

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

Do Not Mark In This Box

FILED

2005 MAY 27 A 10:44

OFFICE WEST VIRGINIA
~~SECRETARY OF STATE~~

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3), 23-4-3, 23-4-3c

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code §§23-1-1a(j)(3)

AMENDMENT TO AN EXISTING RULE: YES X NO _____

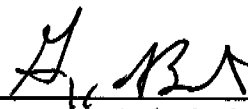
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28

TITLE OF RULE BEING AMENDED: Rules for Health Care Vendor Hearings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS July 1, 2005



Authorized Signature

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: §§23-1-1a(j)(3), 23-4-3, 23-4-3c

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28

TITLE OF RULE BEING AMENDED: Rules for Health Care Vendor Hearings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

DATE OF PUBLIC HEARING: April 19, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: **Note: This hearing was previously scheduled and noticed for another location. The location has changed. The hearing will be held at:
Rooms 207-209
Charleston Civic Center
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH X
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

T. J. Obrokta, General Counsel
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304
Fax # (304) 926-5372



Authorized Signature

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #1

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FILED

2005 MAR 16 P 4:00

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: §§23-1-1a(j)(3), 23-4-3, 23-4-3c

AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 28

TITLE OF RULE BEING AMENDED: Rules for Health Care Vendor Hearings

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: April 19, 2005 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: 4101 MacCorkle Avenue, S.E.
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL ☐, WRITTEN ☐, BOTH ☒
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

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T. J. Obrokta, General Counsel
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Charleston, WV 25304

Fax # (304) 926-5372



Authorized Signature



Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

March 16, 2005

The Honorable Betty Ireland
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 28
"Rules for Health Care Vendor Hearings"

Dear Secretary Ireland:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. The Board of Managers of the Workers' Compensation Commission has approved the enclosed 85 C.S.R. 28 for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

**SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 28
Rules for Health Care Vendor Hearings**

Pursuant to Senate Bill 1004, First Special Session, 2005, the Workers' Compensation Commission may terminate. Thereafter, Workers' Compensation insurance in West Virginia will be provided through the successor to the Commission and other private insurance carriers.

This rule is amended to address the termination of the Commission and to transition certain activities to Office of the Insurance Commissioner. The rule amendments also recognize that, in a private insurance setting, disputes between health care vendors and insurance carriers will be decided in accordance with the arrangement between the carrier and the vendor.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 85, Series 28: Rules for Health Care Vendor Hearings

Type of Rule: Legislative Exempt Interpretive X Procedural

Agency Workers' Compensation Commission

Address 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	0	0	0	0	N/A
PERSONAL SERVICES	0	0	0	0	N/A
CURRENT EXPENSE	0	0	0	0	N/A
REPAIRS & ALTERNATIONS	0	0	0	0	N/A
EQUIPMENT	0	0	0	0	N/A
OTHER:					
Provider and benefit payments	0	0	0	0	N/A
Professional services	0	0	0	0	N/A

2. Explanation of above estimates:

The proposed changes to the rule address the transition of the health care provider hearings to the insurance commissioner upon termination of the Workers' Compensation Commission (commission). The above estimates are based on the assumption that the rule changes become effective in the current fiscal year (FY'05). Thru 12/31/05, health care provider hearings remain under the administration of the Executive Director of the Workers' Compensation Commission (commission) and should not change significantly from the costs that the commission has incurred previously. Subject to the governor issuing the proclamation set forth in chapter twenty-three, article 2C of the Code of West Virginia that terminates the Workers' Compensation Commission, the disputes between health care providers and the commission shall continue to be administered by the insurance commissioner after 12/31/05. Also, after 12/31/05, disputes between payors, such as the successor to the commission or other private carrier, shall be resolved in accordance with the agreement between the health care provider and the payor and will not be subject to this rule.

3. Objectives of this rule:

The purpose of the proposed rule is to define and describe the procedures for administrative hearings for disputed issues between the Workers' Compensation Commission and health care providers, including the transition period from establishing an employers' mutual insurance company to terminating the Workers'

Compensation Commission.

Rule Title: Title 85, Series 28: Rules for Health Care Vendor Hearings

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that there will be no economic impact on State Government. This rule defines the commission's role for health care vendor hearings during the transition period from establishing an employers' mutual insurance company to terminating the commission.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

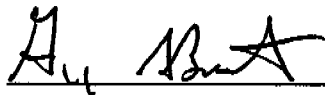
It is expected that there will be no impact from this rule.

C. Economic Impact on Citizens/Public at Large.

This proposed rule would not have a direct economic impact on the citizens of West Virginia.

Date: 3-16-05

Signature of Agency Head or Authorized Representative

A handwritten signature in dark ink, appearing to read "Gregory A. Burton", is written over a horizontal line.

Gregory A. Burton
Executive Director, Workers' Compensation Commission

85CSR28
3-15-05
TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

FILED

SERIES 28
RULES FOR HEALTH CARE VENDOR HEARINGS

2005 MAY 27 A 10:44

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§85-28-1. General.

1.1 Scope. -- This rule sets forth the procedures for administrative hearings for disputed issues between the Workers' Compensation Commission and health care providers.

1.2. Authority. -- W. Va. Code §§23-4-3; 23-4-3c. Pursuant to W. Va. Code, 23-1-1a(j)(3), rules adopted by the Workers' Compensation Board of Managers are not subject to legislative approval as would otherwise be required under W. Va. Code, §29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing date. -- ~~January 29, 2004.~~

1.4 Effective Date. -- ~~March 1, 2004.~~

§85-28-2. Definitions.

As used in this rule, the following terms, words, and phrases have the meaning stated unless in any instance where such term, word, or phrase is employed and the context expressly indicates that another meaning is intended.

2.1 "Agent" means a private company retained by the Commission to audit, identify and collect medical vendor overpayments.

2.2. "Act" means the workers' compensation laws of the State of West Virginia that are codified at chapter twenty-three of the Code of West Virginia.

2.3. "Hearing Officer" refers to an objective trier of fact who will be conducting a de novo administrative hearing in health care vendor issues arising between the Workers' Compensation Commission and a registered health care vendor.

2.4. "Code of West Virginia" and "West Virginia Code" means the West Virginia Code of 1931 as amended.

2.5. "Executive Director" means the Executive Director of the West Virginia Workers' Compensation Commission as provided pursuant to the provisions of W. Va. Code §23-1-1b.

2.6. "Commission" means the West Virginia Workers' Compensation Commission as provided for by W. Va. Code §23-1-1, et seq.

2.7. "Health Care Vendor" or "Health Care Provider" refers to health care providers, including providers of rehabilitation services within the meaning of W. Va. Code §23-4-9, both in- and out-of-state who have signed provider agreements with West Virginia Workers' Compensation Commission to provide health care to injured workers.

2.8. "Office of Judges" refers to the Office of Judges, as set forth in W. Va. Code §23-5-8.

2.9. "This rule" means the present exempt legislative rule that is designated in the caption here as title 85, series 28.

§85-28-3. Overpayments: Notification and Reconsideration.

3.1 Notification of decision. The Commission shall notify each health care vendor of any alleged overpayment by United States mail, first class, postage pre-paid.

3.1.a. In overpayment matters the notification shall detail and provide an itemized statement of the alleged overpayment and the audit reason.

3.1.b. The notification shall include language to inform the health care provider that it is afforded the right to file a request for reconsideration of the decision and provide an address where the request for reconsideration shall be filed.

3.1.c. The notification may be sent by the Commission's agent. The notification may require that the request for reconsideration be filed with the Commission's agent or the Commission as specified in the notification.

3.2 Undisputed amounts. If the findings of overpayment contained within the notification are not disputed by the health care vendor, then the health care vendor is required to remit payment in full within sixty (60) calendar days of the notification date.

3.2.a. Upon receipt of a request from the health care vendor and a showing of undue hardship, the Commission may enter into a repayment agreement with the health care provider. The repayment agreement shall not extend for a period in excess of twelve (12) months and shall provide for the payment of principal and interest. Interest shall be calculated in the same manner as provided in the provisions of W. Va. Code §23-2-13.

3.3 Request for reconsideration. Each health care provider who desires to dispute an overpayment decision is required to file a complete and timely request for reconsideration as a condition precedent to filing a petition for hearing.

3.4. Time limits. A request for reconsideration shall be filed with the Commission within thirty (30) days of the health care provider's receipt of notice of the disputed Commission's decision or action or, in the absence of such a receipt, within sixty (60) days of the date of the Commission's making such disputed decision or taking such disputed action. Such time limitations are a condition of the right to litigate the decision or action and are jurisdictional.

3.5. Contents of the request for reconsideration. In its request for reconsideration, the health care provider shall clearly identify the decision or action disputed. The health care provider shall also clearly identify the bases upon which the health care provider disputes the decision or action.

3.6. Review. Upon the filing of a health care provider's request for reconsideration, the Commission or its agent shall review the bases for the request. Such a review may include a meeting with the health care provider, a review of the health care provider's records, or any other process calculated to provide the Commission with the relevant information necessary to perform its review. After reviewing the request, the Commission shall enter its final decision.

3.6.a. The Commission is required to enter a final decision or enter into an extension agreement with the health care provider within one hundred-twenty (120) days from the date the provider's request for reconsideration is filed.

3.6.b. The Commission and the health care provider may enter into a written extension agreement to provide no more than an additional sixty (60) days for the Commission to enter a final decision.

3.6.c. The Commission's failure to enter a final decision within the initial time period or extended time period, where applicable, triggers a health care provider's right to file a petition for hearing.

3.7. Effect of filing. The filing of a timely and complete request for reconsideration of a written decision or action of the Commission stays the tolling of the time limitations for filing a petition for hearing until the final decision is issued.

3.8. Example. The health care provider receives a decision from the Commission. The health care provider desires to dispute the decision or action. The health care provider must file a request for reconsideration of the decision or action and await the Commission's final decision in the matter, the expiration of the one hundred-twenty (120) day period for the Commission to issue a final decision, or the expiration of such additional written time extension agreement as limited by this rule. The final decision may be contested by filing a petition for hearing. Should the health care provider fail to file a timely and complete request for reconsideration, then the Commission's decision or action becomes final.

§85-28-4. Suspension or Termination.

4.1 Consultation. The Executive Director shall consult with any of the following medical experts for purposes of determining whether a health care provider should be suspended or terminated pursuant to West Virginia Code Section §23-4-3c:

- 1) Medical experts in the Workers' Compensation Commission's Office of Medical Services, including the Director or Associate Director;
- 2) The Health Care Advisory Panel, or one or more of its members; or
- 3) Any other medical expert selected by the Executive Director, in his or her sole discretion.

4.2 Notification. When the Commission determines that there is probable cause to believe that a health care provider should be suspended or terminated under the provisions of W. Va. Code §23-4-3c, the Commission may proceed with the suspension or termination and shall thereafter provide written notice to the health care provider by United States mail, first class, postage pre-paid.

4.2.a. The written notice shall state the nature of the charges against the health care provider and the action taken or to be taken by the Commission.

4.2.b. The written notice shall state a time and place at which the health care provider shall appear to show cause why its right to receive payment from the Workers' Compensation Commission for treatment of injured workers under W. Va. Code §23-1-1 et seq. should not have been or should not be suspended or terminated.

4.2.c. The written notice shall inform the health care provider that it is afforded the opportunity to review the Commission's evidence, to cross-examine the Commission's witnesses, and to present testimony and evidence in support of its position.

4.3. Final decision. Each notification of suspension or termination shall be considered a final decision of the Commission.

§85-28-5. Final decision; Petition for Hearing.

5.1. Notice of final decision. The Commission shall notify each health care vendor of its final decision by United States mail, first class, postage pre-paid.

5.1.a. The notice of final decision shall include language to inform the health care provider that it is afforded the right to file a petition for hearing of the decision and provide an address where the request for reconsideration shall be filed.

5.2. Time limits. A petition for hearing shall be filed with the Commission within thirty (30) days of the health care provider's receipt of notice of the disputed decision or action or, in the absence of such a receipt, within sixty (60) days of the date of the Commission's making such disputed decision or taking such disputed action. Such time limitations are a condition of the right to litigate the decision or action and are jurisdictional.

5.3. Contents of the petition for hearing. In its petition for hearing, the health care provider shall:

- (1) clearly identify the decision or action disputed;
- (2) clearly identify the bases upon which the health care provider disputes the decision or action; and
- (3) provide a summary of documentation supporting the health care provider's position.

5.4. Collection of an alleged overpayment shall remain in abeyance until such time as the matter becomes final under these provisions.

§85-28-6. Hearings; General Provisions.

6.1. All administrative hearings conducted pursuant to this rule will be held in accordance with the provisions of W. Va. Code Section §29A-5-1 et seq. and the provisions of this rule.

6.2. Representation. Corporations and the Commission may only be represented by an attorney duly licensed to practice law in the state of West Virginia.

6.3. Notice of scheduling/status conference or hearing. Unless waived by all parties, all such conferences or hearings shall be preceded by at least ten (10) calendar days written notice.

6.4. Counsel for the health care provider shall file a notice of appearance with the hearing officer, the Commission, and with the Commission designee along with the request for a hearing, or as soon thereafter as the attorney assumes representation of the health care provider.

6.5. The conference and hearings shall be held in Kanawha County, West Virginia, telephonically, or in the county designated by the Commission. The decision to hold the hearing in person or telephonically shall vest in the discretion of the hearing officer. The initial scheduling/ status conference shall be held within forty (40) calendar days from the receipt of protest, unless continued by agreement of the hearing officer and parties.

§85-28-7. Parties and Conduct of Hearings.

7.1. At the initial scheduling/status conference, the hearing officer shall enter an Order establishing

the following:

1. Hearing date;
2. The specific issues to be addressed;
3. The amount of contested overpayment;
4. Discovery cutoff, if discovery is requested by either party and deemed necessary by the hearing officer; and
5. Deadline for disclosure of all witnesses and documents to be offered by either party

7.2. At the time of the hearing, an opportunity shall be afforded to all parties to present relevant evidence. Testimony may be restricted if it appears that it is cumulative in nature, or if it is not relevant to the issues in dispute. Character evidence will not be admissible, as it does not pertain to the relevant issues at hand. Closing arguments shall be restricted to a brief presentation in written form. All of the testimony and evidence at the hearing shall be reported by stenographic notes and characters or by mechanical means. All rulings on the admissibility of testimony and evidence shall also be reported. All reported testimony and evidence at a hearing shall be transcribed, and a copy thereof furnished to the party upon its request.

7.3. All hearings shall be conducted in an informal and impartial manner. The hearing officer shall have the power to administer oaths and affirmations, certify official acts, take depositions, rule upon offers of proof, and receive relevant evidence, regulate the course of the hearing, hold conferences for the settlement or simplification of the issues, dispose of procedural requests, motions or similar matters, and take other such actions as are authorized by this rule.

7.4. Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

7.5. All witnesses who testify during a hearing shall first be subject to oath or affirmation, and any testimony submitted by deposition shall show on the face thereof that the witness was so qualified. Any transcript shall become part of the official record and relied upon for final decision.

7.6. The hearing officer may take notice of judicially cognizable facts. All parties shall be notified either before or during the hearing, or by reference on preliminary reports or otherwise, of the material to be noticed, and they shall be afforded an opportunity to contest the facts so noticed.

§85-28-8. Burden of Proof.

There is a presumption that the Commission's decisions or actions are valid. The party contesting the Commission's decisions or actions has the burden of overcoming this presumption by satisfactory proof.

§85-28-9. Standard for Medically Unsupported Treatment.

West Virginia Code Section §23-4-3c(a)(5) requires the Commission to establish criteria for determining whether a health care provider has made medically unsupported recommendations regarding a percentage of disability or has prescribed medically unsupported treatment, including medication. The criteria shall include, but not be limited to, the following:

- 9.1. Recommendations and treatment must be reflective of accepted standards of good practice,

within the scope of practice of the provider's license or certification;

9.2. Treatment must be curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes. On a case-by-case basis, the Commission may, in its sole discretion, authorize the use of treatment for conditions that are defined as long-term or chronic even though the treatment is not curative or rehabilitative;

9.3. Treatment shall not be proposed or delivered primarily for the convenience of the claimant, the claimant's doctor, or any other provider;

9.4. Treatment shall be provided in the most cost-effective manner and in the least intensive setting consistent with the other criteria set forth herein;

9.5. Treatment shall not present hazards in excess of the expected medical benefits;

9.6. Treatment which is controversial, obsolete, investigational or experimental will be subject to strict scrutiny by the Commission and must be pre-authorized by the Commission; and

9.7. Recommendations regarding a percentage of disability shall reflect a consistent and correct application of the guidelines for the calculation of permanent partial disability as contained in the applicable rules of the Commission.

§85-28-10. Correction of the Record.

Correction of the record shall be made by the hearing officer upon his or her own motion, or upon the written motion of either of the parties to the hearing.

§85-28-11. Subpoenas.

11.1 All subpoenas and subpoenas duces tecum shall be issued in the name of the hearing officer and bear a facsimile of his or her signature, but the party requesting their issuance must sign the actual subpoenas and see that they are properly served. The subpoenas and subpoenas duces tecum must be issued through a party's counsel as a member of the Bar and an officer of the Court. All requests by interested parties for subpoenas and subpoenas duces tecum shall be in writing, and shall contain a statement acknowledging that the requesting party agrees to pay service fees, fees for attendance, and travel for witnesses.

11.2. Every subpoena or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal service made by any person over eighteen (18) years of age, or by registered or certified mail. If service is by mail, then the five (5) day notice period shall not begin to run until the date the subpoena or subpoena duces tecum is received by the person or entity subject thereto as shown by the date on the return receipt.

11.3. Any person who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state. Fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of this state. All such fees related to any subpoena or subpoena duces tecum issued at the instance of an interested party shall be paid by the party who asks that such subpoena or subpoena duces tecum be issued.

11.4. In case of failure or refusal of any person to comply with any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the Commission, or hearing officer, shall compel obedience by attachment proceedings as for contempt of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

11.5. Upon motion made promptly and in any event before the time specified in a subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is being held, or the circuit court in which the subpoena duces tecum was served, or the judge if either such court in vacation, may grant any relief with respect to such subpoena duces tecum which either such court, under the West Virginia Rules of Civil Procedure for Trial Courts of Record, could grant, and for any of the same reasons, with respect to a subpoena duces tecum issued from either such court.

11.6. The issuance of a subpoena duces tecum will be refused only in an instance where there is good reason to believe that the subpoena power is being abused. All subpoenas and subpoenas duces tecum will state on their face the name of the party who requested it.

11.7 Any party filing a protest, by virtue thereof, has conceded jurisdiction and venue with respect to any and all subpoenas issued by the hearing officer with respect to any employee, officer, or representative of the contesting party and any and all notices of deposition or discovery request served by the Commission and deemed relevant by the hearing officer.

§85-28-12. Hearing Officers.

12.1. Every hearing officer appointed by the Commission to conduct a hearing under this rule shall be an attorney licensed to practice law in this state.

12.1.a. The Commission may delegate the authority necessary for the conduct of certain proceedings under this rule to the chief administrative law judge of the office of judges. The chief administrative law judge is authorized to assign attorneys from the office of judges as hearing officers.

12.1.b. The Commission retains the right to appoint other attorneys as hearing officers for purposes of conducting specific hearings or types of hearings under this rule.

12.2. The hearing officers are authorized to receive and rule upon any procedural matter arising before, during and after a hearing.

12.3. Requests for continuances by a party shall not be granted as a matter of course, but only upon a showing of good cause.

§85-28-13. Conclusion of Hearing.

13.1 At the conclusion of the hearing, the parties shall be permitted to file closing arguments, proposed findings of fact, conclusions of law, and such legal briefs or memoranda as they wish. The parties shall be permitted ten (10) calendar days to file such items which filings shall be concurrent.

13.2. The parties shall be permitted five (5) calendar days to respond to the filing of the other party, if desired. No further argument shall be permitted.

13.3. Thereafter, the hearing officer shall prepare a report and recommendation that shall contain proposed findings of fact and conclusions of law as suggested by the hearing officer for the Commission's

approval.

13.4. The parties to the hearing shall then be permitted ten (10) days to file objections or comments upon the report and recommendations and five (5) more days to respond to each other's objections and comments.

13.5. Thereafter, the Commission shall decide whether to accept the report and recommendation, to reject it, to modify it, or to remand the matter back to the hearing officer for further proceedings or upon other instructions.

13.6. The Commission retains the right to review any and all proposed findings of fact against the record and to disagree therewith provided that the Commission states the basis for the disagreement in the final order.

13.7. The Commission shall render either a final order or an interlocutory order as the decision may require in which the Commission accepts in whole or in part the proposed findings of fact and conclusions of law submitted by the hearing officer and, to the extent that the Commission rejects or modifies the report or recommendation of the hearing officer, the Commission shall furnish his or her own findings of fact and conclusions of law.

13.8. A copy of the final order or decision of the Commission shall be served upon each party and the parties' attorneys of record, if any, either in person or by certified mail.

13.9. All appeals from the final order or decision of the Commission shall be taken pursuant to W. Va. Code §29A-5-4, in the circuit court of Kanawha County.

13.10. Upon appeal from the Commission's final decision, hearing officer shall transmit the entire record to the circuit court of Kanawha County, by either paper copy or any other electronic media that can be accommodated by the court in which relief is sought.

§85-28-14. Pending Petitions.

All petitions for hearings filed pursuant to recovery letters generated or other administrative actions taken by the Commission or its agent or filed by health care providers pursuant to the provisions of 85CSR7, "Rules for Selected Hearings", prior to May 5, 2003, for which no hearing has been held shall be transferred to hearing officers designated by the Commission under this rule.

§85-28-15. Notices.

15.1. General. Except as hereinafter provided, the name and address given by the health care vendor on the vendor application shall be used by the Commission for giving any notice required by the statute or by this rule, unless a formal request for a change of name or address is made by the health care vendor as hereinafter provided.

15.2. Change of name or address. Any health care vendor changing the name or the address of the business must promptly notify the Commission, in writing, and request that the name or address be changed on the Commission's records. Every health care vendor required to register with the Office of the Secretary of State shall provide evidence of any name change from that office.

15.3. Effect of failure to request change of name or address. In the absence of a written request for a change of name or address by the health care vendor, any notice given by the Commission to the health care vendor at the address and in the name shown on the Commission's records shall constitute

constructive notice to the health care vendor of any action taken.

15.4. Legal notice to attorney or agent. In any matter arising under this rule in which the Commission is required to give notice to a party, if a party is represented by an attorney or other representative, then notice to the attorney or other representative shall be sufficient notice to the party so represented.

§85-28-16. Transition.

16.1. Upon termination of the commission, disputes between health care providers and the insurance commissioner shall continue to be administered by the insurance commissioner in accordance with these rules.

16.2. Upon termination of the commission, disputes between health care providers and payors, such as the successor to the commission or other private carrier and self insured employers, shall not be subject to these rules, but shall be resolved in accordance with the arrangement between the health care provider and the payor.

§85-28-17. Severability.

If any provision of this rule or the application thereof to any entity or circumstances shall be held invalid, such invalidity shall not affect the provisions or the applications of this rule which can be given effect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.

COPY

**BEFORE THE
WEST VIRGINIA WORKERS' COMPENSATION
BOARD OF MANAGERS**

IN THE MATTER OF:	) HONORABLE JOE MANCHIN, III,
	) CHAIRMAN
PUBLIC HEARING	) RULE 28 - HEALTH CARE
(APRIL 19, 2005)	) PROVIDER HEARINGS

Transcript of proceedings had in the above-styled meeting
were held as therein appears before the **WEST VIRGINIA WORKERS'**
COMPENSATION BOARD OF MANAGERS, held at the Charleston Civic
Center, Suite 209, 200 Civic Center Drive, Charleston, West Virginia, at
1:05 p.m., on the 19th day of April, 2005.

**BILLANTI & ASSOCIATES
COURT REPORTERS
1033 RIDGEMONT DRIVE
ELKVIEW, WV 25071
304-965-7444**

**APPEARANCES:
MEMBERS OF THE WEST VIRGINIA
WORKERS' COMPENSATION BOARD OF MANAGERS**

HONORABLE JOE MANCHIN, III, CHAIRMAN

Robert Alsop (Designee)

PAUL THOMPSON, Member

GENE BAILEY, Member

BOB PHALEN, Member

EVERETTE SULLIVAN, Member

CHRIS JARRETT, Member

MARGARET RICE, Recording Secretary

(VIA TELEPHONE)

DOUGLAS MERRITT, Member

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(P R O C E E D I N G S)

(1:05 P.M)

CHAIRMAN ALSOP: We will open the public hearing for Rule 28, rules for health care vendor hearings.

No one has signed up to speak, but are there any individuals who would like to speak to this rule? (No Response.)

If not, then we'll close the public hearing for Rule 28.

MALE VOICE: I move that we adjourn.

CHAIRMAN ALSOP: All in favor?

(Affirmative responses.)

CHAIRMAN ALSOP: Opposed?

(No responses.)

CHAIRMAN ALSOP: We're adjourned.

(WHEREUPON, the hearing was adjourned at 1:06 p.m.)

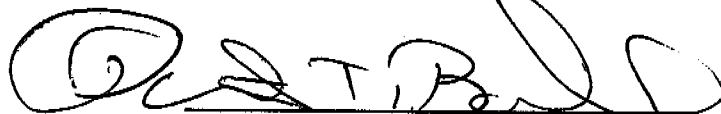
REPORTER'S CERTIFICATE

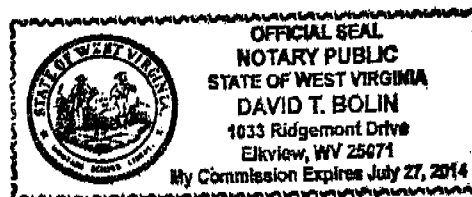
STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, the undersigned, David T. Bolin,
Courter Reporter and Notary Public, do hereby
certify that the foregoing is, to the best of my
skill and ability, a true and accurate transcript
of the proceedings had before the West Virginia
Workers' Compensation Board of Managers as set
forth in the caption hereof, and that this is the
original transcript thereof for the files of the
Board.

GIVEN UNDER MY HAND THIS 2ND
DAY OF MAY, 2005.

MY COMMISSION EXPIRES JULY 27, 2014.


Court Reporter



PUBLIC HEARING

APRIL 19, 2005 – 1:00 P.M.

RULE 28 “HEALTH CARE PROVIDER HEARINGS”

ATTENDANCE SHEET

The Board is required to keep a list of individuals attending its meetings and of those who wish to address the Board.

[illegible]

85 C.S.R. 28
Rules for Health Care Vendor Hearings

Comments
&
Response to Comments

There were no public hearing comments, pursuant to the public hearing held in this matter on April 19, 2005. In addition, no written comments were received regarding this rule.

No response is required from the Workers' Compensation Commission.