

1 04 NCAC 10A .0404 is amended with changes as published in 30:6 NCR 593-602 as follows:

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3 **04 NCAC 10A .0404 TERMINATION AND SUSPENSION OF COMPENSATION**

4 (a) No application to terminate or suspend compensation shall be approved by the Commission without a formal  
5 hearing if the effect of the approval is to set aside the provisions of an award of the Commission.

6 (b) When an employer, carrier, or administrator seeks to terminate or suspend temporary total disability compensation  
7 being paid pursuant to G.S. 97-29 for a reason other than those specified in G.S. 97-18(d) (payment without prejudice),  
8 G.S. 97-18.1(b) (trial return to work), or G.S. 97-29(b) (expiration of 500-week limit on disability compensation (only  
9 for claims arising on or after June 24, 2011)), the employer, carrier, or administrator shall notify the employee's  
10 attorney of record or the employee, if not represented, on Form 24, *Application to Terminate or Suspend Payment of*  
11 *Compensation*. This form requests:

- 12 (1) the date of injury or accident and date the disability began;
- 13 (2) the nature and extent of injury;
- 14 (3) the number of weeks of compensation paid and the date range range(s) including from and to; during  
15 which such compensation was paid;
- 16 (4) the total amount of indemnity compensation paid to date;
- 17 (5) whether one of the following events has occurred:
  - 18 (A) an agreement was approved by the Commission and the date;
  - 19 (B) an employer admitted employee's right to compensation pursuant to G.S. 97-18(b);
  - 20 (C) an employer paid compensation to the employee without contesting the claim within the  
21 statutory period provided under G.S. 97-18(d); or
  - 22 (D) any other event related to the termination or suspension of compensation;
- 23 (6) whether the application is made to terminate or suspend compensation and the grounds; and
- 24 (7) whether the employee is in managed care.

25 (c) The employer, carrier, or administrator shall specify the grounds and the alleged facts supporting the application,  
26 application and shall complete the blank space in the "Important Notice to Employee" portion of Form 24 *Application*  
27 *to Terminate or Suspend Payment of Compensation* by inserting a date 17 days from the date the employer, carrier, or  
28 administrator serves the completed Form 24 *Application to Terminate or Suspend Payment of Compensation* on the  
29 employee's attorney of record by e-mail or facsimile, or the employee, if not represented, by ~~certified mail, return~~  
30 ~~receipt requested.~~ first class mail. The Form 24 *Application to Terminate or Suspend Payment of Compensation* and  
31 attached documents shall be sent to the Commission via upload to the Electronic Document ~~Fee Filing Portal, Portal~~  
32 in accordance with Rule .0108 of this Subchapter, and shall be contemporaneously served on employee's counsel by  
33 e-mail or facsimile, or on the employee, if unrepresented, by ~~certified mail, return receipt requested.~~ first class mail.

34 (d) The Form 24 *Application to Terminate or Suspend Payment of Compensation* shall specify the number of pages  
35 of documents attached which are to be considered by the Commission. If the employee or the employee's attorney of  
36 record objects by the date inserted on the employer's Form 24 *Application to Terminate or Suspend Payment of*  
37 *Compensation*, the Commission shall set the case for an informal hearing, unless waived by the parties in favor of a

1 formal hearing. The objection shall be filed in accordance with Rule .0108 and shall be accompanied by all currently  
2 available supporting documentation. A copy of any objection shall be contemporaneously served on the employer,  
3 carrier, or administrator. The Form 24 *Application to Terminate or Suspend Payment of Compensation* or objection  
4 may be supplemented with any additional relevant documentation received after the initial filing. The term "carrier"  
5 or "administrator" also includes any successor in interest in the pending claim.

6 (e) If an employee does not object within the allowed time, the Commission shall review the Form 24 *Application to*  
7 *Terminate or Suspend Payment of Compensation* and any attached documentation, and an Administrative Decision  
8 and Order shall be rendered without an informal hearing as to whether there is a sufficient basis under the Workers'  
9 Compensation Act to terminate or suspend compensation, except as provided in Paragraph (g) of this Rule. Either  
10 party may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

11 (f) If the employee timely objects to the Form 24 *Application to Terminate or Suspend Payment of Compensation*,  
12 the Commission shall conduct an informal hearing within 25 days of the receipt by the Commission of the Form 24  
13 *Application to Terminate or Suspend Payment of Compensation*, unless the time is extended for good cause shown.  
14 The informal hearing may be by telephone conference between the Commission and the parties or their attorneys of  
15 record. The informal hearing may be conducted with the parties or their attorneys of record personally present with  
16 the Commission. The Commission shall make arrangements for the informal hearing with a view towards conducting  
17 the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with each side  
18 given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the above, the employer, carrier,  
19 or administrator may waive the right to an informal ~~hearing,~~ hearing and proceed to a formal hearing by filing a request  
20 for hearing on a Form 33 *Request that Claim be Assigned for Hearing*.

21 (g) Either party may appeal the Administrative Decision and Order of the Commission as provided by Rule ~~.0703~~  
22 .0702 of this Subchapter. A Deputy Commissioner shall conduct a hearing which shall be a hearing de novo. The  
23 hearing shall be peremptorily set and shall not require a Form 33 *Request that Claim be Assigned for Hearing*. The  
24 employer has the burden of producing evidence on the issue of the employer's application for termination or suspension  
25 of compensation. If the Deputy Commissioner reverses an order previously granting a Form 24 *Application to*  
26 *Terminate or Suspend Payment of Compensation* motion, the employer, carrier, or administrator shall promptly  
27 resume compensation or otherwise comply with the Deputy Commissioners decision, notwithstanding any appeal or  
28 application for review to the Full Commission ~~under~~ pursuant to G.S. 97-85.

29 (h) If the Commission is unable to reach a decision after an informal hearing, the Industrial Commission shall issue  
30 an ~~order~~ Administrative Decision and Order to that effect that shall be in lieu of a Form 33 *Request that Claim be*  
31 *Assigned for Hearing*, and the case shall be placed on the formal hearing docket. If additional issues are to be  
32 addressed, the employer, carrier, or administrator shall within 30 days of the date of the Administrative Decision and  
33 Order file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal hearing is  
34 not currently necessary. The effect of placing the case on the docket shall be the same as if the Form 24 *Application*  
35 *to Terminate or Suspend Payment of Compensation* were denied, and compensation shall continue until such time as  
36 the case is decided by a Commissioner or a Deputy Commissioner following a formal hearing.

1 (i) The Commission shall ~~mail any Administrative Decision and Order to the non-prevailing party by certified mail.~~  
2 send a copy of the Administrative Decision and Order to a non-prevailing party who is without legal representation  
3 by certified mail.

4 (j) No order issued as a result of an informal Form 24 *Application to Terminate or Suspend Payment of Compensation*  
5 hearing shall terminate or suspend compensation retroactively to a date preceding the filing date of the Form 24  
6 *Application to Terminate or Suspend Payment of Compensation*. Compensation may be terminated retroactively **to a**  
7 **date preceding the filing date of the Form 24 *Application to Terminate or Suspend Payment of Compensation*** without  
8 a formal hearing where there is agreement by the parties, where allowed by statute, or where the employee is  
9 incarcerated. Otherwise, retroactive termination or suspension of compensation to a date preceding the filing of a  
10 Form 24 *Application to Terminate or Suspend Payment of Compensation* may be ordered as a result of a formal  
11 hearing. Additionally, nothing shall impair an employer's right to seek a credit pursuant to G.S. 97-42.

12 (k) Any Administrative Decision and Order or other Commission decision allowing the suspension of compensation  
13 on the grounds of noncompliance with medical treatment pursuant to G.S. 97-25 or G.S. 97-27, noncompliance with  
14 vocational rehabilitation pursuant to G.S. 97-25 or G.S. 97-32.2, or unjustified refusal to return to work pursuant to  
15 G.S. 97-32 must specify what action the employee must take to end the suspension and reinstate the compensation.

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17 *History Note: Authority G.S. 97-18.1(c); 97-18.1(d); 97-32.2(g); 97-80(a);*

18 *Eff. January 1, 1990;*

19 *Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.*

1 04 NCAC 10A .0405 is amended with changes as published in 30:6 NCR 593-602 as follows:

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3 **04 NCAC 10A .0405 REINSTATEMENT OF COMPENSATION**

4 (a) In a claim in which the employer, carrier, or administrator has admitted liability, when an employee seeks  
5 reinstatement of compensation pursuant to G.S. 97-18(k), the employee may notify the employer, carrier, or  
6 ~~administrator,~~ administrator and the employer's, carrier's, or administrator's attorney of ~~record,~~ record on a Form 23  
7 *Application to Reinstate Payment of Disability Compensation,* Compensation, Compensation or by the filing of a Form 33 *Request*  
8 *that Claim be Assigned for Hearing.*

9 (b) When reinstatement is sought by the filing of a Form 23 *Application to Reinstate Payment of Disability*  
10 *Compensation,* the original Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached  
11 documents shall be ~~sent to~~ filed with the Commission ~~at the same time and by the same method by which in accordance~~  
12 with Rule .0108 of this Subchapter Subchapter, and a copy of the Form 23 and attached documents ~~are~~  
13 [contemporaneously] sent shall contemporaneously be sent to the employer, carrier, or administrator and the  
14 employer's, carrier's, or administrator's attorney of record. The employee shall specify the grounds and the alleged  
15 facts supporting the application and shall complete the blank space in the "Important Notice to Employer" portion of  
16 Form 23 *Application to Reinstate Payment of Disability Compensation* by inserting a date 17 days from the date the  
17 employee serves the completed Form 23 *Application to Reinstate Payment of Disability Compensation* on the  
18 employer, carrier, or administrator and the attorney of record, if any. The Form 23 *Application to Reinstate Payment*  
19 *of Disability Compensation* shall specify the number of pages of documents attached that are to be considered by the  
20 Commission. Within 17 days from the date the employee serves the completed Form 23 *Application to Reinstate*  
21 *Payment of Disability Compensation* on the employer, carrier, or administrator and the attorney of record, if any, the  
22 employer, carrier, or administrator shall complete Section B of the Form 23 *Application to Reinstate Payment of*  
23 *Disability Compensation* and ~~send file it to~~ with the Commission in accordance with Rule .0108 of this Subchapter  
24 and send a copy contemporaneously to the employee, employee or the employee's attorney of ~~record, at the same time~~  
25 ~~and by the same method by which the form is sent to the Commission.~~ record.

26 (c) If the employer, carrier, or administrator does not object within the time allowed, the Commission shall review  
27 the Form 23 *Application to Reinstate Payment of Disability Compensation* and the attached documentation and,  
28 without an informal hearing, ~~render~~ issue an Administrative Decision and Order as to whether there is sufficient basis  
29 under the Workers' Compensation Act to reinstate compensation. This Administrative Decision and Order shall be  
30 rendered issued within five days of the expiration of the time within which the employer, carrier, or administrator  
31 could have filed a response to the Form 23 *Application to Reinstate Payment of Disability Compensation.* Either party  
32 may seek review of the Administrative Decision and Order as provided by Rule ~~.0703~~ .0702 of this Subchapter.

33 (d) If the employer, carrier, or administrator timely objects to the Form 23 *Application to Reinstate Payment of*  
34 *Disability Compensation,* the Commission shall conduct an informal hearing within 25 days of the receipt by the  
35 Commission of the Form 23 *Application to Reinstate Payment of Disability Compensation* unless the time is extended  
36 for good cause shown. The informal hearing may be conducted with the parties or their attorneys of record personally  
37 present with the Commission. The Commission shall make arrangements for the informal hearing with a view toward

1 conducting the hearing in the most expeditious manner. The informal hearing shall be no more than 30 minutes, with  
2 each side being given 10 minutes to present its case and five minutes for rebuttal. Notwithstanding the foregoing, the  
3 employee may waive the right to an informal hearing and proceed to a formal hearing by filing a request for hearing  
4 on a Form 33 *Request that Claim be Assigned for Hearing*. Either party may appeal the Administrative Decision and  
5 Order of the Commission as provided by Rule ~~.0703~~ .0702 of this Subchapter. A Deputy Commissioner shall conduct  
6 a hearing which shall be a hearing de novo. The hearing shall be peremptorily set and shall not require a Form 33  
7 *Request that Claim be Assigned for Hearing*. The employee has the burden of producing evidence on the issue of the  
8 employee's application to reinstate compensation. If the Deputy Commissioner reverses an order previously granting  
9 a Form 23 *Application to Reinstate Payment of Disability Compensation* motion, the employer shall promptly  
10 terminate compensation or otherwise comply with the Deputy Commissioner's decision, notwithstanding any appeal  
11 or application for review to the Full Commission under G.S. 97-85.

12 (e) If the Commission is unable to render a decision after the informal hearing, the Commission shall issue an order  
13 to that effect, ~~that~~ **which** shall be in lieu of a Form 33 *Request that Claim be Assigned for Hearing*, and the case shall  
14 be placed on the formal hearing docket. If additional issues are to be addressed, the employee, employer, carrier, or  
15 administrator shall file a Form 33 *Request that Claim be Assigned for Hearing* or notify the Commission that a formal  
16 hearing is not currently ~~necessary~~, **necessary** within 30 days of the date of the Administrative Decision or Order. The  
17 effect of placing the case on the docket shall be the same as if the Form 23 *Application to Reinstate Payment of*  
18 *Disability Compensation* was denied, and compensation shall not be reinstated until such time as the case is decided  
19 by a Commissioner or a Deputy Commissioner following a formal hearing.

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21 *History Note: Authority G.S. 97-18(k); 97-80(a);*  
22 *Eff. January 1, 1990;*  
23 *Amended Eff. February 1, 2016; November 1, 2014.*

1 04 NCAC 10A .0502 is amended with changes as published in 30:6 NCR 593-602 as follows:

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3 **04 NCAC 10A .0502 COMPROMISE SETTLEMENT AGREEMENTS**

4 (a) The Commission shall not approve a compromise settlement agreement unless it contains the following  
5 information:

- 6 (1) The employee knowingly and intentionally waives the right to further benefits under the Workers'  
7 Compensation Act for the injury that is the subject of this agreement.
- 8 (2) The employer, ~~carrier~~ carrier, or administrator will pay all costs incurred.
- 9 (3) No rights other than those arising under the provisions of the Workers' Compensation Act are  
10 compromised or released by this agreement.
- 11 (4) The employee has, or has not, returned to a job or position at the same or a greater average weekly  
12 wage as was being earned prior to the injury or occupational disease.
- 13 (5) Where the employee has not returned to a job or position at the same or a greater wage as was being  
14 earned prior to the injury or occupational disease, the employee has, or has not, returned to some  
15 other job or ~~position,~~ position and, if so, the description of the particular job or position, the name  
16 of the employer, and the average weekly wage earned. This Subparagraph does not apply where the  
17 employee or counsel certifies that partial wage loss due to an injury or occupational disease is not  
18 being claimed.
- 19 (6) Where the employee has not returned to a job or position at the same or a greater average weekly  
20 wage as was being earned prior to the injury or occupational disease, a summary of the employee's  
21 age, educational level, past vocational training, past work experience, and any ~~impairment,~~  
22 ~~emotional, mental or physical,~~ emotional, mental, or physical impairment that predates the current  
23 injury or occupational disease. This Subparagraph does not apply upon a showing of:
  - 24 (A) unreasonable burden upon the parties;
  - 25 (B) the employee is represented by counsel; or
  - 26 (C) even if the employee is not represented by counsel, where the employee or counsel certifies  
27 that total wage loss due to an injury or occupational disease is not being claimed.

28 (b) No compromise settlement agreement shall be considered by the Commission unless the following requirements  
29 are met:

- 30 (1) The relevant medical, vocational, and rehabilitation reports known to exist, including those pertinent  
31 to the employee's future earning capacity, are submitted with the agreement to the Commission by  
32 the employer, carrier, administrator, or the attorney for the employer.
- 33 (2) The parties and all attorneys of record have signed the agreement.
- 34 (3) In a claim where liability is admitted or otherwise has been established, the employer, carrier, or  
35 administrator has undertaken to pay all medical expenses for the compensable injury to the date of  
36 the settlement agreement.

- 1 (4) The settlement agreement contains a list of all known medical expenses of the employee related to  
2 the injury to the date of the settlement agreement, including medical expenses that the employer,  
3 carrier, or administrator disputes, when the employer or insurer has not agreed to pay all medical  
4 expenses of the employee related to the injury up to the date of the settlement agreement.
- 5 (5) The settlement agreement contains a list of the unpaid medical expenses, if known, that will be paid  
6 by the employer, carrier, or administrator, if there are unpaid medical expenses that the employer or  
7 carrier has agreed to pay. The settlement agreement also contains a list of unpaid medical expenses,  
8 if known, that will be paid by the employee, if there are unpaid medical expenses that the employee  
9 has agreed to pay.
- 10 (6) The settlement agreement provides that a party who has agreed to pay a disputed unpaid medical  
11 expense will notify in writing the unpaid health care provider of the party's responsibility to pay the  
12 unpaid medical expense. Other unpaid health care providers will be notified in writing of the  
13 completion of the settlement by the party specified in the settlement agreement:
- 14 (A) when the employee's attorney has notified the unpaid health care provider in writing under  
15 G.S. 97-90(e) not to pursue a private claim against the employee for the costs of medical treatment,  
16 or
- 17 (B) when the unpaid health care provider has notified in writing the employee's attorney of its  
18 claim for payment for the costs of medical treatment and has requested notice of a settlement.
- 19 (7) Any obligation of any party to pay an unpaid disputed medical expense pursuant to a settlement  
20 agreement does not require payment of any medical expense in excess of the maximum allowed  
21 under G.S. 97-26.
- 22 (8) The settlement agreement contains a finding that the positions of the parties to the agreement are  
23 reasonable as to the payment of medical expenses.

24 (c) When a settlement has been reached, the written agreement shall be submitted to the Commission upon ~~execution.~~  
25 execution in accordance with Rule .0108 of this Subchapter. All compromise settlement agreements shall be directed  
26 to the Office of the Executive Secretary for review or distribution for review in accordance with Paragraphs ~~(a) and~~  
27 ~~(b)~~ (a) through (c) of Rule .0609 of this Subchapter.

28 (d) Once a compromise settlement agreement has been approved by the Commission, the employer, carrier, or  
29 administrator shall furnish an executed copy of the agreement to the employee's attorney of record or the employee,  
30 if unrepresented.

31 (e) An attorney seeking fees in connection with a Compromise Settlement Agreement shall submit to the Commission  
32 a copy of the fee agreement with the client.

33  
34 *History Note:* Authority G.S. 97-17; 97-80(a); 97-82;

35 *Eff. January 1, 1990;*

36 *Amended Eff. February 1, 2016; November 1, 2014; August 1, 2006; June 1, 2000; March 15, 1995.*

04 NCAC 10A .0609 is amended with changes as published in 30:6 NCR 593-602 as follows:

**04 NCAC 10A .0609 MOTIONS PRACTICE IN CONTESTED CASES**

(a) Motions and responses before a Deputy Commissioner:

(1) in cases that are currently calendared for hearing before a Deputy Commissioner shall be ~~sent by the filing party directly to the assigned Deputy Commissioner.~~ filed in accordance with Rule .0108 of this Subchapter.

(2) to reconsider or amend an Opinion and Award, made prior to giving notice of appeal to the Full Commission, shall be ~~directed by the filing party~~ addressed to the Deputy Commissioner who authored the Opinion and ~~Award.~~ Award and filed in accordance with Rule .0108 of this Subchapter.

(b) Motions and responses shall be ~~sent by the filing party directly to~~ filed with the Office of the Executive ~~Secretary:~~ Secretary in accordance with Rule .0108 of this Subchapter:

(1) when a case is not calendared before a Deputy Commissioner;

(2) once a case has been continued or removed from a Deputy ~~Commissioner~~ Commissioner's calendar; or

(3) after the filing of an Opinion and Award when the time for taking appeal has run.

(c) Motions and responses before the Full Commission:

(1) in cases calendared for hearing before the Full Commission shall be ~~sent by the filing party directly~~ addressed to the Chair of the Full Commission ~~panel.~~ panel and filed in accordance with Rule .0108 of this Subchapter.

(2) filed after notice of appeal to the Full Commission has been given but prior to the calendaring of the case shall be ~~directed by the filing party~~ addressed to the Chair of the ~~Commission.~~ Commission and filed in accordance with Rule .0108 of this Subchapter.

(3) in cases continued from the Full Commission hearing docket, shall be ~~directed by the filing party~~ addressed to the Chair of the panel of Commissioners who ordered the ~~continuance.~~ continuance and filed in accordance with Rule .0108 of this Subchapter.

(4) filed after the filing of an Opinion and Award by the Full Commission but prior to giving notice of appeal to the Court of Appeals shall be ~~sent by the filing party directly~~ addressed to the Commissioner who authored the Opinion and ~~Award.~~ Award and filed in accordance with Rule .0108 of this Subchapter.

(d) Motions and responses thereto shall include a caption containing the Industrial Commission file number(s), party names, and a title identifying the nature of the motion or response. Motions and responses set forth in the body of electronic mail correspondence or contained in a brief [shall] will not be accepted for filing by the Commission. This Paragraph does not apply to parties without legal representation.

~~(d)~~(e) A motion shall state with particularity the grounds on which it is based, the relief sought, and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented.

1 ~~(e)~~(f) Motions to continue or remove a case from the hearing calendar on which the case is set shall be made as much  
2 in advance as possible of the scheduled hearing and may be made in written or oral form. In all cases, the moving  
3 party shall provide the basis for the motion and state that the other parties have been advised of the motion and relate  
4 the position, if known, of the other parties regarding the motion. Oral motions shall be followed with a written motion  
5 from the moving party.

6 ~~(f)~~(g) The responding party to a motion shall have 10 days after a motion is served during which to file and serve  
7 copies of a response in opposition to the motion. The Commission may shorten or extend the time for responding to  
8 any motion in the interests of justice or to promote judicial economy.

9 ~~(g)~~(h) A party who has not received actual notice of a motion or who has not filed a response at the time action is  
10 taken and who is adversely affected by the action may request that it be reconsidered, vacated, or modified. Motions  
11 shall be determined without oral ~~argument~~, argument unless the Commission determines that oral argument is  
12 necessary for a complete understanding of the issues.

13 ~~(h)~~(i) Where correspondence relative to a case before the Commission is sent to the Commission, copies of such  
14 correspondence shall be contemporaneously sent by the same method of transmission to the opposing party or, if  
15 represented, to opposing counsel. Written communications, whether addressed directly to the Commission or copied  
16 to the Commission, may not be used as an opportunity to introduce new evidence or to argue the merits of the case,  
17 with the exception of the following:

- 18 (1) written communications, such as a proposed order or legal memorandum, prepared pursuant to the  
19 Commission's instructions;
- 20 (2) written communications relative to emergencies, changed circumstances, or scheduling matters that  
21 may affect the procedural status of a case such as a request for a continuance due to the health of a  
22 litigant or an attorney;
- 23 (3) written communications sent to the tribunal with the consent of the opposing lawyer or opposing  
24 party, if unrepresented; and
- 25 (4) any other communication permitted by law or the Rules of the Commission.

26 ~~(i)~~(j) All motions and responses thereto shall include a proposed Order in Microsoft Word format to be considered  
27 by the Commission.

28  
29 *History Note: Authority G.S. 97-79(b); 97-80(a); 97-84; 97-91;*  
30 *Eff. January 1, 1990;*  
31 *Amended Eff. February 1, 2016; November 1, 2014; June 1, 2000; March 15, 1995.*

1 04 NCAC 10A .0609A is amended with changes as published in 30:6 NCR 593-602 as follows:

2  
3 **04 NCAC 10A .0609A MEDICAL MOTIONS AND EMERGENCY MEDICAL MOTIONS**

4 (a) Medical motions brought pursuant to G.S. ~~97-25~~, 97-25 and responses ~~thereo~~, thereto shall be brought before  
5 either the Office of the Chief Deputy Commissioner or the Executive Secretary and shall be submitted electronically  
6 to [medicalmotions@ic.nc.gov](mailto:medicalmotions@ic.nc.gov). Motions and responses shall be submitted contemporaneously to the Commission and  
7 the opposing party or opposing party's counsel, if represented.

8 (b) Following receipt of a notice of hearing before a Deputy Commissioner on a medical motion or appeal, the parties  
9 shall submit all subsequent filings and communications electronically directly to the Deputy Commissioner assigned.

10 (c) In addition to any notice of representation contained in a medical motion or response, an attorney who is retained  
11 by a party to prosecute or defend a medical motion or appeal before the Commission shall file a notice of representation  
12 ~~with the Docket Director at [doctors@ic.nc.gov](mailto:doctors@ic.nc.gov)~~ in accordance with Rule .0108 of the Subchapter and send a copy of  
13 the notice to all other counsel and all unrepresented parties involved in the proceeding.

14 (d) Motions submitted pursuant to G.S. 97-25 and requesting medical relief other than emergency relief shall contain  
15 the following:

- 16 (1) a designation as a "Medical Motion" brought pursuant to G.S. 97-25 and a statement directly  
17 underneath the case caption clearly indicating the request is for either an administrative ruling by  
18 the Executive Secretary or an expedited full evidentiary hearing before a Deputy Commissioner;
- 19 (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if  
20 available, the employee's email address and fax number. If the employee is represented, the name,  
21 email address, telephone number, and fax number of employee's counsel;
- 22 (3) the employer's name and employer code;
- 23 (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, to  
24 the extent available, email address;
- 25 (5) the adjuster's name, email address, telephone number, and fax number if counsel for the employer  
26 and carrier has not been retained;
- 27 (6) if an attorney has been retained for the employer or carrier, the attorney's name, email address,  
28 telephone number, and fax number;
- 29 (7) a statement of the treatment or relief requested;
- 30 (8) a statement of the medical diagnosis of the employee and the name of any health care provider  
31 having made a diagnosis or treatment recommendation that is the basis for the motion;
- 32 (9) a statement as to whether the claim has been admitted on a Form 60, *Employer's Admission of*  
33 *Employee's Right to Compensation*, Form 63, *Notice to Employee of Payment of Compensation*  
34 *without Prejudice (G.S. 97-18(d))* or *Payment of Medical Benefits Only without Prejudice (G.S. 97-*  
35 *2(19) & 97-25)*, Form 21, *Agreement for Compensation for Disability*, or is subject to a prior  
36 Commission Opinion and Award or Order finding compensability, with supporting documentation  
37 attached;

- 1 (10) a statement of the time-sensitive nature of the request, if any;
- 2 (11) an explanation of opinions known and in the possession of the movant by any relevant experts,
- 3 independent medical examiners, and second opinion examiners;
- 4 (12) if the motion requests a second opinion examination pursuant to G.S. 97-25, the motion shall specify
- 5 whether the employee has made a prior written request to the defendants for the examination, as
- 6 well as the date of the request and the date of the denial, if any;
- 7 (13) a representation that informal means of resolving the issue have been attempted in good faith, and
- 8 the opposing party's position, if known; and
- 9 (14) a proposed ~~Order~~. Order in Microsoft Word format.

10 (e) Motions submitted pursuant to G.S. 97-25 and requesting emergency medical relief shall contain the following:

- 11 (1) a boldface or otherwise ~~emphasized~~, ~~emphasized~~ designation as "Emergency Medical Motion";
- 12 (2) the employee's name. If the employee is unrepresented, the employee's telephone number and, if
- 13 available, the employee's email address and fax number. If the employee is represented, the name,
- 14 email address, telephone number, and fax number of the employee's counsel;
- 15 (3) the employer's name and employer code, if known;
- 16 (4) the carrier or third party administrator's name, carrier code, telephone number, fax number, and, if
- 17 available, email address;
- 18 (5) the adjuster's name, email address, telephone number, and fax number if counsel for the
- 19 employer/carrier has not been retained;
- 20 (6) the counsel for employer/carrier's name, email address, telephone number, and fax number;
- 21 (7) an explanation of the medical diagnosis and treatment recommendation of the health care provider
- 22 that requires emergency attention;
- 23 (8) a statement of the need for a shortened time period for review, including relevant dates and the
- 24 potential for adverse consequences if the recommended relief is not provided emergently;
- 25 (9) an explanation of opinions known and in the possession of the movant by any relevant experts,
- 26 independent medical examiner, and second opinion examiners;
- 27 (10) a representation that informal means of resolving the issue have been attempted in good faith, and
- 28 the opposing party's position, if known;
- 29 (11) documents known and in the possession of the movant relevant to the request, including relevant
- 30 medical records; and
- 31 (12) a proposed ~~Order~~. Order in Microsoft Word format.

32 (f) Upon receipt of an emergency medical motion, the non-moving party(ies) shall be advised by the Commission of

33 any time allowed for response and whether informal telephonic oral argument is necessary.

34 (g) A party may appeal an Order of the Executive Secretary on a motion brought pursuant to G.S. 97-25(f)(1) or

35 receipt of a ruling on a motion to reconsider filed pursuant to Rule .0702(b) of this Subchapter by ~~submitting~~ filing

36 notice of appeal electronically to medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter

37 or motion expressing an intent to appeal a decision of the Executive Secretary shall be considered a request for an

1 expedited hearing pursuant to G.S. 97-25 and G.S. 97-84. The letter or motion shall specifically identify the Order  
2 from which the appeal is taken and shall indicate that the appeal is from an administrative Order by the Executive  
3 Secretary entered pursuant to G.S. 97-25(f)(1). After receipt of a notice of appeal, the appeal shall be assigned to a  
4 Deputy Commissioner and an Order under the name of the Deputy Commissioner to which the appeal is assigned  
5 shall be issued within five days of receipt of the notice of appeal.

6 (h) Depositions, if requested by the parties or ordered by the Deputy Commissioner, shall be taken in accordance with  
7 Rule .0612 of this Subchapter and on the Deputy Commissioner's order pursuant to G.S. 97-25. In full evidentiary  
8 hearings conducted by a Deputy Commissioner pursuant to G.S. 97-25(f)(1) and (f)(2), depositions shall be completed  
9 and all transcripts, briefs, and proposed Opinion and Awards ~~submitted to~~ filed with the Deputy Commissioner in  
10 accordance with Rule .0108 of this Subchapter within 60 days of the filing of the motion or appeal. The Deputy  
11 Commissioner may reduce or enlarge the timeframe contained in this Paragraph for good cause shown or upon  
12 agreement of the parties.

13 (i) A party may appeal the decision of a Deputy Commissioner filed pursuant to G.S. 97-25(f)(2) by giving filing  
14 notice of appeal to the Full Commission within 15 calendar days of receipt of the ~~decision.~~ decision in accordance  
15 with Rule .0108 of this Subchapter. A letter expressing an intent to appeal a Deputy Commissioner's decision filed  
16 pursuant to G.S. 97-25 shall be considered notice of appeal to the Full Commission, provided that the letter specifically  
17 identifies the decision from which appeal is taken and indicates that the appeal is taken from a decision by a Deputy  
18 Commissioner pursuant to G.S. 97-25(f)(2). After receipt of notice of appeal, the appeal shall be acknowledged by  
19 the ~~Docket Section~~ Commission within three days by sending an Order under the name of the Chair of the Panel to  
20 which the appeal is assigned. The Order shall set the schedule for filing briefs. A Full Commission hearing on an  
21 appeal of a medical motion filed pursuant to G.S. 97-25 shall be held telephonically and shall not be recorded unless  
22 unusual circumstances arise and the Commission so orders. All correspondence, briefs, and motions related to the  
23 appeal shall be addressed to the Chair of the Panel with a copy to his or her law clerk.

24 (j) A party may appeal the administrative decision of the Chief Deputy Commissioner or the Chief Deputy  
25 Commissioner's designee filed pursuant to G.S. 97-25(f)(3) by submitting filing notice of appeal electronically to  
26 medicalmotions@ic.nc.gov within 15 calendar days of receipt of the Order. A letter or motion expressing an intent to  
27 appeal the Chief Deputy Commissioner Commissioner's or the Chief Deputy Commissioner's designee's Order filed  
28 pursuant to G.S. 97-25(f)(3) shall be considered a notice of appeal, provided that the letter specifically identifies the  
29 Order from which appeal is taken and indicates that the appeal is from an Order of a Deputy Commissioner entered  
30 pursuant to G.S. 97-25(f)(3). After receipt of notice of appeal, the appeal shall be acknowledged within five days by  
31 sending an Order under the name of the Deputy Commissioner to whom the appeal is assigned. The appeal of the  
32 administrative decision of the Chief Deputy Commissioner or the Chief Deputy Commissioner's designee shall be  
33 subject to G.S. 97-25(f)(2) and G.S. 97-84.

34 (k) ~~The Commission shall accept the filing of documents by non-electronic methods if electronic transmission is~~  
35 ~~unavailable to the party.~~ Claimants and employers without legal representation are not required to file documents via  
36 electronic transmission and may file documents with the Commission via EDFP, electronic mail, facsimile, U.S. Mail,  
37 private courier service, or hand delivery.

1

2 *History Note:* Authority G.S. 97-25; 97-78(f)(2); 97-78(g)(2); 97-80(a); S.L. 2014-77;

3 *Eff. January 1, 2011;*

4 *Amended Eff. February 1, 2016; November 1, 2014.*

1 Rule 04 NCAC 10A .0613 is amended with changes as published in 30:6 NCR 593-602 as follows:

2  
3 **04 NCAC 10A .0613 EXPERT WITNESSES AND FEES**

4 (a) The parties shall file with the Deputy Commissioner or ~~Commission~~ Commissioner in accordance with Rule .0108 of  
5 this Subchapter within 15 days following the hearing, a list identifying all expert witnesses to be deposed and the  
6 deposition dates unless otherwise extended by the Commission in the interests of justice and judicial economy.

7 (b) After the deposition of each expert, the party that noticed the deposition shall, within 10 days after receiving the  
8 expert's fee invoice, ~~submit to file with~~ the Deputy Commissioner or ~~Commissioner, via email,~~ Commissioner in  
9 accordance with Rule .0108 of this Subchapter a request to approve the costs related to the expert deposition. In these  
10 requests, the party shall ~~provide~~ provide, ~~to the Deputy Commissioner or Commissioner,~~ in a cover letter along with the  
11 invoice (if available), the following:

- 12 (1) the name of the expert and the expert's practice;
- 13 (2) the expert's fax number;
- 14 (3) the expert's area of specialty and board certifications, if any;
- 15 (4) the length of the deposition;
- 16 (5) the length of time the expert spent preparing for the deposition, excluding any time meeting with  
17 parties' counsel;
- 18 (6) whether the Commission determined that the claim was filed pursuant to G.S. 97-29(d) or involved an  
19 exceptional, unique, or complex injury or disease;
- 20 (7) whether the deponent was selected by the employee in the Pre-Trial Agreement as an expert to be  
21 deposed at employer's expense; and
- 22 (8) the party initially responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

23 At the time the request is made, the requesting party shall submit a proposed Order that shows the expert's name, practice  
24 name and fax number under the "Appearances" section. The proposed Order shall also reflect the party initially  
25 responsible for payment of the deposition fee pursuant to Rule .0612 of this Section.

26 (c) The Commission shall issue an order setting the deposition costs of the expert. The term "costs" as used in this Rule  
27 shall mean the expert's fee as approved by the Commission for the deposition, including the expert's time preparing for  
28 the deposition, if applicable.

29 (d) Failure to make payment to an expert witness within 30 days following the entry of a fee order shall result in an  
30 amount equal to 10 percent being added to the fee granted in the Order.

31 (e) A proposed fee for cancellation of a deposition within five days of a scheduled deposition may be ~~submitted to filed~~  
32 with the Deputy Commissioner in accordance with Rule .0108 of this Subchapter for consideration and approval if in the  
33 interest of justice and judicial economy.

34 (f) This Rule applies to all expert fees for depositions; provided, however, either party may elect to reimburse a retained  
35 expert that did not treat or examine the employee the difference between the fee awarded by the Commission and the  
36 contractual fee of the expert.

- 1 *History Note:* Authority G.S. 97-26.1; 97-80(a); 97-80(d);
- 2 *Eff. January 1, 1990;*
- 3 *Amended Eff. February 1, 2016; November 1, 2014; January 1, 2011; June 1, 2000.*

1 04 NCAC 10A .0617 is amended with changes as published in 30:6 NCR 593-602 as follows:

2  
3 **04 NCAC 10A .0617 ATTORNEYS RETAINED FOR PROCEEDINGS**

4 (a) Any attorney who is retained by a party in a proceeding before the Commission shall comply with the applicable  
5 rules of the North Carolina State Bar. A copy of a notice of representation shall be served upon all other counsel and  
6 all unrepresented parties. Thereafter, all notices required to be served on a party shall be served upon the attorney.  
7 No direct contact or communication concerning contested matters may be made with a represented party by the  
8 opposing party or any person on its behalf, without the attorney's permission except as permitted by G.S. 97-32 or  
9 other applicable law.

10 (b) Any attorney who wishes to withdraw from representation in a proceeding before the Commission shall file with  
11 the Commission, in writing writing, a Motion to Withdraw that contains a statement of reasons for the request and  
12 that the request has been served on the client. The attorney shall make reasonable efforts to ascertain the last known  
13 address of the client and shall include this information in the motion. A Motion to Withdraw before an award is made  
14 shall state whether the withdrawing attorney requests an attorney's fee from the represented party once an award of  
15 compensation is made or approved.

16 (c) An attorney may withdraw from representation only by written order of the Commission. The issuance of an  
17 award of the Commission does not release an attorney as the attorney of record.

18 (d) An attorney withdrawing from representation whose client wishes to appeal an Order, Decision, or Award to the  
19 Full Commission shall timely file a notice of appeal, as set out by this Subchapter, on behalf of his or her client either  
20 before or with his or her Motion to Withdraw.

21 (e) Motions to Withdraw shall be submitted electronically to attorneywithdrawals@ic.nc.gov, ~~unless electronic~~  
22 ~~submission is unavailable to the parties.~~ in accordance with Rule .0108 of this Subchapter. The Motion to Withdraw  
23 shall include a proposed Order in Microsoft Word format that includes, in the appearances, the last known address of  
24 any pro se party, party or the contact information of new counsel, counsel if such counsel has been retained. The  
25 proposed Order shall include fax numbers for all parties, if known.

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27 *History Note: Authority G.S. 97-80(a); 97-90; 97-91;*  
28 *Eff. January 1, 2011;*  
29 *Amended Eff. February 1, 2016; November 1, 2014.*