall be by petition and when requested by the division, shall be on a form prescribed by the division. Any such application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney or the employee or dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minnesota Statutes, section 176.081, subdivision 5, clause (d) and shall be served by the attorney on all parties.

Subp. 3. **Request for review of order or award.** Any request for the review of the commissioner of the Department of Labor and Industry of an order or award pertaining to attorney fees shall be on forms prescribed by the division, and shall be filed with the division within 30 days of the date of service of the award or order upon which the appeal is taken.

Statutory Authority: *MS s 175.17*

5220.5600 TAXATION OF DISBURSEMENTS.

Service of the requests for taxation of disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

The opposing party has five days from the date of service upon him in which to serve and file a formal objection to said taxation or allowance, with admission or proof of service upon the other parties.

If requested, a time for hearing before the compensation judge or Court of Appeals may be fixed by the division or Court of Appeals and notice thereof shall be given to the parties by the division.

Statutory Authority: *MS s 175.17*

5220.5700 REMOVAL FROM FILES OF DOCUMENTS OR EXHIBITS.

All applications for permission to remove any exhibit or document from the compensation files must be made to authorized personnel.

Upon the expiration of the time in which to appeal, all exhibits or other documents may be returned to their source of origin without the consent of the parties or notice thereto. Said return shall be accompanied by a letter of transmittal, a copy of which shall remain in the file.

Statutory Authority: *MS s 175.17*

WORKERS' COMPENSATION COURT OF APPEALS

5220.6500 ADDITIONAL EVIDENCE FOR APPEALS.

Applications to take additional evidence made on appeal to the Workers' Compensation Court of Appeals shall be accompanied by a sworn statement giving the names of the witnesses and the matters to which they will testify or, if such evidence is of a documentary nature, the original document or a verified copy thereof shall be attached to such application. The applicant shall, at least ten days prior to the hearing, furnish to the Court of Appeals sufficient copies for service on the adverse parties. Hearings on such applications may be set simultaneously with the hearing on appeal and as a part thereof. If the application for additional evidence is granted, and consists of testimony of witnesses, such testimony shall be taken before a compensation judge, or as ordered by the Court of Appeals. The fee for such transcript shall be paid by the party making the application, unless otherwise ordered by the Court of Appeals.

Application to take additional evidence, made to compensation judges while the case is still within their jurisdiction, shall be made in the same manner as to the Court of Appeals on appeal. If the application is granted, the compensation judge shall designate the time and place for taking the evidence, and due notice thereof shall be given to the parties or their attorneys by the division.

Statutory Authority: *MS s 175.17*

5220.6600 APPEALS FROM ORDERS OR DECISIONS OF THE ASSISTANT COMMISSIONER OR CHIEF ATTORNEY.

With the exception of matters relating to attorney fees, where a matter has been acted upon by the assistant commissioner, the chief attorney, or any other person designated by the commissioner of the Department of Labor and Industry to act thereon, any party in interest may appeal such matters to the Workers' Compensation Court of Appeals within 30 days after he has been served with the

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written order or decision affecting his interest on the grounds set forth in Minnesota Statutes, section 176.421, and in accordance therewith.

Statutory Authority: *MS s 175.17*

5220.6700 QUORUM FOR ACTS OF THE COURT OF APPEALS.

A majority of the Court of Appeals shall constitute a quorum for the exercise of powers conferred and duties imposed on the Court of Appeals as provided by Minnesota Statutes, section 175.09.

Whenever any judge of the Court of Appeals is not present at the oral argument of the case, such case shall be deemed submitted to such judge of the Court of Appeals on the record and briefs therein, and when during the consideration of a case there is a change in the personnel of the Court of Appeals, the case shall be deemed submitted to the new judge or judges on the record and briefs.

Statutory Authority: *MS s 175.17*

5220.6800 HEARINGS ON APPEAL.

Subpart 1. Limitation to argument. Arguments before the Court of Appeals in hearings on appeal shall be limited to the transcript of testimony taken before the compensation judge or other presiding official, the exhibits introduced into evidence, and the law.

Partial transcripts of the testimony adduced at a hearing before such presiding officials may be used on appeal to the Court of Appeals only when the parties to the hearing stipulate in writing as to what portions are necessary for determining the rights of the parties. Such stipulation shall be made a part of the judgment roll in said case. In all such cases, the reporter shall note on the certification page that such transcript contains only a portion of the testimony adduced at the hearing before the compensation judge or other presiding official, and on the index page of said transcript he shall indicate the names of the witnesses whose testimony is transcribed and of those whose testimony has been omitted.

Subp. 2. Filing the brief. The appellant, within 30 days from the date of notice of filing of the transcript by the reporter with the docket clerk, shall file a written brief, in five copies, with the Court of Appeals, together with an affidavit stating that service has been made by the appellant of the copy of his brief upon each adverse party. If a brief has been submitted to the compensation judge or other presiding official, the party submitting said brief may request that it be used on appeal to the Court of Appeals. The appellant's brief shall contain an accurate, concise statement of the facts and the issues, the proposed findings, his argument, and a statement or reference to any applicable law.

Subp. 3. Answering brief. Any answering brief shall be filed with the Court of Appeals within 20 days of the date of service of the brief upon the adverse party or parties, together with affidavit of service showing service upon the opposing parties.

Subp. 4. Waiver of oral argument. If a party desires to waive oral argument before the Court of Appeals, said party shall notify the Court of Appeals of this fact. All arguments on appeal before the Workers' Compensation Court of Appeals shall be limited to 15 minutes by the appellant and 15 minutes by the respondent, unless otherwise authorized by the court.

Statutory Authority: *MS s 175.17*

5220.6900 REARGUMENT ON APPEAL.

Any petition for reargument on appeal before the Workers' Compensation Court of Appeals shall be filed with the Court of Appeals within 15 days from the date of service of the decision of the Court of Appeals on appeal, and shall be accompanied by a proof of service upon the adverse parties. Such petitions shall state the grounds for the requested reargument, and no oral argument on said petitions will be allowed. Any objection to said petition shall be filed with the Court of Appeals within ten days from date of service of the petition upon the adverse party or parties, together with affidavit of service showing service upon the opposing parties.

Statutory Authority: *MS s 175.17*

5220.7000 PETITIONS TO VACATE AWARDS OR ORDERS, AND FOR REHEARINGS.

Subpart 1. Discretion of court. Petitions to vacate awards or orders, and for rehearings, must be filed with the Court of Appeals within a reasonable time after the petitioner has obtained knowledge of the facts constituting the grounds upon which they are based.

Subp. 2. Requirements. Petitions to vacate awards or orders, and for rehearings, shall be verified and accompanied by supporting affidavits and/or medical reports. Sufficient copies shall be filed with the Court of Appeals for service upon the other parties. Such petitions shall set forth in detail the grounds upon which they are based, and shall show:

- A. that certain material evidence not available at the time of the hearing or settlement is now available; or
- B. proof of a change in condition material to the issue involved; or
- C. any other showing that a rehearing is in the best interest of justice.

A transcript of the testimony taken before the compensation judge or other presiding official, or so much thereof as may be necessary to present the question involved in such petition, shall accompany the petition.

Subp. 3. Counter-affidavits. Counter-affidavits to be presented shall be served upon opposing counsel and filed with the Court of Appeals at least two days before the date of hearing on the petition. Rebuttal affidavits may be served upon opposing counsel and filed at any time before the hearing.

The Court of Appeals may, in its discretion, deny such petitions without hearing thereon, or may require the petitioner to submit further proof before acting upon them.

Statutory Authority: *MS s 175.17*

5220.7100 DILATORY PROSECUTIONS OF APPEALS.

In cases where litigants fail to prosecute with reasonable diligence appeals from the decisions of the compensation judges or other presiding officials, or any other matter pending before it, the Court of Appeals may on its own motion, or on motion of either party, on proper showing, order the matter to be stricken from the calendar of cases pending before it. Said matter may thereafter be reinstated on the active calendar of the Court of Appeals for hearing upon proper showing that the matter is ready for hearing.

Statutory Authority: *MS s 175.17*

5220.7200 WRIT OF CERTIORARI.

The party filing a writ of certiorari pursuant to Minnesota Statutes, section 176.471 and rules 103.01 and 111.04 of Civil Appellate Procedure, shall immediately provide the division with an additional copy of any transcripts of hearing pertaining to the matter on appeal.

Statutory Authority: *MS s 175.17*