

Subsection (a) of Section 300.1 of Title 12 NYCRR is amended to read as follows:

(a) As Used in this Part:

(1) “Affidavit” means a declaration or statement of facts made voluntarily and confirmed by the oath of the party making it and taken before a person having authority to administer the oath such as a notary public.

(2) “Affirmation” means a declaration not verified by an oath that the statements made are true under penalty of perjury and can be used by an attorney at law as a substitution for an affidavit.

(3) “Board” means the Workers' Compensation Board, except as pursuant to the Workers' Compensation Law, the decision of the [b]Board in particular cases may be by a member or panel of the [b]Board or by a Workers' Compensation Law [j]Judge.

([2]4) “Chair” means the Chairman, Chairwoman or Chair of the Workers' Compensation Board.[ The term Chairman appearing in this Part shall be deemed to mean Chair.]

([3]5) “Claim” includes any matter over which the Board has jurisdiction.

(6) “Initial Expedited Hearing” means the first hearing scheduled after a pre-hearing conference which is designed to provide an opportunity for the claimant and any lay witnesses to testify.

([4]7) “Insurance Carrier” means the State Insurance Fund, stock corporations, mutual corporations or reciprocal insurers with which employers have insured, and employers permitted to pay compensation directly under the provisions of Workers’ Compensation Law section 50 (3), (3-a) or (4). Insurance carrier also means, as applicable, an employer which has failed to obtain the required workers’ compensation coverage pursuant to Workers’ Compensation Law section 50.

(8) “Legal Representative” means an attorney-at-law or a [licensed] representative licensed by the Board pursuant to Workers’ Compensation Law sections 24, 50(3-b) and (3-d).

(9) “Prima Facie Medical Evidence” means a medical report referencing an injury, which includes traumas and illnesses.

(10) “Workers' Compensation Law [j]Judge” means any person appointed as a referee, pursuant to [the] Workers' Compensation Law section 150, to hear and decide controversies in accordance with the provisions of the Workers' Compensation Law and to conduct such investigations and further hearings in connection therewith as may be required by the Board. “Senior Workers' Compensation Law [j]Judge means the senior referee; “S[s]upervising Workers' Compensation Law [j]Judge means the supervising referee. This subdivision shall not apply to acting referees.

Sections 300.33 is amended to read as follows:

Section 300.33 Pre-hearing conferences.

(a) Statement of purpose. To address the conduct and processing of pre-hearing conferences, to provide a mechanism for the identification of issues and relevant evidence and to permit parties [in interest] an opportunity to assess their case and to resolve outstanding issues prior to [trial] scheduling a hearing regarding those issues.

[a](b) [In all] All cases in which a notice of controversy [(C-7)] and a medical report referencing an injury are [is] filed[, the case] shall be scheduled for a pre-hearing conference to be held as soon as practicable, but in no event more than [60]30 calendar days after receipt by the board of the notice of controversy and a medical report referencing an injury. Cases with outstanding issues, which cannot be processed through conciliation or administrative determination, shall be referred to a pre-hearing conference when necessary to complete any discovery. [Notice of a pre-hearing conference shall be mailed to all parties in interest at 21 days prior to the scheduled pre-hearing conference, provided that such notice may be dispensed with by the board when the parties are present or have consented thereto.]

[(b)](c) In all cases the notice of pre-hearing conference shall be governed by section 300.38 (b) of this Part.

(d) All represented parties must file a pre-hearing conference in accordance with section 300.38 (f) of this Part.

(e) The pre-hearing conference shall be conducted in accordance with, and all parties must comply with, all the provisions in section 300.38(g) of this Part, if the claimant has retained a legal representative on or before the date of the pre-hearing conference.

(f) If the claimant has not retained a legal representative on or before the date of the pre-hearing conference, the following provisions shall apply:

(1) Pre-hearing conferences shall be held before a Workers' Compensation Law Judge or Conciliator, who shall consider at the conference, with the parties or their authorized legal representatives, the following:

[(1)](i) confirmation that all appropriate information, forms, including completed medical reports, have been submitted and a verification that all information on the forms is accurate;

[(2)](ii) addition of any other necessary parties, where appropriate;

[(3)](iii) simplification and limitation of factual and legal issues, where appropriate;

[(4)](iv) presentation of a list of proposed witnesses, where appropriate;

[(5)](v) production of depositions of proposed witnesses, where appropriate;

[(6)](vi) scheduling the case for hearing; and

[(7)](vii) entering into a stipulation made in writing, in which case it shall be signed by all parties to the stipulation. All parties to the stipulation shall certify that they have been advised of the legal effect of the stipulation and that they have agreed to the stipulation of their own free will.

[(c) At any pre-hearing conference, the parties in interest may present an agreement settling upon and determining the compensation and other benefits due to the claimant or the claimant's dependents, to be processed in accordance with section 32 of the Workers' Compensation Law and section 300.36 of this Title.

(d)](2) Pre-hearing conferences may, if practicable, be held at each hearing location.

(3) The pre-hearing conference shall be recorded.

[(e)](4) [In cases where the claimant is represented by an attorney or licensed representative, 10]Ten days before the pre-hearing conference, [each party in interest]the insurance carrier shall file with the board a conference statement, on a form prescribed by the chair, noting all of the specific issues in dispute. [The claimant's statement shall be accompanied by the claim form (C-3) and a completed doctor's report (C-4) or a prima facie medical report giving a history and diagnosis and opinion as to causal relationship of the medical condition, and, where appropriate, the degree and permanency of the disability. Failure to submit a C-4 containing prima facie medical evidence or any other prima facie medical report shall result in the Workers' Compensation Law Judge or Conciliator closing the case. The case will be reopened upon the board's receipt of a prima facie medical report. ]The employer's or carrier's statement shall be accompanied by the employer's report of injury (C-2) and any medical reports, from a treating health provider(s) or consultants, which the employer or carrier has in its possession.

[(f)](5) [All parties]Insurance carriers filing conference statements and accompanying material as directed in [subdivision (e)]paragraph (3) of this [section]subdivision shall:

[(1)](i) at the time of filing, also serve copies on all parties[ in interest]; and

[(2)](ii) state that all discovery has been completed, or shall detail what further discovery is necessary and why it was not completed prior to the pre-hearing conference; and

[(3)](iii) bring to the pre-hearing conference two copies of their conference statement[s] and all accompanying material.

[In cases where the claimant is unrepresented, the board may, for good cause shown, excuse the failure of the claimant to file the pre-hearing conference statement.]

(6) If the claimant has not filed the appropriate Employee Claim form described in section 300.37(b)(1)(i) of this Part prior to the pre-hearing conference, the claimant will be directed to complete and file such form at the pre-hearing conference.

(7) If the insurance carrier requests an opportunity to have the claimant examined by an independent medical examiner, the independent medical examination report as provided in section 300.2(d)(3) of this Part (hereinafter referred to as IME Report) must be completed, filed and served in accordance with Workers' Compensation Law sections 13-b (4) and 137 and section 300.2 (d) of this Part at least three days before the date set by the Workers' Compensation Law Judge or Conciliator for the hearing pursuant to paragraph 12 of this subdivision. The failure to file and serve the IME Report by such date shall be a waiver of the insurance carrier's right to examine the claimant and to have filed on its behalf or otherwise have considered an IME Report on the disputed issues, unless the insurance carrier makes a showing of good cause for such failure, and that it acted in good faith and with due diligence. The showing must be made by an affidavit by the insurance carrier or if represented, by its legal representative. Good cause shall include, but not be limited to, the inability to obtain medical records in advance of the hearing or the failure of the claimant to appear for an independent medical exam.

[(g)](8) At the conclusion of the pre-hearing conference, the Workers' Compensation Law Judge or Conciliator shall issue an order, in writing:

[(1)](i) simplifying and limiting the issues to be tried;

[(2)](ii) setting forth the names of witnesses, the agreements of the parties, if any;

[(3)](iii) the need for further discovery and its terms and conditions if authorized;

[(4)](iv) directing the production of deposition transcripts, if appropriate, and further noting that the case is trial ready or will be ready by a specific date.

[(h)](9) If the claimant fails to appear or is otherwise not prepared to proceed, the case shall be

[closed] marked as no further action. The case shall be [reopened and ] scheduled for another pre-hearing conference upon the claimant's application, advising that he or she is prepared to proceed.

[(i)](10) If after being sent notice, the insurance carrier or its legal representative fails to appear, a Workers' Compensation Law Judge will render a decision based upon the evidence contained in the board file.

[(j)](11) [O] Decisions containing orders or directions made by the Workers' Compensation Law Judge or Conciliator at the pre-hearing conference, pursuant to this section, shall be interlocutory, and shall not be reviewable by the board under section 23 of the Workers' Compensation Law until a decision has been rendered on the controverted issues.

[(k)](12) The Workers' Compensation Law Judge or Conciliator presiding at the pre-hearing conference shall schedule the [trial] hearing date on which [either] the testimony of the claimant and lay and medical witnesses shall be heard, to the extent such testimony is requested by any party, or in their absence, depositions shall be submitted into evidence. The hearing [trial of any case which was on the pre-hearing conference calendar] shall be scheduled to take place within 60 calendar days after the conclusion of the pre-hearing conference. Every effort shall be made to complete the presentation of evidence[trial] at a single [session] hearing. Adjournments of such hearings shall be granted only as provided in section 300.10 of this Part.

[(l)](13) Attendance fees for the testimony or deposition of physicians, podiatrists, chiropractors and psychologists directed pursuant to this section shall be governed by Part 301 of this Title.

Section 300.34 of Title 12 NYCRR is amended to read as follows:

300.34 Special [part for] expedited hearing[s] process.

(a) Purpose. This rule is promulgated pursuant to the requirements of paragraph (d) of subdivision 3 of section 25 of the Workers' Compensation Law with regard to the special [part for ] expedited hearing[s] process

for cases in which the issues have not been resolved within [two] one year[s] after such issues have been raised before the board, or if multiple claims arise from the same accident or occurrence, or if all parties agree to an expedited hearing, or if the chair otherwise deems it necessary. Cases in which a notice of controversy is filed are governed by section 300.38 of this Part.

([a]b) If, in any case, the issues have not been resolved within [two]one year[s] after such issues have been raised before the board, or if multiple claims arise from the same accident or occurrence, or if all parties agree to an expedited hearing, or if the chair otherwise deems it necessary, the chair or a person designated by the chair, on his or her own motion, or on motion of any party in interest, may order that the case be transferred to [a]the special [part for ]expedited hearing[s] process. [Cases transferred to this special part shall be heard by a Workers' Compensation Law Judge assigned to this part.]

([b]c) Each party [in interest ]shall, within [20]twenty days after the order of transfer has been made, file with the board and serve upon all other parties [in interest a concise statement of all unresolved issues, and either a statement that such party is ready for a hearing before a Workers' Compensation Law Judge or a statement detailing what further investigation is necessary and why such investigation has not been completed] a pre-hearing conference statement as set forth in section 300.33(c) of this Part if one was not filed before the transfer.

([c]d) Hearings in the special [part for ]expedited hearing[s] process:

(1) shall be conducted by a Workers' Compensation Law Judge[ assigned to this part];

(2) shall be scheduled in such a manner so that, where appropriate, any and all outstanding issues may be addressed at one hearing; and

(3) [shall, if practicable, be held at the district office where the case file is located and maintained; and

(4) ]shall be scheduled within 30 days after the order of transfer.

([d]e) Every legal representative[attorney, licensed representative,] or authorized representative of a carrier or self-insured employer who appears in proceedings in the special [part for ]expedited hearing[s] process shall be familiar with the facts of the case, the documents filed or to be filed, and the applicable law, and shall have the authority to negotiate and settle any and all outstanding issues, including authority to limit any issue previously raised, subject to the provisions of [S]sections 300.5 and 300.36 of this Title.

([e]f) [Except in case of an emergency, no case placed on a trial calendar in the special part for expedited hearings shall be adjourned or continued except upon approval by the Workers' Compensation Law Judge. Any party seeking to adjourn or continue the case shall file a written request stating the reasons for such adjournment or continuance with the Workers' Compensation Law Judge.] Adjournments.

(1) Adjournments in cases transferred to the special expedited hearing process shall only be granted in accordance with section 300.38 of this Part.

(2) If the adjournment[ or continuance] is approved by the Workers' Compensation Law Judge, the case shall be rescheduled as soon as practicable, but no later than 30 days following such adjournment[ or continuance]. If the adjournment[ or continuance] is denied, the case shall be decided on the record as it stands.

([f]g) If, after reviewing the request for an adjournment[ or continuance], the Workers' Compensation Law Judge determines that the request for an adjournment[ or continuance] is not an emergency and is frivolous, a penalty shall be imposed as follows:

(1) If the request is made by an insurance carrier[ or employer], \$1,000 payable to the board. If such insurance carrier[ or employer] is represented by a[n attorney or licensed] legal representative who is not an employee of the insurance carrier[ or employer], the [attorney or licensed]legal representative shall be responsible for the payment of such penalty.

(2) If the request is made by a claimant who is represented by a[n attorney or licensed] legal representative, \$500 payable to the board. Such penalty shall be paid directly by the [attorney or licensed] legal representative and shall not come out of the claimants award.

(3) No penalty shall be imposed on an unrepresented claimant who requests an adjournment[ or continuance].

([g]h) [O]Decisions solely containing determinations, directions or orders[ or directions] made by a Workers' Compensation Law Judge in the special [part for ]expedited hearing[s] process, pursuant to paragraph (d) of subdivision 3 of section 25 of the Workers' Compensation Law and this section, except a determination of accident or occupational disease, notice, and causal relationship or a monetary award, shall be interlocutory and shall not be reviewable by the board under section 23 of the Workers' Compensation Law until the conclusion of the trial and the resolution of all outstanding issues.

([h]i) This section, as amended, shall take effect [January 1, 1997]immediately, and shall apply to all [new ]claims filed after such date.

A new section 300.37 is added to 12 NYCRR to read as follows:

300.37. Case File Creation and Indexing of Claims that May Be Controverted

(a) Case File: Upon receiving any document regarding a claim or potential claim for workers' compensation benefits for which a case number has not been assigned and a case file has not been created, the Board shall assign a unique case number and create a case file. The assignment of a case number and creation of a case file is not the indexing of a claim for purposes of filing a notice of controversy in accordance with paragraph (2) of subdivision (b) of section 25 of the Workers' Compensation Law. The Board shall assign the case number and create the case file within five business days of receipt of said document for which a case file does not exist. Nothing in this section changes existing law with respect to the filing of a claim for purposes of the limitations

period set forth in Workers' Compensation Law section 28.

(b) Indexing.

(1) The Board will index a claim for compensation only upon the receipt of these forms:

(i) a completed form prescribed by the Chair for an employee, dependent or beneficiary, volunteer firefighter, volunteer ambulance worker, or a volunteer who meets the definition set forth in subdivision (1) of section 161 of the Workers' Compensation Law for a participant in World Trade Center rescue, recovery or cleanup operations to make a claim for compensation, death benefits or volunteer benefits (hereinafter referred to as Employee Claim form) pursuant to the Workers' Compensation Law, Volunteer Firefighters' Benefit Law or Volunteer Ambulance Workers' Benefit Law, or a completed form prescribed by the Chair for an employer or political subdivision to report an injury or illness of an employee, volunteer firefighter or volunteer ambulance worker as required by Workers' Compensation Law section 110 and/or Volunteer Firefighters' Benefit Law section 42 and section 57 or Volunteer Ambulance Workers' Benefit Law section 42 and section 57 (hereinafter referred to as Employer's Report);

(ii) a completed form as prescribed by the Chair for a medical provider treating an injured employee to report on medical treatment which references an injury (hereinafter referred to as Medical Report), except that the Medical Report need not be on the prescribed form where (a) the treating medical provider is based out of state; (b) the claimant was treated in an emergency room; or (c) the claimant is deceased; and

(iii) a completed and executed limited authorization to obtain relevant medical records regarding the prior medical history of the body part or illness at issue (hereinafter referred to as Limited Release). The Limited Release is only required if the claimant files a completed Employee Claim form and indicates on the form that he or she had a prior injury to the same body part or similar illness to the one(s) listed on the form. It shall be part of the Employee Claim form and compliant with the Health Insurance Portability and Accessibility Act.

(2) Notwithstanding paragraph (1) of this subdivision, if the Chair obtains information that a worker was

killed due to injuries or illness sustained in a work related accident, the Chair may direct that a claim be indexed if the alleged employer has either failed or refused to file an Employer's Report as described in paragraph (1) of this subdivision and neither a beneficiary nor representative of the worker's estate has filed a claim or can be identified to file a claim.

(3) Within five business days of receiving the documents required for indexing as set forth in paragraph (1) of this subsection, except as set forth in subsection (c) of this section, the Board shall index the claim and electronically make available to the insurance carrier and, if applicable, the Uninsured Employer's Fund created by Workers' Compensation Law section 26-a, all documents which the Board has received to date.

(4) Notice of Indexing. (i) The Board shall send the claimant, the claimant's legal representative, if any, the insurance carrier and if applicable, the Uninsured Employer's Fund, the notice of indexing on the form prescribed by the Chair. The Board shall also make available to the insurance carrier and, if applicable, the Uninsured Employer's Fund, the completed Limited Release executed by the claimant required by subdivision (b) (1) (iii) of this section.

(ii) The notice of indexing shall include notification that if the insurance carrier files a notice of controversy:

(A) any independent medical examination report as provided in section 300.2(d)(3) of this Part (hereinafter referred to as IME Report) shall be filed with the Board and served as required by Workers' Compensation Law section 137(a)(1) at least three days before the date set for the Initial Expedited Hearing; and

(B) the failure to so file and serve an IME Report shall be a waiver, as provided in section 300.38(g)(8) of this Part, of the insurance carrier's right to examine the claimant and to have filed on its behalf or otherwise have considered an IME Report on the threshold issue of causal relationship.

(c) When claim is not indexed. (1) Notwithstanding subdivision (b) (1) of this section, if the insurance carrier files with the Board a form that serves one of the purposes described in this paragraph before the Board receives all of the forms required to index a claim as provided in subdivision (b) (1) of this section, the Board is not

required to index a claim. The Board may take appropriate action without indexing a claim to address any issue(s) or dispute(s) raised by one of the parties in a form that serves one of the purposes described below that has been filed with the Board by the insurance carrier. If the Board does not index a claim in accordance with this subdivision, the date the Board received the form filed by the insurance carrier that serves one of the purposes described in this paragraph shall be considered the date of indexing for purposes of Workers' Compensation Law sections 25(2-b) and 32. The forms are those prescribed by the Chair or the Board that:

- (i) accept the claim or show that the claim has been accepted; or
- (ii) agree to make temporary payment of compensation, payment for medical treatment, and payment for prescribed medicine without prejudice and without admitting liability pursuant to Workers' Compensation Law section 21-a; or
- (iii) controvert the claim.

(2) If the insurance carrier files a form controverting the claim before the claim is indexed in accordance with subdivision (b)(1) of this section and the Board has not received a medical report referencing an injury, the Board shall:

- (i) contact the claimant, the claimant's legal representative if applicable, and the claimant's treating medical provider or providers if known, in writing to advise of the need for and how to file a Medical Report;
  - (ii) attempt to contact the claimant, claimant's representative if applicable and the claimant's treating medical provider or providers if known by telephone to explain the need for and how to file a Medical Report; and
  - (iii) if the claimant is unrepresented and a Claimant Information Packet has not been sent in accordance with, subdivision (d) (2) (ii), send a Claimant Information Packet as described in subdivision (d) (2)(ii) of this section to the claimant.
- (d) Provisions applicable to all claims that have been or may be controverted.

(1) If the claimant has retained a legal representative at the time the Employee Claim form is filed with the Board, the legal representative shall file with the Employee Claim form:

(i) a written certification, signed by the legal representative, that to the best of the legal representative's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual matters asserted on the Employee Claim form have evidentiary support or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(ii) a list of all documents in the possession, custody or control of the claimant that may be used to support the claim.

(2) If the claimant has not retained a legal representative, the Board shall do the following with respect to a claim that has a case number but has not been indexed, has not been accepted by the insurance carrier, or does not have an Employee Claim form and a Medical Report in the case file:

(i) make readily available, to the employee, assistance in: A) complying with the indexing requirements in subdivision (b) (1) of this section when applicable; B) completing the Employee Claim form; and C) obtaining a Medical Report. Such assistance shall include information about the need for a Medical Report, the services of the Office of the Advocate for Injured Workers, a Board employee electronically completing the Employee Claim form based on information provided by the claimant through a recorded telephone conversation and sending the completed form to the claimant for review, and a telephone hotline exclusively dedicated to these purposes;

(ii) provide to the claimant by mail or other effective means the following information and documents (hereinafter referred to as the Claimant Information Packet):

A) an Employee Claim form;

B) instructions for completing said form that shall include notice of the availability of assistance in

completing the form by calling a toll free telephone number;

C) notice of the necessity of a Medical Report, including the requirement that a medical report referencing an injury must be received in order to schedule a pre-hearing conference if the claim is controverted;

D) notice of the requirement that the employee complete and execute a Limited Release if the employee indicates on the Employee Claim form that he or she had a prior injury to the same body part or similar illness as the one(s) listed on such form;

E) notice that the employee has the right to a legal representative in proceedings before the Board, accompanied by information about access to an attorney or licensed representative which contains contact information for the State and local bar associations and information on how to obtain a list of licensed representatives; and

F) notice regarding medical treatment for work related injuries, including that:

(1) the employee is entitled to medical treatment and prescription drugs for the work related injury and should not pay for such medical treatment; and

(2) the insurance carrier may have contracted with a designated pharmacy or pharmacies from which the employee may be required to obtain his or her prescription drugs and the insurance carrier must send notice to the employee about the designated pharmacy or pharmacies; and

(3) the insurance carrier may have contracted with a diagnostic network to perform x-rays, computed tomography scans ( also known as computerized axial tomography scans) (CT or CAT scans) and/or magnetic resonance imagings (MRI), the employee may be required to obtain such diagnostic tests from a provider that is part of the network, and the insurance carrier must send notice to the employee about such network.

iii) inform the claimant of all available resources in a meaningful fashion, using plain language. All forms, instructions and notices shall be available in English and Spanish; and

(iv) notify the claimant semi-annually in writing for two years after the filing of any document with the

Board of the claimant's right to file a claim, the statute of limitations for doing so, and the assistance available for indexing a claim so long as the Board has a valid address for the claimant.

(3) The Employer's Report shall require the employer or its designee to certify that the employer or its designee has delivered to the injured or ill employee the Claimant Information Packet. The contents of the Claimant Information Packet are set forth in paragraph (2)(ii) of this subdivision except that the notices described in clause (F) of such paragraph shall also include specific information about the designated pharmacy or pharmacies and diagnostic networks claimants must utilize. (i) The information about the designated pharmacy or pharmacies must be in the form of a pharmacy benefit card and include (A) either the identity of all pharmacy chains and independent pharmacies designated by the insurance carrier, or where more than one pharmacy chain or independent pharmacy is so designated, the identity and contact information of a pharmacy benefits manager or other party, who shall provide a list of all pharmacies in the employee's state to the employee in writing or electronically upon and in accordance with an employee's request, and (B) a toll-free number and website where the employee may access information regarding the procedures by which the employee must fill and refill prescriptions through a remote pharmacy or other means, and may obtain a list of such pharmacies including their name, address and phone number, searchable by geographic location and fully updated as of the date at issue, in that employee's state. (ii) The information about the diagnostic network must include (A) the identity and contact information for the diagnostic network with which the insurance carrier has contracted; and (B) a toll-free number and website where the employee may access information about providers who are part of the diagnostic network and how to schedule an appointment. The contents of the Claimant Information Packet will be available to employers on the Board's website except for the information about the specific designated pharmacy or pharmacies and/or diagnostic network(s).

(4) A Medical Report shall set forth facts and opinions responsive to the questions on the form. A separate narrative or office notes of an authorized medical provider shall not be sufficient to serve as a Medical Report,

although they may be used to supplement information in the Medical Report. Separate narrative or office notes may serve as a Medical Report if (i) the treating medical provider is based out of state; (ii) the claimant was treated in an emergency room; or (iii) the claimant is deceased. A medical provider shall not be paid for examining the claimant and filing a Medical Report unless the Medical Report is completed in accordance with this paragraph. The Medical Report may be filed electronically.

(5) A claimant who has not satisfied the indexing requirements may amend the required documents and resubmit them.

A new section 300.38 is added to 12 NYCRR to read as follows:

#### 300.38 Controverted Claims

##### (a) Notice of controversy:

An insurance carrier who controverts a claim shall file with the Board and serve upon all other parties a notice of controversy on the form prescribed by the Chair in accordance with Workers' Compensation Law section 25 (2) (a) or (b) or section 300.22(d)(3) of this Part. The notice of controversy shall comply with the following:

(1) it must be complete and provide a factual basis for the insurance carrier's controverting the claim and for any asserted defenses;

(2) it must contain a written certification signed by the insurance carrier, or if represented, by its legal representative, that to the best of his or her knowledge, information and belief, formed after an inquiry reasonable under the circumstances that the allegations and other factual matters asserted in controverting the claim or the defenses asserted have evidentiary support, or if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. If the initial certification is not signed by a legal representative, then before a legal representative may appear on behalf of

the insurance carrier, the legal representative shall file and serve the required certification;

(3) it must provide the name and, if known, the address and telephone number of each individual likely to have information that the insurance carrier may use to support its factual basis for controverting the claim or for supporting a defense, and briefly describe the information; and

(4) it must provide a list of all documents in the possession, custody or control of the insurance carrier that it may use to support the factual basis for controverting the claim or for supporting a defense.

(b) Notice of pre-hearing conference and other matters: Upon receipt of the notice of controversy and a Medical Report, the Board shall send notice to the parties that shall include the following:

(1) The date of the pre-hearing conference, which shall not be later than thirty days from receipt of a notice of controversy and a Medical Report;

(2) An order directing the parties, except a claimant that has not retained a legal representative, to serve and file a pre-hearing conference statement no later than ten days before the date of the pre-hearing conference; and

(3) Notification that :

(A) any independent medical examination report as provided in section 300.2(d)(3) of this Part (hereinafter referred to as IME Report) shall be filed with the Board and served as required by Workers' Compensation Law section 137(a)(1) at least three days before the date set for the Initial Expedited Hearing; and

(B) the failure to so file and serve an IME Report shall be a waiver, as provided in subdivision (g)(8) of this section, of the insurance carrier's right to examine the claimant and to have filed on its behalf or otherwise have considered an IME Report on the threshold issue of causal relationship.

(c) Medical records:

(1) In accordance with the limited release, the parties may seek production of relevant medical records from medical professionals and hospitals that have treated the claimant for previous injury to the same body part or similar illness to the one listed on the Employee Claim form;

(2) Medical professionals authorized to practice before the Board shall deliver a copy of duly requested records within twenty-one days of the request and within ten business days if the requesting party offers to increase payment to \$1.50 per page copied (an Expedited Request).

(3) In addition to any other penalties, a medical professional authorized to practice before the Board who fails to produce requested documents within twenty-one days, or within ten business days of an Expedited Request, shall be subject to administrative warning or suspension or revocation of his or her authorization to treat and/or conduct independent medical examinations of injured workers, as determined by the Chair or his or her designee. The Board shall notify all authorized medical professionals of their professional responsibility to comply timely with requests for medical records and the possible penalties for failure to do so.

(4) All medical records obtained by the parties shall be filed with the Board so that all parties have access to them.

(d) Subsequent retention of legal representative. If a claimant retains a legal representative after a claim is indexed or after the carrier files a form to controvert the claim when the claim is not indexed, the legal representative shall, within five days thereof, file with the Board and serve on all other parties a notice of retainer on the form prescribed by the Chair together with:

(1) An Employee Claim form, if not previously filed, or the legal representative's certification of a previously filed Employee Claim form or, if the previously filed form is incomplete, incorrect or in need of supplementation, an amended Employee Claim form and certification thereof; and

(2) The list of documents required to accompany the Employee Claim form of a claimant who has retained a legal representative as required in §300.37(d)(1); and if the claimant has retained a legal representative prior to the pre-hearing conference, a pre-hearing conference statement pursuant to subsection (f) of this section.

Certification shall have the same meaning as in §300.37 (d)(1)(i).

(e) Claimant's retention of a legal representative within ten days of the pre-hearing conference may

constitute good cause for the insurance carrier to obtain an adjournment of that conference if the information and/ or documentation provided by the legal representative in accordance with subdivision (d) of this section or any other information or documentation submitted to the Board by the legal representative prior to or at the pre-hearing conference is material and new or different from the information and/or documentation submitted by the claimant. Such adjournment shall be within the discretion of the Workers' Compensation Law Judge or Conciliator as to whether such information is material and new or different from the information previously submitted on behalf of the claimant. Such adjournment shall only be for such time as is necessary to obtain any documents or other information that is relevant and responsive to such new and different documents and information provided by claimant's legal representative.

(f) Pre-Hearing conference statement:

(1) Ten days before the pre-hearing conference, the insurance carrier or its legal representative and legal representative of the claimant shall file with the Board and serve on all other parties a pre-hearing conference statement. A claimant that has not retained a legal representative on or before the date for the pre-hearing conference shall not be required or asked to file the pre-hearing conference statement. The pre-hearing conference statement shall contain information to facilitate the just, speedy and efficient disposition of the claimant's right to workers' compensation benefits, including settlement. If a claimant retains a legal representative within ten days of the pre-hearing conference, the legal representative shall complete and file a pre-hearing conference statement in accordance with this subdivision at or prior to the pre-hearing conference.

(2) The pre-hearing conference statement shall include:

(i) a brief summary of the claim;

(ii) the theory of the case with statutory and if appropriate, case citations;

(iii) with respect to the insurance carrier's statement, an offer of proof for each defense raised;

(iv) a list of lay witnesses, including claimant, the party will call to testify at the initial hearing, including the

names, addresses, employers if known, and a summary of, and the estimated time needed for, the testimony;

(v) a list of medical witnesses, if known, that the party intends to cross-examine and whether the party wishes such cross-examination to be by deposition or, if the Workers' Compensation Law Judge or Conciliator permits, at a hearing;

(vi) the names of any additional necessary parties;

(vii) a statement that all forms necessary to resolve the controversy, including medical reports other than an independent medical examination report (hereinafter referred to as IME Report), have been submitted or will be submitted before or at the pre-hearing conference;

(viii) a statement that all discovery has been completed or will be completed by the pre-hearing conference, or which shall detail what further discovery is necessary and why it will not be completed prior to the pre-hearing conference;

(ix) with respect to the insurance carrier, a statement of whether it alleges that the claimant has not presented prima facie medical evidence, and the basis for such challenge; and

(x) if applicable, a request by the carrier for a broader release for medical records than that set forth in section 300.37 (b) (1) (iii) of this Part, accompanied by an affidavit by the insurance carrier, or if represented, by the insurance carrier's legal representative setting forth the relevance of the records that may be obtained through use of the broader release.

(3) Each party shall attach to the pre-hearing conference statement any and all reports, forms and documents that the party intends to use at the hearing(s), which the party has in its possession or could reasonably have obtained, insofar as they are not already a part of the electronic case file maintained by the Board, including hospital records and forms detailing the employer's statement of wages and the claimant's work status.

(4) Failure by the insurance carrier to timely serve upon all other parties and file with the Board the pre-hearing conference statement, or the filing by the insurance carrier of a materially incomplete statement shall

result in a waiver of defenses to the claim; failure to list a witness on, or to include a copy of any document not in the electronic case file with the pre-hearing conference statement, which the insurance carrier had in its possession or could reasonably have obtained, shall constitute a waiver of the right to call such witness or introduce such document in the case. There shall be no waiver if the Workers' Compensation Law Judge finds, based on the affidavit of the insurance carrier's legal representative (or if the insurance carrier does not have a legal representative, then by the insurance carrier), that the conduct at issue was due to good cause and the insurance carrier exercised good faith and due diligence.

(5) The legal fee of claimant's legal representative shall be subject to a mandatory, substantial reduction for:

- (i) failure to timely serve on all parties and file with the Board the claimant's pre-hearing conference statement;
- (ii) filing a materially incomplete pre-hearing conference statement for claimant;
- (iii) failure to list a witness, who subsequently testifies, on claimant's pre-hearing conference statement; or
- (iv) failure to include with claimant's pre-hearing conference statement a copy of any document not in the electronic case file, which the claimant had in his or her possession or could reasonably have obtained, if such document is used by claimant's legal representative in seeking to establish the claim.

At the time of the fee award, the Workers' Compensation Law Judge shall state what fee would have been awarded but for the mandatory reduction, the amount of the reduction, and the resulting actual fee. If the Workers' Compensation Law Judge finds, based upon the legal representative's affidavit, that the conduct at issue was due to good cause and the legal representative exercised good faith and due diligence, the fee shall not be reduced.

(g) The pre-hearing conference for represented claimants:

- (1) The pre-hearing conference shall be held within thirty days of the filing of a notice of controversy and a medical report referencing an injury, and shall proceed as described herein.

(2) At the pre-hearing conference, the Workers' Compensation Law Judge or Conciliator may take appropriate action with respect to the following:

(i) confirmation that all forms necessary to resolve the controversy, including medical reports except IME Reports, have been filed with the Board and served upon all other parties and a verification from the parties that all information thereon is accurate;

(ii) addition of any other necessary parties;

(iii) simplification and limitation of factual and legal issues;

(iv) stipulations by the parties;

(v) presentation of a list of proposed witnesses;

(vi) settlement or other disposition of the case;

(vii) confirmation that the parties have conferred in a good faith effort to settle or otherwise resolve the case;  
and

(viii) scheduling any hearings or submission of testimony by deposition as to the resolution of disputed threshold issues.

(3) If the insurance carrier alleges in the notice of controversy and/or pre-hearing conference statement that the claimant has not presented prima facie medical evidence, the Workers' Compensation Law Judge or Conciliator shall determine at the pre-hearing conference whether the medical report or reports presented constitute prima facie medical evidence.

(i) A finding that the Medical Report or Reports constitute prima facie medical evidence is an evidentiary determination that the case may proceed and is interlocutory and is not reviewable by the Board as provided in subdivision (i) of this Section.

(ii) Upon a finding that the claimant's medical report does not constitute prima facie medical evidence, the case shall be marked as no further action. Claimant may thereafter submit additional information on an

amended or other medical report, upon which submission the case shall be scheduled for another pre-hearing conference.

(4) The Workers' Compensation Law Judge or Conciliator shall find a waiver of any defense for which the offer of proof at the pre-hearing conference is insufficient.

(5) At the pre-hearing conference, the Workers' Compensation Law Judge or Conciliator shall:

(i) obtain the names and addresses of all health care providers who rendered treatment for a previous injury to the same body part or similar illness to the one claimed in the controverted workers' compensation claim and direct, if necessary, the claimant to sign the appropriate limited medical release;

(ii) if the insurance carrier requested a broader release for medical records than that set forth in section 300.37 (b) (1) (iii) of this Part, hear arguments from all parties as to whether the request should or should not be granted, render a decision and if the decision is to grant the request, direct the claimant to sign the appropriate broader release; and

(iii) determine if there are any prior workers' compensation claims and direct, if necessary, the claimant to sign the prescribed authorization pursuant to Workers' Compensation Law section 110-a.

(6) If the claimant has not filed the Employee Claim form prior to the pre-hearing conference, the claimant will be directed to complete and file such form at the pre-hearing conference. If the claimant is represented at the pre-hearing conference, the legal representative shall certify the Employee Claim form in accordance with section 300.37(d)(1)(i) of this Part.

(7) The parties shall identify the evidence they intend to present at the Initial Expedited Hearing, including lay witnesses and documents. The Workers' Compensation Law Judge or Conciliator shall schedule the Initial Expedited Hearing at which testimony of the claimant and all other lay witnesses shall be taken and recorded for a date no more than thirty days after a pre-hearing conference at which the claimant was represented. However, if there is no request for the testimony of the claimant or any other lay witnesses the Initial Expedited

Hearing shall not be scheduled and held.

(8) If the insurance carrier requests an opportunity to have the claimant examined by an independent medical examiner, the IME Report must be completed, filed and served in accordance with Workers' Compensation Law sections 13-b (4) and 137 and section 300.2 (d) of this Part at least three days before the date set by the Workers' Compensation Law Judge or Conciliator for the Initial Expedited Hearing. If the claimant will not testify and no other lay testimony will be taken so an Initial Expedited Hearing will not be scheduled, the Workers' Compensation Law Judge or Conciliator shall set a date that is no more than thirty days after the pre-hearing conference for the IME Report to be filed and served. The failure to file and serve the IME Report by such date shall be a waiver of the insurance carrier's right to examine the claimant and to have filed on its behalf or otherwise have considered an IME Report on the threshold issue of causal relationship, unless the insurance carrier makes a showing of good cause for such failure, and that it acted in good faith and with due diligence. The showing must be made by an affidavit by the insurance carrier or if represented, by its legal representative. Good cause shall include, but not be limited to, the inability to obtain medical records in advance of the hearing or the failure of the claimant to appear for an independent medical exam.

(9) The parties shall identify any medical witnesses they wish to cross-examine and indicate whether they wish the medical witnesses to appear at a hearing or by deposition. The Workers' Compensation Law Judge or Conciliator shall decide whether medical witnesses shall appear for cross-examination at a hearing or by deposition.

(10) For those medical witnesses to be cross-examined at a hearing, the Workers' Compensation Law Judge or Conciliator will set a hearing date no more than sixty days from the pre-hearing conference and may permit the medical witnesses to appear at the hearing by telephone.

(11) For medical witnesses to be cross-examined by deposition:

(i) the Workers' Compensation Law Judge or Conciliator shall direct that the depositions shall be conducted

and the transcripts filed with the Board no more than fifty-five days from the pre-hearing conference;

(ii) the Workers' Compensation Law Judge or Conciliator may permit depositions to be taken by telephone;

(iii) any medical report(s) and IME Report(s) filed with the Board and served on the parties prior to the deposition(s) shall constitute the direct testimony of the medical witnesses and there shall be no direct examination at the deposition unless requested by a party and authorized by the Workers' Compensation Law Judge or Conciliator upon a finding of exceptional circumstances. Any redirect examination shall be limited to points raised by the cross-examination; and

(iv) the decision of the Workers' Compensation Law Judge or Conciliator setting forth the directions and orders made at the pre-hearing conference, including the direction and order for medical witnesses to be cross-examined by deposition and whether direct examination was authorized, shall be sent to the medical witnesses who the parties are directed to examine. The first part of the decision containing the directions and orders shall prominently set forth (a) the direction for medical witnesses to be cross-examined by deposition and the transcripts filed with the Board within fifty-five days of the pre-hearing conference or cross-examined at a hearing to be held within sixty days of the pre-hearing conference, which date shall be specified in the decision, (b) whether direct examination of medical witnesses was authorized, and (c) that payment for prior medical services by the insurance carrier may depend upon the medical witnesses' appearance at the deposition or hearing, as the case may be, in order to resolve this controverted claim.

(12) A legal representative appearing on behalf of a party must be authorized to enter into stipulations and a settlement or a person authorized to do so shall be available during the pre-hearing conference.

(13) If the claim is not settled or otherwise resolved at the pre-hearing conference, the Workers' Compensation Law Judge or Conciliator shall find that such claim, if otherwise covered by this section, is suitable for expedited hearings, unless the workers' compensation law judge or conciliator finds that there are complex factual or medical issues, the resolution of which are not suitable for resolution through the process set

forth in subdivision (h) of this section. Absent a finding to the contrary, claims involving death, occupational disease (not including, for purposes of this section, carpal tunnel syndrome), or sexual assault shall be presumed not suitable for resolution through the process set forth in subdivision (h) of this section. The Workers' Compensation Law Judge or Conciliator must set forth on the record the reasons for such finding.

(14) The Workers' Compensation Law Judge or Conciliator shall issue a decision stating all determinations, directions and orders made at the pre-hearing conference.

(15) The pre-hearing conference shall be recorded.

(16) If the claimant fails to appear or is otherwise not prepared to proceed, the case shall be marked as no further action. The case shall be scheduled for another pre-hearing conference upon the claimant's application advising that he or she is prepared to proceed.

(17) If the insurance carrier or its legal representative fails to appear, a Workers' Compensation Law Judge or conciliator will render a decision based upon the evidence contained in the Board file. The insurance carrier will be deemed to have waived its right to have an IME Report considered on the issue of causal relationship and to cross-examine the medical providers who have treated the claimant. The foregoing is subject to the insurance carrier making the required showing for an adjournment pursuant to subsection (j) of this section.

(18) Attendance fees for the hearing testimony or deposition of physicians, podiatrists, chiropractors and psychologists directed pursuant to this section shall be governed by Part 301 of this Title.

(h) Expedited hearing process in controverted cases when the claimant is represented:

(1) The Initial Expedited Hearing: (i) Within thirty days following a pre-hearing conference at which the claimant is represented, the Workers' Compensation Law Judge shall hold an Initial Expedited Hearing at which testimony of the claimant and all other lay witnesses shall be taken and recorded. However, if there is no request for the testimony of the claimant or any other lay witnesses the Initial Expedited Hearing shall not be held and the testimony of the medical witnesses shall be taken as set forth at the pre-hearing conference.

(ii) If a party's witness does not appear, then the party shall have waived the right to have the witness testify in-person or by deposition, unless the party makes a showing of good cause that he or she should be granted additional time, and that he or she acted with good faith and due diligence. The showing must be made by an affidavit of the legal representative of the party or, if the party does not have a legal representative, then by the party.

(iii) Independent medical examination. All IME Reports shall be filed and served pursuant to Workers' Compensation Law section 137(1)(a) and section 300.2(d)(11) of this Part no later than three days before the date of the Initial Expedited Hearing as provided in subdivision (g)(8) of this section. If the IME Report was filed and served in the five days before the Initial Expedited Hearing, the insurance carrier's legal representative must bring copies of the IME Report and proof of service to the Initial Expedited Hearing for the Workers' Compensation Law Judge and other parties. Failure to timely file and serve an IME Report in a controverted claim shall be a waiver of the insurance carrier's right to examine the claimant and to have filed on its behalf or otherwise have considered an IME Report on the issue of casual relationship, unless the insurance carrier makes a showing of good cause that it should be granted additional time, and that it acted in good faith and with due diligence. The showing must be made by an affidavit by the insurance carrier, or if represented, by its legal representative.

(iv) If the insurance carrier filed and served an IME Report at least three days prior to the Initial Expedited Hearing, the claimant's legal representative must advise the Workers' Compensation Law Judge if it still requests the cross-examination of the independent medical examiner.

(2) Hearing for medical witnesses when the claimant is represented.

(i) If the Workers' Compensation Law Judge directs the testimony of any medical witness at a hearing, the Workers' Compensation Law Judge shall hold a hearing that is no more than thirty (30) days after the Initial Expedited Hearing at which such medical testimony shall be taken unless the party to produce a medical

witness shows good cause why the medical witness cannot appear by that date, and that it acted in good faith and with due diligence, in which case the hearing shall be scheduled as soon as practicable.

(ii) At such hearing, any Medical Report(s) and IME Report(s) previously filed with the Board and served on the parties shall constitute the direct testimony of the medical witnesses and there shall be no direct examination at the hearing unless requested by a party and authorized by the Workers' Compensation Law Judge upon a finding of exceptional circumstances. Any redirect examination shall be limited to points raised by the cross-examination.

(iii) If the medical witness to be cross-examined by claimant's legal representative fails to appear as scheduled, then the insurance carrier's right to introduce the IME Report from the witness or have the medical witness testify at a hearing or by deposition shall be waived, unless the insurance carrier makes a showing that the witness did not appear because of good cause, and that the insurance carrier acted in good faith and with due diligence. The showing must be made by an affidavit of the legal representative of the insurance carrier or, if the insurance carrier does not have a legal representative, then by the insurance carrier.

(iv) If the medical witness to be cross-examined by the insurance carrier does not appear for cross-examination as scheduled, then his or her testimony shall be taken by deposition at the earliest date practicable. Such deposition may be taken by telephone. With respect to any such medical witness authorized by the Chair or his or her designee to treat and/or conduct independent medical examinations of injured workers, the Board shall promptly direct the witness to appear at such deposition. If the witness does not appear, the Chair or his or her designee shall take such action as it deems appropriate with respect to the witness' authorization to treat and/or conduct independent medical examinations of injured workers.

(3) Summations, memoranda of law and briefs. The parties shall be permitted to make oral summations at the last hearing to present evidence on the controverted issues, or the last deposition of a medical witness regarding causal relationship. In all cases, written post-hearing summations of the evidence, memoranda of

law, and/or briefs are not permitted, unless the Workers' Compensation Law Judge finds, on the record, that the claim presents extensive and complicated factual determinations or novel and important questions of law. All such post-hearing submissions, must be filed with the Board and served on all other parties within five business days from such order or conclusion of the evidence, as described in paragraph four (4) below, whichever is later.

(4) Decisions.

(i) When the close of evidence occurs at a hearing, the Workers' Compensation Law Judge shall advise the parties, on the record, of his or her decision, including the reasons and evidence supporting the decision, and that a notice of decision will be sent after the close of the hearing unless the Workers' Compensation Law Judge determines on the record that there are extensive and complicated factual determinations or novel and important questions of law, in which case the written decision shall be issued within five business days of the hearing, or if post-hearing submissions have been ordered, within five business days of the date the post-hearing submissions are received or the post-hearing submissions were due, whichever is earlier.

(ii) Where the close of the evidence does not occur at a hearing, it shall occur no later than sixty days after the pre-hearing conference, subject to any adjournment of a hearing or deposition having been granted or unless the Workers' Compensation Law Judge on the record finds exceptional circumstances respecting submission of additional documentation that warrants a longer period and states the basis therefore. If the close of the evidence does not occur at a hearing, but upon the submission of deposition transcript(s) and/or documentation directed or ordered by the Workers' Compensation Law Judge, then the Workers' Compensation Law Judge shall issue a decision within five business days from the close of the evidence.

(5) Applicability of Section 300.34. Notwithstanding any other provision to the contrary, the provisions of section 300.34 of this Part only apply to the resolution of claims covered by this section as specifically referenced in this section.

(i) Decisions in expedited hearing process. Decisions containing only orders or directions made by a Workers' Compensation Law Judge in connection with the pre-hearing conference and expedited hearing process in controverted cases, pursuant to this section, including a finding that the Medical Report or Medical Reports constitute prima facie medical evidence, shall not be reviewable by the Board under Workers' Compensation Law section 23 until a decision has been made by a Workers' Compensation Law Judge establishing or disallowing the claim.

(j) Adjournments in Controverted Cases:

(1) Adjournments for a deposition to a period of time beyond that specified in this Section, a pre-hearing conference, or a hearing in a controverted claim shall only be granted in an emergency.

(2) The grounds for adjournment must be established by an affidavit of the legal representative of the requesting party (or if the requesting party is not represented, by the party), that shall be served on all other parties and filed with the Board by the party promptly upon learning the circumstances that are the basis for the adjournment requested. In the event that the emergency occurs on the day of the pre-hearing conference or hearing, the legal representative may make an oral application for an adjournment which the Workers' Compensation Law Judge may grant, conditioned upon the requesting party promptly filing with Board a confirming affidavit, as described in this subsection.

(3) An adjournment, if granted, shall be as short as practicable and generally shall not exceed twenty days.

(4) "Adjournment" includes a rescheduling or continuance.

(5) An "emergency" is a serious event that occurs preventing the timely completion of some action ordered or directed by the Board or regulation. An emergency includes death in the family, serious illness, significant prior professional or business commitment, and inclement weather that prevents travel. It does not include any event that can be prevented or mitigated by the timely taking of reasonable action.

(6) If a Workers' Compensation Law Judge finds that a request for an adjournment or continuance is not an

emergency and is frivolous, he or she shall impose such penalties as are in accordance with Workers' Compensation Law section 25(3)(d) and subdivisions (f) and (g) of section 300.34 of this Part.

(k) This section shall not apply to controverted claims where an employer has failed to secure coverage, as referenced in Workers' Compensation Law section 50, and subdivisions (g), (h) and (i) shall not apply when if a claimant is unrepresented at the time of the pre-hearing conference at which hearing or hearings are scheduled for witness testimony.