

Title 20: Labor

Part 1: Rules of the Mississippi Workers' Compensation Commission

Rule 2.9 Introduction of Evidence and Discovery.

All testimony and documentary evidence shall be presented at the evidentiary hearing before the Administrative Judge. The hearing shall be stenographically reported or recorded. The Commission has discretion to admit any additional evidence offered on review. A motion to introduce additional evidence must be made in writing at least five (5) days before the date of the Commission's review hearing. The motion shall state with particularity the nature and need for such evidence, and the reason it was not introduced at the evidentiary hearing. If additional evidence is admitted, it shall be stenographically reported or recorded and become a part of the record.

Depositions may be taken and discovery had by any party in accordance with the Mississippi Rules of Civil Procedure relating to depositions and discovery (Rules 26 - 37) except as specifically amended by the Commission Rules.

INTERROGATORIES; REQUESTS FOR PRODUCTION. Interrogatories to parties, responses to interrogatories, requests for production of documents and things, and the responses to requests for production shall be served upon other counsel or parties per Rules 33 and 34 of the Mississippi Rules of Civil Procedure, respectively. The interrogatories, requests for production, and responses shall not be filed with the Commission, but the party serving the discovery requests or responses shall file a copy of the transmittal letter with the Commission.

DEPOSITIONS. Medical deposition transcripts shall be filed with the Commission. Deposition transcripts other than medical depositions shall not be filed with the Commission.

REQUESTS FOR ADMISSION. Requests for admissions and responses to requests for admission (Rule 36 of the Mississippi Rules of Civil Procedure) shall be filed with the Commission.

MEDICAL RECORDS AND AFFIDAVITS. Parties in controverted claims shall exchange medical records upon receipt. They are encouraged to admit into evidence medical records of claimant's treatment for the injury alleged in the Petition to Controvert. Absent agreement, the medical records of examining or treating physicians, including narrative office notes, reports dictated by the physician in the ordinary course of his or her practice, CMS 1500 forms, and other records composed by the physician in his or her practice, may be introduced into evidence in lieu of direct testimony taken at the hearing or by deposition upon the following conditions. The records shall not contain narrative reports composed by attorneys which require only the signature of the medical providers.

All medical records filed with the Commission, whether attached to a Motion, Response to Motion, Prehearing Statement, or submitted at a hearing or otherwise, shall be paginated and arranged in chronological order. Failure to do so may constitute unreasonable delay in the proceedings and subject the party to sanctions by the Commission.

1. The party wishing to introduce such medical records shall notify opposing parties and the Commission in writing at least thirty (30) days before the scheduled hearing. The Prehearing Statement may suffice as notification under this Rule.

2. A copy of the medical records shall be attached to the written notice. Each set of medical records shall be presented in chronological order and paginated.

3. An attorney offering the medical records/reports shall attach to the records/reports his or her attested statement that

a. the records/reports are a true, correct and complete copy of the records/reports received from the medical provider, or

b. opposing counsel agreed that only the attached excerpts from the medical provider's records/reports are needed to address the contested issues.

4. The contents of the medical reports shall be subject to the same objections as to relevancy and competency as the testimony of the reporting physician had he or she been personally present to testify at the hearing. Any objection to the use of an affidavit must be made within fifteen (15) days after receipt by the objecting party of a notice of intent to use such affidavit.

5. Any other party to the controversy may depose the physician and/or require the physician's presence at the hearing on the merits, at the sole expense of the party who requests the deposition or appearance at the hearing. Notice of the deposition must be made before setting the case for hearing on the merits, and the deposition must be taken before the evidentiary hearing on the merits. At the deposition or hearing, the physician shall be declared to be the witness of the party who introduced the medical records in lieu of testimony. The other party must cooperate in the taking of the deposition.

6. The affidavit used for the introduction of medical records shall be in the form prescribed by the Commission.

The Rule shall be in force and effect on and after January 18, 2018.

Source: Miss. Code Ann. § 71-3-85.

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