

452 CMR 1.00: ADJUDICATORY RULES OF THE INDUSTRIAL ACCIDENT BOARD

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1.01: SCOPE AND AUTHORITY

452 CMR 1.00 IS PROMULGATED PURSUANT TO M.G.L. C. 152, § 5, FOR THE PURPOSES OF CARRYING OUT THE PROVISIONS OF M.G.L. C. 152. EXCEPT WHERE IT WOULD VIOLATE JUSTICE OR EQUITY, 452 CMR 1.00 SHALL APPLY TO ALL CLAIMS AND COMPLAINTS BEFORE THE INDUSTRIAL ACCIDENT BOARD OF THE INDUSTRIAL ACCIDENT REVIEWING BOARD OF THE DEPARTMENT OF INDUSTRIAL ACCIDENTS FROM THE DATE OF INJURY, EXCEPT FOR THOSE CLAIMS AND COMPLAINTS CONCERNING ATTORNEY'S FEES AND EXPENSES SET FORTH IN 452 CMR 1.19(1) THROUGH (7), WHICH SHALL APPLY ONLY TO COMPLAINTS REGARDING INJURIES ARISING ON OR AFTER NOVEMBER 1, 1986.

1.02: DEFINITIONS

ACTUAL EMPLOYMENT AS USED IN M.G.L. C. 152 AND 452 CMR 1.00 SHALL INCLUDE ANY JOB PERFORMED BY THE EMPLOYEE RECEIVES EARNINGS.

ADDITIONAL COMPENSATION AS USED IN M.G.L. C. 152, § 8(5), SHALL MEAN COMPENSATION AWARDED PURSUANT TO AN ORDER OR DECISION FINDING THAT PRIOR COMPENSATION WAS ILLEGAL.

ALL PAYMENTS DUE AN EMPLOYEE AS USED IN M.G.L. C. 152, § 8(1), SHALL MEAN, IN REGARD TO PAYMENTS DUE OR RETROACTIVE BENEFITS ONLY, THE SUM CERTAIN PAYABLE TO THE EMPLOYEE AFTER THE DATE OF THE AMOUNT DUE A LIEN HOLDER IN SATISFACTION OF ANY LIEN FILED PURSUANT TO M.G.L. C. 152, § 46A UNLESS OTHERWISE AGREED, THE PARTIES SHALL MAKE REASONABLE EFFORTS TO EXPEDITIOUSLY PAY THE AMOUNT DUE THE M.G.L. C. 152, § 46A LIEN HOLDER, BUT IN NO EVENT SHALL PAYMENTS BE MADE BEYOND 60 DAYS OF THE INSURER'S RECEIPT OF THE ORDER, DECISION, ARBITRATOR'S DECISION, OR LUMP SUM OR OTHER AGREEMENT INDICATING THAT SUCH PAYMENTS ARE REQUIRED TO BE MADE. PAYMENTS DUE AN EMPLOYEE SHALL BE MADE BY THE INSURER WITHIN THE TIMEFRAME SPECIFIED IN M.G.L. C. 152, § 8(1).

AMOUNT PAYABLE TO THE EMPLOYEE WITHIN THE FIRST MONTH FROM THE DATE OF THE ORDER OR DECISION AS USED IN M.G.L. C. 152, § 13A(10), SHALL MEAN ANY FUTURE PAYMENTS OF BENEFITS PURSUANT TO M.G.L. C. 152 DUE THE EMPLOYEE FOR THE FIRST 30 DAYS SUBSEQUENT TO THE DATE OF EXECUTION OF A VOLUNTARY PAYMENT OR THE ISSUANCE OF AN ORDER OR DECISION.

1.02: CONTINUED

CASH AWARD AS USED IN M.G.L. C. 152, §13A(10), SHALL MEAN ANY WEEKLY BENEFITS PAYABLE UNDER M.G.L. C. 152, § 36 OR § 36A AND ANY WEEKLY BENEFITS PAYABLE UNDER M.G.L. C. 152 OF AN AMOUNT THAT EXCEEDS THE WEEKLY AMOUNT BEING PAID TO THE EMPLOYEE FOR THE WEEK IMMEDIATELY PRECEDING THE DATE OF THE VOLUNTARY PAYMENT, ORDER OR DECISION.

DISPUTES OVER MEDICAL ISSUES AS USED IN M.G.L. C. 152, § 11A(2), SHALL NOT INCLUDE ANY DISPUTE WHICH:

- (A) THE PARTIES DISAGREE SOLELY REGARDING THE ENTITLEMENT TO WEEKLY BENEFITS FOR A SPECIFIC PERIOD OR PERIODS OF DISABILITY, OR DEATH WHICH OCCURRED PRIOR TO THE DATE SCHEDULED PURSUANT TO M.G.L. C. 152, § 11;
- (B) THE PARTIES DISAGREE REGARDING THE LIABILITY OF THE NAMED INSURER FOR ANY BENEFIT PROVIDED, HOWEVER, THAT THE PARTIES AGREE THAT NO IMPARTIAL PHYSICIAN'S REPORT IS REQUIRED;
- (C) THE PARTIES AGREE UPON BOTH THE NATURE OF THE IMPAIRMENT AND THE CAUSE OF THE IMPAIRMENT BETWEEN THE IMPAIRMENT AND THE EMPLOYMENT; PROVIDED, HOWEVER, THAT THE PARTIES AGREE NO IMPARTIAL PHYSICIAN'S REPORT IS REQUIRED;
- (D) BASED UPON THE INFORMATION SUBMITTED AT A CONFERENCE PURSUANT TO M.G.L. C. 152, § 10, THE ADMINISTRATIVE JUDGE DETERMINES THAT THERE IS NO DISPUTE OVER MEDICAL ISSUES. HIS/HER DETERMINATION, AND REASONS THEREFOR, SHALL BE STATED IN THE M.G.L. C. 152, § 10, ORDER.

EXPERIENCE MODIFIED RATED AS USED IN M.G.L. C. 152, § 48(1), SHALL MEAN ANY NAMED INSURER IN A PROPOSED LUMP SUM SETTLEMENT WHICH HAS AN EXPERIENCE MODIFICATION IN EFFECT AT THE TIME OF THE LUMP SUM SETTLEMENT THAT, UNDER THE TERMS OF A RATING PLAN APPROVED BY THE DEPARTMENT OF INSURANCE, COULD BE AFFECTED BY THE PROPOSED LUMP SUM SETTLEMENT.

FACTUAL BASIS FOR AN INSURER'S REFUSAL TO PAY COMPENSATION AS USED IN M.G.L. C. 152, § 8, SHALL BE A SHORT AND PLAIN STATEMENT OF THE SPECIFIC FACTS SUPPORTING THE INSURER'S REFUSAL.

FILED AS USED ON M.G.L. C. 152, §§10A AND 11C AS USED IN 452 CMR 1.11(1) AND 1.15(1) SHALL MEAN PLACEMENT OF THE APPEAL IN THE MAIL TO THE DEPARTMENT POSTMARKED, OR SENT BY ELECTRONIC MAIL, NO LATER THAN MIDNIGHT ~~ON THE DAY~~ ^{THE DAY} WHEN APPEALING A CONFERENCE ORDER UNDER M.G.L. C. 152, § 10A, AND THE ~~3RD~~ ^{1ST} DAY WHEN APPEALING THE DECISION OF AN ADMINISTRATIVE JUDGE PURSUANT TO M.G.L. C. 152, § 11C. UNLESS OTHERWISE INDICATED, WHERE THE WORDS "FILE" OR "FILED" ARE USED, THEY SHALL MEAN THROUGH PLACEMENT IN THE EMAIL OR ELECTRONIC TRANSMITTAL TO THE DEPARTMENT.

INSURERS AS USED IN M.G.L. C. 152, § 45 SHALL INCLUDE THE WORKERS' COMPENSATION TRUSTS AND SELF-INSURERS.

INTEREST AS USED IN M.G.L. C. 152, § 50, SHALL BE CALCULATED USING THE DEPARTMENT'S PROVIDED FORMULA AVAILABLE ON ITS WEBSITE. THE PARTIES MAY UTILIZE OTHER FORMULAS IF A DISCREPANCY EXISTS THE AMOUNT OF INTEREST IN THE DEPARTMENT FORMULA WILL PREVAIL.

MID-TERM NOTICE OF CANCELLATION AS USED IN M.G.L. C. 152, § 55A, SHALL MEAN ANY NOTICE OF POLICY DISCONTINUANCE DURING THE TERM OF THE POLICY WHERE SUCH DISCONTINUANCE IS INITIATED BY THE INSURER, AND SHALL NOT INCLUDE DISCONTINUANCES INITIATED BY INSURED.

NECESSARY EXPENSES AS USED IN M.G.L. C. 152, § 13A, SHALL MEAN ALL REASONABLE OUT-OF-POCKET COSTS, AS THE DEPARTMENT MAY SET, TO A CLAIMANT'S ATTORNEY INCURRED BY SAID ATTORNEY IN CONNECTION WITH A CLAIM FOR BENEFITS OR CONTESTING A COMPLAINT FILED BY THE INSURER, INCLUDING TRAVEL, RELEVANT MEDICAL RECORDS, DOCTOR'S REPORTS, PRIVATE INVESTIGATOR FEES, CONSULTING FEES, WITNESS CHARGES, INTERPRETER FEES AND SCIENTIFIC TESTING COSTS, BUT SPECIFICALLY EXCLUDING COURT COSTS, EXPENSES, PARKING FEES, POSTAGE, STATIONERY, PHOTOCOPIES, MEALS, AUTOMOBILE RENTALS, AND ORDINARY LEGAL OFFICE OVERHEAD. FILING FEES AND IMPARTIAL PHYSICIAN DEPOSITIONS PURSUANT TO M.G.L. C. 152, § 11A, WHICH ARE PAID BY CLAIMANT'S COUNSEL, SHALL NOT BE SUBMITTED FOR REIMBURSEMENT AS EXPENSES BUT SHALL BE REIMBURSABLE DIRECTLY FROM THE INSURER AGAINST WHOM THE APPEAL IS FILED AT HEARING.

PAYMENT OF COMPENSATION AS USED IN M.G.L. C. 152, § 41, SHALL INCLUDE PAYMENTS MADE BY THE INSURER TO THE EMPLOYEE OR TO THE DEPARTMENT THAT ARE MADE IN FULL AND WITHOUT PREJUDICE TO THE RIGHTS OF EITHER PARTY.

1.02: CONTINUED

TOLAS USED IN M.G.L. C. 152, § 41, SHALL MEAN PERMANENTLY SATISFIES.

(1.03: EMPLOYER'S REPORT OF INJURY: RESERVED)

1.04: INSURER'S NOTICE OF REFUSAL TO PAY COMPENSATION

SUBJECT TO THE PROVISIONS OF M.G.L. C. 152, § 7(1) AND 8(1), AS TO NEWLY DISCOVERED NO GROUNDS FOR REFUSAL TO PAY COMPENSATION SHALL BE ALLOWED AS A DEFENSE IF NOTICE OF REFUSAL CONTAINS A STATEMENT OF THE FACTUAL BASIS SUPPORTING SUCH GROUNDS OR FACTUAL BASIS SOUGHT TO BE RAISED BY AN INSURER ON NEWLY DISCOVERED EVIDENCE AS A DEFENSE UNLESS THE INSURER REPORTS EACH SUCH GROUND OR FACTUAL BASIS TO THE DEPARTMENT AND THE DEPARTMENT NOT LESS THAN FIVE WORKING DAYS BEFORE ANY CONFERENCE OR HEARING THAT IF SUCH EVIDENCE IS NOT IN FACT DISCOVERED UNTIL A TIME WITHIN SUCH FIVE WORKING DAYS CONTINUANCE MAY BE GRANTED AT THE JUDGE'S DISCRETION IF REQUESTED BY THE INSURER OR HEARING.

1.05: PAYMENT OF COMPENSATION

(1) WHEN AN INSURER MAKES PAYMENT OF BENEFITS IN A TIMELY FASHION IT SHALL FILE WITH THE DEPARTMENT OF PAYMENT ON A FORM PRESCRIBED BY THE DEPARTMENT WITHIN 30 CALENDAR DAYS OF RECEIPT OF AN EMPLOYER'S FIRST REPORT OR AN INITIAL WRITTEN CLAIM FOR WEEKLY COMPENSATION PRESCRIBED BY THE DEPARTMENT, WHICHEVER IS RECEIVED FIRST.

(2) WHEN AN INSURER AND AN INJURED EMPLOYEE REACH AN AGREEMENT IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. C. 152, § 19, A MEMORANDUM THEREOF ON A FORM PRESCRIBED BY THE DEPARTMENT, SIGNED BY THE PARTIES, SHALL BE FILED WITH THE DEPARTMENT WITHIN 30 DAYS.

(3) ORDERS, DECISIONS, ARBITRATOR'S DECISIONS AND AGREEMENTS FOR COMPENSATION AND FAILURE TO COMPLY WITH ALL RELEVANT TERMS THEREOF IN A TIMELY FASHION SHALL CONSTITUTE A VIOLATION UNDER M.G.L. C. 152, § 8(1).

1.06: MODIFICATION OR DISCONTINUANCE OF COMPENSATION

(1) WHENEVER THE INSURER OR INSURED DEEMS THE EMPLOYEE TO HAVE REFUSED TO SUBMIT TO OR IN SOME WAY TO HAVE OBSTRUCTED, A MEDICAL EXAMINATION SCHEDULED PURSUANT TO M.G.L. C. 152, § 11A, IT SHALL BE ENTITLED TO SUSPEND WEEKLY BENEFITS WITHOUT AN AGREEMENT, AND SUCH A SUSPENSION OF WEEKLY COMPENSATION SHALL TAKE EFFECT ONLY AFTER THE DEPARTMENT HAS RECEIVED ON A FORM PRESCRIBED BY THE DEPARTMENT AND WHEN THE INSURER SENDS A WRITTEN NOTICE OF SUSPENSION TO THE EMPLOYEE AND THE EMPLOYEE'S LEGAL COUNSEL, IF ANY, BY CERTIFIED MAIL AND A COPY OF THE NOTICE ALSO SENT TO THE DEPARTMENT. SUSPENSION CANNOT BE COMMENCED BEFORE THE NOTICE IS MAILED. SUCH NOTICE SHALL STATE THE GROUNDS FOR THE SUSPENSION OF BENEFITS. SUSPENSIONS PURSUANT TO M.G.L. C. 152, § 11A, SHALL CONTAIN NOTIFICATION OF THE RE-EXAMINATION DATE. THE RE-EXAMINATION SHALL BE SCHEDULED TO OCCUR NOT LESS THAN SEVEN DAYS FROM THE DATE OF NOTICE OF THE SUSPENSION. SUCH NOTICE SHALL ALSO INSTRUCT THE EMPLOYEE TO ATTENDANCE AT, AND COOPERATION WITH, THE RE-EXAMINATION SHALL RESULT IN REINSTATEMENT OF BENEFITS AND PAYMENT OF BENEFITS WITHHELD DURING THE PERIOD OF SUCH SUSPENSION.

SHOULD THE CLAIMANT FAIL TO APPEAR AT THE RE-EXAMINATION, OR IN ANY WAY OBTAIN A RE-EXAMINATION WITHOUT COOPERATE AT SUCH RE-EXAMINATION, THE SUSPENSION SHALL CONTINUE UNTIL AN ADJUDICATOR MAKES A DETERMINATION WHETHER BENEFITS SHOULD BE FORFEITED.

(2) NO SUSPENSION OF BENEFITS SHALL BE ALLOWED ON THE BASIS OF AN EMPLOYEE'S FAILURE TO COOPERATE WITH A VOCATIONAL REHABILITATIVE SPECIALIST WITHIN THE DEPARTMENT PURSUANT TO M.G.L. C. 152, § 11B WITHOUT THE WRITTEN AUTHORIZATION OF THE OFFICE OF EDUCATION AND VOCATIONAL REHABILITATION.

(3) AN INSURER SEEKING TO DISCONTINUE BENEFITS IN ACCORDANCE WITH M.G.L. C. 152, § 11C, SHALL FILE A COMPLAINT IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. C. 152, § 7G. AN INSURER SHALL NOT UNILATERALLY DISCONTINUE BENEFITS UNDER M.G.L. C. 152, § 35E.

1.06: CONTINUED

(4) AN INSURER, WITHOUT THE REQUIREMENT OF AN ORDER UNDER M.G.L. C. 152, § 10A, MAY NOT TAKE CREDIT FOR ANY COMPENSATION DUE TO THE EXTENT OF ANY EXCESS RETAINED BY THE EMPLOYEE IN CONNECTION WITH A SETTLEMENT APPROVED IN ACCORDANCE WITH THE PROVISIONS OF M.G.L. C. 152, § 15.

1.07: CLAIMS AND COMPLAINTS

(1) A CLAIM FOR COMPENSATION MAY BE FILED BY ANY PERSON, INCLUDING AN EMPLOYER, PHYSICIAN, HOSPITAL OR OTHER HEALTH CARE PROVIDER, WHO BELIEVES THAT BENEFITS ARE DUE UNDER M.G.L. C. 152.

(2) PURSUANT TO THE PROVISIONS OF M.G.L. C. 152, § 7G, THE FOLLOWING DOCUMENTATION MUST BE ATTACHED TO A CLAIM FOR BENEFITS, OR COMPLAINT FOR MODIFICATION OR DISCONTINUATION OF BENEFITS BEFORE IT WILL BE PROCESSED BY THE OFFICE OF CLAIMS ADMINISTRATION:

(A) ANY CLAIM FOR A RECALCULATION OF THE COMPENSATION RATE UNDER M.G.L. C. 152, § 7G MUST BE ACCOMPANIED BY ONE OR MORE OF THE FOLLOWING:

1. AN AFFIDAVIT ATTESTING TO THE REASONS WHY THE WEEKLY RATE IS INCORRECT;
2. A WAGE SCHEDULE OF THE EMPLOYEE OR AN AFFIDAVIT ATTESTING THAT A DEMONSTRATED WAGE SCHEDULE WAS UPON THE EMPLOYER, CONCURRENT EMPLOYER AND/OR INSURER AND THAT THE CLAIMANT TOGETHER WITH A BRIEF RECITATION OF WHY THE CLAIMANT ALLEGES THE AVERAGE WEEKLY RATE IS INCORRECT AND WHY THE WAGE SCHEDULE IS NEEDED;
3. ALL RELEVANT PAY STUBS;
4. A W-2 TAX FORM OR ANY OF THE ABOVE DOCUMENTS FOR A COMPARABLE WORKER FOR THE YEAR PURSUANT TO M.G.L. C. 152, § 1(L), SUCH INFORMATION IS APPLICABLE.

WHERE CONCURRENT EMPLOYMENT IS AT ISSUE, DOCUMENTATION AS LISTED ABOVE MUST BE FURNISHED FOR ALL CONCURRENT EMPLOYERS, TOGETHER WITH AN AFFIDAVIT ATTESTING TO THE EMPLOYER AND ITS INSURER DURING THE RELEVANT PERIOD OF CONCURRENT EMPLOYMENT.

(B) CLAIMS FOR PENALTIES UNDER M.G.L. C. 152, § 8(1) SHALL BE ACCOMPANIED BY A COPY OF THE ORDER, DECISION, ARBITRATOR'S DECISION, APPROVED LUMP SUM OR OTHER AGREEMENT DOCUMENTS(S) WITH WHICH IT IS ALLEGED THE INSURER HAS FAILED TO COMPLY, TOGETHER WITH AN AFFIDAVIT SIGNED BY THE CLAIMANT OR THE CLAIMANT'S ATTORNEY ATTESTING TO THE DATE DUE, THE DATE, IF ANY, ON WHICH PAYMENT WAS MADE, AND THE AMOUNT OF THE PENALTY THE CLAIMANT IS OWED.

(C) CLAIMS FILED PURSUANT TO M.G.L. C. 152, § 30 SHALL BE ACCOMPANIED BY THE FOLLOWING:

1. CLAIMS FOR PAYMENT FOR ADEQUATE AND REASONABLE HEALTH CARE SERVICES SHALL BE ACCOMPANIED BY THE FOLLOWING:
 - A. THE DATES OF SERVICE;
 - B. THE TYPE OF TREATMENT OR SERVICE AND THE ITEMIZED COSTS;
 - C. OFFICE NOTES, HOSPITAL RECORDS, OR A STATEMENT FROM THE ATTENDING PHYSICIAN OR MEDICAL VENDOR THAT SUCH VISIT, TESTING, PRESCRIPTION DRUG, THERAPY, OR MEDICAL SERVICE DEVICE OR AID WAS REASONABLE, NECESSARY, AND CAUSAL TO THE INJURY FOR WHICH THE EMPLOYEE IS ELIGIBLE FOR BENEFITS.
2. CLAIMS FOR MILEAGE REIMBURSEMENT NECESSARILY INCIDENTAL TO THE PROVISION OF ADEQUATE AND REASONABLE MEDICAL SERVICES SHALL BE ACCOMPANIED, WHERE APPLICABLE, BY THE FOLLOWING:
 - A. AN ITEMIZED BILL CONFIRMING THE DATE AND LOCATION OF TREATMENT;
 - B. AN AFFIDAVIT FROM THE CLAIMANT OR THE CLAIMANT'S ATTORNEY ATTESTING TO THE MILEAGE FROM THE EMPLOYEE'S HOME TO THE SITE OF THE TREATMENT AND BACK HOME WHERE THE TRAVEL IS INCIDENTAL TO AN EXAMINATION REQUESTED BY THE DEPARTMENT, THE PURPOSE OF THE TREATMENT AND REASON FOR THE TRIP;
 - C. COPIES OF PARKING RECEIPTS, CANCELED CHECKS OR RECEIPTS, TOGETHER WITH OTHER DOCUMENTATION FROM THE PROVIDER, EXCEPT WHERE THE TRAVEL IS INCIDENTAL TO AN EXAMINATION REQUESTED BY THE INSURER OR THE DEPARTMENT, RELATING TO THE INDUSTRIAL INJURY AND DEEMING IT REASONABLE AND NECESSARY.

ALL BILLS PRESENTED SHALL, WHERE POSSIBLE, CONTAIN TREATMENT CODES, THE AMOUNT OF REIMBURSEMENT TO WHICH THE HOSPITAL IS ENTITLED AND THE PROVIDER'S TAX IDENTIFICATION NUMBER.

1.07: CONTINUED

(D) ALL CLAIMS FOR PAYMENT OF AN ATTORNEY'S FEE SHALL BE ACCOMPANIED BY AN ARBITRATOR'S DECISION, LUMP SUM OR OTHER AGREEMENT FOR COMPENSATION, OR, A MEMORANDUM OUTLINING THE CIRCUMSTANCES GIVING RISE TO THE ENTITLEMENT UNDER THE APPROPRIATE SUBSECTION OF M.G.L. C. 152, §§ 10B OR 13A. WHERE NECESSARY EXPENSES HAVE NOT BEEN PAID, A MEMORANDUM SHALL ALSO OUTLINE THE NATURE AND AMOUNT OF EXPENSES AND BE ACCOMPANIED BY RECEIPTS OR PROOF OF EXPENDITURES. EACH CLAIM SHALL BE ACCOMPANIED BY AN AFFIDAVIT SIGNED BY THE ATTORNEY ATTESTING THAT PAYMENT OF THE FEE IS OWED AND THAT THE INSURER HAS REFUSED OR NEGLECTED TO PAY THE FEE AFTER RECEIVING BY CERTIFIED MAIL THAT THE FEE AND/OR NECESSARY EXPENSES ARE OWED AND UNPAID AND THAT SIX MONTHS HAVE PASSED SINCE SAID NOTICE WAS RECEIVED.

(E) CLAIMS FOR PAYMENT OF FUNERAL EXPENSES SHALL BE ACCOMPANIED BY AN ITEMIZED BILL TOGETHER WITH A COPY OF A DEATH CERTIFICATE.

(F) CLAIMS FOR BENEFITS UNDER M.G.L. C. 152, § 31 SHALL BE ACCOMPANIED BY A COPY OF A DEATH CERTIFICATE AND THE DOCUMENTATION REQUIRED FOR FILING A DEPENDENCY BENEFIT UNDER M.G.L. C. 152, § 35A. CLAIMS FOR BENEFITS UNDER M.G.L. C. 152, §§ 34, 34A AND 35 SHALL BE ACCOMPANIED BY A COPY OF A PHYSICIAN'S REPORT OR RECORD NOT MORE THAN SIX MONTHS OLD WHICH DESCRIBES THE EXTENT AND DURATION OF THE EMPLOYEE'S PHYSICAL OR EMOTIONAL INCAPACITY AND WHICH RELATES SAID INCAPACITY TO THE CLAIMED INDUSTRIAL INJURY.

(G) ALL CLAIMS FOR COST-OF-LIVING ADJUSTMENTS PURSUANT TO M.G.L. C. 152, §§ 34 AND 35 SHALL BE ACCOMPANIED BY AN AFFIDAVIT ATTESTING TO THE DATE OF INJURY UNDER WHICH THE CLAIMANT WAS COLLECTING WEEKLY COMPENSATION, THE PRESENT SECTION OF M.G.L. C. 152 UNDER WHICH THE CLAIMANT IS BEING PAID, AND THE DATE OF ELIGIBILITY FOR THE COMMENCEMENT OF THE CLAIMANT'S COST-OF-LIVING ADJUSTMENTS. THIS AFFIDAVIT MUST BE SIGNED BY THE CLAIMANT OR CLAIMANT'S COUNSEL AND MUST ALSO BE ACCOMPANIED BY A SIGNED RELEASE FOR THE SOCIAL SECURITY OFFICE (COMMONWEALTH OF MASSACHUSETTS COST OF LIVING ADJUSTMENT DATA FORM).

(H) IN ANY CLAIM IN WHICH M.G.L. C. 152, § 35A IS THE ONLY BENEFIT CLAIMED AND A DEPENDENCY IS REQUESTED FOR DEPENDENTS WHO ARE CONCLUSIVELY PRESUMED TO BE ELIGIBLE UNDER M.G.L. C. 152, § 35A, THE CLAIM SHALL BE ACCOMPANIED, WHERE APPLICABLE, BY ONE OR MORE OF THE FOLLOWING:

1. THE MARRIAGE LICENSE AND A NOTARIZED STATEMENT FROM THE DEPENDENT CONFIRMING THAT THE SPOUSE WAS LIVING WITH THE EMPLOYEE AT THE TIME OF THE INJURY;
2. BIRTH CERTIFICATES FOR EACH CHILD YOUNGER THAN 18 YEARS OLD, OR, IF OLD ENOUGH TO BE OF AGE, AN AFFIDAVIT ATTESTING TO THE CIRCUMSTANCES UNDER WHICH THE CHILD IS A DEPENDENT UNDER M.G.L. C. 152, § 35A(C);
3. ANY COURT ORDER OR DECREE OR COURT APPROVED AGREEMENT REQUIRING THE EMPLOYEE TO PROVIDE CHILD SUPPORT; OR
4. AN AFFIDAVIT BY A PARENT OF AN UNMARRIED CHILD YOUNGER THAN 18 YEARS OLD ATTESTING TO THE PARENT'S DEPENDENCY UPON THE SUPPORT OF THE CHILD.

(I) ALL CLAIMS FOR BENEFITS UNDER THE PROVISIONS OF M.G.L. C. 152 §§ 36 OR 36A SHALL BE ACCOMPANIED BY THE FOLLOWING:

1. CLAIMS FOR FUNCTIONAL LOSS SHALL INCLUDE A PHYSICIAN'S REPORT WHICH STATES THAT THE CLAIMANT'S MAXIMUM MEDICAL IMPROVEMENT HAS BEEN REACHED AND WHICH CONTAINS AN ESTIMATE OF THE PERCENT OF PERMANENT FUNCTIONAL LOSS ACCORDING TO THE AMERICAN PHYSICIAN ASSOCIATION'S GUIDE TO PHYSICAL IMPAIRMENT.

THERE SHALL ALSO BE A STATEMENT FROM THE CLAIMANT, OR THE CLAIMANT'S AUTHORIZED REPRESENTATIVE INDICATING THE SPECIFIC MONETARY VALUE OF THE BENEFIT BEING SOUGHT AS REFLECTED BY THE OPINION OF THE PHYSICIAN'S ACCOMPANYING REPORT. A CLAIM FOR FUNCTIONAL LOSS MAY BE FILED SOONER THAN SIX MONTHS FOLLOWING THE DATE OF THE LATEST SURGERY RESULTING FROM THE INJURY.

2. CLAIMS FOR SCARRING OR DISFIGUREMENT UNDER M.G.L. C. 152 SHALL BE ACCOMPANIED BY A PHYSICIAN'S REPORT, OPERATIVE NOTE, OR OTHER HOSPITAL RECORD, DESCRIBING THE SCARRING OR DISFIGUREMENT IN DETAIL, INCLUDING ITS LENGTH, SIZE, AND EXACT LOCATION. A SIGNED WRITTEN STATEMENT BY THE CLAIMANT OR THE CLAIMANT'S COUNSEL INDICATING THE MONETARY VALUE OF THE BENEFIT AWARD BEING SOUGHT.

THE CLAIMANT OR HIS COUNSEL SHALL ALSO INCLUDE IN THE SIGNED WRITTEN STATEMENT A DETAILED DESCRIPTION OF THE NATURE AND QUALITY OF THE SCARRING OR DISFIGUREMENT, INCLUDING THE COLOR OF THE SCAR, AND WHETHER OR NOT IT HAS VISIBLE STITCH MARKS OR OTHER ANATOMICAL DEFORMITIES, OR, IN THE ALTERNATIVE, A DATED COLOR PHOTOGRAPH OF THE SCAR WITH REASONABLE CLARITY AND WHICH DEPICTS A RULER, TAPE OR OTHER MEASURING DEVICE IN THE PROXIMITY OF THE SCAR BEING CLAIMED WHICH CAN BE CLEARLY SEEN BY SOMEONE OTHER THAN THE PHOTOGRAPHER. THE PHOTOGRAPH, SHOWING THE LENGTH OF SCAR BEING CLAIMED.

1.07: CONTINUED

NO CLAIMS FOR SCARRING AND DISFIGUREMENT UNDER THE PROVISIONS OF M.G.L. MAY BE FILED SOONER THAN SIX MONTHS FOLLOWING THE DATE OF INJURY OR THE BASIS OF THE CLAIM FOR SCARRING OR DISFIGUREMENT, EXCEPT THAT DISFIGURING INJURIES RELATING TO LIMPS OR USE OF CANES MAY NOT BE FILED BEFORE AN END MEDICAL REPORT IS REACHED.

(J) A COMPLAINT REQUESTING MODIFICATION OR DISCONTINUANCE OF BENEFITS MADE UNDER M.G.L. C. 152, § 10 SHALL BE ACCOMPANIED, WHERE APPLICABLE, BY THE FOLLOWING DOCUMENTATION:

1. HOSPITAL AND MEDICAL RECORDS;
2. PHYSICIAN'S REPORT(S) OPINING WORK CAPACITY WHICH SHALL BE NO MORE THAN 90% OF PRE-ACCIDENT OLD;
3. AN INVESTIGATOR'S REPORT OR A SYNOPSIS WHICH CONTAINS INFORMATION INDICATING WHETHER THE EMPLOYEE IS WORKING OR EXHIBITING THE CAPABILITY OF WORKING, WHERE THE REPORT IS THE BASIS FOR DISCONTINUANCE;
4. WAGE RECORDS DEMONSTRATING EMPLOYMENT OF THE EMPLOYEE DURING WHICH MONTHLY COMPENSATION WAS COLLECTED;
5. A JOB DESCRIPTION OF ANY WORK OFFERED TO THE EMPLOYEE WHEN ACCOMPANIED BY A MEDICAL REPORT WHICH CONTAINS A PHYSICIAN'S OPINION THAT THE EMPLOYEE IS CAPABLE OF SUCH WORK;
6. A BRIEF MEMORANDUM OR AFFIDAVIT SPECIFYING THE BASIS FOR THE REQUEST TO DISCONTINUE OR TERMINATE BENEFITS.

(K) A COMPLAINT REQUESTING RECOUPMENT PURSUANT TO M.G.L. C. 152, § 11D(3) SHALL BE ACCOMPANIED BY A COPY OF THE DECISION OF AN ADMINISTRATIVE JUDGE OR AN ORDER OF THE COMMONWEALTH INDICATING THAT AN OVERPAYMENT HAS BEEN MADE AND AN AFFIDAVIT ATTESTING THAT WEEKLY BENEFITS ARE NO LONGER BEING PAID TO THE EMPLOYEE AND THAT A REDUCTION CANNOT BE IMPLEMENTED.

(L) A CLAIM REQUESTING REIMBURSEMENT UNDER M.G.L. C. 152, §§ 37 AND 37A SHALL BE MADE ON A FORM PRESCRIBED BY THE DEPARTMENT WHICH SHALL BE ACCOMPANIED BY DOCUMENTS STATING THAT IT WAS SERVED ON THE OFFICE OF LEGAL COUNSEL, AND BY A PETITION AND DOCUMENTS ITEMS WHICH INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

1. EMPLOYEE'S JOB DESCRIPTION AND DUTIES; EDUCATIONAL, MILITARY, AND EMPLOYMENT RECORDS AND VOCATIONAL TRAINING PRIOR TO THE "SUBSEQUENT IMPAIRMENT PERSONAL INJURY FOR WHICH PETITIONER SEEKS M.G.L. C. 152, §§ 37 THROUGH 37A REIMBURSEMENT KNOWN AS "SECOND INJURY");
2. EVIDENCE OF EMPLOYER'S KNOWLEDGE OF EMPLOYEE'S PRE-EXISTING PHYSICAL IMPAIRMENT DUE TO A PREVIOUS ACCIDENT, DISEASE OR CONGENITAL CONDITION AS EVIDENCED BY DOCUMENTS AS A JOB APPLICATION, A PRE-EMPLOYMENT PHYSICAL REPORT, OR AN AFFIDAVIT ATTESTING THAT EMPLOYER KNEW OF THE IMPAIRMENT NOT LATER THAN THE DATE OF EMPLOYMENT, OR (FOR INJURIES OCCURRING PRIOR TO DECEMBER 23, 1991) EMPLOYER RECORDS WHICH EXISTED PRIOR TO THE DATE OF THE SUBSEQUENT IMPAIRMENT;
3. EVIDENCE THAT A KNOWN PRE-EXISTING PHYSICAL IMPAIRMENT WAS, OR WAS LIKELY TO BE, A HINDRANCE OR OBSTACLE TO EMPLOYMENT RECORDS EVIDENCING PERMANENT PHYSICAL RESTRICTIONS, DOCUMENTED JOB MODIFICATIONS OR ACCOMMODATIONS WHICH WERE MADE ON BEHALF OF EMPLOYEE);
4. ALL MEDICAL RECORDS PERTAINING TO THE SUBSEQUENT IMPAIRMENT INCLUDING PHYSICIAN REPORTS, INSURANCE MEDICAL EXAMINATIONS, AND DIA IMPARTIAL PHYSICIAN REPORTS;
5. FROM THE COMPENSATION CLAIM INVOLVING THE SECOND INJURY, COPIES OF ALL DOCUMENTS WHICH SUBSTANTIATE THE REIMBURSEMENT WHICH THE PETITIONER REQUESTS:
 - A. EMPLOYEE CLAIM FORM (110)
 - B. FIRST REPORT OF INJURY
 - C. AGREEMENT(S) TO COMPENSATION
 - D. CONFERENCE ORDERS, HEARING DECISIONS AND LUMP SUM AGREEMENT;
6. INDEMNITY RECORD FOR ALL REIMBURSABLE COMPENSATION PAID TO THE EMPLOYEE AFTER THE DATE OF THE ONSET OF DISABILITY OR DEATH THAT CLEARLY IDENTIFY THE CLAIMANT UNDER WHICH COMPENSATION WAS PAID, THE DATES FOR WHICH PAYMENT WAS MADE AND THE AMOUNT OF WEEKLY COMPENSATION;
7. MEDICAL BILLS PAID FOR ALL RELATED REIMBURSABLE MEDICAL TREATMENT RECEIVED BY THE EMPLOYEE AFTER THE DATE OF THE ONSET OF DISABILITY (COMPUTER GENERATED BILLS WHICH CLEARLY IDENTIFY THE CLAIMANT, THE SERVICE PROVIDERS, AND THE DATES WHICH CONSTITUTE SATISFACTORY DOCUMENTATION); AND

1.07: CONTINUED

8. A DESCRIPTION OF THE SUBSEQUENT IMPAIRMENT WHICH INCLUDES AN AUTHORIZED STATEMENT AS TO HOW THE SUBSEQUENT IMPAIRMENT IS SUBSTANTIALLY GREATER THAN THE EFFECTS OF SUCH IMPAIRMENT AND SUBSEQUENT PERSONAL INJURY) THAN THE DISABILITIES THAT HAVE RESULTED FROM THE SUBSEQUENT PERSONAL INJURY ALONE, OR THAT THE SUBSEQUENT INJURY WAS CAUSED BY THE PRE-EXISTING IMPAIRMENT, AND, IF DEATH RESULTS FROM THE SUBSEQUENT INJURY, THAT THE DEATH WOULD NOT HAVE OCCURRED EXCEPT FOR SUCH PRE-EXISTING IMPAIRMENT.
- (M) ALL CLAIMS AND COMPLAINTS ALLEGING M.G.L. C. 152, §§ 8 AND/OR 14 MUST SPECIFY THE INDIVIDUAL SUBSECTIONS UNDER M.G.L. C. 152, §§ 8(1), 8(5), 14(1) OR 14(2) OR THE CLAIMS THAT THE COMPLAINT SHALL BE ADMINISTRATIVELY WITHDRAWN.
- (N) CLAIMS FOR PENALTIES UNDER M.G.L. C. 152, §8(5) SHALL BE ACCOMPANIED BY AN AFFIDAVIT STATING THE PENALTY BEING CLAIMED AND THE BASIS FOR THE ALLEGED CLAIM.

1.08: CONCILIATION

- (1) A CONCILIATION HELD PURSUANT TO M.G.L. C. 152, § 10, SHALL BE PRESIDED OVER BY A CONCILIATOR WITHIN THE DIVISION OF DISPUTE RESOLUTION. THE CONCILIATION SHALL BE INFORMAL. THE CONCILIATOR SHALL MEET WITH THE PARTIES JOINTLY AND MAY, IN HIS DISCRETION, MEET WITH EACH PARTY SEPARATELY.
- (2) A PARTY TO A CONCILIATION MAY BE REPRESENTED BY COUNSEL OF RECORD OR AN AUTHORIZED WRITTEN AUTHORITY TO SIGN AGREEMENTS AS TO COMPENSATION FOR SUCH PARTY. AN INDIVIDUAL WHO IS A PARTY OR WHO DOES NOT BEAR SUCH AUTHORITY MAY ATTEND A CONCILIATION ONLY AS AN OBSERVER. ALL PARTIES SHALL BE ADVISED OF THE DATE, TIME AND LOCATION OF THE CONCILIATION.
- (3) NO CONCILIATOR SHALL BE CALLED TO TESTIFY AT ANY PROCEEDING WITHIN THE DIVISION OF DISPUTE RESOLUTION REGARDING ANY ISSUE WHICH HAS COME BEFORE HIM AS A CONCILIATOR.
- (4) BEFORE A CONCILIATOR CAN REFER AN INSURER'S COMPLAINT TO MODIFY OR DISCONTINUE BENEFITS TO THE INDUSTRIAL ACCIDENT BOARD, THE INSURER MUST HAVE PROVIDED TO THE CONCILIATOR, THE EMPLOYEE'S DESIGNEE, A COPY OF THE WAGE SCHEDULE UPON WHICH WEEKLY BENEFITS ARE BASED. ALTERNATIVELY, THE INSURER SHALL FURNISH AN AFFIDAVIT SIGNED BY A REPRESENTATIVE OF THE INSURER STATING THAT THE WAGE SCHEDULE HAS BEEN REQUESTED BY THE INSURER, BUT THE INSURER COULD NOT PRODUCE SUCH A WAGE SCHEDULE. THE EMPLOYEE OR THE EMPLOYEE'S ATTORNEY SHALL BE ADVISED OF SUCH REQUIREMENT.
- (5) CLAIMS AND COMPLAINTS FILED WITHOUT SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF 452 CMR 1.07(2) SHALL BE WITHDRAWN BY THE CONCILIATOR WITHOUT PREJUDICE AT CONCILIATION UNLESS WAIVED BY THE OPPOSING PARTY AT OR BEFORE THE CONCILIATION.
- (6) CLAIMS FOR REIMBURSEMENT UNDER M.G.L. C. 152, §§ 37 AND 37A WILL BE SCHEDULED FOR CONCILIATION IN THE BOSTON OFFICE UNLESS THE PARTIES AGREE IN WRITING, AT THE TIME OF CONCILIATION IT IS TO BE ADJUDICATED AT A SPECIFIED REGIONAL OFFICE.

1.09: ASSIGNMENT TO DIVISION OF DISPUTE RESOLUTION

- (1) AN INSURER WHO IS AGGRIEVED BY THE ASSESSMENT OF A REFERRAL FEE OF 130% OF THE EMPLOYEE'S WEEKLY WAGE IN THE COMMONWEALTH PURSUANT TO M.G.L. C. 152 § 10(5) MAY REQUEST ADMINISTRATIVE REVIEW BY THE CONCILIATION MANAGER WITHIN 30 DAYS OF THE ISSUANCE OF THE ASSESSMENT. THE REQUEST SHALL INCLUDE ANY RELEVANT DOCUMENTATION WITH SUCH REQUEST.
- (A) A CONCILIATOR'S ASSERTION THAT AN INSURER WAS ABSENT FOR A SCHEDULED CONCILIATION IS FINAL, AND THE REVIEW SHALL BE LIMITED TO THE ISSUES OF WHETHER THE HIGHER FEE WAS A MISTAKE AND, IF NOT A MISTAKE, WHETHER THE ABSENCE OF THE INSURER WAS BEYOND THE INSURER'S CONTROL. SAID MANAGER SHALL MAKE A FINDING WITHIN 30 DAYS OF RECEIPT OF THE REQUEST FOR REVIEW.
- (B) AN INSURER WHO IS AGGRIEVED BY THE FINDING OF SAID MANAGER SHALL HAVE 30 DAYS FROM RECEIPT OF SAID FINDING TO REQUEST A HEARING BEFORE THE DIRECTOR OR THE DIRECTOR'S DESIGNEE. THE HEARING SHALL BE SCHEDULED IN BOSTON WITHIN 30 DAYS OF RECEIPT OF SUCH REQUEST. THE HEARING SHALL BE LIMITED TO THOSE THAT MAY BE CONSIDERED IN THE ADMINISTRATIVE REVIEW. THE HEARING SHALL NOT BE SUBJECT TO RULES OF EVIDENCE.

1.09: CONTINUED

(C) NO INSURER SHALL BE GRANTED MORE THAN ONE ADMINISTRATIVE REVIEW FOR CASE TO THE DIVISION OF DISPUTE RESOLUTION.

(D) AN INSURER'S OBLIGATION TO PAY A REFERRAL FEE SHALL NOT DELAY THE FORWARDING OF THE CASE TO THE INDUSTRIAL ACCIDENT BOARD.

(2) AT ANY TIME AFTER THE CASE HAS BEEN ASSIGNED TO THE INDUSTRIAL ACCIDENT BOARD, A PARTY MAY PETITION THE DIRECTOR FOR A STAY OF THE PROCEEDINGS FOR DOCUMENTED REASONS BY SUCH PARTY OR HIS OR HER ATTORNEY. ON ANY SUCH REQUEST, THE DIRECTOR MAY GRANT A STAY OF UP TO MORE THAN 60 CALENDAR DAYS. A LIST OF ALL STAYS SHALL BE COMPILED QUARTERLY AND SENT TO THE ADVISORY COUNCIL.

(3) AT ANY PROCEEDING WITHIN THE DIVISION OF DISPUTE RESOLUTION, THE BURDEN OF PROOF SHALL BE ON THE PARTY SEEKING BENEFITS OR ON THE INSURER SEEKING MODIFICATION OF BENEFITS.

1.10: CONFERENCES

(1) THE ADMINISTRATIVE JUDGE SHALL PRESIDE OVER THE CONFERENCE HELD PURSUANT TO § 10A. SUCH CONFERENCE SHALL BE INFORMAL, AND INQUIRIES AND INVESTIGATIONS SHALL BE GOVERNED BY THE RULES OF EVIDENCE APPLIED IN THIS COMMONWEALTH.

(2) THE PARTIES SHALL PREPARE FOR SUBMISSION AT THE OUTSET OF A CONFERENCE A MEMORANDUM SET FORTH THE BENEFITS CLAIMED AND THE ISSUES IN DISPUTE, THE FACTS STIPULATED, THE EVIDENCE FOR IDENTIFICATION, THE NAMES OF WITNESSES TO BE PRESENTED, A SUMMARY OF THE WITNESS TESTIMONY, THE ESTIMATED LENGTH OF THE HEARING, AND SUCH OTHER MATTER AS MAY BE REQUIRED. SUCH MEMORANDUM MAY BE AMENDED BY THE PARTIES, WITH THE APPROVAL OF THE ADMINISTRATIVE JUDGE, AT OR BEFORE THE HEARING. AT A CONFERENCE INVOLVING MULTIPLE PARTIES SHALL ALSO IDENTIFY TO THE ADMINISTRATIVE JUDGE AS PART OF THE REQUIREMENTS:

(A) THE MEDICAL ISSUE(S) IN DISPUTE REQUIRING THE FILING OF THE REQUISITE FEE;

(B) A LIST OF DOCUMENTS TO BE INCLUDED IN THE MEDICAL RECORDS TO BE SENT TO THE IMPARTIAL PHYSICIAN; ANY HYPOTHETICALS OR DISCLOSURE QUESTIONS TO BE SUBMITTED TO THE IMPARTIAL PHYSICIAN UPON THE JUDGE'S APPROVAL; IDENTIFICATION OF A SPECIALTY OR THE NAME OF THE IMPARTIAL PHYSICIANS IN ORDER OF PREFERENCE IF AGREED UPON; AND THE NAMES OF THE PHYSICIANS ANTICIPATED TO BE REQUESTED AT HEARING TO BE DEPOSED;

(C) ANY OBJECTIONS TO THE DOCUMENTS INCLUDED IN THE MEDICAL RECORDS AND HYPOTHETICALS SUBMITTED TO THE IMPARTIAL PHYSICIAN.

(3) ALL CONFERENCE IMPARTIAL MEDICAL PACKET SUBMISSIONS (MEDICAL AND HYPOTHETICALS) AND NON-MEDICAL SUBMISSIONS SHALL BE SUBMITTED TO THE DEPARTMENT OF INDUSTRIAL ACCIDENTS ELECTRONICALLY OR BY COMPACT DISC (CD), ON OR BEFORE THE DATE OF THE SCHEDULED HEARING.

(A) THE CONFERENCE SUBMISSIONS MUST BE EMAILED TO BOTH THE JUDGE AND THE ADMINISTRATIVE ASSISTANT. ADDITIONAL MEDICAL DOCUMENTS AND HYPOTHETICALS NOT PART OF THE CONFERENCE PACKET WILL ONLY BE ACCEPTED AND FORWARDED TO THE IMPARTIAL EXAMINER IF RECEIVED BY THE DEPARTMENT AT LEAST 15 BUSINESS DAYS PRIOR TO THE HEARING. IMPARTIAL EXAMINATION. ANY ADDITIONAL MEDICAL DOCUMENTS RECEIVED WITHIN 15 BUSINESS DAYS OF THE EXAMINATION WILL ONLY BE ACCEPTED AT THE DISCRETION OF THE ADMINISTRATIVE ASSISTANT AND THE SENIOR JUDGE.

(B) THE MEDICAL AND NON-MEDICAL PACKET MUST BE SUBMITTED SEPARATELY. ALL SUBMISSIONS MUST BE IN PORTABLE DOCUMENT FORMAT (PDF) AND IN OPTICAL CHARACTER RECOGNITION FORMAT (TEXT-RECOGNIZABLE/OCR). EACH PACKET SHALL:

1. HAVE A TABLE OF CONTENTS PAGE THAT CONTAINS:

- A. BOARD NUMBER;
- B. DATE OF INJURY;
- C. EMPLOYEE'S NAME;
- D. EMPLOYER'S NAME;
- E. INSURER;
- F. HEADING;
- G. SUBMITTING PARTY; AND
- H. DATE OF THE DOCUMENT.

1.10: CONTINUED

2. HAVE FUNCTIONING BOOKMARKS LINK
 3. HAVE MEDICAL RECORDS THAT ARE CLEAN OF NOTATIONS, UNDERLINING, OR HIGHLIGHTING (UNLESS THOSE MARKINGS ARE IN THE ORIGINAL DOCUMENTS); AND,
 4. NOT CONTAIN DIVIDING PAGES SEPARATING EACH FACILITY'S OR DOCTORS' REPORTS.
- (C) CONFERENCE SUBMISSIONS THAT DO NOT MEET SUBMISSION CRITERIA WILL NOT BE ACCEPTED. THE PARTY WILL BE REQUESTED TO RESUBMIT THE DOCUMENTS. A HARD COPY OF THE DOCUMENTS MAY BE SUBMITTED TO THE ADMINISTRATIVE JUDGE AT THE CONFERENCE. BAR CODES ARE REQUIRED FOR THE CONFERENCE MEDICAL PACKET OR THE NON-MEDICAL PACKET. THE PARTY ELECTRONICALLY PROVIDING DOCUMENTS HAS NO ACCESS TO ELECTRONIC MEANS OF DOCUMENT TRANSMISSION SHE OR HE MUST PREPARE SEPARATE HARD COPIES OF THE CONFERENCE MEDICAL AND NON-MEDICAL PACKETS WHICH MUST CONTAIN A TABLE OF CONTENTS AS SET FORTH IN 1.10(3)(B)1.A. THROUGH H., WITH TABS FOR EACH SECTION OF THE PACKET. BAR CODES MUST BE PREPARED BY THE PARTY AT THE DEPARTMENT AND THOSE SHEETS MUST ACCOMPANY THE CONFERENCE PACKET.

(4) NO STENOGRAPHIC TRANSCRIPTION OR ELECTRONIC RECORDING SHALL BE MADE OF CONFERENCE PROCEEDINGS UNDER M.G.L. C. 152, § 10A, EXCEPT THAT THE ADMINISTRATIVE JUDGE, IF HE OR SHE DEEMES IT TO BE IN THE INTEREST OF JUSTICE, MAY REQUIRE SUCH TRANSCRIPTION OR RECORDING OR, AT THE DISCRETION OF ALL PARTIES, MAY ALLOW ANY PARTY, AT ITS OWN EXPENSE, TO MAKE A TRANSCRIPTION OF THE CONFERENCE PROCEEDINGS.

(5) NO IMPARTIAL PHYSICIAN SHALL BE REQUIRED IN DISPUTED MATTERS CONCERNING DISABILITY WHERE THE DISPUTE OVER ENTITLEMENT TO WEEKLY BENEFITS CONCERNS SPECIFIC PHYSICAL DISABILITY.

(6) IN DISPUTES REGARDING THE EXTENT OF INCAPACITY WHERE THE PARTIES AGREE UPON THE NATURE OF THE IMPAIRMENT AS WELL AS THE CAUSAL RELATIONSHIP BETWEEN THE IMPAIRMENT AND EMPLOYMENT, SUBJECT TO THE PROVISIONS OF M.G.L. C. 152, § 11A(2) AND 452 CMR 1.02, THE PARTIES MAY AGREE IN WRITING AT THE TIME OF CONFERENCE THAT AN IMPARTIAL PHYSICIAN IS NOT REQUIRED.

(7) IN CLAIMS WHERE INITIAL LIABILITY HAS NOT BEEN ESTABLISHED, SUBJECT TO THE PROVISIONS OF M.G.L. C. 152, § 11A(2) AND 452 CMR 1.02, THE PARTIES MAY AGREE IN WRITING AT THE TIME OF CONFERENCE THAT AN IMPARTIAL PHYSICIAN IS NOT REQUIRED.

(8) IN CASES WHERE NO IMPARTIAL PHYSICIAN IS REQUIRED THE REQUISITE FEE PURSUANT TO M.G.L. C. 152, § 11A(2) SHALL NOT BE REQUIRED.

(9) NO IMPARTIAL PHYSICIAN SHALL BE REQUIRED WHERE AN ADMINISTRATIVE JUDGE HAS MADE A FINDING BASED UPON THE INFORMATION SUBMITTED AT THE M.G.L. C. 152, § 10A CONFERENCE, THAT THERE IS NO DISPUTE OVER MEDICAL ISSUES AND HAS SO STATED IN THE M.G.L. C. 152, § 10A CONFERENCE ORDER.

(10) THE RESPONSIBILITY FOR PROVIDING AND PAYING FOR AN INTERPRETER WHEN APPEARING AT A M.G.L. C. 152, § 10A CONFERENCE RESTS WITH THE PARTY THAT FILES THE CLAIM OR COMPLAINT. THEREAFTER, RESPONSIBILITY FOR PROVIDING AND PAYING FOR AN INTERPRETER, WHEN APPEARING AT A M.G.L. C. 152, § 10A CONFERENCE RESTS WITH THE PARTY APPEALING FROM THE CONFERENCE ORDER. IF BOTH PARTIES APPEAR AT A M.G.L. C. 152, § 10A CONFERENCE ORDER, THE RESPONSIBILITY OF PROVIDING AND PAYING FOR AN INTERPRETER RESTS WITH THE PARTY THAT FILED THE CLAIM OR COMPLAINT.

1.11: HEARINGS

- (1) UNLESS A LATE APPEAL IS PERMITTED BY THE DIRECTOR, AS PROVIDED BY M.G.L. C. 152, § 11A(2), AN APPEAL FROM AN ORDER OF AN ADMINISTRATIVE JUDGE MUST BE FILED WITH THE DEPARTMENT OF INDUSTRIAL ACCIDENTS AND LABOR RELATIONS, NOT LATER THAN 14 CALENDAR DAYS FROM THE FILING OF THE ORDER. (A) WHERE THE APPOINTMENT OF AN IMPARTIAL EXAMINER IS REQUIRED, A PARTY FILING AN APPEAL MUST FILE A REQUEST FOR A WAIVER OF THE REQUISITE FEE BASED ON INDIGENCE SHALL BE FILED WITH THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT NOT LATER THAN TEN CALENDAR DAYS FROM THE FILING OF THE APPEAL. WHERE MORE THAN ONE PARTY FILES AN APPEAL, EACH SHALL FILE A REQUEST FOR WAIVER OF THE REQUISITE FEE OR A REQUEST FOR WAIVER ON THE PRESCRIBED FORM. THE DEPARTMENT WILL ACCEPT THE FIRST CHECK RECEIVED AS THE REQUISITE FEE REQUIRED TO SCHEDULE AN EXAMINATION BY AN IMPARTIAL PHYSICIAN. ALL OTHER CHECKS WILL BE RETURNED.

1.11: CONTINUED

(B) IN A MULTIPLE INSURER CLAIM, ALL THE INDIVIDUAL APPEAL FORMS SHALL ACCOMPANY A CHECKPAYABLE TO THE DEPARTMENT WHICH IDENTIFIES ALL INSURERS AND STATES THE AMOUNT OF EACH CLAIM. ONE CHECKPAYABLE TO THE DEPARTMENT IN THE AMOUNT OF THE CLAIM SHALL BE APPENDED TO THE MULTIPLE APPEAL COVER SHEET WITH ALL INDIVIDUAL APPEAL FORMS. ALL APPEALS MUST BE FILED IN A TIMELY MANNER SHALL PERFECT ALL APPEALS.

(C) PURSUANT TO M.G.L. C. 152, § 11, THE PARTIES MAY AT THE DISCRETION OF THE ADMINISTRATIVE JUDGE, AGREE IN WRITING OR ON THE RECORD THAT AN IMPARTIAL PHYSICIAN IS NOT AVAILABLE. IF NO AGREEMENT HAS NOT BEEN REACHED AT CONFERENCE;

(D) IN ANY HEARING IN WHICH THE INSURER RAISES THE APPLICABILITY OF THE PROVISIONS OF M.G.L. C. 152, § 1(7A), GOVERNING COMBINATION INJURIES, THE INSURER SHALL STATE THE GROUNDS FOR RAISING SUCH DEFENSE ON THE RECORD OR IN WRITING, WITH AN AFFIDAVIT OF PROOF.

(2) UPON OPENING THE HEARING RECORD, THE PARTIES SHALL EXCHANGE HEARING MEMORANDA ON FORMS PRESCRIBED BY THE DEPARTMENT, AND THE ADMINISTRATIVE JUDGE SHALL SIGN THE RECORD, THE CLAIMS AND DEFENSES IN ISSUE IN THE DISPUTE.

(3) AT A HEARING, ANY TESTIMONY OF PARTIES AND WITNESSES BEFORE AN ADMINISTRATIVE JUDGE GIVEN UNDER OATH OR AFFIRMATION. WHERE THE ADMINISTRATIVE JUDGE FINDS THAT TESTIMONY GIVEN THROUGH ANY INTERPRETER, THE LATTER SHALL GIVE OATH TO INTERPRET FAITHFULLY.

(4) IN ALL HEARINGS BEFORE AN ADMINISTRATIVE JUDGE THE TESTIMONY OF WITNESSES SHALL BE GIVEN ORALLY OR BY DEPOSITION. UNLESS OTHERWISE PROVIDED BY M.G.L. C. 152, OR 452 CMR 1.12(5), THE ADMISSIBILITY OF EVIDENCE AND THE COMPETENCY OF WITNESSES TO TESTIFY AT A HEARING SHALL BE DETERMINED UNDER THE RULES OF EVIDENCE APPLIED IN THE COURTS OF THE COMMONWEALTH. THE DECISION OF THE ADMINISTRATIVE JUDGE SHALL BE BASED SOLELY ON THE EVIDENCE PRESENTED AT HEARING.

(5) AT A HEARING IN A CASE WHICH DOES NOT INVOLVE A DISPUTE OVER MEDICAL ISSUES UNDER 452 CMR 1.02, OR IN WHICH THE ADMINISTRATIVE JUDGE HAS MADE A FINDING UNDER M.G.L. C. 152, § 11A(2) THAT ADDITIONAL TESTIMONY IS REQUIRED DUE TO THE COMPLEXITY OF THE MEDICAL ISSUES INVOLVED OR THE INADEQUACY OF THE REPORT SUBMITTED BY THE IMPARTIAL MEDICAL EXAMINER, THE PARTIES MAY OFFER AS EVIDENCE MEDICAL REPORTS PREPARED BY PHYSICIANS ENGAGED BY SAID PARTIES WITH A STATEMENT OF SAID PHYSICIAN'S QUALIFICATIONS. THE ADMINISTRATIVE JUDGE SHALL ACCEPT THE MEDICAL REPORT AS IF THE PHYSICIAN SO TESTIFIED, PROVIDED THAT WHERE SPECIFIC MEDICAL CONTROVERSY, THE ADMINISTRATIVE JUDGE SHALL, ON MOTION BY A PARTY, STRIKE ANY PORTION OF THAT IS NOT BASED ON:

(A) THE EXPERT'S DIRECT PERSONAL KNOWLEDGE;

(B) EVIDENCE ALREADY IN THE RECORD; OR

(C) EVIDENCE WHICH THE PARTIES REPRESENT WILL BE PRESENTED DURING THE HEARING. PURSUANT TO 452 CMR 1.12(5), ANY PARTY MAY, FOR THE PURPOSE OF CROSS-EXAMINATION, CALL THE PHYSICIAN WHO PREPARED AN ADMITTED MEDICAL REPORT. AFTER SUCH CROSS-EXAMINATION, THE PARTIES MAY CONDUCT FURTHER EXAMINATION PURSUANT TO THE RULES OF EVIDENCE APPLIED IN THE COURTS OF THE COMMONWEALTH.

(6) THE ADMINISTRATIVE JUDGE SHALL PRESIDE OVER THE HEARING AND SHALL CONTROL THE HEARING. PARTIES, ATTORNEYS, AND WITNESSES. EACH PARTY AT A HEARING MAY GIVE A BRIEF OPENING STATEMENT, A CLOSING ARGUMENT, AND MAY SUBMIT BRIEFS, MOTIONS, REQUESTS FOR FINDINGS OF FACT AND FOR RULINGS OF LAW, WITHIN SUCH TIME AS THE ADMINISTRATIVE JUDGE MAY PERMIT. THE ADMINISTRATIVE JUDGE, AT HIS DISCRETION, MAY REQUIRE THE FILING OF BRIEFS IN SUCH TIME AS HE MAY DIRECT.

1.12: DISCOVERY AND DEPOSITIONS

(1) ON OR AFTER THE FILING OF ANY CLAIM, THE CLAIMANT MAY SERVE ON ANY OTHER PARTY A NOTICE TO BE PERMITTED TO ENTER UPON A DESIGNATED AREA OR AREAS OF THE EMPLOYER'S PREMISES FOR THE PURPOSE OF MEASURING, SURVEYING, PHOTOGRAPHING, TESTING, SAMPLING, OR INSPECTING ANY DOCUMENT, RECORD, OR SUBSTANCE THEREON.

1.12: CONTINUED

(2) ON OR AFTER THE FILING OF ANY CLAIM OR COMPLAINT, ANY PARTY MAY SERVE ON EMPLOYER OR MEDICAL PROVIDER RENDERING TREATMENT TO THE CLAIMANT, A REQUEST PERMIT THE PARTY MAKING THE REQUEST TO INSPECT AND COPY, ANY MEDICAL NOTES, TREATMENT RECORDS, EMPLOYMENT RECORDS TO INCLUDE BUT NOT BE LIMITED TO RECORD OF WAGES EARNED AT THE ALLEGED INJURY.

(3) ANY REQUEST SUBMITTED UNDER 452 CMR 1.12(1) OR (2) SHALL SET FORTH THE ITEM OR ITEMS TO BE INSPECTED, AND DESCRIBE EACH ITEM OR CATEGORY WITH REASONABLE PARTICULARITY. THE REQUEST SHALL BE ACCOMPANIED BY A STATEMENT PROVIDING THE RELEVANCE OF THE REQUEST TO THE INSTANT CASE. THE REQUEST SHALL SPECIFY A REASONABLE TIME, PLACE, AND MANNER OF INSPECTION AND PERFORMING THE RELATED ACTS. THE PARTY ON WHOM THE REQUEST IS MADE SHALL RESPOND IN WRITING WITHIN 20 CALENDAR DAYS AFTER SERVICE OF THE REQUEST. THE REQUESTOR SHALL STATE WITH RESPECT TO EACH ITEM OR CATEGORY, THAT INSPECTION AND RELATED ACTIVITIES REQUESTED, UNLESS THE REQUEST IS OBJECTED TO, IN WHICH EVENT THE REASONS FOR OBJECTION SHALL BE STATED.

(4) ON WRITTEN MOTION OF A PARTY, THE ADMINISTRATIVE JUDGE TO WHOM THE CASE HAS BEEN REFERRED MAY REQUIRE, BY THE ISSUANCE OF ANY ORDER, COMPLIANCE WITH ANY REQUEST FOR DISCOVERY. FAILURE TO COMPLY WITH ANY REQUEST SUBMITTED UNDER 452 CMR 1.12(1) OR (2). FAILURE TO COMPLY WITH SAID ORDER OF GOOD CAUSE MAY RESULT IN ASSESSMENT OF COSTS OR PENALTIES PURSUANT TO M.G.L. C. 152, § 11A(2).

ANY MOTION RELATING TO DISCOVERY MUST BE SERVED UPON COUNSEL FOR THE OPPOSING PARTY AND THE ADMINISTRATIVE JUDGE. THE PARTY RECEIVING THE MOTION SHALL, WITHIN TEN DAYS AFTER SERVICE OF THE MOTION, COMPLY WITH THE DISCOVERY SOUGHT BY MOTION OR PROVIDE A WRITTEN RESPONSE TO THE MOTION WITH SPECIFICITY TO THE OTHER PARTY AND THE ADMINISTRATIVE JUDGE. A HEARING ON THE MOTION MAY BE REQUIRED AT THE DISCRETION OF THE ADMINISTRATIVE JUDGE. THE ADMINISTRATIVE JUDGE MAY GRANT OR DENY THE MOTION UPON THE MOTION WITHOUT HEARING.

(5) AT A HEARING IN WHICH THE CASE DOES NOT INVOLVE A DISPUTE OVER MEDICAL ISSUES, OR UNDER 452 CMR 1.02, OR IN WHICH THE ADMINISTRATIVE JUDGE HAS MADE A FINDING UNDER M.G.L. C. 152, § 11A(2) THAT ADDITIONAL TESTIMONY IS REQUIRED DUE TO THE COMPLEXITY OF THE ISSUES INVOLVED OR THE INADEQUACY OF THE REPORT SUBMITTED BY THE IMPARTIAL MEDICAL PROVIDER, THE ADMINISTRATIVE JUDGE MAY AUTHORIZE THE TAKING OF TESTIMONY OF MEDICAL WITNESSES. AN ADMINISTRATIVE JUDGE SHALL AUTHORIZE THE TESTIMONY BY DEPOSITION OF THE IMPARTIAL PHYSICIAN IF THE IMPARTIAL PHYSICIAN'S TESTIMONY MAY NOT BE TAKEN PRIOR TO THE FIRST SCHEDULED HEARING DATE UNDER § 11 OR § 11A(2) HEARING DATE AS APPLICABLE UNLESS AUTHORIZED BY THE ADMINISTRATIVE JUDGE'S AUTHORIZATION OF A PRE-HEARING IMPARTIAL PHYSICIAN DEPOSITION. IN ADDITION TO THE IMPARTIAL PHYSICIAN'S DEPOSITION, AN ADMINISTRATIVE JUDGE MAY AUTHORIZE THE SUBMISSION OF MEDICAL TESTIMONY BY DEPOSITION ON MOTION BY A PARTY OR BY THE ADMINISTRATIVE JUDGE'S OWN INITIATIVE. THE REQUIRED FINDING ON MEDICAL COMPLEXITY AND/OR INADEQUACY OF THE IMPARTIAL PHYSICIAN'S REPORT MAY BE MADE BY THE ADMINISTRATIVE JUDGE PRIOR TO THE FIRST SCHEDULED HEARING DATE UNDER M.G.L. C. 152, § 11 OR § 11A(2) HEARING DATE AS APPLICABLE. AFTER RECEIPT OF THE IMPARTIAL PHYSICIAN'S REPORT, UPON WRITTEN REQUEST OF A PARTY, THE ADMINISTRATIVE JUDGE MAY AUTHORIZE ADDITIONAL MEDICAL TESTIMONY DUE TO INADEQUACY OF THE REPORT OR THE COMPLEXITY OF THE ISSUES INVOLVED.

(A) THE ADMINISTRATIVE JUDGE'S AUTHORIZATION OF ADDITIONAL MEDICAL TESTIMONY SHALL BE IN THE FORM OF A WRITTEN FINDING THAT SUCH TESTIMONY IS REQUIRED DUE TO THE COMPLEXITY OF THE ISSUES INVOLVED OR THE INADEQUACY OF THE REPORT OF THE IMPARTIAL PHYSICIAN. ADDITIONAL MEDICAL TESTIMONY MAY ONLY BE AUTHORIZED PURSUANT TO 452 CMR 1.00.

(B) NOTICE OF THE DATE, TIME, AND PLACE OF THE DEPOSITION SHALL BE PROVIDED TO ALL PARTIES IN WRITING WITH A CERTIFICATE OF SERVICE NOT LESS THAN SEVEN CALENDAR DAYS BEFORE THE DEPOSITION. THE DEPOSITION SHALL BE TAKEN FOR USE AS MEDICAL EVIDENCE ONLY. TESTIMONY OF AN IMPARTIAL PHYSICIAN MAY EXCEED THREE HOURS WITHOUT THE AGREEMENT OF THE PARTY INCLUDING THE PHYSICIAN, OR UNLESS AUTHORIZED IN WRITING BY THE ADMINISTRATIVE JUDGE ON MOTION BY A PARTY. ALL DEPOSITIONS SHALL BE SUBMITTED AT THE TIME REQUESTED BY THE ADMINISTRATIVE JUDGE BUT NO MORE THAN 60 CALENDAR DAYS FROM THE CLOSE OF THE HEARING PROVIDED THAT A PARTY MAY MOTION THE ADMINISTRATIVE JUDGE FOR AN EXTENSION OF TIME OF MORE THAN 30 CALENDAR DAYS. ANY EXTENSION SHALL BE AUTHORIZED IN WRITING BY THE ADMINISTRATIVE JUDGE ON MOTION BY A PARTY.

1.12: CONTINUED

(C) WHERE AN IMPARTIAL MEDICAL EXAMINER WHO HAS SUBMITTED HIS OR HER REPORT IS UNAVAILABLE, OR MAKES HIM OR HERSELF UNAVAILABLE FOR DEPOSITION, EITHER BY MOTION SEEKING A RULING THAT THE IMPARTIAL MEDICAL EXAMINER IS UNAVAILABLE OR BY THE PARTIES OTHERWISE AGREE, A RULING OF UNAVAILABILITY RESULTING FROM REASONS SPECIFIED IN M.G.L. C. 152, § 20B, SHALL RESULT IN THE STRIKING FROM THE RECORD OF THE IMPARTIAL MEDICAL EXAMINER'S REPORT, AND A REQUIRED RULING OF INADEQUACY OF THE REPORT SHALL REQUIRE THE PARTIES TO SUBMIT ADDITIONAL MEDICAL TESTIMONY. UPON SUCH A RULING, THE ADMINISTRATIVE JUDGE SHALL ALLOW A REASONABLE EXTENSION OF TIME FOR SUBMISSION OF SUCH ADDITIONAL MEDICAL EVIDENCE, NOT TO EXCEED 45 DAYS.

(6) MEDICAL WITNESSES SHALL BE INFORMED, BEFORE THE TAKING OF THEIR TESTIMONY, OF THEIR RIGHT TO READ AND SIGN A TRANSCRIPTION OF THEIR TESTIMONY, OR OF THEIR RIGHT TO REFUSE TO READ AND SIGNING. ALL OBJECTIONS TO QUESTIONS AND ALL MOTIONS RELEVANT TO THE MATTER SET FORTH WITH PARTICULARITY, AND WITH THE REASONS IN SUPPORT THEREOF, AND NO MOTION SHALL BE REQUIRED TO RULE ON ANY OBJECTION OR MOTION UNLESS SUCH REASONS OR MOTIONS ARE MADE.

(7) AN ATTORNEY FOR ANY PARTY MAY SERVE A SUBPOENA, ISSUED BY A NOTARY PUBLIC OR A JUSTICE OF THE PEACE, STATING THE TITLE OF THE ACTION, NAME OF THE ADMINISTRATIVE JUDGE OR SENIOR JUDGE IF AN ADMINISTRATIVE JUDGE HAS NOT BEEN ASSIGNED, AND SHALL COMPLY WITH THE RULES TO WHOM IT IS DIRECTED TO ATTEND AND GIVE TESTIMONY OR PRODUCE DOCUMENTS AS SPECIFIED THEREIN. THE NOTARY PUBLIC, CONSTABLE OR JUSTICE OF THE PEACE SHALL FILL IN THE SUBPOENA OR A SUBPOENA FOR THE PRODUCTION OF DOCUMENTARY EVIDENCE, SIGNED BY THE PARTY REQUESTING IT, WHO SHALL FILL IT IN BEFORE SERVICE. A SUBPOENA MAY ALSO COMPLY WITH THE RULES TO WHOM IT IS DIRECTED TO PRODUCE BOOKS, PAPERS, DOCUMENTS OR TANGIBLE THINGS DOCUMENTS BUT THE ADMINISTRATIVE JUDGE, UPON MOTION AT OR BEFORE THE TIME SPECIFIED IN THE SUBPOENA IN COMPLIANCE THEREIN, MAY:

- (A) QUASH OR MODIFY THE SUBPOENA IF IT IS UNREASONABLY OPPRESSIVE; OR BEYOND THE SCOPE OF DISCOVERY OR SEEKS DOCUMENTS PROTECTED BY PRIVILEGE; OR
- (B) CONDITION DENIAL OF THE MOTION UPON THE ADVANCEMENT OF THE PERSON IN WHOM THE SUBPOENA IS ISSUED OF THE REASONABLE COST FOR PRODUCING THE BOOKS, PAPERS, DOCUMENTS OR TANGIBLE THINGS.

NOTICE OF THE SUBPOENA MUST BE GIVEN TO COUNSEL FOR EACH PARTY TO THE ACTION AT LEAST 10 BUSINESS DAYS PRIOR TO SERVICE. AT THE OPTION OF THE PARTY, A SUBPOENA COMPLYING WITH THE RULES FOR PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE THINGS MAY INCLUDE A PROVISION SPECIFYING THE CONVENIENCE OF THE WITNESS AND APPEARANCE AT THE PROCEEDING, THE REQUESTED DOCUMENTS OR OTHER TANGIBLE THINGS MAY BE PROVIDED AT A DATE, TIME AND PLACE SPECIFIED IN THE SUBPOENA. ANY PARTY REQUESTING DOCUMENTS OR OTHER TANGIBLE THINGS IN RESPONSE TO A SUBPOENA SHALL PROVIDE A COPY OF THE RESPONSE TO ALL PARTIES TO THE ACTION PRIOR TO COMMENCEMENT OF THE PROCEEDING. DOCUMENTS OBTAINED BY SUBPOENA NOT IN COMPLIANCE WITH THIS REGULATION SHALL NOT BE ADMITTED IN ANY PROCEEDING EXCEPT BY AGREEMENT OF THE PARTIES, OR AS ALLOWED BY THE ADMINISTRATIVE JUDGE FOR JUST CAUSE. FAILURE TO COMPLY WITH 452 CMR 1.12(7) MAY SUBJECT THE ATTORNEY TO THE PROVISIONS OF M.G.L. C. 152, § 14.

1.13: MEDICAL REPORTS AND RECORDS

PURSUANT TO M.G.L. C. 152, § 30A, ON THE WRITTEN REQUEST OF A PARTY, THE DEPARTMENT SHALL, UPON RECEIPT OF RECORDS KEPT OR COMPILED UNDER M.G.L. C. 111, § 119, CAUSE THEM TO BE IMPROUNDED UNDER SEAL APART FROM THE MAIN FILE, TO BE USED ONLY BY THE ADMINISTRATIVE JUDGE OR BOARD IN CONNECTION WITH A PROCEEDING UNDER M.G.L. C. 152. WHERE SUCH RECORDS ARE USED AS EVIDENCE IN ANY PROCEEDING, THEY SHALL BE INCORPORATED IN THE REPORT BY REFERENCE TO THE EVENT OF CERTIFICATION UNDER M.G.L. C. 152, § 12, SHALL BE CERTIFIED AND IMPOUNDED.

1.14: IMPARTIAL PHYSICIANS

(1) IF WITHIN TEN CALENDAR DAYS OF FILING THE APPEAL THE PARTIES HAVE NOT AGREED AND AN ADMINISTRATIVE JUDGE HAS NOT APPOINTED, A PHYSICIAN FROM THE IMPARTIAL PHYSICIAN UNIT SHALL EXAMINE THE EMPLOYEE, THE IMPARTIAL UNIT SHALL CHOOSE A PHYSICIAN AS DIRECTED BY THE ADMINISTRATIVE JUDGE.

1.14: CONTINUED

(2) ONCE THE IMPARTIAL PHYSICIAN HAS BEEN SELECTED OR APPOINTED, THE ADMINISTRATIVE JUDGE SHALL SUBMIT TO THE IMPARTIAL UNIT ALL APPROVED MEDICAL RECORDS, ANY HYPOTHETICAL QUESTIONS, AND STIPULATIONS OF FACT FOR TRANSMISSION TO THE IMPARTIAL PHYSICIAN. NO PARTY OR PARTIES SHALL INITIATE DIRECT OR INDIRECT COMMUNICATION WITH THE IMPARTIAL PHYSICIAN AND SHALL NOT SUBMIT ANY FORM OF DOCUMENTATION TO THE IMPARTIAL PHYSICIAN WITHOUT THE EXPRESS WRITTEN PERMISSION OF THE ADMINISTRATIVE JUDGE.

(A) THE IMPARTIAL PHYSICIAN MAY NOT COMMUNICATE WITH THE PARTIES UNLESS AUTHORIZED TO DO SO BY THE ADMINISTRATIVE JUDGE, EXCEPT THAT A PARTY WHO WISHES TO ENGAGE THE IMPARTIAL PHYSICIAN TO BE DEPOSED FOR THE PURPOSES OF CROSS EXAMINATION MAY CONTACT THE IMPARTIAL PHYSICIAN'S OFFICE FOR THE PURPOSE OF SCHEDULING A DEPOSITION.

(B) THE IMPARTIAL PHYSICIAN MAY CONTACT THE IMPARTIAL SCHEDULING UNIT TO REQUEST THE RECORDS AND REPORTS FROM PROVIDERS WHO HAVE TREATED THE EMPLOYEE PRIOR TO THE SELECTION OR APPOINTMENT OF THE IMPARTIAL PHYSICIAN. PROVIDERS OF DIAGNOSTIC AND TESTING SHALL SEND THESE RECORDS DIRECTLY TO THE IMPARTIAL PHYSICIAN UPON REQUEST OF THE IMPARTIAL PHYSICIAN OR OF THE IMPARTIAL UNIT. THE ADMINISTRATIVE JUDGE SHALL PROVIDE THE OPPORTUNITY TO REVIEW THE ADDITIONAL MEDICAL RECORDS, AND RULE ON ANY OBJECTIONS OF THE PARTIES TO SUBMISSION OF THE ADDITIONAL RECORDS TO THE IMPARTIAL PHYSICIAN.

(C) EXCEPT BY LEAVE OF THE ADMINISTRATIVE JUDGE, HYPOTHETICAL QUESTIONS TO THE IMPARTIAL PHYSICIAN MUST BE SUBMITTED TO THE ADMINISTRATIVE JUDGE WITHIN 14 DAYS OF THE ISSUANCE OF THE CONFERENCE ORDER.

(3) THE FILING FEE PAID PURSUANT TO M.G.L. C. § 11A(2) TO DEFRAY THE COST OF AN IMPARTIAL PHYSICIAN EXAMINATION IS \$650.00, WITH FURTHER PROVISION WHEN REQUIRED FOR A \$150.00 CANCELED APPOINTMENT FEE, AND A \$200.00 SUPPLEMENTAL REPORT FEE. THE FEE FOR DEPOSITION OF AN IMPARTIAL PHYSICIAN IS \$750.00 FOR UP TO TWO HOURS, AND \$150.00 FOR EACH HOUR THEREAFTER. THE FEE FOR A REVIEW OF THE RECORDS AND REPORT, WITHOUT EXAMINATION IS \$300.00. AN APPEAL OF A CONFERENCE ORDER WILL BE REJECTED IF A FEE IN THE AFORESAID AMOUNT IS NOT FILED WITHIN TEN DAYS OF THE FILING OF THE PARTY'S APPEAL.

(4) AN IMPARTIAL PHYSICIAN MAY REQUEST INCREASED IMPARTIAL FEES. THE REQUEST FOR INCREASED FEES SHALL BE ALLOWED IF AGREED TO BY THE PARTIES, OR THE ADMINISTRATIVE JUDGE MAY GRANT INCREASED FEES WHERE EXTRAORDINARY TIME AND EFFORT IS REQUIRED BASED ON THE COMPLEXITY OF THE MATTER OR VOLUMINOUS MEDICAL RECORD SUBMISSIONS OR OTHER JUSTIFICATION WARRANTING INCREASED COMPENSATION.

(5) FILING FEES POSTED ON BEHALF OF AN INDIGENT CLAIMANT BY THE DEPARTMENT TO DEFEND AN IMPARTIAL EXAMINATION UNDER M.G.L. C. 152, § 11A(2) SHALL BE REIMBURSED TO THE CLAIMANT BY THE INSURER IF THE CLAIMANT PREVAILS AT THE HEARING.

(6) THE FILING FEE PAID PURSUANT TO M.G.L. C. 152, § 11A(2) SHALL BE REIMBURSED TO THE DEPARTMENT TO EACH APPELLANT IF THE PARTIES HAVE AGREED PURSUANT TO 452 CMR 1.00 THAT AN IMPARTIAL PHYSICIAN IS NOT REQUIRED OR THE MATTER IS RESOLVED BY THE PARTIES PRIOR TO AN IMPARTIAL EXAMINATION. ANY FEE REQUIRED TO BE PAID TO AN IMPARTIAL PHYSICIAN FOR A SCHEDULED IMPARTIAL EXAMINATION SHALL BE DEDUCTED EQUALLY FROM EACH APPELLANT'S FILING FEE.

(7) A PARTY REQUESTING THE APPOINTMENT OF AN IMPARTIAL PHYSICIAN BY THE SENIOR ADMINISTRATIVE JUDGE UNDER THE PROVISIONS OF M.G.L. C. 152, §8(4) SHALL BE RESPONSIBLE FOR PAYMENT TO THE IMPARTIAL PHYSICIAN FOR THE PROCUREMENT OF A REPORT IN AN AMOUNT CONSISTENT WITH CRITERIA DEVELOPED BY THE SERVICES BOARD PURSUANT TO M.G.L. C. 152, §13.

(8) ANY PAYMENT MADE BY A PARTY TO AN IMPARTIAL PHYSICIAN APPOINTED BY THE SENIOR ADMINISTRATIVE JUDGE UNDER THE PROVISIONS OF THE SECOND PARAGRAPH OF M.G.L. C. 152, § 8(4) SHALL BE REIMBURSED TO THE INSURER IF THE REPORT DETERMINES THAT THE PARTICULAR COURSE OF MEDICAL TREATMENT WAS APPROPRIATE.

(9) PARTIES PRECLUDED BY 452 CMR 1.00 FROM PROCURING THE APPOINTMENT OF AN IMPARTIAL PHYSICIAN EXAMINER UNDER M.G.L. C. 152, § 11A(2) MAY, BY AGREEMENT, PETITION THE ADMINISTRATIVE JUDGE HAVING JURISDICTION OVER THE CASE FOR THE APPOINTMENT OF A IMPARTIAL PHYSICIAN. IF GRANTED, SAID IMPARTIAL PHYSICIAN SHALL BE PAID AN AMOUNT CONSISTENT WITH THE FILING FEE IN § 11A(3) BY, OR AMONGST, ANY OF THE REQUESTING PARTIES.

1.15: REVIEWING BOARD

(1) NOTICE OF APPEAL. ANY APPEAL FROM A DECISION OF AN ADMINISTRATIVE JUDGE MUST BE FILED WITH THE DEPARTMENT ON THE FORM PRESCRIBED BY THE DEPARTMENT NOT LATER THAN 30 DAYS FROM THE DATE OF THE DECISION, UNLESS A LATE APPEAL IS PERMITTED BY THE DIRECTOR AS PROVIDED IN M.G.L. C.152, § 11C. A COPY OF THE APPEAL SHALL BE SERVED BY MAIL OR IN HAND ON COUNSEL FOR THE APPELLANT AND ON EACH UNREPRESENTED PARTY.

(2) FILING FEE. THE FILING FEE OR A REQUEST FOR ITS WAIVER SHALL BE SUBMITTED TO THE DEPARTMENT WITH THE NOTICE OF APPEAL. THE FILING FEE PRESCRIBED BY M.G.L. C. 152, § 11C SHALL BE ONE PERCENT OF THE AVERAGE WEEKLY WAGE IN THE COMMONWEALTH AT THE TIME OF PAYMENT. AN APPELLANT MAY REQUEST A WAIVER OF THE FILING FEE BASED ON INDIGENCE SHALL BE FILED ON A FORM PRESCRIBED BY THE DEPARTMENT.

(3) REVIEWING BOARD. AN ADMINISTRATIVE LAW JUDGE MAY REQUIRE COUNSEL OR AN APPELLANT TO APPEAR FOR A CONFERENCE TO CONSIDER WAIVER OF THE FILING FEE, SIMPLIFICATION OF THE APPEAL, WHETHER ORAL ARGUMENT WILL BE HELD, AND ANY OTHER MATTERS THAT MAY ARISE IN CONNECTION WITH THE APPEAL.

(4) BRIEFS. UNLESS OTHERWISE ORDERED BY THE REVIEWING BOARD, A BRIEF SHALL BE FILED BY THE APPELLANT IN ALL CASES IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(A) CONTENT. THE BRIEF OF THE APPELLANT SHALL CONTAIN UNDER APPROPRIATE HEADINGS THE FOLLOWING INFORMATION IN THE ORDER HERE INDICATED:

1. A STATEMENT OF THE ISSUES PRESENTED FOR REVIEW; STATED WITH PARTICULARITY THAT THE DECISION ON REVIEW IS BEYOND THE SCOPE OF THE ADMINISTRATIVE JUDGE'S AUTHORITY, IS ARBITRARY OR CAPRICIOUS, OR CONTRARY TO LAW, WITHOUT MORE, SHALL NOT CONSTITUTE A BASIS FOR REVIEW;
2. A STATEMENT OF THE CASE, WHICH SHALL FIRST INDICATE BRIEFLY THE NATURE AND COURSE OF PROCEEDINGS AND ITS DISPOSITION FOLLOWING CONFERENCE AND HEARING, FOLLOWED BY A BRIEF STATEMENT OF THE FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW, WITH APPROPRIATE REFERENCES TO THE RECORD;
3. THE ARGUMENT, WHICH SHALL CONTAIN THE CONTENTION OF THE APPELLANT WITH RESPECT TO THE ISSUES PRESENTED, SUPPORTING RATIONALE AND CITATIONS TO THE AUTHORITIES, STATUTES, REGULATIONS AND PARTS OF THE RECORD ON WHICH THE PARTY RELIES. THE REVIEWING BOARD SHALL NOT DECIDE QUESTIONS OR ISSUES NOT ARGUED IN THE BRIEF. IF ORAL ARGUMENT IS HELD, NOTHING ARGUED IN THE BRIEF SHALL BE DEEMED TO BE WAIVED BY A FAILURE TO ARGUE ORALLY;
4. A SHORT CONCLUSION STATING THE PRECISE RELIEF SOUGHT; AND
5. THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF COUNSEL AND THEIR FIRM.

(B) LENGTH AND FORM OF BRIEFS. ALL BRIEFS AND APPENDICES SHALL BE PRODUCED IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

1. EXCEPT BY PERMISSION OF AN ADMINISTRATIVE LAW JUDGE, BRIEFS SHALL NOT EXCEED 20 PAGES, EXCLUSIVE OF PAGES AS MAY CONTAIN A TABLE OF CONTENTS, TABLES OF CONTENTS, OR AN ADDENDUM CONTAINING STATUTES, RULES OR REGULATIONS. PERMISSION SHALL BE GRANTED UNLESS THE MOVING PARTY SPECIFIES THE RELEVANT ISSUE OR ISSUES AND WHY SUCH PERMISSION IS NECESSARY FOR ADDITIONAL PAGES.
2. ALL BRIEFS AND APPENDICES SHALL BE PRODUCED BY ANY DUPLICATING OR COPYING METHOD THAT PRODUCES A CLEAR BLACK IMAGE ON WHITE PAPER, WHICH SHALL BE EIGHT AND ONE EIGHTH INCHES IN WIDTH AND ELEVEN INCHES IN HEIGHT. THE TOP, BOTTOM, LEFT AND RIGHT MARGINS SHALL BE AT LEAST ONE INCH. THE TYPEFACE SHALL BE 12 POINT COURIER FONT OR LARGER, WITH NO CHARACTER EXCEEDING 10.5 CHARACTERS PER INCH. TEXT SHALL BE DOUBLE-SPACED, EXCEPT FOR HEADINGS, FOOTNOTES AND INDENTED QUOTATIONS SHALL BE SINGLE-SPACED. THE NUMBERED PAGES OF TEXT SHALL NOT EXCEED 20 PAGES, BUT THE NUMBERED PAGES OF TEXT SHALL NOT EXCEED 20 PAGES. THE NUMBERED PAGES OF TEXT SHALL NOT EXCEED 20 PAGES.
3. ON BEHALF OF THE REVIEWING BOARD, AN ADMINISTRATIVE LAW JUDGE MAY REQUIRE THE APPELLANT TO FILE BRIEFS WHICH ARE NOT IN SUBSTANTIAL COMPLIANCE WITH 452 CMR 1.00.

(C) STATUTORY PROVISIONS. IF DETERMINATION OF THE ISSUES PRESENTED REQUIRES REFERENCE TO STATUTORY PROVISIONS, RULES OR REGULATIONS, OR WHEN AN APPEAL INVOLVES REQUESTS FOR AMENDMENTS TO M.G.L. C. 152, THE PARTIES SHALL REPRODUCE ALL RELEVANT SECTIONS OF THE ACT AND ANY LATER AMENDMENTS, INCLUDING ALL PROVISIONS REGARDING APPLICABILITY DATES.

(D) CITATIONS. REFERENCES TO DECISIONS AND OTHER AUTHORITIES SHALL INCLUDE, IN ADDITION TO THE PAGE AT WHICH THE DECISION OR SECTION BEGINS, A PAGE REFERENCE TO THE PART OF THE DECISION TO WHICH RELIANCE IS PLACED, AND THE YEAR OF THE DECISION OR OTHER AUTHORITY.

1.15: CONTINUED

(E) Amicus Curiae. ANamicus curiae SHALL NOTIFY THE REVIEWING BOARD OF ITS INTENT TO FILE A BRIEF.

(F) RESPONSE BRIEFS. THE BRIEF OF THE APPELLEE, ~~CROSS-APPELLANT~~ SHALL CONFORM TO 452 CMR 1.15(4)(A) AND (B) WITH THE EXCEPTION THAT A STATEMENT OF INTENT NOT BE MADE UNLESS THE APPELLEE OR IS DISSATISFIED WITH THE STATEMENT OF INTENT OF THE APPELLANT.

(G) DESIGNATION OF PARTIES. IN THEIR BRIEFS AND ORAL ARGUMENTS, COUNSEL SHALL DESIGNATE THE PARTIES AS DESIGNATED BY THE ADMINISTRATIVE JUDGE IN THE DECISION, SUCH AS "THE CLAIMANT," "THE EMPLOYER," AND "THE INSURER" AND SHOULD KEEP TO A MINIMUM, DESIGNATE THE PARTIES BY SUCH DESIGNATIONS AS "APPELLANT" AND "APPELLEE".

(H) TIME FOR FILING. APPELLANT SHALL FILE ITS BRIEF 30 DAYS AFTER RECEIPT OF NOTICE FROM THE REVIEWING BOARD THAT IT IS DUE. THE APPELLEE, ~~CROSS-APPELLANT~~ SHALL FILE ITS BRIEF WITHIN 20 DAYS OF RECEIPT OF THE APPELLANT'S BRIEF. A REPLY BRIEF MAY BE FILED BY THE APPELLANT 20 DAYS THEREAFTER. NO FURTHER BRIEFS SHALL BE FILED WITHOUT LEAVE OF THE REVIEWING BOARD. WHEN THERE ARE CROSS-APPEALS, THE PARTY THAT FILES ITS APPEAL FIRST SHALL BE THE APPELLANT FOR THE PURPOSE OF COMPLYING WITH THE TIME REQUIREMENTS FOR THE APPEAL.

(I) EXTENSION OF TIME. A REQUEST FOR AN EXTENSION OF TIME TO FILE A BRIEF SHALL BE MADE IN WRITING WITH THE REVIEWING BOARD AND SHALL STATE THE LENGTH OF EXTENSION REQUESTED AND A SPECIFIC REASON FOR THE REQUEST.

(J) COPIES OF BRIEFS. THE ORIGINAL AND FOUR COPIES OF EACH BRIEF SHALL BE FILED WITH THE REVIEWING BOARD UNLESS THE REVIEWING BOARD BY ORDER SHALL DIRECT A DIFFERENT NUMBER TO BE FILED. ONE COPY SHALL BE SERVED BY MAIL OR IN HAND ON COUNSEL FOR EACH PARTY AND ONE UNREPRESENTED PARTY.

(5) DISMISSAL OF APPEAL. THE REVIEWING BOARD MAY DISMISS AN APPEAL OR CROSS-APPEAL FOR THE FOLLOWING REASONS:

(A) FAILURE OF THE APPELLANT, WITHOUT GOOD CAUSE, TO FILE A BRIEF, UNLESS FILING IS FORWARDED BY THE REVIEWING BOARD;

(B) FAILURE OF THE APPELLANT OR CROSS-APPELLANT TO SUBMIT A FILING FEE OR A FILING STATEMENT;

(C) FAILURE OF THE APPELLANT OR CROSS-APPELLANT TO APPEAR AT ORAL ARGUMENT UNLESS FORWARDED BY THE REVIEWING BOARD.

(6) ORAL ARGUMENT. IF IT ELECTS TO HEAR ORAL ARGUMENT, THE REVIEWING BOARD SHALL NOTIFY THE PARTIES AND ANY AMICUS CURIAE OF THE TIME AND PLACE OF HEARING. A REQUEST FOR ORAL ARGUMENT SHALL BE MADE BY MOTION FILED REASONABLY IN ADVANCE OF THE DATE OF HEARING. THE APPELLANT SHALL ARGUE FIRST. EACH PARTY SHALL BE ALLOWED 15 MINUTES FOR AN ORAL ARGUMENT. TIME IS EXTENDED OR LIMITED BY THE REVIEWING BOARD. IN ADVANCE OF ORAL ARGUMENT, A PARTY MAY REQUEST ADDITIONAL TIME, WHICH WILL BE GRANTED ONLY UNDER UNUSUAL CIRCUMSTANCES.

(7) WITHDRAWAL OF APPEAL. THE PARTIES TO ANY CASE PENDING BEFORE THE REVIEWING BOARD SHALL NOTIFY THE REVIEWING BOARD IN WRITING OF ANY SETTLEMENT, WITHDRAWAL OF APPEAL, OR OTHER DISPOSITION.

1.16: COPIES OF ORDERS, DECISIONS, AND MEMORANDA OF AGREEMENTS

A REQUEST FOR A CERTIFIED COPY OF AN ORDER OR DECISION OF AN ADMINISTRATIVE JUDGE OR THE REVIEWING BOARD, OR A MEMORANDUM OF AGREEMENT, AND ALL PAPERS IN CONNECTION THEREWITH, REQUIRED BY M.G.L. C. 152, § 12, SHALL BE ACCOMPANIED BY A PAYMENT OF NO LESS THAN \$10.00. IF THE ACTUAL COST OF COPYING SAID DOCUMENTS EXCEEDS \$10.00, THE PARTY REQUESTING THE COPY SHALL BE BILLED FOR THE ADDITIONAL COST AND SHALL REMIT THE ADDITIONAL CHARGE.

1.17: Ex Parte COMMUNICATIONS

NO PARTY OR REPRESENTATIVE OF A PARTY INVOLVED IN A PROCEEDING BEFORE AN ADMINISTRATIVE JUDGE OR REVIEWING BOARD SHALL SUBMIT TO THE ADMINISTRATIVE JUDGE OR REVIEWING BOARD INFORMATION, EVIDENCE, ARGUMENT, OR ADVICE, WHETHER WRITTEN OR ORAL, REGARDING THE PROCEEDING IN SUCH PROCEEDING UNLESS SUCH SUBMISSION IS PART OF THE RECORD OR MADE IN THE PRESENCE OF ALL PARTIES. WHEN A PARTY TO A PROCEEDING SUBMITS A LETTER OR ANY WRITING TO AN ADMINISTRATIVE JUDGE OR THE REVIEWING BOARD, A COPY SHALL BE SERVED BY MAIL OR IN HAND ON COUNSEL FOR EACH PARTY OR DIRECTLY ON EACH OTHER PARTY IF NOT REPRESENTED.

1.18: PRACTICE BEFORE THE DEPARTMENT

- (1) ANY ATTORNEY ADMITTED TO PRACTICE BEFORE THE COURTS OF THE COMMONWEALTH MAY APPEAR BEFORE THE DEPARTMENT.
- (2) IN ANY PROCEEDING BEFORE THE DEPARTMENT, ANY PERSON NOT ADMITTED TO PRACTICE BEFORE THE COURTS OF THE COMMONWEALTH MAY APPEAR AND ACT FOR HIMSELF, OR FOR A PARTNER, OR FOR A MEMBER, OR FOR A CORPORATION OF WHICH HE IS AN OFFICER, OR FOR ANYBODY FOR WHOM HE HAS WRITTEN AUTHORIZATION TO REPRESENT ON FILE WITH THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT.
- (3) AN ATTORNEY, OR OTHER AUTHORIZED REPRESENTATIVE MAY, WITHOUT LEAVE, WITHDRAW FROM REPRESENTATION BY FILING A WRITTEN NOTICE OF WITHDRAWAL, WITH COPIES TO ALL PARTIES, IF THE NOTICE IS ACCOMPANIED BY THE APPEARANCE OF A SUCCESSOR REPRESENTATIVE. UNDER UNUSUAL CIRCUMSTANCES, LEAVE OF THE ADMINISTRATIVE JUDGE, OR ADMINISTRATIVE LAW JUDGE, IN CONNECTION WITH AN OVER AN ACTIVE PROCEEDING MUST BE OBTAINED. IN CASES WHERE NO JUDGE HAS ACCEPTED LEAVE MUST BE OBTAINED FROM THE OFFICE OF THE SENIOR JUDGE.
- (4) WHENEVER AN ATTORNEY APPEARS AT A PROCEEDING, WHO:
 - (A) IS NOT THE ATTORNEY OF RECORD; OR
 - (B) IS NOT AN ATTORNEY WHO, PURSUANT TO HIS OR HER REGISTRATION WITH THE BOARD OF OVERSEERS, SHARES THE SAME BUSINESS/PROFESSIONAL ADDRESS AS THE PRESENT ATTORNEY OF RECORD. THE ATTORNEY MUST FILE A WRITTEN NOTICE OF APPEARANCE ON A FORM PRESCRIBED BY THE DEPARTMENT PRIOR TO ADDRESSING THE BOARD IN THE PROCEEDING. WHERE MORE THAN ONE ATTORNEY APPEARS FOR A PARTY, ALL NOTICES WILL BE SENT TO THE ATTORNEY WHO MOST RECENTLY APPEARED. IN ALL CASES, ANY ATTORNEY OR QUALIFIED REPRESENTATIVE SO APPEARING, IS REPRESENTING THE PARTY THAT SHE OR HE POSSESSES FULL AUTHORITY TO HANDLE ANY AND ALL ASPECTS OF THE PROCEEDING PENDING AT THE DEPARTMENT.

1.19: PAYMENT OF ATTORNEYS FEES

- (1) WHERE AN ATTORNEY'S FEE IS PAID BY THE INSURER PURSUANT TO M.G.L. C.152, § 13A, THAT SHALL BE THE ONLY FEE PERMITTED AND NO ADDITIONAL FEE SHALL BE CHARGED BY THE ATTORNEY. WHEN THE EMPLOYEE'S ATTORNEY AND THE INSURER AGREE ON A FEE AND EXPENSES, SUCH AGREEMENT SHALL BE DEEMED TO BE APPROVED BY THE ADMINISTRATIVE JUDGE OR REVIEWING BOARD. WHEN THE EMPLOYEE'S ATTORNEY AND THE INSURER ARE UNABLE TO AGREE, THE ADMINISTRATIVE JUDGE OR REVIEWING BOARD TO WHOM THE CASE WAS ASSIGNED SHALL DETERMINE THE APPROPRIATE FEE PURSUANT TO M.G.L. C. 152, § 13A.
- (2) AN EMPLOYEE AND HIS OR HER ATTORNEY MAY AGREE ON A RETAINER, BUT ONLY TO COVER REASONABLE AND NECESSARY AND REASONABLE EXPENSES AND DISBURSEMENTS RELATED TO HIS REPRESENTATION. AN ATTORNEY ENTITLED TO A FEE PAID BY THE INSURER UNDER M.G.L. C. 152, § 13A, SHALL FILE WITH THE ADMINISTRATIVE JUDGE OR REVIEWING BOARD WITH AN ITEMIZATION OF ANY NECESSARY EXPENSES AND DISBURSEMENTS RELATED TO HIS SERVICES, INCLUDING EXPENSES AND DISBURSEMENTS PAID BY THE EMPLOYEE. THE INSURER SHALL REIMBURSE THE EMPLOYEE FOR ANY SUCH EXPENSES AND DISBURSEMENTS APPROVED BY THE ADMINISTRATIVE JUDGE OR THE REVIEWING BOARD.
- (3) WHEN AN INSURER, AT LEAST TWO DAYS BEFORE A CONFERENCE, OR AT LEAST FIVE DAYS BEFORE A HEARING, SERVES ON A CLAIMANT OR PERSON RECEIVING COMPENSATION OR THE REPRESENTATIVE OF SUCH PERSON A WRITTEN OFFER TO PAY WEEKLY COMPENSATION OR COMPENSATION UNDER M.G.L. C. 152, § 36, AND SUCH OFFER IS NOT ACCEPTED, THE INSURER SHALL NOT BE REQUIRED TO PAY WEEKLY COMPENSATION UNDER M.G.L. C. 152, § 13A, FOR SUCH CONFERENCE OR HEARING, UNLESS THE ORDER OR DECISION OF THE ADMINISTRATIVE JUDGE OR REVIEWING BOARD DIRECTS A PAYMENT OF SAID WEEKLY OR OTHER COMPENSATION IN EXCESS OF THAT OFFER. IF THE ORDER OR DECISION DIRECTS A PAYMENT OF SAID WEEKLY OR OTHER COMPENSATION IN EXCESS OF THAT OFFER, THE INSURER MAY BE TO PAY WEEKLY COMPENSATION IN AN AMOUNT LESS THAN THE AMOUNT BEING OFFERED BY THE OFFER IS TENDERED PROVIDED THAT, IF THE COMPENSATION IS BEING PAID PURSUANT TO M.G.L. C. 152, § 8, AND THE INSURER HAS A WORKERS' COMPENSATION POLICY IN EFFECT FOR THE POLICY UNDER WHICH THE OFFER IS MADE WITH THE EMPLOYER WHERE THE ALLEGED INJURY OCCURRED, A STATEMENT SIGNED BY SAID EMPLOYER INDICATING THE AVERAGE WEEKLY WAGE AT THE TIME OF THE ALLEGED INJURY SHALL BE ATTACHED TO THE WRITTEN OFFER OF PAYMENT.

1.19: CONTINUED

(4) IN ANY PROCEEDING BEFORE THE DIVISION OF DISPUTE RESOLUTION, THE CLAIMANT SHALL BE DEEMED TO HAVE PREVAILED, FOR THE PURPOSES OF M.G.L. C. 152, § 13A, WHEN COMPENSATION IS NOT DISCONTINUED AT SUCH PROCEEDING, EXCEPT WHERE THE CLAIMANT HAS APPEALED THE ORDER FOR WHICH THERE IS NO PENDING APPEAL FROM THE INSURER AND THE DECISION OF THE ADMINISTRATIVE JUDGE DOES NOT DIRECT A PAYMENT OF WEEKLY OR OTHER COMPENSATION BENEFITS EXCEPT THOSE PAID BY THE INSURER PRIOR TO SUCH DECISION.

(5) FOR PURPOSES OF M.G.L. C. 152, § 13A(5), WITHDRAWAL BY AN INSURER AT OR AFTER THE DATE SET FOR A HEARING SHALL CONSTITUTE WITHDRAWAL WITHIN FIVE WORKING DAYS OF THE DATE SET FOR A HEARING UNDER M.G.L. C. 152, § 11. FOR PURPOSES OF M.G.L. C. 152, § 13A(5), THE EMPLOYEE SHALL BE DEEMED TO HAVE PREVAILED WHEN AN INSURER'S M.G.L. C. 152, § 14 FRAUD OR RECOUPMENT COMPLAINT IS FILED AND DISMISSED. FOR PURPOSES OF M.G.L. C. 152, § 13A(6), AN EMPLOYEE SHALL BE CONSIDERED TO HAVE PREVAILED BEFORE THE REVIEWING BOARD IF AN INSURER HAS WITHDRAWN AFTER A HEARING REVIEW HAS BEEN FILED UNDER M.G.L. C. 152, § 11C.

(6) NOTHING IN 452 CMR 1.19 SHALL AFFECT FEES PAID TO AN ATTORNEY BY AN EMPLOYEE OR OTHER THAN THOSE RENDERED AN EMPLOYEE UNDER M.G.L. C. 152.

(7) THE ATTORNEYS' FEES DUE UNDER M.G.L. C. 152, § 13A SHALL BE COMPUTED PURSUANT TO M.G.L. C. 152, § 13A(10) BASED ON THE AVERAGE WEEKLY WAGE IN THE COMMONWEALTH OF MASSACHUSETTS AT THE ORDER OR DECISION IS RENDERED, OR THE DATE THE INSURER ACCEPTS THE CLAIMANT'S REQUEST FOR MODIFICATION OR TERMINATION.

(8) FOR INJURIES OCCURRING BEFORE NOVEMBER 1, 1986, FEES OF ATTORNEYS FOR REPRESENTING EMPLOYEES UNDER M.G.L. C. 152 SHALL BE SUBJECT TO THE APPROVAL OF AN ADMINISTRATIVE JUDGE OR REVIEWING BOARD. IF THE EMPLOYEE AND ATTORNEY CANNOT AGREE AS TO THE ATTORNEY'S FEES, THE EMPLOYEE MAY NOTIFY THE DIVISION OF DISPUTE RESOLUTION WHICH SHALL ASSIGN THE CASE FOR A HEARING AND/OR HEARING.

1.20: JOINDER

(1) AN ADMINISTRATIVE JUDGE BEFORE WHOM A PROCEEDING IS PENDING MAY JOIN, OR AN ADMINISTRATIVE JUDGE BEFORE WHOM A PROCEEDING MAY REQUEST THE ADMINISTRATIVE JUDGE TO JOIN, AS A PARTY, ON WRITING, ANY PARTY TO BE HEARD, AN INSURER, EMPLOYER, OR OTHER PERSON WHO MAY BE LIABLE FOR COMPENSATION TO THE CLAIMANT.

(2) A PARTY TO BE JOINED SHALL NOT BE ALLOWED TO RAISE A DEFENSE OF LATE CLAIM IF THE CLAIM WAS FILED TIMELY, BUT SHALL BE ALLOWED TO RAISE ANY AND ALL OTHER REASONABLE DEFENSES THAT WOULD HAVE BEEN AVAILABLE TO HIM HAD THE CLAIMANT FILED AN ORIGINAL CLAIM AGAINST THE PARTY TO BE JOINED PROVIDED THAT THE PARTY REQUESTING JOINDER, IN THE ABSENCE OF MISTAKE OR INADVERTENCE, MADE A REASONABLE ATTEMPT TO ASCERTAIN THE IDENTITY OF THE CORRECT PARTY OR PARTIES TO THE ORIGINAL CLAIM.

(3) WHEN IT IS DECIDED, AFTER PROPER HEARING OF A REQUEST TO JOIN, THAT THE SUBJECT PARTY SHOULD BE JOINED, THE NEW PARTY SHALL BE ALLOWED A REASONABLE PERIOD OF TIME TO PREPARE A DEFENSE. SUCH PERIOD SHALL NOT EXCEED 45 CALENDAR DAYS FROM THE DATE OF JOINDER, UNLESS THE ADMINISTRATIVE JUDGE WHO ORDERS THE JOINDER FINDS THAT ADDITIONAL TIME TO PREPARE A DEFENSE IS NECESSARY.

1.21: THIRD PARTY LIABILITY

(1) WHEN AN EMPLOYEE WHO CLAIMS OR RECEIVES BENEFITS UNDER M.G.L. C. 152 SEEKS TO ENFORCE THE LIABILITY OF SOME OTHER PERSON OR ENTITY OTHER THAN THE EMPLOYER OR ITS WORKERS' COMPENSATION INSURER WITHIN THE MEANING OF M.G.L. C. 152, § 15, THE EMPLOYEE SHALL IMMEDIATELY NOTIFY THE DIVISION OF DISPUTE RESOLUTION BY CERTIFIED MAIL OF THE COMMENCEMENT OF THE ACTION. WHERE THE WORKERS' COMPENSATION INSURER PROCEEDS TO ENFORCE THE LIABILITY OF SUCH THIRD PERSON, IT SHALL NOTIFY THE EMPLOYEE IN THE SAME MANNER.

1.21: CONTINUED

(2) WHERE THE EMPLOYEE OR THE WORKERS' COMPENSATION INSURER RECOVERS JUDGMENT OR SETTLEMENT IN A CIVIL ACTION IN ANY COURT, THE TERMS OF SUCH JUDGMENT OR SETTLEMENT SHALL BE REPORTED IMMEDIATELY TO THE DEPARTMENT AS WELL AS TO THE APPROPRIATE RATING AGENCY BY M.G.L. C. 152, § 53A(4).

(3) WHEN THE PARTIES ELECT TO SUBMIT TO THE JURISDICTION OF THE DEPARTMENT, THE SETTLEMENT AGREEMENT SHALL BE IN WRITING AND IN CONFORMITY WITH THE GUIDELINES AND FORMS OF THE DEPARTMENT. APPROVAL AUTHORITY STATUTORILY RESIDING IN THE REVIEWING BOARD SHALL BE DELEGATED TO AN INDIVIDUAL ADMINISTRATIVE LAW JUDGE OR ADMINISTRATIVE JUDGE.

(4) A HEARING ON THE MERITS OF THE PROPOSED SETTLEMENT WILL BE HELD IF REQUESTED. IN THE ALTERNATIVE, THE PARTIES MAY WAIVE THEIR RIGHT TO A HEARING AND SUBMIT TO A SETTLEMENT AGREEMENT TO THE DESIGNATED JUDGE FOR REVIEW AND DISPOSITION, EXCEPT WHERE A PARTY SETTLEMENT IS CONDITIONED UPON THE APPROVAL OF A LUMP SUM SETTLEMENT. IN SUCH CIRCUMSTANCE, A HEARING ON THE MERITS OF BOTH AGREEMENTS MUST BE HEARD BY THE JUDGE.

1.22: AMENDMENTS TO CLAIMS AND COMPLAINTS

(1) PURSUANT TO M.G.L. C. 152, § 49, A PARTY MAY AMEND HIS OR HER CLAIM OR COMPLAINT AS TO TIME, PLACE, CAUSE, OR NATURE OF THE INJURY, AS A MATTER OF RIGHT, AT ANY TIME PRIOR TO A HEARING WITH WRITTEN NOTICE TO ALL PARTIES. AT THE TIME OF A CONFERENCE OR THEREAFTER, A PARTY MAY AMEND SUCH CLAIM OR COMPLAINT ONLY BY FILING A MOTION TO AMEND WITH AN ADMINISTRATIVE JUDGE. A MOTION SHALL BE ALLOWED BY THE ADMINISTRATIVE JUDGE UNLESS THE AMENDMENT WOULD PREJUDICE THE OPPOSING PARTY.

(2) AS TO A PARTY TO THE ORIGINAL ACTION, A PARTY MAY AMEND A CLAIM OR COMPLAINT WITH WRITTEN NOTICE TO ALL PARTIES AS A MATTER OF RIGHT AT ANY TIME PRIOR TO A CONFERENCE OR HEARING. A CONTROVERSY CREATED BY THE AMENDED CLAIM OR COMPLAINT AROSE OUT OF CONDUCT OR OCCURRENCES SET FORTH OR ATTEMPTED TO BE SET FORTH IN THE ORIGINAL CLAIM OR COMPLAINT.

(3) NO AMENDMENT TO A CLAIM OR COMPLAINT MAY BE MADE EXCEPT AS PROVIDED BY M.G.L. C. 152 AND 452 CMR 1.00. ANY PARTY SHALL BE ALLOWED A REASONABLE PERIOD OF TIME TO PREPARE FOR AN AMENDED CLAIM OR COMPLAINT. SUCH PERIOD SHALL NOT EXCEED 45 CALENDAR DAYS FROM THE DATE OF NOTICE OF THE AMENDMENT, UNLESS AN ADMINISTRATIVE JUDGE FINDS THAT ADDITIONAL TIME IS NEEDED FOR A DEFENSE IS NEEDED.

1.23: RECOUPMENT OF OVERPAYMENT

WHERE AN EMPLOYEE IS RECEIVING WEEKLY BENEFITS BY AGREEMENT OR BY AN ORDER OF THE DEPARTMENT, A SUBSEQUENT ORDER OR DECISION FILED PURSUANT TO M.G.L. C. 152 AUTHORIZES RETROACTIVE ADJUSTMENT OF THE WEEKLY COMPENSATION RATE, BUT DOES NOT TERMINATE WEEKLY BENEFITS, THE ORDER SHALL SPECIFICALLY ADDRESS THE MANNER OR METHOD OF RECOUPMENT OF SUCH OVERPAYMENT TO THE INSURER.

REGULATORY AUTHORITY

452 CMR 1.00: M.G.L. C. 152, § 5.