

**DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
INDUSTRIAL ACCIDENT BOARD**

Statutory Authority: 19 Delaware Code, Section 2301A(j) (19 Del.C. §2301A(j))
19 DE Admin. Code 1331

FINAL

ORDER

1331 Industrial Accident Board Regulations

Pursuant to 29 Del.C. §10118, the Industrial Accident Board (IAB) issues this Order adopting proposed amendments to the Industrial Accident Board's Rules. Following notice and a public hearing on October 18, 2011, the IAB makes the following findings and conclusions:

SUMMARY OF THE EVIDENCE

1. The IAB posted public notice of the proposed amendments in the September 1, 2011 Register of Regulations and in *The News Journal* (Delaware) and in the *Delaware State News*. IAB Exhibits 1&2. The IAB was making a comprehensive revision to their rules as there has been no revision since 1998.

2. The IAB did not receive any formal written comments. The Deputy Attorney General for the IAB did receive an informal email from Michael Weiss, Esq., who was present at the hearing to discuss the contents of that email.

3. At the public hearing, the Committee received public comment from Michael Weiss, Esquire, addressed the Board on behalf of the Delaware State Bar Association, Worker's Compensation Section, Rules Committee. Mr. Weiss addressed proposed Rule 3.6, as it relates to the filing of petitions. In Delaware, the statute of limitations for initial claims is two years from the date of the accident. Once the claims are accepted, the statute of limitations is five years from the date of last payment. The only way to toll the statute of limitations is to file a petition with the Board. The concern is in the event that a petition is filed close to the statute of limitations and rejected, the statute of limitations may run out before the claimant's attorney can revised and resubmit a petition. On October 13, 2011, via email, Mr. Weiss submitted proposed revised language to DAG Linda Carmichael on behalf of the DSBA's Workers' Compensation Section Rules committee replacing the language in 3.6 as follows: "The Department shall not reject a filing even if the filing is not substantially completed. However, the Department may file a motion to dismiss the filing as incomplete, after notice per Rule 8. The Department will not take steps to schedule a hearing until the filing is appropriately completed unless ordered to do so after a motion pursuant to Rule 8." Mr. Weiss indicated that the Board should not proceed with a claim if it has been incompletely filed.

4. At the public hearing, the Committee received public comment from Dennis Menton, Esq., who supported Mr. Weiss's presentation and stated that he joined in the fear that if a petition was rejected when it is filed close to the statute of limitations period, the claimant may not have any redress. Thus, a claimant may risk being barred from having his case heard, if the petition was "kicked back" for a deficiency. Mr. Menton also commented on proposed Rule 9.3.2, which allows medical bills during the pendency of a petition to be presented at least thirty days before the hearing. He requested the board consider changing the thirty days to forty days. He reported that the thirty day rule is inconsistent with one of the most important functions or policies of the board - to resolve issues without litigation. When bills are allowed to be presented during the course of a pending petition up to the thirtieth day, the employer loses the opportunity to evaluate those bills in conjunction with the thirty day rule. Usually, all of the pieces of the puzzle are in place by thirty-five days; and counsel has the opportunity to make an offer to settle, get the settlement letter, and try to resolve issues without taking it further into litigation. Mr. Menton contends that permitting bills to be presented at the eleventh hour makes it impossible, and he requested the deadline be changed to forty days.

5. At the public hearing, the Committee received public comment from Maura Cullington, Director, Delaware Occupational Health Nurses Association, who commented on the proposed Rules 11.5 and 11.6. Her understanding is that carriers and employers would need authorization from the claimant's counsel in order for case managers to communicate with patients. That would present a barrier to what she has established over these eight years. She has found that the authorization has not been obtained or it does not get to the right person. She sees these changes causing a significant slowdown and barrier to everyone being on the same page in a Workers' Compensation claim.

6. At the public hearing, the Committee received public comment from Neil Taylor, Director, PRO Physical Therapy, who expressed concern the added step of getting authorization to review and access medical records would delay comprehensively understanding the case. Mr. Taylor stated that they go through great lengths to educate their physical therapist and occupational therapist to understand the workers' compensation statute and what they are suppose to do. Further, that they try to get as much information as possible about the injured workers' job or injury, available modified duties, and employer forms authorized through the statute. This additional authorization is going to make it difficult to

understand all the pieces of the puzzle as they start to rehabilitate an injured worker.

7. At the public hearing, the Committee received public comment from Stephen Morrow, Esq. who commented on proposed Rules 11.4 to 11.6 from a claimant's and a claimant's bar perspective. Mr. Morrow stated that these rules merely codified the present case law and prevent communication occurring between defense counsel and the health care provider. The claimant's bar would be concerned about a defense lawyer calling a doctor and accessing information without the claimant's attorney having any knowledge or chance to get the information garnered from the health care provider. In reality, proposed Rules 11.4 to 11.6 codify the present case law that the IAB has in regards to contacting health care providers and how nurse case managers are allowed to contact health care providers.

8. At the public hearing, the Committee received public comment from Kristopher Starr, Esq., who commented on proposed Rule 11.6. Mr. Starr asked to submit a memorandum as part of the record. In addition, he opined that Rule 11.6 as applied to government employers could be illegal on constitutional grounds. He addressed several issues regarding communication amongst a government employer, provider of health care services, and an injured workers' counsel. He further opined that an argument may be raised concerning the legality of proposed Rule 11.6 as specifically applied to government employers from the standpoint of impinging on government operations. Furthermore, Mr. Starr stated that proposed Rule 11.6 restricts speech, specifically commercial speech. In his opinion, the rule prevents government employers from conducting their operations as it curtails their ability to see what is going on with their employees and their efforts to reduce costs through the use of case management services. Continuing with this position, Mr. Starr believes that the rule legislatively delegates to a claimant's attorney the ability to bring to a halt free discovery in the medical context from a government employer. Lastly, Mr. Starr argued that it is his opinion that the proposed rule is an illegal provision.

9. At the public hearing, the Committee received public comment from Scott Mondell, Esq. who commented that the prohibition in proposed Rule 11.6 deals with, and only applies to, legal counsel for the employer. It does not apply to the employer itself or to medical management, only to legal counsel for the employer.

10. At the public hearing, the Board Chair requested that Mr. John Kirk, Deputy Director of the Division of Industrial Affairs, address certain questions regarding proposed Rule 3.6 pertaining to the Department's discretion to reject incomplete filings. Mr. Kirk stated that the genesis of the proposed rule comes from issues that the Department has had to deal with for several years. According to Mr. Kirk, it is unfortunate that some practitioners file petitions which contain little, if any, information other than the claimant's name and the claimant's employer. Currently, when this occurs the Department must conduct an investigation to determine who should receive notice. The Department discussed the impact of this problem on the Department and also discussed its proposal with the Department's Deputy Attorney General, as well as members of the Board and members of the Bar Association's Workers' Compensation Rules Committee. Mr. Kirk's understanding was that this rule was similar to the civil rules in Superior Court. When a complaint is filed in Superior Court, it is filed with the Prothonotary. The Prothonotary is the administrative body for the Court. The Prothonotary's office reviews the filing to confirm that the filings contain all relevant information necessary for the Prothonotary to direct notices to the proper parties, as necessary. According to Mr. Kirk, the proposed rule change provides the Department, as the Board's administrative body, with that ability. Continuing further, Mr. Kirk stated that obviously, if there is a statute of limitations problem, the petition would be accepted and a letter would go out to the petitioner letting them know that it will be held in abeyance until such time as the Department receives sufficient information to be able to send notices to the proper parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. The public was given notice and an opportunity to provide the IAB with comments in writing and by testimony at the public hearing on the proposed amendments to the IAB's Rules as required by 19 Del.C. §10117.

12. With regard to proposed Rule 3.6, the IAB appreciates the concerns raised regarding potential problems when a petition is filed close to end of the statute of limitations. However, the IAB finds that the Department's practice and appreciation for this problem along with the discretion given within the rule provides sufficient leeway for the Department to work with the petitioners and their counsel to ensure that an incomplete petition is not rejected when faced with a statute of limitations issue. Additionally, the proposed Rule 3.6 provides an avenue for the Department to obtain the information necessary for a petition to proceed.

13. With regard to proposed Rule 9.3.2, the IAB finds that this issue has remained outstanding during the entire 7 years of attempted revisions and believes that the amount of time provided is sufficient. Should the practitioners find that the time prescribed is not sufficient, practitioners may bring the issue back up to the IAB for future possible rule change consideration. The IAB acknowledges that if proposed Rule 9.3.2 is adopted, there may be a future need to make additional changes; but at this time, the process has taken longer than anticipated and has left the IAB without the ability to proceed with these needed changes.

14. With regard to proposed Rules 11.4, 11.5 and 11.6, the IAB finds that the requirement for authorization is not so onerous as to stop the process. Rules 11.5 and 11.6 apply when the claimant is represented by legal counsel. Further, that the proposed rule amendments comply with case law.

15. Having heard and considered the public comments on the proposed comprehensive revisions to the IAB Rules, the IAB has determined that no additional changes should be made to the rules as published. Therefore, the IAB adopts the

comprehensive rule changes as proposed and published in the Register of Regulations, Vol. 15, Issue 3 (September 1, 2011).

SO ADOPTED this 18th day of October, 2011.

INDUSTRIAL ACCIDENT BOARD

Lowell L. Groundland, Chair

Mary M. Mantzler

William F. Hare

Terrence M. Shannon

John D. Daniello

Marilyn J. Doto

Otto R. Medinilla, Sr.

Alice M. Mitchell

1331 Industrial Accident Board Regulations

1.0 Address of the Board: Office Hours

~~All communications to the Board shall be addressed to "Industrial Accident Board, State of Delaware" at 4425 North Market Street, Wilmington, DE 19802. The office is open daily from 8:00 a.m. to 4:30 p.m., except Saturdays, Sundays, and Legal Holidays. Unless otherwise notified, the Board's address is 4425 N. Market Street, Wilmington, Delaware, 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays and Legal Holidays.~~

1 DE Reg. 938 (1/1/98)

2.0 Sessions

- 2.1 Hearings on petitions will be held during the normal work week at such locations and at such times as may be set upon notice by the Department of Labor.
- 2.2 Special sessions of the Board for the transaction of business may be held at any time and place in the State of Delaware as may be scheduled by the Board with notice as provided by law.

1 DE Reg. 938 (1/1/98)

3.0 ~~The Administrator of the Office of Workers' Compensation:~~ Filing of Papers

- 3.1 The Administrator of the Office of Workers' Compensation shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, including the transcripts of the testimony and exhibits with all papers and requests filed in proceedings, the minutes of all action taken by the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations, and approved forms.
- 3.2 All orders and other actions of the Board or a Hearing Officer shall be signed by the Board member or Hearing Officer issuing the order and authenticated by the Administrator of the Office of Workers' Compensation.
- 3.3 All pleadings or papers required to be filed with the Board shall be filed in the Department of Labor's offices at in Wilmington or other location designated by the Department for that purpose, within the time limit, if any, fixed by law or Board Rule for such filing; ~~and similarly all requests for official information, copies of official records or opportunity to inspect public records shall be made to the Administrator of the Office of Workers' Compensation. After the Petition to Determine Compensation Due is filed, all communication shall contain the assigned case file number.~~ All written communication shall contain the assigned case file number.
- 3.4 Written Communications addressed to the Board and all petitions and other pleadings, all reports, exhibits, depositions, transcripts, orders, and other papers or documents, received or filed ~~in the office kept with the~~ Department of Labor and retained by the Administrator of the Office of Workers' Compensation shall be stamped showing the date of the receipt of filing thereof.
- 3.5 All requests for information, copies of official records or the opportunity to inspect public records shall be made in writing to the Administrator of the Office of Workers' Compensation, or his or her designee.
- 3.6 All sections of the petition must be completed. The Department in its discretion, may reject a filing for incompleteness.

1 DE Reg. 938 (1/1/98)

4.0 ~~Notice of Denial of Liability~~ Repealed

- 4.1 ~~An insurance carrier or self-insurer shall, within 15 days after receipt of knowledge of a work-related injury, advise the Department and the claimant in writing of the following:~~

- 4.1.1 ~~The date the notice of the claimant's alleged industrial accident was received by the insurance carrier or self-insured employer; and~~
- 4.1.2 ~~If the claim is accepted by the insurance carrier or self-insured employer; or~~
- 4.1.3 ~~If the claim is denied by the insurance carrier or self-insured employer giving the reason for the denial;~~
- 4.1.4 ~~State that the insurance carrier or self-insured employer presently cannot accept or deny the claim, giving the reasons therefor; and stating approximately when the determination will be made.~~
- 4.2 ~~All medical expenses shall be paid by the carrier within 30 days after bills for said expenses are sent to the carrier for payment, unless the carrier notifies the claimant or his/her attorney in writing that said expenses are contested or that further verification is required.~~
- 4.3 ~~Should Claimant allege to the Board that the insurance carrier or self-insured has failed in its responsibilities under Sections (A) and (B), the Department will schedule a hearing. The claimant and the insurance carrier or self-insured employer will present their respective positions. After the hearing, if warranted, the Board will assess a fine of not less than \$100.00 nor more than \$1,000.00.~~

1 DE Reg. 938 (1/1/98)

5.0 Forms Provided by the Department

- 5.1 ~~In all cases where in which forms are provided approved by the Department, all papers filed with the Board shall be on such approved forms, and all applicable questions sections shall be answered completed.~~
- 5.2 ~~Petitions shall be signed by a non-corporate party or an attorney who is a member of the Bar of the Supreme Court of Delaware.~~
- 5.3 ~~An application to terminate a claimant's benefits shall be by petition. Forms are approved by and adopted by the Department.~~

1 DE Reg. 938 (1/1/98)

6.0 Formal Pleadings Not Required

- 6.1 ~~No formal pleading or formal statement of claim or formal answer shall be required of any party to any action before the Board, but However, each person making written request for a hearing shall file with the Department, on forms to be furnished promulgated by the Department, a statement giving substantially the as referenced in Rule 5, a statement giving substantially information requested on said forms.~~
- 6.2 ~~If, during the progress of any hearing, its shall appear to the Board that persons other than those named or referred to in the claim petition are, or may be entitled to receive or liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties at an adjourned hearing of said case upon due notice to all such parties in interest. After the rights of all such parties are determined, the Board may amend the title of the cause in such a manner as may be right and proper. If any time after the filing of a petition, including during the progress of any hearing, it shall appear to the Board that persons other than those named or referred to in the petition are, or may be entitled to receive or may be liable to pay compensation, the Board may inquire into and ascertain the rights and liabilities of such parties upon notice to all such parties in interest. The Board may require additional information from any party appearing before the Board to assist in adequately ascertaining the rights and liabilities of such parties. In determining the rights of all such parties, the Board may amend the title of the petition in such a manner as may be right and proper. Either party may, upon motion to the Board pursuant to Rule 8, join other entities to include, but not limited to, other employers or insurance carriers.~~

1 DE Reg. 938 (1/1/98)

7.0 Agreements for Scheduled Loss Mediation

~~All agreements for any scheduled loss or loss of function must be accompanied by appropriate doctor's reports. At any time prior to thirty (30) days after the pre-trial hearing, any party to a proceeding before the Board may request mediation. A request for mediation shall be filed in accordance with Board Rule No. 3(C). Mediation shall be conducted within thirty (30) days of the proper filing of the request.~~

8.0 Motions Concerning Legal Issues

- 8.1 ~~Except for motions contemplated by Rule No. 10 and 11, where a motion is filed with the Department which make a legal argument, a supporting brief containing citations shall be filed with such motion. A motion may not be filed without proof that a copy of said motion has been served upon the non-moving party. When a motion is filed with the Board, the motion shall contain a brief statement of the legal and factual basis for the motion and the relief sought. It shall have attached a proposed form of order, unless it is an evidentiary hearing. A copy of said motion shall be served on opposing party in the same manner and on the same day as it is filed with the Board.~~

- 8.2 ~~An answering brief shall be filed with the Department by the non-moving party within 15 days of receipt of the supporting brief. An answering brief may not be filed without proof that a copy of said answering brief has been served upon the moving party. If the motion is opposed, the matter will be scheduled for the next available motion day at which both parties may be heard. If the responding party chooses to respond to the motion in writing, such response shall state, in brief, the factual and legal basis for opposing the motion, and request the motion be denied or request an alternative proposed order. The response shall be sent not less than 4 days before the date of the motion is scheduled to be heard, to the opposing party by regular mail and by hand delivery or by fax or email at the same time as it is filed with the Department. The lack of a written response shall not be a waiver of the right to oppose the motion of the hearing. The hearing, unless there is a contrary agreement of the parties, shall take place at the same location that the hearing on the pending petition is to be heard.~~
- 8.3 ~~A reply brief may be filed with the Department by the moving party in the discretion of the moving party, but in no event will a reply brief be accepted by the Department after 7 days from the receipt by the moving party of the non-moving party's answering brief. A reply brief may not be filed without proof that a copy of said reply brief has been served upon the non-moving party. No order involving a matter submitted under this Rule shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue.~~
- 8.4 ~~After the briefs have been filed with the Department, an oral argument may be scheduled by the Department in the Board's discretion. Parties may submit a stipulation and proposed order for agreed upon matters. An unopposed motion stating the position of the opposing party known to the filing counsel shall be an acceptable substitute. If the Board rejects the proposed order, notice to the parties shall be given and include the reason for the rejection. The parties may re-submit a stipulation and proposed order which satisfies the Board's objection.~~
- 8.5 ~~Motions of a procedural nature need not be accompanied by supporting briefs. No order involving a procedural matter requested by the moving party shall be issued by the Board against the non-moving party until the non-moving party has been given an opportunity to be heard on the issue. All motions filed with the Board by an unrepresented party shall be promptly scheduled for hearing on motion day with adequate notice of the date, time, and location of the hearing. The Department shall send a copy of the motion to all parties when there is an unrepresented party filing the motion.~~
- 8.6 ~~Anytime after the employer's first report of injury has been filed with the Department, the Department's scheduling officer may be notified either by oral, telephonic or written communication of the request by a party or party's legal counsel for a legal hearing. The Department's scheduling officer will have the discretion of requiring a written argument from the parties or the parties' legal counsel on the legal issue. Should one or both of the parties fail to accept the scheduling officer's decision, the parties must reduce their respective positions to written memorandums. The memorandums will be submitted to the Department by the parties on a date chosen by the scheduling officer. The Board will review the memorandums and issue a written decision. Corporate entities may not appear for motions without counsel. If no attorney for the carrier or corporate self-insured employer has entered an appearance, the Board shall schedule a hearing on any motion filed by a party, with notice to the carrier or self-insured corporate employer that it must obtain counsel. If the unrepresented corporate entity appears without counsel, the Board shall enter an order granting appropriate relief.~~
- 8.7 ~~Parties may submit a proposed stipulation order for cooperation with reasonable vocational rehabilitation to the Board for approval without a legal hearing.~~
- 8.8 ~~If an unreported or memorandum opinion, whether of the Board or of any court, is cited or relied upon by any party, whether in a written submission or during any oral presentation, a copy thereof shall be provided to the Board and the opposing party. If, during an oral presentation, the party relying on the unreported case does not have a copy of such case immediately available, copies will be provided promptly after the hearing but in no case later than the end of the next business day following the hearing.~~

~~1 DE Reg. 938 (1/1/98)~~

~~1 DE Reg. 1621 (4/1/98)~~

9.0 ~~Formulation of Issues – Pretrial Procedure~~ Pre-Trial Scheduling Conference and Pre-Trial Memorandum

9.1 Pre-Trial Scheduling Conference

- 9.1.1 ~~In any action, The Department of Labor shall conduct a pretrial conference. The Pretrial Scheduling Officers shall be responsible for noticing and conducting such pretrial conferences. Such conference shall be held telephonically, unless either party is unrepresented by counsel in which case, the conference may be held at the Department of Labor offices servicing the county where the accident occurred. The Scheduling Officer shall set a date and time for the hearing on the issues which are the subject of the~~

~~petition convenient to all parties and counsel and subject to the provisions of 19 Del.C. 2348 (c). Hearings as to all other Petitions will be scheduled at the convenience of all parties and counsel to the extent possible. At such conference, the parties may consider: In any action, including remands, a pre-trial scheduling conference shall be held. The Department shall designate an employee to arrange the time and date for the pre-trial conference. The designated employee will have discretionary power to re-schedule the pre-trial scheduling conference, if necessary. The employee designated by the Department in accord with this Rule shall be responsible for noticing such pre-trial scheduling conference.~~

- ~~9.1.1 Means and methods to simplify the issues(s);~~
- ~~9.1.2 The necessity or desirability of amendments to the papers filed or for additional papers to be filed;~~
- ~~9.1.3 The possibility of obtaining stipulations; admissions of fact and of documents which will avoid unnecessary proof;~~
- ~~9.1.4 The limitation of the number of expert witnesses;~~
- ~~9.1.5 Such matters as may aid in the disposition or expedition of the action.~~
- ~~9.1.2 The pre-trial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pre-trial scheduling conference regarding the petition at issue. The designated employee of the Department may grant a continuance of the pre-trial scheduling conference.~~
- ~~9.1.3 Such pre-trial scheduling conference may be held telephonically or by email, unless a party is unrepresented by counsel, in which case, the pre-trial scheduling conference shall be held at the Department of Labor offices servicing the county where the accident occurred.~~
- ~~9.1.4 The Department shall set a date and time for the hearing on the issues that are the subject of the petition, subject to the provisions of 19 Del.C. §2348.~~

~~9.2 Pre-Trial Memorandum~~

~~9.2 The Board may make an order which recites the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties or on their behalf as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of counsel. Such order when entered controls the subsequent course of the action unless modified to prevent manifest injustice.~~

~~9.2.1 In any action, including remands, a joint Pre-Trial Memorandum shall be completed by the parties and filed with the Department.~~

~~9.3 The Department shall designate the pretrial officer to arrange for and preside over pretrial hearings. The pretrial officer will have discretionary power to see that the pretrials are conducted in an effective manner.~~

~~9.2.2 At the time the Department issues the notice of pre-trial scheduling conference, the Department will send an original Pre-Trial Memorandum form with the notice of the pre-trial scheduling conference to counsel for petitioner. Petitioner's counsel shall complete the form and send it to respondent's counsel. Respondent's counsel shall complete respondent's portion and return it to petitioner's counsel who shall file it with the Department and send a copy to respondent's counsel. Should any party be unrepresented, the Pre-Trial Memorandum shall be completed by that party.~~

~~9.2.3 In the event the Pre-Trial Memorandum has not been filed with the Department before the pre-trial scheduling conference or within the time specified in the notice provided by the Department, either party may file a motion pursuant to Rule 8 seeking an Order from the Board to compel the opposing party to complete and/or file a completed Pre-Trial Memorandum by a date certain.~~

~~9.2.4 Any party may object to any matter in the Pre-Trial Memorandum. If the parties cannot agree to resolve the objection, any party may file a motion in accordance with Rule 8. The basis for an objection may include, but is not limited to, that an item in the Pre-Trial Memorandum is not permitted, or that a matter stated in the Pre-Trial Memorandum should be dismissed, altered, supplemented or filed as another petition under Rule 26.~~

~~9.4 At the time of the noticed pretrial, the following information or documentation must be provided:~~

~~9.4.1 Names and addresses of prospective medical and lay witnesses.~~

~~9.4.2 A complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses, either by petition or when raised as an issue in the pretrial conference on employer's petition, copies of the bills shall be provided to counsel with the Petition, at least 30 days before the hearing. The requirement can be waived by a Pretrial Officer.~~

~~9.4.3 Complete statement of defenses to be used by the opposing party.~~

~~9.4.4 A copy of the medical report upon which a petition for benefits under 19 Del.C. §2326 is based shall be provided to opposing counsel.~~

~~9.4.5 A clear statement of the basis for a petition under 19 Del.C. §2347.~~

- 9.4.6 ~~Notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed.~~
- 9.3 The Pre-Trial Memorandum shall contain:
- 9.3.1 names (and, if requested, the addresses) of prospective medical and lay witnesses;
- 9.3.2 a complete statement of what the petitioner seeks and alleges. When a claimant seeks an order for payment of medical expenses either by petition or when raised as an issue at the pre-trial hearing or in the Pre-Trial Memorandum on the employer's petition, copies of the bills shall be provided to counsel with the petition or at least 30 days before the hearing;
- 9.3.3 a complete statement of defenses to be used by the opposing party;
- 9.3.4 a copy of the medical report upon which a petition for benefits under 19 Del.C. §2326 is based shall be provided;
- 9.3.5 a clear statement of the basis for a petition under 19 Del.C. §2347;
- 9.3.6 notice of the intent to use any movie, video or still picture and either a copy of the same or information as to where the same may be viewed;
- 9.3.7 an accurate estimate of the time necessary for hearing. This requirement includes an ongoing responsibility to update to Board as to any changes in the estimated trial time that may arise before hearing.
- 9.5 ~~Either party may modify a pretrial memorandum at any time prior to thirty (30) days before the hearing. If the thirtieth day prior to a hearing falls on a weekend or holiday, the last day to amend the pretrial shall be the last business day which is at least thirty days prior to the hearing date. Should a party wish to amend the pretrial to list additional witnesses, the party shall provide the names and addresses of such witnesses. Notice of any modification to the pretrial shall be sent to the opposing counsel or to a party directly if the party is unrepresented in a fashion insuring timely receipt of the same. The thirty day notice requirement regarding amendments to a pretrial memorandum may be waived by consent of the parties upon written stipulation or by the Pretrial Scheduling Officer or the Board upon written application. However, only the party who filed the petition which forms the subject of the pretrial memorandum may amend the petition subject to the provisions of Board Rule 26.~~
- 9.6 ~~Subject to the pretrial officer's discretion, a hearing date for a petition may be scheduled even if one or both parties fail to attend the pretrial. Only the pretrial scheduling officer can grant a continuance of a pretrial hearing.~~
- 9.7 ~~Responsibility does attach to the requesting party to arrange to have medical witness(es) present for the Board's scheduled hearing date. Such arrangements must be coordinated with and approved by the pretrial scheduling officer. Unless specifically asked for, no subpoena will be issued to expert witnesses since parties make their own arrangements for expert appearance.~~
- 9.8 ~~The pretrial officers, at their discretion, may schedule an additional pretrial hearing upon request of either party or the Board.~~
- 9.9 ~~In the absence of unusual circumstances, the party filing a petition shall file with said petition a pretrial memorandum with the petitioner's portion completed. The pretrial memorandum shall be sent to the opposing party's counsel by the Department of Labor upon the filing of an entry of appearance. In the event that the opposing party is represented, the petitioning party may send the pretrial directly to opposing counsel with notice to the Board that the same has been done.~~
- 9.10 ~~The pretrial scheduling conference shall be held on a date not later than 30 days after the date of the issuance of proper notice of a pretrial conference regarding the petition at issue. In the event that the pretrial memorandum has not yet been filed with the Department of Labor, the Board shall issue an Order compelling the submission of the same by a date certain, not to exceed fifteen (15) days.~~
- 9.4 Amendments:
- 9.4.1 Either party may modify a Pre-Trial Memorandum at any time prior to thirty (30) days before the hearing. Amending the Pre-Trial Memorandum by written notice to the opposing party and the designated employee of the Department of Labor may be made in accord with this Rule. If a party objects to an amendment, the party requesting relief shall file a motion in accord with Rule 8.
- 9.4.2 If the thirtieth day prior to a hearing falls on a weekend or legal holiday, the last day to amend the Pre-Trial Memorandum shall be the next business day following that date.
- 9.4.3 Should a party wish to amend the Pre-Trial Memorandum to list additional witnesses, the party shall provide the names (and, if requested, the addresses) of such witnesses.
- 9.4.4 Notice of any modification to the Pre-Trial Memorandum shall be sent to the opposing counsel or unrepresented party in the same manner and on the same day as it is submitted to the Department.

9.4.5 The thirty-day notice requirement regarding amendments to the Pre-Trial Memorandum may be waived or modified by consent of the parties upon written stipulation, or by the Board upon written motion pursuant to Rule 8.

9.5 The designated employee of the Department of Labor will review the Pre-Trial Memorandum, note a time and date for the hearing, sign the form and send copies of the completed Pre-Trial Memorandum to the Parties. Such Pre-Trial Memorandum controls the subsequent course of the action unless amended by the Board to prevent manifest injustice.

9.6 Parties are responsible for arranging the appearance of noticed witnesses including the issuance of any subpoenas and the sending of notices of date and place of the hearing as well as the scheduled time of that witness' testimony.

1 DE Reg. 938 (1/1/98)

1 DE Reg. 1621 (4/1/98)

10.0 Depositions Upon Oral Examination

10.1 After a petition has been filed with the Department, any party to a proceeding before the Board may apply to the Board for an Order to provide for obtaining evidence by oral deposition within the State of Delaware for use in hearings before the Board. The application shall be made by motion, presented upon notice, showing good cause for obtaining such evidence by oral deposition or use in such proceeding. The procedure for obtaining such evidence shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable. After a petition has been filed with the Department, any party to a proceeding before the Board may obtain testimony by oral deposition of a expert witness, or a healthcare provider listed as a party pursuant to 19 Del.C. §2346, for use in a hearing before the Board, in lieu of personal appearance before the Board.

10.2 The date, time and location of oral deposition shall be agreed upon by the parties with notice of date and time served by the party taking the oral deposition.

10.3 The procedure for obtaining such testimony shall conform to the Rules of Civil Procedure of the Superior Court of the State of Delaware insofar as may be practicable, and not inconsistent with this Rule.

10.24 The term "good cause", within the meaning of this rule shall mean cases where unusual circumstances exist, such as when a witness is about to leave the State or who will otherwise be unavailable to testify at the time of the hearing, or when a witness is too ill to appear and testify in person. The taking of depositions will not be ordered as a matter of course. Any party to a proceeding objecting to obtaining such testimony by oral deposition for use in such proceeding shall object by motion, presented upon notice, showing good cause for the objection.

10.35 After notice and argument, the Board shall rule on each such motion unless, prior to motion or argument, the parties stipulate in writing to the taking of the deposition, in which case the oral deposition may be taken, without the Board sanction, before any person, at any notice, and in any manner and when so taken may be used like other depositions. The taking of fact witness depositions may not proceed without Board approval.

10.46 The deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.

10.57 The party placing a deposition into evidence during a Board hearing, must supply the Board with the original and three copies of that the deposition transcript at the time of the hearing. If the parties have agreed to allow a Hearing Officer to conduct the hearing, the party placing the deposition into evidence must supply the Hearing Officer with the original and one copy of the deposition transcript at the time of the hearing. The party placing the deposition into evidence may provide the Board or Hearing Officer a disc or other electronic format of the deposition in addition to providing the copies above.

10.68 Medical witness fees pursuant to 19 Del.C. §2322(e) shall include the costs of depositions taken pursuant to this rule. Costs shall also include the taking of videotape depositions. The amount of such fees and costs shall be consistent with guidelines established pursuant to 19 Del.C. §2322B(m).

10.79 All videotape depositions must be accompanied by a written transcripts.

1 DE Reg. 938 (1/1/98)

11.0 Discovery and Production of Documents and Things for Inspection, Copying, or Photographing Request for the Production and Inspection of Documents And Other Evidence; Healthcare Authorizations And Copying or Photocopying

11.1 After a petition has been filed, any party may serve on any other party a request to produce and permit the party making the request, or someone acting in his behalf, to inspect and copy or photograph, any designated documents which constitute or contain evidence relating to any matter which is relevant to the subject matter

~~involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served. After a petition has been filed, a claim for workers' compensation benefits has been made, or workers' compensation benefits are being paid, any party may serve on any other party a written request for the production and/or inspection of any designated documents or other items which contain or constitute evidence relevant to the claim or petition and which are not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served.~~

- 11.2 The request shall set forth the items to be inspected or produced either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of ~~making the inspection and performing the related acts~~ for compliance with the request.
- 11.3 The party upon whom the request is served shall serve a written response within 15 day after the service of the request. The response shall state, with respect to each item or category, that the production and/or inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to a part of an item or category, the objected part shall be specified. The party submitting the request may move for an order from the Board compelling discovery with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. ~~The Board shall rule upon any such motion after notice and argument.~~
- 11.4 ~~The Board authorized the following medical authorization form for Workers' Compensation Cases:~~
- ~~"I, _____, do hereby authorize any doctor or hospital or other health care provider to supply any and all medical records and reports to the bearer of the original or a copy of this petition regarding any medical condition provided all requests for this information are in writing."~~
- ~~Legal counsel for the insurance carrier or self-insured employers will go through the claimant's legal counsel to obtain any medical information concerning the claimant. Legal counsel for one party may speak to the opposing party's medical witness(es) with the oral or written consent of the opposing party's legal counsel.~~
- ~~Medical authorization must be signed and returned or objected to, in writing, within 15 working days of its receipt.~~
- 11.4 Any claimant receiving or seeking workers' compensation benefits under the Delaware Workers' Compensation Act shall sign a healthcare records authorization for use in Delaware Workers' Compensation cases. Healthcare records authorization must be signed and returned, or objected to in writing within fifteen (15) calendar days of its receipt.
- 11.5 If a claimant is represented by legal counsel, the employer, employer's insurance carrier or legal counsel for the employer or insurance carrier must obtain the required healthcare records authorization through the claimant's legal counsel. The employer, employer's insurance carrier or legal counsel for the employer or insurance carrier shall provide copies of all claimant's healthcare records obtained through the use of the healthcare records authorization or which are otherwise in their possession to the claimant's legal counsel upon written request. Claimant's legal counsel shall provide to the employer, carrier or the employer or carrier's legal counsel all claimant's healthcare records in their possession or control upon written request.
- 11.6 If a claimant is represented by legal counsel, legal counsel for the employer, the employer's insurance carrier or the employer may have direct contact with the claimant's healthcare provider only with the written or oral consent of the claimant's legal counsel. Legal counsel for the employer or the employer's insurance carrier may submit the healthcare records authorization to any healthcare provider for the production of existing healthcare records with notice to claimant's legal counsel.
- 11.7 Video surveillance recordings that are submitted by the parties for viewing by the Board at the time of the hearing should be limited to a total of one-half (1/2) hour of viewing time unless the Board approves an extension for valid reasons. Requests for an extension shall be made before the video is shown at the time of the hearing.
- 11.8 In the event the Board permits a video surveillance recording lasting longer than one-half (1/2) hour, the Board requires a written index to accompany the submission of such video. Said index shall specify the segments of the video which are believed to have probative value.

1 DE Reg. 938 (1/1/98)

12.0 Continuances

- 12.1 ~~A request for a continuance shall be in writing and shall be addressed to the Department of Labor Pre-Trial Scheduling Officer. A request for a continuance may be granted upon showing of the appropriate cause under the statute. 49 Del.C. §2348. The Scheduling Officer shall rule upon the request within three (3) business days of the receipt of the written request unless the request is made within three (3) business days of the hearing in which case the matter shall be ruled upon on the day of the request. Said ruling may be issued~~

~~verbally to the parties as long as a written decision is issued within three (3) business days of the ruling. The written decision shall set forth the reason(s) for the grant or denial of the request. A request for continuance shall be in writing, include a proposed form of order, and provide notice that a copy was sent to the opposing party. A request for a continuance may be granted upon a showing of cause under 19 Del.C. §2348.~~

~~Should a party object to the Department's decision, it may by motion, seek Board review and the Board shall hear the matter de novo. Upon such motion, the Department of Labor shall then set the matter for a legal hearing before the Board on the next Board Motion day or as expeditiously as possible. Should a party object to the decision, it may by motion seek re-argument. Upon such motion, the Department shall then set the matter for a legal hearing as expeditiously as possible before the Board or a Hearing Officer who heard the original request.~~

~~Once a H~~earing~~ on the M~~erits~~ has begun, only the Board may grant a continuance may only be granted should it become necessary to continue the case in order to prevent a miscarriage of justice.~~

12.2 For the purposes of determining whether a requesting party has made the required showing of "good cause" or "extraordinary circumstances" under ~~the statute 19 Del.C. §2348, the Department and the Board shall use the following definitions of those terms:~~

12.2.1 "Good Cause" shall include:

- 12.2.1.1 the unavailability of a previously scheduled medical or other material witness;
- 12.2.1.2 the unavailability of an attorney for a party due to ~~an unintended~~ conflicting court appearance;
- 12.2.1.3 the illness of a party, a party's attorney, or a material witness (including, if appropriate, illness which affects the ability of necessary person to participate in the deposition of a medical or other material witness);
- 12.2.1.4 ~~an unexpected~~ justifiable absence from the State of a party, a party's attorney or material witness;
- 12.2.1.5 a justifiable substitution of counsel for one party (this shall not include a transfer of files within a law firm);
- 12.2.1.6 the unavailability of a medical witness whose deposition cannot be scheduled despite due and prompt diligence on the part of the requesting party;
- 12.2.1.7 inadequate notice from the Department and/or the Board which would justifiably prevent a party from having a full and fair opportunity to be heard; and
- 12.2.1.8 any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

~~The Department and/or the Board's decision must set forth the facts in sufficient detail to support its decision.~~

12.2.2 "Extraordinary Circumstances" shall include:

- 12.2.2.1 the sudden unavailability of a previously scheduled medical or other material witness;
- 12.2.2.2 an emergency mandatory court appearance which precludes the appearance of a party's attorney at the hearing;
- 12.2.2.3 a serious personal or medical emergency on the part of a party or a party's attorney; and
- 12.2.2.4 any other unforeseen circumstance beyond the control of the party seeking the continuance which would prevent the party from having a full and fair hearing.

~~The Department's and/or Board's decision must set forth the facts in sufficient detail to support its decision.~~

1 DE Reg. 938 (1/1/98)

13.0 Opening Statements and Summations Closing Statements

13.1 ~~The attorney for the petitioner may make an opening address. The attorney for the respondent may make an opening address either before any testimony is taken on behalf of the petitioner or at the close of petitioner's testimony and before any testimony is offered on behalf of the respondent. Either party or their attorney, if represented, may make an opening statement. The petitioner or the petitioner's attorney may make an opening statement prior to any testimony being presented. The respondent or the respondent's attorney may make an opening statement either before any testimony is presented on behalf of the petitioner or at the close of the petitioner's testimony and before any testimony is offered on behalf of the respondent.~~

13.2 ~~Regarding summations, the petitioner shall be permitted to open and close and the respondent shall be permitted to respond. Opening statements shall be limited to five (5) minutes unless an extension of this time limit has been approved by the Board for a valid reason.~~

13.3 ~~Regarding closing statements, the petitioner, or the petitioner's attorney, shall be permitted to present a closing statement and a rebuttal closing statement. The respondent, or the respondent's attorney, shall be permitted a closing statement in response to petitioner's closing statement. Both the petitioner's and the respondent's~~

closing statements shall be limited to ten (10) minutes each unless an extension of this time limit has been approved by the Board; such approval shall not be withheld without cause. Petitioner's rebuttal closing statement shall be limited to five (5) minutes, unless an extension of this time limit has been approved by the Board; such approval shall not be withheld without cause.

14.0 Evidence

- 14.1 Stipulation of Facts. At all hearings on the merits, the parties, when represented by counsel, shall submit a written stipulation of facts to the Board. The document shall be signed by the parties' counsel. An original and three (3) copies shall be submitted to the Board at the beginning of such hearing and shall become part of the record in the matter.
- 14.42 All witnesses shall be sworn in for all proceedings before the Board.
- 14.23 The rules of evidence applicable to the Superior Court of the State of Delaware shall be followed insofar as practicable; however, that evidence will be considered by the Board which, in its opinion, possesses any probative value commonly accepted by reasonably prudent ~~men~~ persons in the conduct of their affairs. The Board may, in its discretion, disregard any customary rules of evidence and legal procedures so long as such a disregard does not amount to an abuse of its discretion.

15.0 Leading Questions

Leading questions of expert witnesses are permissible by either party to a controversy. In accordance with Rule 14, leading questions of expert witnesses are permissible by any party.

16.0 Attorneys, Questions and Facts

- 16.1 The Department shall forthwith be notified of representation by an attorney for an employer or an employee or any matter pending before the Board. An attorney may withdraw his appearance without obtaining the Board's permission where such withdrawal will leave a member of the Delaware Bar appearing as attorney of record for the party. Otherwise, no appearance shall be withdrawn except on order of the Board. Requests by attorneys to withdraw shall be in writing and state the last known address of their client. The Department shall be notified of representation by an attorney for any party on any matter pending before the Board. An attorney's appearance may be withdrawn without obtaining the Board's permission when another member of the Delaware Bar has entered an appearance as attorney of record for the party or when there is no petition pending before the Board. Such notification of withdrawal shall be in writing to the Department stating the last known address of the client, with a copy sent to the client and to the opposing parties. Otherwise, no appearance shall be withdrawn except by Order of the Board after motion by the attorney with notice to the client and to the opposing parties.
- 16.2 When employees, employers, or their insurance carriers or self insurers are represented by an attorney in hearings before the Board, only the attorney can examine or cross-examine witnesses at the hearing. Further, the attorney must be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State. Otherwise, there must be an associate counsel with the above qualifications. When any party is represented by an attorney in a matter before the Board, only that attorney can examine or cross examine witnesses at the hearing on behalf of that party. That attorney must either be a member of the Bar of the State of Delaware and duly licensed to practice in the Courts of this State or an attorney properly admitted pro hac vice and accompanied by an attorney who is a member of the Delaware Bar.

1 DE Reg. 938 (1/1/98)

17.0 Exhibits

- 17.1 Exhibits submitted at Industrial Accident Board hearings are to be kept by the Department during passage of time of appeal. When time for appeal has passed, the exhibits may be returned to their proper owner or destroyed. Exhibits submitted at Board hearings are to be kept by the Department until final disposition of all appeals and/or pending petitions. After the expiration of all appeals and/or pending petitions, it is the duty of the party, or the party's attorney, who submitted the exhibits to retrieve their exhibits from the Department. The Department will dispose of all exhibits not retrieved in accordance with State of Delaware record retention policies.

1 DE Reg. 938 (1/1/98)

18.0 Copies of Evidence Available to Applicants

- 18.1 Typewritten copies of evidence taken in any case before the Board shall not be furnished to the parties, but persons entitled thereto may purchase same from the reporter who has recorded such evidence. A transcript

of the evidence before the Board shall not be furnished to the parties, but parties may purchase a copy of the transcript from the person who transcribed the evidence.

- 18.2 ~~In cases of appeal to the Superior Court, a typewritten copy of the evidence shall be furnished as provided by statute. When a case is appealed to the Superior Court, a transcript of the evidence shall be furnished as provided by statute.~~

19.0 Filing of Agreement After Awards

- 19.1 ~~In case of an award by the Board which is not appealed or if appeal is sustained by the Court of last appeal, the insurance carrier or self-insurer shall make payments pursuant to and in compliance with the provisions of said award. An award of the Board shall be considered as self-executing. Nevertheless, for administrative purposes, an agreement reflecting the provisions of an award of the Board shall be entered into between the parties and filed with the Department. A final receipt shall be filed with the Department when the agreement is paid in full. In the case of an award by the Board which is not appealed or if the appeal is sustained by the Court of last appeal, the insurance carrier or self-insurer shall make payments in compliance with the provisions of said award. An award of the Board shall be considered as self-executing. For the Department to maintain accurate record keeping, the parties to an award shall file an agreement reciting the provisions of the award within 14 days. A Receipt for Compensation shall be filed with the Department when the award is paid in full.~~
- 19.2 In absence of the ~~final~~ Receipt for Compensation mentioned in 21.1 above, payments of compensation shall not be ended except on an award made according to the provisions of 19 **Del.C.** §2347, as amended. A ~~final~~ Receipt for Compensation signed by the injured employee will be accepted by the Board as prima facie evidence that the disability of such injured employee has ceased.

1 DE Reg. 938 (1/1/98)

20.0 Time for Draft for First Payment of Compensation Payment in Uncontested Awards

- 20.1 ~~An insurance carrier for the employer or the self-insurer shall enter into an agreement and make the first payment of compensation within fifteen (15) days after a compensable injury unless liability is denied, in which case Rule No. 4 shall apply. Said agreement must be filed with and approved by the Department. When an award has been made by the Board and an appeal of that award has been taken by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal for those portions of the award that are appealed. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be made to the claimant not later than fourteen (14) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to Rule No. 19.1.~~
- 20.2 ~~When an award has been made by the Board, the first payment of compensation shall be drawn to the claimant's order but not later than seven (7) days after the appeal period has run, irrespective of whether an agreement has at that time been entered into between the parties pursuant to section 19.1.~~
- 20.3 ~~When an award has been made by the Board, and an appeal has been taken therefrom by the employer or its insurance carrier, no compensation shall be paid during the pendency of the appeal. If the final disposition of the case is adverse to the employer or its insurance carrier, first payment of compensation shall be drawn to the claimant's order not later than seven (7) days after the Board's award becomes final and binding, irrespective of whether an agreement has at that time been entered into between the parties pursuant to section 19.1.~~
- 20.4 ~~Unless otherwise agreed, the proceeds of all settlements of cases pending before the Board, except in commutation cases, shall be paid within 30 days after a letter correctly memorializing the settlement is sent to either party by the other.~~

1 DE Reg. 938 (1/1/98)

21.0 Further Hearing, Reopening or Rehearing Post Hearing Motions

- 21.1 Applications for (1) further hearing in a proceeding after the closing of testimony and before final submission on oral argument or brief, or for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing or reargument after decision, must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or decision, as the case may be. Such petition shall state specifically the grounds relied upon, and shall be filed with the Department and a copy served by the petitioner upon each adverse party, or his or her attorney, who appeared at the hearing, or oral argument, if any, or on brief. The Board may permit additional testimony or argument after the close of a hearing. This may occur before the Board renders a decision or after the Board renders a decision. A party requesting that the Board permit additional testimony or argument shall do so by written motion.

A copy of each decision will be mailed by certified mail, return receipt requested to all interested parties. The ten days will commence upon receipt of the certified mail decision. A properly submitted application for rehearing or reargument within ten (10) days of a parties' receipt of a Board decision will toll the Statute of Limitations under ~~19 Del.C. §2349~~. The time under ~~§2349~~ will begin anew when the published decision of the rehearing or reargument is received by the parties.

- 21.2 ~~If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated, and it must appear not to be merely cumulative. If a party's motion requests additional testimony or argument after the close of a hearing and before the Board renders a decision, the nature and purpose of the evidence shall be stated. Such evidence shall not be merely cumulative. Such motion shall be filed not later than ten days after the date of the last testimony, oral argument or the filing of any brief requested by the Board. The first day shall commence on the day following such testimony, oral argument or the filing of such brief. The date of last testimony, oral argument or the filing of any brief requested by the Board shall be stated in the motion. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.~~
- 21.3 ~~If the application be for rehearing or reargument after decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Board is sought to be vacated, repealed, enlarged, or modified, the matter so relied upon must be full set forth in the petition. If the motion requests additional testimony or argument after the close of a hearing and after the Board renders a decision, the matter claimed to have been erroneously decided must be specified and the alleged errors stated. Such motion must be filed with the Board not later than ten days after receipt of the Board's decision. The first day shall commence on the day following receipt of the Board's decision. The date the party received the Board's decision shall be set forth in the motion. Such motion, properly filed, will toll the period for perfecting appeals under 19 Del.C. §2349 and the time under § 2349 will begin anew after the subsequent decision is received by the parties. Such motion shall be served upon the attorney for each party and upon each unrepresented party in accordance with Rule 8.~~
- 21.4 ~~The non-moving party shall file an answer within ten (10) days and serve a copy upon each adverse party, or his attorney, who appears at the hearing, or oral argument, if any, or on the brief. When a motion is filed under Section (B) or (C) of this Rule, the non-moving party may file an answer not later than ten days after receipt of the motion and serve a copy of the answer upon the attorney for each party and upon each unrepresented party in accordance with Rule 8. The first day shall commence on the day following receipt of the motion. The date of receipt of the motion shall be set forth in the answer.~~

1 DE Reg. 938 (1/1/98)

22.0 Commutation of Compensation

- 22.1 Commutation of compensation pursuant to 19 Del.C. §2358 is to be favorably considered by the Board where there are sound and convincing reasons substantiated by ~~dependable~~ evidence and such commutation will be in the best interests of the injured employee or the dependents of a deceased employee.
- 22.2 The Board may ~~lay down~~ set guidelines and impose such conditions as it may deem advisable for the disbursement of all funds commuted.
- 22.3 The Board or a Hearing Officer may approve a commutation by a hearing with live testimony, by teleconference or by consideration of an appropriate stipulation and order, with an accompanying affidavit in support of request for commutation, at the discretion of the Board or Hearing Officer.

1 DE Reg. 938 (1/1/98)

23.0 Attorney's Fees

- 23.1 ~~The claimant's attorney shall file with the Board and serve upon the other party at the time of hearing a completed Affidavit Regarding Attorney's Fees, said forms being provided by the Department]. Said affidavit shall be reviewed by the Board so as to assist it in awarding a reasonable attorney's fee in those cases where an attorney's fee may be awarded to the claimant. Objections, if any, to the contents thereof will be heard by the Board during the summation of the employer's or its carrier's attorney. The claimant's attorney shall file with the Board and serve upon the other party in the same manner and at the same time as filing with the Board, a completed affidavit regarding attorney's fees, with a copy of the attorney's fee agreement attached. Said affidavit and fee agreement shall be reviewed by the Board, so as to assist in awarding a reasonable attorney's fee in those cases when an attorney's fee may be awarded to the claimant. Objections, if any, to the contents of the affidavit shall be heard by the Board during closing arguments.~~

1 DE Reg. 938 (1/1/98)

24.0 Reimbursement From the Workers' Compensation Fund

- 24.1 No petition of an employer or its insurance carrier for reimbursement from the Workers' Compensation Fund as provided in 19 **Del.C.** §2327 will be accepted by the Department unless the employer or its insurance carrier first notified by certified mail the Deputy Attorney General assigned to defend said fund, of its intention to seek reimbursement from said Fund, and supply the Department with proof of compliance when its petition is filed. Any application for reimbursement from said Fund shall be by petition with supporting medical documentation attached. The petition shall identify with specificity, by dates of injury and part(s) of the body affected, all prior and subsequent injuries for which reimbursement under 19 **Del.C.** §2327 is claimed.

1 DE Reg. 938 (1/1/98)

25.0 Expedited Hearings Pursuant to 19 Del.C. §2348(g)

- 25.1 If a claimant who is receiving no wages or benefits, or is out of work without income or substantial income, desires to have his/her petition heard at the earliest possible time, ~~or is out of work without income or substantial income,~~ he/she may file with the petition which, or thereafter, a in addition to the benefits being sought also Requests for an Expedited Hearing, which shall state the grounds for the Request and shall be accompanied by the following:
- 25.1.1 A copy of the Department standard Pre-Trial Memorandum, filled out as completely as possible with regard to the Claimant's case.
- 25.1.2 A copy of a medical report, hospital record, or similar documentation, which fairly describes the nature of claimant's injury and disability and the cause thereof; if such documentation is unavailable, or incomplete, claimant shall submit a supplementary statement describing, to the best of his/her knowledge and understanding, the nature of his/her injury and disability and the cause thereof.
- 25.1.3 A statement identifying: (a) the name and address of employer's insurer, if known; and (b) the name of the person, if known, who denied the claimant and his/her office address and telephone number.
- 25.2 Upon filing of a Request for petition requesting an Expedited Hearing, it shall be reviewed for completeness by ~~a Pre-Trial Officer the Department.~~ Unless substantially lacking in compliance with the requirements of 25.1, a copy of the Request and supporting papers shall promptly be sent by certified mail, return receipt requested, to the employer and its insurance carrier, if known, together with a copy of this Rule (or a ~~resume summary~~ summary of its requirements) and a notice as to the name and telephone number of the ~~Pre-Trial Officer handling the case Department.~~
- If the filed Request petition does not fully comply with the requirements of 25.1, the ~~Pre-Trial Officer Department~~ may direct the claimant to submit further information or documentation before the Request petition will be sent to employer or its insurer, or the ~~officer Department personnel~~ may direct Claimant to submit the additional material directly to the employer, its insurer, and the Department.
- 25.3 Within five (5) business days after receipt of a Request for petition requesting an Expedited Hearing, ~~the employer or its insurer shall notify the designated Pre-Trial Officer by telephone, or by Department writing delivered within the allowed time,~~ the following:
- 25.3.1 ~~Whether the Request is opposed and, if so, the reasons therefor. If additional time for this decision is requested, the Pre-Trial Officer may, for good cause, allow up to five (5) additional days, and shall notify claimant is this is done. Whether the request for expedited hearing is opposed and, if so, the reasons therefore:~~
- 25.3.2 The name and address of the lawyer who will represent it.
- 25.3.3 The name and address of each physician or other expert being engaged to examine or test claimant and the dates of appointments. If additional time for scheduling appointments is requested, the ~~Pre-Trial Officer Department~~ may, for good cause, allow up to ten (10) additional days for submission of this information, and shall notify claimant if this is done.
- 25.3.4 Whether a formal pre-trial conference is requested.
- 25.4 If a formal pre-trial conference is requested, it shall be scheduled as promptly as practicable ~~by the Pre-Trial Officer.~~ Otherwise, the Pre-Trial Memorandum shall be completed, served on claimant, and filed with the Department within ten (10) business days after the deadline for the response under section 25.3.1.
- 25.5 As soon as it is determined ~~(by consent or by ruling)~~ that a case will have an Expedited Hearing, the ~~Pre-Trial Officer Department~~ shall confer with the parties to set a date and time for hearing. Should it appear to the ~~Pre-Trial Officer Department~~ that undue delay is threatened, due to difficulty in securing pertinent records or a timely appointment for examination or other cause, the ~~Pre-Trial Officer Department~~ may endeavor to resolve the cause for delay by direct communication with any person responsible, and both parties shall cooperate in supporting efforts to secure an early hearing date. As soon as the ~~Pre-Trial Officer Department~~ is satisfied that

all responsible efforts to secure an early date have been completed, the officer Department shall schedule a hearing and notify both parties.

1 DE Reg. 938 (1/1/98)

26.0 Additional Issues

- 26.1 ~~Whenever a petition is pending before the Industrial Accident Board, either party may assert an additional issue or file an additional petition in the manner prescribed below:~~ When a petition is pending before the Board, either party may assert an additional issue or file an additional petition for consideration by the Board. The following issues shall be added to a pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the Department:
- 26.2 ~~The following issues shall be added to a then-pending petition through a letter request, timely filed with the Department and sent to opposing counsel in the same manner as service is made upon the Department:~~
- 26.2.1 A request for the payment of medical expenses.
- 26.2.2 A request for reimbursement of travel expenses; or
- 26.2.3 A request for partial disability benefits if the ~~then~~-pending petition is claimant's petition for an ongoing period of total disability benefits or the employer's request for the review of an open agreement as to compensation.
- 26.3 ~~A party wishing to assert one or more of the following issues must file a formal petition and serve the same in accordance with the statute:~~ When a petition is pending before the Board, either party may assert an additional issue but a party wishing to assert one or more of the following issues must file a formal petition and serve the same in accordance with the statute unless otherwise permitted by the Board pursuant to Rule 8.
- 26.3.1 A request to review an open compensation agreement.
- 26.3.2 A claim for permanent impairment benefits.
- 26.3.3 A claim for a recurrence of temporary, total and/or partial disability.
- 26.3.4 A petition claim for disfigurement benefits; or
- 26.2.5 a forfeiture of the right to compensation pursuant to 19 Del.C. §2353.
- 26.4 ~~A subsequently filed petition may be consolidated with a then-pending matter petition only upon:~~
- 26.4.1 The agreement of the parties; or
- 26.4.2 A motion by the party seeking to consolidate the petitions approved by the Board after due notice to opposing counsel and the opportunity for counsel to be heard under Rule 8.

1 DE Reg. 938 (1/1/98)

27.0 Form of Orders

- 27.1 ~~Any party seeking relief from the Industrial Accident Board on any of the matters listed below shall present the Board with a proposed form of order, suitable for immediate signatures by the Board member(s) hearing the request for relief. This rule shall apply to:~~ Any party seeking relief from the Industrial Accident Board shall present the Board or Hearing Officer with a proposed form of Order, suitable for immediate signature.
- 27.1.1 ~~Motion to Compel production of documents.~~
- 27.1.2 ~~Motion to Compel claimant to execute a medical or other authorization (including a copy of the proposed authorization).~~
- 27.1.3 ~~Motions to Dismiss for failure to prosecute.~~
- 27.1.4 ~~Uncontested petitions to terminate temporary, total or temporary, partial disability benefits.~~
- 27.1.5 ~~Uncontested petitions for approval of commutation of benefits.~~
- 27.1.6 ~~Application to take the deposition of a witness unavailable for trial.~~
- 27.1.7 ~~Application for reconsideration of a Pre-Trial Officer's decision.~~

1 DE Reg. 938 (1/1/98)

28.0 Time

- 28.4 The Department of Labor and the Industrial Accident Board shall follow the provisions of Superior Court Civil Rule 6 unless otherwise specified in the statute, 19 Del.C. §2301 et. seq. or the Administrative Procedures Act, 29 Del.C. §10001 et. seq.

1 DE Reg. 938 (1/1/98)

29.0 Legal Hearings/Motion Day

- 29.1 Upon the receipt of a written request, with proper notice to opposing counsel, for a legal hearing or other pre-hearing motion before the Board, the Department shall hold a conference amongst the parties for the purposes of scheduling the same. The conference call shall take place no later than the third calendar day following the receipt of the request by the Department of Labor. The Board shall hold Motion Day at each location where the Board hears matters. The Board may hear testimony and make rulings upon miscellaneous matters including, but not limited to, legal hearings, motions, uncontested matters, commutations, and other matters contemplated by these Rules.
- 29.2 Upon the receipt of a written request, with proper notice to opposing counsel, that the Department issue a subpoena, the Department shall act upon the request within three (3) calendar days of the date the request is received by the Department of Labor. Any matter brought before the Board at Motion Day shall comply with the provisions of Rule No. 8, although the Department and Board shall give due consideration to requests for expedited relief which will affect a hearing close in time to the request. In such event, the Department or Board shall make reasonable effort to schedule the matter at the next available Motion Day.

1 DE Reg. 938 (1/1/98)

30.0 Repealed Interpreters

In any proceeding before the Board where the claimant, or the claimant's witness(es), require the services of an interpreter, the claimant shall request a list of Department approved court interpreters or approved telephonic interpretation services to provide interpretation services for the claimant. The claimant shall be responsible for arranging all service of the court interpreter or telephonic interpretation service. The Department will be responsible for the payment of all reasonable fees for usage of its approved interpreters.

1 DE Reg. 1621 (4/1/98)

31.0 Repealed Timely Notification of Settlement

Attorneys for all parties shall appear on the date and at the time of the hearing scheduled before the Board unless notification of settlement has been received by the Office of Workers' Compensation from the petitioning attorney by 12:00 p.m. on the last work day preceding the hearing date. Failure to provide timely notification of settlement shall require the appearance of the attorneys for all parties as scheduled unless excused by the Board. Timely notification of settlement will automatically excuse the appearance of the attorneys and the cases will be removed from the calendar.

1 DE Reg. 1621 (4/1/98)

15 DE Reg. 854 (12/01/11) (Final)