

Pat McCrory, Governor
Andrew T. Heath, Chair



Bernadine S. Ballance, Commissioner
Linda Cheatham, Commissioner
Danny L. McDonald, Commissioner
Tammy R. Nance, Commissioner
Pamela T. Young, Commissioner

North Carolina Industrial Commission

IN RE: RULEMAKING BY THE NORTH CAROLINA INDUSTRIAL COMMISSION
PURSUANT TO SESSION LAW 2013-294.

ORDER ADOPTING NEW AND AMENDED INDUSTRIAL COMMISSION RULES

PROPOSED RULES FOR ADOPTION: 04 NCAC 10A .0410, 04 NCAC 10C .0201, 04 NCAC 10E .0103, 04 NCAC 10E .0104, 04 NCAC 10E .0201, 04 NCAC 10E .0202, 04 NCAC 10E .0203, 04 NCAC 10E .0301, 04 NCAC 10H .0206, 4 NCAC 10I .0204, 004 NCAC 10L .0101, 04 NCAC 10L .0102, 04 NCAC 10L .0103, 04 NCAC 10L .0104.

PROPOSED RULES FOR AMENDMENT: 04 NCAC 10A .0102, 04 NCAC 10A .0405, 04 NCAC 10A .0601, 04 NCAC 10A .0603, 04 NCAC 10A .0605, 04 NCAC 10A .0608, 04 NCAC 10A .0609A, 04 NCAC 10A .0612, 04 NCAC 10A .0613, 04 NCAC 10A .0701, 04 NCAC 10A .0704, 04 NCAC 10A .0801, 04 NCAC 10B .0501, 04 NCAC 10C .0103, 04 NCAC 10C .0108, 04 NCAC 10C .0109, 04 NCAC 10D .0110, 04 NCAC 10G .0104A, 04 NCAC 10G .0107, 04 NCAC 10G .0110, 04 NCAC 10J .0101.

After careful consideration of the proposed rules, the comments received at the February 24, 2014 public hearing, and written comments received from the public, the Industrial Commission adopts the attached additions and amendments to the North Carolina Industrial Commission Rules, which will be submitted to the Rules Review Commission, Office of Administrative Hearings, pursuant to N.C. Gen. Stat. § 150B-21.1(b), for review.

This the 17th day of March 2014.



Andrew T. Heath

Chairman



Linda Cheatham

Commissioner



Tammy R. Nance

Commissioner



Bernadine S. Ballance

Commissioner



Danny L. McDonald

Commissioner



Pamela T. Young

Commissioner

1 Rule 04 NCAC 10A .0102 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0102 OFFICIAL FORMS**

5 ~~(a) The Industrial Commission will remain in continuous session subject to the call of the Chairman to meet as a~~
6 ~~body for the purpose of transacting such business as may come before it.~~

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

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

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

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

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

17
18 *History Note: Authority G.S. 97-80(a); 97-81(a);*
19 *Eff. January 1, 1990;*
20 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10A .0405 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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4 **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

5 ~~(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~~
6 ~~nail will be considered as equivalent to the loss of one fourth of such finger or toe.~~

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

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

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

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

20 (b) When reinstatement is sought by the filing of a Form 23 Application to Reinstate Payment of Disability
21 Compensation, the original Form 23 Application to Reinstate Payment of Disability Compensation and the attached
22 documents shall be sent to the Commission at the same time and by the same method by which a copy of the Form
23 23 and attached documents are sent to the employer, carrier, or administrator and the employer's, carrier's, or
24 administrator's attorney of record. The employee shall specify the grounds and the alleged facts supporting the
25 application and shall complete the blank space in the "Important Notice to Employer" portion of Form 23
26 Application to Reinstate Payment of Disability Compensation by inserting a date 17 days from the date the
27 employee serves the completed Form 23 Application to reinstate Payment of Disability Compensation on the
28 employer, carrier, or administrator and the attorney of record, if any. The Form 23 Application to Reinstate Payment
29 of Disability Compensation shall specify the number of pages of documents attached that are to be considered by the
30 Commission. Within 17 days from the date the employee serves the completed Form 23 Application to Reinstate
31 Payment of Disability Compensation on the employer, carrier, or administrator and the attorney of record, if any, the
32 employer, carrier, or administrator shall complete Section B of the Form 23 Application to Reinstate Payment of
33 Disability Compensation and send it to the Commission and to the employee, or the employee's attorney of record,
34 at the same time and by the same method by which the form is sent to the Commission.

35 (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review
36 the Form 23 Application to Reinstate Payment of Disability Compensation and attached documentation and, without
37 an informal hearing, render an Administrative Decision or Order as to whether there is sufficient basis under the

1 Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be rendered
2 within five days of the expiration of the time within which the employer, carrier, or administrator could have filed a
3 response to the Form 23 Application to Reinstate Payment of Disability Compensation. Either party may seek
4 review of the Administrative Decision and Order as provided by Rule .0703 of this subchapter.

5 (d) If the employer, carrier, or administrator timely objects to the Form 23 Application to Reinstate Payment of
6 Disability Compensation, the Commission shall conduct an informal hearing within 25 days of the receipt by the
7 Commission of the Form 23 Application to Reinstate Payment of Disability Compensation unless the time is
8 extended for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record
9 personally present with the Commission. The Commission shall make arrangements for the informal hearing with a
10 view toward conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30
11 minutes, with each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the
12 foregoing, the employee may waive the right to an informal hearing and proceed to a formal hearing by filing a
13 request for hearing on a Form 33 Request that Claim be Assigned for Hearing. Either party may appeal the
14 Administrative Decision and Order of the Commission as provided by Rule .0703 of this subchapter. A Deputy
15 Commissioner shall conduct a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and
16 shall not require a Form 33 Request that Claim be Assigned for Hearing. The employee has the burden of producing
17 evidence on the issue of the employee's application to reinstate compensation. If the Deputy Commissioner reverses
18 an order previously granting a Form 23 Application to Reinstate Payment of Disability Compensation motion, the
19 employer shall promptly terminate compensation or otherwise comply with the Deputy Commissioner's decision,
20 notwithstanding any appeal or application for review to the Full Commission under G.S. 97-85.

21 (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order
22 to that effect, that shall be in lieu of a Form 33 Request that Claim be Assigned for Hearing, and the case shall be
23 placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or
24 administrator shall file a Form 33 Request that Claim be Assigned for Hearing or notify the Commission that a
25 formal hearing is not currently necessary, within 30 days of the date of the Administrative Decision or Order. The
26 effect of placing the case on the docket shall be the same as if the Form 23 Application to Reinstate Payment of
27 Disability Compensation was denied, and compensation shall not be reinstated until such time as the case is decided
28 by a Commissioner or a Deputy Commissioner following a formal hearing.

29
30 *History Note: Authority G.S. 97-18(k); 97-80(a);*

31 *Eff. January 1, 1990;*

32 *Amended Eff. April 1, 2014.*

1 Rule 04 NCAC 10A .0410 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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4 **04 NCAC 10A .0410 SAFETY RULES**

5 The safety rules or regulations adopted by an employer qualify as approved by the Commission within the meaning
6 of G.S. 97-12 if the following requirements are satisfied:

7 (1) The rules include the general provisions of the safety rules outlined by the American National
8 Standards Institute and the Occupational Safety and Health Act.

9 (2) The rules have been filed in writing with the Commission's Safety Education Director.

10 (3) A copy of the rules bearing a certificate of approval from the Commission has been returned to the
11 employer. The certificate of approval shall indicate that the rules have been reviewed and found
12 by the Safety Education Director of the Commission to be in compliance with the general rules of
13 the American National Standards Institute and the Occupational Safety and Health Act and that the
14 rules are approved by the Commission pursuant to G.S. 97-12.

15

16 *History Note: Authority G.S. 97-12; 97-80(a);*

17 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10A .0601 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **SECTION .0600 – CLAIMS ADMINISTRATION AND PROCEDURES**

5
6 **04 NCAC 10A .0601 EMPLOYER'S OBLIGATIONS UPON NOTICE; DENIAL OF LIABILITY; AND**
7 **SANCTIONS**

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

11 ~~(b)(a) When an~~ Upon the employee's ~~employee files~~ filing of a claim for compensation with the Commission, the
12 Commission may order reasonable sanctions against the employer or its insurance carrier ~~which if it does not, within~~
13 30 days following notice from the Commission of the filing of the claim, or 90 days when a disease is alleged to be
14 from exposure to chemicals, fumes, or other materials or substances in the workplace, ~~or within such reasonable~~
15 ~~additional time as the Commission may allow,~~ do one of the following:

- 16 (1) ~~Notify~~ File a Form 60 *Employer's Admission of Employee's Right to Compensation* to notify the
17 Commission and the employee in writing that ~~the employer~~ is admitting the employee's right to
18 compensation and, if applicable, satisfy the requirements for payment of compensation under G.S.
19 97-18(b);
20 (2) ~~Notify~~ File a Form 61 *Denial of Workers' Compensation Claim* to notify the Commission and the
21 employee that ~~the employer~~ denies the employee's right to compensation consistent with G.S.
22 97-18(c);
23 (3) File a Form 63 *Notice to Employee of Payment of Compensation Without Prejudice* Initiate
24 ~~payments without prejudice and without liability and satisfy the requirements of~~ consistent with
25 G.S. 97-18(d).

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

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

30 ~~(e)(b) If the employer or insurance carrier denies~~ When liability in any ~~ease,~~ case is denied, the employer or
31 insurance carrier shall provide a detailed statement of the basis of denial ~~must that shall~~ be set forth in a letter of
32 denial or Form ~~61,~~ 61 *Denial of Workers' Compensation Claim*, and ~~which that~~ shall be sent to the ~~plaintiff or his~~
33 employee's attorney of record, if any record or the employee, if unrepresented, all known health care providers
34 ~~which~~ who have submitted bills and provided medical records to the ~~employer/carrier,~~ employer or carrier, and the
35 Industrial Commission. ~~The detailed statement of the basis of denial shall set forth a statement of the facts, as~~
36 ~~alleged by the employer, concerning the injury or any other matter in dispute; a statement identifying the source, by~~

1 ~~name or date and type of document, of the facts alleged by the employer; and a statement explaining why the facts,~~
2 ~~as alleged by the employer, do not entitle the employee to workers' compensation benefits.~~

3

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

5 *Eff. January 1, 1990;*

6 *Amended Eff. April 1, 2014; August 1, 2006; June 1, 2000.*

1 Rule 04 NCAC 10A .0603 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10A .0603 RESPONDING TO A PARTY'S REQUEST FOR HEARING**

5 (a) No later than 45 days from receipt of ~~the Request~~ a request for ~~Hearing,~~ hearing from ~~[an employee]~~ a party, ~~the~~
6 ~~self insured employer, insurance carrier, or counsel for the defendant(s)]~~ the opposing party or parties shall file
7 with the ~~Industrial~~ Commission a response to the ~~Request~~ request for ~~Hearing,~~ hearing.

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

9 (1) ~~The~~ the basis of the disagreement between the parties, including a statement of the ~~specific~~ issues
10 raised by the ~~plaintiff moving party~~ which ~~that~~ are conceded and the ~~specific~~ issues raised by the
11 ~~plaintiff moving party~~ which are ~~denied.~~ denied;

12 (2) ~~The~~ the date of the injury; if it is contended to be different than that alleged by the ~~plaintiff.~~
13 moving party;

14 (3) ~~The~~ the part of the body injured; if it is contended to be different than that alleged by the ~~plaintiff.~~
15 moving party;

16 (4) ~~The~~ the city and county where the injury occurred; if they are ~~contended~~ contended to be different
17 than that alleged by the ~~plaintiff.~~ moving party;

18 ~~(5)~~ The ~~[the] names and addresses of all doctors and other expert witnesses whose testimony is~~
19 ~~needed by the defendant(s). [non moving party;]~~

20 ~~(6)~~ The ~~[the] names of all lay witnesses known by the defendant(s) non moving party whose~~
21 ~~testimony is to be taken. [taken;]~~

22 ~~(57)~~ An ~~an~~ estimate of the time required for the hearing of the ~~ease.~~ case; and

23 ~~(68)~~ The ~~the~~ telephone ~~number(s)~~ number(s), and ~~address(es)~~ email address(es), and mailing
24 address(es) of the party(ies) responding to the ~~Request for Hearing,~~ request for hearing and their
25 legal counsel.

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

33
34 *History Note:* Authority G.S. 97-80(a); 97-83;
35 Eff. January 1, 1990;
36 Amended Eff. April 1, 2014; June 1, 2000.

1 Rule 04 NCAC 10A .0605 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

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4 **04 NCAC 10A .0605 DISCOVERY**

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

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

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

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

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

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

1 or cause any unnecessary expense or delay, that the information requested is not known or equally
2 available to the requesting party, and that the interrogatory or requested document relates to an
3 issue presently in dispute or ~~which that~~ the requesting party reasonably believes may later be in
4 dispute. A party may serve an interrogatory, however, to obtain verification of facts relating to an
5 issue presently in dispute. Answers to interrogatories may be used to the extent permitted by ~~the~~
6 ~~rules of evidence.~~ Chapter 8C of the North Carolina General Statutes.

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

9 ~~(3)(7)~~ Additional methods of discovery as provided by the North Carolina Rules of Civil Procedure may
10 be used only upon motion ~~and approval by the Industrial Commission~~ or by agreement of the
11 parties. The Commission shall approve the motion if it is shown to be in the interests of justice or
12 to promote judicial economy.

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 for the following:

20 (a) notices of depositions;

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

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

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

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

26 ~~(5)(9)~~ Sanctions ~~may~~ shall be imposed under this Rule for failure to comply with a Commission order
27 compelling discovery. A motion by a party or its attorney to compel discovery under this Rule and
28 ~~4 NCAC 10A .607~~ Rule .0607 of this Subchapter shall represent that informal means of resolving
29 the discovery dispute have been attempted in good faith and state ~~briefly~~ the opposing parties'
30 position or that there has been a reasonable attempt to contact the opposing party and ascertain its
31 position.

32
33 *History Note:* Authority G.S. 97-80(a); 97-80(f);

34 *Eff. January 1, 1990;*

35 *Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

1 Rule 04 NCAC 10A .0608 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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4 **04 NCAC 10A .0608 STATEMENT OF INCIDENT LEADING TO CLAIM**

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

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

17

18 *History Note: Authority G.S. 97-80(a);*
19 *Eff. January 1, 1990;*
20 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10A .0609A is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

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

6 ~~(1) Medical motions pursuant to N.C. Gen. Stat. §97-25 brought before the Office of the Executive~~
7 ~~Secretary for an administrative ruling shall comply with applicable provisions of Rule 609 and~~
8 ~~shall be submitted electronically to medicalmotions@ic.nc.gov, unless electronic submission is~~
9 ~~unavailable to the party.~~

10 ~~(2) A party may file with the Deputy Commissioner Section a request for an administrative ruling on~~
11 ~~a medical motion. A party, also, may appeal an Order from the Executive Secretary's Office on an~~
12 ~~Expedited Medical Motion by giving notice of appeal to the Dockets Department within 15 days~~
13 ~~of receipt of the Order or receipt of the ruling on a Motion to Reconsider the Order filed pursuant~~
14 ~~to Rule 703(1). The Motion shall contain a designation as an administrative "Expedited Medical~~
15 ~~Motion", documentation in support of the request, including the most recent medical record/s and~~
16 ~~a representation that informal means of resolving the issue have been attempted in good faith, and~~
17 ~~the opposing party's position, if known.~~

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

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

27 ~~(3) A party may appeal an Order by a Deputy Commissioner on an Expedited Medical Motion by~~
28 ~~giving notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of~~
29 ~~the ruling on a Motion to Reconsider the Order filed pursuant to Rule 703(1).~~

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

33 ~~(B) After receipt of notice of appeal, the appeal will be acknowledged by the Dockets~~
34 ~~Department within three (3) days by sending an appropriate Order under the name of the~~
35 ~~Chair of the Panel to which the appeal is assigned. The parties may be permitted to file~~
36 ~~briefs on an abbreviated schedule in the discretion of the panel chair. The panel chair will~~
37 ~~also determine if oral arguments are to be by telephone, in person, or waived. All~~

1 ~~correspondence, briefs, or motions related to the appeal shall be addressed to the panel~~
2 ~~chair with a copy to the law clerk of the panel chair.~~

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

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

5 ~~(A) A boldface, or otherwise emphasized, designation as "Emergency Medical Motion."~~

6 ~~(B) An explanation of the need for a shortened time period for review, including any hardship~~
7 ~~that warrants immediate attention/action by the Commission.~~

8 ~~(C) A statement of the time sensitive nature of the request, with specificity.~~

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

10 ~~(E) Documentation in support of the request, including the most recent medical records.~~

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

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

17 ~~(3) Emergency Medical Motions and responses thereto shall be submitted electronically, unless~~
18 ~~electronic submission is unavailable to the party.~~

19 ~~(A) Emergency Medical Motions and responses thereto filed with the Executive Secretary's~~
20 ~~Office shall be submitted to medicalmotions@ic.nc.gov.~~

21 ~~(B) Emergency Medical Motions filed with the Chief Deputy Commissioner shall be~~
22 ~~submitted electronically directly to the Chief Deputy Commissioner and his/her legal~~
23 ~~assistant.~~

24 ~~(C) Emergency Medical Motions filed with the Chair of the Commission shall be submitted~~
25 ~~electronically to the Chair, his/her legal assistant, and his/her law clerk.~~

26 (a) Medical motions brought pursuant to G.S. 97-25, and responses thereto, shall be brought before the Office of the
27 Chief Deputy Commissioner and shall be submitted electronically to medicalmotions@ic.nc.gov. Motions and
28 responses shall be submitted simultaneously to the Commission and the opposing party or opposing party's counsel,
29 if any.

30 (b) Once notification has been received by the parties that a medical motion has been assigned to a Deputy
31 Commissioner, subsequent filings and communication shall be submitted directly to the Deputy Commissioner
32 assigned.

33 (c) Upon receipt of a medical motion, carriers, third-party administrators, and employers [who are not represented]
34 shall immediately [assign counsel and] send notification of the [counsel's] name, email address, telephone number
35 and fax number of the attorney appearing on their behalf to medicalmotions@ic.nc.gov. An attorney who is retained
36 by a party in any proceeding before the Commission shall also file a Notice of Representation with the Docket

1 Director at dockets@ic.nc.gov with a copy of the notice sent to all other counsel and all other unrepresented parties
2 involved in the proceeding.

3 (d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall
4 contain the following:

- 5 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25;
- 6 (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax
7 number. If represented, the name, email address, telephone number and fax number of claimant's
8 counsel;
- 9 (3) the employer's name and employer code;
- 10 (4) the carrier or third party administrator's name, carrier code, email address, telephone number and
11 fax number;
- 12 (5) the adjuster's name, email address, telephone number and fax number if counsel for the
13 employer/carrier has not been retained;
- 14 (6) the counsel for employer/carrier's name, email address, telephone number and fax number;
- 15 (7) a statement of the treatment or relief requested;
- 16 (8) a statement of the medical diagnosis of claimant and the treatment recommendation and name of
17 the health care provider that is the basis for the motion;
- 18 (9) a statement as to whether the claim has been admitted on a Form 60, Form 63, Form 21 or is
19 subject to a prior Commission Opinion and Award or Order finding compensability, with
20 supporting documentation attached;
- 21 (10) a statement of the time-sensitive nature of the request;
- 22 (11) an explanation of opinions known and in the possession of the employee of additional medical or
23 other relevant experts, independent medical examiners, and second opinion examiners;
- 24 (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall
25 specify whether the plaintiff has made a prior written request to the defendants for the
26 examination, as well as the date of the request and the date of the denial, if any;
- 27 (13) a representation that informal means of resolving the issue have been attempted in good faith, and
28 the opposing party's position, if known; and
- 29 (14) a proposed Order.

30 (e) Motions requesting emergency medical relief shall contain the following:

- 31 (1) a boldface or otherwise emphasized, designation as "Emergency Medical Motion";
- 32 (2) the claimant's name and, if unrepresented, claimant's email address, telephone number, and fax
33 number. If represented, the name, email address, telephone number and fax number of claimant's
34 counsel;
- 35 (3) the employer's name and employer code;
- 36 (4) the carrier or third party administrator's name, carrier code, email address, telephone number and
37 fax number;

- 1 (5) the adjuster's name, email address, telephone number and fax number if counsel for the
2 employer/carrier has not been retained;
- 3 (6) the counsel for employer/carrier's name, email address, telephone number and fax number;
- 4 (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider
5 that requires emergency attention;
- 6 (8) a statement of the need for a shortened time period for review, including relevant dates and the
7 potential for adverse consequences if the recommended treatment is not provided emergently;
- 8 (9) an explanation of opinions known and in the possession of the employee of additional medical or
9 other relevant experts, independent medical examiner, and second opinion examiners;
- 10 (10) a representation that informal means of resolving the issue have been attempted in good faith, and
11 the opposing party's position, if known; and
- 12 (11) a proposed Order.

13 (f) The parties shall receive notice of the date and time of an initial informal telephonic conference to be conducted
14 by a Deputy Commissioner to determine whether the motion warrants an expedited or emergency hearing and to
15 clarify the issues. During the initial informal telephonic conference each party shall be afforded an opportunity to
16 state its position and submit documentary evidence. ~~Prior to the initial informal telephonic conference, the parties~~
17 ~~shall submit a brief medical chronology and procedural history of three pages or less, the relevant Form 60, Form~~
18 ~~63, Form 21 or Commission Opinion and Award, and relevant medical information including medical records.~~

19 (g) At or prior to the initial informal telephonic conference, the parties may consent to a review of the contested
20 issues by electronic mail submission of only relevant medical records and opinion letters.

21 (h) Depositions deemed necessary by the Deputy Commissioner shall be taken on the Deputy Commissioner's order
22 within 35 days of the date the motion is filed. Transcripts of depositions shall be submitted electronically to the
23 Commission within 40 days of the date of the filing of the motion.

24 (i) At the initial informal telephonic conference, each party shall notify the Commission and the other party as to
25 whether a second informal telephonic conference is necessary. This second informal telephonic conference does not
26 extend the time for resolution of the Motion.

27 (j) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of
28 any time allowed for response and whether informal telephonic oral argument is necessary.

29 (k) A party may appeal a Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 by giving
30 notice of appeal to the Full Commission within 15 days of receipt of the Order or receipt of the ruling on a Motion to
31 Reconsider the Order filed pursuant to Rule .0703(b) of this Subchapter. A letter expressing an intent to appeal a
32 Deputy Commissioner's Order on a motion brought pursuant to G.S. 97-25 shall be considered notice of appeal to
33 the Full Commission, provided that the letter specifies the Order from which appeal is taken. After receipt of notice
34 of appeal, the appeal shall be acknowledged by the Docket Section within three days by sending an Order under the
35 name of the Chair of the Panel to which the appeal is assigned. The parties may file briefs on an abbreviated
36 schedule when necessary for a determination of the issues. The panel chair shall also determine if oral arguments

1 are to be by telephone, in person, or waived. All correspondence, briefs, or motions related to the appeal shall be
2 addressed to the panel chair with a copy to the law clerk of the panel chair.

3 (l) The Commission will accept the filing of documents by non-electronic methods if electronic transmission is
4 unavailable to the party.

5

6 *History Note: Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a);*

7 *Eff. January 1, 2011;*

8 *Amended Eff. April 1, 2014.*

1 Rule 04 NCAC 10A .0612 is adopted as published on the OAH website for the public comment period beginning January
2 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0612 DEPOSITIONS**

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

11 ~~(b) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case must be reset
12 or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may in his
13 discretion assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who
14 refused the stipulation.~~

15 ~~(c) Except under unusual circumstances, all lay evidence must be offered at the initial hearing. Lay evidence can only be
16 offered after the initial hearing by order of a Commissioner or Deputy Commissioner. The costs of obtaining lay
17 testimony by deposition shall be borne by the party making the request unless otherwise ordered by the Commission.~~

18 (a) Prior to a hearing before a Deputy Commissioner, the parties shall confer to determine the methods by which medical
19 evidence, if any, will be submitted. In doing so, absent a well-grounded objection, the parties shall stipulate to the
20 admission of all relevant medical records, reports, and forms, as well as opinion letters from the employee's health care
21 providers with the goal of minimizing the use of post-hearing depositions. When a Pre-Trial Agreement is required by
22 the Commission, the parties shall certify in the Pre-Trial Agreement that the parties have conferred to determine the
23 methods by which medical evidence, if any, will be submitted, and the parties shall state whether there is any
24 disagreement about the stipulation of medical evidence. The parties shall state in the Pre-Trial Agreement all experts to
25 be deposed post-hearing.

26 (b) When medical or other expert testimony is requested by the parties for the disposition of a case, a Deputy
27 Commissioner or Commissioner may order expert depositions to be taken on or before a day certain not to exceed 60
28 days from the date of the hearing; provided, however, the time allowed may be enlarged or shortened in the interests of
29 justice or to promote judicial economy, or where required by the Act. The costs of up to two post-hearing depositions
30 selected by the employee of health care providers who evaluated or treated the employee shall be borne by the employer.
31 The employer shall also bear the costs of a deposition of a second opinion doctor selected jointly by the parties or ordered
32 by the Commission pursuant to G.S. 97-25. The employee shall designate the health care providers the employee will
33 depose at employer's expense in the Pre-Trial Agreement. The parties may notice depositions of additional experts, and
34 the costs thereof shall be borne by the party noticing the depositions; provided, however, if a ruling favorable to the
35 employee is rendered and is not timely appealed by the employer, or the employer's appeal is dismissed or withdrawn,
36 then the employer shall reimburse the employee the costs of such additional expert depositions. Notwithstanding this
37 provision, the parties may come to a separate agreement regarding reimbursement of deposition costs, which shall be

1 submitted to the Commission for approval. Provided further, in (i) claims pursuant to G.S. 97-29(d) and (ii) cases
2 involving exceptional, unique, or complex injuries or diseases, the Commission may allow additional depositions of
3 experts to be taken at the employer's expense, when requested by the employee and when necessary to address the issues
4 in dispute, in which case the employee shall state, and the Commission shall consider, at a minimum, the following
5 factors when determining whether or not the employer shall bear the costs of such depositions:

- 6 (1) The name and profession of the proposed deponent;
- 7 (2) If the proposed deponent is a health care provider, whether the health care provider evaluated,
8 diagnosed or treated the employee;
- 9 (3) The issue to which the testimony is material, relevant and necessary;
- 10 (4) The availability of alternate methods for submitting the evidence and the efforts made to utilize
11 alternate methods;
- 12 (5) The severity or complexity of the employee's condition;
- 13 (6) The number and complexity of the issues in dispute;
- 14 (7) Whether the testimony is likely to be duplicative of other evidence; and
- 15 (8) The opposing party's position on the request.

16 The term "costs" as used in this rule shall mean the expert's fee as approved by the Commission for the deposition,
17 including the expert's time preparing for the deposition, if applicable, and shall include fees associated with the
18 production and delivery of a transcript of the deposition to the Commission, including the court reporter's appearance
19 fee, but shall not include costs for a party to obtain his or her own copy of the deposition transcript, or attorney's fees
20 associated with the deposition, unless so ordered by the Commission pursuant to G.S. 97-88.1.

21 (c) If the claimant is unrepresented at the time of a full evidentiary hearing before a Deputy Commissioner, the
22 Commission shall determine the best method for presenting medical evidence, if necessary, and the party responsible for
23 bearing associated costs.

24 (d) If a party unreasonably refuses to stipulate to relevant medical evidence, and as a result, the case is reset or
25 depositions are ordered for testimony of medical or expert witnesses, a Deputy Commissioner or Commissioner may
26 assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the
27 stipulation, pursuant to G.S. 97-88.1.

28 (e) All evidence and witnesses other than those tendered as an expert witness shall be offered at the hearing before the
29 Deputy Commissioner. Non-expert evidence may be offered after the hearing before the Deputy Commissioner by order
30 of a Deputy Commissioner or Commissioner. The costs of obtaining non-expert testimony by deposition shall be borne
31 by the party making the request unless otherwise ordered by the Commission in the interests of justice or to promote
32 judicial economy.

33
34 *History Note: Authority G.S. 97-80(a); 97-88; 97-88.1;*
35 *Eff. June 1, 1990;*
36 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10A .0613 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10A .0613 EXPERT WITNESSES AND FEES**

5 ~~(a) Dismissals:~~

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

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

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

15 ~~(b) Removals:~~

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

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

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

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

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

30 (b) ~~Within 10 days after~~ After the deposition of each expert, the party that noticed the deposition shall, within 10 days
31 after receiving the expert's fee invoice, submit to the Deputy Commissioner or Commissioner, via email, a request to
32 approve the costs related to the expert deposition. In these requests, the party shall provide to the Deputy Commissioner
33 or Commissioner, in a cover letter along with the invoice (if available), the following:

34 (1) the name of the expert and the expert's practice;

35 (2) the expert's fax number;

36 (3) the expert's area of specialty and board certifications, if any;

37 (4) the length of the deposition;

- 1 (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with
2 parties' counsel;
3 (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an
4 exceptional, unique, or complex injury or disease;
5 (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be
6 deposed at employer's expense; and
7 (8) the party initially responsible for payment of the deposition fee pursuant to 04 NCAC 10A .0612.

8 At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice
9 name and fax number under the "Appearances" section. The proposed order shall also reflect the party initially
10 responsible for payment of the deposition fee pursuant to 04 NCAC 10A .0612.

11 (c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this rule
12 shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for
13 the deposition, if applicable. ~~and shall include fees associated with the production and delivery of a transcript of the~~
14 ~~deposition to the Commission, including the court reporter's appearance fee, but shall not include costs for a party to~~
15 ~~obtain his or her own copy of the deposition transcript, or attorney's fees associated with the deposition, unless so~~
16 ~~ordered by the Commission pursuant to G.S. 97-88.1]~~

17 (d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an
18 amount equal to 10 percent being added to the fee ordered to be paid to the expert.

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

21 (f) This rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained
22 expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the
23 contractual fee of the expert.

24
25 *History Note: Authority G.S. 97-80(a); G.S. 97-80(d); 97-80(f);*
26 *Eff. January 1, 1990;*
27 *Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

1 Rule 04 NCAC 10A .0701 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **SECTION .0700 - APPEALS**
5

6 **04 NCAC 10A .0701 REVIEW BY THE FULL COMMISSION**

7 ~~(a) A letter expressing an intent to appeal shall be considered notice of appeal to the Full Commission within the~~
8 ~~meaning of N.C. Gen. Stat. §97-85, provided that it clearly specifies the Order or Opinion and Award from which appeal~~
9 ~~is taken.~~

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

19 ~~(c) Particular grounds for appeal not set forth in the application for review shall be deemed abandoned, and argument~~
20 ~~thereon shall not be heard before the Full Commission.~~

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

31 ~~(e) After notice of appeal has been given to the Full Commission, any motions related to the issues before the Full~~
32 ~~Commission shall be filed in triplicate with the Full Commission, with service on the other parties.~~

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

35 ~~(g) Cases should be cited by North Carolina Reports, and, preferably, to Southeastern Reports. Counsel shall not discuss~~
36 ~~matters outside the record, assert personal opinions or relate personal experiences, or attribute unworthy acts or motives~~
37 ~~to opposing counsel.~~

1 ~~(h) The Industrial Commission or any one of the parties with permission of the Industrial Commission may waive oral~~
2 ~~argument before the Full Commission. In the event of such waiver, the Full Commission will file a decision, based on~~
3 ~~the record, assignments of error and briefs.~~

4 ~~(i) A plaintiff appealing the amount of a disfigurement award shall personally appear before the Full Commission to~~
5 ~~permit the Full Commission to view the disfigurement.~~

6 ~~(j) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit shall apply to the~~
7 ~~length of attachments. Briefs shall be prepared entirely using a 12 point font, shall be double spaced, and shall be~~
8 ~~prepared with non-justified right margins. Each page of the brief shall be numbered at the bottom right of the page. When~~
9 ~~quoting or paraphrasing testimony or other evidence in the transcript of the evidence, a parenthetic entry in the text, to~~
10 ~~include the exact page number location within the transcript of the evidence of the information being referenced shall be~~
11 ~~placed at the end of the sentence citing the information [Example: (T.p.38)]. When quoting or paraphrasing testimony or~~
12 ~~other evidence in the transcript of a deposition, a parenthetic entry in the text to include the name of the person deposed~~
13 ~~and exact page number location within the transcript of the deposition of the information being referenced shall be placed~~
14 ~~at the end of the sentence citing the information. [Example: (Smith p.15)].~~

15 ~~(a) Application for review shall be made to the Commission within 15 days from the date when notice of the Deputy~~
16 ~~Commissioner's Opinion and Award shall have been given. A letter expressing a request for review is considered an~~
17 ~~application for review to the Full Commission within the meaning of G.S. 97-85, provided that the letter specifies the~~
18 ~~Order or Opinion and Award from which appeal is taken.~~

19 ~~(b) After receipt of a request for review, the Commission shall acknowledge the request for review by letter. The~~
20 ~~Commission shall prepare the official transcript and exhibits and provide them along with a Form 44 *Application for*~~
21 ~~*Review* to the parties involved in the appeal at no charge within 30 days of the acknowledgement letter. The official~~
22 ~~transcript and exhibits and a Form 44 *Application for Review* shall be provided to the parties electronically, where~~
23 ~~possible. In such cases, the Commission shall send an e-mail to the parties containing a link to the secure FTP site where~~
24 ~~the official transcript and exhibits can be downloaded. The e-mail shall also provide instructions for the submission of~~
25 ~~the parties' acknowledgement of receipt of the Form 44 *Application for Review* and the official transcript and exhibits to~~
26 ~~the Commission. The Commission shall save a copy of the parties' acknowledgements [e-mails] in the file for the claim~~
27 ~~to serve as record of the parties' electronic receipt of the Form 44 *Application for Review* and the official transcript and~~
28 ~~exhibits. In cases where it is not possible to provide a party with the official transcript and exhibits electronically, the~~
29 ~~Commission shall provide the official transcript and exhibits and a Form 44 *Application for Review* via certified U.S.~~
30 ~~Mail, with return receipt requested. The Commission shall save a copy of the return receipt to serve as record of the~~
31 ~~party's receipt of the official transcript and exhibits and Form 44 *Application for Review*.~~

32 ~~(c) A motion to reconsider or to amend the decision of a Deputy Commissioner shall be filed with the Deputy~~
33 ~~Commissioner within 15 days of receipt of notice of the award with a copy to the Docket Director. The time for filing a~~
34 ~~request for review from the decision of a Deputy Commissioner under the rules in this Subchapter shall be tolled until a~~
35 ~~motion to reconsider or to amend the decision has been ruled upon by the Deputy Commissioner. However, if either~~
36 ~~party files a letter expressing a request for review as set forth in subsection (a) above, jurisdiction shall be immediately~~
37 ~~transferred to the Full Commission, and the Docket Director shall notify the Deputy Commissioner. Upon transfer of~~

1 jurisdiction to the Full Commission, any party who had a pending motion to reconsider or amend the decision of the
2 Deputy Commissioner may file a motion with the Chairman of the Commission requesting remand to the Deputy
3 Commissioner with whom the motion was pending. Within the Full Commission's discretion, the matter may be so
4 remanded. Upon the Deputy Commissioner's ruling on the motion to reconsider or amend the decision, either party may
5 thereafter file a letter expressing a request for review of the Deputy Commissioner's decision as set forth in subsection
6 (a) above.

7 (d) The appellant shall submit a Form 44 *Application for Review* upon which appellant shall state the grounds for the
8 review. The grounds shall be stated with particularity, including the errors allegedly committed by the Commissioner or
9 Deputy Commissioner and, when applicable, the pages in the transcript on which the alleged errors are recorded.
10 Grounds for review not set forth in the Form 44 *Application for Review* are deemed abandoned, and argument thereon
11 shall not be heard before the Full Commission.

12 (e) The appellant shall file the Form 44 *Application for Review* and brief in support of the grounds for review with the
13 Commission with a certificate of service on the appellee within 25 days after receipt of the transcript or receipt of notice
14 that there will be no transcript. The appellee shall have 25 days from service of appellant's brief to file a responsive brief
15 with the Commission. Appellee's brief must include a certificate of service on the appellant. When an appellant fails to
16 file a brief, an appellee shall file its brief within 25 days after the appellant's time for filing the Form 44 *Application for*
17 *Review* and appellant's brief has expired. A party who fails to file a brief shall not participate in oral argument before the
18 Full Commission. If multiple parties request review, each party shall file an appellant's brief and appellee's brief on the
19 schedule set forth in this Paragraph. If the matter has not been calendared for hearing, any party may file with the Docket
20 Director a written stipulation to a single extension of time not to exceed 15 days. In no event shall the cumulative
21 extensions of time exceed 30 days.

22 (f) After a request for review has been given to the Full Commission, any motions related to the issues for review before
23 the Full Commission shall be filed with the Full Commission, with service on the other parties. Motions related to the
24 issues for review including motions for new trial, to supplement the record, including, but not limited to, documents from
25 offers of proof, or to take additional evidence, filed during the pendency of a request for review to the Full Commission
26 shall be argued before the Full Commission at the time of the hearing of the request for review, except motions related to
27 the [appellate record] official transcript and exhibits. The Full Commission, for good cause shown, may rule on such
28 motions prior to oral argument.

29 (g) Cases shall be cited to the North Carolina Reports, the North Carolina Court of Appeals Reports, or the North
30 Carolina Reporter, and when possible, to the Southeastern Reporter. If no reporter citation is available at the time a brief
31 is filed or if an unpublished decision is referenced in the brief, the party citing to the case shall attach a copy of the case
32 to its brief. Counsel shall not discuss matters outside the record, assert personal opinions or relate personal experiences,
33 or attribute wrongful acts or motives to opposing counsel or members of the Commission.

34 (h) Upon the request of a party or on its own motion, the Commission may waive oral argument in the interests of justice
35 or to promote judicial economy. In the event of such waiver, the Full Commission shall file an award, based on the
36 record and briefs.

1 (i) Briefs to the Full Commission shall not exceed 35 pages, excluding attachments. No page limit applies to the length
2 of attachments. Briefs shall be prepared using a 12 point type, shall be double spaced, and shall be prepared with non-
3 justified right margins. Each page of the brief shall be numbered at the bottom of the page. When a party quotes or
4 paraphrases testimony or other evidence from the appellate record in the party's brief, the party shall include, at the end
5 of the sentence in the brief that quotes or paraphrases the testimony or other evidence, a parenthetic entry that designates
6 the source of the quoted or paraphrased material and the page number location within the applicable source. The party
7 shall use "T" to refer to the transcript of hearing testimony, "Ex" for exhibit, and "p" for page number. For example, if a
8 party quotes or paraphrases material located in the hearing transcript on page 11, the party shall use the following format
9 "(T p 11)", and if a party quotes or paraphrases material located in an exhibit on page 12, the party shall use the following
10 format "(Ex p 12)". When a party quotes or paraphrases testimony in the transcript of a deposition in the party's brief, the
11 party shall include the last name of the deponent and the page on which such testimony is located. For example, if a
12 party quotes or paraphrases the testimony of John Smith, located on page 11 of such deposition, the party shall use the
13 following format "(Smith p 11)".

14 (j) An employee appealing the amount of a disfigurement award shall personally appear before the Full Commission to
15 permit the Full Commission to view the disfigurement.

16
17 *History Note: Authority G.S. 97-80(a); 97-85;*

18 *Eff. January 1, 1990;*

19 *Amended Eff. April 1, 2014; January 1, 2011; August 1, 2006; June 1, 2000.*

1 Rule 04 NCAC 10A .0704 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10A .0704 REMAND FROM THE APPELLATE COURTS**

5 (a) When a case is remanded to the Commission from the appellate courts, each party may file a statement, with or
6 without a brief, to the Full Commission setting forth its position on the actions or proceedings, including evidentiary
7 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of
8 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission
9 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored
10 the decision is no longer a member of the Industrial Commission. The deadline to submit the statement to the
11 Commission shall be stayed automatically upon a party filing a petition for discretionary review or rehearing to the
12 appellate courts.

13 (b) Application may be made in the first instance to the Supreme Court for a writ of supersedeas to stay the
14 execution or enforcement of a judgment, order, or other determination mandated by the Court of Appeals when a
15 notice of appeal of right or a petition for discretionary review has been or will be timely filed, or a petition for
16 review by certiorari, mandamus, or prohibition has been filed to obtain review of the decision of the Court of
17 Appeals.

18
19 *History Note: Authority G.S. 97-80(a); 97-86;*
20 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10A .0801 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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

5
6 **04 NCAC 10A .0801 WAIVER OF RULES**

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

10 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
11 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
12 case pending before the Commission upon written application of a party or upon its own initiative only if the
13 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
14 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 *History Note: Authority G.S. 97-80(a);*
23 *Eff. January 1, 1990;*
24 *Amended Eff. April 1, 2014.*
25

1 Rule 04 NCAC 10B .0501 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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

5
6 **04 NCAC 10B .0501 WAIVER OF RULES**

7 ~~In the interest of justice, these rules may be waived by a Commissioner, Deputy Commissioner, or the Full~~
8 ~~Commission.~~

9 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
10 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
11 case pending before the Commission upon written application of a party or upon its own initiative only if the
12 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
13 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 (6) 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. April 1, 2014; May 1, 2000.*

1 Rule 04 NCAC 10C .0103 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10C .0103 DEFINITIONS**

5 As used in this Subchapter:

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

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

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

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

- 22 (a) case assessment; ~~assessment, including a personal interview with the injured worker;~~
- 23 (b) development, implementation and coordination of a care plan with health care ~~providers~~
24 providers, ~~and with the worker worker,~~ and his or her family;
- 25 (c) evaluation of treatment results;
- 26 (d) planning for community ~~re-entry; re-entry and return to work work; with the employer of~~
27 injury and/or and
- 28 (e) referral for further vocational rehabilitation services.

29 ~~(e)(3) "Vocational Rehabilitation"~~ "Vocational rehabilitation" ~~refers to~~ means the delivery and
30 coordination of services under an individualized written plan, with the goal of assisting the injured
31 workers-~~worker~~ to return to suitable ~~employment.~~ employment or participate in education or
32 retraining, as defined by subsection (5) of this Rule or applicable statute.

33 ~~(1) Specific vocational rehabilitation services may include, but are not limited to: vocational~~
34 ~~assessment, vocational exploration, counseling, job analysis, job modification, job development~~
35 ~~and placement, labor market survey, vocational or psychometric testing, analysis of transferable~~
36 ~~skills, work adjustment counseling, job seeking skills training, on the job training and retraining,~~
37 ~~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.~~

1

2 *History Note:* Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; 97-80;

3 *Eff. January 1, 1996;*

4 *Recodified from 4 NCAC 10C .0101, Eff. April 17, 2000;*

5 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10C .0108 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10C .0108 INTERACTION WITH PHYSICIANS**

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

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

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

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

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

1 ~~Whenever an RP~~ When a rehabilitation professional communicates with a physician without the prior consent or
2 presence of the injured worker, the ~~RP~~ rehabilitation professional must ~~promptly~~ document the reasons for and the
3 substance of the communication and ~~promptly~~ report such the reasons and substance to the injured worker or his or
4 her attorney, if represented, pursuant to Rule ~~VI~~ .0106 of this Subchapter.

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

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

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

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

18 (1) When a party or health care provider requests a consult, second opinion, or independent medical
19 examination that is authorized or ordered, the rehabilitation professional may assemble and
20 forward medical records and information, schedule and coordinate an appointment, and, if the
21 worker consents, have a joint meeting with the health care provider and the worker after a private
22 exam, if requested.

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

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

29
30 *History Note: Authority G.S. 97-25.4; 97-25.5; 97-32.2; 97-80;*

31 *Eff. January 1, 1996;*

32 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10C .0109 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10C .0109 VOCATIONAL REHABILITATION SERVICES AND RETURN TO WORK**

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

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

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

14 (1) current job, current employer;

15 (2) new job, current employer;

16 (3) on-the-job training, current employer;

17 (4) new job, new employer;

18 (5) on-the-job training, new employer;

19 (6) formal education or vocational training to prepare worker for job with current or new employer;
20 and

21 (7) self-employment, only when its feasibility is documented with reference to the employee's
22 aptitudes and training, adequate capitalization, and market conditions.

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

25 (1) the retraining or education requested;

26 (2) the availability, location, cost, and identity of providers of the requested retraining or education;

27 (3) the likely duration until completion of the requested retraining or education and the likely class schedules,
28 class attendance requirements, and out-of-class time required for homework and study;

29 (4) the current or projected availability of employment upon completion; and

30 (5) the anticipated pay range for employment upon completion.

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

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

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

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

15 ~~(e)~~ In identifying proposed employment for the injured worker, the RP should consider the worker's transportation
16 requirements.

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

19 ~~(g)~~(j) The ~~RP, rehabilitation professional~~ shall not initiate or continue placement activities ~~which~~ that do not appear
20 reasonably likely to result in placement of the injured worker in suitable employment. The ~~RP, rehabilitation~~
21 professional shall report to the parties when efforts to place the worker in suitable employment do not appear
22 reasonably likely to result in placement of the injured worker in suitable employment.

23
24 *History Note:* Authority G.S. 97-2(22); 97-25.4; 97-25.5; 97-32.2; ~~97-2(22);~~

25 *Eff. January 1, 1996;*

26 *Amended Eff. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10C .0201 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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

5
6 **4 NCAC 10C .0201 WAIVER OF RULES**

7 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
8 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
9 case pending before the Commission upon written application of a party or upon its own initiative only if the
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
11 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. April 1, 2014.*

1 Rule 04 NCAC 10D .0110 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3

4 **04 NCAC 10D .0110 WAIVER OF RULES**

5 ~~For good cause, and in its discretion, subject to statutory requirements, the Commission may waive adherence to any~~
6 ~~of these Rules.~~ In the interests of justice or to promote judicial economy, the Commission may, except as otherwise
7 provided by the Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this
8 Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative
9 only if the employee is not represented by counsel. Factors the Commission shall use in determining whether to
10 grant the waiver are:

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

17

18 *History Note:* Authority G.S. 97-25.2; 97-80(a);
19 Eff. January 1, 1996;
20 Amended Eff. April 1, 2014.

1 Rule 04 NCAC 10E .0103 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10E .0103 ADMISSION OF OUT-OF STATE ATTORNEYS TO APPEAR BEFORE THE**
5 **COMMISSION**

6 (a) Attorneys residing in and licensed to practice law in another state who seek to be admitted to practice before the
7 Commission to represent a client in a particular claim pursuant to N.C. Gen. Stat. § 84-4.1 may file a motion with
8 the Commission that complies with the requirements of N.C. Gen. Stat. § 84-4.1. ~~If the *pro hac vice* motion is filed~~
9 ~~in a case involving a stipulated Opinion and Award regarding a death claim, the motion shall be filed with the Chief~~
10 ~~Deputy Commissioner.] The North Carolina attorney with whom the out-of-state attorney associates pursuant to~~
11 N.C. Gen. Stat. § 84-4.1(5) may also file the motion.

12 (b) The motion shall be filed with the Executive Secretary of the Commission except under the following
13 circumstances:

14 (1) If the pertinent claim is set for hearing before or pending decision by a Deputy Commissioner or
15 the Full Commission, the motion shall be filed with the Deputy Commissioner or chair of the Full
16 Commission panel, respectively.

17 (2) If the motion is filed in a case involving a form application regarding a death claim, the motion
18 shall be filed with the Director of Claims Administration.

19 (3) If the motion is filed in a case involving a stipulated Opinion and Award regarding a death claim,
20 the motion shall be filed with the Chief Deputy Commissioner.

21 (c) A proposed Order that includes the facsimile numbers for all counsel of record shall be provided with the
22 motion.

23 (d) Following the payment of the fees to the North Carolina State Bar and General Court of Justice as required by
24 N.C. Gen. Stat. § 84-4.1, the out-of-state attorney or the associated North Carolina attorney shall file a statement
25 with the Executive Secretary documenting payment of said fees and the submission of any *pro hac vice* admission
26 registration statement required by the North Carolina State Bar.

27
28 *History Note: Authority G.S. 84-4.1; 97-80(a);*
29 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10E .0104 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10E .0104 SECURE LEAVE PERIODS FOR ATTORNEYS**

5 (a) In order to secure for the parties to actions and proceedings pending before the Industrial Commission, and to
6 the public at large, the heightened level of professionalism that an attorney is able to provide when the attorney
7 enjoys periods of time that are free from the urgent demands of professional responsibility and to enhance the
8 overall quality of the attorney's personal and family life, any attorney may from time to time designate and enjoy
9 one or more secure leave periods each year as provided in this Rule.

10 (b) During any calendar year, an attorney's secure leave periods pursuant to this Rule shall not exceed, in the
11 aggregate, three calendar weeks.

12 (c) To request a secure leave period an attorney shall file a written request, by letter or motion, containing the
13 information required by subsection (d) of this Rule with the Office of the Chair within the time provided in
14 subsection (e). Upon such filing, the Chair shall review the request and, if appropriate, issue a letter allowing the
15 requested secure leave period, and the attorney shall not be required to appear at any trial, hearing, deposition, or
16 other proceeding before the Commission during that secure leave period.

17 (d) The request shall contain the following information:

18 (1) the attorney's name, address, telephone number and state bar number,

19 (2) the date(s) for which secure leave is being requested,

20 (3) the dates of all other secure leave periods during the current calendar year that have previously
21 been designated by the attorney pursuant to this Rule,

22 (4) A statement that the secure leave period is not being designated for the purpose of delaying,
23 hindering or interfering with the timely disposition of any matter in any pending action or
24 proceeding, and

25 (5) a statement that no action or proceeding in which the attorney has entered an appearance has been
26 scheduled, tentatively set, or noticed for trial, hearing, deposition or other proceeding during the
27 designated secure leave period.

28 (e) To be allowed, the request shall be filed:

29 (1) no later than ninety (90) days before the beginning of the secure leave period, and

30 (2) before any trial, hearing, deposition or other matter has been regularly scheduled, peremptorily set
31 or noticed for a time during the designated secure leave period.

32 An untimely request will be automatically denied by letter. In the event that a party has been denied secure leave
33 because the request was not timely filed and there are extraordinary circumstances, the attorney may file a motion
34 requesting an exception. If the case has been scheduled for hearing before a Deputy Commissioner, the motion shall
35 be addressed to the Deputy Commissioner. If the matter is scheduled for hearing before the Full Commission, the
36 motion shall be addressed to the chair of the panel before which the hearing will be held. In all other cases, the
37 motion should be directed to the Office of the Chair.

1 (f) If, after a secure leave period has been allowed pursuant to this Rule, any trial, hearing, deposition, or other
2 proceeding is scheduled or tentatively set for a time during the secure leave period, the attorney shall file with the
3 Deputy Commissioner or chair of the Full Commission panel before which the matter was calendared or set, and
4 serve on all parties, a copy of the letter allowing the secure leave period with a certificate of service attached. Upon
5 receipt, the pertinent proceeding shall be rescheduled for a time that is not within the attorney's secure leave period.

6 (g) If, after a secure leave period has been allowed pursuant to this Rule, any deposition is noticed for a time during
7 the secure leave period, the attorney may serve on the party that noticed the deposition a copy of the letter allowing
8 the secure leave period with a certificate of service attached, and that party shall reschedule the deposition for a time
9 that is not within the attorney's secure leave period.

10 (h) Nothing in this Rule shall limit the inherent power of the Commission to reschedule a case to allow an attorney
11 to enjoy a leave during a period that has not been allowed pursuant to this Rule, but there shall be no entitlement to
12 any such leave.

13

14 *History Note: Authority G.S. 97-80(a);*
15 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10E .0201 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3

4

SECTION .0200 – FEES

5

04 NCAC 10E .0201 DOCUMENT AND RECORD FEES

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

8 (b) Upon written request, to the extent permitted by Article 1 of Chapter 97, Article 31 of Chapter 143, and Chapter

9 132 of the North Carolina General Statutes, copies of documents and audio recordings of Commission hearings are

10 available at the “actual cost” as defined by G.S. 132-6.2(b). The Commission shall provide the “actual cost” on the

11 Commission’s website. Certification of documents in the Commission’s claim files is available upon request at a

12 cost of one dollar (\$1.00) per certification in addition to the “actual cost” for the copies of the documents.

13 Electronic copy certification is not available.

14 (c) Documents shall be sent via certified mail upon request at the actual cost established by the United States Postal

15 Service.

16 (d) 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. April 1, 2014.*

1 Rule 04 NCAC 10E .0202 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10E .0202 HEARING COSTS OR FEES**

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

6 (1) one hundred twenty dollars (\$120.00) for a hearing before a Deputy Commissioner to be charged
7 after the hearing has been held;

8 (2) one hundred twenty dollars (\$120.00) if a case is continued after the case is calendared for a
9 specific hearing date, to be paid by the requesting party or parties;

10 (3) one hundred twenty dollars (\$120.00) if a case is withdrawn, removed, or dismissed after the case
11 is calendared for a specific hearing date;

12 (4) two hundred twenty dollars (\$220.00) for a hearing before the Full Commission to be charged
13 after the hearing has been held;

14 (5) one hundred twenty dollars (\$120.00) if an appeal or request for review to the Full Commission is
15 withdrawn or for the dismissal of an appeal or request for review due to the failure to prosecute or
16 perfect the appeal or request for review after the appeal or request for review is scheduled for a
17 specific hearing date;

18 In workers' compensation cases, these fees shall be paid by the employer unless the Commission orders otherwise,
19 except as specified in subsection (2) above.

20 (b) The Commission may waive fees set forth in subsection (a) of this rule, or assess such fees against a party or
21 parties pursuant to G.S. 97-88.1 if the Commission determines that the hearing has been brought, prosecuted, or
22 defended without reasonable ground.

23 (c) Failure to pay fees or costs assessed by the Commission may result in penalties. The Commission may issue a
24 notice and order to show cause as to why a fee or cost assessed by the Commission has not been paid.

25
26 *History Note:* Authority G.S. 7A-305; 97-73; 97-80; 143-291.1; 143-291.2; 143-300;
27 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10E .0203 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10E .0203 FEES SET BY THE COMMISSION**

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

6 (1) four hundred dollars (\$400.00) for the processing of a compromise settlement agreement to be
7 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). Unless the
8 parties agree otherwise, the employer(s) or the employer's carrier(s) shall pay such fee in full
9 when submitting the agreement to the Commission, and shall then be entitled to a credit for the
10 employee's 50% share of such fee against settlement proceeds;

11 (2) three hundred dollars (\$300.00) for the processing of a Form 21 *Agreement for Compensation for*
12 *Disability*, Form 26 *Supplemental Agreement as to Payment of Compensation*, or Form 26A
13 *Employer's Admission of Employee's Right to Permanent Partial Disability* to be paid by the
14 employee and the employer in equal shares. The employer shall pay such fee in full when
15 submitting the agreement to the Commission. Unless the parties agree otherwise or the award
16 totals \$3,000 or less, the employer shall be entitled to a credit for the employee's 50% share of
17 such fee against the award;

18 (3) two hundred dollars (\$200.00) for the processing of a I.C. Form MSC5, *Report of Mediator*, to be
19 paid 50% by the employee and 50% by the employer(s) or the employer's carrier(s). The
20 employer(s) or the employer's carrier(s) shall pay such fee in full upon receipt of an invoice from
21 the Commission and, unless the parties agree otherwise, shall be reimbursed for the employee's
22 share of such fees when the case is concluded from benefits that may be determined to be due to
23 the employee, and the employer(s) or the employer's carrier(s) may withhold funds from any
24 award for this purpose.

25 (4) a fee equal to the filing fee required to file of a civil action in the Superior Court division of the
26 General Court of Justice for the processing of a Form 33I *Intervenor's Request that Claim be*
27 *Assigned for Hearing*, to be paid by the intervenor.

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

30
31 *History Note:* Authority G.S. ~~[97-10.2;]~~ 97-17; ~~[97-18.2;]~~ 97-26(i); 97-73; 97-80; 143-291.2; 143-300;
32 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10E .0301 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

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

5
6 **04 NCAC 10E .0301 WAIVER OF RULES**

7 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
8 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
9 case pending before the Commission upon written application of a party or upon its own initiative only if the
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
11 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; 143-300;*
20 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10G .0104A is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS**

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

8 ~~(b) Qualifications of Interpreters. To qualify as a foreign language interpreter, a person must possess sufficient~~
9 ~~experience and education, or a combination of experience and education, speaking, and understanding English and~~
10 ~~the foreign language to be interpreted, to qualify as an expert witness pursuant to N.C. Gen. Stat. §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, in writing, not less than 21~~
13 ~~days prior to the date of the mediation conference. The notice shall state with specificity the language(s) that must be~~
14 ~~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, either agreed upon by the parties or approved by the Industrial Commission, to~~
17 ~~assist at the mediation conference.~~

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

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

28 (a) Any party who is unable to speak or understand English shall so notify the Commission, the mediator, and the
29 opposing party(ies) in writing, not less than 21 days prior to the date of the mediated settlement conference. The
30 notice shall contain the party's primary language and how the party plans to communicate in English during the
31 mediation.

32 (b) If either party shall request assistance by a qualified foreign language interpreter for a party who does not speak
33 or understand the English language, the party requesting the assistance of the foreign language interpreter shall bear
34 the costs.

35 (c) If the certified mediator, in his or her discretion, notifies the parties of the need for a qualified foreign language
36 interpreter, the parties shall retain a disinterested interpreter, who possesses the qualifications listed in paragraph (d)
37 of this Rule, to assist at the mediated settlement conference. The fee of the foreign language interpreter and any

1 postponement fees necessitated by the need for a qualified foreign language interpreter shall be shared by the parties
2 unless the parties agree otherwise.

3 (d) A qualified foreign language interpreter shall possess sufficient experience and education, or a combination of
4 experience and education, in speaking and understanding English and the foreign language to be interpreted, to
5 qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

6 (e) Qualified foreign language interpreters shall abide by the Code of Conduct and Ethics of Foreign Language
7 Interpreters and Translators, contained in Part 4 of *Policies and Best Practices for the Use of Foreign Language*
8 *Interpreting and Translating Services in the North Carolina Court System* and promulgated by the North Carolina
9 Administrative Office of the Courts, and shall interpret, as word for word as is practicable, without editing,
10 commenting, or summarizing, testimony or other communications. The Code of Conduct and Ethics of Foreign
11 Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and
12 editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's
13 website, <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the
14 offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina,
15 between the hours of 8:00 a.m. and 5:00 p.m.

16
17 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;*

18 *Eff. January 1, 2011;*

19 *Amended Eff. April 1, 2014.*

1 Rule 04 NCAC 10G .0107 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3
4 **04 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR**

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

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

9 ~~(1) Conference Fees. The mediator shall be paid by the parties at the rate of \$150.00 per hour for mediation
10 services at the conference.~~

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

16 ~~(3) Postponement Fees. As used herein, the term "postpone" shall mean to reschedule or otherwise not proceed
17 with a scheduled mediation conference after that conference has been scheduled to convene on a specific date. After
18 a conference is scheduled to convene on a specific date it may not be postponed without the requesting party first
19 notifying all other parties concerning the grounds for the requested postponement, or without the consent and
20 approval of the mediator or the Dispute Resolution Coordinator. If a mediation conference is postponed without
21 good cause, the mediator shall be paid a postponement fee unless, upon application of the party or parties charged
22 with the fee, the fee is waived by the Commission. Unless the Commission otherwise orders, the postponement fee
23 shall be \$300.00 if the mediation conference is postponed within seven calendar days of the scheduled conference,
24 and \$150.00 if the mediation conference is postponed more than seven calendar days prior to a scheduled
25 conference. Postponement fees shall be allocated in equal shares to the party or parties requesting the postponement
26 unless otherwise ordered by the Commission.~~

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

30 ~~(c) Payment by Parties. Payment shall be due upon completion of the conference; provided, that the State shall be
31 billed at the conference and pay within 30 days of receipt of the billing, and insurance companies or carriers whose
32 written procedures do not provide for payment of the mediator at the conference may pay within 15 days of the
33 conference. Unless otherwise agreed to by the parties or ordered by the Commission, costs of the mediated
34 settlement conference shall be allocated to the parties, as follows: one share by plaintiff(s); one share by the
35 workers' compensation defendant employer or its insurer, or if more than one employer or carrier is involved, or if
36 there is a dispute between employer(s) or carrier(s), one share by each separately represented entity; one share by
37 participating third party tort defendants or their carrier, or if there are conflicting interests among them, one share~~

1 ~~from each such defendant or group of defendants having shared interests; and, one share by the defendant State~~
2 ~~agency in a State Tort Claims Act case. Parties obligated to pay a share of the costs shall be responsible for equal~~
3 ~~shares; provided, however, that in workers' compensation claims the defendant shall pay the plaintiff's share of~~
4 ~~mediation, postponement, and substitution fees, as well as its own. Unless the Dispute Resolution Coordinator enters~~
5 ~~an Order allocating such fees to a particular party, the fees may be taxed as other costs by the Commission. The~~
6 ~~defendant shall be reimbursed for the plaintiff's share of such fees when the case is concluded from benefits that~~
7 ~~may be determined to be due to the plaintiff, and the defendant may withhold funds from any award for this purpose.~~

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

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

12 (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars
13 (\$150.00) per hour for mediation services provided at the mediated settlement conference.

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

19 (3) Postponement Fees. As used in this Subchapter, the term "postpone" means to reschedule or
20 otherwise not proceed with a scheduled mediated settlement conference after the conference has
21 been scheduled to convene on a specific date. After a conference is scheduled to convene on a
22 specific date, the conference may not be postponed unless the requesting party notifies all other
23 parties of the grounds for the requested postponement and obtains the consent and approval of the
24 mediator or the Dispute Resolution Coordinator. If the conference is postponed without good
25 cause, the mediator shall be paid a postponement fee. The postponement fee shall be three
26 hundred dollars (\$300.00) if the conference is postponed within seven calendar days of the
27 scheduled date, and one hundred fifty dollars (\$150.00) if the conference is postponed more than
28 seven calendar days prior to the scheduled date. Unless otherwise ordered by the Commission in
29 the interests of justice, postponement fees shall be allocated in equal shares to the party or parties
30 requesting the postponement. As used in this Rule, "good cause" shall mean that the reason for
31 the postponement involves a situation over which the party seeking the postponement has no
32 control, including but not limited to, a party or attorney's illness, a death in a party or attorney's
33 family, a demand by a judge that a party or attorney for a party appear in court, or inclement
34 weather such that travel is prohibitive.

35 (4) The settlement of a case prior to the scheduled date of the mediated settlement conference shall be
36 good cause to cancel the mediation without the approval of the mediator or the Dispute Resolution
37 Coordinator. The parties shall notify the mediator of any cancellation due to settlement. The

1 mediator may charge a cancellation fee of one hundred fifty dollars (\$150.00) if notified of the
2 cancellation within fourteen days of the scheduled date, or three hundred dollars (\$300.00) if
3 notified within seven days of the scheduled date.

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

9 (1) one share by plaintiff(s);

10 (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one
11 employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share
12 by each separately represented entity;

13 (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting
14 interests among them, one share from each defendant or group of defendants having shared
15 interests; and

16 (4) one share by the defendant State agency in a Tort Claims Act case.

17 Parties obligated to pay a share of the costs are responsible for equal shares; provided, however, that in workers'
18 compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and substitution fees,
19 as well as defendant's own share. If plaintiff requests postponement of the mediated settlement conference,
20 defendants shall be entitled to a credit for the postponement fee.

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

25
26 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide Mediated*
27 *Settlement Conference in Superior Court Civil Actions;*
28 *Eff. January 16, 1996;*
29 *Amended Eff. October 1, 1998;*
30 *Recodified from 4 NCAC 10A .0616;*
31 *Amended Eff. April 1, 2014; January 1, 2011; June 1, 2000.*

1 Rule 04 NCAC 10G .0110 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3

4 **04 NCAC 10G .0110 WAIVER OF RULES**

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

7 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the
8 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
9 case pending before the Commission upon written application of a party or upon its own initiative only if the
10 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
11 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. April 1, 2014; June 1, 2000.*

1 Rule 04 NCAC 10H .0206 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3

4 **04 NCAC 10H .0206 WAIVER OF RULES**

5 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the
6 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
7 case pending before the Commission upon written application of a party or upon its own initiative only if the
8 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
9 waiver are:

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

16

17 *History Note: Authority G.S. 97-80(a); 143-166.4;*

18 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10I .0204 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, as follows:

3

4 **04 NCAC 10I .0204 WAIVER OF RULES**

5 In the interests of justice or to promote judicial economy the Commission may, except as otherwise provided by the
6 Rules in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a
7 case pending before the Commission upon written application of a party or upon its own initiative only if the
8 employee is not represented by counsel. Factors the Commission shall use in determining whether to grant the
9 waiver are:

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

16

17 *History Note: Authority G.S. 97-80(a); 130A-425(d);*

18 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10J .0101 is amended as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **SUBCHAPTER 10J – FEES FOR MEDICAL COMPENSATION**

5
6 **SECTION 0100 – FEES FOR MEDICAL COMPENSATION**

7
8 **04 NCAC 10J .0101 FEES FOR MEDICAL COMPENSATION**

9 (a) The Commission has adopted and published a Medical Fee Schedule, pursuant to the provisions of G.S. 97-
10 26(a), setting maximum amounts, except for hospital fees pursuant to G.S. 97-26(b), that may be paid for medical,
11 surgical, nursing, dental, and rehabilitative services, and medicines, sick travel, and other treatment, including
12 medical and surgical supplies, original artificial members as may reasonably be necessary at the end of the healing
13 period and the replacement of such artificial members when reasonably necessitated by ordinary use or medical
14 circumstances. The amounts prescribed in the applicable published Fee Schedule shall govern and apply according
15 to G.S. 97-26(c).

16 (b) The Commission's Medical Fee Schedule contains maximum allowed amounts for medical services provided
17 pursuant to Chapter 97 of the General Statutes. The Medical Fee Schedule utilizes 1995 through the present,
18 Current Procedural Terminology (CPT) codes adopted by the American Medical Association, Healthcare Common
19 Procedure Coding Systems (HCPCS) codes, and jurisdiction-specific codes. A listing of the maximum allowable
20 amount for each code is available on the Commission's website at <http://www.ic.nc.gov/ncic/pages/feesched.asp> and
21 in hardcopy at 430 N. Salisbury Street, Raleigh, North Carolina.

22 (c) The following methodology provides the basis for the Commission's Medical Fee Schedule:

- 23 (1) CPT codes for General Medicine are based on 1995 North Carolina Medicare values multiplied by
24 1.58, except for CPT codes 99201-99205 and 99211-99215, which are based on 1995 Medicare
25 values multiplied by 2.05.
- 26 (2) CPT codes for Physical Medicine are based on 1995 North Carolina Medicare values multiplied
27 by 1.36.
- 28 (3) CPT codes for Radiology are based on 1995 North Carolina Medicare values multiplied by 1.96.
- 29 (4) CPT codes for Surgery are based on 1995 North Carolina Medicare values multiplied by 2.06.

30 (d) The Commission's Hospital Fee Schedule, adopted pursuant to G.S. 97-26(b), provides for payment as follows:

- 31 (1) Inpatient hospital fees: Inpatient services are reimbursed based on a Diagnostic Related
32 Groupings (DRG) methodology. The Hospital Fee Schedule utilizes the 2001 Diagnostic Related
33 Groupings adopted by the State Health Plan. Each DRG amount is based on the amount that the
34 State Health Plan had in effect for the same DRG on June 30, 2001.

35 DRG amounts are further subject to the following payment band that establishes maximum and
36 minimum payment amounts:

- 37 (A) The maximum payment is 100 percent of the hospital's itemized charges.

- 1 (B) For hospitals other than critical access hospitals, the minimum payment is 75 percent of
2 the hospital's itemized charges. Effective February 1, 2013, the minimum payment rate is
3 the amount provided for under Subparagraph (5) below, subject to adjustment on April 1,
4 2013 as provided therein.
- 5 (C) For critical access hospitals, the minimum payment is 77.07 percent of the hospital's
6 itemized charges. Effective February 1, 2013, the minimum payment rate is the amount
7 provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as
8 provided therein.
- 9 (2) Outpatient hospital fees: Outpatient services are reimbursed based on the hospital's actual charges
10 as billed on the UB-04 claim form, subject to the following percentage discounts:
- 11 (A) For hospitals other than critical access hospitals, the payment shall be 79 percent of the
12 hospital's billed charges. Effective February 1, 2013, the payment is the amount provided
13 for under Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided
14 therein.
- 15 (B) For critical access hospitals, the payment shall be 87 percent of the hospital's billed
16 charges. For purposes of the hospital fee schedule, critical access hospitals are those
17 hospitals designated as such pursuant to federal law (42 CFR 485.601 et seq.). Effective
18 February 1, 2013, the critical access hospital's payment is the amount provided for under
19 Subparagraph (5) below, subject to adjustment on April 1, 2013 as provided therein.
- 20 (3) Ambulatory surgery fees: Ambulatory surgery center services are reimbursed at 79 percent of
21 billed charges. Effective February 1, 2013, the ambulatory surgery center services are reimbursed
22 at the amount provided for under Subparagraph (5) below, subject to adjustment on April 1, 2013
23 as provided therein.
- 24 (4) Other rates: If a provider has agreed under contract with the insurer or managed care organization
25 to accept a different amount or reimbursement methodology, that amount or methodology
26 establishes the applicable fee.
- 27 (5) Payment levels frozen and reduced pending study of new fee schedule: Effective February 1,
28 2013, inpatient and outpatient payments for each hospital and the payments for each ambulatory
29 surgery center shall be set at the payment rates in effect for those facilities as of June 30, 2012.
30 Effective April 1, 2013, those rates shall then be reduced as follows:
- 31 (A) Hospital outpatient and ambulatory surgery: The rate in effect as of that date shall be
32 reduced by 15 percent.
- 33 (B) Hospital inpatient: The minimum payment rate in effect as of that date shall be reduced
34 by 10 percent.
- 35 (6) Effective April 1, 2013, implants shall be paid at no greater than invoice cost plus 28 percent.

1 (e) Employers, insurers, and managed care organizations, or administrators on their behalf, may review and
2 reimburse charges for all medical compensation, including ~~[- but not limited to,]~~ medical, hospital, and dental fees,
3 without submitting the charges to the Commission for review and approval.

4 (ef) A provider of medical compensation shall submit its statement for services within 75 days of the rendition of
5 the service, or if treatment is longer, within 30 days after the end of the month during which multiple treatments
6 were provided. However, in cases where liability is initially denied but subsequently admitted or determined by the
7 Commission, the time for submission of medical bills shall run from the time the health care provider received
8 notice of the admission or determination of liability. Within 30 days of receipt of the statement, the employer,
9 carrier, or managed care organization, or administrator on its behalf, shall pay or submit the statement to the
10 Commission for approval or send the provider written objections to the statement. If an employer, carrier,
11 administrator, or managed care organization disputes a portion of the provider's bill, the employer, carrier,
12 administrator, or managed care organization, shall pay the uncontested portion of the bill and shall resolve disputes
13 regarding the balance of the charges through its contractual arrangement or through the Commission.

14 (fg) Pursuant to G.S. 97-18(i), when the 10 percent addition to the bill is uncontested, payment shall be made to the
15 provider without notifying or seeking approval from the Commission. When the 10 percent addition to the bill is
16 contested, any party may request a hearing by the Commission pursuant to G.S. 97-83 and G.S. 97-84.

17 (gh) When the responsible party seeks an audit of hospital charges, and has paid the hospital charges in full, the
18 payee hospital, upon request, shall provide reasonable access and copies of appropriate records, without charge or
19 fee, to the person(s) chosen by the payor to review and audit the records.

20 (hi) The responsible employer, carrier, managed care organization, or administrator shall pay the statements of
21 medical compensation providers to whom the employee has been referred by the treating physician authorized by
22 the insurance carrier for the compensable injury or body part, unless the physician has been requested to obtain
23 authorization for referrals or tests; provided that compliance with the request shall not unreasonably delay the
24 treatment or service to be rendered to the employee.

25 (ij) Employees are entitled to reimbursement for sick travel when the travel is medically necessary and the mileage
26 is 20 or more miles, round trip, at the business standard mileage rate set by the Internal Revenue Service per mile of
27 travel and the actual cost of tolls paid. Employees are entitled to lodging and meal expenses, at a rate to be
28 established for state employees by the North Carolina Director of Budget, when it is medically necessary that the
29 employee stay overnight at a location away from the employee's usual place of residence. Employees are entitled to
30 reimbursement for the costs of parking or a vehicle for hire, when the costs are medically necessary, at the actual
31 costs of the expenses.

32 (jk) Any employer, carrier or administrator denying a claim in which medical care has previously been authorized is
33 responsible for all costs incurred prior to the date notice of denial is provided to each health care provider to whom
34 authorization has been previously given.

35
36 *History Note: Authority G.S. 97-18(i); 97-25; 97-25.6; 97-26; 97-80(a); 138-6;*
37 *Eff. January 1, 1990;*

1 Rule 04 NCAC 10L .0101 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **SUBCHAPTER 10L – INDUSTRIAL COMMISSION FORMS**
5 **SECTION .0100 – WORKERS’ COMPENSATION FORMS**
6

7 **04 NCAC 10L .0101 FORM 21 – AGREEMENT FOR COMPENSATION FOR DISABILITY**
8

9 (a) The parties to a workers’ compensation claim shall use the following Form 21, *Agreement for Compensation for*
10 *Disability*, for agreements regarding disability and payment of compensation therefor pursuant to G.S. 97-29 and 97-
11 30. Additional issues agreed upon by the parties such as payment of compensation for permanent partial disability
12 may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where applicable.
13 The Form 21, *Agreement for Compensation for Disability*, shall read as follows:
14

15 North Carolina Industrial Commission
16 Agreement for Compensation for Disability
17 (G.S. 97-82)
18

19 IC File # _____
20 Emp. Code # _____
21 Carrier Code # _____
22 Carrier File # _____
23 Employer FEIN _____
24

25 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act
26

27 _____
28 Employee’s Name
29 _____
30 Address
31 _____
32 City _____ State _____ Zip _____
33 _____
34 Home Telephone _____ Work Telephone _____
35 Social Security Number: _____ Sex: M F Date of Birth: _____
36 _____
37 _____

1 Employer's Name Telephone Number

2 _____

3 Employer's Address City State Zip

4 _____

5 Insurance Carrier

6 _____

7 Carrier's Address City State Zip

8 _____

9 Carrier's Telephone Number Carrier's Fax Number

10

11 We, The Undersigned, Do Hereby Agree And Stipulate As Follows:

12 1. All parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
13 _____ is the carrier/administrator for the employer.

14 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising
15 out of and in the course of employment on or by _____

16 3. The injury by accident or occupational disease resulted in the following injuries: _____

17 _____

18 4. The employee was/ was not paid for the entire day when the injury occurred.

19 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
20 was \$ _____, subject to verification unless otherwise agreed upon in line 9 below.

21 6. Disability resulting from the injury or occupational disease began on _____

22 7. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
23 of \$ _____ per week beginning _____, and continuing for _____ weeks.

24 8. The employee has / has not returned to work for _____

25 on _____, at an average weekly wage of \$ _____.

26 9. State any further matters agreed upon, including disfigurement, permanent partial, or temporary partial
27 disability: _____

28 10. If applicable, the Second Injury Fund Assessment is \$ _____. Check is is not attached.

29 11. The date of this agreement is _____. Date of first payment: _____ Amount: _____

30 12. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement
31 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of
32 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your
33 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer
34 agree otherwise.

35 Check one of the boxes below if the award is more than \$3,000.00:

36 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.

37 The employee and employer have agreed that the employer will pay the entire fee.

1
2 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
3 factors. Your right to payment of future medical compensation will terminate two years after your employer or
4 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
5 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
6 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

7
8 IMPORTANT NOTICE TO EMPLOYER

9
10 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
11 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this
12 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days after
13 receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement
14 to the Industrial Commission, or show good cause for not submitting the agreement.

15
16 NEED ASSISTANCE?

17
18 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
19 (800) 688-8349.

20
21 Form 21
22 4/2014

23
24 Self-Insured Employer or Carrier, Mail to:
25 NCIC - Claims Section
26 4335 Mail Service Center
27 Raleigh, NC 27699-4335
28 Telephone: (919) 807-2502
29 Helpline: (800) 688-8349
30 **Website: <http://www.ic.nc.gov/>**

31
32 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at
33 <http://www.ic.nc.gov/forms/form21.pdf>. The form may be reproduced only in the format available at
34 <http://www.ic.nc.gov/forms/form21.pdf> and may not be altered or amended in any way.

35
36 *History Note: Authority G.S. 97-73; 97-80(a); 97-82;*
37 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10L .0102 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10L .0102 FORM 26 – SUPPLEMENTAL AGREEMENT AS TO PAYMENT OF**
5 **COMPENSATION**
6

7 (a) If the parties to a workers' compensation claim have previously entered into an approved agreement on a Form
8 21, *Agreement for Compensation for Disability*, or a Form 26A, *Employer's Admission of Employee's Right to*
9 *Permanent Partial Disability*, they shall use the following Form 26, *Supplemental Agreement as to Payment of*
10 *Compensation*, for agreements regarding subsequent, additional disability and payment of compensation therefor
11 pursuant to G.S. 97-29 and 97-30. Additional issues agreed upon by the parties such as payment of compensation
12 for permanent partial disability may also be included on the form. This form is necessary to comply with 04 NCAC
13 10A .0501, where applicable. The Form 26, *Supplemental Agreement as to Payment of Compensation*, shall read as
14 follows:

15
16 North Carolina Industrial Commission
17 Supplemental Agreement as to Payment
18 of Compensation (G.S. §97-82)

19
20 IC File # _____
21 Emp. Code # _____
22 Carrier Code # _____
23 Carrier File # _____
24 Employer FEIN _____

25
26 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

27
28 _____
29 Employee's Name
30 _____
31 Address
32 _____
33 City _____ State _____ Zip _____
34 _____
35 Home Telephone _____ Work Telephone _____
36 Social Security Number: _____ Sex: M F Date of Birth: _____

1 _____
 2 Employer's Name _____ Telephone Number _____
 3 _____
 4 Employer's Address _____ City State Zip _____
 5 _____
 6 Insurance Carrier _____
 7 _____
 8 Carrier's Address _____ City State Zip _____
 9 _____
 10 Carrier's Telephone Number _____ Carrier's Fax Number _____
 11 _____

12 We, The Undersigned, Do Hereby Agree and Stipulate As Follows:

- 13 1. Date of injury: _____
 14 2. The employee returned to work / was rated on _____ (date), at a weekly wage of \$ _____.
 15 3. The employee became totally disabled on _____.
 16 4. Employee's average weekly wage was reduced / was increased on _____, from \$ _____
 17 per week to \$ _____ per week.
 18 5. The employer and carrier/administrator hereby undertake to pay compensation to the employee at the rate
 19 of \$ _____ per week
 20 Beginning _____, and continuing for _____ weeks. The type of disability compensation is
 21 _____

22 6. State any further matters agreed upon, including disfigurement or temporary partial disability:
 23 _____

24 7. IMPORTANT NOTICE TO EMPLOYEE: The Industrial Commission's fee for processing this agreement
 25 is \$300.00 to be paid in equal shares by the employee and the employer. You are not required to pay your portion of
 26 the fee in advance, and if your award is \$3,000.00 or less, you are not responsible for any portion of the fee. If your
 27 award is more than \$3,000.00, the employer shall deduct \$150.00 from your award, unless you and your employer
 28 agree otherwise.

- 29 Check one of the boxes below if the award is more than \$3,000.00:
 30 The employer will deduct \$150.00 from the amount to be paid pursuant to this agreement.
 31 The employee and employer have agreed that the employer will pay the entire fee.

32 8. The date of this agreement is _____.
 33 _____

34 Name Of Employer _____ Signature _____ Title _____

36 Name Of Carrier/Administrator _____ Signature _____ Title _____

1 By signing I enter into this agreement and certify that I have read the "Important Notices to Employee" printed on
2 Pages 1 and 2 of this form.

3 _____
4 Signature of Employee _____ Address

5 _____
6 Signature of Employee's Attorney _____ Address

7
8 Check box if no attorney retained.

9
10 North Carolina Industrial Commission

11 The Foregoing Agreement Is Hereby Approved:

12 _____
13 Claims Examiner _____ Date

14 _____
15 Attorney's fee approved

16
17 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
18 PAYMENTS

19 Once your compensation checks have been stopped, if you claim further compensation, you must notify the
20 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your
21 rights to these benefits may be lost.

22
23 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE 5 JULY 1994 CLAIMING ADDITIONAL
24 MEDICAL BENEFITS

25 If your injury occurred before 5 July 1994, you are entitled to medical compensation as long as it is reasonably
26 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

27
28 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER 5 JULY 1994 CLAIMING ADDITIONAL
29 MEDICAL BENEFITS

30 If your injury occurred on or after 5 July 1994, your right to future medical compensation will depend on several
31 factors. Your right to payment of future medical compensation will terminate two years after your employer or
32 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
33 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
34 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

35
36 IMPORTANT NOTICE TO EMPLOYER

37

1 This form is to be used only to supplement Form 21, Agreement for Compensation for Disability (G.S. 97-82), or an
2 award in cases in which subsequent conditions require a modification of a former agreement or award. The
3 employee must be provided a copy of the form when the agreement is signed by the employee. Failure to file Form
4 28B, Report of Compensation and Medical Compensation Paid, within 16 days after last payment pursuant to this
5 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days
6 after receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the
7 agreement to the Industrial Commission, or show good cause for not submitting the agreement.

8
9 NEED ASSISTANCE?

10
11 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
12 (800) 688-8349.

13
14 Form 26
15 4/2014

16
17 Self-Insured Employer or Carrier Mail to:

18 NCIC - Claims Administration

19 4335 Mail Service Center

20 Raleigh, North Carolina 27699-4335

21 Main Telephone: (919) 807-2500

22 Helpline: (800) 688-8349

23 Website: <http://www.ic.nc.gov/>

24
25 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at
26 <http://www.ic.nc.gov/forms/form26.pdf>. The form may be reproduced only in the format available at
27 <http://www.ic.nc.gov/forms/form26.pdf> and may not be altered or amended in any way.

28
29 *History Note: Authority G.S. 97-73; 97-80(a); 97-82;*
30 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10L .0103 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3
4 **04 NCAC 10L .0103 FORM 26A – Employer’s Admission of Employee’s Right to Permanent Partial**
5 **Disability**

6
7 (a) The parties to a workers’ compensation claim shall use the following Form 26A, *Employer’s Admission of*
8 *Employee’s Right to Permanent Partial Disability*, for agreements regarding the employee’s entitlement to and the
9 employer’s payment of compensation for permanent partial disability pursuant to G.S. 97-31. Additional issues
10 agreed upon by the parties, including, but not limited to, election of payment of temporary partial disability pursuant
11 to G.S. 97-30 may also be included on the form. This form is necessary to comply with 04 NCAC 10A .0501, where
12 applicable. The Form 26A, *Employer’s Admission of Employee’s Right to Permanent Partial Disability*, shall read
13 as follows:

14
15 North Carolina Industrial Commission
16 Employer’s Admission of Employee’s Right to Permanent Partial Disability
17 (G.S. §97-31)

18
19 IC File # _____
20 Emp. Code # _____
21 Carrier Code # _____
22 Carrier File # _____
23 Employer FEIN _____

24
25 The Use Of This Form Is Required Under The Provisions of The Workers' Compensation Act

26
27 _____
28 Employee’s Name
29 _____
30 Address
31 _____
32 City _____ State _____ Zip _____
33 _____
34 Home Telephone _____ Work Telephone _____
35 Social Security Number: _____ Sex: M F Date of Birth: _____
36
37 _____

1 Employer's Name Telephone Number

2 _____

3 Employer's Address City State Zip

4 _____

5 Insurance Carrier

6 _____

7 Carrier's Address City State Zip

8 _____

9 Carrier's Telephone Number Carrier's Fax Number

10 _____

11 WE, THE UNDERSIGNED, DO HEREBY AGREE AND STIPULATE AS FOLLOWS:

12 1. All the parties hereto are subject to and bound by the provisions of the Workers' Compensation Act and
13 _____ is the Carrier/Administrator for the Employer.

14 2. The employee sustained an injury by accident or the employee contracted an occupational disease arising
15 out of and in the course of employment on _____.

16 3. The injury by accident or occupational disease resulted in the following injuries:
17 _____.

18 4. The employee was was not paid for the 7 day waiting period.

19 If not, was salary continued? yes no. Was employee paid for the date of injury? yes no

20 5. The average weekly wage of the employee at the time of the injury, including overtime and all allowances,
21 was \$ _____. This results in a weekly compensation rate of \$ _____.

22 6. The employee has has not returned full time to work for _____
23 on _____, at an average weekly wage of \$ _____.

24 7. Claimant was released with permanent restrictions without permanent restrictions.

25 8. Permanent partial disability compensation will be paid to the injured worker as follows:
26 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
27 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)
28 _____ weeks of compensation at rate of \$ _____ per week for _____ % rating to _____ (body part)

29 Total amount of permanent partial disability compensation is \$ _____. Date of first
30 payment: _____.

31 9. State any further matters agreed upon, including disfigurement, loss of teeth, election of temporary partial
32 disability, waiting period or other:

33 _____.

34 10. An overpayment is claimed in the amount of \$ _____. Overpayment was calculated as
35 follows: _____.

36 If overpayment claimed, a Form 28B is attached. yes no

1 IMPORTANT NOTICE TO EMPLOYEE CLAIMING ADDITIONAL WEEKLY CHECKS OR LUMP SUM
2 PAYMENTS

3 Once your compensation checks have been stopped, if you claim further compensation, you must notify the
4 Industrial Commission in writing within two years from the date of receipt of your last compensation check or your
5 rights to these benefits may be lost.

6
7 IMPORTANT NOTICE TO EMPLOYEE INJURED BEFORE JULY 5, 1994 CLAIMING ADDITIONAL
8 MEDICAL BENEFITS

9 If your injury occurred before July 5, 1994, you are entitled to medical compensation as long as it is reasonably
10 necessary, related to your workers' compensation case, and authorized by the carrier or the Industrial Commission.

11
12 IMPORTANT NOTICE TO EMPLOYEE INJURED ON OR AFTER JULY 5, 1994 CLAIMING ADDITIONAL
13 MEDICAL BENEFITS

14 If your injury occurred on or after July 5, 1994, your right to future medical compensation will depend on several
15 factors. Your right to payment of future medical compensation will terminate two years after your employer or
16 carrier/administrator last pays any medical compensation or other compensation, whichever occurs last. If you think
17 you will need future medical compensation, you must apply to the Industrial Commission in writing within two
18 years, or your right to these benefits may be lost. To apply you may also use Industrial Commission Form 18M.

19
20 IMPORTANT NOTICE TO EMPLOYER

21 The employee must be provided a copy when the agreement is signed by the employee. Failure to file Form 28B,
22 Report Of Compensation And Medical Compensation Paid, within 16 days after last payment pursuant to this
23 agreement may subject the employer or carrier/administrator to a penalty. Pursuant to Rule 501, within 20 days after
24 receipt of the agreement executed by the employee, the employer or carrier/administrator must submit the agreement
25 to the Industrial Commission, or show good cause for not submitting the agreement.

26
27 NEED ASSISTANCE?

28 If you have questions or need help and you do not have an attorney, you may contact the Industrial Commission at
29 (800) 688-8349.

30
31 Form 26A

32 1/2014

33
34 Self-Insured Employer or Carrier Mail to:

35 NCIC - Claims Administration

36 4335 Mail Service Center

37 Raleigh, North Carolina 27699-4335

1 Main Telephone: (919) 807-2500

2 Helpline: (800) 688-8349

3 Website: <http://www.ic.nc.gov/>

4

5 (b) A copy of the form described in Paragraph (a) of this Rule can be accessed at

6 <http://www.ic.nc.gov/forms/form26a.pdf>. The form may be reproduced only in the format available at

7 <http://www.ic.nc.gov/forms/form26a.pdf> and may not be altered or amended in any way.

8

9 *History Note: Authority G.S. 97-30; 97-31; 97-73; 97-80(a); 97-82;*

10 *Eff. April 1, 2014.*

1 Rule 04 NCAC 10L .0104 is adopted as published on the OAH website for the public comment period beginning
2 January 31 through February 26, 2014, with changes as follows:

3

4 **04 NCAC 10L .0104 FORM 36 – SUBPOENA**

5

6 (a) The parties to a claim shall use the following Form 36, *Subpoena*, to subpoena a person(s) to appear and testify
7 and/or produce documents for inspection before the Commission. The Form 36, *Subpoena*, shall read as follows:

8

9 STATE OF NORTH CAROLINA File No. _____

10 _____ County North Carolina Industrial Commission

11 _____

12 VERSUS

13 _____

14 SUBPOENA

15 G.S. 1A-1, Rule 45; G.S. 8-59; G.S. 97-80(e)

16 Party Requesting Subpoena

17 NCIC/State/Plaintiff Defendant

18 NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but
19 must be signed and issued by a Commissioner, Deputy Commissioner, or the Executive Secretary.

20 TO: Name and Address Of Person Subpoenaed _____

21 Alternate Address _____

22 Telephone No. _____

23 Alternate Telephone No. _____

24 YOU ARE COMMANDED TO: (check all that apply):

25 appear and testify, in the above entitled action, before the Industrial Commission at the place, date and time
26 indicated below.

27 appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.

28 produce and permit inspection and copying of the following items, at the place, date and time indicated below. (A
29 party shall not issue a subpoena duces tecum less than 30 days prior to the hearing date except upon prior approval
30 of the Commission. G.S. 97-80(e).)

31 See attached list. (List here if space sufficient)

32 _____

33 Location Of Hearing/Place Of Deposition/Place To Produce _____

34 Date To Appear/Produce _____

35 Time To Appear/Produce : _____ AM _____ PM

36 Name And Address Of Applicant Or Applicant's Attorney _____

37 Date _____

1 Signature of Official or Attorney
2 Deputy Commissioner Commissioner Executive Secretary Attorney

3 Telephone No. Of Applicant Or Applicant's Attorney

4 RETURN OF SERVICE

5 I certify this subpoena was received and served on the person subpoenaed as follows:

6 By

7 personal delivery.

8 registered or certified mail, receipt requested and attached.

9 service by Sheriff.

10 I was unable to serve this subpoena. Reason unable to serve:

11 Service Fee \$

12 Paid

13 Due

14 Date Served

15 Name Of Authorized Server (Type Or Print)

16 Signature of Authorized Server

17 Title

18 NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to
19 the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or
20 delivered to the party. This does not apply in criminal cases.

21 NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

22 (c) Protection of Persons Subject to Subpoena

23 (1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena
24 shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The
25 court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an
26 appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable
27 attorney's fees.

28 (2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of
29 public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose
30 of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal
31 appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery,
32 on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the
33 subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records
34 were made and kept in the regular course of business, or if no such records are in the custodian's custody, an
35 affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be
36 obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered
37 according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or

1 proceeding without further certification or authentication. Copies of hospital medical records tendered under this
2 subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings
3 and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing
4 contained herein shall be construed to waive the physician-patient privilege or to require any privileged
5 communication under law to be disclosed.

6 (3) Written objection to subpoena. - Subject to subsection (d) of this rule, a person commanded to appear at a
7 deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically
8 stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified
9 for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the
10 subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written
11 objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for
12 objecting to a subpoena:

13 a. The subpoena fails to allow reasonable time for compliance.

14 b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the
15 privilege or protection.

16 c. The subpoena subjects a person to an undue burden or expense.

17 d. The subpoena is otherwise unreasonable or oppressive.

18 e. The subpoena is procedurally defective.

19 (4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the
20 party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to
21 inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection
22 is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to
23 compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the
24 subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is
25 to occur.

26 (5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to
27 produce and permit the inspection and copying of records, books, papers, documents, electronically
28 stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified
29 for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The
30 court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons
31 set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial,
32 hearing, deposition, or production of materials is to occur.

33 (6) Order to compel; expenses to comply with subpoena. - When a court enters an order compelling a deposition or
34 the production of records, books, papers, documents, electronically stored information, or other tangible things, the
35 order shall protect any person who is not a party or an agent of a party from significant expense resulting from
36 complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be

1 reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored
2 information, or tangible things specified in the subpoena.

3 (7) Trade secrets; confidential information. - When a subpoena requires disclosure of a trade secret or other
4 confidential research, development, or commercial information, a court may, to protect a person subject to or
5 affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued
6 shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the
7 court may order a person to make an appearance or produce the materials only on specified conditions stated in the
8 order.

9 (8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may
10 order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable
11 expenses including attorney's fees.

12 (d) Duties in Responding to Subpoena

13 (1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically
14 stored information, or tangible things shall produce them as they are kept in the usual course of business or shall
15 organize and label them to correspond with the categories in the request.

16 (2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for
17 producing electronically stored information, the person responding must produce it in a form or forms in which it
18 ordinarily is maintained or in a reasonably useable form or forms.

19 (3) Electronically stored information in only one form. - The person responding need not produce the same
20 electronically stored information in more than one form.

21 (4) Inaccessible electronically stored information. - The person responding need not provide discovery of
22 electronically stored information from sources that the person identifies as not reasonably accessible because of
23 undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show
24 that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court
25 may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the
26 limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that
27 seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the
28 electronically stored information involved.

29 (5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject
30 to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with
31 specificity and shall be supported by a description of the nature of the communications, records, books, papers,
32 documents, electronically stored information, or other tangible things not produced, sufficient for the requesting
33 party to contest the objection.

34 INFORMATION FOR WITNESS

35 NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on
36 Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

37 DUTIES OF A WITNESS

- 1 • Unless otherwise directed by the presiding Deputy Commissioner or Commissioner, you must answer all
- 2 questions asked when you are on the stand giving testimony.
- 3 • In answering questions, speak clearly and loudly enough to be heard.
- 4 • Your answers to questions must be truthful.
- 5 • If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- 6 • You must continue to attend court until released by the court. You must continue to attend a deposition
- 7 until the deposition is completed.

8 **BRIBING OR THREATENING A WITNESS**

9 It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone

10 attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report

11 that to the presiding Deputy Commissioner or Commissioner.

12 **NOTE REGARDING RULE 45 ABOVE**

13 With respect to the provisions of Rule 45 cited above as they apply to this subpoena, the North Carolina Industrial

14 Commission is the “court” and the “court in the county.” All motions regarding this subpoena shall be filed with the

15 North Carolina Industrial Commission pursuant to 04 NCAC 10A .0609.

16

17 Form 36 (Rev. [4/14])

18

19 (b) The copy of the form described in Paragraph (a) of this Rule can be accessed at

20 <http://www.ic.nc.gov/forms/form36.pdf>. The form may be reproduced only in the format available at

21 <http://www.ic.nc.gov/forms/form36.pdf> and may not be altered or amended in any way.

22

23 *History Note: Authority G.S. 1A-1, Rule 45; 8-59; 97-80(a),(e);*

24 *Eff. April 1, 2014.*