STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WORKERS' COMPENSATION COURT

RULES OF PRACTICE

GEORGE E. HEALY, JR.

CHIEF JUDGE

WORKERS' COMPENSATION COURT

RULES OF PRACTICE

INDEX

I. GENERAL RULES

II. TRIAL

III. RECORDS

Page

IV. APPEALS

Page

V. PRO HAC VICE

VI. RULES OF PROCEDURE OF THE MEDICAL ADVISORY BOARD

WORKERS' COMPENSATION COURT

RULES OF PRACTICE

I. GENERAL RULES

1.1. ADOPTION OF RULES – APPLICATION. -- The provisions contained in these Rules of Practice shall take effect when approved by the Rhode Island Supreme Court, and shall be cited as W.C.C. – R.P. These rules shall be applicable to all matters pending on the day of approval and such matters as may be filed with the court thereafter.

Reporter's Notes. The Workers' Compensation Court Rules of Practice have been revised on several occasions to address statutory changes which have required rule revisions. The most recent amendments to the Rules of Practice were approved by the Rhode Island Supreme Court and became effective on April 2, 2013. With the implementation of a new case management system and mandatory electronic filing, the Rules of Practice were amended, approved by the Rhode Island Supreme Court, and became effective on March 1, 2014 and amended on October 6, 2014.

1.2. POWERS OF ADMINISTRATIVE JUDGE. -- Notwithstanding anything in these Rules of Practice to the contrary, the chief judge of the Workers' Compensation Court as the administrative judge, by virtue of Chapters 29 through 38 and Chapter 47 of Title 28 of the General Laws, as amended, shall continue to have and exercise the powers therein given.

1.3. MANDATORY ELECTRONIC FILING. -- In accordance with Art. X of the Rhode Island Supreme Court Rules Governing Electronic Filing, electronic filing is mandatory for cases in the Workers' Compensation Court using the Rhode Island Judiciary's (Judiciary) Electronic Filing System. All parties are required to use the Judiciary's Electronic Filing System except for incarcerated individuals or where a waiver is granted in accordance with Art. X, Rule 3(c). Self-represented litigants may electronically file documents in accordance with Art. X, Rule 3(b) but are not required to do so. The Workers' Compensation Court Rules of Practice must be read in conjunction with Art. X, the Rhode Island Judiciary Rules of Practice Governing Public Access to Electronic Case Information, and the Rhode Island Judiciary User Guide for Electronic Filing.

1.4. DEFINITIONS. -- For further definitions, see Art. X, Rule 1(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing.

(A) Case Initiating Document(s). The first document(s) filed in a case.

(B) Certificate of Service. Where the Workers' Compensation Court Rules of Practice require service of a document to be certified by an attorney of record or an unrepresented party, the following certification shall be used:

CERTIFICATE OF SERVICE

I hereby certify that, on the _____ day of _____, _____:

☐ I filed and served this document through the electronic filing system on the following parties: _____.
The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I served this document through the electronic filing system on the following parties: _____.
The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I mailed or ☐ hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is _____ at the following address _____.

/s/ NAME_____

(C) Civil Case Cover Sheet. A civil case cover sheet shall be filed with any Case Initiating Document(s). The document shall capture identifying information regarding the parties in a case to ensure proper identification within the Judiciary's case management system (CMS), which is party driven. Once the information is entered into the CMS by the court, the document shall be sealed by the court and it shall not be available to the parties or the public due to the identifying information contained therein. The most current version of the Civil Case Cover Sheet is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Workers' Compensation Court.

(D) Electronic Filing System (EFS). An approved Judiciary-wide system for the filing and service of pleadings, motions and other documents or information via electronic means such as the Internet, a court-authorized remote service provider or through other remote means to and from the Judiciary's CMS.

(E) Filing. Where the Workers' Compensation Court Rules of Practice require a document to be filed, filing shall mean electronic filing using the EFS unless stated otherwise.

(F) Notice. Where the Workers' Compensation Court Rules of Practice require notice to be given, notice shall mean electronic notice using the EFS unless stated otherwise.

(G) Registered User. An individual or entity with an assigned username and password authorized by the Judiciary to access and utilize the EFS.

(H) Service. Where the Workers' Compensation Court Rules of Practice require a document or information to be served, sent, delivered, or forwarded, the following shall be applicable: (1) Subpoenas, petitions, or other documents that must be hand-delivered or delivered in person cannot be electronically served; and (2) All other service or notice within a case shall be electronic using the EFS unless stated otherwise.

(I) Signature. Where the Workers' Compensation Court Rules of Practice require an electronic signature on any document, the signature shall be reflected as /s/ NAME unless stated otherwise.

1.5. SERVICE OF PETITION. -- Upon the filing of a petition, the court shall issue a notice of pretrial conference to the petitioner or her/his attorney of record stating the name of the judge assigned to hear the matter and the date and time of the pretrial conference. Effective October 1, 2013, in accordance with G.L. 1956 §§ 28-35-14 and 28-35-15, the petitioner shall mail a copy of the petition and a copy of the notice of pretrial conference to the respondent, the insurance carrier and/or third party administrator, and the agent for service (if applicable), within ten (10) days of filing the petition.

Contemporaneous with the service of the documents referenced above, the petitioner must file with the court an executed certificate of service, utilizing the form promulgated by the court.

1.6. LANGUAGE ASSISTANCE NOTICE. -- In an effort to provide language assistance to limited English proficient persons, service of Case Initiating Document(s) shall include the Language Assistance Notice which informs the recipient of the right to a foreign language interpreter at no cost and contains instructions about how to obtain language assistance services. The most current version of the Language Assistance Notice is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Workers' Compensation Court.

1.7. ELECTRONIC FILING OF DOCUMENTS. When using the EFS:

(A) All Case Initiating Document(s), including any required documents, attachments, or exhibits, shall be submitted individually as separate files within the same initial submission or filing;

(B) All subsequent pleadings, motions, and other papers, shall be submitted individually with related documents submitted as separate files within the same submission or filing (for example, a motion and memorandum or other supporting attachments or exhibits filed in support of a motion); and

(C) Categories of items such as bills, receipts, invoices, photographs, etc. may be submitted in one attachment or exhibit.

For specific requirements, see the Workers' Compensation Court's Electronic Filing System Guidelines.

1.8. CLERK REVIEW; ACCEPTANCE/REJECTION PROCEDURE. -- Following submission, the clerk shall timely review the electronically filed document(s) and shall notify the filing party as to whether the filing is accepted or rejected. Upon acceptance, the submitted document(s) shall be entered into the docket of the case and the docket shall reflect the date and time of filing as set forth in Art. X, Rule 5(b) of the Rhode Island Supreme Court Rules Governing Electronic Filing. In accordance with Art. X, Rule 5(c) of the Rhode Island Supreme Court Rules Governing Electronic Filing, grounds for the rejection of a document submitted to the EFS in the Workers' Compensation Court are limited in scope as follows:

(A) Petitions filed without a signature;

(B) Petitions filed without the required attachments as set forth in these rules;

(C) Petitions filed without the Secretary of State verification of proper corporate name; and/or

(D) Petitions filed without the proper proof of insurance coverage from the Department of Labor and Training.

If rejected, the filing will not be docketed and notice will be sent to the Registered User indicating why the document(s) was returned. The rejection notice shall identify the basis for the rejection in accordance with the rules of the court. A rejected filing shall be promptly corrected and resubmitted and shall be deemed to have been submitted and filed on the initial filing date for purposes of any statutory or rule-based deadline.

1.9. AGREEMENTS AND STIPULATIONS. -- All agreements and stipulations of the parties, except those made orally on the record during the course of a hearing before a stenographer, shall be reduced to writing and properly captioned with the cause of action to which the same relates. A stipulation withdrawing a petition or a claim for trial shall be signed by all counsel of record and filed with the court, except as otherwise provided in W.C.C. – R.P. 2.23. All other agreements and stipulations, in order to be binding, must be dated and signed by counsel of record and filed with the court. If an agreement or stipulation is entered by a judge of the court, it will be deemed to have the same force and effect as an order of the court. The court, on its own motion or on the motion of any party, may strike any agreement or stipulation for just cause.

Reporter's Notes. This rule substantially reflects the present practice in effect before the Workers' Compensation Court. It should be noted that a stipulation withdrawing a petition or a claim for trial following the entry of a pretrial order must be signed by all counsel of record. While Chaves v. Robert E. Derecktor of Rhode Island, Inc., 569 A.2d

1063 (R.I. 1990), indicates that a claim for trial may be unilaterally withdrawn, this rule recognizes that a withdrawal prior to the entry of a final decree may constitute a successful defense of a petition on behalf of an employee which would require an award of costs, counsel fees, and witness fees pursuant to G.L. 1956 § 28-35-32.

1.10. WITHDRAWAL OF ATTORNEYS. -- No attorney appearing in any case will be allowed to withdraw without the consent of the court, except where another attorney enters an appearance at the time of such withdrawal. All other withdrawals shall be upon motion with reasonable notice to the party represented. No such motion shall be granted unless the attorney who seeks to withdraw shall file with the clerk the last known address of her/his client, or the client files her/his address, and in either situation the address which is filed shall be the official address to which notices may be sent. A motion for withdrawal shall be accompanied by an affidavit setting forth facts showing the military status of the client, or by a written statement of the client consenting to such withdrawal. No motion to withdraw an appearance will be granted if it appears that the client is in the military service of the United States, as defined in the Servicemembers Civil Relief Act (50 U.S.C.A. App. § 501, et seq.), and any amendments thereto, unless the client consents thereto in writing, or another attorney enters as counsel of record at the time of such withdrawal.

1.11. RELIEF FROM ERROR IN DECREES OR ORDERS – CLERICAL MISTAKES. -- Clerical mistakes in decisions, decrees, orders, or other parts of the record, and errors therein arising from oversight or omission, may be corrected by the judge at any time on the judge's own initiative or on the motion of any party filed before the decree is entered, and after such notice, if any, as the judge orders.

Reporter's Notes. This rule is self-explanatory and modeled after Rule 60(A) of the Superior Court Rules of Civil Procedure. It also recognizes the procedure outlined in W.C.C. – R.P. 2.20 which provides that all parties will be provided seventy-two (72) hours' notice before a decree may be entered. It is anticipated that all clerical errors will be recognized and brought to the attention of the court prior to the time any proposed order or decree is entered. This rule also anticipates that errors which are brought to light following the entry of the decree may be corrected by the judge who entered the original decree if it involves a clerical error, and in all other situations, would be subject to review by the Appellate Division of the Workers' Compensation Court.

II. TRIAL

2.1. CALENDAR. -- (A) The chief judge shall designate a pretrial calendar as necessary to expedite the disposition of cases as outlined in G.L. 1956 § 28-35-20(a). All cases filed with the court, excluding (1) appeals from the Department of Labor and Training, (2) appeals from the Medical Advisory Board, (3) requests for anniversary reviews, (4) petitions for settlement

pursuant to G.L. 1956 §§ 28-33-25 and 28-33-25.1, and (5) petitions to determine a controversy involving disputes under the coverage provisions of an insurance policy filed pursuant to G.L. 1956 § 28-30-13, shall be assigned to pretrial conference by the court and placed on the pretrial calendar for a day certain on or before the twenty-first (21st) day from said filing. The court shall notify the petitioner of the date of said assignment.

(B) In the event that a petition is withdrawn without prejudice by stipulation or dismissed without prejudice by the court, said petition shall be referred back to the judge previously assigned to hear the matter if the petition is filed again within one (1) year of the withdrawal or dismissal.

Reporter's Notes. This rule recognizes the expanded jurisdiction of the court following the 1992 Workers' Compensation Reform Legislation (P.L. 1992, Ch. 31). The court is now required to review the decisions of the Medical Advisory Board regarding the discipline of health care providers under G.L. 1956 § 28-30-22(e) and the determinations of the Department of Labor and Training relating to employers' failure to maintain insurance coverage. In such situations, the court's review is focused on the record of the proceedings before the administrative body and a pretrial conference under those circumstances would appear superfluous.

The elimination of the pretrial conference in cases where the court is requested to conduct an anniversary review pursuant to the provisions of G.L. 1956 § 28-33-46 also reflects a practical approach to the statute. Since the anniversary review anticipates the compilation of numerous medical records prior to action by the court, the twenty-one (21) day pretrial conference would be counterproductive.

The provision in this rule that petitions for settlement filed under G.L. 1956 § 28-33-25 need not be assigned for pretrial conference is in compliance with long-standing practice and also recognizes the basic purpose of G.L. 1956 § 28-35-20. Since petitions for settlement are not adversarial, there should be no issues in dispute and, therefore, no necessity for a pretrial conference or pretrial order.

The most recent amendment to this rule reflects the long-standing practice of the court which was implemented to prevent a petitioner from accepting a dismissal without prejudice in order to shift the matter in dispute to another judge of the court.

2.2. HEARING. -- When reached, the judge to whom the pretrial conference has been assigned shall conduct the pretrial conference in conformance with G.L. 1956 § 28-35-20(c).

2.3. PRETRIAL CONFERENCE – FAILURE TO APPEAR. -- (A) In the event that a party, after proper notice, fails to appear at the pretrial conference, the judge before whom the matter is being heard may, in her/his discretion, enter a pretrial order granting, denying, or dismissing the

petition. Dismissals may be with or without prejudice. Any pretrial order so entered shall contain a finding that the absent party, with due notice, failed to appear.

(B) Relief from Pretrial Order. -- After a pretrial order has been entered by the judge following a party's failure to appear, the judge may, on motion and upon such terms as are just, relieve a party from any order which has been entered pursuant to G.L. 1956 § 28-35-20 for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud, misrepresentation, or other misconduct of an adverse party; (3) the pretrial order is void; (4) the orders have been previously satisfied, released, or discharged; or (5) any other reason justifying relief from operation of the pretrial order. The motion shall be filed within a reasonable time and not more than six (6) months after the date on which the pretrial order was entered. A motion under this rule does not affect the finality of the pretrial order or suspend its operation.

Reporter's Notes. This rule varies substantially from the practice in other courts and acknowledges the requirements imposed by G.L. 1956 § 28-35-20 on the court with reference to the pretrial conference. It also recognizes that in proceedings before the Workers' Compensation Court, service of process on the respondent is effectuated by the moving party. (*See* G.L. 1956 §§ 28-35-14, 28-35-15, and 28-35-17.) In those cases where a party fails to appear, the court may, in its discretion, allow the appearing party to proceed and may thereafter enter an order adverse to the absent party.

W.C.C. - R.P. 2.3(B) is modeled after Rule 60(b) of the Superior Court Rules of Civil Procedure, but limits the time within which to file a motion seeking relief from a pretrial order to a period not to exceed six (6) months from the date the pretrial order was entered. Since an unappealed pretrial order ripens into a decree under the provisions of G.L. 1956 § 28-35-20, review of such a decree alleging fraud is governed by G.L. 1956 § 28-35-61, which requires that any petition alleging that a decree has been procured by fraud must be filed within six (6) months of the date such decree was entered. This rule is therefore modified to reflect that statutory time constraint.

2.4. INITIAL HEARING. -- In all matters in which a claim for trial has been filed following the entry of a pretrial order, the court may conduct an initial hearing in order to reduce the issues in dispute and to arrange a trial and briefing schedule.

No oral testimony shall be taken at the initial hearing, however, the hearing may be on the record at the discretion of the trial judge and all agreements made shall be binding. Documentary evidence, including depositions, medical affidavits, and Non-conforming Documents pursuant to Art. X, Rule 4(b) of the Rhode Island Supreme Court Rules Governing Electronic Filing, which the parties intend to introduce at trial shall be identified or submitted to the court. All motions to compel production filed by either party in accordance with W.C.C. - R.P. 2.17 shall be heard on the record or resolved by stipulation, at the discretion of the trial judge, at the time of the initial hearing. The trial judge shall rule on any objections to the production of documents at the initial hearing. If there are any subsequent requests for production or objections raised during the course of the trial, such requests shall be heard at a

time scheduled by the trial judge. The parties shall identify any witnesses whom they intend to testify before the court and provide three (3) dates upon which each witness is available to testify. The parties shall, at the request of the trial judge, designate trial counsel.

The initial hearing shall not be waived without leave of the trial judge. In the event that a party fails to appear at the initial hearing, the trial judge may enter orders adverse to the party so failing to appear and/or impose other sanctions deemed appropriate.

Reporter's Notes. This rule is intended to assist the court and counsel in scheduling trial calendars. G.L. 1956 § 28-35-17(b) mandates that following a claim for trial, the court shall schedule an initial hearing within thirty (30) days of the date the claim for trial is filed. The decision to utilize the initial hearing is left to the discretion of the trial judge but, in those cases where the initial hearing is held, this rule sets forth the procedure to be utilized. Since counsel are expected to identify or present affidavits and other documentary evidence at the time of the initial hearing, it is anticipated that motions for protective orders filed pursuant to W.C.C. – R.P. 2.13(B)(3) will be filed and heard at the time of the initial hearing. The most recent amendments to this rule address discovery practices which have emerged in the court and allows the trial judge to expedite the discovery process and move the matter to trial as soon as practicable.

2.5. DOCKETING. -- All cases shall be docketed and numbered consecutively by year.

2.6. TRIAL DATES. -- Cases shall be assigned for trial on any day, Monday through Friday, of each week of the year; except that no cases shall be assigned on a legal holiday or such other days as the court shall set.

2.7. CONTINUANCE. -- All motions for continuances shall be granted or denied in the discretion of the judge assigned to hear the case. The judge shall give due regard to the policy of the court to provide prompt and speedy trials. No continuance will be granted without good cause.

2.8. CONTINUED CASE STATUS. -- All attorneys having a continued matter scheduled for hearing between 8:30 a.m. and 12:30 p.m. shall present themselves between 8:30 a.m. and 10:00 a.m. on the day assigned for hearing and apprise the judge and/or the judge's clerk as to the status of the particular matter before the judge on that day. All attorneys having a matter scheduled for hearing between 2:00 p.m. and 4:30 p.m. shall present themselves no later than 1:30 p.m. on the day assigned for hearing to apprise the judge and/or the judge's clerk as to the status of the matter.

2.9. EXCUSAL OF ATTORNEY. -- No attorney shall be excused from attendance at the Court except upon application to the Chief Judge, or her/his designee, and such excuse from attendance shall be granted on such terms and conditions as the court may deem proper. All motions to be excused shall:

(1) List the file number, caption and trial judge of every case assigned during the period for which the excuse is sought and the name of the attorney of record for each of the adverse parties; and

(2) Contain a certification that the attorney requesting the excusal has notified all attorneys of record, or parties if not represented, in all pending cases assigned during the requested period of excusal at least forty-eight (48) hours prior to the filing of the request for excusal and has not received any notice of an objection from any party.

Said motion, if granted, will not result in a continuance unless counsel of record has been notified as provided above. All requests for excusal shall be submitted no later than fifteen (15) days prior to the commencement of the period for which excusal is sought.

An attorney of record for an adverse party who objects to the motion to be excused shall file an objection with the chief judge, or her/his designee, immediately upon receipt of said motion. The chief judge, or her/his designee, shall conduct a hearing on the objection.

In case of the sudden illness of an attorney, or the attorney's absence from a hearing for some other imperative and unforeseen cause, a judge shall take such action, without notice, as shall appear reasonable under the circumstances.

Reporter's Notes. This rule was amended to ensure that all judges and opposing parties involved in any matter scheduled for hearing during the excusal period are made aware of the request for excusal. The rule also provides a mechanism for an opposing party to object to a request for excusal.

2.10. EXAMINATION AND CROSS-EXAMINATION. -- The examination and cross-examination of any witness shall be conducted by only one (1) attorney for each party. The attorney shall stand while so examining or cross-examining, and while addressing the judge, unless, for satisfactory reasons, the judge presiding at the trial shall suspend this rule in a particular case.

2.11. SUBPOENA FOR ATTENDANCE OF WITNESSES - FORMS - ISSUANCE. – (A) Every subpoena shall be issued either by the court, a notary public, any officer authorized by statute, or the attorney of record. It shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified, and/or it may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court may, upon

motion made promptly, and in any event, at or before the time specified in the subpoena for compliance therewith, quash or modify the subpoena if it is unreasonable and/or unduly burdensome.

(B) Proof of service when necessary shall be made by filing with the court a statement of the date and manner of service and the names of the persons served, certified by the person who made the service.

2.12. SERVICE OF SUBPOENA. -- A subpoena may be served by a sheriff, a deputy, or any other disinterested person over the age of eighteen (18) years. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and rendering to them the fees for one (1) day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the State or an officer or agency thereof, fees and mileage need not be tendered. A subpoena may be served at any place within the State.

2.13. DEPOSITIONS IN PENDING ACTIONS. -- (A)(1) Any party may take the testimony of any person, including a party, by deposition upon oral examination for the purpose of discovery or use as evidence in the trial of the action. The deposition may be taken without leave of the court provided that notice is given to the opposing party no less than seven (7) days prior to the taking of the deposition, or if the parties agree to the taking of the deposition, upon shorter notice. The attendance of a deponent may be compelled by the use of a subpoena. The deposition of a person confined in prison may be taken only by leave of the court on such terms as the court prescribes.

(2) In the event that a party issues a notice of deposition of an expert witness and indicates in said notice that the deposition is to be taken for use at trial, the failure of a party or their attorney to appear at the deposition after proper notice shall be deemed a waiver of the right to examine or cross-examine the deponent and shall be deemed a waiver of the right to object to the admissibility of the deposition transcript at trial.

(3) Objections made during a deposition which is introduced into evidence at trial shall be deemed waived unless the objecting party requests a ruling by the trial judge on a specific objection prior to the admission of the deposition into evidence.

(B) Orders for the Protection of Parties and Deponents. -- (1) Objections to the taking of a deposition and motions for protective orders must be filed at least forty-eight (48) hours prior to the scheduled time of the deposition.

(2) After notice is served for taking a deposition by oral examination, upon motion or objection timely filed by any party or by the person to be examined, and upon notice and for good cause shown, the court may make an order that the deposition shall not be taken, or that it may be taken only at some designated time or place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall

be held with no one present except the parties to the action and their officers or counsel, or that the deposition be sealed and opened only by order of the court or such other conditions as the court deems appropriate.

(3) The court may, in its discretion, upon motion after notice is given of the intention to submit medical evidence by affidavit pursuant to G.L. 1956 § 9-19-27, require the party seeking to take the deposition of the expert witness or other party to pay the costs incurred in the taking of the deposition including a reasonable expert witness fee or such other conditions as the court deems appropriate.

(4) The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

Reporter's Notes. This rule recognizes prior practice before the court and the strong reliance of the court and the litigants on the use of the deposition to present the testimony of expert witnesses. The rule has been modified somewhat in order to standardize the practice in those cases where a party is seeking to take the deposition of an expert witness for use as evidence. W.C.C. – R.P. 2.13(A)(2) requires the party taking the deposition to state in the notice of deposition that the testimony is being taken for use at trial. When such notice is given, the burden shifts to the adverse party to appear at the deposition and voice any objections to the admission of the deposition as evidence. In the event that a party fails to appear or fails to voice any objection, s/he shall be deemed to have waived any objection to the admission of the deposition on the grounds of hearsay.

W.C.C. - R.P. 2.13(A)(3) establishes a standardized procedure to address evidentiary objections made during the deposition of a witness. Such objections are deemed waived unless the objecting party requests a ruling from the trial judge prior to the deposition being admitted into evidence.

W.C.C. – R.P. 2.13(B)(3) addresses the ruling of the Rhode Island Supreme Court in Gerstein v. Scotti, 626 A.2d 236 (R.I. 1993), with reference to the payment of an expert witness fee. While the rule still requires the proponent of an affidavit to pay the fees charged by the expert witness for the first hour of cross-examination in most cases, it also recognizes the economic disparity which may exist between the employer and employee in workers' compensation litigation. This rule allows a party offering an affidavit to seek a protective order where the exercise of the right of cross-examination could result in the exclusion of the affidavit due to the inability of a party to pay the expert witness fee in advance. It is anticipated that in ruling on a motion for a protective order filed under this section, the court will assess and attempt to balance the interests of all parties utilizing the guidelines enunciated by the Rhode Island Supreme Court in Martinez v. Kurdziel, 612 A.2d 669 (R.I. 1992). This procedure also allows the court to shift the expenses of cross-examination in those cases where it is determined that a party's exercise of the right will prove unduly burdensome to the other party. Finally, this rule recognizes the unique situation which arises in workers' compensation cases under the provisions of G.L. 1956 § 28-35-32. This statute requires that the employer shall pay costs, counsel fees, and witness

fees to an employee who is successful in prosecuting or defending a petition before the court. Since the employee may ultimately be entitled to recoup expert witness fees where a case is successfully prosecuted or defended, the shifting of these costs prior to that time where justice so requires does not seem particularly onerous.
The rule was amended by deleting reference to the costs of cross-examining an impartial medical examiner appointed by the court in order to make it consistent with the language of G.L. 1956 § 28-33-35(b) which states that the party contesting the impartial medical examiner's findings shall bear the cost of the appearance of the examiner.

2.14. DEFAULT - REFUSAL TO MAKE DISCOVERY - CONSEQUENCES. -- (A) If a party, or an officer or managing agent of a party, without good cause, fails to appear for his or her deposition after being served with proper notice, the trial judge, on motion, may make such orders in regard to the failure as are just, including but not limited to: (1) dismissing the petition or entering orders adverse to that party, or (2) requiring the party to submit to her/his deposition at a time and place set by the trial judge, and to pay the reasonable expenses incurred in reconvening the deposition, including reasonable attorneys' fees.

(B) If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, the proponent may apply to the trial judge for an order compelling an answer. If said motion is granted, the trial judge shall order the party to submit to further examination under such circumstances as deemed just.

2.15. ARGUMENT. -- Argument at the conclusion of the testimony in any hearing may be requested by either party, and if granted, shall be limited at the discretion of the trial judge. When more than one attorney is to be heard on the same side, the time may be divided between them as they may elect. The trial judge may request proposed findings of fact from the parties.

2.16. AMENDMENT OF PLEADINGS. -- The trial judge shall, in her/his discretion, allow amendments to any of the pleadings in a case at any time prior to the rendering of a decision.

2.17. MOTIONS. -- All motions, except motions to amend the pleadings, shall be in writing and filed with the court, and heard at the discretion of the trial judge. The moving party shall promptly deliver a copy of the motion and notice of hearing to the opposing party.

2.18. NOTICE OF FILING. -- When an attorney enters her or his appearance on behalf of a party to a pending action, all subsequent petitions involving the same parties or the same matter in controversy shall be served on all counsel of record by the attorney filing the subsequent petition or petitions, so long as there is litigation between the parties pending before the court.

2.19. NOTICE OF DECISIONS. -- In any matter heard and decided by the court, the court shall forward to all attorneys of record and any unrepresented parties a copy of the decision and proposed decree or, in the event that the trial judge renders a bench decision, a notice of decision and copy of the proposed decree.

2.20. DECREES. -- The court shall prepare an appropriate decree and a copy thereof, and present the same for entry within the time provided by law. A copy of the proposed decree shall be sent to the attorneys of record and any unrepresented parties at least seventy-two (72) hours prior to entry thereof, and an appropriate certificate to that effect shall appear on the decree presented for entry.

2.21. TESTIMONY. -- The testimony of all parties and witnesses before a judge shall be given under oath or affirmation and governed by the Rhode Island Rules of Evidence except as modified by these Rules.

2.22. PETITIONS. -- (A) All petitions to review, petitions to enforce, and petitions to adjudge in contempt, shall be accompanied by a legible copy of the appropriate agreement, order, and/or decree sought to be reviewed or enforced. The court shall not accept any petition which is not filed in accordance with this rule. In the event any such petition is accepted by the court, it shall be subject to being dismissed without prejudice for failure to be in proper form.

(B) All petitions seeking payment of bills for medical services rendered shall be accompanied by a legible copy of the bill, the report upon which the bill for services is based and, if liability has been established, a legible copy of the agreement, order, and/or decree sought to be reviewed. All such petitions shall also be accompanied by an affidavit of a treating or consulting doctor that the service provided was necessary to cure, rehabilitate or relieve the person to whom the service was rendered of the effects of the injury set forth in the agreement, order, and/or decree under review. The court shall not accept any petition which is not filed in accordance with this rule. In the event any such petition is accepted by the court, it shall be subject to dismissal without prejudice for failure to be in proper form.

2.23. DISMISSAL/WITHDRAWAL OF ACTIONS. -- (A) Voluntary Discontinuance – Effect Thereof. -- (1) By Stipulation. -- A proceeding may be discontinued by a party without order of the court by: (a) filing a stipulation at any time before the adverse party has filed an answer or entry of appearance, or (b) filing a stipulation signed by all parties who have appeared in the proceeding.

(2) By Order of the Court. -- Except as provided in paragraph (1) of this section, a proceeding shall not be discontinued, nor a claim for trial withdrawn, at a party's insistence save upon order of the court after hearing, and upon such terms and conditions as the court deems proper. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(B) Involuntary Dismissal – Effect Thereof. -- (1) By the Court. -- The court may, in its discretion, dismiss any proceeding for lack of prosecution on its own motion.

(2) On Motion of the Respondent. -- On motion of the respondent, the court may, in its discretion, dismiss any action for lack of prosecution as provided in paragraph (B)(1) above.

(3) Effect. -- Unless the court in its order for dismissal otherwise specifies, a dismissal under paragraphs (B)(1) and (2) shall be with prejudice.

2.24. REPORTS OF COURTAPPOINTED IMPARTIAL MEDICAL EXAMINERS. -- The report of the findings of a court appointed impartial medical examiner and/or a comprehensive independent health care review team shall be admissible as an exhibit of the court. The court shall provide copies of the report to the parties or their attorneys upon receipt. If a party elects to contest the findings of the report, notice of contest must be filed with the court within ten (10) days of receipt of the report. A notice of deposition to depose the impartial medical examiner, a subpoena issued to the examiner to appear in court at the next scheduled hearing, or a notice of objection signed by the contesting party and filed with the court, shall constitute a notice of contest as required by G.L. 1956 § 28-33-35 if filed with the court within ten (10) days of receipt of the report. The contesting party shall pay the cost of the deposition of the examiner, including any reasonable fee to the examiner, or the cost of the appearance of the examiner to testify before the court. If after hearing, the employee has successfully prosecuted her/his petition or has successfully defended, in whole or in part, any employer's petition, the employer shall reimburse the employee for the entire cost of the deposition or testimony of the author of the report, including any expert witness fee.

Reporter's Notes. This rule reconciles several different statutory provisions regarding the appointment and use of the impartial medical examiner. The appointment of an impartial medical examiner to examine an employee and to provide advice on the employee's medical status can occur at several points in a workers' compensation case. The court is authorized to order an impartial medical examination pursuant to G.L. 1956 §§ 28-34-5, 28-35-22, and 28-35-24. While most of these provisions are silent regarding the procedure to be followed to preserve a party's right of cross-examination of the author of the report, G.L. 1956 § 28-33-35 imposes a duty on any party contesting the report of the impartial examiner to file a "Notice of Contest" within ten (10) days of the receipt of the report.

The rule promulgated by the court recognizes the value of adopting a uniform procedure to ensure a party's right of cross-examination and applies the rule to all situations where an impartial examination is held. The rule also liberally interprets the term "Notice of Contest" to include any document or pleading designed to apprise a party and the court that the objecting party intends to preserve the right to cross-examine the author of the report.

The rule has been amended to delete reference to the procedure set forth in W.C.C. - R.P. 2.13(B)(3) regarding shifting the costs of deposing expert witnesses in order to be consistent

with the language of G.L. 1956 § 28-33-35 which states that the party contesting the findings of the impartial medical examiner shall pay the cost of the appearance of the examiner.

2.25. AFFIDAVIT OF THE TREATING PHYSICIAN. -- The affidavit of the treating physician shall be admissible as an exhibit of the court, with or without the appearance of the affiant, if presented in accordance with the provisions of G.L. 1956 §§ 9-19-27 and 9-19-39 and filed with the court ten (10) days prior to the date of the hearing. Both parties retain the right to examine or cross-examine the physician by deposition or in court, subject to the procedure set forth in W.C.C. – R.P. 2.13(B)(3).

2.26. SETTLEMENTS. -- (A) PROCEDURE FOR LUMP SUM SETTLEMENT OR STRUCTURED-TYPE PAYMENT. -- (1) Every petition for approval of a lump sum settlement or structured-type payment shall set forth the pertinent facts, including but not limited to, the date of the injury, a description of all injuries, the periods of incapacity totaling at least six (6) months, the settlement amount, the amounts of any liens, the amount of any Medicare set-aside, any settlement structure, and whether the medicals will be left open.

(2) The following documents shall be attached to the petition at the time of filing, and the court shall not accept any petition for filing unless accompanied by all necessary documents:

(a) Legible copies of all agreements, orders, and decrees establishing liability for the injury or injuries, the weekly compensation rate, the periods and degree of incapacity, and the receipt of specific compensation.

(b) A statement, dated within thirty (30) days of the date of the filing of the petition, on the letterhead of and signed by the physician who is currently treating the employee for the injury for which the employee is receiving compensation, describing the employee's present medical condition and ability to return to the workforce as it relates to the work-related injury; or in the event that the employee is no longer treating, the medical report of the employee's last date of treatment, describing the employee's medical condition and ability to return to the workforce as it relates to the work-related injury accompanied by an affidavit signed by the employee or her/his attorney attesting that the employee is no longer treating.

(c) A copy of correspondence notifying the employer, as distinguished from the insurer, of the details of the proposed settlement, and of its right to be heard thereon. Failure of the employer to appear at the hearing following receipt of sufficient notice shall be deemed a waiver of the employer's right to be heard.

(d) A copy of correspondence notifying the employer, as distinguished from the insurer, of the potential effect of the proposed settlement on its workers' compensation insurance premium.

(e) The report from the most recent impartial medical examination performed at the direction of the Medical Advisory Board and/or the court.

(f) A statement listing all health care providers known to the parties who have provided any services to the employee and a list of balances owed for treatment.

(g) The parties shall agree to and submit a joint proposed order and final decree. If the parties are unable to agree on a joint proposed order, the parties may set the matter for hearing before the judge.

(3) Any dispute as to the reasonableness of any charge for medical services shall be brought to the attention of the judge hearing the petition who may, in her/his discretion (a) conduct a hearing pursuant to G.L. 1956 § 28-35-20 et seq., to address the charges in dispute; (b) continue the hearing on the petition for settlement until the dispute is resolved; or (c) dismiss the petition for settlement without prejudice.

(4) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the judge that the payment of a lump sum or structured-type payment in lieu of future weekly payments will be in the best interest of the parties, including the employee, employer, and insurance carrier.

(5) The judge shall determine the fees and costs of the employee's attorney in accordance with G.L. 1956 § 28-33-25, which shall be set forth in the order and decree.

(6) If the judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the judge shall enter an order so finding and directing that the lump sum shall be paid within fourteen (14) days of the entry of the order. The judge shall schedule a hearing date for the entry of a final decree following entry of the order. In the case of a structured-type settlement, payment shall commence in accordance with the terms of the settlement agreement.

(7) On the date and time set by the judge, the parties shall appear and submit a final decree for entry by the court. The decree shall contain an agreement signed by all counsel that all payments ordered at the time of the approval of the settlement have been made and that all health care expenses incurred in the care and treatment of the employee's work-related injuries which are the subject of the settlement have been paid.

(8) Any pending petitions regarding the work-related injury which is the subject of the settlement must be withdrawn or otherwise resolved prior to the entry of the order approving the settlement.

(9) Petitions seeking approval of settlements with open medicals must be filed utilizing the forms promulgated by the court.

(10) Petitions for settlement with open medicals shall be heard no sooner than one (1) week after the petition is filed with the court.

Reporter's Notes. The amendment to this rule recognizes recent changes in the Medicare Rules and Regulations that may require an employee to set aside a certain portion of the settlement proceeds to satisfy any potential obligation to Medicare for medical expenses for treatment of the work-related injury. The rule also addresses settlements in which the employer/insurer remains liable for future medical expenses for treatment of the work-related injury.

(B) PROCEDURE FOR SETTLEMENT OF DISPUTED CASES. -- (1) Every petition for approval of a settlement of a disputed claim pursuant to G.L. 1956 § 28-33-25.1 shall set forth the pertinent facts of the case, the amount of the proposed settlement, including the net amount to be realized by the employee, and, if applicable, the amount of any liens, the amount of any Medicare set-aside, and any settlement structure.

(2) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the judge that the settlement proposal is in the best interest of the parties, including the employee, employer, and insurance carrier.

(3) If the judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the judge shall enter an order granting the settlement and enter a decree denying and dismissing the petition with prejudice.

(4) The parties shall agree to and submit a joint proposed order and decree. If the parties are unable to agree to a joint proposed order, the parties may set the matter for hearing before the judge.

In all settlement proceedings, the parties shall use forms, pleadings, and settlement documents promulgated by the court when such forms exist.

Reporter's Notes. This rule is designed to standardize the practice of the court regarding petitions for approval of settlement. The 1992 Reform of the Workers' Compensation Act (P.L. 1992, Ch. 31) eliminated a unilateral petition to commute future benefits and authorized the court to hear petitions for approval of a settlement only when they are filed jointly. This rule, recognizing that such petitions are filed only when the parties have agreed to settle a case, requires that the parties submit sufficient documentary evidence with the petition to allow the court to review the matter and determine if the proposed settlement meets the standard enunciated in G.L. 1956 § 28-33-25.

This rule also recognizes the statutory amendment requiring that all settlement payments approved by the court must be paid within fourteen (14) days of the date the order is entered and requires the parties to appear and present a pleading indicating that all required payments have been made prior to the entry of a decree approving the settlement. It is anticipated that the rule will virtually eliminate petitions which are filed after a settlement has been approved alleging a failure to make payments under the terms of the Act.

2.27. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS - SANCTIONS. -- (A) All attorneys of record shall include their name, address, email address, bar number, telephone number, and signature on all pleadings, motions, and other papers filed with the court. A party who is not represented by an attorney shall sign their pleading, motion, or other paper and state her or his name, address, email address (if electing to utilize the EFS), and telephone number. The signature of an attorney or party certifies that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is supported by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or a needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after hearing, may impose upon the person who signed it, a represented party, or both, any appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

(B) All proceedings for costs, expenses, reasonable attorney's fees, and/or penalties to be assessed for delay or inaction without just cause pursuant to G.L. 1956 § 28-35-17.1 or § 28-33-17.3, or for sanctions pursuant to section (A) of this rule, shall be heard by the trial judge at such time as s/he shall determine. In the event that such proceedings are instituted at the appellate level, notice of such action shall be provided by the appellate panel assigned to hear the appeal advising the party or attorney of the hearing and providing her/him an opportunity to be heard.

Reporter's Notes. This rule generally follows Rule 11 of the Superior Court Rules of Civil Procedure. It affirms the requirement of good faith in pleading and requires the pleader to assert that there is a good faith basis for the pleading and that it is based in fact and supported by law. The amendments to this rule establish procedures consistent with the provisions of G.L 1956 § 28-33-17.3.

2.28. PROCEDURE AND ORDER OF TRIAL. -- All attorneys shall be prepared to proceed on the scheduled date for trial.

2.29. ANNIVERSARY REVIEW. -- (A) If an employee has received weekly workers' compensation benefits for fifty-two (52) consecutive weeks, the employer has the right to request that the Workers' Compensation Court conduct an anniversary review pursuant to the provisions of G.L. 1956 § 28-33-46. The employer must file with the court an employer's petition to review requesting the anniversary review within fourteen (14) days of the fifty-two (52) week anniversary.

(B) Upon receipt of a request for an anniversary review, the court shall refer the matter to the Medical Advisory Board for an evaluation by a comprehensive independent health care

review team which shall include a vocational rehabilitation counselor. Upon receipt of the report of the comprehensive independent health care review team, the court shall assign the matter to a judge for pretrial conference pursuant to G.L. 1956 § 28-35-20 at which time the judge shall make findings as required by G.L. 1956 § 28-33-46.

Reporter's Notes. The rule has been amended to shift the initiation of the anniversary review process to the employer/insurer from the court.

2.30. APPELLATE REVIEW OF DECISIONS BY THE DEPARTMENT OF LABOR AND TRAINING AND THE MEDICAL ADVISORY BOARD. -- (A)(1) Any party may file a petition with the court to review a decision of the Department of Labor and Training or the Medical Advisory Board within thirty (30) days of the date the decision enters.

(2) The petitioner shall file with the court a copy of the decision to be reviewed, along with the petition stating their grounds for appeal. The respondent need not file a responsive pleading unless otherwise required by statute or by court order.

(B) The petitioner shall provide a certified copy of the entire record of the proceeding under review to the court within thirty (30) days after the petition is filed, unless the court orders otherwise.

(C) After a petition is filed, the court shall establish a schedule for the submission of briefs by the parties.

(D) The Workers' Compensation Court Rules of Practice shall govern the proceedings. The court may consider evidence of procedural irregularities at the Department of Labor and Training or the Medical Advisory Board.

(E) The court shall not substitute its judgment for that of the Department of Labor and Training or the Medical Advisory Board regarding the weight of the evidence on questions of fact. The court may affirm or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the petitioner have been prejudiced because the decision of the Department of Labor and Training or the Medical Advisory Board is:

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the Department of Labor and Training or the Medical Advisory Board;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence presented; or

(6) arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion.

Reporter's Notes. W.C.C. – R.P. 2.30 implements the procedure to address the expanded jurisdiction of the court as an appellate body to review the actions taken by the Department of Labor and Training and the Medical Advisory Board under the provisions of the Workers' Compensation Act. In appeals to the Workers' Compensation Court involving the discipline of health care providers by the Medical Advisory Board and the decisions and orders of the Department of Labor and Training, the court's role is to review the determinations made by the Department of Labor and Training or the Medical Advisory Board to ensure that the parties were afforded all substantive and procedural due process rights. Although all proceedings under the provisions of the Workers' Compensation Act are specifically exempted from the Administrative Procedures Act pursuant to G.L. 1956 § 42-35-18(b)(6) – (15), the standard of judicial review of administrative actions established by that statute provides helpful guidance in this area and indicates the standards which must be met to ensure proper procedural safeguards. Accordingly, the review of a decision of the Department of Labor and Training and the Medical Advisory Board is limited to the record developed below to ensure that the decision was proper. The Workers' Compensation Court may not substitute its judgment for that of the Department of Labor and Training or the Medical Advisory Board as to the weight of the evidence on factual issues which have been determined by the Department of Labor and Training or the Medical Advisory Board.

2.31. APPROVAL OF REHABILITATION PROGRAM. -- (A) Any party may file a petition with the court to approve a rehabilitation program pursuant to G.L. 1956 § 28-33-41(b). The petition shall set forth all the pertinent facts regarding the program including, but not limited to, the exact date and nature of the employee's injury, the length of the employee's incapacity, the name and address of all health care providers who have treated the employee, and the exact nature of the proposed rehabilitation program including, but not limited to, the location of the program, a proposed start date, a proposed completion date, the goal or objective of the program, the expected cost to complete the program, and the employee's expected earning capacity upon the successful completion of the program.

(B) The petitioner shall attach the following documents to the petition:

(1) A legible copy of the original document(s) establishing liability and any subsequent documents modifying the description of the injury, the periods of incapacity, or the employee's average weekly wage.

(2) A legible copy of all medical records pertaining to the diagnosis and treatment of the employee's work injury, in chronological order and appropriately tabbed.

(3) A legible copy of the most recent Functional Capacity Evaluation.

(4) A legible copy of the rehabilitation provider's report detailing the precise medical restorative services, vocational restorative services, or re-employment services recommended for the injured employee, including the program location, the program start date, the expected program completion date, the expected cost, and the expected goal of the program.

(5) If the injured employee is the petitioner, an affidavit signed by the employee attesting that s/he is desirous of pursuing the proposed rehabilitation plan and acknowledging that her/his failure to cooperate with a plan approved by the court may jeopardize her/his receipt of future compensation benefits.

The court shall not accept for filing any petition seeking approval of a rehabilitation program unless it is accompanied by all of the necessary documents set forth above.

(C) The court shall refer all such petitions to a judge of the court who shall conduct a mandatory pretrial conference as provided for in G.L. 1956 § 28-35-20. At the pretrial conference, the trial judge may refer the petition to the Medical Advisory Board with instructions to have the employee evaluated as the trial judge may direct. Such evaluation may be performed by an individual to be selected by the trial judge or by an independent health care review team whose composition will be determined by the trial judge. At the pretrial conference, the trial judge may request the petitioner to provide copies of the records set forth in subsections (B)(2), (B)(3), and (B)(4) above in the event that the employee is to be evaluated by more than one (1) expert.

Reporter's Notes. W.C.C. – R.P. 2.31 was revised in September 2000 to establish a procedure to support the amendment to G.L. 1956 § 28-33-41(b). The Workers' Compensation Court assumed original jurisdiction over disputes arising under this section of the Act pursuant to P.L. 2000, Ch. 491, § 4. Prior to the passage of this amendment, disputes relating to the provision of rehabilitative services were initially heard at the Department of Labor and Training and any party dissatisfied with the Department's ruling was given the opportunity to appeal the matter to the Workers' Compensation Court.

The rule requires the petitioner to submit the necessary records in support of the proposed rehabilitation plan. The procedure allows the court to review requests for approval of rehabilitation programs and protect all parties from abuse of the statute.

This rule was amended in 2013 to provide for more specific and detailed information to be included in petitions for approval of rehabilitation plans proposed under G.L. 1956 § 28-33-41(b). The rule was also amended with regard to the number of copies of the proposed rehabilitation plan and supporting documentation that need to be initially filed with the court. The rule provides that only when appropriate, as determined by the trial judge, shall additional copies be provided to the court by the petitioner.

2.32. INSURANCE COVERAGE DISPUTES. -- (A) In any case filed pursuant to the provisions of G.L. 1956 § 28-30-13, involving a dispute regarding coverage under the provisions of a workers' compensation insurance contract, the party seeking review of the insurance contract shall file with the court a petition for determination of an insurance controversy which shall contain: (1) a statement of the claim stating the basis for which the petitioner is entitled to relief, and (2) a prayer setting forth the relief sought by the petitioner. Relief in the alternative or in several different types may be demanded. The petition shall set forth the name, address, email address if known, and agent for service of each respondent.

(B)(1) Upon the filing of the petition, the court shall issue a notice to the petitioner, or his/her attorney of record, stating the name of the judge assigned to hear the matter and the date and time the parties shall appear before the judge for an initial hearing. The petitioner shall effect service of the petition and notice upon each respondent in accordance with W.C.C. – R.P. 1.5.

(2) At the initial hearing, the parties shall be prepared to consider:

(a) the determination of the issues;

(b) any amendments to the pleadings;

(c) the need to add or join additional parties to the action;

(d) any admissions of fact and documents which will be entered by stipulation of the parties;

(e) the names of any expert witnesses; and

(f) such other matters which may aid in the efficient disposition of the action.

At the close of the initial hearing, the trial judge shall establish dates for the closing of discovery, the submission of all pretrial memoranda designated by the trial judge, and the date(s) for the trial.

(C) Following the trial on the merits, the trial judge shall render a decision which responds to the petitioner's prayer for relief and prepare an appropriate decree pursuant to W.C.C. – R.P. 2.20 of these rules.

Reporter's Notes. In 2000, the General Assembly expanded the jurisdiction of the court to provide for the adjudication of disputes between an employer and an insurance carrier regarding a policy of workers' compensation insurance. This was a revolutionary change for several reasons. For the first time, the court exercised jurisdiction in cases not arising from a dispute between an employer and an employee regarding the employee's right to a workers' compensation benefit. Prior to this time, the statutory and decisional law was clear that disputes between an employer and an insurer relating to insurance coverage

were not within the court's jurisdiction. While the adjudication of cases of this nature may well seem to be a logical evolution of the court's authority, it was nevertheless a major expansion of the court's authority.

The second aspect of this statutory change which was noteworthy involved the pretrial conference. Cases of this nature are not heard at pretrial conference pursuant to .G.L. 1956 § 28-35-20 as are most other cases filed with the court. Since these cases do not involve a claim for a weekly compensation benefit and are not intended to address an issue regarding wage replacement, it was felt that the need to enter a binding pretrial order was not significant and the more traditional approach was adopted.

This rule was extensively revised in 2014 to mirror the general practice and procedures of the Workers' Compensation Court, with the exception of the pretrial conference, rather than the procedures of the Superior Court, which served as the model for the previous version of the rule.

2.33. PROCEDURE REGARDING STOP WORK ORDERS PURSUANT TO G.L. 1956 § 28-36-15(i). -- (A)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of an employer for failure to secure workers' compensation insurance, the employer may appeal the entry of the order to the Workers' Compensation Court.

(2) The court shall schedule a hearing within five (5) days of the filing of the appeal to determine whether the order of suspension may be stayed. In order to obtain a court order staying the Director's order of suspension, it shall be the burden of the employer/appellant to present specific facts to demonstrate that the substantial rights of the employer have been prejudiced because the Director's order is (a) in violation of the Department's constitutional or statutory authority, (b) made upon unlawful procedure, (c) arbitrary, capricious, or characterized by clear abuse of discretion, or (d) clearly erroneous and that immediate and irreparable loss, damage, or injury will result to the employer if the order of suspension remains in effect during the pendency of the appeal.

(3) The proceeding to stay the order of suspension pending a hearing on the merits shall be on the record. All agreements or stipulations entered during the course of the proceeding shall be binding.

(4) Following the hearing, the court shall issue an order determining whether the Director's order of suspension may be stayed during the pendency of the appeal on the merits or whether the order shall remain in full force and effect. The court shall set a date for a full hearing on the merits within twenty-one (21) days.

(B)(1) In the event that the Director of the Department of Labor and Training issues an order suspending the operation of an employer for failure to secure workers' compensation insurance and the employer has failed to comply with said order, the Director may file a petition with the court for an emergency hearing to enforce the terms of her/his order. The petition shall

state the facts establishing the basis for the order of suspension, the dates on which the order was entered by the Department and served upon the employer, and that the employer has continued to operate its business following the entry of said order.

(2) The court shall schedule a hearing on the petition to enforce within forty-eight (48) hours of the date of filing and provide notice of the date and time of the hearing to the Director. The Director shall effect service of the petition and notice on the employer by delivering a copy of the petition and notice to a person individually or, if a private corporation, by delivering a copy of the petition and notice to an officer, or a managing or general agent, or by delivering a copy of the petition and notice at an office of the corporation to a person employed by said corporation, or by delivering a copy of the petition and notice to an agent authorized by appointment or by law to receive service of process. If the employer is a public corporation, body, or authority, service shall be made by delivering a copy of the petition and notice to any officer, director, or manager thereof. Service of the petition and notice shall be made by a sheriff or the sheriff's deputy within the sheriff's county, or by a person who is not a party to the proceedings and who is at least eighteen (18) years of age. The Director shall certify to the court that such service has been effected prior to the time of the hearing.

(3) The court shall conduct a pretrial conference in connection with the Director's petition to enforce in accordance with G.L. 1956 § 28-35-20 and W.C.C. – R.P. 2.3 of the Rules of Practice of the Workers' Compensation Court. Following the pretrial conference, the court shall enter a pretrial order granting or denying the petition to enforce. The pretrial order shall be binding on the parties as of the date of entry and the filing of a claim for trial shall not stay its operation. If either party is aggrieved by the court's pretrial order, they may file a claim for trial which shall proceed in accordance with the Workers' Compensation Act and the Rules of Practice of the Workers' Compensation Court.

Reporter's Notes. This rule was enacted to establish the procedure in those cases where the Director of the Department of Labor and Training issues an order requiring an employer to cease operations for failure to maintain workers' compensation insurance pursuant to G.L. 1956 § 28-36-15(i). This rule recognizes that such an order could have a devastating impact upon the operation of a business and therefore allows the employer to file an immediate appeal to the Workers' Compensation Court seeking a stay of the Director's order. The employer has the burden to present facts setting forth the procedural or substantive errors made by the Director and, more importantly, requires the employer to demonstrate that irreparable harm will result if the order is not stayed pending appeal. The request for a stay of the Director's order will be heard by the court within five (5) days of the date of filing the appeal.
W.C.C. – R.P. 2.33(B) addresses the situation where the Director has issued an order suspending business operations for the failure to secure workers' compensation insurance and the employer continues to conduct operations in defiance of that order. G.L. 1956 § 28-36-15(i) specifically notes that "the operation of a commercial enterprise without the required workers' compensation insurance is a crime and creates a clear and present danger of irreparable harm to employees who are injured while the employer is uninsured." In light of this, the court determined that immediate action was required

when the employer is operating in defiance of the Director's order. W.C.C. – R.P. 2.33(B)(2) provides that a pretrial conference will be held within forty-eight (48) hours of the date a petition to enforce is filed by the Director and imposes upon the Director of the Department of Labor and Training the duty to make actual service upon the employer. The rule provides that if the court is satisfied that the employer is required to maintain workers' compensation insurance and has failed to do so, a pretrial order shall enter suspending the employer's business operations. If the employer continues to conduct business following the pretrial order, it would be subject to contempt proceedings.

2.34. APPEALS FROM DETERMINATIONS OF THE RETIREMENT BOARD PURSUANT TO G.L. 1956 § 45-21.2-9. -- (A) Any appeal from a determination of the Retirement Board made pursuant to G.L. 1956 § 45-19-1 shall be heard by the Court, *de novo,* in accordance with the Rules of Practice of the Workers' Compensation Court and G.L. 1956 § 45-21.2-9.

(B) The party claiming an appeal shall file a notice of appeal with the Retirement Board and with the court within twenty (20) days of the entry of the Retirement Board's decision and shall serve copies of said notice of appeal upon the opposing parties. The notice of appeal shall be accompanied by a statement of claim together with the Orders and Findings adopted by the Retirement Board.

(C) When a notice of appeal is timely filed with the court, the order of the Retirement Board shall be stayed pending further action by the court.

(D) Upon receipt of the notice of appeal and statement of claim, a judge shall conduct a mandatory pretrial conference within twenty-one (21) days, pursuant to G.L. 1956 § 28-35-20. Notice of said conference shall be sent by the court to the appellant and/or attorneys of record stating the name of the judge assigned to hear the matter as well as the date, time, and location of the pretrial conference. The appellant shall serve the notice of appeal and notice of hearing upon the opposing parties in accordance with W.C.C. – R.P. 1.5.

(E) No later than seventy-two (72) hours prior to the pretrial conference all parties shall submit and exchange the medical records and reports in support of their respective positions regarding the claim.

(F) Upon receipt of a notice of appeal and prior to the pretrial conference, the municipality/agency affected by the decision of the Retirement Board may intervene as a party to the case without leave of the court. Following the pretrial conference, and only with leave of the court, the municipality/agency may intervene as a party and shall then be entitled to notice and an opportunity to be heard.

(G) Any party aggrieved by a decision or decree of the Workers' Compensation Court shall file an appeal in accordance with G.L. 1956 § 28-35-28 and Article IV of the Rules of Practice of the Workers' Compensation Court.

(H) The court shall retain jurisdiction in these matters to review its orders and decrees. Such petitions shall be filed directly with the court and shall be subject to the Rules of Practice of the Workers' Compensation Court and procedures for case management and dispute resolution as set forth in Title 28, Chapters 29 through 38.

Reporter's Notes. In 2011, the jurisdiction of the Workers' Compensation Court was expanded by the enactment of G.L. 1956 § 45-21.2-9(f) – (k). This rule was added to set forth the rules and procedure for appeals from the Retirement Board by parties seeking accidental disability benefits pursuant to G.L. 1956 § 45-19-1. It must be noted that the rule was designed to reconcile the unique nature of the litigation under G.L. 1956 § 45-21.2-9 with other litigation before the Workers' Compensation Court. Initially, it must be noted that the amendment to the statute did not set forth a time within which a party may pursue an appeal to the Workers' Compensation Court. Effective July 2013, legislation was enacted providing that a party aggrieved by the decision of the retirement board shall file an appeal with the court within twenty (20) days. The parties should also be aware that the terms "pretrial conference" and "pretrial order" as used in the Act are vastly different than the common usage. G.L. 1956 § 28-35-20 sets forth the procedure for the pretrial conference under the terms of the Act and the requirement that the court enter a pretrial order following the pretrial conference. It mandates that the pretrial order address the relief sought in the petition and shall be binding upon the parties upon entry. Any payments ordered shall be made within fourteen (14) days of the date on which the order was entered. Moreover, the pretrial order remains in full force and effect until a final decree is entered by the court. Thus, the pretrial conference is a significant milestone in any workers' compensation case and the parties should be ready to proceed on the date set for hearing. This portion of the statute was reviewed by the Rhode Island Supreme Court in City of Pawtucket v. Pimental, 960 A.2d 981 (R.I. 2008).

III. RECORDS

3.1. HOURS. -- The court shall be open from 8:30 a.m. to 4:30 a.m., Monday through Friday, or such other time as the court may set. Trials shall be conducted from 10:00 a.m. to 12:30 p.m. and from 2:00 p.m. to 4:30 p.m. Monday through Friday, or such other times as the court may set.

3.2. PROOF OF FILING. -- A document will be deemed to have been filed on the date and time when it is submitted to the EFS, regardless of whether the court is open for business at the time of submission. The filing shall be stamped with the submission date and time. Documents will be considered to have been timely filed when submitted at any time up to 11:59 p.m. on a filing deadline day. The time and date registered by the Judiciary's computer shall be determinative.

3.3. BRIEFS AND MEMORANDA. -- Every brief and memorandum filed with the court shall be printed or typewritten on 8 ½ by 11 inches paper, distinctly legible, shall be signed by the attorney or party presenting it, and contain a signed certification that a copy has been forwarded to all attorneys of record and any unrepresented parties. Said brief or memorandum shall contain (1) a brief and concise statement of the case, (2) the specific questions raised, and (3) legal argument, together with the authorities relied upon in support thereof. In cases where it may be necessary for the court to conduct an examination of record evidence, each party shall specify in their brief the leading facts which they deem established by the evidence, with a reference to the transcript or deposition pages where the evidence of such fact may be found.

3.4. WITHDRAWAL OF EVIDENCE. -- After the final disposition of a case, attorneys may, with the approval of the court, withdraw all exhibits introduced into evidence and not required by statute, rule, or special order to remain on file. If the same are not withdrawn within ninety (90) days the court shall not be required to preserve the same. If the court shall so direct, the parties shall substitute exact copies of any exhibit so withdrawn.

3.5. AMENDMENT OF RECORDS. -- The court may allow amendments, which do not affect legibility, to be made to a document, provided that any amendment so made shall be dated and signed or initialed by counsel and/or the trial judge and shall be filed as an amended document.

3.6. INFORMATION REQUIRED ON PETITIONS AND OTHER DOCUMENTS. -- Every petition filed with the court shall have endorsed thereon the name, address, and email address (required only if electing to utilize the EFS) of the petitioner, the name, address, email address, bar number, and telephone number of the attorney, if any, representing same, and the name, mailing address, and email address, if known, of the respondent. Every document subsequently filed in any case shall state the assigned name and number of the case and a brief description of the purpose of the document.

3.7. PRESENTATION OF DOCUMENTS FOR ENTRY AND SIGNATURE. -- All motions, orders, decrees, requests for extension of time for filing reasons of appeal, or any other documents shall be executed by the judge to whom the matter has been assigned or who rendered the decision in said matter, unless said judge is not in attendance at the court due to illness or vacation, in which case the document shall be presented to the duty judge for signature.

IV. APPEALS

4.1. FILING OF CLAIM OF APPEAL. -- (A) Any person aggrieved by the entry of a decree by a trial judge may appeal to the Appellate Division of the court by filing with the court a claim of appeal on a form promulgated by the court. The claim of appeal shall include a request for a

transcript of the testimony and decision in the case, or any part thereof required for purposes of the appeal.

(B) The party filing the claim of appeal shall forthwith forward a conformed copy of said claim of appeal to all other parties which shall include all dates, amounts, and times contained in the original claim of appeal filed with the court.

4.2. TRANSCRIPT ON APPEAL. -- At the time of the filing of the claim of appeal and request for the transcript of the proceedings-the transcription will be computed at the rate of three dollars and 00/100 ($3.00) per page for originals and one dollar and 50/100 ($1.50) per page for copies thereof. Policies and procedures regarding the ordering, payment, and delivery of transcripts shall be promulgated by the Supreme Court Finance and Budget Office of the Administrative Office of State Courts. The most current version of the transcript policy and procedure is located on the Judiciary's website at www.courts.ri.gov under the heading of Quick Links on the home page.

4.3. FAILURE TO PERFECT APPEAL. -- When a party who has filed a claim of appeal to the Appellate Division fails to perfect the appeal by filing the reasons of appeal within the time prescribed, or for any other cause, the court shall issue an order to show cause why the appeal should not be dismissed, mailed to both the appellant and the appellee, setting the same down for hearing to a day certain before the trial judge who rendered the decision.

4.4. EXTENSION OF TIME. -- (A) When no transcript is requested, the reasons of appeal shall be filed within twenty (20) days of the date on which the claim of appeal is filed.

(B) When a transcript is requested, the stenographer shall notify the parties that the transcript has been completed. The reasons of appeal must be filed within twenty (20) days of the date of said notice.

(C) The court shall grant only one ex parte extension of time to file the reasons of appeal and said extension shall not be granted for more than thirty (30) days.

(D) Additional extensions of time to file the reasons of appeal may be granted by motion with notice to all parties or by written agreement signed by all parties and approved by the court.

4.5. PRACTICE ON APPEAL. -- (A) Within ten (10) days of the filing of the reasons of appeal with the court , the appellant or other moving party shall file a statement of the case and a summary of the issues proposed to be argued on appeal. This document shall be concise, not exceeding five (5) pages, and a copy shall be sent to the appellee(s). Within ten (10) days after the filing of the above statement, the responding party may file a counter-statement, not to exceed five (5) pages, and a copy shall be promptly sent to the appellant. Failure to file a counter-statement shall constitute a waiver of the same.

(B)(1) Following the filing of such statements, the court may require the appearance by counsel for the parties before a single judge of the court for a settlement conference. Counsel shall be prepared to engage in a meaningful discussion of the matter with the goal of achieving settlement of the dispute. If a settlement is not reached, the objectives of the conference shall be to determine the issues on appeal and to determine the manner in which the appeal shall proceed.

(2) At the time scheduled for the settlement conference, counsel for all parties shall submit a joint filing which shall certify that they have conferred in good faith to attempt to resolve the disputed issues prior to the time of the conference.

(C) In the event that the single judge of the court determines it appropriate, s/he may:

(1) refer the appeal to an appellate panel for disposition of the issues on appeal by order or opinion without further argument; or

(2) order that the matter be placed on the regular appellate calendar for oral argument before an appellate panel.

In either situation, the single judge may direct or allow the filing of supplemental memorandum by the parties and set the time for the filing of same.

Reporter's Notes. This rule codifies the settlement conference procedure. This procedure was reviewed and endorsed by the Supreme Court's Committee on Alternate Dispute Resolution as an effective vehicle to reduce the issues in dispute and to foster meaningful dialogue calculated to resolve the matter.

This rule also changes the procedure for show cause hearings. Following the settlement conference, the matter may be assigned to an appellate panel for disposition with or without argument. This provision is modeled after Rhode Island Supreme Court Rules, Art. I, Rule 12A(3)(b), and allows the Appellate Division to expedite the handling of those cases where the issue on appeal is relatively simple and unequivocally controlled by settled law. In all other cases, it is anticipated that the matter will be heard at oral argument.

4.6. DECREES OF APPELLATE DIVISION. -- No final decree shall be entered by the Appellate Division without forty-eight (48) hours' notice to all parties, regardless of whether it is a new decree or affirms the decree of the trial judge.

4.7. REVIEW BY SUPREME COURT - PROCEDURE. -- A copy of any petition or motion to the Supreme Court of the State of Rhode Island regarding any order or decree of the Workers' Compensation Court shall be filed with the Workers' Compensation Court by the petitioner/movant and contemporaneously with the Clerk of the Supreme Court.

A copy of the order of the Supreme Court granting or denying any writ of certiorari or motion shall forthwith be filed with the Workers' Compensation Court by the attorney for the prevailing party.

Reporter's Notes. This rule requires that any petition or motion filed with the Rhode Island Supreme Court regarding any order or decree of the Workers' Compensation Court must be contemporaneously filed with court so that the Workers' Compensation Court is notified of any proceedings or actions taken by the Supreme Court.

V. PRO HAC VICE

5.1. OUT-OF-STATE COUNSEL. -- No person, who is not an attorney and counselor of the Supreme Court of the State of Rhode Island, shall be permitted to act as attorney or counselor for any party in any proceeding, hearing or trial in the Workers' Compensation Court unless granted leave to do so by the Workers' Compensation Court or by the Supreme Court. Unless the Workers' Compensation Court or the Supreme Court permits otherwise, any attorney who is granted such leave to practice before the Workers' Compensation Court shall not engage in any proceeding, hearing, or trial therein unless there is present in the courtroom for the duration of the proceeding, hearing, or trial a member of the bar of Rhode Island who shall be prepared to continue with the proceeding, hearing or trial in the absence of counsel who has been so granted leave.

Subject to the limitations and exceptions set forth in Art. II, Rule 9 of the Supreme Court Rules for the Admission of Attorneys and Others to Practice Law, leave shall be granted by the Workers' Compensation Court, in its discretion, upon a miscellaneous petition signed by the petitioner in a form approved by the Supreme Court, supported by certifications of the attorney seeking admission pro hac vice and of Rhode Island associate counsel, and assented to by the party being represented in a client certification. The most current forms for pro hac vice are located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Workers' Compensation Court.

VI. RULES OF PROCEDURE OF THE MEDICAL ADVISORY BOARD

6.1. ELECTRONIC FILING. – The Rules of Procedure for the Medical Advisory Board are not subject to the mandatory electronic filing requirement set forth in, Art. X of the Rhode Island Supreme Court Rules Governing Electronic Filing.

6.2 COMPOSITION. -- The chief judge of the Workers' Compensation Court shall appoint a Medical Advisory Board which shall serve at the chief judge's pleasure and consist of eleven (11) members in the following specialties: one (1) orthopedic surgeon, one (1) neurologist, one (1) neurosurgeon, one (1) physiatrist, one (1) chiropractor, one (1) physical therapist, one (1) internist, one (1) psychiatrist and three (3) ad hoc physician members appointed at the discretion of the chief judge. The chief judge shall designate the chairperson of the Board.

6.3. AUTHORITY. -- The chief judge of the Workers' Compensation Court, with the advice of the Medical Advisory Board, is authorized to:

(A) adopt and review protocols and standards of treatment for compensable injury, which shall address types, frequency, modality, duration, and termination of treatment, and types and frequency of diagnostic procedures;

(B) approve and promulgate rules, regulations, and procedures concerning the appointment and qualifications of comprehensive independent health care review teams;

(C) approve and administer procedures to disqualify or disapprove medical service providers and maintain the approved provider list;

(D) appoint an administrator of the Medical Advisory Board;

(E) approve and promulgate rules, regulations, and procedures concerning the appointment and qualifications of impartial medical examiners;

(F) bi-annually review the performance of each comprehensive independent health care review team and impartial medical examiner.

6.4. MEETINGS. -- The Medical Advisory Board shall meet periodically at the call of the chairperson. The meeting of six (6) members will constitute a quorum. The approved written minutes, excepting any audio and/or visual recording used to aid in the compilation of the meeting minutes, will constitute the record of proceedings unless otherwise noted in these rules.

6.5. IMMUNITY. -- Any person serving as a member of the Medical Advisory Board shall be immune from any civil liability in that capacity so long as that person acts in good faith, without malice, and not for improper personal enrichment.

6.6. PROTOCOLS AND STANDARDS OF TREATMENT. -- Protocols and standards of treatment for compensable injury shall be adopted pursuant to W.C.C. – R.P. 6.3(1) and may be updated or modified from time to time. They shall be maintained in the office of the administrator of the Medical Advisory Board.

6.7. IMPARTIAL MEDICAL EXAMINERS AND INDEPENDENT HEALTH CARE REVIEW TEAMS. -- The following rules apply to the selection of physicians for impartial medical examiner positions and for physicians/health care providers who wish to participate on comprehensive health care review teams. The Medical Advisory Board may limit the number of impartial medical examiners in each specialty.

(A) *Qualifications*. –

(1) The applicant/physician shall be Board Certified, if applicable, in a medical specialty certified by one of the following organizations: the American Board of Medical Specialties; the American Osteopathic Association Bureau of Osteopathic Specialists; or the American Board of Physician Specialties. Board-qualified physicians can obtain a provisional appointment for a period of five (5) years after completion of her/his medical training.

(2) The applicant/physician/health care provider who seeks appointment as an impartial medical examiner must be willing and able to see employees subject to petitions before the Workers' Compensation Court within three (3) weeks of their appointment by the court and to render a written report, as described in subsection (C)(3) herein, to the office of the administrator of the Medical Advisory Board within a period of three (3) weeks.

(B) *Application*. –

(1) The applicant/physician/health care provider must complete a form, the most current form is located on the Rhode Island Judiciary's website at www.courts.ri.gov under the heading of Forms, Workers' Compensation Court, detailing a record of prior achievements, hospital staff appointments (where applicable), and an explanation of any past disciplinary action (where applicable). A current curriculum vitae (CV) must be attached.

(2) Applications should be mailed to the Medical Advisory Board, Attn.: Office of the Administrator, Workers' Compensation Court, One Dorrance Plaza, Providence, RI 02903.

(3) Each health care provider approved by the Medical Advisory Board as an impartial medical examiner shall apply for renewal every two (2) years on a form supplied by the Medical Advisory Board. A current CV shall be submitted with the renewal application.

(C) *Requirements*. –

(1) Upon approval, each impartial medical examiner will be sworn in by the chief judge of the Workers' Compensation Court or the chief judge's designee.

(2) Billing for impartial medical examinations scheduled by the court or the Medical Advisory Board shall be in accordance with the fee schedule established by the chief judge, with the advice of the Medical Advisory Board.

(3) Reports shall be issued in the format set forth on Form MAB05, the most current form is located on the Judiciary's website at www.courts.ri.gov under the heading of Forms, Workers' Compensation Court.

6.8. DISQUALIFICATION OF HEALTH CARE PROVIDERS. -- The following rules are promulgated for the purpose of assisting the administrator of the Medical Advisory Board, the health care providers, and the Medical Advisory Board in the consideration and resolution of complaints against health care providers formally brought to the attention of the Medical Advisory Board.

(A) *Procedure*. -- Formal proceedings before the Medical Advisory Board are neither civil nor criminal in nature, but are quasi-judicial administrative proceedings. The proceedings shall conform generally to these rules and to such other rules of procedure as may be adopted by the Medical Advisory Board, as authorized by G. L. 1956 §§ 28-30-22(b)(3) and (e).

(B) The Medical Advisory Board may receive a complaint regarding allegations of misconduct by a health care provider through the submission of a properly filed complaint as described in W.C.C. – R.P. 6.8(C).

(C) *Complaint*. –

(1) Time of Filing. -- A complaint shall be filed within one (1) year from the date of the occurrence of the alleged violation or misconduct. The date of receipt by the administrator and not the date of deposit in the mail, shall be determinative.

(2) Place of Filing. -- A complaint shall be filed at the Medical Advisory Board, Attn.: Office of the Administrator, Workers' Compensation Court, One Dorrance Plaza, Providence, RI 02903.

(3) Contents. -- A complaint shall contain, as a minimum, the following information:

(a) The full name and address of the person/entity making the complaint.

(b) The full name and address of the person against whom the charge is made.

(c) A concise statement of the facts that form the basis for the complaint.

(d) Identification of the specific medical protocols and/or statutes which are alleged to have been violated.

(e) The date(s) of the alleged violation(s), or if the alleged violation(s) is of a continuing nature, the dates between which said continuing violation(s) has/have occurred.

(4) Review. -- Upon receipt of a complaint in accordance with the foregoing requirements, the administrator of the Medical Advisory Board shall review the complaint to determine whether the allegations are within the Medical Advisory Board's authority to investigate.

(a) If the complaint does not fall within the Medical Advisory Board's jurisdiction, the charge shall be dismissed and notice of the dismissal shall be sent to the complainant. The initial complaint and response shall be filed in a "not opened" complaint file and maintained in the Medical Advisory Board Office.

(b) If the complaint does fall within the Medical Advisory Board's jurisdiction, a case file shall be established.

(D) *Procedure*. --

(1) Notice Letter. -- A letter shall be sent, return receipt requested, to the health care provider stating that a complaint or referral has been received by the Medical Advisory Board and identifying the alleged violation(s). A copy of the complaint shall also be enclosed.

(2) Response. -- The respondent shall submit a written response within fourteen (14) business days of receipt of the notice letter.

(a) The Medical Advisory Board will proceed with an investigation whether or not a response is submitted by the health care provider.

(b) The respondent may include in her/his response a request that a conference be held on the issue of mitigation.

(3) Pleadings. -- Pleadings shall be limited to a petition for discipline (i.e., complaint or referral) and response thereto.

(4) Preliminary Investigations. -- The administrator shall conduct a preliminary investigation into matters under the Medical Advisory Board's jurisdiction. Such investigation shall be designed to obtain adequate information upon which the Medical Panel can determine whether a violation finding may be warranted.

(5) Medical Panels. –

(a) The chairperson of the Medical Advisory Board shall appoint and designate a Medical Panel comprised of three (3) members of the Medical Advisory Board to review each complaint.

(b) The Medical Panel shall meet to review the results of the administrator's preliminary investigation.

(c) The respondent may appear before the Medical Panel to discuss the case and may be accompanied by legal counsel.

(d) Subsequent to their review, the Medical Panel shall vote as to whether or not a violation has occurred.

(i) If the vote is unanimous, finding a violation, then the Medical Panel shall state its findings and sanctions and draft an Order which shall be transmitted to the administrator.

(ii) If the vote is not unanimous, no sanctions shall be levied and the complaint shall be dismissed.

(e) The administrator shall advise the respondent, pursuant to W.C.C. – R.P. 6.8(E)(6)(a), of the findings of the Medical Panel and any sanctions ordered.

(E) *Disqualification or Suspension Appeal*. --

(1) Time to Appeal. –

(a) If an Order of the Medical Panel disqualifies or suspends a health care provider, s/he may appeal the Order to the Medical Advisory Board within ten (10) working days of the entry of the Order by the administrator. The appeal shall be in writing and mailed, return receipt requested, to the administrator of the Medical Advisory Board. The date of receipt by the Medical Advisory Board and not the date of mailing shall be determinative.

(b) If no appeal is taken, the Order shall be considered a Final Order of the Medical Advisory Board.

(2) Form. -- The appeal shall contain, at a minimum, the following information:

(a) the full name and address of the health care provider requesting the appeal;

(b) a concise statement of facts and the reasons for the appeal;

(c) a copy of the Medical Panel's Order.

(3) Review on Appeal. – Members of the Medical Panel shall not participate with the Medical Advisory Board in reviewing the appeal.

(4) Representation. --

(a) When a respondent appears on her/his own behalf before the Medical Advisory Board in a formal proceeding, s/he shall file with the Medical Advisory Board an address at which any notice or other written communication may be served upon her/him as well as their telephone number.

(b) When a respondent is represented by counsel before the Medical Advisory Board in a formal proceeding, counsel shall file with the Medical Advisory Board a written notice of appearance which shall state counsel's name, Rhode Island attorney registration number, address and telephone number, and the name and address of the respondent on whose behalf counsel appears. The notice of appearance shall also contain the caption and file number of the subject proceeding. Any additional notice or other written communication required to be served on or furnished to a respondent shall be sent to counsel of record at counsel's address in lieu of transmission to the respondent.

(5) Continuances. --

(a) The chairperson or an acting chairperson of the Medical Advisory Board may grant extensions of time in a formal proceeding where the continuance is for good cause, will not result in undue delay, and the failure to grant a continuance will result in undue hardship.

(b) No more than two (2) continuances will be granted to either the respondent or the administrator of the Medical Advisory Board absent good cause shown.

(6) Service. –

(a) *By Medical Advisory Board*. -- Orders, notices and other documents originating with the Medical Advisory Board, including all forms of Medical Advisory Board action and other documents designated by the Medical Advisory Board for this purpose, shall be signed by the chairperson and served by first class mailing, to the person at their address of record, except when service by another method shall be specifically required by these rules.

(b) *By Respondent*. -- All pleadings, briefs, and other documents filed by respondent with the Medical Advisory Board in formal proceedings shall be served upon the office of the administrator of the Medical Advisory Board. Such service shall be made by delivery in person or by first class mailing with postage prepaid.

(c) *Effect of Service Upon Counsel*. -- When a respondent is represented by counsel, service upon such counsel shall be deemed to be service upon the respondent.

(d) *Date of Service*. -- The date of service shall be the day when the document served is deposited in the United States mail or is delivered in person; except as to pleadings or other documents required or permitted to be filed with the Medical Advisory Board as provided in W.C.C. – R.P. 6.8(C)(1), (D)(2) and (E)(1)(i). A postmark shall be determinative of the day of deposit in the United States mail.

(e) *Proof of Service*. -- When service is required to be made, there shall accompany and be attached to the original, a certificate of service substantially in the following form:

Certificate of Service

I hereby certify that I have this day served by (indicate method of service) the foregoing document upon all parties of record in this proceeding.

Dated this _____ day of _____, 20__.

_____
Signature

(7) Appearances. -- The Medical Advisory Board requires counsel for all parties to enter their appearance.

(8) Order of Procedure. -- In proceedings upon a petition for discipline, the administrator of the Medical Advisory Board shall have the burden of proof, shall indicate the specific acts of misconduct alleged, the specific protocols violated and all other evidence demonstrating a violation of the Rhode Island General Laws. The administrator may also present rebuttal evidence. These proceedings shall not be open to the public; however, the final order and decision of the Medical Advisory Board are available for viewing in accordance with subsection (10) herein.

(a) *Presentation by the Parties*. –

(i) General Rule. – The respondent and the administrator of the Medical Advisory Board shall have the right to present relevant facts and arguments in support of their respective positions. The proceedings shall proceed with all reasonable diligence and with the least practicable delay.

(ii) Objections. – Any objections to the admission of factual material or any procedural objections shall be on the record and the grounds upon which

the objection is based shall be specifically stated. The Medical Advisory Board Chairperson or her/his designee shall rule on all objections made.

(b) *Witnesses*. -- The chairperson of the Medical Advisory Board or her/his designee may limit the number of witnesses who may be heard in order to eliminate unduly repetitious or cumulative testimony without prejudice to the substantive rights of any party.

(c) *Additional Evidence*. -- At the hearing, the chairperson of the Medical Advisory Board or her/his designee may authorize any participant to file specific documentary evidence as a part of the record within a fixed time.

(d) *Transcript*. -- Hearings shall be recorded by a reporter designated by the Medical Advisory Board. The transcript shall include a verbatim report of the hearings with no omissions and shall be the sole official transcript of the proceeding.

(i) After the close of the record, no additional evidence or document shall be considered.

(ii) Corrections in an official written transcript may be allowed only in order to conform to the evidence presented at the hearing. No corrections shall be made to an official written transcript of the hearing, except as provided in this section. Transcript corrections agreed to by all parties may be incorporated into the record if and when approved by the Medical Advisory Board at any time during the hearing or after the close of the hearing.

(iii) The Medical Advisory Board will cause to be made available a stenographic record of all Medical Advisory Board hearings of appeal under W.C.C. – R.P. 6.8. A respondent requesting a copy of the transcript may obtain a copy at their own expense.

(e) *Stipulations*. -- The participants may stipulate to any relevant facts or to the authenticity of any documents. Stipulations shall be binding on the participants.

(f) *Evidence*. –

(i) Admissibility. -- The petition for discipline and answer shall not be considered as evidence unless offered and received as evidence in accordance with these rules.

(ii) Objections to Evidence. -- In the event there is an objection to any evidence being proffered, objections shall be on the record and the grounds upon which the objection is based shall be specifically stated.

The chairperson of the Medical Advisory Board or her/his designee shall rule on all objections made.

(g) *Conferences*. -- Conferences between the participants to expedite the proceeding may be held at any time prior to or during hearings.

(9) Filing or Determination. -- The Medical Advisory Board shall submit a written decision of its action setting forth the specific violations found and the sanctions to be assessed, if any.

(a) Copies of the decision of the Medical Advisory Board shall be served on the respondent and the Administrator of the Medical Advisory Board.

(b) Upon receipt of the decision of the Medical Advisory Board, the administrator of the Medical Advisory Board shall advise the respondent of any sanctions ordered.

(c) The Final Order of the administrator shall be sent by first class mailing to the respondent, the complainant, and to the appropriate licensing authority.

(d) The Medical Advisory Board may file a petition the Workers' Compensation Court to enforce any Final Order.

(10) Access to Records. -- All investigatory records of the Medical Advisory Board shall not be open to the public. Records of the Final Order and Decision of the Medical Advisory Board are available to members of the public at the office of the administrator of the Medical Advisory Board.

(11) Appeal to the Workers' Compensation Court. -- The respondent may file an appeal of the Medical Advisory Board's decision to disqualify or suspend as provided by statute with the Workers' Compensation Court following the procedure set forth in W.C.C. – R.P. 2.30.

6.9. PREFERRED PROVIDER NETWORKS (PPN). -- (A) *Purpose*. -- G.L. 1956 § 28-33-8 provides: "[I]f the insurer or self-insured employer has a preferred provider network approved and kept on record by the medical advisory board, any change by the employee from the initial health care provider of record shall only be to a health care provider listed in the approved preferred provider network." Injured workers in the State of Rhode Island retain their right to choose their first health care provider. The PPN is utilized when the injured worker wishes to change from the original treating health care provider to another health care provider.

(B) *Requirements for Approval*. -- (1) The PPN must offer a sufficiently wide selection of qualified physicians and other appropriate health care providers in various fields to allow adequate choice to the injured worker and to assure that the health care providers will be readily available to provide the service required.

(2) There must be geographic diversity of health care providers in the PPN to allow for patient convenience. This diversity is of greater importance for health care providers in categories that will, in general, provide the most care; i.e., orthopedics, general surgery, neurosurgery, physiatry, chiropractic, family practice, podiatry, etc. There must be a multiple choice of health care providers who will provide other special services to the injured workers, e.g., opthalmologists, neurologists, urologists, psychologists, psychiatrists.

(3) The size of the PPN must reflect the number of employees served by that specific PPN and the geographic distribution of the units of the facility utilizing an individual PPN.

(C) *Application Contents*. -- The applicant requesting approval of a PPN must provide the following:

(1) a cover letter requesting approval of the proposed PPN;

(2) the applicant's signed acknowledgement that it will comply with the requirements of G.L. 1956 § 28-33-8;

(3) the names, business addresses and telephone numbers of each health care provider who has signed an authorization to be included in the proposed PPN. The health care providers should be listed by category of specialty;

(4) if the health care provider is employed by or under contract with the insurer, self-insurer or group self-insurer, the organization shall set forth the nature of the contract or agreement and the frequency and regularity with which the organization calls upon the expertise of said health care provider, if applicable;

(5) the geographic areas proposed to be covered by the network as it relates to the facility operated by the employer;

(6) a demographic page showing what percentage of the employees live in what communities in the state, e.g., 50% in Providence, 25% in Kent County;

(7) an injury history may be presented to demonstrate the types and quantity of injuries incurred by employees during the preceding two (2) years. This information will aid the Medical Advisory Board in determining if there is sufficient choice of health care providers;

(8) copies of all contracts related to the creation or management of the proposed PPN with, by, and/or between the applicant and any third-party administrator, preferred provider organization, health care provider or other entity involved in the administration of the proposed PPN. Proprietary information contained in said contracts may be redacted;

(9) a signed authorization from each health care provider on the proposed PPN must be filed by the insurer or self-insured employer at the time of the filing of the application. The most current form is located on the Rhode Island Judiciary's website at www.courts.ri.gov under the heading of Forms, Workers' Compensation Court.

Contents of said applications are proprietary in nature and not available for public viewing.

Reporter's Notes. – In reference to W.C.C. – R.P. **6.9(C)(8), contracts submitted as part of an application will be reviewed to ensure compliance with G.L. 1956 § 28-33-8 which states: "any contract proffered or maintained which restricts or limits the health care provider's ability to make referrals pursuant to the provisions of this section, restricts the injured employee's first choice of health care provider, substitutes or overrules the treatment protocols maintained by the medical advisory board or attempts to evade or limit the jurisdiction of the workers' compensation court shall be void as against public policy."**

(D) *Procedures for Approval*. -- (1) The PPN application must be submitted by the insurer or self-insured employer who wishes to utilize a PPN in providing care for injured employees. It is not acceptable for a group of self-insured employers who are represented by a single third-party administrator to submit a single network for the group.

(2) Incomplete applications will be returned to the applicant with an explanation as to why the application is incomplete. Should the insurer/self-insured employer not respond to this notification further as directed, the Administrator may, at her/his discretion, bring the application to the Medical Advisory Board for a final vote of approval or denial.

(3) Upon receipt of a complete application as outlined in W.C.C. – R.P. 6.9, the application will be placed on the agenda of the next meeting of the Medical Advisory Board for a vote to either approve or deny the application.

(E) *Consideration and Vote by the Medical Advisory Board.* -- (1) Representatives of the proposed PPN may appear before the Medical Advisory Board to answer any questions and present any additional information.

(2) After reviewing and discussing the proposed PPN, the Medical Advisory Board may make recommendations and table its vote, or vote to approve or deny the application.

(3) A Medical Advisory Board member shall recuse from voting or discussion if that member, a business associate, employer, or family member appears on the proposed network. However, when a majority of the Medical Advisory Board members must recuse themselves from consideration of a PPN, then, pursuant to the "Rule of Necessity" exception, the number of affected members necessary to establish a majority/quorum may participate in the vote.

(F) *Approval of the PPN by the Medical Advisory Board*. -- (1) Upon approval, the PPN will be kept on file at the Medical Advisory Board Office.

(2) The insurer/self-insured employer shall post the PPN at each place of business and shall provide each employee with a copy of the PPN. In extreme circumstances, individual notification may be waived pending prior approval by the administrator of the Medical Advisory Board.

(3) Should any changes occur within the PPN after approval by the Medical Advisory Board, the representative of the insurer/self-insured employer shall file a notice of such change within thirty (30) days with the Medical Advisory Board. Substantial changes may require further approval by the Medical Advisory Board.

(G) *Non-approval of the PPN by the Medical Advisory Board*. -- (1) If the Medical Advisory Board does not approve the PPN, the insurer/self-insured employer will be notified as to the additional information or changes that may be needed to effectuate approval of the PPN.

(2) Submission of this additional information or execution of changes shall be accomplished as further directed by the administrator of the Medical Advisory Board.

(3) Failure to submit this additional information or execution of changes as further directed may result in the administrator moving for a final vote of approval or denial of the application in its current form.

(H) *Complaints, Disputes or Appeals Regarding Preferred Provider Networks*. -- (1) The chief judge of the Workers' Compensation Court may review and/or settle any complaints or disputes regarding any PPN.

(2) If the chief judge is unable to resolve any complaint or dispute, the aggrieved party may file an appeal to the Workers' Compensation Court pursuant to W.C.C. – R.P. 2.30.

Reporter's Notes. -- **The Medical Advisory Board has existed and operated under these rules since its inception in 1992. These rules have been modified over the years to ensure the provision of high quality medical care to injured workers, while preventing unnecessary delay in return to work or excessive costs to the system. The Medical Advisory Board was created pursuant to G.L. 1956 § 23-30-22 as a branch of the Workers' Compensation Court. The Rules of Procedure of the Medical Advisory Board have been incorporated into the Workers' Compensation Court Rules of Practice. This incorporation will assist all parties appearing before the Medical Advisory Board. These rules clearly detail the hearing process and specifically note compliance with W.C.C. – R.P. 2.30 in regard to appeals made to the Workers' Compensation Court.**

The terms health care providers, medical service providers, and health service providers are used interchangeably in these rules and are considered to be any persons who have provided health care services to injured workers.