

Ins 17

STATE OF WISCONSIN)
) ss.
OFFICE OF THE COMMISSIONER OF INSURANCE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Susan Mitchell, Commissioner of Insurance and custodian of the official records of said office, do hereby certify that the annexed order adopting rules regarding rules of practice for the Board of Governors of the Patients Compensation Fund and the Wisconsin Health Care Liability Insurance Plan was issued by this office May 18, 1979.

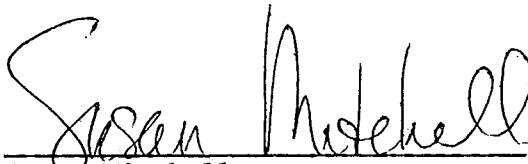
I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

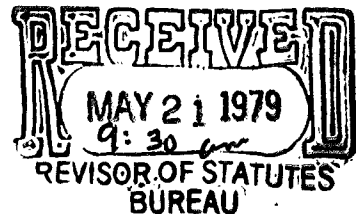
IN TESTIMONY WHEREOF, I have hereunto subscribed my name in the City of Madison, State of Wisconsin, this 18th day of May 1979.

STATE OF WISCONSIN
RECEIVED AND FILED

MAY 18 1979

VEL PHILLIPS
SECRETARY OF STATE


Susan Mitchell
Commissioner of Insurance



ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE

MAY 18 1979

Adopting and Renumbering Rules

Pursuant to authority vested in the Commissioner of Insurance, ^{VEL PHILLIPS}
~~SECRETARY OF STATE~~

by sections 601.41 (3), 619.04 and 655.003, Wis. Stats., the Commissioner of Insurance as Chairman of the Board of Governors of the Wisconsin Health Care Liability Insurance Plan and of the Patients Compensation Fund hereby adopts and renumbers rules as follows:

Sections Ins 17.01 to Ins 17.24 are adopted to read:

Ins 17.01 DEFINITIONS. (ss 619.04 and 655.003, Stats.) As used in this chapter: (1) "Board" means the board of governors established pursuant to s. 619.04 (3), Stats.;

(2) "Fund" means the patients compensation fund established pursuant to s. 655.27 (1), Stats., except as defined in section Ins 17.24 Wis. Adm. Code;

(3) "Hearing" includes both hearings and rehearings, and these rules shall cover both so far as applicable, except where otherwise specifically provided by statute or in chapter Ins 17.

(4) "Plan" means the Wisconsin health care liability insurance plan established by section Ins 17.25 Wis. Adm. Code pursuant to s. 619.01 (1) (a), Stats.;

(5) "Commissioner" means the commissioner of insurance or deputy whenever detailed by the commissioner or discharging the duties and exercising the powers of the commissioner during an absence or a vacancy in the office of the commissioner, as provided by s. 601.11 (1) (b), Stats.

Ins 17.02 PETITION FOR DECLARATORY RULINGS. (ss 619.04 and 655.003, Stats.) (1) Petitions for declaratory rulings shall be governed by s. 227.06, Stats.

(2) Such petitions shall be filed with the commissioner who shall investigate, give notice, etc.

(3) All final determinations shall be made by the board.

Ins 17.03 HOW PROCEEDINGS INITIATED. (ss. 619.04 and 655.003, Stats.) Proceedings for a hearing upon a matter may be initiated: (1) On a complaint by any individual, corporation, partnership or association which is aggrieved, filed in triplicate (original and 2 copies) with the commissioner.

(2) By the board on its own motion whenever its investigation discloses probable ground therefore.

Ins 17.04 GENERAL RULES OF PLEADING. (ss. 619.04 and 655.003, Stats.) All pleadings shall be governed by s. 802.02, Stats., where applicable.

Ins 17.05 CAPTION OF PLEADINGS AND NOTICE. (ss 619.04 and 655.003, Stats.) All pleadings, notices, orders and other papers filed in reference to any hearings shall be captioned "Before the Board of Governors of the Wisconsin Health Care Liability Insurance Plan and Wisconsin Patients Compensation Fund" and shall be entitled "In the Matter of (here insert the matter that is involved)."

Ins 17.06 SERVICE OF PAPERS. (ss. 619.04 and 655.003, Stats.) A copy of all papers filed at or in reference to any hearing shall be served, or furnished as the case may be, on or to each other party or person interested who enters an appearance in the proceedings.

Ins 17.07 PROCEDURE UPON FILING COMPLAINT. (ss. 619.04 and 655.003, Stats.) Upon the filing of a complaint as prescribed by section Ins 17.03 Wis. Adm. Code the commissioner or member of the commissioner's staff shall investigate the matter alleged, to determine whether there is sufficient

cause for action and shall report the findings to the board for action. If the board determines that there is sufficient cause for action it shall order a hearing. If it determines that no further action is warranted it shall so notify the complainant in writing of the reasons therefore.

Ins 17.08 FORMS OF NOTICE. (ss. 619.04 and 655.003, Stats.)

Notices of hearing shall include a statement of issues and shall be in substantially the following form: (1) If on a complaint filed with the commissioner a copy thereof shall be attached to a notice in the following form:

"To: (Name)

(Street Address)

(City) (State) (Zip)

Take notice that a hearing will be held on the _____ day of _____, 19____ at the office of the Commissioner of Insurance, 123 West Washington Avenue, Madison, Wisconsin (or other proper designation of the place where the hearing will be held) at _____ o'clock in the _____ m. or as soon thereafter as the matter may be reached, on the (here to be stated briefly the substance of the subject matter of the hearing).

This is a class proceeding as defined by Wisconsin Statute section 227.01 (2).

This hearing will be conducted under the authority granted the Board by Chapter 655 and by section 227.01 (1) of the Wisconsin Statutes.

Dated at Madison, Wisconsin this _____ day of _____, 19____

BOARD OF GOVERNORS OF THE WISCONSIN
HEALTH CARE LIABILITY INSURANCE PLAN
AND WISCONSIN PATIENTS COMPENSATION FUND

(Signature)

Chairman or Secretary

(2) If initiated on the board's own motion or investigation the form of notice shall be as set forth in subsection (1), but altered by inserting the following:

"The issues involved and the matters there to be considered are set forth in the attached copy of the complaint to which you are required to make answer in writing at least ... days before the time set for said hearing."

(3) Except in the case of an emergency such notice shall be mailed to the known interested parties at least 10 days prior to the hearing.

Ins 17.09 ANSWER. (ss. 619.04 and 655.003, Stats.) The respondent shall be required to answer any notice within the time therein specified and failure to do so shall constitute a default. The commissioner may, upon proper showing, excuse such failure to answer upon such terms as the commissioner determines to be just and permit the party to make answer within such time as the commissioner prescribes, provided, however, that no party shall be relieved from such default after a hearing has been concluded and an order entered or other disposition made of the matter. The answer shall be verified by the respondent individually, or if a corporation by a proper officer of such corporation, unless an admission of the allegations might subject the person or party to prosecution for a felony, and shall be filed with the commissioner in triplicate (original and 2 copies) within the time prescribed in the notice of hearing.

Ins 17.10 CONTENTS OF ANSWER. (ss. 619.04 and 655.003, Stats.) The answer must contain: (1) A specific denial of each material allegation of the charges, factual situations or matters which the respondent controverts.

(2) A statement of any new matter constituting a defense or mitigating the offense or matter charged, which the respondent wishes to have considered.

(3) Every material allegation not controverted as prescribed shall be taken as true, but any new matter set forth in the answer shall be deemed controverted without any reply being served or filed.

Ins 17.11 HEARING EXAMINER. (ss. 619.04 and 655.003, Stats.)

The board may designate the commissioner or any employe on the commissioner's staff or borrowed from another agency pursuant to ss. 16.24 or 20.901, Stats., as a hearing examiner to preside over any case. Such examiner may:

- (1) Administer oaths and affirmations.
- (b) Issue subpoenas authorized by law.
- (c) Rule on offers of proof and receive relevant evidence.
- (d) Take depositions or have depositions taken when permitted by law.
- (e) Regulate the course of the hearing.
- (f) Hold conferences for the settlement or simplification of the issues by consent of the parties.
- (g) Dispose of procedural requests or similar matters.
- (h) Make or recommend findings of fact, conclusions of law and decisions to the extent permitted by law.
- (i) Take other action authorized by agency rule consistent with this chapter.

Ins 17.12 RULES OF HEARING. (ss. 619.04 and 655.003, Stats.)

All hearings shall be conducted pursuant to ss. 227.07 - 277.08, Stats.

Ins 17.13 CONTINUANCES. (ss. 619.04 and 655.003, Stats.)

Continuances and adjournments of hearings may be granted for cause by the board or the hearing examiner.

Ins 17.14 HEARING PUBLIC. (ss. 619.04 and 655.003, Stats.)

All hearings shall be open to the public, except where otherwise

specifically provided by statute or ordered by the board or the person conducting the same.

Ins 17.15 SUBPOENAS. (ss. 619.04 and 655.003, Stats.) The commissioner may sign and issue subpoenas for the attendance of a party or any witness at a hearing whether conducting the hearing or not. The hearing examiner may sign and issue subpoenas for the attendance of witnesses or parties at such hearing.

Ins 17.16 SERVICE. (ss. 619.04 and 655.003, Stats.) Service of notice of hearing, notice of order of the board, and of any other notices during the process of and in relation to a hearing shall be given as provided by ch. 227, Stats. Services of any notice, paper or document in a proceeding after the entry of an appearance as provided by this section shall be made in such manner and may be on the party or on any agent, employe, officer or attorney appearing for or with such party as last entered in the record of such proceedings or furnished and in modification thereof shall be conclusive as the proper and correct mail address.

Ins 17.17 APPEARANCES. (ss. 619.04 and 655.003, Stats.) Parties may appear in person or by a regularly employed employe or agent, or by an attorney, and if a corporation by any of its active officers. Upon an appearance at a hearing the name and mail address of the party appearing and the name and mail address of any agent, employe, officer or attorney appearing with or for such party shall be furnished and entered in the record of the proceedings, and the appearance so made and the mail addresses so given shall be binding on the party unless and except as modified by written notice to the board or the person conducting the hearing and to all other parties appearing therein served as provided by section Ins 17.15 Wis. Adm. Code which when so modified shall in turn have the same force and effect as in the first instance.

Ins 17.18 EXAMINATION OF WITNESSES. (ss. 619.04 and 655.003, Stats.)

Witnesses may be examined on behalf of the board by the commissioner or the hearing examiner, or by an employe of the board with the permission of the hearing examiner, or by a representative of the attorney general acting as counsel for the board or the state. Such witnesses may be cross-examined by a party or any one authorized and appearing therefor, but no more than one individual, whether the party or an agent, employe, officer or attorney appearing with or for such party, shall cross-examine a witness except by permission of the hearing examiner. The commissioner, the hearing examiner, any employe of the board or any representative of the attorney general who shall be acting at said hearing, may call adversely any party, officer, agent or employe of a party and any witness on behalf of any party and may cross-examine any witness or party testifying at such hearing. All witnesses shall be sworn by the commissioner or the hearing examiner before testifying in the same manner as is provided by a statute in respect to the swearing of witnesses testifying in proceedings before courts of record.

Ins 17.19 RECORD. (ss. 619.04 and 655.003, Stats.) (1) Method.

All the proceedings at a hearing in a contested case shall be recorded either mechanically, electronically or stenographically. The typed transcript of the record will be prepared when deemed necessary by the board or hearing examiner or when requested as set out in subsection (2). The record in a contested case shall include the material listed in s. 227.07 (6), Stats.

(2) Copies. If a transcript of the hearing is prepared for the board or hearing examiner, copies will be furnished to all persons upon request upon payment of the fee authorized by s. 601.31 (21), Stats. If no transcript has been prepared by the commissioner or other hearing officer and a party requests that one be prepared, that party shall be responsible

for all costs of transcript either dictated at length into the record, or reduced to writing signed by the persons or parties stipulating, and filed as a part of the record of the proceedings.

(3) Copies for Interested Parties. Parties who are impecunious who require and request a transcript for appeal or for other purposes deemed reasonable by the commissioner or hearing officer shall be furnished with a transcript of the hearing at the expense of the office of the commissioner of insurance upon the filing of a verified petition stating the purpose for which the transcription is needed and that the person is without means to purchase a transcript.

Ins 17.20 STIPULATIONS. (ss. 619.04 and 655.003, Stats.) All stipulations or agreements in reference to a matter the subject of a hearing or entered into at a hearing shall be either dictated at length into the record, or reduced to writing, signed by the persons or parties stipulating, and filed as a part of the record of the proceedings. Controversies, or matters which may be the subject of or cause for a hearing may be disposed of by stipulation, agreed settlement or consent orders.

Ins 17.21 MOTIONS. (ss. 619.04 and 655.003, Stats.) Except during a hearing, motions shall be made in writing and signed by the party or person authorized and appearing in the proceedings therefor, or if the party is a corporation by an active officer of the corporation. At least 3 days notice thereof shall be given to the board or the hearing examiner, and to each and every other party to the proceeding, served as prescribed by section Ins 17.16 Wis. Adm. Code.

Ins 17.22 DEFAULT. (ss. 619.04 and 655.003, Stats.) In case the respondent fails to submit an answer as required by section Ins 17.08 Wis. Adm. Code or fails to appear at a hearing at the time and place fixed

therefor, the matters specified shall be taken as true and the board may make findings and enter an order on the basis thereof. The default of a party in answering or in appearing shall not preclude the board from hearing said matter, taking such evidence as necessary and proper, and disposing of the matter.

Ins 17.23 ARGUMENTS. (ss. 619.04 and 655.003, Stats.) The hearing examiner may hear oral arguments and limit the time thereof. All arguments shall be submitted in writing unless otherwise ordered. At least 3 copies of all briefs or written arguments shall be furnished to the board. The time for filing such arguments shall be fixed by the hearing examiner.

Ins 17.24 REVIEW OF CLASSIFICATION. (ss. 619.04 and 655.003, Stats.)

(1) Any person other than a hospital or a hospital connected with a nursing home, asserting placement in the wrong classification for insurance premium rate purposes may petition for a review of classification. The commissioner shall refer such petition to a committee consisting of 2 physicians and one informed person, all appointed by the commissioner. The decision of such committee shall be reported to the petitioner within 5 working days of the closing of the hearing record.

(2) Any hospital or hospital combined with a nursing home which believes that it has been placed in the wrong classification for insurance premium rate purposes may petition for a review of classification. The commissioner shall refer such petition to a committee consisting of 2 hospital representatives and one informed person; all appointed by the commissioner. The decision of such committee shall be reported to the petitioner within 5 working days of the closing of the hearing record.

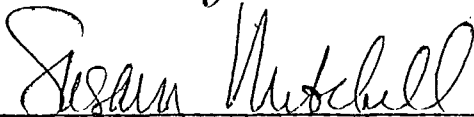
(3) Any person or hospital who is not satisfied with the determination of the committee may petition for a declaratory ruling under

section Ins 17.02 Wis. Adm. Code within 30 days of the date of the written notice of the committee's determination.

(4) At any hearing held pursuant to such petition for a declaratory ruling the committee report shall be considered and the members of the committee have the right to appear and be heard but shall not be required to be present.

Section Ins 3.37 Wis. Adm. Code is renumbered to be section Ins 17.26.

Dated at Madison, Wisconsin, this 18th day of May.



Susan Mitchell
Commissioner of Insurance