

INTRODUCTION

By virtue of the authority vested in the Industrial Commission pursuant to Idaho Code §§ 72-508 and 72-707, the Industrial Commission of the State of Idaho hereby adopts the following rules of procedure governing judicial matters under its jurisdiction as provided by the Idaho Workers' Compensation Law. These rules shall amend and supplement those rules previously adopted by the Commission.

COMMENT: This paragraph is intended to introduce the reader to the authority vested in the Commission to establish its procedural rules. ~~Definitions are now explained in a single rule.~~

RULE 1.

TITLE, SCOPE, AND DEFINITIONS

A. Title and Scope.

These rules shall be cited as the Judicial Rules of Practice and Procedure Under the Idaho Workers' Compensation Law, or abbreviated J-R-P-, and shall apply in all disputed cases coming under the Commission's jurisdiction. Any party to a controversy may apply to the Commission for relief, and the Commission shall make such order, ruling or award as it determines is reasonable and just. However, where the Commission in an administrative rule or regulation adopts a procedure for adjudication of a specific type of dispute, these rules shall apply only to the extent expressly incorporated therein. Pursuant to Idaho Code § 72-708 the Commission will construe these rules liberally to secure the just, speedy, and economical determination of all issues.

B. Definitions.

1. "File" or "Filing" is the actual receipt of a document at the Commission's office at ~~317 Main Street~~ 700 South Clearwater Lane in Boise, Idaho, before the close of business at 5:00 pm Mountain Time, as shown by the Commission's date stamp, except as otherwise provided by these rules.
2. "Service" or "serve" is the transfer of a document or pleading to the other party or parties. See JRP Rule 4.
3. "Pro se" shall refer to a person acting as his/her own legal counsel in matters before the Commission.
4. "Commission" ~~means shall reference in these rules~~ the Idaho Industrial Commission and shall include one or more of the three ~~3~~ Commissioners, ~~any member or members thereof~~, any Referee, Mediator, or any other person to whom the Commissioners have delegated any part of their authority.
5. "Default" is the failure of a party to respond when required within a specified time period. See JRP Rule 6.
6. "Prima facie" is the first appearance of evidence. A prima facie case is established by sufficient evidence to prove eligibility for benefits. See JRP Rule 6.
7. "De novo" is a process in which a prior decision or determination is reviewed with ~~from~~ a fresh analysis of the pleadings, testimony, and exhibits.

RULE 2.

REPRESENTATION

A. Natural Persons.

Any natural person may act *pro se* or be represented by an attorney who is licensed to practice law in the State of Idaho, or who is associated with an attorney licensed to practice law in the State of Idaho.

B. Parties Other Than Natural Persons.

Except as otherwise set forth in these rules, all parties other than natural persons must be represented by an attorney who is licensed to practice law in the State of Idaho or who is associated with an attorney licensed to practice law in the State of Idaho. This requirement includes, but is not limited to, the filing of any document in any matter in which a complaint has been filed and participating in any proceeding before the Commission.

COMMENT: The representation of parties has been clarified, and the designation of a "natural" person ~~added~~ removed.

RULE 3.
PLEADINGS

A. Complaint and Answer.

1. For purposes of these rules, an "application for hearing" as referenced in Idaho Code § 72-706 shall be called a complaint. The complaint shall be in the form prescribed by the Commission, an [example](#)~~sample~~ of which is attached hereto as Appendix 1. A complaint delivered by facsimile transmission (fax) to the Commission before midnight Mountain Time shall be considered filed on that date.
2. The answer to such complaint shall be in the form prescribed by the Commission, an [example](#)~~sample~~ of which is attached hereto as Appendix 3.

B. Separate Complaints.

1. **Consolidation** - A separate complaint shall be filed for each alleged accident or occupational disease for which workers' compensation benefits are claimed. Separate pleadings shall be filed in each case in which a complaint has been filed; provided, however, that a single pleading may be filed in two or more cases which have been consolidated. No cases shall be consolidated except by order of the Commission, and the Commission will not consider consolidation of cases unless a separate complaint has been filed in each and every case sought to be consolidated.

C. Industrial Special Indemnity Fund.

Any claim against the Industrial Special Indemnity Fund (ISIF) shall be made by filing a separate complaint in accordance with Idaho Code, § 72-334 and shall be in the form prescribed by the Commission, an [example](#)~~sample~~ of which is attached hereto as Appendix 2. All complaints against the ISIF shall be filed with the Commission and a copy shall be served on all other parties.

D. Certifying Pleadings, Motions or Other Papers.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one licensed attorney of record of the State of Idaho, in the attorney's individual name. A party who is not represented by an attorney shall sign the pleading, motion, or other paper. The signature of any party to an action, or the party's attorney, shall constitute a certification that said party, or the party's attorney, has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief after reasonable inquiry there are

sufficient grounds to support it; and that it is not submitted for delay or any other improper purpose.

E. Motions Generally.

1. An application to the Commission for an order shall be made by filing a motion which, unless made during a hearing, shall be made in writing, state the legal and factual basis for the motion, and set forth the relief or order sought.
2. If after 14 days from the filing of a motion, no brief, affidavit, or other response is filed, the Commission may act on the motion. The Commission may act on the motion sooner after giving actual notice, or attempting to give actual notice by telephone or by facsimile transmission, to all parties. If the motion is opposed by any party, the Commission may base its ruling on written argument or may conduct such conference or hearing as may be necessary, in the Commission's judgment, to rule on the motion.
3. All motions and other pleadings shall be served on any other party.

F. Motions to Reconsider.

A motion to reconsider pursuant to Idaho Code § 72-718 shall be made⁺ within 20 days from the date the final decision is filed and shall be supported by a brief filed with the motion. All responses to a motion to reconsider shall be filed within 14 days of the date of filing of the motion. Any reply brief shall be filed no later than 10 days from the date of filing the response.

G. Form and Size Requirements for Filed Documents.

All pleadings, letters, petitions, briefs, notices and other documents filed with the Commission shall be on 8 1/2" x 11" paper.

~~*COMMENT: Subsection E.2. A response to a motion now allows 14 days instead of 10 to accommodate delivery and review of the material before preparation of a responsive filing.*~~

COMMENT RE: Complaint - The necessity to sign the release by claimant is not jurisdictional to filing the complaint. The use of this form is intended for ease in receiving medical information by Employer/Surety. Should claimant refuse to release such medical information, serious consequences may develop in pursuing~~continuing~~ the claim for benefits.

⁺Amended March 1, 2008

RULE 4.

FILING AND SERVICE

A. Generally.

Documents required by these rules to be filed or served shall be filed or served by means of regular United States mail (mail), overnight service, parcel service, personal service of process, or fax. Service by mail is completed on mailing, unless otherwise specified in these rules. For any document transmitted by fax, the original document shall be sent to the Commission and copies served on all other parties the same day as the day of transmission.

B. Service – Complaint.

1. The party making the complaint shall file the original of the complaint with the Commission. Contemporaneous, thereto, ~~the~~ the party filing the complaint shall serve all other parties to the action with a copy of the complaint. In serving the employer and any surety or sureties, service shall be made on the party's Idaho agent. The Commission shall serve a copy of the complaint on behalf of *pro se* claimants on the Idaho agent of employer's surety listed on Commission records.
2. The address to which each copy of the complaint is served shall be the last known address of the respective party or parties, or the agent thereof as named in the Commission's records, *i.e.*, claim, bond record, or authorized adjuster list.
3. After the complaint has been served on all parties to the action, the party filing the complaint or such party's attorney shall certify to the Commission the parties served, the date and method of service, and the identity of the person served, or, if service is accomplished by mail, the address to which the complaint was sent.

C. Service – Answer.

1. Each party served with a copy of the complaint must file an answer to said complaint within 21 days from the date of the service of the complaint. ~~Actual receipt by the Commission shall be the date and time the Answer is filed.~~ A copy of the answer shall be contemporaneously served by the defendant(s) on all other parties. If a party has an attorney, service shall be on that attorney.
2. The Commission may shorten or extend the time for filing an answer to the complaint after a motion and showing of good cause has been made within the original time allowed.

COMMENTS: Subsection A includes a ~~more~~-comprehensive list of delivery options. Subsection B requires service on the Idaho agent and not an out-of-state office of either the Employer or Surety.

RULE 5.

EX PARTE COMMUNICATIONS

- A. No Commissioner or Referee shall initiate, permit, or consider communications made to him or her outside the presence of the parties concerning a pending proceeding. No person shall discuss with a Commissioner or a Referee the facts or merits of any matter in which a Complaint has been filed, unless all parties or their attorneys are present, or a party has failed to attend a conference in which the parties have been duly notified of the time for such **discussion** conference.
- B. In the event such communication is made, the Commissioner or Referee receiving the communication shall give written notice to all parties of the communication. Any party may thereafter request a status conference to discuss the impact and effect of the communication, and any resolution thereof.
- C. Referees acting as mediators shall be exempt from the above requirements.

~~COMMENT: Substantial changes were made to more fully explain what "ex parte" communications are prohibited, and resolve situations that occur.~~

RULE 6.

DEFAULT

A. Procedure for Entry of Default.

A party seeking the entry of a default shall give notice by certified United States mail to all parties of its intent to take default and shall file with the Commission proof of service, or attempted service, of such notice that contains a copy of the notice. If the party against whom the default is sought does not ~~answer~~respond within 21 days after service, or attempted service, of the notice, ~~the party seeking the default may file a motion with~~ the Commission shall issue an order entering~~for entry of default. When a party against whom an award or judgment for affirmative relief is sought has failed to respond within the time prescribed by this rule, the Commission shall enter that party's~~ default and serve notice thereof on all parties to the action.

B. Setting Aside Default.

For good cause shown, and on written motion filed within 10 days after an entry of default, the Commission may set aside such entry.

C. Award or Judgment of Default.

~~After Whenever the Commission has granted an entry of order entering default becomes final, the Claimant must~~party seeking an award or judgment shall file with the Commission an application for such award or judgment and shall establish a *prima facie* case to support an award or judgment~~that application. A claimant's burden of establishing a prima facie case should not be disregarded simply because the employer was defaulted by order of the Commission.~~

The Claimant~~party~~ may establish such *prima facie* case by submitting affidavits, depositions, and/or medical reports to the Commission ~~along with the party's application~~ or, alternatively, ~~it~~the Claimant may file a request for hearing to establish a *prima facie* case. Proof of medical facts at hearing may be made in the manner set forth in JRP Rule 10(G)~~below~~.

A defaulted party ~~may~~shall not be allowed to participate further in the proceedings and, therefore, may not present evidence to rebut the Claimant's prima facie case~~hearing~~. When the Commission determines whether the Claimant~~party seeking a default award or judgment~~ has established a *prima facie* case, it shall enter an appropriate order and serve notice thereof on all parties.

C. ~~Setting Aside Default.~~

~~For good cause shown and on written motion filed within 21 days after entry of default, or an award or judgment of default, the Commission may set aside such entry, award or judgment.~~

A flow chart of a typical default proceeding is attached as Appendix 4.

COMMENT: The new rule streamlines the default process and eliminates the requirement to file a motion for default Clarification is provided for the reader to better understand a complicated process that is seldom used at the Commission.

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RULE 7.

DISCOVERY

- A.** Parties may obtain discovery by one or more of the following methods: depositions by oral examination or written questions, written interrogatories, or requests for production of documents or things.
- B.** Requests for admissions shall not be allowed. This provision notwithstanding, the parties may agree to admit facts prior to hearing.
- C.** Procedural matters relating to discovery, except sanctions, shall be controlled by the appropriate provisions of the Idaho Rules of Civil Procedure.

COMMENT: Discovery is limited to the procedures within this rule. Requests for admissions continue to remain an unacceptable procedure at the Commission.

RULE 8.

PREHEARING PROCEDURE

A. Conferences.

On the motion of any party filed any time after the answer to the complaint has been filed, or on its own motion, the Commission may hold a conference or conferences with all parties to consider and discuss the following, as appropriate:

1. Mediating the dispute as provided in [JRP Rule 17](#) ~~of these rules~~;
2. Clarifying the issues;
3. Amending the pleadings;
4. Obtaining admissions of fact and of documents which will avoid unnecessary proof;
5. Limiting the number of expert witnesses and identifying persons having knowledge of relevant facts who may be called as witnesses;
6. Discovery issues and schedule;
7. Issues of fact and law;
8. Whether the case should be heard by the full Commission because it is a case of first impression, presents a situation to overturn or modify precedent, involves novel or complex facts, or otherwise merits hearing by the full Commission rather than by a Referee; and
9. Any other matter which any party or the Commission deems relevant.

B. Telephone Conferences

In any prehearing proceeding before the Commission, including any scheduling or discovery matter, the Commission may, on motion of any party or on its own motion, direct that the proceeding be conducted by telephone conference with all parties.

C. **Requesting a Hearing.**

1. Unless otherwise scheduled for hearing under these rules, no case shall be set for hearing until the time for filing an answer has passed and a party shall have filed with the Commission and served on all other parties a written request for hearing which shall contain the following:
 - a. Statement of readiness for hearing;
 - b. Clear and concise statement of the factual and legal issue or issues which the party desires the Commission to hear and decide;
 - c. Desired location of the hearing;
 - d. Desired dates of the hearing;
 - e. Unavailable dates of counsel;
 - f. Estimated length of the hearing;
 - g. Whether settlement negotiations have been conducted and if so, the likelihood that settlement will be achieved before hearing;
 - h. Whether the case should be heard by the full Commission because it is a case of first impression, presents a situation to overturn or modify precedent, involves novel or complex facts, or otherwise merits hearing by the full Commission rather than by a Referee; and
 - i. Whether a translator or any assistive device will be needed, ~~and~~ any other information, ~~that~~ which will be helpful to the Commission in scheduling or conducting the hearing.
2. Within 14 days of the date of service of the request for hearing, all opposing parties shall respond in writing to the request. Any party objecting to scheduling the case for hearing must submit a clear and concise statement of the reasons why the case should not be set. If no response is timely filed, the Commission may schedule a hearing based solely on the request for hearing.
3. The Commission may order all parties to submit prehearing statements containing any of the information specified in subparagraphs C.1.c. through C.1.i. above and/or prehearing memoranda and may schedule a case for hearing on its own motion.

D. Emergency Hearings.

If, at any time after the date the answer is filed, or should have been filed, any party believes that an emergency exists such that an expedited hearing on any issue or issues is needed, that party shall file a request for an emergency hearing. The Commission may issue an order scheduling an emergency hearing after conducting a conference in which all parties are provided an opportunity to present their positions as to the necessity of an emergency hearing. The determination of what constitutes an ~~situation~~ emergency justifying an emergency hearing shall be within the Commission's sole discretion. In the event the request is granted, the parties shall be prepared to proceed to hearing within 30 days of the scheduling order.

E. Small Claims.

If both parties agree that the total amount of the claim is less than \$2,000 and the parties have failed to resolve the matter in mediation, the case may be heard according to subsection D on an emergency basis.

COMMENTS: Subsection A.1 references the importance of mediation in the resolution process of issues at the Commission. Mediation has a separate rule.

~~Subsection A, B, and C are streamlined for better use. In setting a case for hearing, it is recommended that a telephone conference be conducted to enhance the efficiency of the judicial process.~~

Subsection D provides a specific forum to resolve issues which substantially impact the health or financial stability of an injured worker and need immediate attention by the Commission.

Subsection E provides a ~~new~~ forum to resolve cases in which the total amount in controversy does not warrant extended litigation .

RULE 9.

WITNESS FEES, MILEAGE AND SERVICE OF SUBPOENAS

Unless otherwise provided by law, no person shall be required to attend as a witness in any proceeding before the Industrial Commission unless that person's lawful mileage and witness fee for one day's attendance shall first be paid or tendered to him or her. Witness fees and mileage shall be in the amounts provided by law for a witness in the district courts of this state as set forth in Idaho Rule of Civil Procedure 54(d)(1), and shall be paid by the party in whose behalf the witness is subpoenaed unless the witness chooses not to accept payment. Service of subpoenas shall be accomplished in the manner provided by law for the service of subpoenas in civil proceedings in the district courts of this state.

COMMENTS: This rule standardizes the procedures of service for subpoenas and provides for reimbursement of costs for witnesses pursuant to Idaho Code § 72-709 (4).

~~Under Personnel Commission Rule IDAPA 28.25.H.1, employees of the State who are required to appear in any judicial or administrative proceeding in any capacity connected with official state duty are not entitled to receive compensation, including witness fees, mileage, lodging, meals, and miscellaneous expenses.~~

RULE 10.

HEARING PROCEDURE

A. Presiding Officers.

Hearings are held before one or more Commissioners or a Referee appointed by the Commission. The presiding officer in each case is designated by the Commission.

B. Stipulations.

The parties may stipulate to the facts of any case in writing and the Commission may make its order or award thereon.

C. Exhibits.

1. Unless good cause is shown to the contrary at least 10 days prior to a hearing, each party shall serve on all other parties complete, legible, and accurate copies of all exhibits to be offered into evidence at hearing, including but not limited to medical records. The proposed exhibits shall be arranged in chronological order with the first exhibit as the earliest date proceeding to the latest date. All pages within each exhibit shall be numbered in consecutive order. Each party shall file a notice with the Commission that service of such exhibits has been completed.
2. In the event that the existence of a proposed exhibit is discovered in good faith and with due diligence less than 10 days before the date of hearing, the party discovering the same shall immediately notify all other parties of the existence of the exhibit. The party shall also serve a complete, legible and accurate copy of the exhibit on all other parties, and file with the Industrial Commission a notice indicating the proposed exhibit has been served.
3. All parties are encouraged to present the Commission, at hearing, with an electronic copy (in .pdf format) of all exhibits to be offered. Each exhibit within the electronic copy shall be clearly identified by its exhibit letter or number.

D. Depositions.

Generally - The testimony of any witness or witnesses may be presented by deposition prior to the conclusion of the hearing, provided that the party offering the deposition testimony provides reasonable notice prior to the taking of the deposition that the deposition may be used for testimonial purposes. The deposition testimony of any witness also may be presented prior to the conclusion of the hearing by agreement of the parties. Absent such notice or agreement, a deposition may be used only to the extent allowed by the Idaho Rules of Civil Procedure.

E. **Post-hearing Depositions.**

1. At the conclusion of a hearing, unless the parties agree to a shorter time, the record shall remain open for the submission of expert testimony through the post-hearing depositions ~~testimony~~ of physicians and vocational expert witnesses. "Physician" as used in this rule means (1) a "physician" as defined by Idaho Code § 72-102(21), or (2) a practitioner of medicine or any of the healing arts or sciences duly licensed as such in another state. Notice of all depositions to be taken pursuant to this subsection must be filed with the Commission and served on all other parties not later than 10 days prior to the hearing.
2. A party who has given notice of a deposition under this subsection may vacate the deposition only by serving reasonable written notice on all other parties and giving them an opportunity to respond. Any party who objects to vacating a post-hearing deposition must serve reasonable written notice of its objection on all other parties. If any party serves a notice of objection as provided herein, the deposition shall not be vacated; provided, however, that the service of a notice of objection shall constitute a certification that the party or parties objecting to vacating the deposition will bear the costs of the deposition.
3. All depositions to be submitted on behalf of a claimant must be taken no later than 14 days after the conclusion of the hearing; all depositions to be submitted on behalf of a defendant must be taken no later than 28 days after the conclusion of the hearing. The Commission may alter the time limits within which to notice or take post-hearing depositions on motion showing good cause for such modification; provided, however, that any stipulation or motion to enlarge the period for post-hearing depositions must be submitted to the Commission for its approval prior to the expiration of the original period and must set forth reasonable grounds for such enlargement and the extent of the enlargement sought.
4. Unless the Commission, for good cause shown, shall otherwise order at or before the hearing, the evidence presented by post-hearing deposition shall be evidence known by or available to the party at the time of the hearing and shall not include evidence developed, manufactured, or discovered following the hearing. Experts testifying post-hearing may base an opinion on exhibits and evidence admitted at hearing but not on evidence developed following hearing, except on a showing of good cause and order of the Commission. Lay witness rebuttal evidence is only admissible post-hearing in the event new matters have been presented or ~~and~~ the Commission so orders.

F. Evidence.

The filing of a document, including a pre-hearing deposition, does not signify its admission in evidence, and only those documents which have been admitted as evidence shall be included in the record of proceedings of the case.

G. Medical Reports.

Any medical report(s) existing prior to the time of hearing, signed and dated by a physician, or otherwise sufficiently authenticated, may be offered for admission as evidence at the hearing. The fact that such report(s) constitutes hearsay shall not be grounds for its exclusion from evidence.

H. Hearing Transcript and Deposition Procedure

1. All requests for copies of hearing transcripts shall be in writing and filed directly with the Commission. The Commission will provide the requesting party with one copy of the hearing transcript. Oral requests will not be honored.
2. The Commission will not honor any request for a transcript made directly to the court reporter. The requestor will be responsible for any costs charged by the court reporter for any documents the court reporter provides to the requestor. Invoices sent to the Commission for such costs will be returned.
3. Parties that notice a deposition will be responsible for its costs including the court reporter.
4. The Commission will not provide or pay for copies of depositions, including discovery or post-hearing lay or expert witness depositions.
5. Pre-hearing depositions submitted for evidentiary purposes shall be admitted into the record as exhibits. The party proposing the exhibit shall provide all other parties with a copy of the deposition pursuant to this rule.
6. Post-hearing depositions submitted for evidentiary purposes shall be admitted into the record according to the provisions of this rule. The party offering a post-hearing deposition shall provide all other parties with a copy of the deposition at no cost to such parties.

I. Video Hearings

1. The Commission may, sua sponte or on a motion made by a party, order the holding of a hearing utilizing video conferencing equipment and facilities available to the Commission under such terms and conditions as the Commission may provide.

COMMENTS: Subsection C.1 provides a system of organization of exhibits presented to the Commission for its consideration in resolving issues. Bates stamping is encouraged. Although the rule requires service of the exhibits 10 days before the hearing, the Commission would encourage the parties to make every effort for each party to receive the exhibits 10 days before the hearing.

Subsection E.1 limits the post-hearing depositions testimony of physicians and vocational rehabilitation witnesses to expert, rather than factual, testimony.

Subsection E.4 addresses ~~clarifies~~ the use of expert testimony and lay witness rebuttal testimony. ~~that previously was a practice at the Commission but was not otherwise formally adopted in rule form.~~

Subsection H memorializes the Commission's policy to provide hearing transcripts, but not deposition transcripts, upon a party's written request. A party offering a deposition into evidence must provide a copy thereof to all other parties.

RULE 11.

BRIEFS

A. Brief Format.

All briefs shall be printed on white paper 11 inches long by 8 ½ inches wide. The type shall be no smaller than 12 point Times New Roman. All lines must be double-spaced, except for quotations which may be indented and single spaced. There shall be a margin of 1 ½ inches at the top and at the bottom of each page, and 1 inch at each side of each page. The pages shall be numbered at the bottom. Greater leniency is afforded *pro se* claimants in complying with this provision.

Exclusive of any addendum or exhibit, the following page limits apply:

- a. Claimant's opening brief shall not be in excess of 30 pages;
- b. Defendant's responsive brief shall not be in excess of 30 pages;
- c. Claimant's closing brief shall not be in excess of 15 pages;

No brief in excess of these page limits shall be filed without the Commission's prior approval.

Any brief that exceeds the page limits without prior approval may be stricken by the Commission.

BA. Time for Filing.

The Commission shall grant a request by any party to submit argument by written brief. Unless there appears good cause for establishing an alternate briefing schedule and the Commission so orders, the claimant shall file an opening brief no later than 56 days after the hearing, each defendant shall file a response brief no later than 73 days after the hearing, and the claimant may file a reply brief no later than 83 days after the hearing. As continuances are not favored, the Commission will not grant requests for additional time for filing briefs unless made by motion within the original time allowed and a showing of good cause. ~~No brief in excess of 30 pages, exclusive of any addendum or exhibit, shall be filed without the Commission's prior approval.~~

CB. Citations and Support Required.

Whenever a party refers to deposition testimony or hearing testimony, whether by quoting or paraphrasing, such reference must include a citation to the page or pages and line or lines in the transcript. Whenever a party refers to evidence reflected in an exhibit, such reference must include a citation to the number and page of the exhibit. Whenever a party asserts a point

of law, such assertion must be supported by citation to appropriate legal authority, including but not limited to, statutes, case law, or legal treatises. Whenever a brief does not contain the citations and support required by this rule it may be subject to a motion to strike by any party or may be stricken by the Commission on its own motion. Greater leniency is afforded *pro se* claimants in complying with this provision.

D. C. Copies of Briefs.

An original and fFour copies of all post-hearing briefs shall be filed submitted to with the Commission ~~along with the original.~~

COMMENT: Subsection A establishes uniform formatting for briefs and limits briefing to 30 pages unless prior approval is obtained for additional briefing. ~~Redundancy of arguments and transcript duplication is intended by the new language to more sharply focus legal briefing before the Commission.~~

RULE 12.

DISMISSALS

A. Generally.

Unless good cause is presented, dismissal of a complaint shall be without prejudice.

B. Non-Prosecution.

The Commission may dismiss a complaint without prejudice if no action has been taken on the case for a period of 6 months. Prior to dismissal, the Commission shall give written notice to the parties of the Commission's intent to dismiss the complaint. Any party may, within 21 days of the date of service of the Commission's notice, show cause in writing why the Commission should not dismiss the complaint.

C. Party Filing Complaint.

Unless the interests of justice require otherwise, the Commission shall grant a motion for dismissal when made by the party filing the complaint.

D. Stipulation.

The Commission may, on presentation of sufficient grounds or good cause, dismiss a complaint pursuant to stipulation by the parties.

COMMENTS: Subsection A. Parties submit several different types of requests to dismiss cases at the Commission. Prior to a final order, dismissal with prejudice is not favored without a showing of good cause.

Subsection C. The dismissal of the complaint by claimant is not automatic under the rule. The Commission is permitted to consider additional circumstances that may warrant the case to proceed through litigation.

Subsection D. A stipulation to dismiss without prejudice between parties represented by counsel will be sufficient for approval. In those situations where both parties are not represented by legal counsel, or the dismissal will be with prejudice, the stipulation must contain sufficient information for the Commission to approve the request.

RULE 13.

DISPOSITION OF EXHIBITS

At any time after the expiration of 21 days from the date within which an appeal may be taken from a decision of the Commission, the Commission may dispose of any exhibits. A party seeking the return of any exhibits offered by that party shall contact the Commission and arrange to reclaim such exhibits prior to expiration of the 21-day period.

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COMMENT: The Commission has limited storage capacity. Retention of exhibits will be the responsibility of the parties.

RULE 14.

CHANGE OF ATTORNEY

A. Substitution of Attorney.

The attorney of record for a party may be changed or substituted by notifying the Commission and all parties. Approval by the Commission will not be necessary if both the withdrawing attorney and the new attorney sign the notice. If a new attorney appears in an action, the action shall proceed without delay, unless the Commission finds good cause for delay of the proceedings.

B. Leave to Withdraw.

Except as provided above, or by stipulation between an attorney and his or her client, no attorney may withdraw as an attorney of record without first obtaining approval by the Commission. A request to withdraw shall be made by filing a motion, supported by affidavit, with the Commission and served on all parties to the action, including the client. The Commission may grant leave to withdraw as counsel of record on a showing of a factual basis to establish good cause and on such conditions as will prevent any delay in determination and disposition of the pending action. Notwithstanding this provision, a claimant who intends to terminate the services of his or her attorney of record and to proceed *pro se* may do so by giving written notice to the Commission, the claimant's attorney of record, and all parties that the claimant will no longer be represented by counsel and will represent himself or herself.

C. Notice to Client of Withdrawal.

Following entry of an order permitting withdrawal, the withdrawing attorney shall with due diligence, serve a copy of the order on the attorney's former client and file proof of service of the same with the Commission. Until the order is served on the client, the attorney shall remain counsel of record for the client. The withdrawing attorney shall make such service to the last known address of his or her client. Such service may be made by personal service or by United States mail to the client's last-known address. Service by mail shall be complete on mailing. On entry of an order granting leave to withdraw from an action, no further proceedings can be had in that action which will affect the rights of the client of the withdrawing attorney for a period of 21 days after service or mailing of the order of withdrawal to the parties to the action.

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D. Extraordinary Circumstances.

In the event of the death, extended illness, prolonged or unexplained absence, suspension or disbarment from the practice of law of an attorney of record in an action, if such attorney has not associated with another attorney, the Commission may issue an order withdrawing the attorney of record. In such event, no further proceedings can be had in such action that will affect the rights of the party represented by such attorney for a period of 21 days after the order has been served as provided in this rule.

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COMMENTS: Subsection A indicates the preference of the Commission for substituting legal counsel to promote continued representation of parties throughout the litigation process.

Subsection C emphasizes the continuing responsibility of an attorney to represent his/her client until notice of withdrawal is served on the client.

RULE 15.

DECLARATORY RULINGS

A. Purpose.

The Commission provides this format for rulings on the construction, validity, or applicability of any workers' compensation statute, rule, ~~regulation~~, or order.

B. "Person" Defined.

The word "person" whenever used in this rule, shall be construed to mean any person, partnership, governmental agency or department, unincorporated association or society, or other corporation of any character whatsoever. Such a person shall be the petitioner in the proceeding.

C. Contents of Petition.

Whenever any person has an actual controversy over the construction, validity or applicability of a statute, rule, ~~regulation~~ or order, that person may file a written petition with the Commission, subject to the following requirements:

1. The petitioner must expressly seek a declaratory ruling and must identify the statute, rule, ~~regulation~~ or order on which a ruling is requested and state the issue or issues to be decided;
2. The petitioner must allege that an actual controversy exists over the construction, validity or applicability of the statute, rule, ~~regulation~~ or order and must state with specificity the nature of the controversy;
3. The petitioner must have an interest which is directly affected by the statute, rule, ~~regulation~~, or order in which a ruling is requested and must plainly state that interest in the petition; and
4. The petition shall be accompanied by a memorandum setting forth all relevant facts and law in support thereof.

D. Service on Parties.

The petitioner shall serve a copy of the petition on all other persons to the actual controversy at the time the petition is filed with the Commission. All persons so served shall be

deemed parties to the declaratory ruling proceeding. A declaratory ruling shall not be binding on persons not made parties to the proceeding.

E. Time for Responses or Replies.

Within 14 days after service of a petition, any party served may file a written response thereto, stating with specificity the facts and the law on which the responding party relies. Within 10 days after service of the response, the petitioner may file a reply. The Commission may shorten or extend the time for filing a response or reply on a motion and showing of good cause made within the original time allowed. All such responses or replies shall be served on all other parties.

F. Disposition of Petition.

On receipt of a petition and after the time for filing all responses and replies has passed, the Commission may:

1. On motion of any party, or on its own motion, hold a hearing on the facts and/or law;
2. Conduct such investigation or inquiry as it deems proper, or call for a submission of such facts, evidence, or information as it deems necessary to enable it to make a determination of the issue or issues;
3. Issue a written ruling which shall have the force and effect of a final order or judgment; or
4. Decline to make a ruling when:
 - a. The Commission lacks jurisdiction over the issue or issues presented;
 - b. There is no actual controversy;
 - c. The petitioner would not be directly affected by a resolution of the issue presented;
 - d. The petitioner does not provide sufficient facts or other information on which the Commission may base a ruling;
 - e. The issue on which a determination is sought is or should be the subject of other administrative or civil litigation or appeal; or
 - f. It appears to the Commission that there is other good cause why a declaratory ruling should not be made.

|

COMMENTS: Subsection A provides a ~~more~~-clear purpose for this rule.

Requests for a declaratory ruling by the Commission from a person who is not a party to an actual controversy under the provisions of Idaho Code, Section § 67-5232, shall be processed in accordance with the rules promulgated by the Idaho Attorney General at IDAPA 04.11.01.400-409.

| ~~Subsection C removes redundant language.~~

Draft

RULE 16.
SANCTIONS

The Commission retains power to impose appropriate sanctions for any violation or abuse of its rules or procedures.

Draft

COMMENT: *This rule reiterates ~~Added language compliments~~ the ability of the Commission to promote compliance with all aspects of an orderly judicial system.*

RULE 17.

MEDIATION

A. Definition.

Mediation is an informal process by which participants voluntarily meet to reach an agreement for a fair settlement of their dispute(s). Each mediation is conducted by a neutral Commission mediator who has experience in resolving disputes. The mediator facilitates the meeting but does not give legal advice to the participants.

B. Duties of Mediator.

The mediator shall assist the participants in reaching a mutually acceptable resolution of the dispute(s) through discussion and negotiation. The mediator shall be impartial, neutral, and unbiased. The mediator shall make no decisions for the participants. The mediator shall maintain the confidentiality of information obtained in the mediation process and will not testify for any participant should the case proceed to a formal hearing.

C. Request for Mediation.

At any point in the dispute resolution process, a person or party may request mediation of the dispute(s). If the mediation process is agreed by the opposing party, the Commission will schedule the mediation as soon as practicable.

D. Mediation Procedure.

1. An appropriate time and place for mediation will be established through coordination with the Commission. If mediation is held prior to hearing, the hearing date shall not be vacated unless the parties so request and the Commission so orders.
2. A person with full authority to settle the dispute shall participate or be available to participate in mediation proceedings. Any participant may be assisted by another person.
3. Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence in any proceeding before the Commission. All communications whether verbal or written from the participants to the mediator shall be confidential, unless otherwise agreed by the participants or ordered by an official with appropriate authority to do so.

4. In the event a mediation is conducted without good faith of either party or is vacated or cancelled within 48 hours of the scheduled meeting between the parties without good cause, sanctions may be imposed against the party responsible for the failure to proceed.

E. Agreement.

If the participants reach an agreement, the parties shall submit a written and signed settlement agreement for approval by the Commission.

COMMENTS: Subsection A defines the mediation process. This ~~new~~-rule provides the working mechanism for resolution of issues at the Commission through a structured, but voluntary, mediation program.

Subsection B provides the scope of duties of the mediator in assisting the parties to reach a joint resolution.

Subsection C emphasizes that the mediation process can only be accomplished by the joint agreement of the parties.

Subsection D outlines the procedure to be followed by the participants in the mediation process. Since the mediation process is voluntary, the success of mediation is dependent in a large part on the good faith of each party coming to the mediation with the intention to settle the case. Without such initial commitment, the parties and Commission have expended unnecessary time and costs. Also, the parties need to extend sufficient notice if the mediation cannot go forward. If these common courtesies cannot be met, sanctions are available under paragraph 4.

Subsection E indicates that any agreement of the parties is still subject to approval by the Commission under its statutory responsibility to determine that such settlements are in the best interests of all parties.

RULE 18.

LUMP SUM SETTLEMENT AGREEMENTS

A. Service, Form.

Documents necessary to finalize settlement under this rule shall be filed and a copy served on the other parties. The text of a settlement agreement shall be on 8.5" X 11" paper and shall identify the attorney or party that prepared it.

B. Standard of Review.

Prior to approving a lump sum settlement, the Commission will review a proposed lump sum settlement to determine whether such settlement is in the best interests of all parties. Supporting documents shall be complete, accurate, legible, and arranged in chronological order beginning with the earliest date and proceeding to the most recent date without duplicate submissions.

C. Requirements.

To ensure the Commission has information on which ~~a the Idaho Code §72-404~~ determination can be made, ~~the Commission requires the parties to submit the following information and serve a copy on each of the parties;~~ Defendant shall complete the Defendant Settlement Summary (see appendix 6A) and shall attach the same as Exhibit A to a proposed lump sum settlement. Claimant shall complete the Claimant Settlement Summary (See appendix 6B), and submit the same to the Commission contemporaneous with the submission of an executed lump sum settlement.

- ~~1. Text of the terms of settlement, which shall include:~~
 - ~~a. The parties' names;~~
 - ~~b. Industrial Commission claim number(s);~~
 - ~~c. Claimant's current medical and employment status;~~
 - ~~d. A list of all medical providers paid, grouped within categories which are "physician," "hospital," "therapy," "mileage," "miscellaneous,"~~
 - ~~e. An itemized summary of benefits paid and those to be paid;~~
 - ~~f. Outstanding and unpaid medical expenses, if any;~~

- ~~g. Method of calculating benefits and supporting data, including key medical records,~~
 - ~~h. Signature of the claimant and the signatures of all other parties, or the authorized agents of the other parties, to the agreement,~~
 - ~~i. An itemization of any and all fees and costs charged by claimant's counsel prior to the submission of the agreement and an itemization of fees and costs to be deducted from the lump sum payment or payments, and~~
 - ~~j. A copy of the attorney fee agreement between claimant and counsel for claimant.~~
- ~~2. Attorney fee letters as set forth in IDAPA 17.02.05.281.~~
3. A complete copy of the Complaint, Answer, any Amended Complaint and Amended Answer, and any Findings of Fact, Conclusions of Law and Order entered by the Commission in the case, or if any of these documents do not exist, an affirmative statement as to which documents do not exist.
- ~~4. An affirmative statement that the agreement is in the best interests of the parties, pursuant to Idaho Code § 72-404.~~

D. Effect of Submission and Hearings.

The submission of a proposed lump sum settlement or agreement shall not be considered a motion. If the Commission declines to approve a proposed lump sum settlement agreement, the Commission may request additional relevant information, or on its own motion or on the motion of a party to the agreement schedule a hearing limited to the issue of whether the lump sum settlement and discharge of one or more defendants is for the best interest of all parties. There is no appeal from the Commission's decision.

E. Format.

~~The information required under Section C of this rule shall be submitted in a format substantially similar to the form provided in Appendix 5A and B.~~

COMMENT: Paragraph D reflects the administrative process in reviewing proposed lump sum settlement agreements. If not initially approved, the parties may still submit additional information for consideration by the Commission. Also, an administrative hearing is available to the parties for presentation of relevant information for the Commission to consider in reviewing the lump sum settlement proposal.

RULE 19.

DISPUTES BETWEEN PROVIDERS AND PAYORS

A. Scope.

By virtue of the authority vested in the Commission pursuant to Idaho Code §§ 72-508 and 72-707, the Industrial Commission of the State of Idaho hereby adopts this judicial rule of procedure governing the resolution of disputes between providers and payors.¹ A "dispute" means a disagreement between a provider and a payor over whether any charge for medical services is acceptable pursuant to the provisions of the administrative regulation applicable at the time a charge was incurred.² The definitions set forth in IDAPA 17.02.09.030 are incorporated by reference as if fully set forth herein.

B. Compliance Prerequisite.

In order to commence the dispute resolution process, a provider must have complied with the applicable procedures preliminary to dispute resolution set forth in IDAPA 17.02.09.034.

C. Service.

Required documents shall be filed and served by mail, fax, or personal delivery.

D. Review.

The Commission will use this dispute resolution process to determine whether the provider's charge is acceptable pursuant to the provisions of IDAPA 17.02.09.031 – 033.

E. Dispute Resolution Process.

1. Pleadings.

- a. **Provider** - If a provider has received from a payor a final objection to all or part of a provider's bill, or if 45 days have passed from the date provider sent the bill without response from payor, the provider may file with the Commission and serve on the payor a request for approval of the disputed charge. If a payor has finally objected to more than one charge in

1. This Judicial Rule stands on its own and does not incorporate by reference any other Judicial Rule promulgated by this Commission.

2. This process shall be used solely for resolving disputes between providers and payors over whether any charge for medical services is acceptable pursuant to the provisions of the administrative regulation applicable at the time a charge was incurred. It shall not be used to resolve disputes regarding the reasonableness, necessity or appropriateness of medical treatment. Reasonableness of treatment includes such issues as whether the number, provider, type or style of treatments is appropriate. Those issues may be raised by means of a Complaint filed with the Commission.

a single billing, the provider may seek approval of all such charges in a single motion.

- (i) **Form.** The provider shall file such request on the form provided in Appendix 6 and attach thereto affidavits or other documents evidencing facts sufficient to show that the charge in dispute is acceptable pursuant to the applicable regulation. If the dispute is over a charge that does not have a CPT code or a conversion factor, the Provider will provide evidence of the provider's usual charge for that medical service to non-industrially injured patients.
- (ii) **Timing.** Such request must be filed with the Commission and served on the payor within 30 calendar days of the date the provider receives the payor's final objection, or within 90 days from the date provider sent the bill to payor if payor has not responded. A provider's failure to timely file a request for the disputed charge shall forever bar the provider from seeking the Commission's approval of any charge as to which a final objection has been made.

- b. **Payor** - A payor served with a request for the disputed charge shall file a response with the Commission, together with affidavits and/or other documents evidencing facts sufficient to show that the charge in dispute is not acceptable pursuant to the applicable regulation. The response and accompanying documents shall be served on the provider within 21 calendar days of the date it receives the provider's motion. If no response is filed and served within the time provided herein, the Commission shall enter a default in favor of the provider and the charges will be deemed acceptable.

2. **Commission Staff Review.**

When the time for filing a response has passed, the Commission shall refer all pleadings and supporting documents filed by the parties to a Commission staff member or members for administrative review and disposition.

- a. **Review.** The Commission's staff shall review the pleadings and supporting documents as well as all other relevant information. The weight to be placed on any evidence considered by the Commission's staff shall be solely within the staff's independent judgment.
- b. **Administrative Order.** The Commission staff will issue an administrative order ruling on the motion for disputed charge. The administrative order shall state the reasons therefor and shall be filed with the Commission and served on all parties.
- c. **Compensation for Costs and Expenses.** If Provider's motion disputing CPT or MS-DRG coded items prevails, an additional thirty

percent (30%) shall be added to the amount found by the Commission to be owed as compensation for Provider's costs and expenses associated with using the dispute resolution process as set forth in IDAPA 17.02.09.034.10.

In the case of a prevailing motion disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount owed within thirty (30) days after the date of the Administrative Order.

The provider shall give written notice to the Commission that the Administrative Order remains unpaid after thirty (30) days. The written notice is to be copied to the in-state insurance adjuster and/or self-insured employer, whichever is appropriate.

The Commission will await a response from Payor for five business days to allow confirmation that payment was properly made. After such time has expired without payment confirmation, the Commission shall issue a Second Administrative Order to the Payor concerning the additional amount requested.

3. **Reconsideration.**

a. **De Novo Review.** Any party aggrieved by the administrative order issued by the Commission staff may, within 20 days of the date the administrative order is entered, file for reconsideration seeking *de novo* review by the Industrial Commission, stating with specificity the reason(s) therefor and shall serve a copy on the opposing party. The other party shall have 10 days to file a response to the motion, and the aggrieved party shall have 5 days to file a reply to the response. On filing for reconsideration, and where the Commission determines that the interests of justice will be served by further review, the Commission may conduct a *de novo* review of the record to determine whether the interests of justice have been served by the administrative order, or may remand the matter to Commission staff for *de novo* consideration and entry of an additional administrative order.

(i) **Record.** The record shall include all pleadings and exhibits filed with the Commission, any other information relied on by the Commission staff, and the administrative order.

b. **Opportunity to Present Additional Evidence.**

(i) Any party desiring to submit additional evidence must submit it with the reconsideration or response thereto. Additional evidence may not be submitted with a reply to a response. The party submitting the evidence must demonstrate good cause

why the evidence was not submitted with the motion for disputed charge. Good cause will be based on whether the evidence was newly discovered or not available when the motion for a disputed charge was submitted, or excusable neglect. If the party fails to show good cause, the evidence will not be considered.

(ii) The Commission shall issue an order ruling on a request to augment the record. If the Commission grants such request, it shall establish a schedule and method whereby such additional evidence may be presented.

c. **Order.** After a *de novo* review of the record and, where applicable, review of additional evidence, the Commission shall issue an order on the reconsideration.

COMMENTS: Subsection E.1.a extends the time for a provider to file a bill for payment.

Subsection E.3.b provides a concise statement of the process for augmenting the record.

Amended effective March 1, 2008 to conform with IDAPA changes.

RULE 20.

CHANGE OF PHYSICIAN

A. Legal Authority.

Rule 20 was established and adopted by the Commission pursuant to Idaho Code § 72-432(4).

B. Definitions.

1. The terms "petition," "written notice," "employee's request," and "claimant's request" as used in Idaho Code § 72-432(4) have the same meaning and shall refer to the Petition for Change of Physician (Petition) as described herein.
2. The terms "written decision" and "response" as used in Idaho Code § 72-432(4) have the same meaning and shall refer to the Response to Petition for Change of Physician (Response) as described herein.
3. The term "employee" shall refer to an employee or an authorized representative thereof.
4. The term "employer" shall refer to the employer, surety, or authorized representative thereof.

C. Filing and Service.

1. Any documents required by this rule to be filed and/or served on a party and/or the Commission shall be so filed or served by mail, by fax machine, or by personal delivery. Such documents shall be sent to the last known address of the person receiving the document.
2. Proof of service shall be accomplished by a certificate of service from the serving party indicating the type of document served, the method of service, name and address of the person receiving service, and the date the document was either mailed, transmitted by fax, or personally delivered.
3. Service by mail shall be presumed to be accomplished 3 days after the date of mailing, unless otherwise shown by the receiving party.

D. Attorney Representation.

For purposes of this rule, the provisions of [JRP Rule 2](#), ~~J.R.P.~~, requiring representation by an attorney shall ~~not~~ apply.

E. Petition.

In order to request a change of physician within the meaning of Idaho Code § 72-432(4), the employee must serve a petition on the employer or surety. The petition may be served at any time, regardless of whether a complaint has been filed pursuant to [JRP Rule 3.A.](#), ~~J.R.P.~~ If a complaint and answer have been filed and the employer/surety is represented by an attorney, the petition shall be served on said attorney. A copy of the petition shall be provided to the Commission. The petition shall be in writing and submitted in a format substantially similar to the form provided in Appendix 7A.

1. The petition shall be signed by the employee and shall contain the following information:
 - a. Name and address of the employee;
 - b. Name and address of the employer;
 - c. Name and address of surety (if known);
 - d. Name and address of current physician;
 - e. Name and address of physician to whom change is being requested;
 - f. General information (including date, place, and circumstances of injury/disease);
 - g. Summary statement of the medical treatment received to date;
 - h. Reason change of physician is requested; and
 - i. Dates available for hearing within the next 30 days.
2. The employee may attach to the petition legible and accurate copies of any documentation supporting the request for change of physician. Whether such documents are accepted into evidence is solely within the discretion of the Commission.

F. Response.

The employer shall respond to the petition within 14 days from the date of service thereof. The response shall be in writing and be submitted in a format substantially similar to the form provided in Appendix 7B.

1. The response shall be signed by the employer and shall contain the following information:
 - a. Name and address of the employer;
 - b. Name and address of the surety;
 - c. Name and address of the employee;
 - d. Statement approving or denying the Petition;
 - e. If denied, a statement of the reasons for the denial; and
 - f. If denied, dates available for hearing within the next 14 days.
2. The employer may attach to the response legible and accurate copies of any documentation supporting the response. Whether such documents are accepted into evidence is solely within the discretion of the Commission.
3. If the petition is approved by the employer, the employer shall ~~render and~~ provide its response to the Commission. If the petition is denied on the grounds that no further medical care is reasonable, no documentation need be provided. A copy of the response shall be served on the employee. The parties shall act in accordance with such approval without further action by the Commission.
4. If a copy of the petition has been filed with the Commission and is denied by the employer, the employer shall file its response with the Commission. A copy of the response shall be served on the employee. On receipt of the response, the Commission shall deem the petition filed and the matter in dispute.
5. Default. If the employer does not respond within 14 days from the date the petition was received and the employee desires a default order, the employee shall file a written statement that there has been no response to the Petition and attach a copy of the certificate of service of the petition. On receipt of these documents, the Commission shall issue an order granting the petition. A copy of the order shall be served by the Commission on the parties.

G. Expedited Hearing.

Within 14 days from the filing of the response denying the petition, the Commission shall conduct an expedited hearing to determine whether or not the petition should be granted unless employer/surety denies further medical care is reasonable in its response. In that case, the Commission will serve its determination on the petition in writing without a hearing. Hearings shall be conducted in accordance with the following guidelines:

1. Presiding Officer. The hearing shall be conducted by a Referee or one or more of the Commissioners.
2. Hearing. The hearing shall be conducted in person or by telephone conference, at the convenience of the Commission. If conducted by telephone conference, the call shall be initiated by the presiding officer.
3. Notice. Notice of the presiding officer(s) method, time, and place of the hearing shall be given to the parties as soon as practicable.
4. Evidence. Exhibits, affidavits, depositions, and other documentation offered into evidence must be submitted to the Commission, and copies served on the opposing party, at least 48 hours prior to the hearing. The parties shall be afforded the opportunity to present witnesses.
5. Extensions. The time limits described herein shall not be extended.
6. Waiver. The expedited hearing may be waived on stipulation of the parties. In that event, the decision of the Commission will be based on the written information provided to the Commission prior to the scheduled hearing.

H. Decision.

The Commission shall issue a decision following the hearing, or waiver thereof, but in no event more than 14 days after the filing of the response.

1. Basis. The employee bears the burden of establishing reasonable grounds to grant the petition. Reasonable grounds shall be determined from the pertinent facts and circumstances presented by the parties, and is a factual determination solely within the discretion of the Commission.
2. Appeals. The decision shall not be subject to review or appeal until all issues in the case have been determined by the Commission.

I. **Alternative Procedure.**

The above procedure shall not be deemed exclusive. An employee may pursue a change of physician through the application for hearing process described in Idaho Code § 72-706.

Draft

COMMENTS: Subsection D applies the attorney representation requirements of JRP Rule 2 to Change of Physician proceedings.

RULE 21.

EFFECTIVE DATE

These rules shall be updated and effective on and after ~~March 1, 2012~~⁰⁸. [January 1, 2013.](#)

Draft