WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: Bureau of Employment Programs Workers' Compensation Division TITLE NUMBER: 85

AMENDMENT TO AN EXISTING RULE: YES ___, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ___

TITLE OF RULE BEING AMENDED: ___

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Protocols & Procedures for Performing Audiological Examinations & Evaluations in Noise Induced Hearing Loss Claims

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 100.

SECTION 64-5-6(j), PASSED ON May 26, 1993.

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: July 2, 1993

Andrew N. Richardson

2.00

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer help we can get)

FAX: (304) 558-0900

May 28, 1993

John Kozak
Workers' Comp Commission
601 Morris Street
Charleston, WV 25301

HB 100 authorizing, **Title 85, Series 13,** **Protocols & Procedures for Performing Audiological Examinations & Evaluations in Noise Induced Hearing Loss Claims**, passed the Legislature on **May 26, 1993.** It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-5-6(j).** The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

***IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, **PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT,** TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE **MUST** BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, **WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT,** AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

TITLE 85
LEGISLATIVE RULES
WORKERS' COMPENSATION DIVISION, BUREAU OF EMPLOYMENT PROGRAMS
SERIES 13
PROTOCOLS AND PROCEDURES FOR PERFORMING MEDICAL EVALUATIONS
IN NOISE-INDUCED HEARING LOSS CLAIMS

§ 85-13-1 General.

1.1. Scope. -- This legislative rule establishes the protocols and procedures, as defined by the workers' compensation health care advisory panel, for the performance of examinations or evaluations by physicians or medical examiners in hearing loss claims.

1.2 Authority. -- W.Va. Code §23-4-3b.

1.3 Filing Date. --

1.4 Effective Date --

§ 85-13-2. Protocols And Procedures For Performing Audiological Examinations And Evaluations In Workers' Compensation Claims for Noise-Induced Hearing Loss.

2.1 The protestable compensability order entered in any noise-induced hearing loss claim shall state whether the claim is to be considered under the Craddock standard set forth in the commissioner's policy dated November 8, 1984, attached, or the post-Craddock standard set forth in W.Va. Code 23-4-6b.

2.2 An audiogram performed at the request of any physician may be utilized by the claimant for the purpose of completing the workers' compensation application, form WC 123HL. However, only physicians who are qualified otologists or otolaryngologists may interpret the results of audiograms in assessing the degree of the claimant's noise-induced hearing loss impairment for the purpose of determining the percentage of the claimant's disability, if any.

2.3 A physician examining and evaluating a claimant in a noise-induced hearing loss claim must consider the claimant's medical and occupational history, as well as available audiograms, in determining the etiology of the hearing loss.

2.4 The commissioner will inform all physicians evaluating noise-induced hearing loss claimants on his or her behalf that standard air conduction and bone conduction testing, speech reception threshold, and speech discrimination testing must be routinely performed as a part of audiometric testing. If a physician fails to have the routine testing performed, as requested, he or she shall not be compensated for the evaluation by the workers' compensation division. W.Va. Code 23-4-8.

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2.5 In addition to the routine testing outlined in section 2.4 of this rule, physicians evaluating hearing loss claimants should have tympanometry, acoustic reflex and other tests performed, including but not limited to a brain stem audiometry test, any time such tests are needed to reach an informed decision.

2.6. Conductive hearing loss is not caused by exposure to noise, but can be caused by injury to the external or middle ear. Conductive hearing loss can be identified if bone conduction and air conduction testing are utilized in the audiometric evaluation. Therefore, in examining and evaluating a workers' compensation claimant for noise-related hearing loss, a physician shall utilize only audiograms that include both bone conduction and air conduction test results. The physician shall also have tympanometry and acoustic reflex tests performed if he/she suspects the claimant has a conductive hearing loss.

When a conductive loss is identified on an audiogram, the evaluating or examining physician should use the bone conduction levels rather than air conduction levels to calculate a claimant's four frequency total, pursuant to W.Va. Code 23-4-6b. The examining physician should consider that part or all of a sensory neural loss may be the result of a primary disease process.

2.7 The audiologist shall perform speech discrimination testing using standard audiologic procedures. The standard procedures require that the testing be performed with a speech signal 40 decibels above the threshold established for the claimant. The audiologist also may need to use other decibel levels, either higher or lower than 40 decibels, to obtain the most accurate and best speech discrimination score. The 75 decibel level is not the standard.

The physician interpreting the speech discrimination results shall use the formula set forth in W.Va. Code 23-4-6b, to calculate the claimant's impairment rating.

2.8 In interpreting an audiogram, a physician should recognize that medical evidence indicates noise-induced hearing loss usually will start in the higher frequencies and progress to the lower frequencies; noise-induced hearing loss will not cause an audiometric pattern that reflects a claimant's best hearing is at the 1000 or 2000 Hz. frequencies, with poorer hearing in the lower frequencies; noise-induced hearing loss usually will not cause an audiometric pattern that reflects an ascending curve and will not cause a flat audiometric pattern; and, noise usually does not affect hearing in the low frequencies. If an audiogram presents a pattern that is atypical of a noice-induced hearing loss pattern, then the physician interpreting the audiogram should consider causes other than noise exposure in determining the etiology of a hearing loss.

2.9 When a claimant has been exposed to steady state noise, his or her noise-induced hearing loss should be symmetrical between the ears and if the hearing loss is asymmetrical, then the evaluating physician should consider all causes for hearing loss, including nonoccupational noise.

2.10 If a physician determines that a claimant's hearing loss is the result of noise exposure and other causes, the physician shall calculate the hearing loss disability rating pursuant to the formula set forth in W.Va. Code 23-4-6b, and shall state in his or her report the percentage of the calculated hearing loss that is attributable to noise exposure and the percentage of the hearing loss that is attributable to other causes.

TITLE 85
LEGISLATIVE RULES
WORKERS' COMPENSATION DIVISION, BUREAU OF EMPLOYMENT PROGRAMS

SERIES 13
PROTOCOLS AND PROCEDURES FOR PERFORMING MEDICAL EVALUATIONS
IN NOISE-INDUCED HEARING LOSS CLAIMS

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WORKERS' COMPENSATION FUND

[illegible] ROCKEFELLER IV
Governor

[illegible] MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

TIMOTHY E. HUFFMAN
Commissioner

November 8, 1984

Pursuant to an Order of the West Virginia Supreme Court in the case of Andy Craddock and Charles Kinder vs. Gretchen O. Lewis, Commissioner, West Virginia Workers' Compensation Fund, and based upon a report rendered in accordance therewith by a panel of physicians, this office adopts the following policy regarding the evaluation and the compensation of noise-induced hearing loss:

1. The low fence shall remain at 25 decibels.

2. The high fence shall remain at ninety-two decibels.

3. The audiometric frequencies to be used shall be: 500 Hz, 1000 Hz, 2000 Hz and 3000 Hz.

4. With regard to a compensation for permanent partial disability for subjective tinnitus, where such tinnitus is reliably, objectively clinically documented and measured by an audiologist or shown to cause permanent partial disability by an otologist, otolaryngologist, psychologist or psychiatrist, there shall be no greater than 3.25% whole man impairment.

5. Awards for reduced speech discrimination will be on the following basis:

Percent Discrimination	Percent Award PPD
90% - 100%	0%
80% - 90%	2%
70% - 80%	6%
60% - 70%	8%
0% - 60%	10%

The maximum award for impaired speech discrimination shall not exceed 10%. Only audiometric test results obtained by an audiologist having the certificate of clinical competence in audiology (CCC-A) are acceptable for purposes of awarding compensation. Speech discrimination scores will be obtained at a presentation level of 75 dB re hearing level (HL) unless the resultant score is less than 90% or 75dB HL is not sufficient to bring about maximum discrimination. When this is the case discrimination scores will be obtained at a level

which results in maximum discrimination (PB-Max) for the individual being tested. Discrimination scores will be shown for each ear as a function of presentation level. Recorded Central Institute for the Deaf phonetically balanced word lists (C.I.D. W-22) will be used. Full 50 word lists will be the basis for the discrimination score.

6. Calibration records should be maintained which are sufficient to demonstrate that the audiometer used was within tolerances specified by the American National Standards Institute specification 53.6-1969. Calibration records will include at least the following: 1. Biological calibration on the date of the test. 2. Semiannual electroacoustic calibration including calibration of stimulus frequency. 3. An exhaustive electroacoustic calibration at least every two years.

   Acoustic measurement of the test environment should be completed at least annually and records of the measurement should be sufficient to demonstrate that the test environment is within tolerances specified by the American National Standards Institute Specification S3.1-1960 (rev 1971) Criteria for Noise in Audiometric Rooms.

A complete audiometric evaluation should include:

A. Preliminary otoscopy.

B. Air and bone conduction thresholds.

C. Speech reception thresholds and speech discrimination scores.

D. Acoustic impedance testing to include tympanometry, acoustic reflex thresholds and acoustic reflex decay results as indicated.

E. Stenger and Modified Stenger tests, Bekesy results, brief tone results and other special tests as indicated.

Please find attached a copy of tables and procedure developed pursuant to the hereinabove policy which will be used to calculate whole man impairment in hearing loss claims.

I trust that the information contained herein needs no further explanation. However, should you have further questions or need anything from this office, please do not hesitate to contact us.

Sincerely,

Timothy E. Hoffman
Commissioner

TEH:cm
Enclosure

SENATE BILL NO. 202

(By Senator Manchin)

[Introduced March 1, 1993; referred to the Committee on the Judiciary.

A BILL to amend and reenact section six, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of workers' compensation to promulgate legislative rules relating to protocols and procedures for performing medical evaluations in noise-induced hearing loss claims.

Be it enacted by the Legislature of West Virginia:

That section six, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-6. ~~Office of workers' compensation commissioner~~ Workers' compensation.

(a) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the workers' compensation commissioner (employers' excess liability fund), are authorized.

(b) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, relating to the workers' compensation commissioner (time limits for the administrative proceedings of adjudications and awards), are authorized.

(c) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (self-insured employers), are authorized.

(d) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the workers' compensation commissioner (payment of attorney's fees), are authorized.

(e) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (standards for medical examination in occupational pneumoconiosis claims), are authorized with the amendments set forth below:

On page 1, the second and third unnumbered paragraphs on page one are amended to read as follows:

"When two or more ventilatory function tests performed in reasonably close proximity in time produce differing but acceptable results, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional testing at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the results are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis."

When blood gas studies are performed and abnormal values are obtained and thereafter new blood gas studies are performed and normal or significantly higher values are further obtained, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional studies at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the values are unreliable or incorrect or are clearly

attributable to some identifiable disease or illness other than occupational pneumoconiosis."

And,

On page 7, paragraph (11) is amended to read as follows:

"(11) It is recognized that arterial blood gas studies done in laboratories throughout this state are obtained at different altitudes. Only by 'standardizing' for altitude can an equitable assessment be made of impairment when values of arterial oxygen are being measured at remarkably different altitudes. Therefore, the results reported from laboratories should include the name of the laboratory and the date and time of the testing, altitude of the laboratory and barometric pressure at the laboratory on the day the samples were collected. The O. P. Board will evaluate the arterial blood gas values by converting those values to the average altitude of Charleston, West Virginia. For this purpose, it shall be sufficient to add 1 mmHg to each arterial oxygen tension for each 300 feet or fraction thereof that the testing laboratory is located above the average altitude of Charleston, because the relationship of barometric pressure (altitude) and alveolar oxygen is approximately linear up to 4,000 feet as long as the subject breathes room air.

As an example, Bluefield is located approximately 2,600 feet above sea level. Charleston is approximately 600 feet above sea level. Thus, arterial oxygen values obtained in Bluefield should

have 6.67 mmHg added to them before applying the table to them to obtain 'percent impairment.' The calculations are as follows:

'Bluefield (2,600') minus Charleston (600') equals 2,000' differential 2,000' divided by 300' altitude equals 6.67 6.67 multiplied by 1 mmHg per 300' altitude equals 6.67 mmHg.'"

(f) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred eighty-five, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the workers' compensation commissioner (administration of the coal-workers' pneumoconiosis fund), are authorized.

(g) The legislative rules filed in the state register on the thirtieth day of November, one thousand nine hundred eighty-nine, modified by the division of workers' compensation to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred ninety, relating to the division of workers' compensation (enforcement of reporting and payment requirements), are authorized.

(h) The legislative rules filed in the state register on the sixteenth day of January, one thousand nine hundred ninety, modified by the division of workers' compensation to meet the

objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, one thousand nine hundred ninety, relating to the division of workers' compensation (self-insured employers), are authorized.

(i) The legislative rules filed in the state register on the eighteenth day of September, one thousand nine hundred ninety-two, modified by the division of workers' compensation to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-three, relating to the division of workers' compensation (protocols and procedures for performing medical evaluations in noise-induced hearing loss claims), are authorized.

NOTE: The purpose of this bill is to authorize the Division of Worker's Compensation to promulgate legislative rules relating to protocols and procedures for performing medical evaluations in noise-induced hearing loss claims.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.