



IDAHO INDUSTRIAL COMMISSION

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August 15, 2018

RE: Guidance Memorandum on Idaho Code § 72-435

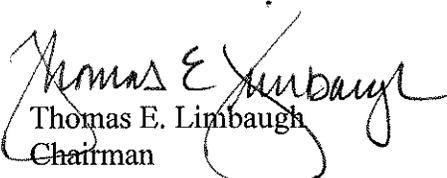
This memorandum will address mechanisms available to practitioners seeking suspension or reduction of workers' compensation benefits due to injurious practices.

As developed in *Fomichev v. Lynch* 2012 WL 7761938 (Order on Reconsideration, Issued February 20, 2013¹) an employer seeking to suspend a claimant's compensation for unsanitary or unreasonable practices must seek an order of the Commission prior to such suspension.

In cases where a complaint is already on file, a defendant may file a motion in conformance with current JRP Rule 3(F). Such motion must be supported by facts sufficient to warrant the relief sought, whether this comes in the form of affidavit, deposition or medical record. Similarly, under JRP 3(F)(2), an opposing party may defend the motion with such evidence as they deem necessary. In all cases, the Referee is free to craft a path going forward that meets the needs of a particular case.

In cases where no complaint has yet been filed, a defendant may file a complaint similar to the complaint found at JRP Appendix 1- Workers' Compensation Complaint and must ensure all the same basic information is included. A complaint made pursuant to Idaho Code § 72-435 must include a description of the alleged unsanitary and/or unreasonable practice sufficient to put a claimant on notice of the behavior or practice to which objection is made. After a response or an answer is due, either party is free to request an emergency hearing pursuant to JRP 8(D). Nothing in the rule prohibits the parties and the Referee from crafting a procedure which best suits the needs of the parties to resolve the matter.

Sincerely,


Thomas E. Limbaugh
Chairman


Thomas P. Baskin
Commissioner


Aaron White
Commissioner

¹ Both Casemaker and Westlaw erroneously list the date of publication as February 20, 2012.