

The Fierce Urgency of Medical Motions in North Carolina Workers' Compensation

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Determining the urgency of each and every motion in a fair and unbiased manner filed can be a difficult task for the North Carolina Industrial Commission. To clarify and streamline the process by which the Commission can make determinations of urgency with respect to medical motions, the North Carolina General Assembly has set forth an ironclad set of rules.

According to the new provisions of N.C. Gen. Stat. § 97-25(f), all medical motions related to accepted claims, including those of an allegedly "expedited" or "emergency" nature, are to be filed with the Office of the Chief Deputy Commissioner via electronic mail. Once the motion is filed, the Commission will conduct an informal telephonic pre-trial conference in order to determine whether the motion warrants either an expedited or emergency hearing. If, after the conference, the Commission determines that such a hearing is not necessary, the Commission will handle the motion in the same fashion as any other administrative motion, with a decision due from the Commission within sixty (60) days of the date the motion was filed.

The new provisions of N.C. Gen. Stat. § 97-25(g) lay out the road map for a situation in which the Commission deems the nature of the medical treatment requested to require an expedited hearing. If the Commission determines that the nature of the requested treatment is truly so urgent that the injured worker should not have to wait any more than is necessary for a decision, the Commission will rule on the motion in a expeditious manner. In that case, the parties are to be afforded the opportunity to present documentary evidence in support of their respective arguments in an informal telephonic hearing. The moving party's motion must also contain an affirmative representation that good faith measures were taken to resolve the disagreement informally. If the Commission determines after hearing and reviewing the evidence that expert medical deposition testimony is necessary in order to rule on the merits of the motion, the Commission will order all deposition testimony to be taken within thirty-five (35) days of the filing of the motion, with transcripts to be expedited and submitted within forty (40) days of the filing of the motion. Finally, the Commission is then required to render its decision on the medical motion within five (5) days of the deadline for the submission of transcripts.

If following the pre-trial conference, however, the Commission determines that the requested treatment constitutes a true emergency, N.C. Gen. Stat. §97-25(h) now requires the Commission to make a ruling on the motion within five (5) days of the date it was filed. However, the law also delineates strict requirements for motions requesting emergency treatment. Such a motion must include:

1. An explanation of both the medical diagnosis and the treatment

2. A specific statement of the time-sensitive nature of the request, including relevant dates and potential adverse consequences that would be caused by delay,
3. An explanation of all other opinions, including those of second opinion examiners, known by and in the possession of the injured worker,
4. All relevant medical records in the injured employee's possession, and
5. A representation that informal means of resolving the issue have been attempted.

Although the North Carolina Workers' Compensation rules generally allow a full ten (10) days in which to respond to motions filed with the Industrial Commission, it is especially important to pay attention to deadlines with respect to medical motions. If, as described above, the Commission determines that the motion is an emergency request for treatment, then the defendants have only five (5) days – not the usual ten (10) days – within which to respond. So, when it comes to medical motions, it is always best to file a written response as soon as possible to avoid any such issues.

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