

1420.2200 DISCOVERY.

Subpart 1. **Demand.** Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. the names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross-examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made;

B. nonprivileged written or recorded statements made by a party or by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed;

C. the petitioner shall disclose the names and addresses of all persons who have treated the employee in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease;

D. wage and personnel records;

E. if temporary partial disability benefits are claimed, the employee must provide a list of postinjury employers and authorizations for the release of wage information for each or a complete set of wage records regarding the employee's claim; and

F. for the purpose of the pending hearing only, a party shall provide a response to a party's request for admissions relevant to the matters in dispute, including, but not limited to, the genuineness of any documents, whether the party is the person depicted in surveillance, and whether or not surveillance accurately depicts the subject's activities during the time covered by the surveillance. If a party fails to provide a response to a request for admissions, the requesting party may file a motion to compel compliance with discovery under part 1420.2250 or a motion to establish an admission or preclude evidence under subpart 5.

Subp. 2. **Depositions.** Under Minnesota Statutes, section 176.411, subdivision 2, depositions may be taken in the manner the law provides for depositions in civil actions in the district courts for the state, except where a judge orders otherwise. Upon request by an adverse party, a party must produce named witnesses for discovery deposition, except as otherwise provided by this part or Minnesota Statutes, section 176.155, subdivision 5.

A. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge who will determine whether the deposition should proceed. The motion must state, with specificity, the facts or other

reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

- (1) the deposition is needed for the proper presentation of a party's case;
- (2) the deposition is not for purposes of delay;
- (3) unusual or extraordinary circumstances exist which compel extensive discovery; or
- (4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition may be offered as an exhibit at the hearing, unless, for good cause shown, the party taking the deposition has the permission of the judge to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a judge, the cross-examination deposition must be completed before the hearing.

D. Depositions taken for purposes of presenting testimony may be offered as an exhibit at the hearing but need not be filed with the division before the hearing.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

Subp. 3. **Motions for disputed or additional discovery.** Upon the motion of a party, the judge may order discovery of other relevant material or information and resolve disputes about the extent of discovery, recognizing all privileges recognized by law. The judge may order discovery available under the Rules of Civil Procedure for the district courts of Minnesota provided that the discovery:

- A. is needed for the proper presentation of a party's case;
- B. is not for purposes of delay; and
- C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

Subp. 4. **Motion for direct testimony by physician or health care provider.** A motion for full testimony of a physician or health care provider must comply with part 1420.2900, subpart 3.

Subp. 5. **Penalties.** Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the judge are allowed upon a party's motion:

A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or

B. an order prohibiting the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subp. 6. **Protective orders.** When a party is asked to reveal material which that party considers proprietary or privileged information, trade secrets, or sensitive medical data, the party may bring the matter to the attention of the judge, who shall issue a protective order as is reasonable and necessary or as otherwise provided by law.

Subp. 7. **Employer's expert medical examinations.** If an employee claims that the employee's ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and verbal examination by the employer's or insurer's expert under Minnesota Statutes, section 176.155, subdivision 1, if requested by the employer or insurer. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served as provided in part 1420.2250. The judge may issue an order allowed by Rule 26.03 of the Rules of Civil Procedure for the district courts. An insurer seeking to require attendance for the requested examination may file a motion to compel attendance under part 1420.2250.

Subp. 8. **Disclosure of surveillance evidence.**

A. A party possessing relevant surveillance evidence must disclose the existence of said evidence to opposing parties upon discovery demand but no later than 30 days prior to the hearing date, or within five business days of the date it is obtained if the evidence is obtained within 30 days of the hearing date. The surveillance evidence must be disclosed at least five business days before a hearing. If a party offers undisclosed surveillance, it is only admissible where the proponent makes an offer of proof to the judge and establishes that admission of the undisclosed surveillance is vital to prevent a miscarriage of justice or fraud.

Surveillance evidence under this part includes any photographic, video, digital, motion picture, or other electronic recording or depiction of a party surreptitiously taken or obtained without the party's expressed permission or knowledge. If the items described

in this subpart were not surreptitiously obtained, they are not considered surveillance evidence. Surveillance evidence does not include the personal observations of an investigator or witness or party whether surreptitiously obtained or not, or the handwritten or recorded notes of observations. Surveillance evidence includes surveillance reports.

B. At the time of disclosure of the existence of surveillance evidence under this subpart, the party disclosing evidence shall provide a copy of the evidence to the attorney representing the subject of the surveillance, or where the subject is unrepresented, to the subject, and shall advise the other parties of the existence of surveillance. A copy of the surveillance shall be presumed to have been disclosed when sent by first class mail upon posting or delivered by messenger. In the case of surveillance evidence disclosed within ten days of the hearing date, disclosure shall be by messenger under this rule and not by first class mail. Where an edited version of surveillance is disclosed, the subject of the surveillance may request the right to view or inspect the unedited version or to be provided with a copy of the unedited version at the insurer's expense.

Statutory Authority: *MS s 14.51; 176.081; 176.155; 176.285; 176.312; 176.361; 176.83*

History: *29 SR 1446*

Published Electronically: *June 20, 2005*