

1 04 NCAC 10A .0102 is amended as published in 27:02 NCR 168 as follows:

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3 **04 NCAC 10A .0102 OFFICIAL FORMS**

4 ~~In reviewing an Opinion and Award of a Deputy Commissioner or of a sole Commissioner acting as the hearing~~
5 ~~officer, the Full Commission may sit en banc or in panels of three.~~

6 (a) Copies of the Commission's rules, forms, and minutes may be obtained by contacting the Commission in person,
7 by written request mailed to 4340 Mail Service Center, Raleigh, NC 27699-4340, or from the Commission's website
8 at <http://www.ic.nc.gov/forms.html>.

9 (b) The use of any printed forms other than those provided by the Commission is prohibited except that insurance
10 carriers, self-insureds, attorneys and other parties may reproduce forms for their own use, provided:

11 (1) no statement, question, or information blank contained on the Commission form is omitted from
12 the substituted form, and

13 (2) the substituted form is identical in size and format with the Commission form.

14
15 *History Note: Authority G.S. 97-80(a); 97-81(a);*
16 *Eff. January 1, 1990;*
17 *Amended Eff. January 1, 2013; June 1, 2000.*
18

1 04 NCAC 10A .0105 is amended as published in 27:02 NCR 170 as follows:

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3 **04 NCAC 10A .0105 ELECTRONIC PAYMENT OF COSTS**

4 Electronic payment is ~~authorized~~ required for fees and costs owed to the North Carolina Industrial Commission. ~~The~~
5 ~~Industrial Commission shall implement guidelines to facilitate electronic payment.~~

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7 *History Note: Authority G.S. 97-80(a);*

8 *Eff. January 1, 2011;*

9 *Amended Eff. January 1, 2013.*

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1 04 NCAC 10A .0404 is amended with changes as published in 27:02 NCR 172 as follows:

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3 **04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION**

4 ~~(a) Payments of compensation undertaken pursuant to an award of the Industrial Commission shall continue until~~
5 ~~the terms of the award have been fully satisfied. In cases where [Where] the award is to pay compensation during~~
6 ~~disability, there is a rebuttable presumption that disability continues until the employee returns to suitable~~
7 ~~employment.~~ No application to terminate or suspend compensation shall be approved by the Commission without a
8 formal hearing if the effect of ~~such~~ the approval is to set aside the provisions of an award of the ~~Industrial~~
9 Commission.

10 (b) When an employer, ~~or carrier/administrator~~ carrier, or administrator seeks to terminate or suspend temporary
11 total disability compensation being paid pursuant to ~~G.S. § 97-29~~ G.S. 97-29 for a reason other than those specified
12 in ~~G.S. § 97-18(d), payment without prejudice, G.S. 97-18(d) (payment without prejudice), or G.S. § 97-18.1(b),~~
13 ~~trial return to work, G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on~~
14 ~~disability compensation (only for claims arising on or after June 24, 2011)),~~ the employer, ~~or carrier/administrator~~
15 ~~carrier, or administrator~~ shall notify ~~the employee and~~ the employee's attorney of ~~record, record or the employee, if~~
16 ~~any not represented,~~ on Form 24, "~~Application to Stop Payment of Compensation.~~" Application to Terminate or
17 Suspend Payment of Compensation. This form requests:

- 18 (1) the date of injury ~~[of]~~ or accident and date the disability began;
- 19 (2) the nature and extent of injury;
- 20 (3) the number of weeks compensation paid and the date range including from and to;
- 21 (4) the total amount of indemnity compensation paid to date;
- 22 (5) whether one of the following events has occurred:
- 23 (A) an agreement was approved by the Commission and the date;
- 24 (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
- 25 (C) an employer paid compensation to the employee without contesting the claim within the
26 statutory period provided under G.S. 97-18(d); or
- 27 (D) any other event related to the termination or suspension of compensation[.];
- 28 (6) whether the application is made to terminate or suspend compensation and the grounds; and
- 29 (7) whether the employee is in managed care.

30 (c) The employer, ~~or carrier/administrator~~ carrier, or administrator shall specify the ~~legal~~ grounds and the alleged
31 facts supporting the application, and shall complete the blank space in the "Important Notice to Employee" portion
32 of Form 24 Application to Terminate or Suspend Payment of Compensation by inserting a date 17 days from the
33 date the employer, ~~or carrier/administrator~~ carrier, or administrator ~~deposits the completed Form 24 in the mail to~~
34 ~~the employee and the employee's attorney of record, if any. The original of the Form 24 and the attached documents~~
35 ~~shall be sent to the Industrial Commission at the same time and by the same method by which a copy of the Form 24~~
36 ~~and attached documents are sent to the employee and the employee's attorney of record, if any. serves the completed~~
37 Form 24 Application to Terminate or Suspend Payment of Compensation on the employee's attorney of record by e-

1 ~~mail or facsimile,~~ or the employee, if not represented, by ~~[e-mail, facsimile or U.S. Mail]~~ certified mail, return
2 receipt requested. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and attached
3 documents shall be sent to the Commission via upload to the Electronic Document Fee Portal, and shall be
4 contemporaneously served on ~~[plaintiff's]~~ employee's counsel by e-mail or facsimile, or on ~~[plaintiff]~~ the employee,
5 if unrepresented, by ~~[U.S. Mail]~~ certified mail, return receipt requested. ~~[If the Form 24 Application to Terminate or~~
6 ~~Suspend Payment of Compensation is served by U.S. Mail, a copy shall also be uploaded to the Electronic~~
7 ~~Document Fee Portal.]~~

8 (d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages
9 of documents attached which are to be considered by the ~~Industrial~~ Commission. ~~Failure to specify the number of~~
10 ~~pages may result in the refusal of the Industrial Commission to accept the same for filing.~~ If the employee or the
11 employee's attorney of ~~record, if any,~~ record objects by the date inserted on the employer's Form 24, *24 Application*
12 *to Terminate or Suspend Payment of Compensation,* ~~or within such additional reasonable time as the Industrial~~
13 ~~Commission may allow,~~ the ~~Industrial~~ Commission shall set the case for an informal hearing, unless waived by the
14 parties in favor of a formal hearing. The objection shall be accompanied by all currently available supporting
15 documentation. A copy of any objection shall be ~~sent, with any supporting documents,~~ contemporaneously served
16 on to the employer employer, and carrier/administrator, carrier, or administrator. The Form 24 *Application to*
17 *Terminate or Suspend Payment of Compensation* or objection may be supplemented with any additional relevant
18 documentation received after the initial filing. The term "~~carrier/administrator~~" "carrier" or "administrator" also
19 includes any successor in ~~interest.~~ interest in the pending claim.

20 ~~(e)~~(e) If an employee does not object within the allowed time, the ~~Industrial~~ Commission shall review the Form 24
21 *Application to Terminate or Suspend Payment of Compensation* and any attached documentation, and an
22 Administrative Decision and Order ~~may~~ shall be rendered without an informal hearing as to whether ~~compensation~~
23 ~~shall be terminated or suspended,~~ there is a sufficient basis under the Workers' Compensation Act to terminate or
24 suspend compensation, except as provided in ~~paragraph (f) below.~~ Paragraph (g) of this Rule. Either party may seek
25 review of the Administrative Decision and Order as provided by ~~4 NCAC 10A .0703.~~ Rule .0703 of this Subchapter.

26 ~~(f)~~(f) If the employee timely objects to the Form 24, *24 Application to Terminate or Suspend Payment of*
27 *Compensation,* the ~~Industrial~~ Commission shall conduct an informal hearing within 25 days of the receipt by the
28 ~~Industrial~~ Commission of the Form 24, ~~unless the time is extended for good cause shown.~~ *24 Application to*
29 *Terminate or Suspend Payment of Compensation,* unless the time is extended for good cause shown. The informal
30 hearing may be by telephone conference between the ~~Industrial~~ Commission and the parties or their attorneys of
31 ~~record, if any.~~ When good cause is shown the ~~The~~ informal hearing may be conducted with the parties or
32 their attorneys of ~~record, if any,~~ record personally present with the ~~Industrial Commission~~ Commission, in Raleigh
33 ~~or such other location as is selected by the Industrial Commission.~~ The ~~Industrial~~ Commission shall make
34 arrangements for the informal hearing with a view towards conducting the hearing in the most expeditious ~~manner~~
35 manner, under the circumstances. Except for good cause shown, the ~~The~~ informal hearing shall be no more than 30
36 minutes, with each side given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the
37 above, the employer, ~~or carrier/administrator~~ carrier, or administrator may waive the right to an informal hearing,

1 and proceed to a formal hearing by filing a request for hearing on a Form ~~33~~. 33 Request that Claim be Assigned for
2 Hearing. A decision on the application shall be made within five days after the completion of the informal hearing.
3 ~~(e)(g)~~ Either party may appeal the Administrative Decision and Order of the Industrial Commission as provided by
4 ~~4 NCAC 10A .0703~~. Rule .0703 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be
5 a hearing de novo. The hearing shall be **peremptorily** set ~~[without delay]~~ and shall not require a Form ~~33~~. 33
6 Request that Claim be Assigned for Hearing. The employer has the burden of producing evidence on the issue of
7 the employer's application for termination or suspension of compensation. If the Deputy Commissioner reverses an
8 order previously granting a Form 24 Application to Terminate or Suspend Payment of Compensation motion, the
9 ~~employer~~ employer, or carrier/administrator ~~carrier, or administrator~~ shall promptly resume compensation or
10 otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal or application for review to
11 the Full Commission under ~~G.S. § 97-85~~. G.S. 97-85.

12 ~~(f)(h)~~ ~~In the event~~ If the Industrial Commission is unable to reach a decision after an informal hearing, the Industrial
13 Commission shall issue an order to that effect ~~which~~ that shall be in lieu of a Form 33 Request that Claim be
14 Assigned for Hearing, and the case shall be placed on the formal hearing docket. If additional issues are to be
15 addressed, the ~~employer~~ employer, or carrier/administrator ~~carrier, or administrator~~ shall ~~be required~~ within 30 days
16 of the date of the Administrative Decision and Order ~~to~~ file a Form 33 Request that Claim be Assigned for Hearing
17 or ~~to~~ notify the Industrial Commission that a formal hearing is not currently necessary. The effect of placing the
18 case on the docket shall be the same as if the Form 24 Application to Terminate or Suspend Payment of
19 Compensation were denied, and compensation shall continue until such time as the case is decided by a
20 Commissioner or a Deputy Commissioner following a formal hearing.

21 ~~(g)(i)~~ The Commission shall mail ~~Any any~~ Administrative Decision and Order ~~shall be mailed~~ to the non-prevailing
22 party by certified mail.

23 ~~(h)(j)~~ No order issued as a result of an informal Form 24 Application to Terminate or Suspend Payment of
24 Compensation hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of
25 the Form ~~24~~. 24 Application to Terminate or Suspend Payment of Compensation. Compensation may be terminated
26 retroactively without a formal hearing where there is agreement by the parties, where allowed by statute, or where
27 the employee is incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding
28 the filing of a Form 24 Application to Terminate or Suspend Payment of Compensation may be ordered as a result of
29 a formal hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to ~~G.S. § 97-42~~.
30 ~~[G.S. 97-49]~~ G.S. 97-42.

31 (k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation
32 on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with
33 vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to
34 G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

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36 *History Note:* Authority ~~G.S. 97-18(e); G.S. 97-18(d)~~ 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);
37 *Eff. January 1, 1990;*

Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.

1 04 NCAC 10A .0405 is amended with changes as published in 27:02 NCR 175 as follows:

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3 **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

4 ~~(a) Amputation of any portion of the bone of a distal phalange of a finger or toe at or distal to the visible base of the~~
5 ~~nail will be considered as equivalent to the loss of one fourth of such finger or toe.~~

6 ~~(b) Amputation of any portion of the bone of the distal phalange of a finger or toe proximal to the visible base of the~~
7 ~~nail will be considered as equivalent to the loss of one half of such finger of toe.~~

8 ~~(c) Amputation through the forearm at a point so distal to the elbow as to permit satisfactory use of a prosthetic~~
9 ~~appliance with retention of full natural elbow function shall be considered amputation of the hand. Otherwise, it~~
10 ~~shall be considered amputation of the arm.~~

11 ~~(d) Amputation through the lower leg at a point so distal to the knee as to permit satisfactory use of a prosthetic~~
12 ~~appliance with retention of full natural knee function shall be considered amputation of the foot. Otherwise, it shall~~
13 ~~be considered amputation of the leg.~~

14 (a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks
15 reinstatement of compensation on a basis other than a request for review of an award pursuant to G.S. 97-47, the
16 employee may notify the employer, carrier, or administrator, and the employer's, carrier's, or administrator's attorney
17 of record, on a Form 23 *Application to Reinstate Payment of Disability Compensation*, or by the filing of a Form 33
18 *Request that Claim be Assigned for Hearing*.

19 (b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability*
20 *Compensation*, the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached
21 documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form
22 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or
23 administrator's attorney of record. The Form 23 *Application to Reinstate Payment of Disability Compensation* shall
24 specify the number of pages of documents attached **[which] that** are to be considered by the Commission. Failure to
25 specify the number of pages shall result in the refusal of the Commission to accept the same for filing. Upon receipt
26 of the Form 23 *Application to Reinstate Payment of Disability Compensation*, the Commission shall notify the
27 employer, carrier, or administrator that the Form 23 *Application to Reinstate Payment of Disability Compensation*
28 has been received by providing a copy of a Form 23 *Application to Reinstate Payment of Disability Compensation*
29 via facsimile or electronic mail. Within 10 days of the receipt of the Form 23 *Application to Reinstate Payment of*
30 *Disability Compensation* from the Commission, the employer, carrier, or administrator shall complete Section B of
31 the Form 23 *Application to Reinstate Payment of Disability Compensation* and send it to the Commission and to the
32 employee, or the employee's attorney of record, at the same time and by the same method by which the form is sent
33 to the Commission.

34 (c) If the employer, carrier, or administrator does not contest the reinstatement of compensation, the Commission
35 shall review the Form 23 *Application to Reinstate Payment of Disability Compensation* and any attached
36 documentation and, without a hearing, render an Administrative Decision and Order as to whether the compensation
37 shall be reinstated. This Administrative Decision and Order shall be rendered within five days of the expiration of

1 the time within which the employer, carrier, or administrator could have filed a response to the Form 23 *Application*
2 *to Reinstate Payment of Disability Compensation.*

3 (d) If the employer, carrier, or administrator contests the reinstatement of compensation, the Commission shall
4 schedule an informal hearing to take place within seven days of the receipt of the completed Form 23 *Application to*
5 *Reinstate Payment of Disability Compensation* response from the employer, carrier, or administrator. The informal
6 hearing shall be conducted by telephone conference between the Commission, the parties, and the parties' attorneys
7 of record. The Commission shall make arrangements for the informal hearing with a view towards conducting the
8 hearing in the most expeditious manner under the circumstances. The informal hearing shall be no more than 30
9 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. An Administrative
10 Decision and Order shall be rendered regarding the Form 23 *Application to Reinstate Payment of Disability*
11 *Compensation* within five business days after the completion of the informal hearing.

12 (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order
13 to that effect, that shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall be
14 placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or
15 administrator shall within 30 days of the date of the Administrative Decision and Order, file a Form 33 *Request that*
16 *Claim be Assigned for Hearing* or notify the Commission that a formal hearing is not currently necessary. The
17 Commission shall issue an order to that effect, ~~which~~ that shall be in lieu of a Form 33 *Request that Claim be*
18 *Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be
19 addressed, the employee, employer, carrier, or administrator shall within 30 days of the Date of the Administrative
20 Decision and Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a
21 formal hearing is not currently necessary.

22 (f) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule .0703 of
23 this Subchapter. The Deputy Commissioner shall conduct a hearing de novo. The hearing shall be set without delay
24 and shall not require the filing of a Form 33 *Request that Claim be Assigned for Hearing*. If the Deputy
25 Commissioner reverses an order previously denying a Form 23 *Application to Reinstate Payment of Disability*
26 *Compensation*, the employer, carrier, or administrator shall resume compensation or otherwise comply with the
27 Deputy Commissioner's decision, notwithstanding any appeal or application for review to the Full Commission of
28 the decision under G.S. 97-85.

29 (g) Notwithstanding Paragraph (f) of this Rule, the employee may waive the right to an informal hearing and
30 proceed to a formal hearing before a Deputy Commissioner by filing a Form 33 *Request that Claim be Assigned for*
31 *Hearing*. If the parties, or the parties' attorneys of record, agree that an informal hearing regarding the Form 23
32 *Application to Reinstate Payment of Disability Compensation* is not necessary, they may so notify the Commission,
33 and an Administrative Decision and Order shall be rendered based on the Form 23 *Application to Reinstate Payment*
34 *of Disability Compensation*, response, and documentation submitted.

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36 *History Note:* Authority G.S. 97-18(k); 97-80(a);
37 Eff. January 1, 1990;

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Amended Eff. January 1, 2013.

1 04 NCAC 10A .0406 is amended with changes as published in 27:02 NCR 176 as follows:

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3 **04 NCAC 10A .0406 DISCOUNT RATE TO BE USED IN DETERMINING COMMUTED VALUES**

4 ~~The Industrial Commission in its discretion will designate the interest rate and methods of computation to be used in~~
5 ~~arriving at the commuted value of unaccrued compensation payments.~~

6 To ~~commute~~ compute the present value of unaccrued compensation payments, the parties shall utilize the Internal
7 Revenue Service's Applicable Federal Rate or the discount rate that is:

- 8 (1) used to determine the present value of an annuity, an interest for life or a term of years, or a
9 remainder or reversionary interest,
- 10 (2) set monthly by the Internal Revenue Service for Section 7520 interest rates, and
- 11 (3) found in the Index of Applicable Federal Rate (AFR) Rulings. The Index of AFR Rulings is
12 hereby incorporated by reference and includes subsequent amendments and editions. A copy may
13 be obtained at no charge from the Internal Revenue Service's website,
14 <http://www.irs.gov/app/picklist/list/federalRates.html>, or upon request, at the offices of the
15 Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina,
16 between the hours of 8:00 a.m. and 5:00 p.m.

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18 *History Note: Authority G.S. 97-40; 97-44; 97-80(a);*
19 *Eff. January 1, 1990;*
20 *Amended Eff. January 1, 2013.*
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1 04 NCAC 10A .0408 is amended with changes as published in 27:02 NCR 177 as follows:

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3 **04 NCAC 10A .0408 APPLICATION FOR OR STIPULATION TO ADDITIONAL MEDICAL**
4 **COMPENSATION**

5 ~~(a) The Industrial Commission may enter an order as contemplated by G.S. § 97-25.1 providing for additional~~
6 ~~medical compensation on its own motion or pursuant to a stipulation of the parties or by approval of an agreement of~~
7 ~~the parties for additional medical compensation reflected in a Form 21 or a Form 26.~~

8 ~~(b)(a) If the parties have not reached an agreement regarding additional medical compensation, an~~ An employee
9 may file ~~a claim~~ an application for additional medical compensation with the Office of the Executive Secretary
10 ~~Industrial Commission~~ for an order pursuant to the terms of G.S. § 97-25.1, for payment of additional medical
11 compensation within two years of the date of the last payment of medical or indemnity compensation, whichever
12 shall last occur. ~~The claim~~ An application may be made on a Form 18M Employee's Application for Additional
13 Medical Compensation, ~~or by written request~~ request, or by filing a Form 33 Request that Claim be Assigned for
14 Hearing ~~to~~ with the Industrial Commission. ~~The filing of this claim tolls the time limit contained in this paragraph~~
15 ~~and in G.S. § 97-25.1. The original and one copy of the claim must be filed with the Industrial Commission's Office~~
16 ~~of the Executive Secretary, one copy must be provided to the employer or carrier/administrator, and one copy must~~
17 ~~be provided to the attorney of record, if any.~~

18 ~~(c)(b) Upon receipt of the claim,~~ application, the Industrial Commission ~~will~~ shall notify the ~~employer~~ employer, ~~or~~
19 ~~carrier/administrator~~ carrier, or administrator that the claim has been received by providing a copy of ~~a~~ the Form
20 18M Employee's Application for Additional Medical Compensation or ~~a~~ the written ~~claim~~ request. ~~The~~ Within 30
21 days, the employer employer, or carrier/administrator carrier, or administrator ~~shall, within 30 days,~~ [shall] may
22 send to the Industrial Commission and ~~to the employee and the employee's attorney of record, if any,~~ record or the
23 employee, if unrepresented, a written statement as to whether the ~~employee's~~ employee's request is accepted or denied. If the
24 request is denied, the ~~employer~~ employer, or carrier/administrator carrier, or administrator ~~shall~~ may state in writing
25 the grounds for the denial and shall attach any supporting documentation to the statement of denial.

26 ~~(d) In cases where the employee's right to additional medical compensation is contested, the Form 18M, Request for~~
27 ~~Additional Medical Compensation, shall be treated as a Motion to the Executive Secretary for future medical~~
28 ~~compensation. Defendants shall have 30 days to respond. An administrative ruling shall thereafter be made subject~~
29 ~~to the right of either party to appeal such administrative decision by filing a Form 33, Request for Hearing, pursuant~~
30 ~~to the 15-day time limitations contained in 4 NCAC 10A .703. An appeal of the Administrative Decision shall have~~
31 ~~the effect of staying the decision, provided that the stay may be dissolved in the discretion of the Commission for~~
32 ~~good cause shown.~~

33 (c) The parties may, by agreement or stipulation [as] consistent with the Workers' Compensation Act, provide for
34 additional medical compensation.

35 ~~(e)(d)~~ This Rule applies to injuries by accident occurring on or after July 5, 1994.

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37 *History Note: Authority G.S. 97-25.1; 97-80(a);*

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Eff. March 15, 1995;
Amended Eff. January 1, 2013; June 1, 2000.

04 NCAC 10A .0601 is amended with changes as published in 27:02 NCR 181 as follows:

SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES

04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND SANCTIONS

~~(a) The employer or its insurance carrier shall promptly investigate each injury reported or known to the employer and at the earliest practicable time shall admit or deny the employee's right to compensation or commence payment of compensation as provided in G.S. 97-18(b), (c), or (d).~~

~~(b)(a) When an~~ Upon the employee's ~~employee files~~ employee files ~~filing of~~ a claim for compensation with the Commission, the Commission may order reasonable sanctions against the employer or its insurance carrier which if it does not, within 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be from exposure to chemicals, fumes, or other materials or substances in the workplace, ~~or within such reasonable additional time as the Commission may allow,~~ do one of the following:

- (1) ~~Notify~~ File a Form 60 ~~Employer's Admission of Employee's Right to Compensation to notify~~ the Commission and the employee in writing that ~~it~~ the employer is admitting the employee's right to compensation and, if applicable, satisfy the requirements for payment of compensation under G.S. 97-18(b);
- (2) ~~Notify~~ File a Form 61 ~~Denial of Workers' Compensation Claim to notify~~ the Commission and the employee that ~~it~~ the employer denies the employee's right to compensation consistent with G.S. 97-18(c);
- (3) File a Form 63 ~~Notice to Employee of Payment of Compensation Without Prejudice~~ Initiate ~~payments without prejudice and without liability and satisfy the requirements of~~ consistent with G.S. 97-18(d).

~~For purposes of this Rule, reasonable sanctions shall not prohibit the employer or its insurance carrier from contesting the compensability of and its liability for the claim.~~

Requests for extensions of time to comply with G.S. 97-18(j) ~~this rule may~~ shall be addressed to the Executive Secretary, Claims Administration Section.

~~(c)(b) If the employer or insurance carrier denies~~ When liability in any case, case is denied, the employer or insurance carrier shall provide a detailed statement of the basis of denial ~~must~~ that shall be set forth in a letter of denial or Form ~~61,~~ 61 ~~Denial of Workers' Compensation Claim,~~ and which that shall be sent to the ~~plaintiff or his~~ employee's attorney of ~~record, if any~~ record or the employee, if unrepresented, all known health care providers ~~which who~~ who have submitted bills to the ~~employer/carrier,~~ employer or carrier, and the ~~Industrial~~ Commission. ~~The detailed statement of the basis of denial shall set forth a statement of the facts, as alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source, by name or date and type of document, of the facts alleged by the employer; and a statement explaining why the facts, as alleged by the employer, do not entitle the employee to workers' compensation benefits.~~

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2 *History Note:* Authority G.S. 97-18; 97-80(a); 97-81(a);

3 *Eff. January 1, 1990;*

4 *Amended Eff. January 1, 2013; August 1, 2006; June 1, 2000.*

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04 NCAC 10A .0603 is amended with changes as published in 27:02 NCR 182 as follows:

04 NCAC 10A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING

(a) No later than 45 days from receipt of ~~the Request~~ a request for ~~Hearing,~~ hearing from an employee, the self-insured employer, insurance carrier, or counsel for the defendant(s) shall file with the ~~Industrial~~-Commission a response to the ~~Request~~ request for ~~Hearing,~~ hearing. If a defendant files a request for hearing, the employee is not required to respond.

(b) ~~This~~ The response shall contain the following:

- (1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ specific issues raised by the plaintiff ~~which that~~ which that are conceded and the ~~specific~~ specific-issues raised by the plaintiff which are ~~denied,~~ denied;
- (2) ~~The~~ the date of the injury; if it is contended to be different than that alleged by the ~~plaintiff.~~ plaintiff;
- (3) ~~The~~ the part of the body injured; if it is contended to be different than that alleged by the ~~plaintiff.~~ plaintiff;
- (4) ~~The~~ the city and county where the injury occurred; if they are ~~contended~~ contended to be different than that alleged by the ~~plaintiff.~~ plaintiff;
- (5) ~~The~~ the names and addresses of all doctors and other expert witnesses whose testimony is needed by the ~~defendant(s).~~ defendant(s);
- (6) ~~The~~ the names of all lay witnesses known by the defendant(s) whose testimony is to be ~~taken.~~ taken;
- (7) ~~An~~ an estimate of the time required for the hearing of the ~~ease,~~ case; and
- (8) ~~The~~ the telephone ~~number(s)~~ number(s), ~~and address(es)~~ email address(es), and mailing address(es) of the party(ies) responding to the ~~Request for Hearing,~~ request for hearing and their legal counsel.

(c) ~~Utilization of a~~ A Form 33R, ~~Response to Request for Hearing,~~ 33R Response to Request that Claim be Assigned for Hearing, ~~which~~ is completed in full and filed with the Docket Section of the Commission, shall ~~be the~~ sole means of constitute compliance with this Rule. A copy of the Form 33R Response to Request that Claim be Assigned for Hearing ~~Response to Request for Hearing~~ shall be forwarded to the attorneys for all opposing parties or attorneys, if such have been retained, the opposing parties themselves, if unrepresented. ~~In the event of a request for hearing by a defendant, the employee shall not be required to respond. Extensions of time within which to file a response shall be granted for good cause shown.~~

*History Note: Authority G.S. 97-80(a); 97-83;
Eff. January 1, 1990;
Amended Eff. January 1, 2013; June 1, 2000.*

04 NCAC 10A .0604 is amended with changes as published in 27:02 NCR 183 as follows:

04 NCAC 10A .0604 APPOINTMENT OF GUARDIAN AD LITEM

(a) ~~In all cases where it is proposed that minors Minors or incompetents shall sue by may bring an action only through their guardian *ad litem*, litem. the Industrial Commission shall appoint such guardian *ad litem* upon Upon the written application on a Form 42 Application for Appointment of Guardian Ad Litem, of a reputable person closely connected with such minor or incompetent; but if such person will not apply, then, upon the application of some reputable citizen; and the Industrial Commission shall make such appointment only after due inquiry as to the fitness of the person to be appointed. the Commission shall appoint the person as guardian *ad litem*, if the Commission determines it to be in the best interest of the minor or incompetent. The Commission shall appoint the guardian *ad litem* only after due inquiry as to the fitness of the person to be appointed.~~

(b) ~~In no event, however, shall any No compensation due or owed to the minor or incompetent shall be paid directly to the guardian *ad litem*. Rather, compensation payable to a minor or incompetent shall be paid as provided in N.C. Gen. Stat. § 97-48 and G.S. 97-49. The use of the word "guardian" in N.C. Gen. Stat. § 97-49 does not mean a guardian *ad litem*. The Commission may assess a fee to be paid by the employer or the carrier, to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent.~~

(c) ~~[Consistent with G.S. 1A-1, Rule 17(b)(2), the] The Commission may assess a fee to be paid by the employer or the insurance carrier to an attorney who serves as a guardian *ad litem* for actual services rendered upon receipt of an affidavit of actual time spent in representation of the minor or incompetent as part of the costs.~~

History Note: Authority G.S. 1A-1, Rule 17; 97-50; 97-79(e); 97-80(a); 97-80(b); 97-91;
Eff. January, 1990;
Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000; March 15, 1995.

1 04 NCAC 10A .0605 is amended with changes as published in 27:02 NCR 183 as follows:

2
3 **04 NCAC 10A .0605 DISCOVERY**

4 In addition to depositions and production of books and records provided for in G.S. 97-80, parties may obtain
5 discovery by the use of interrogatories as follows:

6 (1) Any party may serve upon any other parties written interrogatories, up to 30 in number, including
7 subparts thereof, to be answered by the party served or, if the party served is a public or private
8 corporation or a partnership or association or governmental agency, by any officer or agent, who
9 shall furnish such information as is available from the party interrogated.

10 ~~(a)~~(2) Interrogatories may, without leave of the ~~Industrial~~ Commission, be served upon any party after
11 the filing of a Form ~~48~~, 18 Notice of Accident to Employer and Claim of Employee,
12 Representative, or Dependent, Form ~~48B~~, 18B Claim by Employee, Representative, or Dependent
13 for Benefits for Lung Disease, or Form ~~33~~, 33 Request that Claim be Assigned for Hearing, or
14 after approval of Form 21, after the acceptance of a claim.

15 ~~(b)~~(3) Each interrogatory shall be answered separately and ~~fully~~ in writing under oath, unless it is
16 objected to, in which event the reasons for objection shall be stated in lieu of an answer. The
17 answers ~~are to~~ shall be signed by the person making them and the objections shall be signed by the
18 party making them. The party on whom the interrogatories have been served shall serve a copy of
19 the ~~answers,~~ answers and objections, if any, within 30 days after service of the interrogatories.
20 The parties may stipulate to an extension of time to respond to the interrogatories. A motion to
21 extend the time to respond shall represent that an attempt to reach agreement with the opposing
22 party to informally extend the time for response has been unsuccessful and the opposing parties'
23 position or that there has been a reasonable attempt to contact the opposing party to ascertain its
24 position.

25 ~~(c)~~(4) If there is an objection to or other failure to answer an interrogatory, the party submitting the
26 interrogatories may move the ~~Industrial~~ Commission for an order compelling answer. If the
27 ~~Industrial~~ Commission orders answer to an interrogatory within a time certain and no answer is
28 made or the objection is still lodged, the ~~Industrial~~ Commission may issue an order with
29 appropriate sanctions, including ~~but not limited to~~ the sanctions specified in Rule 37 of the North
30 Carolina Rules of Civil Procedure, G.S. 1A-1, Rule 37.

31 ~~(2)~~(5) Interrogatories and requests for production of documents shall may relate to matters ~~which that~~ are
32 not privileged, ~~which that~~ are relevant to an issue ~~presently~~ in dispute, ~~or which that~~ the requesting
33 party reasonably believes may later be disputed. ~~Signature~~ The signature of a party or attorney
34 serving interrogatories or requests for production of documents constitutes a certificate by such
35 person that he or she has personally read each of the interrogatories and requests for production of
36 documents, that no such interrogatory or request for production of documents will oppress a party
37 or cause any unnecessary expense or delay, that the information requested is not known or equally

1 available to the requesting party, and that the interrogatory or requested document relates to an
2 issue presently in dispute or which that the requesting party reasonably believes may later be in
3 dispute. A party may serve an interrogatory, however, to obtain verification of facts relating to an
4 issue presently in dispute. Answers to interrogatories may be used to the extent permitted by ~~the~~
5 rules of evidence. Chapter 8C of the North Carolina General Statutes.

6 ~~(6)~~ Up to the time a matter is calendared for a hearing, parties may serve requests for production of
7 documents without leave of the Commission.

8 ~~(7)~~ Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may
9 be used only upon motion ~~and approval by the Industrial Commission~~ or by agreement of the
10 parties. The Commission shall approve the motion in the interests of justice or to promote judicial
11 economy. [to prevent manifest injustice, promote judicial economy, or expedite a decision in the
12 public interest].

13 ~~(4)~~ Notices of depositions, discovery requests and responses pertinent to a pending motion, responses
14 to discovery following a motion or order to compel, and responses shall be filed with the
15 Commission, as well as served on the opposing party. Otherwise, discovery requests and
16 responses, including interrogatories and requests for production of documents shall not be filed
17 with the Commission.

18 ~~(8)~~ Discovery requests and responses, including interrogatories and requests for production of
19 documents, shall not be filed with the Commission, except in the following circumstances for the
20 following:

21 (a) notices of depositions;

22 (b) discovery requests and responses pertinent to a pending motion;

23 (c) responses to discovery following a motion or order to compel; and

24 (d) post-hearing discovery requests and responses.

25 The above listed documents shall be filed with the Commission, as well as served on the opposing
26 party.

27 ~~(5)~~~~(9)~~ Sanctions ~~may~~ shall be imposed under this Rule for failure to comply with a Commission order
28 compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and
29 ~~4 NCAC 10A .607~~ Rule .0607 of this Subchapter shall represent that informal means of resolving
30 the discovery dispute have been attempted in good faith and state ~~briefly~~ the opposing parties'
31 position or that there has been a reasonable attempt to contact the opposing party and ascertain its
32 position. The parties shall not submit motions to compel production of information otherwise
33 obtainable under G.S. 97-25.6.

34
35 *History Note: Authority G.S. 97-80(a); 97-80(f);*

36 *Eff. January 1, 1990;*

37 *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*

1 04 NCAC 10A .0607 is amended with changes as published in 27:02 NCR 184 as follows:

2
3 **04 NCAC 10A .0607 DISCOVERY OF RECORDS AND REPORTS**

4 (a) Upon written request, any party shall furnish, without cost, provide to the requesting party without cost, a copy
5 of any and all medical, vocational and rehabilitation reports, employment records, Industrial Commission forms, and
6 written communications with **medical health care** providers in its possession, within 30 days of the request, unless
7 objection is made within that time period. ~~This obligation~~ The duty to respond exists whether or not a request for
8 hearing has been filed. ~~This obligation~~ filed and is a continuing one, and any such reports and records ~~which that~~
9 come into the possession of a party after receipt of a request pursuant to this Rule shall be provided to the requesting
10 party within 15 days from its the party's receipt of these reports and records. ~~Upon receipt of a request, an insurer or~~
11 administrator for an employer's workers' compensation program shall inquire of the employer concerning the
12 existence of records encompassed by the request.

13 (b) Upon receipt of a request, a carrier or administrator for an employer's workers' compensation program shall
14 inquire of the employer concerning the existence of records encompassed by the request.

15
16 *History Note: Authority G.S. 97-80(a); 97-80(b); 97-80(f);*

17 *Eff. January 1, 1990;*

18 *Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*

19

1 04 NCAC 10A .0608 is amended with changes as published in 27:02 NCR 184 as follows:

2
3 **04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM**

4 (a) ~~At the outset of taking a statement,~~ Upon the request of the employer or his agent to take a written or a recorded
5 statement, the employer or his agent shall advise the employee that the statement ~~is being taken to~~ may be used ~~in~~
6 ~~part~~ to determine whether the claim will be paid or denied. Any plaintiff who gives his or her employer, ~~or~~ its
7 carrier, or any agent either a written or recorded statement of the facts and circumstances surrounding his or her
8 injury shall be furnished a copy of ~~such~~ the statement within 45 days after request. Further, any plaintiff who shall
9 give a written or recorded statement of the facts and circumstances surrounding his injury shall, without request, be
10 furnished a copy no less than 45 days from the filing of a Form 33 *Request that Claim be Assigned for Hearing*.
11 ~~Such~~ The copy shall be furnished at the expense of the person, firm or corporation at whose direction the statement
12 was taken.

13 (b) If any person, firm or corporation fails to comply with this ~~rule,~~ Rule, then an order may be entered by a
14 Commissioner or Deputy Commissioner ~~[shall enter an order]~~ prohibiting that person, firm or corporation, or its
15 representative, from introducing the statement into evidence or using any part of ~~it,~~ the statement.

16
17 *History Note: Authority G.S. 97-80(a);*
18 *Eff. January 1, 1990;*
19 *Amended Eff. January 1, 2013; June 1, 2000.*
20

04 NCAC 10A .0609 is amended with changes as published in 27:02 NCR 184 as follows:

04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES

(a) Motions ~~brought before the a Deputy Commission Commissioner; shall be addressed as follows:~~

(1) ~~All motions~~ in cases ~~which that~~ are currently calendared for hearing before ~~a the Full Commission or Deputy Commissioner shall be sent by the filing party directly to the assigned Chair of the Full Commission panel or Deputy Commissioner Commissioner. before whom the case is pending.~~

(2) ~~to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be directed by the filing party to the Deputy Commissioner who authored the Opinion and Award.~~

(b) ~~Motions filed before a case is calendared before a Deputy Commissioner, or once a case has been continued, or removed from a Deputy Commissioner Calendar, or after the filing of an Opinion and Award when the time for taking appeal has run, shall be directed sent by the filing party directly to the Office of the Executive Secretary Secretary: of the Industrial Commission. Motions to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be directed to the Deputy Commissioner who authored the Opinion and Award.~~

(1) ~~when a case is not calendared before a Deputy Commissioner;~~

(2) ~~once a case has been continued or removed from a Deputy Commissioner calendar; or~~

(3) ~~after the filing of an Opinion and Award when the time for taking appeal has run.~~

(c) Motions before the Full Commission:

(1) in cases calendared for hearing before the Full Commission shall be sent by the filing party directly to the Chair of the Full Commission panel.

(3)(2) ~~Motions~~ filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be directed by the filing party to the Chair of the ~~Industrial~~ Commission.

(4)(3) ~~If a in case has been cases~~ continued from the Full Commission hearing docket, ~~motions~~ shall be directed by the filing party to the Chair of the panel of Commissioners who ordered the continuance.

(5)(4) ~~Motions~~ filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be ~~directed~~ sent by the filing party directly to the Commissioner who authored the Opinion and Award.

~~(b)(d)~~ (d) A motion shall state with particularity the grounds on which it is based, the relief sought, and a ~~brief statement of~~ the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing ~~parties,~~ parties if not represented.

~~(e)(e)~~ (e) Motions to continue or remove a case from the hearing calendar on which the case is set ~~must shall~~ be made ~~well in advance as much in advance as possible~~ of the scheduled hearing and may be made in written or oral form.

In all ~~cases~~ cases, the moving party ~~must~~ shall provide ~~just cause~~ the basis for the motion and state that the other

1 parties have been advised of the motion and relate the position, if known, of the other parties regarding the motion.
2 Oral motions ~~must~~ shall be followed with a written ~~confirmation~~ motion from the moving party.

3 ~~(d)~~(f) The responding party to a motion shall have 10 days after a motion is served during which to file and serve
4 copies of response in opposition to the motion. The ~~Industrial~~ Commission may shorten or extend the time for
5 responding to any ~~motion~~ motion ~~[to prevent manifest injustice, promote judicial economy, or expedite a decision in~~
6 ~~the public interest]~~ in the interests of justice or to promote judicial economy.

7 ~~(e)~~(g) ~~Notwithstanding the provisions of Paragraph 4 of this Rule, a motion may be acted upon at any time by the~~
8 ~~Commission, despite the absence of notice to all parties, and without awaiting a response thereto.~~ A party who has
9 not received actual notice of ~~such~~ a motion or who has not filed a response at the time ~~such~~ action is taken and who
10 is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions ~~will~~ shall be
11 determined without oral argument, unless the ~~Industrial~~ Commission ~~orders otherwise.~~ determines that oral
12 argument is necessary for a complete understanding of the issues.

13 ~~(f)~~(h) ~~In all cases where~~ Where correspondence relative to a case before the ~~Industrial~~ Commission is sent to the
14 ~~Industrial~~ Commission, copies of such correspondence shall be contemporaneously sent by the same method of
15 transmission to the opposing party or, if represented, to opposing counsel. Written communications, whether
16 addressed directly to the Commission or copied to the Commission, may not be used as an opportunity to introduce
17 new evidence or to argue the merits of the case, with the exception of the ~~following~~ following: ~~instances:~~

- 18 (1) ~~Written~~ written communications, such as a proposed order or legal memorandum, prepared
19 pursuant to the Commission's instructions;
- 20 (2) ~~Written~~ written communications relative to emergencies, changed circumstances, or scheduling
21 matters that may affect the procedural status of a case such as a request for a continuance due to
22 the health of a litigant or an attorney;
- 23 (3) ~~Written~~ written communications sent to the tribunal with the consent of the opposing lawyer or
24 opposing ~~party~~ party, if unrepresented; and
- 25 (4) ~~Any~~ any other communication permitted by law or the ~~rules~~ Rules ~~or procedures~~ of the
26 Commission.

27 ~~At no time may written communications, whether addressed directly to the Commission or copied to the~~
28 ~~Commission, be used as an opportunity to cast the opposing party or counsel in a bad light.~~

29 ~~(g)~~(i) All motions and responses thereto ~~made before the Industrial Commission must~~ shall include a proposed
30 Order to be considered by the ~~Industrial~~ Commission.

31 (h) ~~Except as otherwise expressly provided by statute, rule, or by order of the Commission, in computing any period~~
32 ~~of time prescribed or allowed by the Commission Rules, by order of the Commission, or by any applicable statute,~~
33 ~~the day of the act, event, or default after which the designated period of time begins to run is not to be included. The~~
34 ~~last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which~~
35 ~~event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the~~
36 ~~period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be~~

1 | ~~excluded in the computation. Whenever a party has the right to do some act or take some proceedings within a~~
2 | ~~prescribed period after the service of any document, three days shall be added to the prescribed period.~~

3
4 *History Note:* Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;
5 *Eff. January 1, 1990;*
6 *Amended Eff. January 1, 2013; June 1, 2000; March 15, 1995.*
7

1 04 NCAC 10A .0609A is amended with changes as published in 27:02 NCR 186 as follows:

2
3 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

4 ~~(a) Expedited Medical Motions:~~

5 ~~(1)(a) Medical [Medical] motions~~ **Motions** pursuant to G.S. 97-25 brought before the Office of the Executive
6 Secretary for ~~an administrative a~~ ruling shall comply with applicable provisions of Rule .0609 of this Subchapter
7 and shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is unavailable to
8 the party.

9 ~~(2)(b) A party may file with the Deputy Commissioner Docket Section a request for an administrative a~~ ruling on a
10 ~~medical motion~~ **brought pursuant to G.S. 97-25**. A party, also, may appeal an Order from the Executive Secretary's
11 Office on an ~~Expedited a~~ **[Medical Motion] motion brought pursuant to G.S. 97-25** by giving notice of appeal to the
12 ~~Dockets Department Docket Section~~ within 15 days of receipt of the Order or receipt of the ruling on a Motion to
13 Reconsider the Order filed pursuant to Rule ~~703(4). .0703(b)~~ of this Subchapter. The ~~Motion motion~~ **brought**
14 **pursuant to G.S. 97-25** shall contain a designation as ~~an administrative "Expedited Medical [a "Medical] Motion", a~~
15 **motion brought pursuant to G.S. 97-25**, documentation in support of the ~~request, request~~ including the most recent
16 medical ~~record/s record(s)~~ and a representation that informal means of resolving the ~~issue issues~~ have been
17 attempted in good faith, and the opposing party's position, if known.

18 (A) ~~— A Pre Trial Conference will be held immediately to clarify the issues. Parties are encouraged to~~
19 ~~consent to a review of the contested issues by electronic mail submission of only relevant medical~~
20 ~~records and opinion letters.~~

21 (B) ~~— If depositions are deemed necessary by the Deputy Commissioner, only a brief period for taking~~
22 ~~the same will be allowed. Preparation of the transcript will be expedited and will initially be at the~~
23 ~~expense of defendants. Requests for independent medical examinations may be denied unless~~
24 ~~there is a demonstrated need for the evaluation.~~

25 (C) ~~— Written arguments and briefs shall be limited in length, and are to be filed within five days after~~
26 ~~the record is closed.~~

27 (c) A Deputy Commissioner shall conduct a Pre-Trial Conference as soon as possible to clarify the issues. Parties
28 may consent to a review of the contested issues by electronic mail submission of only relevant medical records and
29 opinion letters. Depositions deemed necessary by the Deputy Commissioner shall be set on an expedited schedule at
30 the expense of defendants. Requests for independent medical examinations shall be denied unless there is a
31 demonstrated need for the evaluation. The parties shall provide the deposition transcript to the Deputy
32 Commissioner as soon as possible. Written arguments and briefs shall be filed within five days after the record is
33 closed.

34 ~~(3)(d) A party may appeal an Order by a Deputy Commissioner on an Expedited a~~ **[Medical Motion] motion**
35 **brought pursuant to G.S. 97-25** by giving notice of appeal to the Full Commission within 15 days of receipt of the
36 Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant to Rule ~~703(4). .0703(b)~~ of this
37 Subchapter.

1 (A) ~~A letter expressing an intent to appeal a Deputy Commissioner's Order on an Expedited Medical~~
2 ~~Motion shall be considered notice of appeal to the Full Commission, provided that it clearly~~
3 ~~specifies the Order from which appeal is taken.~~

4 (B) ~~After receipt of notice of appeal, the appeal will be acknowledged by the Dockets Department~~
5 ~~within three (3) days by sending an appropriate Order under the name of the Chair of the Panel to~~
6 ~~which the appeal is assigned. The parties may be permitted to file briefs on an abbreviated~~
7 ~~schedule in the discretion of the panel chair. The panel chair will also determine if oral arguments~~
8 ~~are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the~~
9 ~~appeal shall be addressed to the panel chair with a copy to the law clerk of the panel chair.~~

10 A letter expressing an intent to appeal a Deputy Commissioner's Order on an ~~[Medical Motion]~~ motion brought
11 pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifies
12 the Order from which appeal is taken. After receipt of notice of appeal, the appeal shall be acknowledged by the
13 Docket Section within three days by sending an Order under the name of the Chair of the Panel to which the appeal
14 is assigned. The parties may file briefs on an abbreviated schedule when necessary for a determination of the issues.
15 The panel chair shall also determine if oral arguments are to be by telephone, in person, or waived. All
16 correspondence, briefs, or motions related to the appeal shall be addressed to the panel chair with a copy to the law
17 clerk of the panel chair.

18 (e) If the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify whether
19 the plaintiff has made a prior written request to the defendants for the examination, as well as the date of the request
20 and the date of the denial, if any.

21 ~~(b) Emergency Medical Motions:~~

22 ~~(1)(f) Motions requesting emergency medical relief administratively shall contain the following:~~

23 ~~(A)(1) A a boldface, or otherwise emphasized, designation as "Emergency Medical ~~Motion.~~" Motion";~~

24 ~~(B)(2) An an explanation of the need for a shortened time period for review, including any hardship that~~
25 ~~warrants immediate ~~attention/action~~ attention or action by the ~~Commission.~~ Commission;~~

26 ~~(C)(3) A a statement of the time-sensitive nature of the ~~request, with specificity.~~ request;~~

27 ~~(D)(4) ~~Detailed~~ dates and times related to the issue raised and to the date a ruling is ~~requested.~~ requested;~~

28 ~~(E)(5) ~~Documentation~~ documentation in support of the request, including the most recent medical~~
29 ~~records. records; and~~

30 ~~(F)(6) A a representation that informal means of resolving the issue have been attempted in good faith,~~
31 ~~and the opposing party's position, if known.~~

32 ~~(2)(g) A party may file an Emergency Medical Motion with the Executive Secretary's Office, the Chief Deputy~~
33 ~~Commissioner, or the Office of the Chair. A proposed Order shall be provided with the motion. The non-moving~~
34 ~~party(ies) ~~will~~ shall be advised by the Commission regarding any time allowed for response and ~~may be advised~~~~
35 ~~whether informal telephonic oral argument is necessary.~~

36 ~~(3)(h) Unless electronic submission is unavailable to the party, Emergency Medical Motions and responses ~~thereto~~~~
37 ~~shall be submitted electronically, unless electronic submission is unavailable to the party, as follows:~~

- 1 ~~(A)(1) Emergency Medical Motions and responses thereto~~ if filed with the Executive Secretary's Office
2 ~~Office, shall be submitted to medicalmotions@ic.nc.gov. medicalmotions@ic.nc.gov;~~
3 ~~(B)(2) Emergency Medical Motions~~ if filed with the Chief Deputy Commissioner, ~~shall be submitted~~
4 ~~electronically directly to the Chief Deputy Commissioner and his/her~~ his or her legal assistant.
5 ~~assistant; or~~
6 ~~(C)(3) Emergency Medical Motions~~ if filed with the Chair of the Commission ~~shall be submitted~~
7 ~~electronically~~ to the Chair, ~~his/her~~ his or her legal assistant, and ~~his/her~~ his or her law clerk.

8
9 *History Note:* *Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);*
10 *Eff. January 1, 2011;*
11 *Amended Eff. January 1, 2013.*

12

1 04 NCAC 10A .0612 is amended with changes as published in 27:02 NCR 188 as follows:

2
3 **04 NCAC 10A .0612 DEPOSITIONS AND ADDITIONAL HEARINGS**

4 (a) The parties may, by agreement or stipulation with notice to the Commission, conduct depositions for discovery
5 prior to the hearing before the Deputy Commissioner.

6 ~~(a)~~(b) When additional testimony is necessary to the disposition of a case, a Commissioner or Deputy
7 Commissioner ~~may~~ shall order the deposition of witnesses to be taken on or before a day certain not to exceed 60
8 days from the date of the ruling; provided, the time allowed may be enlarged ~~for good cause shown, in the [interest]~~
9 interests of justice and judicial economy. The costs of such depositions shall be borne by defendants for those
10 medical witnesses who examined the plaintiff at defendants' expense, ~~in those instances in which defendants are~~
11 ~~requesting the depositions, and in any other case which, or when ordered in the discretion of by~~ the Commissioner or
12 Deputy Commissioner. ~~Commissioner, it is deemed appropriate.~~

13 ~~(b)~~(c) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case ~~must~~
14 ~~be~~ is reset or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may
15 ~~in his discretion~~ assess the costs of such hearing or depositions, including reasonable attorney fees, against the party
16 who refused the ~~stipulation.~~ stipulation, pursuant to G.S. 97-88 and G.S. 97-88.1.

17 ~~(c)~~(d) ~~Except under unusual circumstances, all~~ All lay evidence and witnesses other than those tendered as an expert
18 witness ~~must~~ shall be offered at the ~~initial hearing.~~ hearing before the Deputy Commissioner. ~~Lay~~ Non-expert
19 evidence ~~can only~~ may be offered after the ~~initial~~ hearing before the Deputy Commissioner by order of a
20 Commissioner or Deputy Commissioner. The costs of obtaining ~~lay non-expert~~ testimony by deposition shall be
21 borne by the party making the request unless otherwise ordered by the ~~Commission.~~ Commission in the interests of
22 justice or [as required to prevent manifest injustice and] to promote judicial economy.

23
24 *History Note:* Authority G.S. 97-80(a); 97-88; 97-88.1;
25 Eff. June 1, 1990;
26 Amended Eff. January 1, 2013; June 1, 2000.

27

04 NCAC 10A .0613 is amended with changes as published in 27:02 NCR 188 as follows:

04 NCAC 10A .0613 EXPERT WITNESSES AND FEES

~~(a) Dismissals:~~

~~(1) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice at plaintiff's instance except upon order of the Industrial Commission and upon such terms and conditions as justice requires; provided, however, that no voluntary dismissal shall be granted after the record in a case is closed.~~

~~(2) Unless otherwise ordered by the Industrial Commission, a plaintiff shall have one year from the date of the Order of Voluntary Dismissal to refile his claim.~~

~~(3) Upon proper notice and an opportunity to be heard, any claim may be dismissed with or without prejudice by the Industrial Commission on its own motion or by motion of any party for failure to prosecute or to comply with these Rules or any Order of the Commission.~~

~~(b) Removals:~~

~~(1) A claim may be removed from the hearing docket by motion of the party requesting the hearing or by the Industrial Commission upon its own motion.~~

~~(2) Upon settlement of a case or approval of a form agreement, the parties shall submit a request for removal and/or a dismissal and proposed Order.~~

~~(3) A removed case may be reinstated by motion of either party; provided that cases wherein the issues have materially changed since the Order of Removal or where the motion to reinstate is filed more than one year after the Order of Removal, a Form 33 Request for Hearing will be required.~~

~~(4) When a plaintiff has not requested a hearing within two years of the filing of an Order of Removal requested by the plaintiff or necessitated by the plaintiff's conduct, and not pursued the claim, upon proper notice and an opportunity to be heard, any claim may be dismissed with prejudice by the Industrial Commission, in its discretion, on its own motion or by motion of any party.~~

(a) The parties shall file with the Deputy Commissioner within 15 days following the trial, a list identifying all expert witnesses to be deposed and the dates of their depositions unless otherwise extended by the Commission in the interests of justice and judicial economy.

(b) Within 10 days after each expert witness deposition, defendants' counsel shall submit to the Deputy Commissioner, via email, a request to approve the expert's fee. In these requests, counsel shall provide to the Deputy Commissioner, in a cover letter along with the invoice (if provided to counsel), the following:

(1) the name of the expert deposed;

(2) his or her practice's name;

(3) his or her fax number;

(4) his or her area of specialty and board certifications, if any;

(5) the length of the deposition; and

1 (6) the length of time the expert spent preparing, excluding any time meeting with parties' counsel, for
2 the deposition.

3 Counsel shall submit a proposed Order that shows the expert's name, practice name and fax number under the
4 "Appearances" section.

5 (c) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in
6 the assessment of a 10 percent penalty in an amount equal to 10 percent being added to the fee payable to the expert
7 witness.

8 (d) A proposed fee for cancellation of a deposition within five days of scheduled deposition may be submitted to the
9 Deputy Commissioner for consideration and approval if in the interest of justice and judicial economy.

10
11 *History Note: Authority G.S. 97-18(i); 97-80(a); 97-80(f);*
12 *Eff. January 1, 1990;*
13 *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*
14

1 04 NCAC 10A .0616 is amended with changes as published in 27:02 NCR 190 as follows:

2
3 **04 NCAC 10A .0616 DISMISSALS**

4 ~~(a) Services of Foreign Language Interpreters Required When a person who does not speak or understand the~~
5 ~~English language is called to testify in a hearing, other than in an informal hearing conducted pursuant to G.S. 97-~~
6 ~~18.1, the person, whether a party or a witness shall be assisted by a qualified foreign language interpreter.~~

7 ~~(b) Qualifications of Interpreters To qualify as a foreign interpreter, a person must possess sufficient experience~~
8 ~~and education, or a combination of experience and education, speaking and understanding English and the foreign~~
9 ~~language to be interpreted, to qualify as an expert witness pursuant to G.S. 1C 1, Rule 702. A person qualified as an~~
10 ~~interpreter under this Rule shall not be interested in the claim and must make a declaration under oath or affirmation~~
11 ~~to interpret accurately, truthfully and without any additions or deletions, all questions propounded to the witness and~~
12 ~~all responses thereto.~~

13 ~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter Any party who is unable to speak~~
14 ~~or understand English, or who intends to call as a witness a person who is unable to speak or understand English,~~
15 ~~shall so notify the Industrial Commission and the opposing party, in writing, not less than 21 days prior to the date~~
16 ~~of the hearing. The notice shall state with specificity the language(s) that must be interpreted for the Commission.~~

17 ~~(d) Designation of Interpreter Upon receiving or giving the notice required in Paragraph (3) of this Rule, the~~
18 ~~employer or insurer shall retain a qualified, disinterested interpreter, either agreed upon by the parties or approved~~
19 ~~by the Industrial Commission, to appear at the hearing and interpret the testimony of all persons for whom the notice~~
20 ~~in Paragraph (3) of this Rule has been given or received.~~

21 ~~(e) Interpreter Fees The interpreter's fee shall constitute a cost as contemplated by G.S. 97 80. A qualified~~
22 ~~interpreter who interprets testimony for the Industrial Commission shall be entitled to payment of the fee agreed~~
23 ~~upon by the interpreter and employer or insurer that retained the interpreter. Except in cases where a claim for~~
24 ~~compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and employer~~
25 ~~or insurer shall be paid by the employer or insurer. Where it is ultimately determined by the Commission that the~~
26 ~~request for an interpreter was unfounded, attendant costs may be assessed against the movant.~~

27 ~~(f) Interpreter Ethics Foreign language interpreters shall abide by the code of ethical conduct for court interpreters~~
28 ~~promulgated by the North Carolina Administrative Office of the Courts and adopted by the Industrial Commission~~
29 ~~and shall interpret as word for word as is practicable, without editing, commenting, or summarizing, testimony or~~
30 ~~other communications.~~

31 (a) No claim filed under the Workers' Compensation Act shall be dismissed without prejudice, except upon order of
32 the Commission in the interest of justice. No voluntary dismissal shall be granted after the record in a case is closed.
33 Unless otherwise ordered by the Commission in the **interest**, **interests** of justice, a plaintiff shall have one year from
34 the date of the Order of Voluntary Dismissal Without Prejudice to refile his claim.

35 (b) Upon notice and opportunity to be heard, any claim may be dismissed with or without prejudice by the
36 Commission on its own motion or by motion of any party if the Commission finds that the party failed to prosecute
37 or to comply with the rules in this Subchapter or any Order of the Commission.

1 (c) In a denied claim, if ~~When~~ a plaintiff has not requested a hearing within two years of the filing of the Order
2 removing the case from a hearing calendar and has not pursued the claim, upon notice and opportunity to be heard,
3 any claim shall be dismissed with prejudice by the Commission, on its own motion or by motion of any party.
4

5 *History Note: Authority G.S. 97-80(a); 97-84; 97-91;*
6 *Eff. June 1, 2000;*
7 *Amended Eff. January 1, 2013; January 1, 2011.*
8

1 04 NCAC 10A .0701 is amended with changes as published in 27:02 NCR 192 as follows:

2 **SECTION .0700 – APPEALS**

3
4 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

5 (a) A letter expressing ~~an intent to appeal shall be~~ a request for review is considered ~~notice of appeal~~ an application
6 of review to the Full Commission within the meaning of ~~G.S. § 97-85, G.S. 97-85,~~ provided that ~~the letter~~
7 specifies the Order or Opinion and Award from which appeal is taken.

8 (b) After receipt of ~~notice of appeal,~~ a request for review, the ~~Industrial Commission will~~ shall supply to the
9 appellant a Form 44 *Application for Review* upon which appellant ~~must~~ shall state the grounds for the ~~appeal~~
10 review. The grounds ~~must~~ shall be stated with particularity, including the ~~specific~~ errors allegedly committed by the
11 Commissioner or Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged
12 errors are recorded. Failure to state with particularity the grounds for ~~appeal~~ review shall result in abandonment of
13 such grounds, as provided in Paragraph ~~(3)~~ (d). Appellant's completed Form 44 *Application for Review* and brief
14 ~~must~~ shall be filed and served within 25 days of appellant's receipt of the transcript or receipt of notice that there
15 will be no ~~transcript~~ transcript, unless the ~~Industrial Commission, in its discretion, waives the use of the Form 44.~~
16 ~~The time for filing a notice of appeal from the decision of a Deputy Commissioner under these rules shall be tolled~~
17 ~~until a timely motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner.~~

18 (c) ~~The time for filing a request for review from the decision of a Deputy Commissioner under the Rules in this~~
19 ~~Subchapter shall be tolled until a timely motion to reconsider or to amend the decision has been ruled upon by the~~
20 ~~Deputy Commissioner. A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed~~
21 ~~within 15 days of receipt of notice of the award.~~

22 ~~(e)(d) Particular grounds~~ Grounds for appeal review not set forth in the ~~application for review~~ Form 44 Application
23 for Review ~~shall be~~ are deemed abandoned, and argument thereon shall not be heard before the Full Commission.

24 ~~(d)(e) Appellant's~~ The [Appellant] appellant shall file a Form 44 *Application for Review* and brief in support of his
25 grounds for ~~appeal~~ review ~~shall be filed in triplicate~~ with the ~~Industrial Commission,~~ Commission, with a certificate
26 indicating service on ~~the appellee~~ appellee, by mail or in person, within 25 days after receipt of the ~~transcript,~~
27 ~~transcript~~ or receipt of notice that there will be no transcript. ~~Thereafter, appellee~~ The appellee shall have 25 days
28 from service of appellant's brief ~~within which to file a reply brief in triplicate with the Industrial Commission,~~
29 Commission with written statement of service ~~of copy by mail or in person on the~~ appellee appellant. When an appellant
30 fails to file a brief, appellee shall file his brief within 25 days after the appellant's time for filing brief has expired. A
31 party who fails to file a brief ~~will~~ shall not be allowed oral argument before the Full Commission. If both parties
32 ~~appeal, request review,~~ they shall each file an appellant's and appellee's brief on the schedule set forth ~~herein~~ in this
33 Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket Director a written
34 stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative extensions of time
35 exceed 30 days.

36 ~~(e)(f) After notice of appeal~~ a request for review has been given to the Full Commission, any motions related to the
37 issues for review before the Full Commission shall be filed ~~in triplicate~~ with the Full Commission, with service on

1 the other parties. Motions related to the issues for review including motions for new trial, to amend the record, or to
2 take additional evidence, filed during the pendency of a request for review to the Full Commission shall be argued
3 before the Full Commission at the time of the hearing of the request for review.

4 ~~(f) No new evidence will be presented to or heard by the Full Commission unless the Commission in its discretion~~
5 ~~so permits.~~

6 (g) Cases ~~should~~ shall be cited to the North Carolina ~~Reports~~ Reports, the North Carolina Court of Appeals Reports,
7 or the North Carolina Reporter, and ~~preferably, when possible,~~ to the Southeastern Reporter. Counsel shall not
8 discuss matters outside the record, assert personal opinions or relate personal experiences, or attribute ~~unworthy~~
9 wrongful acts or motives to opposing counsel.

10 (h) ~~The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive~~
11 ~~oral argument before the Full Commission. Upon the request of a party or on its own motion, the Commission may~~
12 ~~wave oral argument [to prevent manifest injustice, promote judicial economy, or expedite a decision in the public~~
13 ~~interest] in the interests of justice or to promote judicial economy.~~ In the event of such waiver, the Full Commission
14 ~~will~~ shall file a ~~decision, an award,~~ based on the ~~record, assignments of error~~ record and briefs.

15 ~~(i)~~ (i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit ~~shall apply~~
16 applies to the length of attachments. Briefs shall be prepared ~~entirely~~ using a 12 point ~~font, type,~~ shall be double
17 spaced, and shall be prepared with non-justified right margins. Each page of the brief shall be numbered at the
18 bottom right of the page. When a party quotes or paraphrases ~~quoting or paraphrasing~~ testimony or other evidence
19 from a transcript of the evidence or from an exhibit in the party's brief, the party shall include, at the end of the
20 sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetic entry in the text that
21 designates the source of the quoted or paraphrased material and the page number location within the applicable
22 source, to include the exact page number location within the transcript of the evidence of the information being
23 referenced shall be placed at the end of the sentence citing the information [Example: (T p.38)]. The party shall use
24 "T" for transcript, "Ex" for exhibit, and "p" for page number. For example, if a party quotes or paraphrases material
25 located in the transcript on page 11, the party shall use the following format "(T p 11)", and if a party quotes or
26 paraphrases material located in an exhibit [three] on page 12, the party shall use the following format "(Ex [3] p
27 12)". When a party quotes or paraphrases ~~quoting or paraphrasing~~ testimony or other evidence in the transcript of a
28 deposition in the party's brief, the party shall include, at the end of the sentence in the brief that quotes or
29 paraphrases the testimony or other evidence from the deposition, a parenthetic entry in the text to include that
30 contains the name of the name of the person deposed and exact the page number location within the transcript of the
31 deposition. of the information being referenced shall be placed at the end of the sentence citing the information.
32 [Example: (Smith p.15)]. For example, if a party quotes or paraphrases the testimony of John Smith, located on
33 page 11 of the transcript of the deposition, the party shall use the following format "(Smith p 11)".

34 ~~(j)~~ (j) ~~A plaintiff~~ An employee appealing requesting a review of the amount of a disfigurement award shall
35 personally appear before the Full Commission to permit the Full Commission to view the disfigurement.

36
37 *History Note: Authority G.S. 97-80(a); 97-85;*

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2
3

Eff. January 1, 1990;
Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 04 NCAC 10A .0702 is amended with changes as published in 27:02 NCR 193 as follows:

2
3 **04 NCAC 10A .0702 REVIEW OF ADMINISTRATIVE DECISIONS**

4 ~~(a) Except as otherwise provided in G.S. § 97-86, in every case appealed to the North Carolina Court of Appeals,~~
5 ~~the Rules of Appellate Procedure shall apply. The running of the time for filing and serving a notice of appeal is~~
6 ~~tolled as to all parties by a timely motion filed by any party to amend, to make additional findings or to reconsider~~
7 ~~the decision, and the full time for appeal commences to run and is to be computed from the entry of an Order upon~~
8 ~~any of these motions, in accordance with Rule 3 of the Rules of Appellate Procedure.~~

9 ~~(b) If the parties cannot agree on the record on appeal, appellant shall furnish the Chair of the Industrial~~
10 ~~Commission, or his designee, one copy of the proposed record on appeal, objections and/or proposed alternative~~
11 ~~record on appeal along with a timely request to settle the record on appeal. The hearing to settle the record on~~
12 ~~appeal shall be held at the offices of the Industrial Commission or by telephone conference. The record on appeal~~
13 ~~shall be settled in accordance with the provisions of Rule 18(d) of the North Carolina Rules of Appellate Procedure.~~

14 ~~(c) The amount of the appeal bond shall be set by the Chair, or his designee, and may be waived in accordance with~~
15 ~~G.S. § 97-86.~~

16 (a) Administrative decisions include orders, decisions, and awards made in a summary manner, without findings of
17 fact, including decisions on **the following**:

- 18 (1) applications to approve agreements to pay compensation and medical bills;
- 19 (2) applications to approve the termination or suspension or the reinstatement of compensation;
- 20 (3) applications for change in treatment or providers of medical compensation;
- 21 (4) applications to change the interval of payments; and
- 22 (5) applications for lump sum payments of compensation

23 **Administrative decisions** shall be reviewed upon the filing of a Motion for Reconsideration with the Commission
24 addressed to the Administrative Officer who made the decisions or may be reviewed by requesting a hearing within
25 15 days of receipt of the decisions or receipt of the ruling on a Motion to Reconsider. These issues may also be
26 raised and determined at a subsequent hearing.

27 (b) Motions for Reconsideration shall not stay the effect of the order, decision or award; provided that the
28 Administrative Officer making the decision or a Commissioner may enter an order staying its effect pending the
29 ruling on the Motion for Reconsideration or pending a decision by a Commissioner or Deputy Commissioner
30 following a formal hearing. In determining whether or not to grant a stay, the Commissioner or Administrative
31 Officer shall consider whether granting the stay will frustrate the purposes of the order, decision, or award. Motions
32 to Stay shall not be filed with both the Administrative Officer and a Commissioner.

33 (c) Any request for a hearing to review an administrative decision shall be made to the Commission and filed with
34 the Commission's Docket Director. The Commission shall designate a Commissioner or Deputy Commissioner to
35 hear the review. The Commissioner or Deputy Commissioner hearing the matter shall consider all issues de novo,
36 and no issue shall be considered moot solely because the order has been fully executed during the pendency of the
37 hearing.

1 (d) Orders filed by a single Commissioner, including orders dismissing reviews to the Full Commission or denying
2 the right of immediate request for review to the Full Commission, are administrative orders and are not final
3 determinations of the Commission. As such, an order filed by a single Commissioner is not appealable to the North
4 Carolina Court of Appeals. A one-signature order filed by a single Commissioner may be reviewed by:

5 (1) filing a Motion for Reconsideration addressed to the Commissioner who filed the order; or

6 (2) requesting a review to a Full Commission panel by requesting a hearing within 15 days of receipt
7 of the order or receipt of the ruling on a Motion for Reconsideration.

8
9 *History Note: Authority G.S. 97-80(a); 97-85*

10 *Eff. January 1, 1990;*

11 *Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.*

12

1 04 NCAC 10A .0704 is adopted as published in 27:02 NCR 193 as follows:

2

3 **04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS**

4 When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or
5 without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary
6 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of
7 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission
8 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored
9 the decision is no longer a member of the Industrial Commission.

10

11 *History Note: Authority G.S. 97-80(a); 97-86;*

12 *Eff. January 1, 2013.*

13

1 04 NCAC 10A .0801 is amended with changes as published in 27:02 NCR 194 as follows:

2
3 **SECTION .0800 – RULES OF THE COMMISSION**
4

5 **04 NCAC 10A .0801 SUSPENSION-WAIVER OF RULES**

6 ~~In the interest of justice, these rules may be waived by the Industrial Commission. The rights of any unrepresented~~
7 ~~plaintiff will be given special consideration in this regard, to the end that a plaintiff without an attorney shall not be~~
8 ~~prejudiced by mere failure to strictly comply with any one of these rules.~~

9 In the interests of justice or to promote judicial economy [To prevent manifest injustice to a party, or to expedite a
10 decision in the public interest], the Commission may, except as otherwise provided by the Rules in this Subchapter,
11 [suspend] waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending
12 before the Commission upon written application of a party or upon its own [initiative, and may order proceedings in
13 accordance with its directions.] [initative.]-initiative. Factors the Commission shall use in determining whether to
14 grant the waiver are:

- 15 (1) the necessity of a waiver;
- 16 (2) the party's responsibility for the conditions creating the need for a waiver;
- 17 (3) the party's prior requests for a waiver;
- 18 (4) the precedential value of such a waiver;
- 19 (5) notice to and opposition by the opposing parties; and
- 20 (6) the harm to the party if the waiver is not granted.

21
22
23 *History Note:* Authority G.S. 97-80(a);
24 Eff. January 1, 1990;
25 Amended Eff. January 1, 2013.
26

1 04 NCAC 10B .0203 is amended with changes as published in 27:02 NCR 199 as follows:

2 **04 NCAC 10B .0203 INFANTS AND INCOMPETENTS**

3 A Commissioner or Deputy Commissioner may upon the motion of a party or upon his own motion, enlarge the time
4 within which an action must be taken or a document filed pursuant to this Article. If the claim has not been
5 calendared, a Motion for Enlargement of Time should be directed to the Commissioner or Deputy Commissioner
6 designated by the Chair to determine Tort Claim motions. An enlargement of time may be granted either before or
7 after the relevant time requirement has elapsed.

8 (a) Persons seeking to appear on behalf of an infant or incompetent, in accordance~~[Consistent]~~with [G.S. 17(b),]
9 ~~[Infants or incompetents may bring a tort claim action only through their guardian ad litem. Upon the written~~
10 ~~application]~~ G.S. 1A-1, Rule 17, shall apply on a Form 42 ~~[Application for Appointment of Guardian Ad Litem, the]~~
11 Application for Appointment of Guardian Ad Litem. The Commission shall appoint a fit and proper person as
12 guardian ad litem, if the Commission determines it to be in the best interest of the minor or incompetent. The
13 Commission shall appoint the guardian ad litem only after due inquiry as to the fitness of the person to be appointed.

14 ~~[(b) No compensation due or owed to the minor or incompetent shall be paid directly to the guardian ad litem.]~~

15 ~~[(c)]~~(b) [Consistent with G.S. 1A-1, Rule 17(b)(2), the] The Commission may assess a fee to be paid to an attorney
16 who serves as a guardian ad litem for actual services rendered upon receipt of an affidavit of actual time spent in
17 representation of the minor or incompetent as part of the costs.

18
19 *History Note:* Authority G.S. 143-300; 143-291; 143-295;
20 Eff. January 1, 1989;
21 Recodified from 4 NCAC 10B .0307 Eff. April 17, 2000;
22 Amended Eff. January 1, 2013; May 1, 2000.
23

1 04 NCAC 10B .0501 is amended with changes as published in 27:02 NCR 204 as follows:

2
3 **SECTION .0500 – RULES OF THE COMMISSION**
4

5 **04 NCAC 10B .0501 SUSPENSION-WAIVER OF RULES**

6 ~~In the interest of justice, any tort claims Rule may be waived by a Commissioner, Deputy Commissioner, or the Full~~
7 ~~Commission.~~

8 In the interests of justice or to promote judicial economy [To prevent manifest injustice to a party, or to expedite a
9 decision in the public interest], the Commission may, except as otherwise provided by the Rules in this Subchapter,
10 [suspend] waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending
11 before the Commission upon written application of a party or upon its own initiative, and may order proceedings in
12 accordance with its directions. ~~[initiative.]~~ initiative. Factors the Commission shall use in determining whether to
13 grant the waiver are:

- 14 (1) the necessity of a waiver;
- 15 (2) the party's responsibility for the conditions creating the need for a waiver;
- 16 (3) the party's prior requests for a waiver;
- 17 (4) the precedential value of such a waiver;
- 18 (5) notice to and opposition by the opposing parties; and
- 19 (1) ~~the harm to the party if the waiver is not granted.~~

20
21 *History Note:* Authority *G.S. 143-291; 143-300;*
22 *Eff. January 1, 1989;*
23 *Amended Eff. January 1, 2013; May 1, 2000.*
24

1 04 NCAC 10C .0101 is amended with changes as published in 27:02 NCR 204 as follows:

2
3 **SUBCHAPTER 10C - NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR UTILIZATION**
4 **OF REHABILITATION PROFESSIONALS IN WORKERS' COMPENSATION CLAIMS**

5
6 **SECTION .0100 – ADMINISTRATION**

7
8 **4 NCAC 10C .0101 APPLICABILITY OF THE RULES**

9 (a) ~~These rules~~ The Rules in this Subchapter apply to:

10 (1) ~~All~~ cases in which the employer is obligated to provide [provide₂] or is providing medical
11 compensation, and the injured worker is obligated to accept medical compensation under the
12 Workers' Compensation Act, or in which such compensation is provided by agreement, and during
13 any period when the employer is paying temporary total disability benefits "~~without prejudice,~~"
14 without prejudice in accordance with G.S. 97-18(d); and

15 (2) any rehabilitation professional ~~any rehabilitation professional (hereinafter RP)~~ as defined in Item
16 (1) of Rule .0103 of this Subchapter, who is assigned under the Workers' Compensation Act and
17 approved by the Commission pursuant to ~~Section VI-E.~~ Rule .0105 of this Subchapter.

18 (b) Any ~~RP~~ rehabilitation professional who is not assigned under the Workers' Compensation Act and approved by
19 the Commission pursuant to Rule .0105 of this Subchapter must disclose his or her role to (1) the medical health
20 care provider at the time of the initial contact and (2) any other person from whom the non-approved ~~RP~~
21 rehabilitation professional seeks information about the case.

22
23 *History Note:* Authority G.S. 97-18(d); 97-25.4; 97-25.5; 97-32.2; 97-80;
24 Eff. January 1, 1996;
25 Recodified from 4 NCAC 10C .0103, Eff. April 17, 2000;
26 Amended Eff. January 1, 2013; June 1, 2000.
27
28

04 NCAC 10C .0103 is amended with changes as published in 27:02 NCR 205 as follows:

4 NCAC 10C .0103 DEFINITIONS

As used in this Subchapter:

(a)(1) ~~RPs are~~ "Rehabilitation professional" means a medical case ~~managers~~ manager and manager, a ~~coordinators~~ coordinator of medical rehabilitation ~~services~~ services, and/or or a vocational rehabilitation professional providing vocational rehabilitation services, including ~~but not limited~~ to, state, private, or carrier based, whether on site, telephonic, or in or out of state. ~~RPs do not include direct care providers, e.g., physical therapists, occupational therapists, or speech therapists.~~ Physical therapists, occupational therapists, speech therapists, and other direct care providers are not rehabilitation professionals under the Rules in this Subchapter.

~~(b) The "parties" are the worker, the worker's attorney, the employer, the workers' compensation carrier (including claims administrator, third party administrator), and the employer or carrier's attorney(s).~~

~~(c) "Physician" means medical doctor, chiropractor, other physician, and, where the context requires, other health care providers.~~

~~(d)(2)~~ "Medical rehabilitation" ~~refers to~~ means the planning and coordination of health care ~~services.~~ services by a medical case manager or coordinator, with the goal of assisting an injured worker to be restored ~~The goal of medical rehabilitation is to assist in the restoration of injured workers as~~ nearly as possible to the workers' worker's pre-injury level of physical function. Medical case management ~~may include but is not limited to~~ includes:

(a) ~~case assessment; assessment, including a personal interview with the injured worker;~~

(b) ~~development, implementation and coordination of a care plan with health care providers, providers, and with the worker, worker, and his or her family;~~

(c) ~~evaluation of treatment results;~~

(d) ~~planning for community re-entry; re-entry and return to work, work; with the employer of injury and/or and~~

(e) ~~referral for further vocational rehabilitation services.~~

~~(e)(3) "Vocational Rehabilitation"~~ "Vocational rehabilitation" ~~refers to~~ means the delivery and coordination of services under an individualized written plan, with the goal of assisting the injured workers worker to return to suitable ~~employment~~ employment, as defined by Item (5) of this Rule or applicable statute, ~~[and]~~ or education and retraining to substantially increase the employee's wage-earning capacity.

~~(1) Specific vocational rehabilitation services may include, but are not limited to: vocational assessment, vocational exploration, counseling, job analysis, job modification, job development and placement, labor market survey, vocational or psychometric testing, analysis of transferable skills, work adjustment counseling, job seeking skills training, on the job training and retraining, and follow up after re-employment.~~

1 ~~(2) The vocational assessment is based on the RP's evaluation of the worker's social, medical, and~~
2 ~~vocational standing, along with other information significant to employment potential and on a~~
3 ~~face to face interview between the worker and the RP, to determine whether the worker can~~
4 ~~benefit from vocational rehabilitation services, and, if so, to identify the specific type and~~
5 ~~sequence of appropriate services. It should include an evaluation of the worker's expectations in~~
6 ~~the rehabilitation process, an evaluation of any specific requests by the worker for medical~~
7 ~~treatment or vocational training, and a statement of the RP's conclusion regarding the worker's~~
8 ~~need for rehabilitation services, benefits expected from services, and a description of the proposed~~
9 ~~rehabilitation plan.~~

10 ~~(3) Job placement activities may be commenced after completion of a vocational assessment and~~
11 ~~formulation of an individualized plan for vocational services which specifies its goals and the~~
12 ~~priority for return to work options in each case. Placement shall only be directed toward~~
13 ~~prospective employers offering the opportunity for suitable employment, as defined herein.~~

14 ~~(f)(4) "Return to work" means placement of the injured worker into suitable employment, as defined~~
15 ~~herein. by Item (5) of this Rule or applicable statute. Return to work options generally should be~~
16 ~~considered in the following priority:~~

17 ~~(1) Current job, current employer;~~

18 ~~(2) New job, current employer;~~

19 ~~(3) On the job training, current employer;~~

20 ~~(4) New job, new employer;~~

21 ~~(5) On the job training, new employer;~~

22 ~~(6) Formal vocational training to prepare worker for job with current or new employer.~~

23 ~~(7) Due to the high risk of small business failure, self employment should be considered only when its~~
24 ~~feasibility is documented with reference to worker's aptitudes and training, adequate~~
25 ~~capitalization, and market conditions.~~

26 ~~(g)(5) "Suitable employment" For claims arising before June 24, 2011, "suitable employment" means~~
27 ~~employment in the local labor market or self-employment which that is reasonably attainable and~~
28 ~~which that offers an opportunity to restore the worker as soon as possible and as nearly as~~
29 ~~practicable to pre-injury wage, while giving due consideration to the worker's qualifications (age,~~
30 ~~education, work experience, physical and mental capacities), impairment, vocational interests, and~~
31 ~~aptitudes. No one factor shall be considered solely in determining suitable employment. For~~
32 ~~claims arising on or after June 24, 2011, the statutory definition of "suitable employment," G.S.~~
33 ~~97-2(22), applies.~~

34 ~~(6) "Conditional rehabilitation professional" means a rehabilitation professional who has not met the~~
35 ~~requirements for qualified rehabilitation professionals under Paragraph (d) of Rule .0105 of this~~
36 ~~Subchapter and who desires to provide services as a rehabilitation professional in cases subject to~~
37 ~~the Rules in this Subchapter.~~

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History Note: Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;
Eff. January 1, 1996;
Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;
Amended Eff. January 1, 2013; June 1, 2000.

1 04 NCAC 10C .0107 is amended with changes as published in 27:02 NCR 209 as follows:

2
3 **4 NCAC 10C .0107 COMMUNICATION**

4 (a) The insurance carrier shall notify the Commission and all parties on a Form 25N Notice to the Commission of
5 Assignment of Rehabilitation Professional when a rehabilitation professional is assigned to a case and identify the
6 purpose of the rehabilitation involvement.

7 ~~(a)~~(b) At their first the initial meeting, RPs the rehabilitation professional shall provide the injured worker with a
8 copy of these rules the Rules in this Subchapter, or a summary of the ules approved by the Commission and shall
9 inform the injured worker that the rehabilitation professional is required to share relevant medical and vocational
10 rehabilitation information with the employer and insurance carrier and that the rehabilitation professional may be
11 compelled to testify regarding any information obtained.

12 (b) RPs The rehabilitation professional shall timely inform injured workers that the RP-Rehabilitation Professional
13 will share relevant and material information with the employer and insurance carrier and that the RP-Rehabilitation
14 Professional may be compelled to testify regarding any information obtained.

15 (c) In cases where the employer is paying medical compensation to a provider rendering treatment under the
16 Workers' Compensation Act, the injured worker, if requested by an RP a rehabilitation professional, shall sign a
17 Form 25C Consent-Authorization for Rehabilitation Professional to Obtain Medical Records of Current Treatment
18 authorizing the RP-rehabilitation professional to obtain records of such the current treatment. Refusal to sign the
19 consent may be deemed by the Commission to be noncompliance with rehabilitation and may result in the
20 suspension of benefits.

21 (d) The rehabilitation professional shall provide copies of all correspondence and reports contemporaneously
22 [electronically] to all parties [and by mail or facsimile to all parties without email on the same day] by the same
23 mode of transmission.

24 ~~(d)~~(e) In preparing written and oral reports, the RP-rehabilitation professional shall present only information
25 relevant and material to the worker's medical rehabilitation and/or and vocational rehabilitation and shall make every
26 effort to avoid undue invasion of the worker's privacy.

27 ~~(e)~~ The carrier shall promptly notify the Industrial Commission and all parties on a Form 25N when an RP is
28 assigned to a case and identify the purpose of the rehabilitation involvement.

29 (f) The RP shall provide copies of all correspondence simultaneously to all parties to the extent possible, making
30 every effort to effectuate prompt service.

31 ~~(g)~~(f) The RP-rehabilitation professional shall make periodic written reports documenting accurately and
32 completely the substance of all significant activity in the case, including the rehabilitation activity activity, defined
33 above, which reports shall be provided to all parties at the same time. A worker not represented by counsel shall be
34 furnished The rehabilitation professional shall furnish a worker who is unrepresented by counsel with a copy of
35 each periodic report, or, in the alternative, the RP rehabilitation professional shall advise the worker either orally or
36 in writing (at least as often as reports are produced) as to the plan for and progress of the case, and shall advise the

1 | ~~worker that he or she~~ the worker has the right to request a copy of the reports under ~~Industrial Commission Rule 4~~
2 | NCAC 10A .0607.

3 | ~~(h)(g)~~ Frequency and timing of periodic reports ~~will~~ shall be determined at the time of referral and ~~will~~ shall depend
4 | ~~upon~~ on the type of service provided. ~~However, prompt~~ Communication of significant activity to all parties by
5 | telephone, ~~telecopier, facsimile,~~ electronic media, or letter ~~should~~ must occur when information ~~pertinent~~ relevant to
6 | the rehabilitation process is obtained, ~~when~~ changes or revisions are recommended or occur in medical or vocational
7 | treatment plans, or on any other occasion when the worker's understanding and cooperation is ~~important~~ critical to
8 | the implementation of the rehabilitation plan.

9 | ~~(f) Communication with worker's attorney.~~

10 | ~~(1)(h)~~ The first meeting of the worker and RP shall, If requested by the injured worker or his or her attorney, the
11 | first initial meeting of the injured worker and RP rehabilitation professional shall, if requested, shall take place at the
12 | office of the worker's attorney-attorney and shall occur within 20 days of the request. If this location is requested, it
13 | shall not delay the meeting more than (20) calendar days.

14 | ~~(2)(i)~~ To promote cooperation among the parties, the RP The rehabilitation professional shall may coordinate
15 | activities with the injured worker's attorney, and, at the employer or carrier's discretion, with the defense attorney. ~~If~~
16 | ~~the RP believes that the worker is not cooperating with the provision of rehabilitation services, the RP shall advise~~
17 | ~~all parties and shall describe what cooperative action on the part of the worker is sought.~~

18 | (j) If the rehabilitation professional believes the injured worker is not complying with the provision of rehabilitation
19 | services, the rehabilitation professional shall detail in writing the actions that the rehabilitation professional believes
20 | the injured worker is required to take to return to compliance. In determining whether the injured worker is in
21 | compliance with the provision of rehabilitation services, the rehabilitation professional shall rely on his or her
22 | independent professional judgment and training and shall focus on the overall effect that the worker's actions or
23 | inactions are having on the rehabilitation goals.

24 |
25 | *History Note:* Authority G.S. 97-25.4; 97-25.5, 97-32.2, 97-2(19), 97-80;

26 | *Eff. January 1, 1996;*

27 | *Amended Eff. January 1, 2013; June 1, 2000.*

04 NCAC 10C .0108 is amended with changes as published in 27:02 NCR 210 as follows:

4 NCAC 10C .0108 INTERACTION WITH PHYSICIANS

(a) At the initial visit with a physician the RP-rehabilitation professional shall provide ~~professional~~-identification in the form of a company identification or business card and ~~shall~~-explain the RP's rehabilitation professional's role in the case.

(b) In all cases, the RP-rehabilitation professional shall advise the worker that ~~he or she~~-the worker has the right to a private examination by the medical health care provider outside of the presence of the RP-rehabilitation professional. If the worker prefers, he or she may request that the RP-rehabilitation professional accompany him or her during the examination. However, if the worker or the worker's attorney notifies the RP-rehabilitation professional in writing that the worker desires a private examination, no subsequent waiver of that right shall be effective unless the waiver is ~~revoked~~-made in writing by the worker or, if represented, by the worker's attorney.

(c) If the RP-rehabilitation professional ~~wishes~~ needs to have a an personal-in-person conference with the physician following an examination, the RP-rehabilitation professional ~~should~~ shall reserve with the physician sufficient appointment time for ~~a~~-the conference. The worker ~~must~~-shall be offered the opportunity to attend ~~this~~-the conference with the physician. If the worker or the physician does not consent to a joint conference, or if in the physician's opinion it is medically contraindicated for the worker to participate in the conference, the RP rehabilitation professional ~~will~~-shall note this in his or her report, ~~and may in such case~~-communicate directly with the physician, and shall report the substance of the communication.

(d) When the RP-rehabilitation professional determines that it is necessary to communicate with a physician other than at a joint meeting, the RP-rehabilitation professional shall first notify the injured worker, or ~~his/her~~-his or her attorney if represented, of the RP's rehabilitation professional's intent to communicate and the reasons therefore. The RP-rehabilitation professional ~~need is not required to~~ obtain the injured worker's or his or her attorney's prior consent ~~for the following types of communication: if:~~

- (1) The communication is limited to scheduling issues or requests for time-sensitive medical records;
- (2) A medical emergency is involved;
- (3) The injured worker's health or medical treatment would either be adversely affected by a delay or benefited by immediate action;
- (4) The communication is limited to advising the physician of the employer or carrier approval for recommended testing or treatment;
- (5) The injured worker or attorney has consented to ~~such the communications~~ communications; ~~through a valid, current authorization;~~
- (6) The communication is initiated by the physician; or
- (7) The injured worker failed to show up for a scheduled appointment or arrived at a time other than the scheduled appointment time.

~~Whenever an RP-~~When a rehabilitation professional communicates with a physician without the prior consent or presence of the injured worker, the RP-rehabilitation professional must ~~promptly~~-document the reasons for and the

1 substance of the communication and promptly report such the reasons and substance to the injured worker or his or
2 her attorney, if represented, pursuant to Rule VI-.0106 of this Subchapter.

3 ~~(e) The RP may assist in scheduling second opinions requested by the treating physician, as well as supporting
4 treatment. In such case, the worker shall receive at least 10 calendar days notice of an appointment for a second
5 opinion unless otherwise agreed by the parties or required by statute.~~

6 ~~(f) The RP may assist in obtaining from the treating physician an opinion as to the degree of permanent partial
7 impairment retained by the worker at maximum medical improvement. The decision to obtain a second physician's
8 opinion on the degree of impairment is not within the practice of rehabilitation. However, if requested by the party
9 who desires a second opinion, the RP may assemble information, schedule, coordinate, and, with the worker's
10 consent, attend the appointment with that physician.~~

11 ~~(g) If a party requests a second opinion or an independent medical examination, the RP's involvement is limited to
12 assembling and forwarding medical records and information, and scheduling, coordinating, and, with the worker's
13 consent, attending the appointment with that physician.~~

14 (e) The following guidelines requirements apply to interactions regarding impairment ratings, independent medical
15 examinations, second opinions or consults:

16 ~~(1) Rehabilitation professionals shall not initiate a request for impairment ratings, second opinions or
17 independent medical examinations. Rehabilitation professionals may communicate the requests to
18 medical providers, injured workers and carriers, and shall clearly communicate the source of the
19 requests.~~

20 ~~(2)(1) When a party or [medical-]health care provider requests a consult, second opinion or independent
21 medical examination, the rehabilitation professional may assemble and forward medical records
22 and information, schedule and coordinate an appointment, and, if the worker consents, have a joint
23 meeting with the [medical-]health care provider and the worker after a private exam, if requested.~~

24 ~~(3)(2) When any such exam is requested by the carrier, the worker shall receive at least 10 calendar days'
25 notice of the appointment unless the parties agree otherwise or unless otherwise required by
26 statute.~~

27 ~~(h)(f) The RP-rehabilitation professional shall simultaneously send copies to the parties copies of all written
28 communications to-with [medical-]health care providers, providers and shall accurately and completely record and
29 report all oral communications.~~

31 *History Note:* Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;

32 Eff. January 1, 1996;

33 Amended Eff. January 1, 2013; June 1, 2000.

04 NCAC 10C .0109 is amended with changes as published in 27:02 NCR 211 as follows:

4 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK

(a) When performing the vocational assessment and formulating and drafting the individualized written rehabilitation plan for the employee required by G.S. 97-32.2(c), the vocational rehabilitation professional shall follow G.S. 97-32.2.

(b) Job placement activities may not be commenced until after a vocational assessment and an individualized written rehabilitation plan for vocational rehabilitation services specifying the goals and the priority for return-to-work options have been completed in the case in accordance with G.S. 97-32.2. Job placement activities shall be directed only toward prospective employers offering the opportunity for suitable employment, as defined by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

(c) Return-to-work options shall be considered in the following order of priority:

- (1) current job, current employer;
- (2) new job, current employer;
- (3) on-the-job training, current employer;
- (4) new job, new employer;
- (5) on-the-job training, new employer;
- (6) formal education or vocational training to prepare worker for job with current or new employer;
and
- (7) self-employment, only when its feasibility is documented with reference to the employee's aptitudes and training, adequate capitalization, and market conditions.

(d) When an employee requests retraining or education as permitted in G.S. 97-32.2(a), the vocational rehabilitation professional shall provide a written assessment of the employee's request, ~~which that~~ includes an evaluation of:

- (1) the retraining or education requested;
- (2) the availability, location, cost, and identity of providers of the requested retraining or education;
- (3) the likely duration until completion of the requested retraining or education and the likely class schedules, class attendance requirements, and out-of-class time required for homework and study;
- (4) the current or projected availability of employment upon completion; and
- (5) the anticipated pay range for employment upon completion.

~~(a)~~(e) The RP-rehabilitation professional shall obtain work restrictions from the medical health care provider work restrictions which that fairly address the demands of any proposed employment. If ordered by a physician, the RP rehabilitation professional should shall obtain schedule an appointment with a third party provider to evaluate an injured worker's functional capacity valuation (FCE) or physical capacity -apacity, or impairments to work valuation, (PCE). Any FCE or PCE obtained should measure the worker's capacities and impairments.

~~(b)~~(f) The RP-Rehabilitation Professional-rehabilitation professional shall refer the worker only to opportunities for suitable employment, as defined herein by Item (5) of Rule .0103 of this Subchapter or by applicable statute.

1 ~~(e)~~(g) If the RP-rehabilitation professional intends to utilize written or videotaped job descriptions in the return-to-
2 work process, the RP-rehabilitation professional shall provide a copy of the description to all parties for review
3 before the job description is provided to the doctor. The worker or the worker's attorney shall have seven business
4 days from ~~the mailing of the description,~~ description to notify the RP-rehabilitation professional, all parties, and the
5 physician of any objections or amendments ~~to the job description,thereto.~~ The job description and the objections or
6 amendments, if any, shall be submitted to the physician simultaneously. This process ~~may~~ shall be expedited ~~on~~
7 ~~occasions~~ when job availability is critical. This waiting period does not apply if the worker or the worker's attorney
8 has pre-approved the job description.

9 ~~(d)~~(h) In preparing written job descriptions, the RP-rehabilitation professional shall utilize standards including
10 ~~recognized standards which may include but not be limited to the Dictionary of Occupational Titles and/or and the~~
11 Handbook for Analyzing Jobs published by the ~~U.S. United States~~ Department of ~~Labor, Labor,~~ which are
12 ~~recognized as national standard references for use in vocational rehabilitation.~~

13 ~~(e)~~(i) In identifying proposed employment for the injured worker, the RP-rehabilitation professional ~~should~~ shall
14 consider the worker's transportation requirements.

15 ~~(f)~~(j) The rehabilitation professional may conduct follow-up after job placement ~~may be carried out~~ to verify the
16 appropriateness of the job placement.

17 ~~(e)~~(k) The RP-rehabilitation professional shall not initiate or continue placement activities ~~which that~~ do not appear
18 reasonably likely to result in placement of the injured worker in suitable employment. The RP-rehabilitation
19 professional shall report to the parties when efforts to place the worker in suitable employment do not appear
20 reasonably likely to result in placement of the injured worker in suitable employment.

21
22 *History Note:* Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-2(22);
23 *Eff. January 1, 1996;*
24 *Amended Eff. January 1, 2013; June 1, 2000.*
25
26

1 04 NCAC 10C .0201 is adopted with changes as published in 27:02 NCR 212 as follows:

2
3 **SECTION .0200 - RULES OF THE COMMISSION**

4 |
5 **4 NCAC 10C .0201 SUSPENSION WAIVER OF RULES**

6 In the interests of justice or to promote judicial economy [~~To prevent manifest injustice to a party, or to expedite a~~
7 ~~decision in the public interest~~], the Commission may, except as otherwise provided by the Rules in this Subchapter,
8 [~~suspend~~ waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending
9 before the Commission upon written application of a party or upon its own [~~initiative, and may order proceedings in~~
10 ~~accordance with its directions.~~] [~~initiative.~~] initiative. Factors the Commission shall use in determining whether to
11 grant the waiver are:

- 12 (1) the necessity of a waiver;
13 (2) the party's responsibility for the conditions creating the need for a waiver;
14 (3) the party's prior requests for a waiver;
15 (4) the precedential value of such a waiver;
16 (5) notice to and opposition by the opposing parties; and
17 (6) the harm to the party if the waiver is not granted.

18 |
19 *History Note: Authority G.S. 97-25.4; 97-80;*
20 *Eff. January 1, 2013.*
21
22

1 4 NCAC 10E .0201 is adopted with changes as published in 27:02 NCR 216 as follows:

2
3 **SECTION .0200 – FEES**
4

5 **4 NCAC 10E .0201 DOCUMENT AND RECORD FEES**

6 (a) The fees in this Rule apply to all subject areas within the authority of the Commission.

7 (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter
8 132 of the North Carolina General Statutes, transcripts of Commission proceedings, copies of recordings of
9 Commission proceedings, copies of exhibits from Commission proceedings, and copies of all other public
10 documents are available at the “actual cost” as defined by G.S. 132.6.2(b). The Commission shall provide the
11 “actual cost” on the Commission’s website. ~~the actual cost.~~

12 ~~(c)~~ (c) Certified copies are available upon request at a cost of one dollar (\$1.00) per certification in addition to any
13 other applicable cost for the document. Electronic copy certification is not available.

14 ~~(d)~~ (d) Documents shall be sent via certified mail upon request at the actual cost established by the United States
15 Postal Service.

16 ~~(e)~~ (e) North Carolina sales tax shall be added if applicable.
17

18 *History Note:* Authority G.S. 7A-305; 97-73; 97-79; 97-80; 132-6.2; 143-291.1; 143-291.2; 143-300
19 *Eff. January 1, 2013.*

1 4 NCAC 10E .0202 is adopted with changes as published in 27:02 NCR 216 as follows:

2

3 **4 NCAC 10E .0202 HEARING COSTS OR FEES**

4 (a) The following hearing costs or fees apply to all subject areas within the authority of the Commission:

- 5 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner;
- 6 (2) one hundred twenty dollars (\$120.00) if a case is withdrawn after the case is calendared for a
7 specific hearing date;
- 8 (3) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission;
- 9 (4) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is
10 withdrawn before the appeal or request for review is scheduled for a specific hearing date;
- 11 (5) one hundred fifty-five dollars (\$155.00) if an appeal or request for review to the Full Commission
12 is withdrawn after the appeal or request for review is calendared for a specific hearing date;
- 13 (6) one hundred twenty dollars (\$120.00) for the dismissal of an appeal or request for review due to
14 the failure to prosecute or perfect the appeal or request for review before the appeal or request for
15 review is calendared for a specific hearing date; and
- 16 (7) one hundred and fifty-five dollars (\$155.00) for the dismissal of an appeal or request for review
17 due to the failure to prosecute or perfect the appeal or request for review after the appeal or request
18 for review is calendared for a specific hearing date.

19 (b) Failure to pay fees or costs assessed by the Commission may result in further penalty, including a notice and
20 order to show cause as to why a fee or cost assessed by the Commission has not been paid.

21

22 *History Note:* Authority G.S. 7A-305; 97-73; 97-80; 143-291.1; 143-291.2; 143-300;

23 | *Eff.* January 1, 2013

24

1 4 NCAC 10E .0203 is adopted as published in 27:02 NCR 216 as follows:

2
3 **4 NCAC 10E .0203 FEES SET BY THE COMMISSION**

4 (a) In workers' compensation cases, the Commission sets the following fees:

- 5 (1) three hundred seventy-five dollars (\$375.00) for the processing of a compromise settlement
6 agreement;
- 7 (2) two hundred fifty dollars (\$250.00) for the processing a Form 21 *Agreement for Compensation for*
8 *Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A
9 *Employer's Admission of Employee's Right to Permanent Partial Disability*;
- 10 (3) three hundred dollars (\$300.00) for the processing of a request for a third party distribution order;
- 11 (4) one hundred seventy-five dollars (\$175.00) for the processing of a Form 24 *Application to Stop or*
12 *Suspend Payment of Compensation*; and
- 13 (5) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the
14 General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be*
15 *Assigned for Hearing*.

16 (b) In tort claims cases, the filing fee is an amount equal to the filing fee required to file a civil action in the
17 Superior Court division of the General Court of Justice.

18
19 *History Note:* Authority G.S. 97-10.2; 97-17; 97-18.1 ~~97-18.2~~; 97-26(i); 97-73; 97-80; 143-291.2; 143-
20 300.
21 *Eff.* January 1, 2013.

1 4 NCAC 10E .0301 is adopted with changes as published in 27:02 NCR 217 as follows:

2
3 **SECTION .0300 – RULES OF THE COMMISSION**
4

5 **4 NCAC 10E .0301 SUSPENSION WAIVER OF RULES**

6 In the interests of justice or to promote judicial economy [~~To prevent manifest injustice to a party, or to expedite a~~
7 ~~decision in the public interest~~], the Commission may, except as otherwise provided by the Rules in this Subchapter,
8 [~~suspend~~ waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending
9 before the Commission upon written application of a party or upon its own [~~initiative, and may order proceedings in~~
10 ~~accordance with its directions.~~] [~~initiative.~~] initiative. Factors the Commission shall use in determining whether to
11 grant the waiver are:

- 12 (1) the necessity of a waiver;
13 (2) the party's responsibility for the conditions creating the need for a waiver;
14 (3) the party's prior requests for a waiver;
15 (4) the precedential value of such a waiver;
16 (5) notice to and opposition by the opposing parties; and
17 (6) the harm to the party if the waiver is not granted.
18

19 *History Note:* Authority G.S. 97-25.2; 97-25.4; 97-73; 97-80; 130A-425(d); 143-166.4; 143-296; 143-
20 300.
21 *Eff.* January 1, 2013

1 4 NCAC 10G .0101 is amended with changes as published in 27:02 NCR 223 as follows:

2
3 **SUBCHAPTER 10G – NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED**
4 **SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES**

5
6 **SECTION .0100 – MEDIATION AND SETTLEMENT**

7
8 **04 NCAC 10G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE**

9 (a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim
10 agree to mediate ~~their the claim, they the parties~~ may schedule and proceed with mediation on their own, or ~~they the~~
11 parties may submit a request for a mediation order pursuant to ~~Rule 4(d). Paragraph (d) of this Rule.~~ No order from
12 the Commission is necessary if the parties mutually agree to ~~mediate, mediate the claim,~~ but the mediator shall file a
13 report of mediation with the Commission as required by ~~Rule 6(b)(4). Paragraph (g) of Rule .0106 of this~~
14 Subchapter. If the parties proceed with mediation in the absence of an order from the ~~Commission, Commission~~ and
15 the Commission thereafter enters a mediation order, the parties shall ~~timely~~ notify the Commission that ~~they the~~
16 parties have agreed upon the selection of a mediator or, if the ~~mediation-mediated settlement~~ conference has been
17 completed, that ~~they the parties~~ request to be excused from any further mediation obligations pursuant to ~~Rule 4(g).~~
18 Paragraph (f) of this Rule.

19 (b) Referral Upon Receipt of a Form 33 ~~Request for Hearing. Request that Claim be Assigned for Hearing.~~ In any
20 case in which the Commission receives a Form 33 ~~Request for Hearing. Request that Claim be Assigned for Hearing,~~
21 the Commission shall order ~~that disputed the case to a mediated settlement conference. conference unless doing so~~
22 would be contrary to the [interest] interests of justice.

23 (c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution
24 Coordinator, and such other employees as the Commission Chair ~~may designate from time to time~~ may, by written
25 order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute
26 within the ~~tort and~~ workers' compensation and state tort claim jurisdiction of the Commission. Requests to dispense
27 with or defer a ~~mediation-mediated settlement~~ conference shall be addressed to the Dispute Resolution Coordinator.
28 Unless the context otherwise requires, references to the "Commission" in ~~these the Rules in this Subchapter~~ shall
29 mean the Dispute Resolution Coordinator.

30 (d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a
31 party may move the Commission to order ~~such~~ a conference. ~~Such~~ The motion shall be served on non-moving
32 parties and shall state the reasons why the order should be entered. ~~allowed and, if the case is pending on the~~
33 ~~hearing docket, whether the party prefers for the case to be set for hearing on the next docket, for it to not be heard~~
34 ~~until further notice from the parties, or for it to not be set before a specified date. The motion shall be served on~~
35 ~~non-moving parties.~~ Responses may be filed in writing with the Commission within 10 days after the date of the
36 service of the motion. ~~The Commission may require that any~~ Any motion for a mediation order shall be submitted
37 on a form provided by the Commission.

1 (e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a
2 dispute arising under the Workers' Compensation Act or the Tort Claims Act.

3 ~~(f) Content of Order. The Commission's order shall (1) require that the mediated settlement conference be held in
4 the case, that pertinent documents be exchanged and that any specified discovery be completed prior to the
5 conference; (2) establish a deadline for the pre conference exchange of documents and other discovery, and for the
6 completion of the conference; (3) provide a period within which the parties may select a mediator by mutual
7 agreement (see Rule 2); (4) state the rate of compensation of the Commission appointed mediator in the event that
8 the parties do not exercise their right to select a mediator pursuant to Rule 2; (5) state that the parties shall be
9 required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the
10 Commission (see Rule 7); and, (6) may specify a date for an Industrial Commission hearing should the parties fail to
11 reach a settlement.~~

12 ~~(g)~~(f) Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with or
13 canceled by the Commission, but Commission in the interests of justice or judicial economy. As used in
14 this Rule, the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or
15 excusing the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation
16 may not be dispensed with or canceled by the parties or the mediator unless the parties have agreed, subject to
17 Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing
18 filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. As used
19 herein, the terms "dispensed with" and "canceled" shall mean and refer to setting aside or rescinding the mediation
20 order(s) entered in the case, or excusing the parties from their obligations under the order(s) or these rules. Within
21 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for Hearing,~~ or otherwise
22 within the deadline set forth in 21 days of the date of the Commission's order entered pursuant to Rules 1(e) and
23 1(d), Paragraph (c) or Paragraph (d) of this Rule, a party may move to dispense with or defer the mediated
24 settlement conference. Such~~The~~ motion shall state the reasons the relief is ~~sought, sought~~ and must be received by
25 the Dispute Resolution Coordinator within the applicable ~~21 or 55 day~~ deadline. For good cause shown, the
26 Commission may grant the motion. ~~However, failure to file a motion to dispense with mediated settlement~~
27 ~~conference within the above stated 21 or 55 day deadline and after a mediator has been appointed may result in the~~
28 ~~moving party or parties, or other responsible person, being required to pay an administrative fee of up to \$100.00 to~~
29 ~~the Commission.~~

30 ~~(h)~~(g) Exemption from Mediated Settlement Conference. ~~In order to provide for the most efficacious use of~~
31 ~~mediation and neutral evaluation procedures, the Commission may specify, by type or kind, those cases to be~~
32 ~~ordered into or excluded from mediation and neutral evaluation procedures.~~ The State shall not be compelled to
33 participate in a mediation or neutral evaluation procedure with a prison inmate.

34 ~~(i)~~(h) Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to
35 authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated
36 settlement conference. ~~The Commission may require that such~~~~The~~ motion shall be filed on a form provided by the
37 Commission, and such motion shall be filed~~Commission~~ within 55 days of the filing of a Form 33 ~~Request for~~

1 ~~Hearing, Request that Claim be Assigned for Hearing,~~ or otherwise within 21 days of the order requiring a mediated
2 ~~settlement conference—the deadline set forth in the Commission’s order entered pursuant to Rules 1(c) and 1(d),~~
3 Paragraph (c) or Paragraph (d) of this Rule, and shall state:

- 4 (1) ~~that~~ all parties consent to the ~~motion.~~ motion;
- 5 (2) ~~that~~ the neutral evaluator and the parties have agreed upon the selection and all terms of
6 compensation of the neutral ~~selected.;~~ selected; and
- 7 (3) the name, address, and telephone number of the neutral evaluator selected by the ~~parties;~~ parties.
- 8 (4) ~~the names of all persons and entities the parties have agreed to excuse from attending the~~
9 ~~proceeding; and~~
- 10 (5) ~~such other information as may be required by the Commission.~~

11 (i) If the parties are unable to agree to the matters listed in Paragraph (h), ~~selection of a neutral or the persons~~
12 ~~excused from attending, then~~ the Commission shall deny the motion for authorization to use a neutral evaluation
13 procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission.
14 If the parties are able to ~~timely~~ agree on the ~~above~~ matters listed in Paragraph (h), ~~then~~ the Commission ~~may~~ shall
15 order the use of a neutral evaluation ~~proceeding.~~ Proceeding; provided, however, that the Commission
16 ~~will~~ shall not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by
17 counsel.

18 (j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the
19 plaintiff’s case be mediated, the Commission shall enter an order dispensing with mediation.

20
21 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide
22 Mediated Settlement Conference in Superior Court Civil Actions;
23 Eff. January 16, 1996;
24 Amended Eff. October 1, 1998;
25 Recodified from 4 NCAC 10A .0616;
26 Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0103 is amended with changes as published in 27:02 NCR 225 as follows:

2
3 **04 NCAC 10G .0103 THE MEDIATED SETTLEMENT CONFERENCE**

4 (a) Where Conference Is to Be ~~Held~~ Held. Unless all parties in a workers' compensation case or a state tort claims
5 case and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the case
6 is pending. The mediator shall ~~be responsible for reserving~~ reserve a place and ~~making~~ make arrangements for the
7 conference and ~~for giving~~ give ~~timely~~ notice to all attorneys and unrepresented parties of the time and location of the
8 conference.

9 (b) When Conference Is to Be ~~Held~~ Held. ~~Subject to the Commission's orders,~~ The conference shall be held at the
10 time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.

11 (c) Request to Extend Date of ~~Completion~~ Completion. ~~A party, or the mediator, may request that the Commission~~
12 In the [interest] interests of justice, the Commission may extend the deadline for completion of the
13 ~~conference.~~ conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion
14 of the mediator. The Commission may grant the request and extend the completion deadline by written order.

15 (d) ~~Recesses~~ Recesses. The mediator may recess the conference at any time and may set times for reconvening.
16 ~~No further notification is required for persons present at the recessed conference. If the time for reconvening is set~~
17 before the conference is recessed, no further notification is required for persons present at the recessed conference.

18 (e) The Mediated Settlement Conference Is Not to Delay Other ~~Proceedings~~ Proceedings. A mediated settlement
19 conference ~~shall is not be~~ is not be cause for ~~the~~ the delay of other proceedings in the case, including the completion of
20 ~~discovery,~~ discovery and the filing or hearing of motions, ~~except by order of the Commission, unless ordered by the~~
21 Commission in the [interest] interests of justice. ~~However,~~ No depositions shall be taken following a Commission
22 order requiring mediation until mediation is concluded, except by agreement of the parties or order of the
23 ~~Commission.~~ Commission in the interest of justice.

24 (f) Inadmissibility of Negotiations by Parties and Attorneys. Evidence of statements made and conduct occurring in
25 a mediated settlement conference or other settlement proceeding conducted ~~under these rules,~~ pursuant to the Rules
26 in this Subchapter, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the
27 settlement conference or proceeding, ~~shall are not be~~ are not be subject to discovery and shall be inadmissible in any
28 proceeding in the action or other actions on the same claim, except:

- 29 (1) ~~In~~ proceedings for sanctions for violations of the attendance or payment of mediation fee
30 provisions of Rules 4 and 7; contained in Rule .0104 and Rule .0107 of this Subchapter;
- 31 (2) ~~In~~ proceedings to enforce or rescind a settlement of the action;
- 32 (3) ~~In~~ disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards
33 of conduct for mediators or other neutrals, including the ~~Industrial~~ Commission; or
- 34 (4) ~~In~~ proceedings to enforce laws concerning juvenile or elder abuse. ~~As used in these rules, the term~~
35 "neutral observer" includes persons seeking mediator certification, persons studying dispute
36 resolution processes, and persons acting as interpreters. No settlement agreement to resolve any or
37 all issues reached at the proceeding conducted under this subsection or during its recesses shall be

1 enforceable unless it has been reduced to writing and signed by the parties. No evidence
2 otherwise discoverable shall be inadmissible merely because it is presented and discussed in a
3 mediated settlement conference or other settlement proceeding.

4 (g) No settlement agreement to resolve any or all issues reached at the settlement conference or proceeding
5 conducted under this Subchapter or reached during a recess in the conference or proceeding shall be enforceable
6 unless the settlement agreement has been reduced to writing and signed by the parties. No evidence otherwise
7 discoverable shall be inadmissible solely because the evidence is presented or discussed in a mediated settlement
8 conference or other settlement proceeding.

9 ~~(g)(h)~~ Inadmissibility of Mediator Testimony. No mediator, other neutral, or neutral observer present at a
10 settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct
11 occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement
12 proceeding ~~conducted pursuant to these rules~~ the Rules in this Subchapter in any Industrial-Commission case or civil
13 proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except: ~~to attest~~
14 ~~to the signing of any agreements, and except proceedings for sanctions for violations of the attendance or payment~~
15 ~~of mediation fee provisions of Rules 4 and 7, disciplinary hearings before the State Bar or any agency enforcing~~
16 ~~standards of conduct for mediators or other neutrals, including the Industrial Commission, and proceedings to~~
17 ~~enforce laws concerning juvenile or elder abuse.~~

18 (1) to attest to the signing of any settlement agreements;

19 (2) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions
20 contained in Rule .0104 and Rule .0107 of this Subchapter;

21 (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of
22 conduct for mediators or other neutrals, including the Commission; and

23 (4) proceedings to enforce laws concerning juvenile or elder abuse.

24 (i) As used in this Subchapter, the term “neutral observer” includes persons seeking mediator certification, persons
25 studying dispute resolution processes, and persons acting as interpreters.

26
27 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 3 of Rules Implementing Statewide
28 Mediated Settlement Conference in Superior Court Civil Actions;
29 Eff. January 16, 1996;
30 Amended Eff. October 1, 1998
31 Recodified from 4 NCAC 10A .0616;
32 Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .0104A is amended with changes as published in 27:02 NCR 228 as follows:

2
3 **4 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS**

4 ~~(a) Services of Foreign Language Interpreters Required Unless Waived.~~ When a person who does not speak or
5 understand the English language is required to attend a ~~mediation~~-mediated settlement conference, the person shall
6 be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by ~~both the~~ parties.

7 ~~(b) Qualifications of Interpreters.~~ To qualify as a foreign language interpreter, a person ~~must~~ shall possess
8 sufficient experience and education, or a combination of experience and education, ~~speaking, speaking~~ and
9 understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S.
10 8C-1, Rule 702.

11 ~~(c) Notice to Industrial Commission and Opposing Party of Need for Interpreter.~~ Any party who is unable to speak
12 or understand English shall so notify the ~~Industrial Commission~~ and the opposing party, party(ies) in writing, not less
13 than 21 days prior to the date of the ~~mediation~~-mediated settlement conference. The notice shall state ~~with~~
14 ~~specificity~~ the language(s) that ~~must~~ shall be interpreted.

15 ~~(d) Designation of Interpreter.~~ Upon notice of the need for an interpreter, the employer or insurer shall retain a
16 ~~qualified, disinterested interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, either agreed~~
17 ~~upon by the parties or approved by the Industrial Commission,~~ to assist at the ~~mediation~~-mediated settlement
18 conference. The parties may select by agreement, or in the absence of an agreement, the Commission may appoint a
19 disinterested interpreter possessing the qualifications listed in Paragraph (b) of this Rule.

20 ~~(e) Interpreter Fees.~~ The interpreter's fee ~~shall~~ constitutes a cost as contemplated by G.S. 97-80. A qualified
21 interpreter who appears at a ~~mediation~~-mediated settlement conference ~~shall be~~ is entitled to payment of the fee
22 agreed upon by the interpreter and ~~the~~ employer or insurer ~~that who~~ retained the interpreter. Except in cases where a
23 claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and
24 employer or insurer shall be paid by the employer or insurer. Where ~~it is ultimately determined by~~ the Commission
25 ultimately determines that the request for an interpreter was unfounded, attendant costs ~~may~~ shall be assessed
26 against the movant.

27 ~~(f) Interpreter Ethics.~~ Foreign language interpreters shall abide by the ~~code of ethical conduct for court interpreters~~
28 Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and
29 Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court
30 System and promulgated by the North Carolina Administrative Office of the Courts, and adopted by the Industrial
31 Commission shall interpret, as word for word as is practicable, without editing, commenting, or summarizing,
32 testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and
33 Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be
34 obtained at no charge from the North Carolina Administrative Office of the Court's website,
35 <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of
36 the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the
37 hours of 8:00 a.m. and 5:00 p.m.

1

2 *History Note:*

Authority G.S. 97-80(a), (c); 97-79(b); 143-296; 143-300;

3

Eff. January 1, 2011;

4

Amended Eff. January 1, 2013.

1 4 NCAC 10G .0105 is amended with changes as published in 27:02 NCR 229 as follows:

2
3 **04 NCAC 10G .0105 SANCTIONS**

4 If a person or party whose attendance at a mediated settlement conference is required by Rule ~~4~~ .0104 of this
5 Subchapter fails to ~~attend~~, attend or cancels, without Commission approval in accordance with Paragraph (f) of Rule
6 .0101 of this Subchapter, a duly ordered mediated settlement conference without good cause, ~~or otherwise violates~~
7 ~~these rules [the Rules in this Subchapter] without good cause~~, the Commission may impose upon the party or his
8 principal any lawful sanction, including ~~but not limited to~~ holding the party [or his principal] in contempt or
9 requiring the party [or his principal to] the payment of to pay fines, attorneys' fees, mediator fees and expenses and
10 loss of earning incurred by persons attending the ~~conference~~, conference, ~~[holding the party or his principal in]~~
11 ~~contempt, or any [and] other sanctions authorized [by 04 NCAC 10A .0802.] by Rule 37(b) of the Rules of Civil~~
12 ~~Procedure~~. Any sanctions that ~~may be~~ are assessed against a party ~~under these rules~~ consistent with the Workers'
13 Comp Act, the Tort Claims Act and the Rules in this Subchapter, ~~including, but not limited to, mediation including~~
14 mediated settlement conference postponement fees and sanctions for the unauthorized cancellation or failure to
15 appear at a ~~mediation~~ the conference, may be assessed against the party or the party's principal or attorney
16 depending on whose conduct necessitated the assessment of sanctions.

17
18 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 5 of Rules Implementing Statewide
19 Mediated Settlement Conference in Superior Court Civil Actions;
20 Eff. January 16, 1996;
21 Amended Eff. October 1, 1998;
22 Recodified from 4 NCAC 10A .0616;
23 Amended Eff. January 1, 2013; June 1, 2000.

1 4 NCAC 10G .0107 is amended with changes as published in 27:02 NCR 230 as follows:

2
3 **04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR**

4 (a) By ~~Agreement.~~ Agreement. When the mediator is stipulated to by the parties, compensation shall be as agreed
5 upon between the parties and the mediator.

6 (b) By ~~Commission Order.~~ Order. When the mediator is appointed by the Commission, the mediator's
7 compensation shall be as ~~follows.~~ follows:

8 (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars
9 (\$150.00) per hour for mediation services provided at the mediated settlement conference.

10 (2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee
11 of one hundred fifty dollars (\$150.00). ~~\$150.00, unless otherwise ordered by the Commission.~~ The
12 mediator's administrative fee shall be paid in full unless, within 10 days after ~~the date that~~ the
13 mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution
14 Coordinator that the issues for which a request for hearing had been was filed have been fully
15 resolved or that the hearing request has been withdrawn.

16 (3) Postponement Fees. As used herein in this Subchapter, the term "postpone" ~~shall~~ means to
17 reschedule or otherwise not proceed with a scheduled ~~mediation~~ mediated settlement conference
18 after ~~that the~~ conference has been scheduled to convene on a specific date. After a conference is
19 scheduled to convene on a specific date, ~~if the conference~~ may not be postponed without unless the
20 requesting party ~~first notifying~~ notifies all other parties ~~concerning~~ of the grounds for the
21 requested ~~postponement, or without postponement and obtains~~ the consent and approval of the
22 mediator or the Dispute Resolution ~~Coordinator.~~ Coordinator that the postponement is for the
23 benefit of the parties. If ~~a mediation~~ the conference is postponed without good cause, the mediator
24 shall be paid a postponement fee, ~~unless, upon application of the party or parties charged with the~~
25 ~~fee, the fee is waived by the Commission.~~ Unless the Commission otherwise orders, The
26 postponement fee shall be ~~two hundred twenty five dollars (\$225.00)~~ three hundred dollars
27 (\$300.00) if the mediation conference is postponed within seven calendar days of the scheduled
28 ~~conference, date, and one hundred twenty five dollars (\$125.00)~~ one hundred fifty dollars
29 (\$150.00) if the mediation conference is postponed more than seven calendar days prior to a the
30 scheduled conference date. Unless otherwise ordered by the Commission in the [interest] interests
31 of justice, postponement fees shall be allocated in equal shares to the party or parties requesting
32 the postponement, unless otherwise ordered by the Commission. As used in this Rule, "good
33 cause" Good cause shall mean that the reason for the postponement involves a situation over
34 which the party seeking the postponement has no control, including but not limited to, a party or
35 attorney's illness, a death in a party or attorney's family, a sudden and unexpected demand by a
36 judge that a party or attorney for a party appear in court for a purpose not inconsistent with the

Guidelines established by Rule 3.1(d) of the General Rules of Practice for the Superior and District Courts or inclement weather such that travel is prohibitive.

(4) The settlement of a case prior to the scheduled date ~~for of the mediation~~ mediated settlement conference shall be good cause for a postponement, provided that the mediator was notified of the settlement ~~immediately after it the settlement~~ was reached and that the mediator received notice of the settlement at least ~~fourteen (14)~~ 14 calendar days prior to the date scheduled for mediation.

(c) Payment by ~~Parties—Parties.~~ Parties. Payment ~~shall be~~ is due upon completion of the mediated settlement conference; provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the billing, bill, and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the Commission, ~~Commission due to a party or parties violating a Rule in this Subchapter, the costs of the mediated settlement~~ conference shall be allocated to the parties, as follows:

- (1) one share by plaintiff(s);
- (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share by each separately represented entity;
- (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting interests among them, one share from each ~~such~~ defendant or group of defendants having shared interests; ~~and, and~~
- (4) one share by the defendant State agency in a ~~State~~-Tort Claims Act case.

Parties obligated to pay a share of the costs ~~shall be~~ are responsible for equal shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees, as well as ~~its own~~ defendant's own share.

(d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular ~~party,~~ party due to the party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees ~~when the case is concluded~~ from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.

History Note: Authority G.S. 97-80(a), (c); 143-296; 143-300; ~~Rule 4~~ Rule 7 of Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 4 NCAC 10A .0616; Amended Eff. January 1, 2013; January 1, 2011; June 1, 2000.

1 4 NCAC 10G .01101 is amended with changes as published in 27:02 NCR 233 as follows:

2
3 **4 NCAC 10G .0110 SUSPENSION WAIVER OF RULES**

4 ~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the~~
5 ~~Commission may waive any requirement of these rules.~~

6 In the interests of justice or to promote judicial economy [To prevent manifest injustice to a party, or to expedite a
7 decision in the public interest], the Commission may, except as otherwise provided by the Rules in this Subchapter,
8 [suspend] waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending
9 before the Commission upon written application of a party or upon its own [initiative, and may order proceedings in
10 accordance with its directions.] [initiative.] initiative. Factors the Commission shall use in determining whether to
11 grant the waiver are:

- 12 (1) the necessity of a waiver;
- 13 (2) the party's responsibility for the conditions creating the need for a waiver;
- 14 (3) the party's prior requests for a waiver;
- 15 (4) the precedential value of such a waiver;
- 16 (5) notice to and opposition by the opposing parties; and
- 17 (6) the harm to the party if the waiver is not granted.

18
19 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300;
20 Eff. January 16, 1996;
21 Amended Eff. October 1, 1998;
22 Recodified from 4 NCAC 10A .0616;
23 Amended Eff. January 1, 2013; June 1, 2000.

