



New Mexico Medical Review Commission

DAVID GALLAGHER, ESQ.
DIRECTOR

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ACTING DIRECTOR



May 21, 2020

Dear Counsel:

We have completed our first 2-weeks of Zoom hearings. Thanks to COVID-19, our backlog is extremely large. We vacated almost two months of cases for which the “Panel Packs” had already been prepared. A number of new cases have been filed. Since mid-March, the governor’s stay home policy requirements changed our staffing levels. With the Zoom training and the catching-up (we hold as many as three Zoom hearings per business day) the Commission will no longer be able to provide Panel Packs for each panel. In the absence of Panel Packs, plaintiffs and defense will provide briefs and counsel-created-document-packs for each hearing. The document-packs are three-fold.

First, we are to relieve some pressure on staff due to trying to catch up 2 months of delayed cases.
Second, they afford each counsel a chance to be selective of records that support their case.
Third, it will allow an expedited hearing so that the Zoom hearing is not as long as the in-person hearings – as Zoom is a different and more intensive way to meet than in person.

The Commission continues to obtain all the records and provides them to counsel. From those records we provide, plaintiff and defense will select the records they want to discuss in the brief. The only difference is staff doesn’t have to go through stacks of records utilizing very little information from the application provided by the plaintiff. We have asked both parties to do this for years, because of the administrative problem this causes.

Consequently, it is very important that you take the extra time to provide the briefs and documents germane to your issues and defenses. My experience with panelists is that they were quite reliant on the Panel Packs; and, they are now equally reliant on your briefs and choice of pertinent records and literature in order to fairly evaluate the claim and the defense. Here are the policies that the Commission is going to have to enforce in order to provide you folks and the volunteer panelists a fair hearing:

- **Patient/Plaintiff Duties.** If you feel your Application is adequate to provide your opening and argument, you need not file an informal supplementary ‘brief’. Within **15 calendar days** of the Panel hearing, you must either provide the Commission and all counsel your brief; or, advise that you are not providing a brief. You must also provide your numbered documents (see “All Counsel Duties”, below) at this time. Within **5 calendar days** of the hearing, after seeing the Providers’ brief and documents, you may provide a one-page response with necessary documents.
- **Provider/Defendant Duties.** Within **10 calendar days** of the hearing, you must specifically respond to the Patient’s Application and/or brief with your informal supplementary brief and numbered documents.
- **All Counsel Duties.**
 - **Briefs.** Double spaced with 12-point legible font. If over 5 pages (one page for a responsive brief), arrange a conference call with all counsel and Michael Rueckhaus (cell 505.362.2900) to justify the length of the brief.
 - **Documents.** Provide numbered medical records that are germane to your claims and defenses. If over 50 pages, arrange a conference call with all counsel and Michael Rueckhaus (cell 505.362.2900) to justify the number of documents. *(please provide 1 PDF of documents and number the pages)*
 - **Literature.** Within **5 calendar days** of the hearing, provide the Commission and all counsel PDFs of all literature to the Commission so we can distribute to the Panelists.
 - **Recording.** Your statutory right, but you must arrange for your own recording of the proceeding. Due to HIPAA and Zoom security issues, the Commission will not be recording the hearing.
 - **Avoid Duplication of Documents.** It would be nice if counsel would confer (and/or make reference in the briefs to documents that have already been designated) to avoid showering the Panelists with duplications.

I personally appreciate your cooperation. Times: they are a changin’.

Sincerely,

Michael Rueckhaus
Acting Director