PART II. INDUSTRIAL ACCIDENT BOARD

Notes of Decisions: A community center is an agency of that state and is therefore subject to workers compensation statutes. AG-MW 210 (1980).

CHAPTER 41. COMMUNICATIONS AND GENERAL MEDICAL PROVISIONS

Cross References: These sections cited in 28 TAC §49.115 (relating to Notice).

Communications

§41.1. through 41.4. [RESERVED]

§41.5. Compliance and Suspension of Rules.

All parties seeking any action of the board shall comply with these rules, unless in its judgment the board determines that compliance with any of the rules under particular circumstances will result in injustice to either or both parties. Accordingly, rules may be suspended at the discretion of the board and additional hearings held or cases scheduled for hearing out of their regular order. (1968)

Source: The provisions of this §41.5 adopted to be effective November 20, 1977, 2 TexReg 4315.

Notes of Decisions: Any fees paid to the Texas Industrial Accident Board and which has later been placed in the state treasury can only be disbursed in accordance with specific appropriations made by law. Therefore the Industrial Accident Board has no authority to refund any fees paid to it when the fees have been deposited in the state treasury. AG-MW 1048 (1972).

§41.6. [RESERVED]

§41.8. Contents of Rule-Making Petitions.

(a) Changes to these rules may be petitioned by any party. Rule-making petitions shall contain the following:
  (1) a brief statement summarizing the proposed section;
  (2) the text of the proposed section:
    (A) if an existing section, state the title and code number, and prepare the text to indicate the words and punctuation to be added, changed, or deleted;
    (B) if a new section, prepare the text in the exact form proposed for adoption;
  (3) a statement of the statutory source of the section;
  (4) a suggested effective date;
  (5) a cost-benefit analysis, estimating the public benefits to be expected as a result of adoption of the proposed section, and the probable economic cost to persons who are required to comply with the section. This provision is optional;
  (6) any other matter required by law;
  (7) the petitioner's name, complete mailing address, and telephone number; and
  (8) the petitioner's signature.

(b) Five copies of the petition shall be filed with the board by certified mail.

(c) Within 60 days after the petition is submitted, the board shall either initiate rulemaking procedures, or notify the petitioner in writing, stating the reasons for denial.

Source: The provisions of this §41.8 adopted to be effective November 6, 1986, 11 TexReg 4429.

§41.9. [RESERVED]

§41.10. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Health provider —Used in these board rules in a generic sense, having reference to licensed practitioners of medicine, osteopathic, chiropractic, and podiatry.

Insurance carrier or carrier —Shall be synonymous with the term "association," as defined in Texas Civil Statutes, Article 8309, §1, to mean any insurance company authorized to insure payment of workers' compensation including political subdivisions according to Texas Civil Statutes, Article 8309h, §3(b).

Medical expenses—Shall include health provider care by licensed medical doctors, osteopathic physicians, chiropractic physicians , and podiatrists, as well as hospital care, drugs and prescriptions, appliances, nursing care, psychological care,

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therapy and physical rehabilitation, where the same are prescribed by a health provider named under the Workers' Compensation Law, and rendered or provided by a licensed source.

Medical report or medical treatment —Shall also include, where applicable, osteopathic, chiropractic, podiatric care, and the reports thereof.

Subscriber and employer—Are synonymous.

Source: The provisions of this §41.10 adopted to be effective November 11, 1983, 8 TexReg 4491; amended to be effective October 1, 1985, 10 TexReg 3506.

§41.11. through 41.14. [RESERVED]

§41.15. Social Security Number.

All forms, reports, and other documents filed with the board which pertain to a claim shall include the social security number of the injured employee.

Source: The provisions of this §41.15 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.16. through 41.19. [RESERVED]

§41.20. Adjuster Identification.

Each adjuster employed by or on behalf of an insurance company, self-insured, insurance agent, or corporation or by an employer in connection with either the investigation or handling of a workers' compensation claim shall provide the board with his/her license number as issued under the Insurance Code article 21.07-4. This shall be accomplished in each file as soon as practical.

Source: The provisions of this §41.20 adopted to be effective November 11, 1983, 8 TexReg 4491; amended to be effective July 20, 1984, 9 TexReg 3732.

§41.21. through 41.24. [RESERVED]

§41.25. Attorney Identification.

Each attorney engaged by either a claimant, insurance carrier, or self-insured in connection with the handling of a workers' compensation claim shall provide the board with his/her permanent State Bar identification number promptly upon retention in the claim.

Source: The provisions of this §41.25 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.26. [RESERVED]

§41.27. Employer's Identification.

Each carrier and employer shall provide the employer's federal tax identification number on:

(1) the employer's first report of injury;
(2) the employer's supplemental report of injury;
(3) the wage statement;
(4) a form A-1, A-2, and A-4 (initial filing only);
(5) a statement of controversion;
(6) a notice that employer has become subscriber, Form IAB-20;
(7) a cancellation or nonrenewal notice for workers' compensation insurance, Form IAB-9; and
(8) other forms as the board shall direct (effective 1987).

Source: The provisions of this §41.27 adopted to be effective December 21, 1987, 12 TexReg 4528.

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§41.29. [RESERVED]

§41.30. Self-Insureds.

Unless otherwise specifically noted therein, whenever a board rule makes reference to an insurance carrier or association, this shall be interpreted to include also all self-insured entities as well.

Source: The provisions of this §41.30 adopted to be effective November 11, 1983, 8 TexReg 4491.

Notes of Decisions: The Texas Legislature has the authority to pass laws as is necessary for all cities, towns and villages to provide for workers compensation insurance. The city of Bryan elected to become a self-insured entity and hence is subject to the jurisdiction of the Texas Industrial Accident Board. AG-MW 1059 (1972). Self-insured entities are liable for the tax as provided for in article 8306 §28. AG H-1012 (1977).

§41.31. through 41.34. [RESERVED]

§41.35. Designation of Insurance Carriers' Austin Representative.

All insurance carriers writing and issuing workers' compensation insurance policies effective in Texas shall designate in writing to the board their Austin, Texas, representative to the Industrial Accident Board for purposes of communication with the board. The name, business address, and phone number of such representative shall be supplied and kept current at all times. Written notification or communication by the board with such representative shall be deemed notification to the carrier for all purposes.

Source: The provisions of this §41.35 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.36. through 41.39. [RESERVED]

§41.40. General Policy Concerning Communications.

The board hereby promulgates its general policy concerning communications to and from the Industrial Accident Board:

(1) The carrier shall send a copy of all written communications relating to a pending claim before the board to the claimant, or if claimant is represented by counsel, directly to his attorney and to the board. Without limiting the generality of the foregoing, the term "written communications" shall include board approved Form A-1, A-2, A-4, and A-2 Lump Sum Transmittal Letter, Statements of Controversion, and Notices of Intention to Appeal.

(2) The attorney representing the claimant shall send a copy of all written communications relating to a pending claim before the board to the insurance carrier and to the board. Without limiting the generality of the foregoing, the term "written communication" shall include written claim for compensation, affidavit of hardship, power of attorney, notice of appeal.

Source: The provisions of this §41.40 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.41. through 41.44. [RESERVED]

§41.45. Communication to Claimants.

All notices and written communications to claimant will be mailed to the last address supplied, either on the employer's first report of injury or by claimant's letter. If the board is notified that claimant is represented by an attorney, copies of forms, notices, and correspondence will thereafter be mailed to his attorney and not to the claimant. However, copies of compromise approval notices, prehearing setting, and awards of the board will be mailed to the claimant and his attorney.

Source: The provisions of this §41.45 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.46. through 41.49. [RESERVED]

§41.50. Carrier's Address.

Unless otherwise approved by the board, all notices and communications to insurance carriers will be addressed to the carrier at an address designated by the carrier as its Texas mailing address. (Jan. 7, 1957)

Source: The provisions of this §41.50 adopted to be effective November 20, 1977, 2 TexReg 4315.

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§41.51. through 41.54. [RESERVED]

§41.55. Communication to Employers.

All notices and written communications to employers, including notice of conduct which may result in the imposition of a statutory penalty by the board, will be mailed to the last address supplied either on the employer's first report of injury form or on the notice that the employer has become a subscriber form.

Source: The provisions of this §41.55 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.56. through 41.59. [RESERVED]

§41.60. Communication to Insurance Carriers.

Unless otherwise required by statute, or provided by a board rule, all notices and other communications to insurance carriers will be sent either to an address designated by the carrier as its principal Texas mailing address or to its designated Austin representative.

Source: The provisions of this §41.60 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.61. through 41.64. [RESERVED]

§41.65. Communication to Health Care Provider.

A health care provider shall send a copy of all written communications relative to a pending claim for compensation and the treatment thereof or concerning a statement for professional services rendered to the insurance carrier and to the claimant or his attorney, if represented.

Source: The provisions of this §41.65 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.66. through 41.69. [RESERVED]

§41.70. Filing of Instruments.

(a) The following shall be filed only with the board in Austin:
- (1) notice of injury and claim for compensation (Texas Civil Statutes article 8307, §4a);
- (2) employer's first report of injury (Texas Civil Statutes article 8307, §7);
- (3) employer's response to board request for information (Texas Civil Statutes article 8307, §7);
- (4) notice that employer has become subscriber (Texas Civil Statutes article 8308, §18a);
- (5) response to request for notice that employer has become subscriber (Texas Civil Statutes article 8308, §18a);
- (6) notice of cancellation or nonrenewal of compensation insurance (Texas Civil Statutes article 8308, §20a);
- (7) form A-1, Report of Initial Payment of Compensation (Texas Civil Statutes article 8306, §3b);
- (8) statement of controversion (Texas Civil Statutes article 8306, §18a(a));
- (9) application to suspend compensation (Texas Civil Statutes article 8306, §12a and article 8307, §4);
- (10) formal statements of position (Texas Civil Statutes article 8307, §10);
- (11) statement of position in death cases (Texas Civil Statutes article 8306, §18a(a));
- (12) notice of intention to appeal (Texas Civil Statutes article 8307, §5);
- (13) response to notice of possible violation (Texas Civil Statutes article 8306, §18a(a));
- (14) carrier's designation of board representative (Texas Civil Statutes article 8306, §18a).

(b) All other correspondence and forms relating to claims arising under the Workers' Compensation Law must be filed with the proper regional office or the proper resident reviewer of the board in Austin.

Source: The provisions of this §41.70 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.71. through 41.74. [RESERVED]

§41.75. Timely Filing.

Forms, reports, and other documents required to be filed before a specified time will be considered timely only if received by the board at Austin or at an appropriate regional office prior to or during business hours on the last permissible day of filing. When the last day of filing is a legal holiday, or is Sunday, then the time is extended so as to include the next succeeding business day.

Source: The provisions of this §41.75 adopted to be effective November 11, 1983, 8 TexReg 4491.

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§41.76. through 41.79. [RESERVED]

§41.80. Filings Subsequent to Final Order or Award.

In order for it to continue monitoring a claim for future medical and compensation benefits after a final award, carriers must continue filing with the board in Austin, and in accordance with existing board rules, the following documents: A-1, A-2, A-4, notice of suspension of medical benefits, a copy of the instruments reflecting final disposition of the case, whether by compromise, settlement agreement, court judgment, or dismissal without judgment entry, and upon request a copy of all available medical information.

Source: The provisions of this §41.80 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.81. through 41.84. [RESERVED]

§41.85. Translation of Documents.

Whenever a party submits or files a medical report, witness statement, or other instrument written in a foreign language, a true and correct English translation shall be filed simultaneously.

Source: The provisions of this §41.85 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.86. through 41.89. [RESERVED]

§41.90. Responsibility of Translators.

Whenever a non-English speaking party appears before the board or any member thereof at a prehearing conference or a formal hearing, a translator who is proficient in the English language must accompany the party. The responsibility for providing an interpreter rests with the party producing the non-English speaking witness.

Source: The provisions of this §41.90 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.91. through 41.94. [RESERVED]

§41.95. Wage Information.

The board will accept in lieu of other wage information a stipulated wage agreement executed by the injured employee and the insurance carrier which establishes by mutual agreement an average weekly wage and a weekly compensation rate on a standard form approved by the board. Such stipulation may be considered by the Industrial Accident Board , along with any other evidence concerning the wage rate, but it will not necessarily be binding upon the board. No action by the board on the claim shall be taken as formal approval of such stipulation, and the same shall be regarded only as an informal waiver of proof for purposes of the hearing before the board.

Source: The provisions of this §41.95 adopted to be effective November 11, 1983, 8 TexReg 4491.

General Medical Provisions

§41.101. through 41.104. [RESERVED]

§41.105. Preparation and Filing of Initial Medical Reports.

(a) When a physician, chiropractor, or podiatrist renders care to an injured worker, he shall submit an initial report in accordance with Texas Civil Statutes article 8306, §7. This initial report may be a narrative report or a form report. If a form report is used for the initial report, it must contain as a minimum all or substantially all of the information required in the Physician's Report IAB-152.

(b) A copy of each and every initial medical report of the health provider shall be promptly and simultaneously sent to the insurance carrier and to the claimant or his attorney.

(c) Any party to a claim must file a copy of each and every medical report and/or hospital record with the board on request.

Source: The provisions of this §41.105 adopted to be effective November 11, 1983, 8 TexReg 4491.

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§41.106. through 41.109. [RESERVED]

§41.110. Subsequent Narrative Medical Reports.

Subsequent narrative medical reports reasonably necessary to inform the insurance carrier, claimant, and board of the injury status of the claimant shall be periodically and simultaneously sent by the health provider to the insurance carrier, claimant or his attorney, and the board.

Source: The provisions of this §41.110 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.111. through 41.114. [RESERVED]

§41.115. Additional Filing of Medical Reports.

(a) All available medical reports and medical information shall be filed with the board by the insurance carrier after the expiration of four weeks of disability, or following the amputation of any member, or earlier if requested by the board.

(b) All available medical reports and medical information shall be filed with the board by the attorney for the claimant after the expiration of four weeks of disability, or following the amputation of any member, or earlier if requested by the board.

Source: The provisions of this §41.115 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.116. through 41.119. [RESERVED]

§41.120. Identifying Information in Medical Reports.

In addition to the information concerning the description of the injury or disease, the treatment thereof, and any known or estimated disability resulting therefrom, each medical report shall also contain sufficient information to enable the insurance carrier and board to identify the compensation claim to which the report refers. At a minimum, such identifying information shall include the name of the patient (claimant), his social security number, the date of injury, the name of the employer, and if known, the board and insurance company file numbers.

Source: The provisions of this §41.120 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.121. through 41.124. [RESERVED]

§41.125. Cost of Medical Reports.

The association shall pay the fair and reasonable charges of the health provider for the preparation and submission of both the initial and subsequent medical reports, records, and information. There shall be no additional charge made to the claimant, or his attorney, or to the board for copies of these reports and records.

Source: The provisions of this §41.125 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.126. through 41.129. [RESERVED]

§41.130. Assignment of Medical Benefits.

In the event an assignment of medical benefits is made by an injured employee to a health or accident insurance company, a true copy thereof shall be promptly and simultaneously filed by the health or accident insurance company with both the board and association.

Source: The provisions of this §41.130 adopted to be effective November 11, 1983, 8 TexReg 4491.

Notes of Decisions: Nursing care for an injured claimant may be provided for by members of the family and they are entitled to be compensated by the insurance carrier. Houston General Insurance Co. *v*. Wayne Hamilton Tex. App. 634 SW 2d 28 Rehearing denied May 20, 1982.

§41.131. through 41.135. [RESERVED]

§41.140. Demand for Surgical Operation.

Any written demand for a surgical operation under Texas Civil Statutes article 8306, §12e, or any application for reduction or suspension of compensation pursuant to article 8307, §4, must be filed with the board at least seven calendar days prior to the

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date of hearing. However, where good cause for waiving strict compliance is approved by the board, parties may file demand for or tender or surgery on or before the scheduled date of hearing.

Source: The provisions of this §41.140 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.141. through 41.144. [RESERVED]

§41.145. Reports Accompanying Demand for Surgical Operation.

(a) Demand for surgery either by the claimant or by the insurance carrier shall be accompanied by a medical report which establishes, regardless of specific words used, that:

(1) in reasonable medical probability the requested surgical procedure will either effect a cure or will materially and beneficially improve and relieve the claimant's condition; and

(2) the surgery is medically advisable.

(b) In addition to the medical report described in subsection (a) of this section, the party demanding the surgery shall simultaneously file with the board all other medical reports pertinent to the injury or disease at issue.

Source: The provisions of this §41.145 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.150. Scars and Deformities.

In all cases involving severe and disfiguring burns or lacerations, a descriptive medical report of the scars or deformity shall be submitted by either the carrier or the claimant. In all such cases involving scars to the face, arms, or hands, a color photograph taken after maximum healing has occurred must be submitted at or prior to any final board action on the claim.

Source: The provisions of this §41.150 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.151. through 41.154. [RESERVED]

§41.155. Transportation Costs as Medical Expenses.

Whenever it becomes reasonably necessary for a claimant to travel outside the city or county of his or her residence in order to obtain medical care under Texas Civil Statutes article 8306, §7, the reasonable costs thereof shall be reimbursed by the insurance carrier. This would include, where appropriate, the reasonable costs of meals and lodging. All travel by private conveyance shall be based upon the mileage expense allowance then current for travel by state employees.

Source: The provisions of this §41.155 adopted to be effective November 11, 1983, 8 TexReg 4491.

Cross References: This section cited in 28 TAC §69.35 (relating to Claimant's Expenses).

§41.156. through 41.159. [RESERVED]

§41.160. Suspension of Medical Benefits Defined.

(a) A carrier will be deemed to have suspended medical benefits when:

(1) it has filed the notice required in board §41.165 of this title (relating to Notice of Suspension of Medical Benefits); or

(2) it has failed to promptly direct the claimant to a health provider, following request therefore by the claimant pursuant to Texas Civil Statutes article 8306, §7;

(3) it has failed or refused to pay an accrued and itemized health provider bill (medical expense), as submitted, and within 30 days from the carrier's receipt thereof. For the purpose of this rule, a health provider bill will be considered adequately itemized if it is in sufficient detail to permit the carrier and board to evaluate whether the charges thereon are fair and reasonable within the meaning of Texas Civil Statutes article 8306, §7 and §7b.

(b) All carriers shall promptly date stamp each health provider bill with the date the same was received by the carrier. Failure on the part of the carrier to comply with this section shall create a rebuttable presumption that such health provider bill was received by the carrier within five business days of the date of such bill.

Source: The provisions of this §41.160 adopted to be effective November 11, 1983, 8 TexReg 4491.

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§41.161. through 41.164. [RESERVED]

§41.165. *Notice of Suspension of Medical Benefits.*

An insurance carrier shall notify the board in writing within 10 days following any decision to suspend or terminate medical benefits as provided in Texas Civil Statutes article 8306, §7, giving the reason and reasons therefore. A copy of this notice shall be simultaneously sent to the claimant or his attorney, if any, and to the health provider(s).

Source: The provisions of this §41.165 adopted to be effective November 11, 1983, 8 TexReg 4491.

Cross References: This section cited in 28 TAC §41.160 (relating to Suspension of Medical Benefits Defined).

§41.166. through 41.169. [RESERVED]

§41.170. Voluntary Arbitration.

The board shall establish procedures for selection of voluntary arbitration panels to assist the board in regulating fees and charges submitted by health care providers to the full extent authorized by Texas Civil Statutes article 8306, §7 and §7b.

(1) The executive director of the board shall prepare bylaws subject to the final approval of the board governing the operation and functions of the various voluntary arbitration panels.

(2) The executive director of the board shall implement the procedures so adopted by the board, and he or his designee shall supervise the arbitration panels established by the board and shall serve as chairman of each panel. However, the executive director may from time to time designate the assistant executive director of the board or other person to act as chairman in his place.

(3) The procedures for selection of panels and the bylaws shall be available to all parties.

Source: The provisions of this §41.170 adopted to be effective November 11, 1983, 8 TexReg 4491.

§41.175. Payment of Medical Benefits.

In any case where the carrier has accepted liability for compensation benefits, if the carrier subsequently denies any part of a health care provider's bill, within 20 days after such denial, the carrier shall notify the board in writing and shall explain in detail the reason(s) for its refusal to pay each item. The carrier shall provide copies of the notification to the health care provider and to the claimant and his or her attorney. These copies shall include the following statement:

The insurance carrier, and not the claimant/patient or employer, is solely responsible for all reasonable and necessary medical treatment rendered in connection with the injury, and no billing for any unpaid amounts should be directed to the claimant/patient or employer, nor should any attempt be made to collect any unpaid amount from the claimant/patient or employer, unless the claim has been denied by the board or the court.

Source: The provisions of this §41.175 adopted to be effective October 1, 1985, 10 TexReg 3506.

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CHAPTER 43. INSURANCE COVERAGE

§43.1. through 43.4. [RESERVED]

§43.5. Notice That Employer Has Become Subscriber.

The notice that employer has become subscriber shall be filed with the board's Austin office by certified mail or in person within 30 days of the effective date of the policy and the notice must be completed in detail and shall include:

(1) name, address, and occupation of insured;
(2) effective date of the policy;
(3) signature of the insurance company representative;
(4) complete name of the insurance company;
(5) policy number, and if notice is a rewrite of an existing policy, this information must be included on the notice;
(6) area or location of the business;
(7) Form 154, which shall be filed for divided risk coverage; and
(8) the employer's federal tax identification number (effective 1987).

Source: The provisions of this §43.5 adopted to be effective November 20, 1977, 2 TexReg 4316; amended to be effective September 25, 1979, 4 TexReg 3230; amended to be effective November 11, 1983, 8 TexReg 4492; amended to be effective October 1, 1985, 10 TexReg 3506; amended to be effective December 21, 1987, 12 TexReg 4529.

Notes of Decisions: Notice means that the subscriber has notified the Industrial Accident Board that it is a subscriber. If the subscriber fails to notify the Industrial Accident Board , the subscriber's employees does not have constructive notice that their employer is a subscriber. Kathaleen Rabjohns et vir *v.* Hospital Corporation International, Ltd. Deborah Ferguson *v.* Hospital Corporation International, Ltd. 573 F. Supp. 438 (1983).

§43.6. through 43.9. [RESERVED]

§43.10. Termination of Coverage.

(a) *Once a carrier files Form IAB20, Notice that Employer has Become Subscriber, that insurance carrier shall be deemed to* have compensation coverage for the named employer until notice of cancellation or nonrenewal of compensation insurance is properly filed with the board by certified mail or in person and sent to the subscriber by certified mail or until another carrier files Form IAB20, Notice that Employer has Become Subscriber. In the latter instance, coverage by the prior carrier will terminate, effective on the inception date of the policy written by the subsequent carrier, and not on the date such subsequent notice by such carrier is filed with the board.

(b) Notice of cancellation or nonrenewal of compensation insurance shall be provided to the employer on a form prescribed by the board. (1987)

Source: The provisions of this §43.10 adopted to be effective November 11, 1983, 8 TexReg 4492; amended to be effective December 21, 1987, 12 TexReg 4529.

§43.11. through 43.14. [RESERVED]

§43.15. Sanctions.

In the event a carrier fails to file notice that employer has become subscriber, as required by statute, the board will notify the carrier of its delinquency pursuant to Chapter 41 of this title (relating to Communications and General Medical Provisions).

(1) If the carrier requests a hearing, the matter will be heard by the board within 10 days of the request.
(2) If the carrier does not timely request a hearing and does not timely make the required filing of notice, the board may then impose the penalty authorized by Texas Civil Statutes article 8308, §18a(b). The carrier will be promptly notified in writing of any board imposition of penalty.
(3) However, the board may consider a request for extension of time to provide the requested information if the carrier makes the request and in addition shows good cause therefore within 10 days of receipt of notice from the board.

Source: The provisions of this §43.15 adopted to be effective November 11, 1983, 8 TexReg 4492.

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CHAPTER 45. EMPLOYER'S REPORT OF INJURY OR DISEASE

§45.1. through 45.4. [RESERVED]

§45.5. Forms.

The employer's first report of injury and supplemental report of injury shall be completed on standardized forms approved by the board for that purpose. Every insurance carrier writing workers' compensation coverage effective in Texas shall provide an adequate number of the current forms in use to each insured employer.

Source: The provisions of this §45.5 adopted to be effective November 11,1983, 8 TexReg 4493.

§45.6. through 45.9. [RESERVED]

§45.10. Employer's Report of Injury and Disease.

Since the efficient operation of workers' compensation depends so greatly upon the insurance carrier and Industrial Accident Board receiving prompt notice of injury or occupational disease claims by employees, the employer shall promptly give written notice to the Industrial Accident Board and to its insurance carrier of any employee's claim of injury resulting in absence from work in excess of one day, or of any notice by the employee of the manifestation of an occupational disease. This initial report must be made by the employer even in the absence of verification by the employer of the claimed injury or occupational disease. However, the filing by an employer of a report of injury shall not be deemed an admission of liability for the claim.

Source: The provisions of this §45.10 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.11. through 45.14. [RESERVED]

§45.15. Filing of Employer's First Report of Injury.

The employer shall send the original employer's first report of injury directly to the Industrial Accident Board in Austin and shall simultaneously deliver a copy thereof to its workers' compensation insurance carrier.

Source: The provisions of this §45.15 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.16. through 45.19. [RESERVED]

§45.20. Board Request for Additional Information.

When requested in writing by the board, the employer shall promptly furnish to the board the information requested if such information is either known to the employer or reasonably available to said employer and which is pertinent to the compensation claim in question.

Source: The provisions of this §45.20 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.21. through 45.24. [RESERVED]

§45.25. Employer's Supplemental Report of Injury.

When the employee returns to work or is no longer incapacitated as a result of the injury or occupational disease, the employer shall file an employer's supplemental report of injury promptly with the board and shall simultaneously deliver a copy thereof to the insurance carrier.

Source: The provisions of this §45.25 adopted to be effective November 11, 1983, 8 TexReg 4493.

§45.26. through 45.29. [RESERVED]

§45.30. Sanctions.

If the employer fails to timely submit any information to the board which the board is entitled to request under the authority of the Workers' Compensation Act, the board shall notify the employer by certified mail with a copy sent to the employer's insurance carrier to either file the requested information or request a hearing by the board within 10 days of notice. If the employer timely requests a hearing, the matter will be heard by the board in Austin within 10 days of the request. If the employer does not timely request a hearing and does not timely provide the requested information, the board may impose a penalty authorized by Texas Civil Statutes article 8307, §7. The employer will be promptly notified of any imposition of penalty by the board. The board may consider a request for extension of time to provide the requested information if the employer makes the request in writing and shows good cause therefore within 10 days of the receipt of notice from the board.

Source: The provisions of this §45.30 adopted to be effective November 11, 1983, 8 TexReg 4493.

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CHAPTER 47. EMPLOYEE NOTICE OF INJURY OR DEATH AND CLAIM FOR BENEFITS

§47.1. through 47.4. [RESERVED]

§47.5. Information Constituting Claim.

The prescribed claim form, or any written communications from an injured employee, claiming either medical care or compensation payments, giving his name, the date and the general nature of injury, and the name of his employer shall constitute a claim. (1970)

Source: The provisions of this §47.5 adopted to be effective November 20, 1977, 2 TexReg 4317.

Notes of Decisions: If a claimant completes a compromise settlement agreement on the form provided by the Industrial Accident Board, the form is a claim for compensation within the meaning of article 8307. AG H-1194 (1978).

§47.6. through 47.9. [RESERVED]

§47.10. Signature of Claimant.

All claim forms must be personally signed by the injured employee and give his home address. If the employee is unable to write, he must make an "X" for his signature, and his mark must be witnessed by at least one credible witness. (1978) (Rev. 1973)

Source: The provisions of this §47.10 adopted to be effective November 20, 1977, 2 TexReg 4317.

§47.11. through 47.14. [RESERVED]

§47.15. Employer Advances Compensation.

Where an employer advances compensation in accordance with Civil Statutes article 8309, §4b, it is necessary that IAB form EAC-70 be completed and forwarded by the employer within ten (10) days to the board in Austin, and such form shall also be furnished within ten (10) days to the employee and the insurance carrier advising the date first payment was made. (Rev. 1979)

Source: The provisions of this §47.15 adopted to be effective November 20, 1977, 2 TexReg 4317; amended to be effective September 23, 1979, 4 TexReg 3231.

§47.16. through 47.19. [RESERVED]

§47.20. Beneficiaries Filing Claim.

In cases of injury resulting in death, the claim form or any written communication claiming compensation payments giving the employee's name, the employer's name, the date of the employee's death, and the name of the claimant shall constitute a claim. One of several beneficiaries may file claim for all beneficiaries. The names of all beneficiaries should be listed on the claim. (1953)

Sources: The provisions of this §47.20 adopted to be effective November 20, 1977, 2 TexReg 4317.

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CHAPTER 49. PROCEDURES FOR FORMAL HEARINGS BY THE BOARD

Formal Hearings

§49.1. through 49.4. [RESERVED]

§49.5. Schedule of Hearings.

Formal hearing before the Board will be scheduled the first Friday following the expiration of fourteen (14) days from the date of Pre-Hearing Conference. If the Friday upon which a hearing would otherwise be scheduled is a legal holiday or follows a legal holiday, the hearing will be scheduled for the following Monday. A claimant or his attorney must give the Board and all parties seven (7) days written notice if they intend to be present for such formal hearing. Hearings will begin at 9:30 a.m. in the Board's Austin office and cases normally will be heard by the Board in the order registered with the receptionist. (1970) (Rev. 1977)

Source: The provisions of this §49.5 adopted to be effective November 20, 1977, 2 TexReg 4317.

§49.6. through 49.9. [RESERVED]

§49.10. Timely Acceptance of Evidence.

All interested parties required to file evidence with the Board for consideration in a claim scheduled for a hearing must file this evidence not later than 5:00 p.m. on date of hearing. The Board will consider requests for delayed evidence filing from any interested party. The request must be filed with the Board in writing no later than 5:00 p.m. on the date of hearing and it must include a statement of the facts showing good cause and necessity for the delay. If delayed evidence is filed by any party after permission has been granted by the Board, copies of such evidence must be simultaneously furnished to the opposing party. (1970) (Rev. 1975)

Source: The provisions of this §49.10 adopted to be effective November 20, 1977, 2 TexReg 4317.

§49.15. Formal Statement of Position.

The insurance carrier and attorney representing the claimant shall file their formal statement of position in the Board's Austin office on or before the date of Formal Hearing.

Source: The provisions of this §49.15 adopted to be effective September 22, 1979, 4 Texreg 3231.

§49.16. through 49.19. [RESERVED]

§49.20. Request for Cancellation.

Upon written request by claimant or all claimant beneficiaries, the board, at its discretion, may at any time prior to the entry of an award, cancel a scheduled hearing when good cause is shown. Request for cancellation of a scheduled hearing shall be by written notice and filed with the board's Austin office. (Rev. 1979)

Source: The provisions of this §49.20 aodpted to be effective November 20, 1977, 2 TexReg 4317; amended to be effective September 22, 1979, 4 TexReg 3231.

§49.21. through 49.24. [RESERVED]

§49.25. Delay or Postponement of Hearing.

On the date of hearing, the board will review the case in accordance with the provisions of article 3809a of the Act, the Industrical Accident Board may delay or postpone the hearing of the claim provided that within its discretion the board deems it to be the best interest of the injured employee that the case not be heard at that time; and such hearing may be delayed or postponed until the carrier discontinues payment of compensation or the furnishing of hospitalization, chiropractic service or medical treatment or until the board deems it to the best interest of such employee for an award to be rendered. (1968) (Rev. 1977)

Source: The provisions of this §49.25 adopted to be effective November 20, 1977, 2 TexReg 4317.

§49.26. through 49.29. [RESERVED]

§49.30. Filing of Medical Bills.

All bills unpaid by the insurance carrier or copies of receipts for medical services for claim for reimbursement must be filed with the board at the pre-hearing conference or attached to the formal statement of position. There must be clear itemization of all

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prescriptions or incidentals, date of purchase, treatment rendered and physician prescribing same on items furnished. (Rev. 1979)

Source: The provisions of this §49.30 adoted to be effective November 20, 1977, 2 TexReg 4317; amended to be effective September 22, 1979, 4 TexReg 3231.

§49.31. through 49.34. [RESERVED]

§49.35. Filing of Medical Reports and Records.

If not previuosly filed pursuant to other board rules, all medical reports and records shall be filed at the time of formal hearing.

Source: The provisions of this §49.35 adopted to be effective November 11, 1983, 8 TexReg 4495.

§49.36. through 49.39. [RESERVED]

§49.40. Carrier Attendance.

The carrier's designated Austin representative must be available to the board on the day a claim is scheduled for formal hearing. In the event the Industrial Accident Board needs a copy of the carrier's file, or a portion thereof, the carrier's designated Austin representative shall obtain the file, or portion thereof, as requested by the board, from the carrier by suitable overnight mail or delivery service.

Source: The provisions of this §49.40 adopted to be effective November 11, 1983, 8 TexReg 4495.

§49.41. through 49.44. [RESERVED]

§49.45. Contents of Formal Statement of Position.

The formal statement of position shall be responsive to the prehearing officer's recommendations and shall be sufficiently detailed to apprise the board of all controverted issues. Legal contentions should be citations to applicable authorities.

Source: The provisions of this §49.45 adopted to be effective November11, 1983, 8 TexReg 4495.

Cross References: This section cited in 28 TAC §49.50 (relating to Sanctions).

§49.46. through 49.49. [RESERVED]

§49.50. Sanctions.

Failure to file a formal statement of position or filing a formal statement of position that does not comply with the requirements of board rule §49.50 (relating to Contents of Formal Statement of Position) may be punishable by appropriate sanctions by the board.

Source: The provisions of this §49.50 adopted to be effective November 11, 1983, 8 TexReg 4495.

Special Formal and other Investigative Hearings

§49.101. through 49.104. [RESERVED]

§49.105. Procedures.

These hearings will only generally follow the Texas Rules of Civil Procedure. Evidence will be received in accordance with the Texas Rules of Evidence as generally applied in Texas judicial proceedings, although not with the same degree of strictness. The procedures used in these hearings shall generally follow that used in judicial proceedings in the courts of this state.

Source: The provisions of this §49.105 adopted to be effective November 11, 1983, 8 TexReg 4494.

Cross References: This section cited in 28 TAC §49.131 (relating to Withdrawal of Attorney); and 28 TAC §53.65 (relating to Certification Procedure).

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§49.106. through 49.109. [RESERVED]

§49.110. Commencement of Hearings.

Upon its own motion, or upon the written request or complaint of either a party or employer, the board may schedule a special formal hearing, fraud hearing, or investigative hearing to be conducted by the board or any member under the authority of applicable provisions of the Workers' Compensation Law of Texas.

Source: The provisions of this §49.110 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.111. through 49.114. [RESERVED]

§49.115. Notice.

All hearings shall be commenced by written notice, in accordance with the provisions of Chapter 41 of these rules (relating to Communications and General Medical Provisions) to the individuals and businesses or agencies directly concerned with the subject of the hearing. Sufficiency of the notice shall be presumed unless the issue is raised by an interested party on or before the hearing date.

Source: The provisions of this §49.115 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.116. through 49.119. [RESERVED]

§49.120. Special Statutory Notice.

In the event of hearings conducted by the board pursuant to the provisions of Texas Civil Statutes article 8306, §18, or Texas Civil Statutes article 8307, §7, and §9a, or Texas Civil Statutes article 8308, §18a, the notice requirements of those statutes will prevail whether same or inconsistent with any other provisions of these board rules pertaining to notice.

Source: The provisions of this §49.120 adopted to be effective November 11, 1983, 8 TexReg 4494.

Cross References: This section cited in 28 TAC §49.125 (relating to Thirty-Day Notice).

§49.121. through 49.124. [RESERVED]

§49.125. Notice of Special Formal Hearing.

In all other hearings except for those described in board rule §49.120 (relating to Special Statutory Notice), and unless waived by the board upon its own motion, or for good cause shown, no less than 14 days written notice of the date, time, and place of such hearing will be given to the parties concerned.

Source: The provisions of this §49.125 adopted to be effective November 11, 1983, 8 TexReg 4494; amended to be effective June 16, 1988, 13 TexReg 2752.

§49.126. through 49.129. [RESERVED]

§49.130. Personal Appearance Hearings in Austin.

A party desiring to make a personal appearance hearing before the board on a claim which is scheduled for formal hearing by the board in Austin shall give the board and all other interested parties not less than seven days written notice thereof. The claimant's attendance at such hearing is required unless waived by the board for good cause shown. Hearings will begin at 9:30 a.m. in the board's Austin office, and cases normally will be heard by the board in the order they are registered with the receptionist. Strict compliance with the notice provisions of this rule may be waived for good cause.

Source: The provisions of this §49.130 adopted to be effective November 11, 1983, 8 texReg 4494.

§49.131 Withdrawal of Attorney

After a compensation claim has been scheduled for a special formal hearing, or other hearing as provided in §53.65 of this title (relating to Procedures), *et seq.*, an attorney may not voluntarily withdraw as counsel for a claimant, except upon written request therefore as approved by the Industrial Accident Board.

Source: The provisions of this §49.131 adopted to be effective October 1, 1985, 10 TexReg 3506.

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§49.134. [RESERVED]

§49.135. Use of Court Reporters.

Testimony will be recorded under the direction and control of the board member conducting the hearing. It will be permissible for any party to have a court reporter record the proceedings, conditioned upon:

(1) notification thereof shall be made to the presiding board member not less than three days before the scheduled hearing; and

(2) the original of the transcript shall be promptly furnished by the court reporter to the board, without cost to the board; and

(3) a true copy of the transcript shall be made available to the opposing party or parties at the usual and customary charge therefore.

Source: The provisions of this §49.135 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.136. through 49.139. [RESERVED]

§49.140. Continuance.

After a hearing is scheduled and notice is given to the party or parties as herein provided, a postponement or cancellation may be had by any party only for good cause. A request for postponement or cancellation shall be first and promptly made by telephone or in person to the presiding board member. If the request is granted, the party shall confirm the request and the grounds therefore by letter to the board member, with a copy thereof being delivered to the opposing party/parties or counsel.

Source: The provisions of this §49.140 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.141. through 49.144. [RESERVED]

§49.145. Recess.

After a hearing has commenced, circumstances may develop which, in the best interest of equity and justice, require the presiding board member to recess the hearing until a later time or date. If this occurs, the parties and all subpoenaed witnesses shall be entitled to notice of the date, time, and place of the resumption of hearing, in accordance with the same provisions as herein before provided for in these rules for the initial notice, except not less than 10 days written notice thereof shall be given to the party or parties.

Source: The provisins of this §49.145 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.146. through 49.149. [RESERVED]

§49.150. Complaint Specifications.

For all hearings for which complaint and allegation of violation of any provision of the Workers' Compensation Law or of Industrial Accident Board rules, the written notice herein provided for shall describe in detail the areas of investigation or complaint so as to fairly inform the party under investigation.

Source: The provisions of this §49.150 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.151. through 49.154. [RESERVED]

§49.155. Documentary Evidence.

If documentary evidence is to be tendered at the hearing, true copies thereof shall be prepared in advance by the parties offering such evidence, sufficient in number for all interested parties to the hearing.

Source: The provisions of this §49.155 adopted to be effective November 11, 1983, 8 TexReg 4494.

§49.156. through 49.159. [RESERVED]

§49.160. Filing of Formal Statement of Position.

Although no formal statement of position is required to be filed in these types of hearings, any party may file a written brief concerning the facts, law, or argument which a party may desire to present in written form to the board.

Source: The provisions of this §49.160 adopted to be effective November 8, 1983, 8 TexReg 4494.

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§49.161. through 49.164. [RESERVED]

§49.165. Subpoenas and Subpoenas Duces Tecum.

(a) Upon its own motion, or upon the written request of any party to a hearing, the board member presiding over the scheduled hearing may issue a subpoena for attendance of a witness or issue a subpoena *duces tecum* in order to examine any part of the books, files, and records of the parties or other witnesses as relate to the matters in dispute.

(b) It is urged that all requests for subpoenas be promptly made and correctly identify the name and address of the person to be subpoenaed, and a description of the books, record, *etc.*, to be produced by subpoena *duces tecum*.

(c) Although the board will issue a subpoena upon request and in accordance with this rule, the requesting party should be aware the board is unable to enforce its subpoena authority unless the request is accompanied by $1.00 cash for each subpoena to be served, and, in addition, the party requesting the subpoena may be called upon to pay witness travel expense pursuant to Texas Civil Statutes article 3708.

(d) No subpoena will be directed to a witness residing more than 100 miles from the county courthouse in the county where the hearing is held.

(e) A true copy of the request for subpoena/subpoena *duces tecum* shall be promptly mailed by the requesting party to all other parties to the hearings.

(f) Any objection to a subpoena or to a subpoena *duces tecum* , or any portion thereof, shall be made in writing to the board member conducting the hearing and shall state with certainty the grounds of objection. If the written objection is presented to the board not less than seven days prior to the hearing, then a majority of the board shall rule upon the same. If presented less than seven days in advance of the hearing, or at the time of the hearing, the objection may be determined by the board member scheduled to conduct the hearing.

(g) Any subpoena *duces tecum* issued by the board, or any member thereof, shall be restricted in the documents, instruments, and other writings discoverable thereby, to the provisions of the Texas Rules of Civil Procedure, Rule 186a, as now written, or hereafter amended. In the event of an unresolved dispute concerning the applicability of a subpoena *duces tecum* to a particular document, instrument, or other writing, the board or board member conducting the hearing shall examine the instrument in camera to determine whether or not the same is discoverable in whole or in part.

(h) Insofar as practicable, and also in conformity with the board rules herein provided, Rules 176, 177, 177a, 178, and 179 of the Texas Rules of Civil Procedure, as now written, or hereafter amended, shall be applicable to subpoena practice before the board.

Source: The provisions of §49.165 adopted to be effective November 8, 1983, 8 TexReg 4494.

Notes of Decisions: Under Texas Civil Statutes article 3926a if the Harris County Commissioner's court has so authorized a constable may charge a fee for serving subpoenas which has been issued by the Texas Industrial Accident Board. AG-51 (1983).

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CHAPTER 51. AWARD OF THE BOARD

Cross References: This chapter cited in 28 TAC §55.50 (relating to Attorneys Fees and Expenses).

§51.5. Power of Attorney.

Attorneys representing claimants will be authorized by the board to receive fees and expenses only when a power of attorney, contract of employment of attorney, or other document signed by the claimant is filed with the board. The attorneys' fees for representing claimants shall be specified within such power of attorney, contract of employment, or other signed document, and such fees are not to exceed 25% of the total recovery. All attorneys' fees for representing claimants before the board shall be subject to the approval of the board as provided in Texas Civil Statutes, Article 8306, §7(c). When a dispute arises as to the representation of the claimaint by two or more attorneys, the board will require a signed and dated power of attorney or employment contract from each attorney, and the attorney first retained will be deemed to be the attorney of record, unless the board shall determine that the claimant has effected a change of attorneys. (1981)

Source: The provisions of this §51.5 adopted to be effective September 18, 1981, 6 TexReg 3274; amended to be effective October 1, 1985, 10 TexReg 3506.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.6. [RESERVED]

§51.7. Representation in Fatal Cases.

(a) Representation in fatal cases of multiple beneficiaries who stand in differing degrees of relationship to the decedent, and consequently have adverse claims for benefits, constitutes a conflict of interest, and is prohibited.

(b) An attorney who contracts such representation will be ordered to withdraw entirely, and may be subjected to disciplinary action.

Source: The provisions of this §51.7 adopted to be effective April 18, 1988, 13 TexReg 1539.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.8. through 51.9. [RESERVED]

§51.10. Joint Payment of Award.

Any payment by an insurance carrier of an award of the board to a claimant represented by counsel shall be made payable jointly to the claimant and to his attorney. (1970)

Source: The provisions of §51.10 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.11. through 51.14. [RESERVED]

§51.15. Periodic Installments.

When an award is made for payment of compensation in periodic installments, the carrier will notify the board of payment of the award by filing Form A-1 (report of initial payment of compensation), or A-4 (report of resumption of compensation), whichever is appropriate. An A-2 (report of suspension of compensation) will be filed with the board when the carrier discharges its obligation. (1974)

Source: The provisions of §51.15 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.16. through 51.19. [RESERVED]

§51.20. Lump Sum Payment.

When an award is made for payment of compensation in a lump sum the carrier will notify the board of payment of the award by filing Form A-2 (report of suspension of compensation). (1974)

Source: The provisions of §51.20 adopted to be effective September 18, 1981, 6 TexReg 3274.

Notes of Decisions: In fatality cases, two situations arise where lump sum payments are authorized: (1) upon the remarriage of the widow or widower. (2) where as *bona fide* dispute exist as to the liability of the association. AG-JM 2 (1983).

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§51.21. through 51.24. [RESERVED]

§51.25. Request for Review.

Requests for review shall be filed in writing with the board stating the reason for which the award is sought to be modified or set aside. The board in its discretion may set a date on which the request may be considered and will give notice of the hearing to all parties. As soon as possible after the hearing is held, the board will affirm, set aside, or modify the award on the basis of the information available to it at the time from any source. The board may on its own motion correct typographical errors at any time. (1974)

Source: The provisions of §51.25 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.26. through 51.29. [RESERVED]

§51.30. Review of Award.

Review may be granted if any erroneous award was made because of fraud mistake, or if a change has occurred in the physical condition of the injured employee requiring modification of the award as to amount or duration of payments. (1974)

Source: The provisions of §51.30 adopted to be effective September 18, 1981, 6 TexReg 3274.

§51.31. through 51.34. [RESERVED]

§51.35. Unauthorized Attorney's Fee.

No attorney's fee shall be deducted from an award, compromise settlement agreement, periodic benefit payments, or A-2 (report of suspension of compensation) payment, unless first authorized by the board, and only in the amount so authorized. (1981)

Source: The provisions of §51.35 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.36. through 51.39. [RESERVED]

§51.40. Attorneys Not Licensed In Texas.

Attorney's fees and/or expenses shall be authorized and paid only to attorneys who hold a valid license to practice law in the State of Texas. Attorneys licensed only in states other than Texas may appear as representative of claimants but shall not be entitled to receive attorney's fee thereby. (1981)

Source: The provisions of §51.40 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.41. through 51.44. [RESERVED]

§51.45. Attorney Fees and Expenses on Fatal Cases.

Only those attorney's fees and expenses authorized by the board shall be deducted from the amount awarded the claimant. In all death cases where the carrier admits liability on all issues involved and tenders payment of maximum benefits in writing under the Workers' Compensation Act and no controversies arise, then no attorney's fee shall be allowed. The board is not, however, prohibited from allowing reasonable expenses incurred by the attorney in the preparation and presentation of said claim before the board, said expenses being allowed by Texas Civil Statutes article 8306, §7c. (1973)

Source: The provisions of §51.45 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

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§51.46. through 51.49. [RESERVED]

§51.50. Payments of Attorney's Fees.

The parties may agree after the board's award, and with the approval of the board, to a different method of payment of attorney's fees as provided by law. Any such agreement shall be submitted to the board in writing, and when approved, shall be binding on all parties. (1968)

Source: The provisions of §51.50 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.51. through 51.54. [RESERVED]

§51.55. Attorney's Expenses.

No attorney expenses, in addition to the attorney's fees authorized by the board, will be allowed, unless the attorney submits to the board an itemized statement of such incurred expense showing its origin, date incurred or paid, and amount, with the request that such expense be authorized for deduction. The itemized list will be presented at the prehearing conference for approval by the hearing examiner, or accompany a compromise settlement agreement when it is sent to the board for its approval. (1981)

Source: The provisions of §51.55 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

§51.56. through 51.59. [RESERVED]

§51.60. Deductible Expenses.

Generally the board will allow as deductible all those expenses which the claimant's attorney pays (or incurs) and which were reasonably necessary in the investigation, preparation, and proof of the claimant's workers' compensation claim only. (1981)

Source: The provisions of §51.60 adopted to be effective September 18, 1981, 6 TexReg 3274.

Cross References: This section cited in 28 TAC §55.50 (relating to Attorney's Fees and Expenses); and 28 TAC §56.40 (relating to Attorney's Fees and Expenses).

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CHAPTER 53. CARRIER'S REPORT OF INITIATION AND SUSPENSION OF COMPENSATION PAYMENTS

§53.1. through 53.4. [RESERVED]

§53.5. Payment of Benefits Without Prejudice.

It being the policy of the Industrial Accident Board to encourage the prompt delivery of compensation and medical benefits to an injured worker, neither the payment of periodic benefits nor of the health provider care shall be considered an admission of liability by the insurance carrier.

Source: The provisions of this §53.5 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.6. through 53.9. [RESERVED]

§53.10. Written Notice of Injury Defined.

(a) Written notice of injury as used in Texas Civil Statutes article 8306, §18a, shall consist of either:
  (1) an employer's first report of injury (IAB Form E-1); or
  (2) any other instrument in writing, regardless of its source, which fairly informs the carrier of the name of the injured worker, the identity of the employer, the approximate date of injury, and facts showing compensable lost time or the probability of compensable lost time.

(b) Every carrier shall promptly and legibly date stamp every written notice of injury received by it, showing the date such notice was received.

Source: The provisions of this §53.10 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.11. through 53.14. [RESERVED]

§53.15. Board Notice to Carrier of Injury.

The board shall furnish a dated written notification of any injury which may produce compensable lost time to the carrier's designated Austin representative. This notice shall begin the 20-day period for commencement of the payment of compensation, or the filing of the statement of controversion, as required in Texas Civil Statutes article 8306, §18a, unless the carrier has already received earlier written notice thereof from another source (effective January 1, 1983).

Source: The provisions of this §53.15 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.16. through 53.19. [RESERVED]

§53.20. Mode of Payment of Compensation.

Every insurance carrier shall report to the Industrial Accident Board and to the claimant or his attorney on Form A-1 the initial payment of compensation to an injured employee or employee's beneficiary within 10 days from the date of issuance of a draft, check, or other evidence of payment. If such payment represents both initial and final payment, that fact shall be stated on the face of the Form A-1.

(1) All payments of compensation whether of periodic payments, advances, A-2 lump sum payments, or of compromise settlement agreements, shall be by United States legal tender, checks, or negotiable drafts drawn on a Texas bank.

(2) Whenever a payment of compensation is made through the use of a negotiable draft, the carrier shall accompany the draft with written advice to the claimant of the carrier's office location and phone number where the claimant may call, at carrier's expense, to obtain help if necessary in cashing the compensation draft.

Source: The provisions of this §53.20 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.21. [RESERVED]

§53.22. Application to Change the Benefits Payment Period.

(a) While a claim is pending before the board, the claimant and the carrier, with board authorization, may agree to change the weekly payment of benefits to one of the following payment periods: every two weeks, every four weeks, monthly, or quarterly.

(b) Application for board authorization shall be made in writing on a form approved by the board.

Source: The provisions of this §53.22 adopted to be effective April 18, 1988, 13 TexReg 1539.

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§53.23. through 53.24. [RESERVED]

§53.25. Contents of Statement of Controversion or Statement of Position.

A statement of position or a statement of controversion as provided for in Texas Civil Statutes, Article 8306, §18a(a), shall state fully and in writing the grounds for refusal to commence paying compensation. These grounds must be based on actual investigation of the claim and stated in sufficient detail so as to be compared with the position taken by the carrier at the prehearing conference. It is insufficient to simply state a conclusion, for example, "liability in question," "compensability in dispute," or "under investigation." When a carrier files an insufficient statement of controversion or statement of position, the board will issue a complaint report to the carrier through its designated Austin Industrial Accident Board representative. The carrier will have 30 days from the date of receipt of the complaint report to respond in writing to the charge. The board will evaluate the carrier's response. If a majority of the board members determine that a violation has occurred, the violation may be used to establish a record of general business practice, in accordance with Texas Civil Statutes, Article 8306, §18a(d). A failure to respond to the complaint report within 30 days will constitute an automatic violation.

Source: The provisions of this §53.25 adopted to be effective July 20, 1984, 9 TexReg 3733; amended to be effective October 1, 1985, 10 TexReg 3507.

§53.26. through 53.29. [RESERVED]

§53.30. Filing of Wage Statement.

(a) In cases in which the reported weekly compensation rate is less than the maximum prescribed by law, the insurance carrier shall file with the board and the claimant or his attorney a wage statement reporting the wages upon which the compensation rate is based. The wage statement shall accompany the Form A-1, report of initial payment of compensation, or in the event a wage statement is not available at the time of filing Form A-1, the carrier shall indicate on Form A-1 that a wage statement has been requested and shall file said form within a reasonable time, not to exceed 30 days from the date of initial payment of compensation.

(b) When an employer fails or refuses to promptly complete and return the wage statement to the carrier, the carrier shall notify the board of that fact and additionally shall supply the employer's current address to the board. The board will thereafter contact the employer pursuant to the provisions of Texas Civil Statutes article 8307, §7, and of these rules, and may impose appropriate sanctions against the employer for a continuing unexcused failure to respond to the request.

(c) If the carrier does not notify the board of the employer's failure to comply within 30 days of the carrier's first request for a wage statement, the board shall set the compensation rate based upon evidence in the file, and the carrier shall be required to pay the rate determined by the board beginning with the date that the initial payment of compensation was due and continuing until the wage statement is filed with the board or until the carrier is authorized to stop or suspend compensation.

Source: The provisions of this §53.30 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.31. through 53.34. [RESERVED]

§53.35. Notice of Suspension of Compensation.

(a) In every instance in which an insurance carrier has paid compensation to a claimant, the carrier shall report to the board and to the claimant or his attorney on Form A-2 (notice of suspension of compensation payments) within 10 calendar days from the date of last payment. The reasons for suspension of payment shall be stated fully on the notice. When Form A-2 is filed stating compensation suspended because case settled with third party, the carrier shall accompany the notice with a copy of the judgment(s) or settlement papers.

(b) If a carrier suspends or stops the payments of indemnity compensation or medical benefits, and notifies the board in writing thereof pursuant to Texas Civil Statutes, Article 8306, §18a(b), and Article 8307, §11, such notice shall state fully the reason(s) for suspending or stopping such payments. This statement must contain sufficient substantive information to enable the board to evaluate the carrier's position on the claim. It is sufficient to simply state the carrier's position with such phrases as abandoned medical treatment, disability in dispute, *etc.* When a carrier files an insufficient statement of reasons for suspension of payment of benefits, the board will issue a complaint report to the carrier through its designated Austin Industrial Accident Board representative. The carrier will have 30 days from the date of receipt of the complaint report to respond in writing to the charge. The board will evaluate the carrier's response. If a majority of the board members determine that a violation has occurred, the violation may be used to establish a record of general business practice, in accordance with Texas Civil Statutes, Article 8306, §18a(d). A failure to respond to the complaint report within 30 days will constitute an automatic violation.

Source: The provisions of this §53.35 adopted to be effective November 11, 1983, 8 TexReg 4495; amended to be effective July 20, 1983, 9 TexReg 3733; amended to be effective October 1, 1985, 10 TexReg 3507.

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§53.36. through 53.39. [RESERVED]

§53.40. Transmittal Letters.

In cases where the carrier tenders a lump sum payment to claimant based upon medical disability, the carrier shall accompany the payment with the A-2 and a transmittal letter which shall read as follows:

(1) Enclosed is our payment of compensation $ _____ for injuries received on _____. This payment is based on the medical reports contained in our file. Your case remains open before the Industrial Accident Board. This payment does not represent a settlement of your compensation claim. However, there are certain requirements of the law and of the Industrial Accident Board rules with which you must comply in order to protect your claim in the future. Please call our office or the board if you require additional medical treatment or become further disabled as a result of your injury.

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(2) The insurance carrier shall file an amended A-2 not later than 10 days after the carrier has received a rejected lump sum payment from the claimant or has itself cancelled for any reason the lump sum payment.

Source: The provisions of this §53.40 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.41. through 53.44. [RESERVED]

§53.45. Maximum Payment to Minor.

In cases of specific injury or injuries resulting in death, permanent total incapacity, or a high degree of permanent partial disability, where the injured employee is a minor, the compensation rate per week shall be fixed at the maximum allowed by the law unless the evidence clearly dictates the contrary.

Source: The provisions of this §53.45 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.46. through 53.49. [RESERVED]

§53.50. Resumption of Compensation.

In the event the carrier shall, after reporting suspension of payment on Form A-2, subsequently resume the payment of compensation, it shall report such resumption on Form A-4 within 10 days from date of first payment after resumption, and a copy of such Form A-4 shall be furnished to the claimant or his attorney.

Source: The provisions of this §53.50 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.51. through 53.54. [RESERVED]

§53.55. Payment for Amputation.

When an industrial injury occurring prior to September 1, 1973, results in the amputation or partial amputation of a finger, thumb, or toe, the insurance carrier shall file with the board, with copy to the claimant or his attorney, a signed medical report and a chart showing the exact point of amputation at the time a Form A-2, compromise or lump sum payment, is submitted.

Source: The provisions of this §53.55 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.56. through 53.59. [RESERVED]

§53.60. Application for Suspension of Compensation.

Where application is made by the carrier for suspension of compensation pursuant to either Texas Civil Statutes article 8306, §12a, or Texas Civil Statutes article 8307, §4, the question of suspension will be set by the board for hearing within two weeks of said application. No suspension of compensation benefits will be approved by the board, under Texas Civil Statutes article 8307, §4a, unless statutory grounds exist for such suspension. No suspension of compensation benefits will be approved by the board, under Texas Civil Statutes article 8306, §12a, unless:

(1) the injured employee has returned to work; or

(2) the injured employee refuses light duty work procured for him in the locality where he was injured or at a place agreeable to him; or

(3) the treating physician has released the employee to return to work without physical restrictions relating to the compensable injuries involved.

Source: The provisions of this §53.60 adopted to be effective November 11, 1983, 8 TexReg 4495.

§53.63. Suspension of Weekly Compensation.

(a) A carrier may not suspend payment of weekly or other periodic benefits pending final adjudication until there exists evidence justifying suspension. However, in no event, unless directed otherwise by the board, shall a carrier suspend benefits until:

(1) the injured employee returns to work;

(2) the injured employee is released by a physician to return to work without restrictions;

(3) the employee refused employment offered him or her consistent with any restrictions;

(4) the statutory maximum benefit has been paid;

(5) the claim is resolved by settlement, A-2 lump sum payment, or matured award;

(6) evidence exists showing that the carrier has no liability for the employee's injury; or

(7) there is a third-party settlement which relieves the carrier of its liability.

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(b) Medical evidence indicating that a worker can perform work with restrictions or evidence existing showing that the injured employee has engaged in activities inconsistent with his or her impairment shall constitute good cause under §61.25 of this title (relating to Setting at Carrier's Request).

(c) Nothing in this section shall conflict with the provisions of Texas Civil Statutes, Article 8307, §§4(b).

Source: The provisions of this §53.63 adopted to be effective July 28, 1988, 13 TexReg 3512.

§53.65. Certification Procedure.

In cases where it appears that the carrier willfully fails, or refuses without justification to pay compensation, the following procedure will apply.

(1) If, on suspension or stoppage of workers' compensation payments, it appears to the board that the carrier has not fully discharged its obligation to the claimant, the board will notify the carrier through its Austin Industrial Accident Board representative of the deficiency, and copies of such notice shall be sent to the claimant or his attorney.

(2) The board will specify a reasonable period of time in which a carrier may either pay the deficiency and submit a correct report or submit information to the board justifying the amount of its payment.

(3) If the carrier fails to pay the deficiency or fails to submit information justifying the amount of its payment, the board shall set the case for formal hearing to be held by a majority of the board within 100 miles of the claimant's residence. The provision of §53.65 of this title (relating to Special Formal Hearing and Other Investigative Hearings), *et. seq.*, shall apply.

(4) At such hearing, if it is determined that compensation benefits are due, the board shall so order. If the carrier fails to obey such order within 10 days the board may certify such fact to the commissioner of insurance for proceedings, according to Texas Civil Statutes, Article 8306, §18.

Source: The provisions of this §53.65 adopted to be effective October 1, 1985, 10 TexReg 3507.

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CHAPTER 55. LUMP SUM PAYMENTS

§55.1. through 55.4. [RESERVED]

§55.5. Lump Sum Payments.

No lump sum payment of fatal benefits may be made without prior board approval. No lump sum payment of fatal benefits may be made to beneficiaries, unless there exists a *bona fide* dispute as to the liability of the insurance carrier, and, no lump sum payment of benefits for injuries enumerated in Texas Civil Statutes article 8306, §11a, shall be made unless there is also a *bona fide* dispute as to the liability of the insurance carrier (Texas Civil Statutes article 8306, §8 and §10b)

(1) When authorized by statute, a lump sum payment for minors compensation in fatal cases will be considered by the board upon receipt of a certified copy of letters of Guardianship. If the carrier requests an order of a probate court directing a lump sum payment, the cost thereof shall be borne by the carrier.

(2) All lump sum payment agreements submitted to the board must be submitted in four parts-the original must be white, the second copy pink, third copy yellow, and fourth copy white. The forms must either be on NCR paper or be submitted with carbon left intact. A copy of the lump sum payment agreement will be furnished to the parties listed below in lieu of a separate approval notice:

(A) the pink copy will be mailed to the claimant (in an envelope of like color) by the board;

(B) the yellow copy will be mailed to the claimant's attorney if one has been employed (in an envelope of like color); and

(C) the final copy will be placed in the Austin representative's box.

Source: The provisions of §55.5 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective November 11, 1983, 8 TexReg 4496.

§55.6. through 55.9. [RESERVED]

§55.10. Settlements Final When Approved.

Compromise Settlement Agreements between insurance carriers and persons claiming benefits under the Texas Workers' Compensation Law are not final until approval by the Board. (1953).

Source: The provisions of §55.10 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.11. through 55.14. [RESERVED]

§55.15. Compromise Settlement Agreements.

Compromise Settlement Agreements. A compromise settlement agreement must contain the following information:

(1) that the board is of the opinion that the agreement provides for payment of compensation to claimant or claimants in an amount to which he or they are justly entitled under the law;

(2) that the agreement is executed on a form approved by the Board;

(3) that the agreement is accompanied by physician's signed report of the findings of a recent examination of the employee;

(4) that the employee has achieved maximum recovery, or that good reason exists for settlement prior to maximum recovery;

(5) that in the event of serious injury to claimant's eye healing has occurred and the board furnished with a medical report on whether the other eye is or may be affected;

(6) that the agreement is accompanied by a completed copy of the Employer's Wage Statement certified to by the employer in any instance in which claimant's compensation rate is less than the maximum allowed by law or claimant suffers some degree of loss of wage earning capacity.

(7) that the agreement is accompanied by a completed copy of Employer's First Report of Injury;

(8) that in all instances of serious burns or cuts, a detailed medical report of scars or disfigurement is furnished and in all injuries to the face, arms or hands, a color photograph is provided to the board;

(9) the Compromise Settlement Agreement shall include on the face of the agreement the agreed average weekly wage and compensation rate, the social security number, the beginning and ending date of actual or agreed time lost from work with the number of weeks and days totaled, and the exact amount of compensation previously paid, if any;

(10) that the agreement expressly provides whether the claimant or the insurance carrier shall be responsible for unpaid medical expenses and for medical expenses likely to be incurred following approval of the agreement by the board;

(11) when authorized by the statute, a lump sum payment for minors compensation in fatal cases will be considered by the board upon receipt of a certified copy of Letters of Guardianship. If the carrier requests an order of a Probate Court directing a lump sum payment, the cost thereof shall be borne by the carrier;

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(12) all Compromise Settlement Agreements submitted to the Board must include a copy of the payment of compensation form (combination A-1, A-2, A-4) if compensation was paid before the Compromise Settlement Agreement was entered into;

(13) all Compromise Settlement Agreements submitted to the board must be submitted in four (4) parts-the original must be white, the second copy pink, the third copy yellow and fourth copy white. The forms must either be on NCR paper or be submitted with carbon left intact. A copy of the Compromise Settlement Agreement will be furnished to the parties listed below in lieu of a separate approval notice. The pink copy will be mailed to the claimant (in an envelope of like color) by the board. The yellow copy will be mailed to the claimant's attorney if one has been employed (in an envelope of like color). The final copy will be placed in the Austin representative's box.

Source: The provisions of §55.15 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective September 1, 1981, 6 TexReg 3274.

§55.16. through 55.19. [RESERVED]

§55.20. Execution of Compromise Settlement Agreement.

A compromise settlement agreement must be signed by the claimant personally, unless sufficient good cause is found by the board to excuse strict compliance to this section. Only in extraordinary circumstances will the board approve a compromise settlement agreement in which the attorney signs the claimant's name under a power of attorney.

Source: The provisions of §55.20 adopted to be effective September 18, 1981, 6 TexReg 3274.

§55.21. through 55.24. [RESERVED]

§55.25. Loss of an Eye.

The Board considers "loss of an eye" when loss of vision reached ninety (90%) percent. Permanent partial loss of vision in an eye will be calculated on the actual loss of vision as a result of an injury, and not on loss of vision after restoration of vision by proper fitting glasses. The following table for the estimate of compensation to be paid workers who have suffered partial or complete loss of vision in one eye, through accident or occupation, is adopted by the Board. (1961) (Rev. 1973).

TABLE OF VISUAL LOSSES OF ONE EYE

	RETAINED	*LOST*
20/20 indicates 100% of visual efficiency and no loss of vision		
20/30	94.5%	5.5%
20/40	89.0%	11.0%
20/50	83.5%	16.5%
20/60	78.0%	22.0%
20/70	72.5%	27.5%
20/80	67.0%	33.0%
20/90	61.5%	38.5%
20/100	56.0%	44.0%
20/110	50.0%	50.0%
20/120	41.0%	59.0%
20/130	36.5%	63.5%
20/140	32.0%	68.0%
20/150	28.5%	71.5%
20/160	23.0%	77.0%
20/170	18.5%	81.5%
20/180	14.0%	86.0%
20/190	12.0%	88.0%
20/200	Total Loss	Total Loss

Source: The provisions of §55.25 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.26. through 55.29. [RESERVED]

§55.30. Hearing Impairment.

(a) Hearing tests for use in compensation ratings shall be derived from the pure-tone audiogram calculated to ANSI-S3.6-1969 standards. Examination should be performed by a medical specialist who does hearing evaluations or by an

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audiologist having the Certificate of Clinical Competence from the American Speech-Language-Hearing Association upon referral. Hearing handicap will be based on the functional state of both ears.

(b) The average of the hearing threshold levels at 500 Hz, 1,000 Hz, 2,000 Hz, and 3,000 Hz should be calculated for each ear. The percent of impairment for each ear should be calculated by multiplying by 1.5 the amount by which the above average hearing threshold level exceeds 25 dB up to a maximum of 100% which is reached at 92dB. The hearing handicap, a bilateral assessment, should then be calculated by multiplying the smaller percentage, (better ear), by five, adding this figure to the larger percentage, (poorer ear), and dividing the total by six.

(c) Since there is no exact scientific test by which non-industrial hearing losses can be distinguished from induced impairment, the opinion as to the amount of loss due to such other causes shall be made by the examining medical specialist.

(d) No consideration shall be given to possible improvements through use of prosthesis. Where artificial appliances would materially and beneficially improve the future usefulness and occupational opportunities of the employee, the insurer shall provide same, and shall continue to furnish the needed artificial appliance or appliances until a satisfactory fit is obtained in the judgment of the attending physician or physicians. The association shall be liable for replacing or repairing any artificial appliances so furnished.

(e) Such prosthesis shall be prescribed upon proper evaluation by a medical specialist who does hearing aid evaluations or by an audiologist having the Certificate of Clinical Competence from the American Speech-Language-Hearing Association upon referral. Such hearing and speech centers shall have no commercial properties.

(f) The above formula should be used in calculating the percentage of loss of hearing, but the doctor giving the report shall state specifically the exact loss of hearing in percentage, and not decibels.

(g) See examples and chart.

EXAMPLES

A. MILD TO MARKED BILATERAL SENSORINEURAL HEARING LOSS

	500 Hz.	*1000 Hz.*	*2000 Hz.*	*3000 Hz.*
R EAR	15	25	45	55
L EAR	30	45	60	85

1. TO CALCULATE THE AVERAGE HEARING THRESHOLD LEVEL (HTL)

$$\text{R EAR} = \frac{15 + 25 + 45 + 55}{4} = \frac{140}{4} = 35 \text{ dB}$$

$$\text{L EAR} = \frac{30 + 45 + 60 + 85}{4} = \frac{220}{4} = 55 \text{ dB}$$

2. TO CALCULATE MONAURAL IMPAIRMENT

R EAR − 35 dB − 25 dB = 10 dB; 10 × 1.5 = 15%

L EAR − 55 dB − 25 dB = 30 dB; 30 × 1.5 = 45%

3. TO CALCULATE HEARING HANDICAP

SMALLER NUMBER (BETTER EAR) 15% × 5 = 75

LARGER NUMBER (POORER EAR) 45% × 1 = 45

TOTAL: 120 ÷ 6 = 20%

THEREFORE, A PERSON WITH THE HEARING THRESHOLD LEVELS

SHOWN IN THE AUDIOGRAM ABOVE WOULD HAVE A 20% HEARING HANDICAP.

B. SLIGHT BILATERAL SENSORINEURAL HEARING LOSS

	500 Hz.	*1000 Hz.*	*2000 Hz.*	*3000 Hz.*
R EAR	15	15	20	30
L EAR	20	20	30	40

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1. AVERAGE HTL

R EAR = $\frac{15 + 15 + 20 + 30}{4} = \frac{80}{4} = 20$ dB

L EAR = $\frac{20 + 20 + 30 + 40}{4} = \frac{110}{4} = 27.5$ dB

2. MONAURAL IMPAIRMENT

R EAR = 20 dB − 25 dB − 5dB; 0 × 1.5 = 0%

L EAR = 27.5 dB − 25 dB = 2.5 dB; 2.5 × 1.5 = 3.75%

3. HEARING HANDICAP

SMALLER NUMBER (BETTER EAR) 0% × 5 = 0.00

LARGER NUMBER (POORER EAR) 3.75% × 1 = 3.75

TOTAL: 3.75 ÷ 6 = 1% (ROUNDED OFF)

THEREFORE, THE HEARING HANDICAP IS 1%

C. SEVERE TO EXTREME BILATERAL SENSORINEURAL HEARING LOSS

	500 Hz.	*1000 Hz.*	*2000 Hz.*	*3000 Hz.*
R EAR	80	90	100	110
L EAR	75	80	90	95

1. AVERAGE HTL

R EAR = $\frac{80 + 90 + 100 + 110}{4} = \frac{380}{4} = 95$ dB (USE 92 dB MAXIMAL VALUE)

L EAR = $\frac{75 + 80 + 90 + 95}{4} = \frac{340}{4} = 85$ dB

2. MONAURAL IMPAIRMENT

R EAR = 92 dB (MAXIMUM) − 25 dB = 67 dB; 67 × 1.5 = 100%

L EAR = 85 dB − 25 dB = 60 dB; 60 × 1.5 = 90%

3. HEARING HANDICAP

SMALLER NUMBER (BETTER EAR) 90% × 5 = 450

LARGER NUMBER (POORER EAR) 100% × 1 = 100

550 ÷ 6 = 92%.

THEREFORE, THE HEARING HANDICAP IS 92%

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TABLE 1.
TABLE OF MONAURAL HEARING IMPAIRMENT*

DSHL.	%	*DSHL.*	%
100	0.0		
105	1.9	245	54.4
110	3.8	250	56.3
115	5.6	255	58.1
120	7.5	260	60.0
125	9.4	265	61.9
130	11.3	270	63.8
135	13.1	275	65.6
140	15.0	280	67.5
145	16.9	285	69.4
150	18.8	290	71.3
155	20.6	295	73.1
160	22.5	300	75.0
165	24.4	305	76.9
170	26.3	310	78.8
175	28.1	315	80.6
180	30.0	320	82.5
185	31.9	325	84.4
190	33.8	330	86.3
195	35.6	335	88.1
200	37.5	340	90.0
205	39.4	345	90.9
210	41.3	350	93.8
215	43.1	355	95.6
220	45.0	360	97.5
225	46.9	365	99.4
230	48.8	370	100.0
235	50.6	or greater	
240	52.5		

1. FROM THE AUDIOGRAM OR NUMERICAL RECORD OF THE AUDIOMETRIC TEST, FIND THE DECIBEL SUM OF THE HEARING THRESHOLD LEVELS (DSHL) OF 500, 1000, 2000, AND 3000 HERTX (Hz.).

500	20
1000	25
2000	35
3000	40
TOTAL:	120 DSHL

2. UNDER THE HEADING, 120 DSHL (COL. 1, LINE 5) = 7.5%

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3. COMPUTATION OF % OF HEARING HANDICAP:
IF THE MONAURAL % FIGURE IS THE SAME FOR BOTH EARS, THAT FIGURE EXPRESSES THE % HEARING HANDICAP. IF THE PERCENTAGE MONAURAL HEARING IMPAIRMENTS ARE NOT THE SAME, APPLY THE FORMULA:

$$\frac{(5 \times \%\ [\text{BETTER EAR}] + 1 \times \%\ [\text{POORER EAR}])}{6} = \%\ \text{HEARING HANDICAP}$$

AUDIOMETERS ARE CALIBRATED TO ANSI-1969 STANDARD REFERENCE LEVELS. τ DECIBEL SUM OF THE HEARING THRESHOLD LEVELS AT 500, 1000, 2000, AND 3000 HERTZ.

Source: The provisions of §55.30 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective September 18, 1981, 6 TexReg 3274; amended to be effective November 11, 1983, 8 TexReg 4496.

§55.31. through 55.34. [RESERVED]

§55.35. Stipulation of Medical Payments.

Where an insurance carrier agrees to pay accrued medical and hospital expenses in a Compromise Settlement Agreement, any exceptions or special stipulations agreed upon by the parties must be clearly stated on the face of the Compromise Settlement or an attached affidavit. (1970)

Source: The provisions of §55.35 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.36. through 55.39. [RESERVED]

§55.40. Attorney's Signature.

Settlement Agreements entered into by claimants who are represented by an attorney must be signed by the attorney. The attorney's name and address shall be on the face of the agreement. (1953) (Rev. 1973).

Source: The provisions of §55.40 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.41. through 55.44. [RESERVED]

§55.45. Percent of Medical Impairment.

Where the amount of compensation due is covered by Texas Civil Statutes article 8306, §12, the board may consider percentage of medical impairment as only one element in arriving at percentage of legal disability as distinguished from medical disability. (1973)

Source: The provisions of §55.45 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.46. through 55.49. [RESERVED]

§55.50. Attorneys Fees and Expenses.

Sections 51.5; 51.7; 51.10; 51.35; 51.40; 51.45; 51.50; 51.55; and 51.60 of this title (relating to Power of Attorney; Representation in Fatal Cases; Joint Payment of Award; Unauthorized Attorney's Fee; Attorney Fees and Expenses on Fatal Cases; Payments of Attorney's Fees; Attorney's Expenses; and Deductible Expenses) shall be applied by the board to claims disposed of by settlement agreement.

Source: The provisions of §55.50 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective April 18, 1988, 13 TexReg 1539.

§55.51. through 55.54. [RESERVED]

§55.55. Compromise Settlement Agreement to Set Aside Award.

A compromise settlement agreement, properly executed between or among all parties to the claim, when filed in any board office in the period after an award has been entered but before it bocomes final, or suit is filed, will serve to set aside the award as of the

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date the compromise settlement agreement is filed. If the board subsequently fails to approve the compromise settlement agreement, then the original award will be immediately re-entered.

Source: The provisions of this §55.55 adopted to be effective November 6, 1986, 11 TexReg 4430.

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§55.56. through 55.59. [RESERVED]

§55.60. Consent Withdrawn.

The board's approval of a compromise settlement agreement shall be final at the time the approval is signed by the board unless the board has received a request in writing prior to entry of the approval order that one or more parties to the agreement wishes to withdraw their consent to the agreement, and the board permits the withdrawal of such consent. Any such written request to the board for permission to withdraw consent to an agreement must fully set out the reason or reasons for such request. (1981)

Source: The provisions of §55.60 adopted to be effective November 20, 1977, 2 TexReg 4320; amended to be effective September 18, 1981, 6 TexReg 3274; amended to be effective October 1, 1985, 10 TexReg 3506.

§55.61. through 55.64. [RESERVED]

§55.65. Withdrawal of Consent by Death.

If the claimant has died after signing the compromise settlement agreement, but before the board approved the same, the claimant's death will be considered as effectively terminating claimant's continuing consent to the compromise settlement agreement. (1981)

Source: The provisions of §55.65 adopted to be effective September 18, 1981, 6 TexReg 3274.

§55.66. through 55.71. [RESERVED]

§55.74. [RESERVED]

§55.75. Tender Payment Time Period.

An insurance carrier shall have twenty days from and after the date of approval of a Compromise Settlement Agreement in which to pay or tender payment to the injured employee of the amount approved by the board, and shall have twenty (20) days from the receipt of bills in which to tender all accrued medical expenses resulting from the injury. Failure to tender payment within such time shall cause the board to immediately set such case for formal hearing for the purpose of invoking proper sanctions.

Source: The provisions of §55.75 adopted to be effective November 20, 1977, 2 TexReg 4320.

§55.76. through 55.79. [RESERVED]

§55.80. Waiving of Approval Appearance.

Personal appearance of the claimant shall be required prior to recommendation by the Board Representative for approval of Compromise Settlement Agreements, unless upon the showing of good cause said personal appearance is waived by the Board Representative. (1970) (Rev. 1977).

Source: The provisions of §55.80 adopted to be effective November 20, 1977, 2 TexReg 4320.

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CHAPTER 56. STRUCTURED COMPROMISE SETTLEMENT AGREEMENTS

Authority: The provisions of this Chapter 56 issued under Texas Civil Statutes, Article 8307, §4.

§56.5. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Annuity company—The company from which the carrier is purchasing an annuity for the claimant. The annuity company may be the carrier if the carrier meets the tests provided below for annuity companies (effective 1987).

Structured settlement—Structured Compromise Settlement Agreement.

Source: The provisions of this §56.5 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.10. Form.

A structured settlement must:

(1) be submitted on a form approved by the board;

(2) be accompanied by a physician's signed report of the findings of a recent examination of the employee;

(3) be accompanied, in the event of serious injury to claimant's eye, by a medical report indicating that healing has occurred and whether the other eye is or may be affected;

(4) be accompanied, in the event of severe and disfiguring burns or lacerations, by a descriptive medical report of the scars. In all cases involving injury to the face, arms, or hands, a color photograph taken after maximum healing must be submitted to the board;

(5) be submitted in five parts. The original must be white, the second part pink, the third yellow, the fourth white, and the fifth goldenrod. The forms must be submitted with carbon left intact. The board will furnish the following parties with approved copies of the forms.

(A) The claimant will receive the pink copy.

(B) The attorney, if any, will receive the yellow copy.

(C) The Austin board representative will receive the final two copies (effective 1987).

Source: The provisions of this §56.10 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.15. Execution.

A structured settlement must be signed by the claimant personally, unless the board finds good cause to excuse strict compliance to this section. Only in extraordinary circumstances will the board approve a structured settlement in which the attorney signs the claimant's name under a power of attorney (effective 1987).

Source: The provisions of this §56.15 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.20. Personal Appearance by Claimant.

A personal appearance of the claimant may be required by the board prior to approval. The personal meeting is to be set up by the board, not by the carrier. A carrier representative is required to be present (effective 1987).

Source: The provisions of this §56.20 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.25. Medical Benefits.

Where a carrier agrees to pay accrued medical and hospital expenses in a structured settlement, any exceptions or special stipulations must be clearly stated on the face of the structured settlement or on an attached affidavit (effective 1987).

Source: The provisions of this §56.25 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.30. Consent of Parties—Withdrawal.

The board's approval of a structured settlement shall be final at the time the approval is signed by the board unless the board has received a request in writing prior to entry of the approval order that one or more parties to the agreement wishes to withdraw their consent to the settlement, and the board permits the withdrawal of such consent. Any such written request to the board for permission to withdraw consent to a settlement must fully set out the reason or reasons for such request (effective 1987).

Source: The provisions of this §56.30 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.35. Attorney's Signature.

A structured settlement entered into by a claimant who is represented by an attorney must be signed by the attorney. The attorney's name and address must be on the face of the settlement (effective 1987).

Source: The provisions of this §56.35 adopted to be effective December 21, 1987, 12 TexReg 4529.

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§56.40. Attorney's Fees and Expenses.

Sections 51.5; 51.7; 51.10; 51.35; 51.40; 51.45; 51.50; 51.55; and 51.6 of this title (relating to Power of Attorney; Representation in Fatal Cases; Joint Payment of Award; Unauthorized Attorney's Fees; Attorneys Not Licensed in Texas; Attorney Fees and Expenses on Fatal Cases; Payments of Attorney's Fees; Attorney's Expenses; and Deductible Expenses) shall be applied by the board to claims disposed of by structured settlement (effective 1987).

Source: The provisions of this §56.40 adopted to be effective December 21, 1987, 12 TexReg 4529; amended to be effective April 18, 1988, 13 TexReg 1539.

§56.45. Tender Payment Time Period.

The carrier shall have 20 days after the date of approval of a structured settlement to pay or tender any approved lump sum payment to the injured employee or approved fees and expenses to any attorney(s), and shall have 20 days from the receipt of bills in which to tender all reasonable accrued medical expenses necessarily resulting from the injury. Failure to tender payment within such time shall cause the board to immediately set such case for formal hearing for the purpose of invoking proper sanctions (effective 1987).

Source: The provisions of this §56.45 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.50. Final When Approved.

A structured settlement is not final until the settlement is approved by the board. Board approval is deemed to have occured at 5 p.m. of the day the approval is signed (effective 1987).

Source: The provisions of this §56.50 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.55. Annuity Company.

An annuity company providing an annuity under the terms of a structured settlement must be licensed to do business in Texas and must have a Best's rating of A+, with a financial size category of VII or above, according to the most recent information available (effective 1987).

Source: The provisions of this §56.55 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.60. Payments Guaranteed.

The workers' compensation carrier shall guarantee the payments provided by the annuity company in the event of default (effective 1987).

Source: The provisions of this §56.60 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.65. Cost of the Annuity.

(a) The carrier shall submit to the board with the structured settlement, in camera, the cost of the annuity.

(b) The cost of the annuity to a carrier that does not purchase an annuity from a third party is the discounted value of the periodic payments to be provided (effective 1987).

Source: The provisions of this §56.65 adopted to be effective December 21, 1987, 12 TexReg 4529.

§56.70. Structured Settlement Agreement to Set Aside Award.

A structured settlement, properly executed between or among all parties to the claim, when filed in the board's office in the period after an award has been entered but before it becomes final, or suit is filed, will serve to set aside the award as of the date the structured settlement is filed. If the board subsequently fails to approve the settlement, then the original award will be re-entered immediately (effective 1987).

Source: The provisions of this §56.70 adopted to be effective December 21, 1987, 12 TexReg 4529.

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CHAPTER 57. REQUEST FOR CASE FOLDERS AND CERTIFICATIONS OF ACTIONS OF THE BOARD

Notes of Decisions: The Texas Industrial Accident board is not authorized to release any information pertaining to a worker's compensation claim except in cases where the board has a reasonable basis to believe that a fraud has been committed. The board is authorized to release and/or report to the appropriate state and federal agencies such information as may be necessary to prosecute the wrongdoer. The board is also authorized to release information for statistical gathering purposes. AG-MW 202 (1980).

§57.1. through 57.4. [RESERVED]

§57.5. Request for Copies or Statistical Information.

Written requests for public information by persons entitled thereto under Texas Civil Statutes article 8307, §9 and §9a, shall be mailed or presented in person to the board's Austin office. Copies and certified copies of files or portions thereof or statistical information will be furnished only upon receipt of the correct payment. Fees and charges for requested reproduced copies or statistical information may be obtained from the Industrial Accident Board. There will be no refund for less than $5.00 of monies paid by actual mistake in excess of the correct amount or for copies of instruments not in the board's file, unless specifically requested in writing. No copies or certified copies of instruments will be furnished between seven days prior to the date of formal hearing and the date of the board's award. (1977).

Source: The provisions of this §57.5 adopted to be effective November 20, 1977, 2 TexReg 4322; amended to be effective June 9, 1980, 5 TexReg 2111; amended to be effective September 18, 1981, 6 TexReg 3274.

§57.6. through 57.9. [RESERVED]

§57.10. Written Request for Public Information.

All written requests for public information under Texas Civil Statutes article 8307, §9a, from prospective employers must be accompanied by a written authorization from the prospective employee. (1977).

Source: The provisions of this §57.10 adopted to be effective November 20, 1977, 2 TexReg 4322.

§57.11. through 57.14. [RESERVED]

§57.15. Telephone Request for Public Information.

All telephone inquiries from prospective employers seeking public information under Texas Civil Statutes article 8307, §9a, must be directed to the board's Austin office. Written authorizations required under this statute must also be directed to the board's Austin office. (1977).

Source: The provisions of this §57.15 adopted to be effective November 20, 1977, 2 TexReg 4322.

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CHAPTER 59. NOTICES OF INTENTION TO APPEAL

§59.1. through 59.4. [RESERVED]

§59.5. Filing of Notice.

Notices of intention to appeal from a final order or award of the board shall be filed with the board in Austin and must be in writing, clearly and accurately identify the compensation claim to which it pertains, including the board file number, and delivered to the board's office in Austin, either:

(1) in person, or
(2) by mail, or
(3) by wire or telegram, or
(4) by comparable means.

Source: The provisions of this §59.5 adopted to be effective November 20, 1977, 2 TexReg 4323; amended to be effective November 11, 1983, 8 TexReg 4497.

§59.6. through 59.9. [RESERVED]

§59.10. Receipt of Notice.

Receipt of the Notice of Intention to Appeal shall be acknowledged by a board member, the executive director of the board or by persons duly designated by the board for such purpose, who shall immediately stamp and sign each such notice. Acknowledgement will subsequently be made by mail to all interested parties. (1970).

Source: The provisions of this §59.10 adopted to be effective November 20, 1977, 2 TexReg 4323.

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CHAPTER 61. PREHEARING CONFERENCES

§61.1. through 61.4. [RESERVED]

§61.5. Notice of Prehearing Setting.

The board will give at least 30 days notice of prehearing conference to all interested parties, unless compensation or medical benefits are not being paid, in either of which event a prehearing conference may be set with less than 30 days notice. (Revised 1983).

Source: The provisions of this §61.5 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323; amended to be effective November 11, 1983, 8 TexReg 4497; amended to be effective October 21, 1983, 8 TexReg 4497.

§61.6. through 61.9. [RESERVED]

§61.10. Setting When Compensation Not Paid.

If the carrier, having knowledge of the claim, has not paid weekly compensation benefits, the board, upon request of the claimant or his representative shall set the case for pre-hearing conference on the first docket following such request. Provided further, that the institution of weekly compensation benefits by the carrier after the setting of the pre-hearing conference may or may not be available as a reason for cancellation of the pre-hearing conference. (1973)

Source: The provisions of this §61.10 adopted to be effective January 1, 1976.

§61.11. through 61.14. [RESERVED]

§61.15. Setting Under Texas Civil Statutes article 8306, §18a.

(a) If the carrier, having received written notice of a compensable lost time injury as provided in Texas Civil Statutes article 8306, §18a, is not timely paying compensation or ceases the payment of such benefits, the board shall set the claim for a prehearing conference on the first available docket.

(b) In the event a dispute arises over the suspension of medical benefits as defined in these board rules, a health provider may file with the board a written request to attend a prehearing conference, as a party and participant therein, and in such event the health provider shall attend the prehearing conference, either in person or by a representative. In the request, the health provider shall certify the charges have been itemized and that timely reports have been made in accordance with Texas Civil Statutes article 8306, §7, and these board rules. (Effective January 1, 1984).

Source: The provisions of this §61.15 adopted to be effective October 21, 1983, 8 TexReg 4497.

§61.16. through 61.19. [RESERVED]

§61.20. Setting on Hardship.

(a) If the board determines that financial hardship may exist and the carrier has failed to tender an adequate advance or acceleration of benefits within 10 days from the filing of a hardship affidavit with the board, the board shall schedule such case for prehearing conference on the next docket following 30 days from the date of the filing of the hardship affidavit.

(b) Hardship affidavits must contain sufficient factual information to support the allegations of hardship, and shall be signed and sworn by the claimant personally, unless otherwise waived by the board for good cause shown.

(c) A copy of the hardship affidavit shall be forwarded to the insurance carrier by the claimant, at the same time the original is filed with the board.

Source: The provisions of this §61.20 adopted to be effective October 21, 1983, 8 TexReg 4497.

§61.21. through 61.24. [RESERVED]

§61.25. Setting at Carrier's Request.

Upon a showing of good cause, prehearing will be set by the board on the insurance carrier's request. It shall be presumed the payment of compensation benefits for a period of consecutive 52 weeks or longer constitutes a case of "extended disability", and in such cases the carrier, upon written request therefore, approved by the board, shall be entitled to a prehearing conference in order to review the claimant's physical and medical condition and the treatment thereof.

Source: The provisions of this §61.25 adopted to be effective October 21, 1983, 8 TexReg 4497.

Cross References: This section cited in 28 TAC §53.63 (relating to Suspension of Weekly Compensation).

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§61.26. through 61.29. [RESERVED]

§61.30. Filing of Medical Information.

All available medical information that has a bearing on the claim at hand must be filed with the board at or before the prehearing in accordance with Texas Civil Statutes article 8309a(b). (1970).

Source: The provisions of this §61.30 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.31. through 61.34. [RESERVED]

§61.35. Exchange of Medical Information.

Claimant or claimant's attorney and carrier shall exchange all available medical information promptly after expiration of six weeks disability or earlier upon written request of either party. Thereafter, all medical information will be exchanged promptly upon receipt. If received less than seven days prior to a prehearing conference, it shall be brought to the prehearing conference for exchange. Both parties shall bring to the prehearing conference all available medical information.

Source: The provisions of this §61.35 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323; amended to be effective September 18, 1981, 6 TexReg 3274.

§61.36. through 61.39. [RESERVED]

§61.40. Additional Medical.

Where the hearing officer determines that additional medical examination will probably assist in settlement, he may order such additional medical examination at the expense of the board, provided no undue delay shall occur thereby, and the prehearing officer shall reset the prehearing conference. (1970) (Rev. 1973).

Source: The provisions of this §61.40 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.41. through 61.44. [RESERVED]

§61.45. Charges for Reports.

Reasonable charges shall be allowed by the board for narrative reports required under Texas Civil Statutes article 8306, §7, and such charges shall be considered necessary expenses to be paid by the carrier. (1970) (Rev. 1977).

Source: The provisions of this §61.45 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.46. through 61.49. [RESERVED]

§61.50. Representatives Must Be Qualified.

The success of the prehearing conference system depends upon a high level of expertise in workers' compensation matters by representatives of carriers and claimants. Carriers should be represented either by an attorney licensed to practice in this state, or by individuals who can demonstrate a continuing proficiency in compensation law and procedure. Negotiation of a settlement in a workers' compensation case constitutes the practice of law, and no attorney's fees or expenses will be authorized by the board to any representative of the claimant other than an attorney licensed to practice in this state.

Source: The provisions of this §61.50 adopted to be effective October 21, 1983, 8 TexReg 4497.

§61.51. through 61.54. [RESERVED]

§61.55. Supply of Forms.

The carrier's representative shall have a sufficient supply of proper forms to enable him to complete settlements at the prehearing conference.

Source: The provisions of this §61.55 adopted to be effective January 1, 1976; amended to be effective October 21, 1983, 8 TexReg 4497.

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§61.56. through 61.59. [RESERVED]

§61.60. Attendance at Conference.

The claimant and his attorney or authorized agent, if any, and the carrier's representative must attend all prehearing conferences pertaining to the claim under consideration. (1970) (Rev. 1977).

Source: The provisions of this §61.60 adopted to be effective January 1, 1976; amended to be effective November 20, 1977, 2 TexReg 4323.

§61.61. through 61.64. [RESERVED]

§61.65. Postponement and Continuance.

If for any reason the case should not be heard at the designated time and place, any interested party shall notify the resident reviewer or the hearing officer 10 days prior to pre-hearing, giving reasons for his objections and he shall furnish a copy of said objections to opposing counsel or party. The resident reviewer or hearing officer may, after reviewing the objections, order the pre-hearing rescheduled or retained on the docket.

Source: The provisions of this §61.65 adopted to be effective January 1, 1976; amended to be effective October 21, 1983, 8 TexReg 4497.

§61.66. through 61.69. [RESERVED]

§61.70. Maintain Setting.

Where the request for continuance or postponement is based upon the payment of compensation and furnishing of medical aid, the resident reviewer or the prehearing officer may still maintain the setting where there is a showing of hardship on the part of the claimant.

Source: The provisions of this §61.70 adopted to be effective January 1, 1976; amended to be effective October 21, 1983, 8 TexReg 4497.

§61.71. through 61.74. [RESERVED]

§61.75. Failure to Appear.

Where claimant or his attorney, if any, fails to make a personal appearance at the prehearing without good cause, such failure to appear shall result in a postponement of the prehearing until the board is assured in writing of his or their appearance. The board may order a reduction in attorney's fees in cases of unexcused or unexplained failure of the attorney to attend any scheduled prehearing conference.

Source: The provisions of this §61.75 adopted to be effective January 1, 1976; amended to be effective October 21, 1983, 8 TexReg 4497.

§61.76. through 61.79. [RESERVED]

§61.80. Participation at Conference.

Although no testimony will be taken at a pre-hearing conference, nevertheless, the claimant, carrier's representative, and any other witnesses in attendance must, if called upon by the pre-hearing examiner or the adverse party, fully participate by responding to requests for information reasonably necessary in the evaluation or defense of the claim presented. A violation of this rule by claimant may result in a continuance of the pre-hearing conference until a subsequent date, and a violation of the rule by any other party or witness may result in appropriate sanctions by the board.

Source: The provisions of this §61.80 adopted to be effective January 1, 1976; amended to be effective October 21, 1983, 8 TexReg 4487.

§61.81. through 61.84. [RESERVED]

§61.85. Carrier Self-Audit of Pre-hearing Conference.

A viable prehearing conference system is important to the efficient functioning of the workers' compensation program in this state. This necessarily includes a good faith effort on the part of both claimant or his/her attorney and of the carrier to negotiate in good faith. In order that the board might monitor the designed function of the pre-hearing conference in all claims which are the subject of a pre-hearing conference, except fatals, statutory total and permanent claims, and second injury fund claims, and where no A-2 payment is made or compromise settlement agreement is entered into at the pre-hearing conference:

(1) The carrier shall make and keep a written record of each compensation file which has been the subject of a pre-hearing conference, and an award recommendation has been made by the pre-hearing examiner, the following information: the name of the claimant; the name and permanent State Bar number of the claimant's attorney, if

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known to the carrier; the board file number; the carrier file number; the date of the pre-hearing conference held on the claim; the amount of the final demand of the claimant or his/her attorney at the pre-hearing conference; the amount of the final offer made by the carrier; and the net award by the board.

(2) Such record shall also include the date of final disposition, the net amount thereof, and whether by way of compromise settlement agreement, judgment, or dismissal without judgment entry.

(3) The record described in this rule shall be retained by the carrier for not less than five years following its completion, and shall be made available to the board, upon its request therefore.

(4) Neither the carrier nor claimant's attorney shall ever be required to file such information as directed herein by the board, and such information shall never become a part of the records of the board. A carrier or an attorney shall, at the request of the board, make these records available to the board for the purpose of the board and carrier or attorney evaluating the negotiation record of the board or the attorney at pre-hearing conferences. No board member or officer or employee of the board shall ever disclose such information, or any part thereof, to any other person, corporation, or agency.

Source: The provisions of this §61.85 adopted to be effective October 21, 1983, 8 TexReg 4497.

§61.86. through 61.89. [RESERVED]

§61.90. Conduct at Prehearing Conference.

Abusive, threatening, and vulgar language or gestures will not be tolerated at a prehearing conference. Violation of this board rule by any party or witness may result in a continuation of the hearing until a later date, sanctions, or, in appropriate instances, charges of unethical conduct under §65.1 of this title (relating to Practicing Before the Board).

Source: The provisions of this §61.90 adopted to be effective October 21, 1983, 8 TexReg 4497.

§61.91. through 61.94. [RESERVED]

§61.95. Consular Officers.

Consular officers and their attorneys shall comply with all board rules and shall attend any prehearing conference or board hearing set on any compensation claim where such consular officers or their attorneys shall purport to represent the interests of any resident or nonresident alien beneficiary in a workers' compensation claim under the Workers' Compensation Laws of Texas. No attorney's fees or other expenses shall be deducted or withheld from any compensation paid without prior authorization of the board pursuant to the provisions of Texas Civil Statutes article 8306, §7c. The board shall be provided with prop documentation, as it may request, from time to time, of the remission of compensation benefits paid through any consular office pursuant to the provision of Texas Civil Statutes article 8306, §17.

Source: The provisions of this §61.95 adopted to be effective January 1, 1976; amended to be effective October 21, 1983, 8 TexReg 4497.

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CHAPTER 63. PROMPTNESS OF FIRST PAYMENT

§63.1. through 63.4. [RESERVED]

§63.5. Quarterly Report.

The executive director of the Industrial Accident Board shall make a report, based on each quarter year's performance of all the insurance carriers writing workers' compensation insurance in Texas, which report will reflect the promptness of first payment of each such carrier of benefits due and payable under the Texas Workers' Compensation Act covering all cases occurring after May 18, 1969. (1970).

Source: The provisions of §63.5 adopted to be effective November 20, 1977, 2 TexReg 4324.

§63.6. through 63.9. [RESERVED]

§63.10. Sanctions for Late Payment.

Any insurance carrier writing workers' compensation insurance under the provisions of the Texas Workers' Compensation Act who, on the average, shall fail to make compensation payments due claimants within a reasonable length of time after the same become due and payable, but in no event later than thirty (30) days on the average from the date of incapacity, shall be subject to appropriate sanctions to be invoked by the Texas Industrial Accident Board. (1970) (Rev. 1973).

Source: The provisions of §63.10 adopted to be effective November 20, 1977, 2 TexReg 4324.

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CHAPTER 65. UNETHICAL OR FRAUDULENT CLAIMS PRACTICES

§65.1. through 65.4. [RESERVED]

§65.5. Practicing Before the Board.

Whenever the board receives evidence that a person practicing before the board is guilty of unethical or fraudulent conduct, such person shall be cited by certified mail to appear before the board in person to show cause why he or she should not be barred from practicing before the board because of such conduct. In all such cases, the board's citation shall contain a detailed description of charges to be considered at such hearing and a reasonable time to secure and prepare evidence shall be given any such person as cited. (Nov. 14, 1955) (Rev. 1973).

Source: The provisions of §65.5 adopted to be effective November 20, 1977, 2 TexReg 4324.

§65.6. through 65.9. [RESERVED]

§65.10. Actions by Carrier, Claimant's Attorney, and/or Agent.

The following willful acts shall be deemed unethical or fraudulent conduct by the board:

(1) *Carrier representatives:*

- (A) misrepresenting to claimants, employers, or health providers the provisions of the Workers' Compensation Law of Texas;
- (B) failing to submit to the board any settlement agreement executed by the parties;
- (C) failing to immediately notify the board of the suspension or stopping of compensation and the reason for such suspension or stopping of compensation;
- (D) stopping or suspending compensation without substantiating evidence that such action is authorized by law;
- (E) misrepresenting that one is employed by the State of Texas or any agency thereof;
- (F) instructing employers not to file Employer's First Reports of Injury with the board when such filing is required by statute;
- (G) instructing employers to violate the claimant's rights guaranteed by Texas Civil Statutes, Article 8306, §7;
- (H) failing to promptly tender full death benefits where no *bona fide* dispute exists as to the liability of the carrier;
- (I) allowing an employer to dictate the methods by which and the terms on which a claim is handled and settled. Nothing in the foregoing shall prohibit the free discussion of a claim prior to prehearing conference, prohibit the employer's assistance in the investigation and evaluation of a claim prior to pre-hearing conference, or prohibit the employer's attendance at a pre-hearing conference and participation therein as a witness/observer;
- (J) failing to confirm medical benefits coverage to any persons or facility providing medical treatment to a claimant where no *bona fide* dispute exists as to the liability of the carrier;
- (K) failing, without good cause, to attend a pre-hearing conference;
- (L) attending a pre-hearing conference without complete authority or failing to exercise authority to effectuate settlement;
- (M) adjusting workers' compensation claims in any manner contrary to the provisions of the Adjusters Licensing Act or the rules and regulations of the State Board of Insurance;
- (N) failing to promptly process claims in a reasonable and prudent manner;
- (O) failing to initiate or reinstate compensation when due where no bona fide dispute exists as to the liability of the carrier;
- (P) misrepresenting the reason for not paying compensation or for the suspension of compensation;
- (Q) misdating the Form A-1 so as to distort the true date of the initial payment of compensation;
- (R) making notations on drafts or other instruments so as to indicate that the draft or instrument represents a final settlement of a claim when in fact the claim is still open and pending before the board;
- (S) failing and refusing to pay compensation from week to week as and when the same matures and accrues directly to the person entitled thereto;
- (T) failing to pay an award of the board as directed by the board when no appeal is perfected;
- (U) violating any rule of the board;
- (V) controverting claims when evidence clearly indicates compensability.

(2) *Claimant's attorney and/or agents:*

- (A) failing, without good cause, to attend a pre-hearing conference;
- (B) committing an act of barratry as defined by the laws of this state;
- (C) soliciting workers' compensation claims;
- (D) withholding sums not authorized by the board from claimant's weekly compensation or from advancements;

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(E) entering into a compromise settlement agreement without the knowledge, consent, and signature of the claimant or beneficiary;

(F) taking a fee or withholding expenses in excess of such sums authorized by the board;

(G) refusing or failing to make prompt delivery to claimant (client) of the funds belonging to a claimant as a result of a compromise settlement agreement, A-2 payment or award;

(H) violating the Code of Professional Responsibility of the State Bar of Texas;

(I) violating any rules of the board. (Rev. 1979).

Source: The provisions of §65.10 adopted to be effective November 20, 1977, 2 TexReg 4324; amended to be effective September 25, 1979, 4 TexReg 3232; amended to be effective September 18, 1981, 6 TexReg 3274; amended to be effective October 26, 1981, 6 TexReg 3819; amended to be effective November 11, 1983, 8 TexReg 4499; amended to be effective October 1, 1985, 10 TexReg 3506.

§65.11. through 65.14. [RESERVED]

§65.15. Filing of Violation Report.

Whenever an authorized representative of the board believes any party to a compensation claim has been or is in violation of either the Workers' Compensation Act, or any part thereof, or of these board rules, a written violation report shall be sent to the executive director with a copy to the party concerned. Said party shall promptly report in writing and shall direct his reply to the executive director. This board may impose sanctions for failure of said party to respond to the violation report within 30 days from receipt thereof.

Source: The provisions of §65.15 adopted to be effective November 11, 1983, 8 TexReg 4499.

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CHAPTER 67. ALLEGATIONS OF FRAUD

§67.1. through 67.4. [RESERVED]

§67.5. Referral to Attorney General.

The board, upon its findings of probable cause, shall promptly refer any written allegation of fraud regarding an employer, employee, attorney, person or facility furnishing medical services, insurance company or its representative to the Attorney General. (Rev. 1979)

Source: The provisions of §67.5 adopted to be effective November 20, 1977, 2 TexReg 4325; amended to be effective September 25, 1979, 4 TexReg 3232.

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CHAPTER 69. MEDICAL EXAMINATION ORDERS

Authority: The provisions of this Chapter 69 issued under Texas Civil Statutes, Article 8307, §4.

SUBCHAPTER A. Carrier's Choice of Health Care Providers

§69.5. Application of Chapter.

(a) This chapter shall not apply to medical examinations ordered pursuant to Texas Civil Statutes, Article 8309b, §10, and 8309d, §10.

(b) Nothing in this chapter shall be construed to limit the rights of the parties to agree on treatment or an examination by a mutually agreed health care provider. The agreement must be in writing if either party intends to take advantage of the protections offered by this chapter.

Source: The provisions of this §69.5 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Carrier's prior choice of health care provider—A health care provider who has examined the claimant in regard to the injury in question as provided in Texas Civil Statues, Article 8307, §4, because:

(A) the board ordered the claimant to be examined by a health care provider of the carrier's choice; or

(B) the claimant granted permission for an examination by a carrier's tendered choice of a health care provider.

Health care provider—A physician, chiropractor, or podiatrist.

180 day period—the elapse of 180 days after an examination conducted by the carrier's choice of health care provider.

Source: The provisions of this §69.10 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.15. Carrier May Apply for Order From Board.

It shall be the policy of the board to issue an order for an examination by a health care provider of the carrier's choice within 30 days after initial date of filing with the board a combination form entitled carrier's request for permission or requested medical examination order.

(1) The carrier shall send the properly completed combination form to the claimant or his attorney by certified mail, with a copy to the board.

(2) The claimant or attorney is required to respond to the request for permission within 10 days from receipt of the request in the space provided at the bottom of the combination form. The response by claimant's attorney shall be returned to the carrier by certified mail with a copy forwarded to the board. An unrepresented claimant may use a return envelope provided by the carrier, and the carrier shall immediately file the claimant's response with the board.

(3) An order will not be necessary if the claimant or his attorney agrees to the examination. An examination by agreement will have the same force and effect as a formal board order. If permission is neither granted nor refused within 10 days from receipt by the claimant or his attorney, the board shall enter a formal order directing the examination as requested by the carrier.

(4) All examinations available under this section must be scheduled as soon as possible, with at least 10 days notice to the claimant or his attorney.

(5) If the examiner of the carrier's choice finds that the claimant is able to return to work and compensation is being paid, the case will be set on the next available pre-hearing docket, but in no event will the scheduled pre-hearing conference be more than 30 days from receipt of the carrier's request for pre-hearing conference if the request is accompanied by the carrier's examiner's report.

Source: The provisions of this §69.15 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.20. Application.

The application for permission or order shall be made on a combination form approved by the board and shall contain all information required by the board as detailed on the form.

Source: The provisions of this §69.20 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.25. Bases for Denial.

(a) *Time limit after injury.* No examination shall be ordered if the combination form is signed or submitted 60 or fewer days after the date of an injury.

(b) *Health care providers limited.* No examination shall be ordered if the license of the health care provider is under suspension by the appropriate licensing agency on the date of application.

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(c) *Ability to travel.* If the carrier should request an examination by a doctor whose practice is outside the area where the claimant lives, then a statement shall be attached to the request setting out the reason(s) for the request and whether such required travel would be suitable to the condition of the claimant and convenient and accessible to him/her.

(d) *One hundred and eighty day period.* No examination shall be ordered if the claimant has been examined for the injury by the carrier's choice of health care provider and the prior health care provider is not the same as the requested health care provider.

(f) *Good cause.* The board may waive any of the bases for denial in subsections (a)–(e) of this section or deny an application for a medical examination order if the board determines that good cause exists.

Source: The provisions of this §69.25 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.30. Appeal.

The carrier or the claimant may appeal a decision by the board staff in writing to the executive director or the full board. The appeal must be received no later than 10 days after the order or denial is mailed or delivered to the parties.

Source: The provisions of this §69.30 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.33. Claimant's Medical Records.

A claimant's health care provider shall timely release any and all medical records relating to the injury or disease in question, including x-rays and results of other diagnostic tests, when requested by the carrier pursuant to this chapter. A carrier shall report to the board the provider's name and the circumstances surrounding a refusal to release records.

Source: The provisions of this §69.33 adopted to be effective June 7, 1988, 13 TexReg 2555.

§69.35. Claimant's Expenses.

Prior to the date the claimant attends an examination ordered by the board or permitted by the claimant, the carrier shall tender to the claimant travel expenses in accordance with §41.155 of this title (relating to Transportation Costs As Medical Expenses).

Source: The provisions of this §69.35 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.40. Attendance of Claimant's Health Care Provider.

In accordance with Texas Civil Statutes, Article 8307, §4, the claimant shall have the right to have a health care provider of his or her choice present at the examination at the carrier's expense.

Source: The provisions of this §69.40 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.45. Unreasonable Delay.

The claimant shall be entitled to a prompt examination. Any examination that fails to commence within two hours after the claimant timely reports for the examination should be reported to the executive director.

Source: The provisions of this §69.45 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.50. Reports of Examinations.

The carrier's choice of health care provider shall immediately submit a written report of the results of the examination to all parties.

Source: The provisions of this §69.50 adopted to be effective February 19, 1988, 13 TexReg 617.

§69.55. Failure to Attend Examination.

(a) A claimant who agrees or is ordered to submit to an examination as requested by the carrier under this chapter is required to attend the examination.

(b) When a claimant fails to attend an examination permitted or ordered under this chapter, the carrier may notify the board in writing on a board-approved form and request a formal hearing. The board shall set the hearing on the first Friday following 10 days from receipt of the carrier's written request, and shall provide written notice to all parties.

(c) The claimant may be heard at this hearing by:
  (1) making a personal appearance in Austin;
  (2) appearing by telephone conference call; or
  (3) filing a written brief.

(d) If a majority of the board determines there was no good cause for the claimant's failure to attend the medical examination, the board shall order the carrier to suspend compensation during the continuance of the claimant's refusal.

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(e) The carrier may not terminate compensation because of the claimant's failure to attend a medical examination permitted or ordered under this chapter until ordered by the board.

Source: The provisions of this §69.55 adopted to be effective February 19, 1988, 13 TexReg 617; amended to be effective June 16, 1988, 13 TexReg 2752.

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CHAPTERS 71. through 87. [RESERVED]

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CHAPTER 89. CRIME VICTIMS COMPENSATION ACT.

§89.1. through 89.4. [RESERVED]

§89.5. Compliance and Suspension of Rules.

Chapter 89 of these sections apply solely to the administration of the Crime Victims Compensation Act (chapter 189, Sixty-Sixth Legislature , Regular Session). All parties seeking any action of the board shall comply with these rules, unless in its judgment the board determines that compliance with any of the rules under particular circumstances will result in injustice to any party. Accordingly, rules may be suspended at the discretion of the board and additional hearings held or cases scheduled for hearing out of their regular order.

Source: The provisions of §89.5 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.6. through 89.9. [RESERVED]

§89.10. Social Security Number.

All forms, reports and other documents filed with the board which pertain to a claim shall include the Social Security number of the claimant.

Source: The provisions of §89.10 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.11. through 89.14. [RESERVED]

§89.15. General Communications.

All applications and communications concerning the Crime Victims Compensation Act shall be filed with the Austin office of the Industrial Accident Board.

Source: The provisions of §89.15 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.16. through 89.19. [RESERVED]

§89.20. Claimant's Address.

All communications from the board to the claimant will be directed to the claimant's last known mailing address. The claimant must promptly advise the Board of any change in address.

Source: The provisions of §89.20 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.21. through 89.24. [RESERVED]

§89.25. Reporting the Crime.

In determining the time period for the victim's reporting the crime (§4b) the board will consider the seventy-two (72) hours to begin with the last known event which constituted the criminally injurious conduct for which compensation is sought.

Source: The provisions of §89.25 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.26. through 89.29. [RESERVED]

§89.30. Filing of Application.

In determining the time period for the victim's filing of an application with the board under §4(c), the board will consider the one year to begin with the last known event which constituted the criminally injurious conduct for which compensation is sought. For crimes or incidents occurring on or after September 1, 1985, the limitation period will not include that period of physical incapacity which reasonably prevented the claimant from filing an application for compensation according to §4(c). It is the claimant's responsibility to provide the board with written medically documented evidence of such physical incapacity.

Source: The provisions of §89.30 adopted to be effective January 1, 1980, 4 TexReg 4660; amended to be effective November 11, 1983, 8 TexReg 4499; amended to be effective November 5, 1985, 10 TexReg 4124.

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§89.31. through 89.34. [RESERVED]

§89.35. Loss of Earnings.

In computing the actual loss of past earnings and the anticipated loss of future earnings, the board will consider the weekly earnings, including all other remuneration resulting from the employment agreement at the time of the crime. Neither the award for actual loss of past earnings nor the award for anticipated loss of future earnings shall exceed the statutory limitation of $150 per week.

Source: The provisions of §89.35 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.36. through 89.39. [RESERVED]

§89.40. Readily Available.

Benefits which are readily available are those which the claimant may reasonably expect to receive. (By contract or application).

Source: The provisions of §89.40 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.41. through 89.44. [RESERVED]

§89.45 Medical Reports.

The claimant shall file with the board current medical reports outlining treatment, diagnosis, and prognosis including estimate of any disability or physical impairment setting forth claimant's ability to be gainfully employed.

Source: The provisions of §89.45 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.46. through 89.49. [RESERVED]

§89.50. Board Ordered Exams.

Medical reports which appear to be inadequate or in conflict will be considered good cause for the board to order additional medical or psychological exams by practitioners of the board's choice. Charges for examinations and reports will be fair and reasonable.

Source: The provisions of §89.50 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.51. through 89.54. [RESERVED]

§89.55. Payment of Bills.

All bills rendered for medical care, chiropractic care, psychiatric and psychological care, and all bills rendered by duly licensed practitioners rendering remedial treatment to the claimant for the condition resulting from the crime, must provide a clear itemization of all prescriptions and incidentals, dates of purchase, treatment rendered and attending practitioner prescribing same on items furnished. Approved payments of unpaid bills will be directed to the creditors.

Source: The provisions of §89.55 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.56. through 89.59. [RESERVED]

§89.60. Funeral Bills.

Regarding funeral and burial expenses submitted for approval, the board will consider only those items deemed reasonable and necessary.

Source: The provisions of §89.60 adopted to be effective January 1, 1980, 4 TexReg 4660.

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§89.61. through 89.64. [RESERVED]

§89.65. Autopsy Report.

If the cause of death is material to the claim, the board may require an autopsy report. The claimant's refusal to permit an autopsy may result in the denial of benefits.

Source: The provisions of §89.65 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.66. through 89.69. [RESERVED]

§89.70. Certificate of Death.

It is the responsibility of the claimant to provide the board with a Certificate of Death.

Source: The provisions of §89.70 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.71. through 89.74. [RESERVED]

§89.75. Care of Minor Children.

A birth certificate is necessary for each child for whom compensation is sought. Payments for care of minor children are made for the sole purpose of enabling a victim or spouse to engage or continue in lawful and gainful employment. Payments as authorized by law will be made upon notification that the victim or spouse is seeking or is engaged in lawful and gainful employment.

Source: The provisions of this §89.75 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.76. through 89.79. [RESERVED]

§89.80. Lump Sum Payments.

The claimant may apply for lump sum payment of anticipated loss of future earnings by filing with the board an affidavit setting forth the specific reasons why payment in a lump sum would be beneficial and why the failure to lump sum the payments would be detrimental. Allowable expenses incurred after the award will be paid in installments.

Source: The provisions of §89.80 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.81. through 89.84. [RESERVED]

§89.85. Insufficient Funds.

When the Compensation to Victims of Crime Fund contains no funds or insufficient funds to make payments to awarded victims, the board will make such award payments as funds become available on the following basis:

(1) *In all applications for injuries sustained on or after January 1, 1984 and approved by the board during calendar* year 1984 and each calendar year thereafter, wherein funds are insufficient to pay the total amount approved, the board will award benefits first to victims entitled to emergency grants, loss of wages and dependents of deceased victims for loss of support. Other approved benefits will be adjusted (pro-rated) and awarded quarterly for an amount not to exceed the monies deposited within the same calendar period. None of the benefits, other than emergency grants, loss of wages and support will be awarded and paid until all claims on the waiting list have been awarded and paid.

(2) The board may make emergency awards under §8 or lump sum or installments awards in cases of extreme need and urgency without regard to priority of such awards in time.

Source: The provisions of §89.85 adopted to be effective January 1, 1980, 4 TexReg 4660; amended to be effective November 11, 1983, 8 TexReg 4499.

§89.86. through 89.89. [RESERVED]

§89.90. Continuing Jurisdiction.

The board shall have continuing jurisdiction of all awards and may amend, terminate, suspend or extend payments under this law upon a showing of mistake, change of condition or for other good cause.

Source: The provisions of §89.90 adopted to be effective January 1, 1980, 4 TexReg 4660.

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§89.91. through 89.94. [RESERVED]

§89.95. Emergency Awards.

All parties will be notified if the board suspends the proceedings pending disposition of a criminal prosecution and the board will consider making an emergency award upon request. All requests for emergency awards will be accompanied by a statement setting forth the reasons why a denial of an emergency award would create a hardship.

Source: The provisions of §89.95 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.96. through 89.99. [RESERVED]

§89.100. Review of Award.

A claimant who is receiving installment payments under the Act must notify the board immediately upon employment, receipt of unemployment compensation, Social Security or any other change of circumstance. Willful misrepresentation of fact or failure to notify the board of change of circumstance will be considered just cause for reconsideration of the award and implementation of other action as authorized under §9(a). The award is subject to review by the board at any time.

Source: The provisions of this §89.100 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.101. through 89.104. [RESERVED]

§89.105. Request for Hearing.

The board will notify the claimant and attorney general within twenty (20) days after rejection of an application and either party may request a hearing and/or pre-hearing within a reasonable period of time thereafter.

Source: The provisions of §89.105 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.106. through 89.109. [RESERVED]

§89.110. Suspended Payments.

Payments to claimant will be suspended immediately upon notification that suit to set aside the board's award has been filed.

Source: The provisions of this §89.110 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.111. through 89.114. [RESERVED]

§89.115. Subrogation.

Under the subrogation provision of §11, failure to notify the board in writing prior to filing suit to recover damages related to criminally injurious conduct will be just cause for reconsideration of the award.

Source: The provisions of §89.115 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.116. through 89.119. [RESERVED]

§89.120. Filing Suit.

Upon notification that suit is to be brought under the provision of §11, the board will promptly notify the parties of its decision pertaining thereto.

Source: The provisions of §89.120 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.121. through 89.124. [RESERVED]

§89.125. Compensation Recovered.

If the claimant brings action as trustee and recovers compensation awarded by the board, the amount deducted for reasonable expenses of the suit, including attorney's fee is subject to the board's approval and may not exceed the state's proportionate share (pro-rata).

Source: The provisions of this §89.125 adopted to be effective January 1, 1980, 4 TexReg 4660.

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§89.126. through 89.129. [RESERVED]

§89.130. Attorney's Fee.

Any attorney representing a claimant and requesting a fee shall file with the board a written power of attorney with itemization of time and expenses incurred prior to the board entering an award. The amount awarded will be based on the services being reasonable and necessary.

Source: The provisions of §89.130 adopted to be effective January 1, 1980, 4 TexReg 4660; amended to be effective November 11, 1983, 8 TexReg 4499.

§89.131. through 89.134. [RESERVED]

§89.135. Will and Trust Instruments.

In all cases in which the claimant is a dependent of a deceased victim of crime, such claimant shall file with the board a copy of all probated wills in which the claimant is a devisee and a copy of all executed trust instruments in which the claimant is a named beneficiary.

Source: The provisions of §89.135 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.136. through 89.139. [RESERVED]

§89.140. Practicing Before the Board.

Whenever the board receives evidence that a person practicing before the board is guilty of unethical or fraudulent conduct, such person shall be cited by certified mail to appear before the board in person to show cause why he or she should not be barred from practicing before the board because of such conduct. In all such cases the board's citation shall contain a detailed description of charges to be considered at such hearing and a reasonable time to secure and prepare evidence shall be given any such person as cited.

Source: The provisions of §89.140 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.141. through 89.144. [RESERVED]

§89.145. "Other Persons."

The term "other person," as used in §6(d)(3), does not include persons related to the claimant within the third degree of affinity or consanguinity; nor does it include purely donative contributors, such as community, civic, or religious organizations.

Source: The provisions of §89.145 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.146. through 89.149. [RESERVED]

§89.150. Texas Residents.

(a) The following persons are presumptively not "Texas residents" within the meaning of this Act:
  (1) persons who are in Texas for less than 30 days;
  (2) persons who are in Texas for the pursuit of temporary business or recreational opportunities who do not intend at the time of crime to make Texas their residence; or
  (3) all other persons whose presence in Texas is of a transient nature and who do not intend at the time of crime to make Texas their residence.

(b) This section applies only to claims for compensation for crimes or incidents occurring between January 1, 1980, and August 31, 1985.

Source: The provisions of §89.150 adopted to be effective January 1, 1980, 4 TexReg 4660; amended to be effective November 5, 1985, 10 TexReg 4124.

§89.151. through 89.154. [RESERVED]

§89.155. "Interested Persons."

The term "interested person" as used in §5(c) does not include the accused criminal offender or nonclaimant creditors.

Source: The provisions of §89.155 adopted to be effective January 1, 1980, 4 TexReg 4660.

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§89.156. through 89.159. [RESERVED]

§89.160. "Lacked Capacity to Commit the Crime."

The term "lacked capacity to commit the crime" used in §3(4)(C) refers only to those persons who by reason of minority or lack of mental capacity are not held liable for their criminal acts.

Source: The provisions of §89.160 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.161. through 89.164. [RESERVED]

§89.165. "Reports."

The term "reports" used in §4(b) includes both written and oral reports.

Source: The provisions of §89.165 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.166. through 89.169. [RESERVED]

§89.170. "Accomplice."

The term "accomplice" used in §6(c)(4) means a person who is criminally responsible as a party to an offense under the Texas Penal Code chapter 7, as amended or as may hereafter be amended.

Source: The provisions of §89.170 adopted to be effective January 1, 1980, 4 TexReg 4660.

§89.171. through 89.174. [RESERVED]

§89.175. Victim's Compliance Necessary.

All information requested by the attorney general's office and/or the Industrial Accident Board shall be promptly furnished by the claimant, his or her attorney or agency representing the claimant. Any delay or refusal to promptly furnish the requested information may result in a delay in further action by the attorney general's office in its investigation or by the board in its processing of the claim.

Source: The provisions of §89.175 adopted to be effective November 11, 1983, 8 TexReg 4499.

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