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## SELF- INSURANCE PROGRAM

### PART I GENERAL - ALL SELF-INSURERS

**A. Definitions.** When used in these rules, the following words or terms shall have the meaning as described in this section.

1. Certified Audit - an audit upon which the auditor expresses his professional opinion that the accompanying statements present fairly the financial position of the self-insurer or fund in conformity with generally accepted accounting principles consistently applied, and accordingly including such tests of the accounting records and other auditing procedures as considered necessary in the circumstances.

2. Common Claim Fund - a fund maintained by a Group Self-Insurer for the sole purpose of paying claims imposed by the provisions of the Arkansas Workers' Compensation Law.

3. Common Self-Insurer - employers who are members of the same trade or professional association entering into agreement to pool their liabilities.

4. Conditional Reserves - acceptable assets equal to the security deposit requirement plus any additional contingent reserves established by the trustees or required by the Commission.

5. Contingent Liability - the amount that a Self-Insurer's fund may be obliged to pay in excess of a given fund year's standard premium collected or on hand. This liability is considered funded if a security deposit equal to the total amount of the contingent liability has been posted. This liability is considered unfunded if a surety bond has been posted equal to all or a portion of the total amount of the contingent liability.

6. Current Ratio - the ratio of current assets to current liabilities as shown in the most recent financial statement.

7. Group - Common Self-Insurer or Homogeneous Self-Insurer.

8. Homogeneous Self-Insurer - employers who are engaged in the same type of business activity or pursuit entering into agreement to pool their liabilities.

9. Loss Development - the change in incurred loss from one point in time to another.

10. Loss Fund - the retention of liability for a self-insurer, either individual self-insurer or group self-insurer, under the terms of an aggregate excess contract. In the absence of an aggregate excess policy, it is the amount of money allocated to pay claims.

11. Net Safety Factor - any amount needed in a given fund year in addition to current loss reserves to fund future loss development.

12. Service Company - a business which has met all the requirements of Part I, E and which has obtained Commission approval to contract with self-insurers for the purpose of providing all services necessary to plan and maintain an approved self-insurance program. The term "Service Agent" is synonymous with the term "Service Company and "third party administrator" as used in the workers' compensation laws and the rules of the Commission.

13. Surplus - all other assets a fund may have on hand in excess of all loss reserves, actual and contingent liabilities and net safety factors in all fund years.

14. Trustees - a group of members elected by a group self-insurer for stated terms of office, to direct the administration of a group self-insurer, and whose duties shall include responsibility for approving applications for new members in such group. The majority of such trustees must be members of the group, but a trustee shall not be an owner, officer or employee of the service agent. They may delegate ministerial authority for membership approval to such person as they select, provided that person is not an owner, officer or employee of the service agent.

15. Trustee's Fund - any fund under the control of the board of trustees of a Group Self-Insurer which is not part of the loss fund or which is not required to pay claims.

16. Working Capital or Net Current Assets - current assets less current liabilities.

17. Written Manual Premium - As defined by Ark.Code.Ann. 11-9-303(b). The rates used for the experience period shall be those published by the Arkansas Workers' Compensation Commission.

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### B. Acceptable Securities

1. The securities acceptable to the Commission as a security deposit shall be certificates of deposit issued by a state chartered bank or a national chartered bank in the State of Arkansas. The securities acceptable to the Commission as a security deposit shall include surety bonds in a form prescribed by the Commission which are issued by any corporate surety which meets the qualifications prescribed in Part I, B, 2 of this rule. The securities acceptable to the Commission as a security deposit shall also include letters of credit in a form prescribed and approved by the Commission. These three approved methods of posting security must follow strict compliance with this rule.

2. Any corporate surety, to be eligible for writing self-insurers' bonds in the State of Arkansas, shall be an admitted or approved carrier by the Insurance Commissioner of the State of Arkansas to transact such a business in the state, and its latest financial statement on file with the Insurance Commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Commissioner requirement for admission of a new company to do business in the State. Any securities held by the Commission may be exchanged or replaced by the depositor with other securities of like nature and amount. Any surety bond may be exchanged or replaced with another surety bond provided the required thirty (30) day notice of termination of liability is given to the Commission. Whenever an employer discontinues business in the state or desires to terminate his status as a self-insurer, or desires to replace securities with a Surety Bond, he shall so notify the Commission and may recover the securities deposited with the Commission upon posting in lieu thereof a special release bond issued by a corporate surety in an amount equal to the total value of such securities. The special release bond shall cover all existing liabilities under the laws and shall remain in force for a period in accordance with the statute of limitations as specified in the Act, and until such time, to be determined by the Commission, as all obligation under the Act have been fully discharged. The Commission shall be authorized to bring suit upon any surety bond so posted, to procure prompt payment of compensation liabilities.

3. Self-insurers shall make all funded securities payable to the Arkansas Workers' Compensation Commission, in trust for (name of depositor) as per Commission requirements. All such securities shall be filed with the Workers' Compensation Commission for deposit with the Treasurer of the State of Arkansas under custody receipt. No other depository is acceptable. The Commission shall be authorized to sell and/or collect the securities in whole or in part, in the case of actual or imminent default of the employer or group, to pay compensation liabilities. Interest accruing

on any negotiable securities so deposited shall be collected and transmitted to the depositor, provided he is not in default in payment of compensation benefits or the annual premium tax. All prefunded deposits shall remain in the custody of the Commission for a period of time as the statute of limitations provided in the laws may dictate, and until such time as all obligations of the employer or group have been fully discharged, such time to be determined by the Commission.

4. The Commission permits deposit of an "Irrevocable Standby Letter of Credit" as an alternative security deposit. The Commission will furnish upon request the prescribed and approved forms for use in utilizing this alternative. The Commission requires that an irrevocable standby letter of credit be accepted only from state chartered banks or national chartered banks with offices in the State of Arkansas. Banks eligible for use must be covered under the Federal Deposit Insurance Corporation (FDIC) and must be acceptable to the Commission. Letters of credit issued by a bank that do not meet the standard as mandated by this rule may be accepted by the Commission with a confirming letter of credit issued by a bank meeting the prescribed criteria. The Commission shall be authorized to make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the employer or group to pay compensation liabilities. All "Irrevocable Standby Letters of Credit" shall remain in the custody of the Commission for a period of time as the statute of limitations provided in the laws may dictate, and until such time as all obligations of the employer or group have been fully discharged, such time to be determined by the Commission.

## C. Filings of Reports - Penalties

1. Each individual self-insurer or group shall file premium tax reports, financial statements, summary loss data and such other reports and statements at such time and in such manner as the Commission shall require. This rule places this responsibility on the employers, groups and service companies to perform their prescribed duties and responsibilities without prompting from the Commission. Failure or refusal of any self-insurer or group to file the prescribed reports with the Commission within the prescribed time period shall subject the mentioned self-insurer to a civil penalty in such amount as the Commission may prescribe, not to exceed one hundred dollars ($100) per infraction per day, and shall be sufficient cause for the revocation of the self-insurer privilege. Failure to pay such penalty within thirty (30) days of notification shall be considered good cause for revocation of the self-insurer privilege.

2. The Commission shall require annual or otherwise periodic payroll audits from each employer, or group of employers, self-insured under the

laws to determine the proper assessment for tax purposes. The amount of tax shall be based upon the written manual premium for the calendar year in question. The tax is limited by law at three (3) percent of the tabulated written manual premium for each self-insurer. Each Individual self-insurer or group shall maintain a true and accurate payroll record, which shall be made available during reasonable business hours, upon demand, to the Commission and its authorized representatives. Unless payroll records are maintained in such manner that a true and accurate division by workers' compensation classification codes can readily be determined for proper rating, the entire payroll shall be presumed to be within the classification to which the highest insurance rate is applicable. If such audits reveal a deficiency in the amounts reported to the Commission or amounts paid to the Commission, the Commission may assess the cost of such audit against such self-insurer. This audit report and payment of the proper tax is due on or before April 1 of each year.

3. Each individual self-insurer and group shall file annual statements of financial condition with the Commission in a form acceptable to the Commission. Individual Self-Insurers must maintain a level of financial strength, financial position, and financial ratios that would be required of any new applicant. These statements must be prepared by a certified public accountant and must be certified audits, except that an individual self-insurer may be allowed to submit another type of statement acceptable to the Commission. Public employers entering the individual self-insurance program may satisfy these requirements by furnishing independent certified audits or by furnishing the most current audit report as prepared by the Legislative Joint Auditing Committee. Any less requirements of these annual statements will be at the discretion of the Commission. An additional security deposit or surety bond may be required in the absence of a certified audit. Interim financial reports may be required in addition to these annual financial statements at the discretion of the Commission. This report is due on or before April 1 of each year.

4. Summary Loss Data will be filed with the Commission by each individual self-insurer or group self-insurer under the laws. This report shall be filed with the Commission on an annual basis, or on a quarterly basis, or on any interim basis as prescribed by the Commission. This report will be due within thirty (30) days after each prescribed evaluation period, and unless otherwise directed, this report will be due not later than February 1 of each year. This self-insurers' statement on this report will be on a form prescribed by the Commission, and any substitute form must contain all the requested data. This report will include but not be limited to the name of the employer, name of the injured employee, claim number, date of accident, nature of injury, amounts paid on the claim for

indemnity, or medical and outstanding reserves, if any. This report will cover all incurred losses of the evaluation period as well as any pending claims where any type payment is made or reserve is pending. This report will require reasonable reserves on all open pending claims.

**D. Contracts for Excess Insurance**

1. Aggregate and specific excess insurance with liability limits and retention amounts acceptable to the Commission may be required as a condition of approval of any individual self-insurer or group self-insurer as hereinafter provided, except qualifying public employer self-insurer groups are entitled to statutory options and limitations.

2. Any casualty insurance company to be eligible to write excess liability coverage for individual self-insurers or group self-insurers in the State of Arkansas, shall at all times meet the same standard as required of any corporate surety as outlined in Part I, B 2.

3. No contract or policy of excess insurance shall be recognized by the Commission in considering the ability of an applicant to fulfill its financial obligation under the workers' compensation laws unless such contract or policy:

a. Is issued by a recognized, admitted or approved casualty insurance company with the minimum qualifications established by these rules.

b. May not be cancelled except upon thirty (30) days written notice by registered or certified mail to the other party to the policy and the Arkansas Workers' Compensation Commission.

c. Is renewable at the expiration of the policy period unless written notice by registered or certified mail is given to the other party to the policy and the Arkansas Workers' Compensation Commission, thirty (30) days prior to such expiration, by the party desiring to cancel or not to renew the policy.

d. If it contains any type of commutation clause, provided (1) that any commutation effected thereunder shall not relieve the underwriter(s) of further liability as respects claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority, and (2) that in the event the underwriter proposes to redeem any future payments payable as compensation for accidents occurring during the term of the policy

by the payment of a lump sum to be fixed as provided in the commutation clause of the policy, provided not less than thirty (30) days prior notice of such commutation shall be given to the Arkansas Workers' Compensation Commission by registered or certified mail by the underwriter(s) or their agent.

e. In the event any commutation is permitted and effected, the Commission shall have the right to direct that such sum either (1) be placed in trust for the benefit of the injured employee(s) entitled to such future payments of compensation, or (2) be invested in approved securities and deposited with the Commission to assure such future payments of compensation to the employee(s) entitled thereto.

f. Contains the provision that obligations due under the terms of the policy shall be made to a party other than the employer, such party to be designated by the Commission if it is deemed to be in the best interest of the employees covered by these laws.

**E. Servicing for Self-Insurers; Qualifications for Service Companies**

1. Each individual self-insurer or group, as a condition of approval to self-insure, shall be required to provide proof of compliance with the provisions of this section regarding servicing requirements.

a. It shall be the sole responsibility of each individual self-insurer or group to provide for qualified persons to service its program in the areas of claims adjusting, underwriting, safety engineering and loss control. Should the Individual Self-Insurer or Group be unable or unwilling to provide any or all of these services through the use of its own employees, then it shall contract with outside agencies with established qualifications to provide these services.

b. In the case where an individual self-insurer or group elects to contract with an approved service company, the Commission may, at its discretion, choose to use the service company as an intermediary in its dealings with the employer. In the case where no service company is used, the Commission will deal with the employer only.

2. Any firm desiring to become qualified as a service company for individual self-insurers or groups shall make application to the Commission on such forms as may be prescribed and the application must be approved before any contract for servicing shall be recognized as fulfilling Part I, E, 1a.

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3. Any firm making application to qualify as a service company shall provide proof that it meets the following conditions before approval may be granted:

a. The owners of the firm, including members of a co-partnership and the officers of the corporation, shall be persons of good moral character with reputations for honesty and fair dealings.

b. The firm must have a sufficient number of experienced and qualified claims personnel. To represent a group self-insurer client, the service company must have at least one resident adjuster with check authority.

c. That the firm has a sufficient number of experienced and qualified personnel in the areas of loss control and safety engineering to meet the needs of all self-insurers with which it intends to contract.

d. That the firm has a sufficient number of experienced and qualified personnel in the area of underwriting to meet the needs of all self-insurers with which it intends to contract. In this context, underwriting includes, but is not limited to the overall planning and coordinating of a self-insurer program, the ability to advise or assist in the procurement of bonds and excess insurance, the ability to provide summary data regarding the Self-Insurer's costs of accidents including the frequency and distribution by type and cause, and the skill to make recommendations to the self-insurer regarding the correction of any deficiencies that arise in the self-insurance program.

e. The application for the privilege of being a service company as defined herein shall be accompanied by a remittance in the amount of one hundred dollars ($100), payable to the Arkansas Workers' Compensation Commission. This fee will not be refunded, regardless of the disposition of the application. The Arkansas Workers' Compensation Commission shall also assess an annual service company renewal fee of one hundred dollars ($100).

4. In support of its application the firm shall submit summary information concerning its organization and resumes on all employees with administrative or professional capacity sufficient to establish compliance with Part I, E 3.

5. Upon compliance to the satisfaction of the Commission with the above provisions, a certificate of approval as a recognized and authorized service

organization shall be issued to the applicant. Failure to comply with any of the foregoing rules or any order of the Commission within the time prescribed shall be considered good cause for withdrawal of the certificate of approval. The Commission shall give prior written notice of such withdrawal. The service company shall have fifteen (15) days from the date of mailing to request a hearing. Failure to request a hearing within the time prescribed shall result in the withdrawal becoming effective thirty (30) days from the date of mailing of the original notice. In no event shall the withdrawal of the certificate of approval be effective prior to the date that the hearing on the question is scheduled. Such notice shall be served personally or by certified or registered mail upon all interested parties.

6. Each service company shall file immediately upon entering into a contract or agreement for servicing, notice of this contract or agreement with the Commission. It shall be the responsibility of the Individual Self-Insurer or Group to obtain the written permission of the Commission before changing its method of fulfilling its servicing requirements from those which were previously approved by the Commission.

7. All firms which desire to qualify as service companies shall make application and receive approval from the Commission under the provisions of these rules before any new or renewal contracts for servicing shall be recognized.

## F. Revocation or Termination of the Self-Insurer Privilege

1. Failure to comply with any of the rules or with any order of the Commission within the time prescribed shall be considered good cause for revocation or termination of self-insurer privilege, within the meaning of A.C.A. 11-9-404. Noncompliance with any of the provisions of the Workers' Compensation laws, particularly those relating to time and method of compensation payments, the furnishing of medical treatment and filing of accident and compensation reports and failure to pay any assessment, shall likewise be deemed good cause. The Commission shall give written notice of such revocation or termination to the employer and/or his agent(s). The employer shall have fifteen (15) days from the date of mailing of the notice to request a hearing on the revocation or termination. Failure to request a hearing within the time prescribed shall result in the revocation or termination becoming effective thirty (30) days from the date of mailing of the original notice. In no event shall any revocation or termination become effective prior to the date that a hearing on the question is scheduled. Such notice shall be served personally or by certified or registered mail upon all interested parties. This review and appeal process will also be applied to application issues.

2. It will be necessary for a self-Insurer to notify the Commission if the status of the self-insurer is materially changed (individual ownership to partnership or to corporation, merger, etc.) at which time the new entity shall be required to qualify. In the event there is a change in majority ownership of a self-insurer, the self-insurer privilege granted to an individual self-insurer shall be at the discretion of the Commission.

**G. Enforcement by Commission of Order of Compliance; Order of Denial; or Order of Termination of Self-Insured Status**

If the Commission has probable cause to believe that an order denying or terminating self-insurer status is being violated or that an employer who is approved or has been previously approved as a self-insurer is liquidating or may be about to liquidate and distribute its assets to its stockholders or to its members without providing for its obligation as a self-insurer to pay or arrange for the payment of compensation and benefits as prescribed for in the law, the Commission may cause an action to be filed in the Circuit Court of Pulaski County or in the county in which such person does business to enjoin and restrain such person from engaging in such method, act, or practice.

**H. Tenure of Authority**

Certificates of Authority granting the privilege of being a self-Insurer for workers' compensation purposes shall expire on May 1 of each year. To effect the renewal of the certificate, the self-insurer must furnish or have on file with the Commission, an acceptable financial statement for its current fiscal year and must fully comply with the laws and the rules of this Commission. Certificates of Approval for service companies must be renewed on an annual basis. Any information submitted by an employer in its application to become a self-insurer or in its request for renewal of that authority will be treated with strict confidence by the Commission. Any information submitted by a service company in its application for approval or in its request for renewal of that approval will be treated with strict confidence by the Commission.

## PART II INDIVIDUAL SELF-INSURER - APPLICATION

**A.** Each employer desiring to become an individual self-insurer, as contemplated by A.C.A. 11-9-404, shall make application to the Commission for such privilege on a form prescribed by the Commission, and this application shall be filed with the Commission sixty (60) days prior to the desired effective date. The application shall contain answers to all questions propounded and shall be under oath.

**B.** Before considering the application, the Commission will require:

1. Financial statement of a current date showing a net worth of not less than two hundred fifty thousand dollars ($250,000) and a current ratio of more than 1 to 1 (1:1) and a working capital of an amount establishing financial strength and liquidity of the business to pay normal compensation claims promptly. The requirement for a more than 1 to 1 (1:1) current ratio may be waived in the case of a public utility or in those instances where generally recognized accounting principles peculiar to a particular industry make this requirement unreasonable. In no event shall the net worth be less than three (3) times the annual loss fund, or in the event that aggregate excess insurance is not maintained, then the net worth shall be at least three (3) times the self-insurer's annual standard premium. Financial statements dated six (6) months or more prior to the date of application may be required to be accompanied by an affidavit stating that there has been no material lessening of net worth nor significant deterioration of current ratio since the date of the statement.

2. In considering the financial strength and liquidity of the business to pay normal compensation claims, the Commission will take into consideration contracts or policies of excess insurance in accordance with Part I, D.

3. Each employer shall execute and file with the Commission an agreement, which shall be part of their application, whereby he agrees (1) to fully discharge by cash payment all amounts required to be paid by the provisions of the Act and (2) to deposit with the Commission acceptable securities or corporate surety bond to secure guarantee of payment of compensation liabilities unless waived by the Commission.

4. Each individual self-insurer shall satisfy the Commission that it has complied with the provisions of Part I, E 1 and Rule 29 where applicable before approval for self-insurer status may be granted by the Commission. In addition, the Commission may require periodic proof that the self-insurer is complying with these standards on a continuing basis.

5. The application for the privilege of being a self-insurer shall be accompanied by a remittance in the amount of one hundred dollars ($100), payable to the Arkansas Workers' Compensation Commission. This fee will not be refunded, regardless of the disposition of the application.

6. Each Individual self-insurer shall satisfy the Commission that it has complied with the requirements of the Arkansas Self-Insurer Guaranty Fund.

7. An investigation and study of the financial and other capabilities of the Individual applicant to meet its obligation under the laws, will be conducted by the Self-Insurance Division of the Commission. The Self-Insurance Division of the Commission will submit an evaluation report to the Commission, after which formal approval for self-insurer status may be granted by the Commission.

**C.** Pursuant to A.C.A. 11-9-404, each individually self-insured employer shall deposit with the Commission acceptable securities or post a surety bond issued by a corporate surety authorized to do business in the State of Arkansas except that the Commission may waive the posting of any securities or surety bond by public employers all in accordance with the following rules:

1. In every case where an application is favorably considered, the Commission will then decide the amount of acceptable securities or surety bond which will be required; provided, however, that in no case will the amount of securities or surety bond be less than one hundred thousand dollars ($100,000) except that the Commission may waive the posting of any securities or surety bond by public employers. A majority owned subsidiary of a parent company, duly admitted as a self-insurer, may not be required to post securities or surety bond, provided the parent company, by resolution, guarantees payment of the liabilities of the subsidiary.

2. The minimum excess insurance requirements that an Individually Self-Insured employer shall maintain shall be determined by the Commission.

## PART III GROUP SELF-INSURER - APPLICATION

**A.** In the case of group coverage as contemplated by A.C.A. 11-9-404, for the express purpose of establishing a group self-insurer, to be administered under the direction of an elected board of trustees, and to provide workers' compensation coverage for a group of employers classified as a common self-insurer group or a homogeneous self-insurer group and who are eligible for membership in accordance with the terms of the Indemnity Agreement, application shall be made to the Workers' Compensation Commission at least sixty (60) days prior to the desired effective date of self-insurer status. Any application submitted with less than thirty (30) days remaining before the desired effective date may be rejected without further consideration. The application shall be made on forms prescribed by the Commission and shall contain answers to all questions propounded and shall be under oath.

1. The application as submitted by the trustees of the self-insurer group shall be accompanied by:

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a. An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the Arkansas Workers' Compensation laws and Rules and Regulations of the Commission. The indemnity agreement requirement mentioned here and elsewhere in this rule is not applicable to public employer groups.

b. Individual application of each member of the group applying for membership in the self-insurer group on the inception date of the Group.

c. Current financial statements supported by a certified audit of at least two (2) members showing the combined net worth of these members applying for self-insurer status on the inception date of the group self-insurer to be not less than one million dollars ($1,000,000), a combined current ratio of more than 1 to 1 (1:1) and a working capital of an amount establishing financial strength and liquidity of the business to pay normal compensation claims promptly and showing evidence of the financial ability of the group to meet its obligation under the laws. For members joining the group self-insurer after inception date or any time after initial qualification of the group, a certified audited financial statement shall not be required of any member of a group either for initial membership or as a condition for continued membership, however, such certified audited financial statement will be accepted. For members joining an established private employer self-insurer group they may provide in lieu of a certified audited financial statement, a statement, certified by the president and treasurer of the member in the case of a corporation, and by the owner and general partners, respectively, in the case of an individual proprietorship or partnership, to the effect that such financial statement is true and correct to the best of the knowledge and belief of the signing authorities. For members joining an established public employer self-insurer group, they may provide in lieu of a certified audited financial statement, a statement prepared by the Legislative Joint Auditing Committee or a financial statement certified by the member entity executive head and the member entity treasurer in the same manner as required of private employer members.

d. A set of by-laws governing the operation of the group self-Insurer shall conform to the conditions specified in Part III, D 1.

e. The application for the privilege of being a group self-insurer shall be accompanied by a remittance in the amount of one hundred dollars ($100), payable to the Arkansas Workers' Compensation Commission. This fee will not be refunded, regardless of the disposition of the application.

f. Each group self-insurer shall satisfy the Commission that it has complied with the requirements of the appropriate guaranty fund.

2. Each group self-insurer shall satisfy the Commission that it has complied with the provisions of Part I, E 1 before approval for self-insurer status may be granted by the Commission. In addition, the Commission may require periodic proof that the self-insurer is complying with these standards on a continuing basis.

3. An investigation and study of the financial and other capabilities of the group applicant to meet its obligation under the law, will be conducted by the Self- Insurance Division of the Commission. The Self-Insurance Division of the Commission will submit an evaluation report to the Commission, after which formal approval for self-insurer status may be granted by the Commission.

4. Subsequent to the inception date of the group self-insurer, prospective new members of the group self-insurer shall submit an application on a form prescribed by the Commission for membership to the board of trustees. The trustees must approve the application for membership in accordance with these rules and the terms of the indemnity agreement for the application to be binding upon the group self-insurer and prospective members. The application for membership shall then be filed with the Commission thirty (30) days prior to the desired effective date of self-insurer status. The Commission may authorize groups to issue binders whereby the trustees may "bind" coverage for an individual member for a period of thirty (30) days. If such a binder has been issued, the trustees must file a copy of the binder with the Commission within five (5) days of issuance and submit a completed application with supporting documents to the Workers' Compensation Commission, Self-Insurance Division within fifteen (15) days of the effective date of coverage. At no time shall coverage be extended, by means of a binder, whereby the effective date of coverage precedes the issue date by more than ten (10) days. Failure of a group to meet the requirements regarding the issuance of binders and/or the submission of applications may subject the group to the loss of authority to issue binders and shall be sufficient grounds for denying an application. The Commission retains the right to reject the admission of any new member. An acceptable financial statement as heretofore set forth for all members joining the group self-insurer after the inception date

shall be submitted to the Commission with the application for membership.

**B. Minimum Security Deposit For Group Self-Insurer**

Each group self-insurer, pursuant to A.C.A. 11-9-404, shall deposit and maintain with the Commission acceptable securities or post a surety bond issued by a corporate surety duly authorized to do business in the State of Arkansas, in an amount determined by the Commission, but not less than two hundred thousand dollars ($200,000.00). The amount of the security deposit or bond shall be determined at least annually based on net safety factors, contingent liabilities, growth of the group, and other data as submitted by the group self-insurers to the Commission. The amount of the security deposit or bond requirement mentioned here and elsewhere in this rule is not applicable to public employer groups.

**C. Group Self-Insurers' Funds and Surplus**

1. Each group self-insurer shall consist of two (2)separate funds, that is, the trustee fund and a common claim fund. All premiums and assessments charged to the member are paid into the trustee fund. The trustee fund shall be used to pay the operational expenses of the group self-insurer.

2. From the trustee fund there shall be created a separate common claim fund. The common claim fund shall be placed in a designated depository, and this fund will be maintained at all times by the authorized service organization or the designated adjuster or individual(s) charged with the handling and payment of claims. This fund shall be adequate to cover any current incurred and contingent liabilities as imposed by the laws.

3. Employers participating in a group self-insurer shall pay the standard premium or percent thereof as designated by the group and approved by the Commission, with exceptions being when at the discretion of the group manager or fiscal agent of the group it becomes necessary to surcharge or assess all members because of the loss experience of the group. Members of a group self-insurer may elect to participate in the experience rating plan established by the National Council on Compensation Insurance or any other acceptable rating plan as approved by the Commission. In this event an experience modification shall be determined for each member by the service agent. Any discounts or deviations from written manual premium approved by the Commission shall apply to all members of the group.

4. Surplus funds for a fund year in excess of the amount necessary to fulfill all obligations under the laws for that fund year may be declared

refundable by the trustees, provided that such amount shall not be paid to the members until approved by the Commission.

**D. Solvency of Group Self-Insurer and Trustee Responsibility**

1. The trustees of each authorized group self-insurer shall cause to be adopted a set of by-laws which shall govern the operation of the fund. These by-laws shall contain, but not be limited to, the following subjects:

a. Qualifications for group self-insurer membership, including underwriting considerations.

b. The method for selecting the trustees, including the term of office.

c. The method for amending the by-laws.

2. In addition to the above by-laws, the trustees shall adopt regulations on the following subjects which shall be binding on the group manager and service company:

a. Investment of surplus funds and claim reserves.

b. Frequency and extent of loss control and safety engineering services to members.

c. The size of the common claim fund.

d. A schedule for payment and collection of premium including a definition of delinquent premium.

e. Membership admission and expulsion procedures.

f. Delineation of authority granted to the trustees.

g. Delineation of authority granted to the group manager.

h. Delineation of authority granted to the service company.

i. Procedures for obtaining projected payroll information for initial premium billing and actual payroll information for final premium adjustments after the close of the policy period to determine the actual premium to be collected for the policy period.

j. Procedures for handling disputes regarding premium paid by members.

3. In order to insure the financial stability of the operations of each and every group self-insurer, the board of trustees of each group shall be responsible for all operations of the group. The board of trustees of each group shall take all necessary precautions to safeguard the assets of the group, including:

a. The designation of a fiscal agent and/or group manager to administer the financial affairs of the group, who shall furnish a fidelity bond with the trustees as obligee, in an amount sufficient to protect the group against the misappropriation or misuse of any funds or securities. The amount of the bond shall be determined by the trustees, and evidence of such bond shall be filed with the Commission, said bond being one of the conditions required for approval of the establishment and continued operation of the group self-insurer. Such fiscal agent or group manager shall not be an owner, officer, or employee of the service organization.

b. All loss funds or funds of any type shall remain in the custody of the trustees or the authorized group manager, provided, however, that a common claim fund for payment of compensation benefits due and other related expenses may be established for the use of the authorized service organization. The service organization or the designated adjuster or individual(s) charged with the handling and payment of claims shall furnish a fidelity bond covering its employees, with the trustees as obligee, in an amount sufficient to protect all funds placed in such common claim fund.

c. Requiring of the accounts and records of the Group to be audited annually or at any time as may be required by the Commission, such audits to be made by certified public accountants or by authorized representatives of the Commission, with the Commission reserving the right to prescribe a uniform accounting system to be used by group self-insurers and/or service organizations, and the type of audits to be made, in order that it may determine the solvency of the group self-insurer. Copies of audits prepared by those other than Commission personnel shall be filed with the Self-Insurance Division of the Commission within three (3) months after the close of the fiscal year.

d. The trustee or fiscal agent or group manager shall not utilize any of the funds collected as premium for any purpose unrelated to

workers' compensation. Further, they shall be prohibited from borrowing any money from the group self-insurer or in the name of the group self-insurer without advising the Commission of the nature and purpose of the loan and obtaining Commission approval.

e. The trustees shall be authorized to invest trustees' funds, claims reserves and surplus provided the Trustees shall not invest more than twenty-five (25%) percent of such funds (as determined by market value at the time of initial purchase) for a given fund year in corporate or municipal bonds. The following are the only acceptable types of investments:

(1) Savings accounts, certificates of deposit, or similar accounts in a duly chartered commercial bank whose deposits are federally insured.

(2) Savings accounts, savings certificates, or similar accounts in a duly chartered savings and loan association whose deposits are federally insured.

(3) Direct obligations of the State of Arkansas.

(4) Direct and indirect obligations of the United States, such as notes, bonds, mortgages or bills which are backed by the full faith and credit of the United States Government.

(5) Corporate or general obligation municipal bonds, of Arkansas cities only, that are publicly traded provided that such bonds have:

(a) a rating equal to or higher than “A-” as rated by Standard & Poor's or “A3” as rated by Moody's at the time of initial purchase.

(b) no more than a five (5) year maturity from original purchase date.

In the event of downgrades in a bond's rating after initial purchase, the total amount invested shall not exceed thirty (30%) percent of all funds for a given fund year, and at no time shall any funds be invested in any bond whose rating has dropped

below a rating of “BBB+” (as rated by Standard & Poor's) or “BBB1” (as rated by Moody's).

f. The trustees shall report annually, as part of the statement of financial condition of the group self-insurer, a schedule showing all investment income earned during the fiscal year just ended.

4. The Trustees shall review at least annually the following items for the purpose of determining whether these areas of concern are being adequately provided for:

a. Service Company performance

b. Loss control and safety engineering

c. Investment policies

d. Collection of bad debt

e. Admission and expulsion procedures

f. Group Manager performance

5. Any changes in the by-laws or written regulations shall be filed with the Commission no later than ten (10) days after their taking effect. The Commission reserves the right to declare any by-law or regulation null and void if it is in violation of these rules or the law.

6. The indemnity agreement required pursuant to Part III, A.1.a. shall conform to the form of the indemnity agreement as prescribed by the Commission, and shall contain all its provisions, but may also contain other provisions not inconsistent with these rules or with the required provisions, and wherever the term "service agent" appears therein the term "group manager" or "fiscal agent" may be substituted as may be necessary to reflect the respective authority, responsibility, and duties of these agents, consistent with these rules.

7. The minimum excess insurance requirements that a group self-insurer shall maintain shall be determined by the Commission, except qualifying public employer self-insurer groups are entitled to statutory options and limitations. (Effective date April 1, 1989; revised August 8, 1995, effective August 29, 1995; revised effective September 20, 2001)

## Rule 18

## FILINGS WITH THE COMMISSION OR APPELLATE COURTS

**I. Briefs to the Commission.** Any party filings briefs with the Arkansas Workers' Compensation Commission in connection with any case pending before it for review on appeal shall file an original and two copies thereof.

**II. All Filings.**

**A.** Briefs, depositions, transcripts, and all other legal material to be filed with the Arkansas Workers' Compensation Commission will not be accepted after January 1, 1990, unless printed or typewritten, double spaced on 8 ½ X 11 inch paper. All briefs, letters, and other papers or documents shall be served upon all other known parties, and shall bear an appropriate certificate of service.

**B.** Except for briefs filed in connection with cases on appeal to the Full Commission, multiple filings are discouraged, and only one copy of any filing will be retained in the Commission file.

**III. Discovery Documents.** Discovery depositions, interrogatories, requests for production or inspection, and responses thereto shall NOT be filed with the Commission, except when permitted on a case by case basis, or when relevant to a motion, to which they or the relevant portions thereof shall be attached as an exhibit.

**IV. Appeals.** Any party who files an appeal from a compensation order or award made by the Full Commission shall be assessed a fifteen dollar ($15.00) processing fee. Such fee shall be paid by appellant and/or cross-appellant with the filing of appeal. The record shall not be compiled and certified until such time as the processing fee has been received and acknowledged by the Clerk of the Commission. (Effective March 1, 1991, and amended September 20, 2001.)

## Rule 20

## REPORTING COSTS, TRANSCRIPTION COSTS, WITNESS FEES

**I.** Hearings, Transcriptions.

**A.** The expense of taking and transcribing a hearing, including expenses incurred as a result of providing a non-English language interpreter where necessary, before the Arkansas Workers' Compensation Commission (Commission) or administrative law judge (ALJ) shall be borne by the respondents.

**B.** Provided, however, that no such expense shall be assessed against the Death and Permanent Total Disability Trust Fund or the Second Injury Trust Fund unless the Commission or an ALJ determines that such expense is justified and directs the Death and Permanent Total Disability Trust Fund or the Second Injury Trust Fund to pay such expense or some portion thereof.

**II.** Depositions.

**A.** The expense or cost of reporting and transcribing depositions, including expenses incurred as a result of providing a non-English language interpreter where necessary, shall be borne by the respondents, except as indicated herein below.

**B.** The expense or cost of reporting and transcribing depositions, including expenses incurred as a result of providing a non-English language interpreter where necessary, taken prior to the time a case is controverted shall be borne by the party requesting authorization to take said deposition.

**C.** The cost of reporting and transcribing depositions, including expenses incurred as a result of providing a non-English language interpreter where necessary, taken after a case has been controverted, and where said depositions are to be made a part of the record, shall be borne by the respondents.

**III.** Witnesses.

The charge or fee made by the attending witness at depositions or hearings shall be paid as follows:

**A.** The party who seeks to introduce or is relying upon the testimony of a witness shall be liable for the attendance fee of said witness.

**B.** All other witnesses shall be paid by the party which is responsible as set out in subsequent paragraphs.

**IV.** Providers.

**A.** In the event a written report of a physician, osteopath, chiropractor or other provider is offered in evidence and the right of cross-examination is requested, it will be granted.

**B.** The party offering the report must produce the author of the report for cross-examination, but the attendance fee or charge of the witness is the liability of the party requesting cross-examination.

**C.** In other types of written reports or evidence, the party offering the report shall, at his expense, produce the author of the report for cross-examination.

**D.** If the Commission or ALJ sends a claimant to a physician, osteopath, chiropractor or other provider for examination or treatment, the cost of the examination or treatment is the liability of the respondents.

**E.** If a written report of a doctor selected by the Commission or ALJ is offered in evidence and cross-examination is requested, it will be granted; however, the party requesting cross-examination shall be liable for payment of the doctor's witness fee.

**V.** Uninsured Employers.

The foregoing rules do not apply in the case of an uninsured employer where it is found he is not subject to the workers' compensation laws.

(Effective March 1, 1982; amended March 26, 1982; amended September 20, 2001.)

## Rule 26

## CONFERENCES WITH LEGAL ADVISOR

Pursuant to Ark. Code Ann. § 11-9-703 (1996 Repl.), and legislative mandate, the Legal Advisor Division is directed to set and to conduct preliminary conferences, called Mediation Conferences, with the goal of mediating disputed issues between claimants and respondents. A Mediation Conference shall be held in all cases in which the amount in dispute is two-thousand five hundred dollars ($2,500) or less.

**I.** Upon written request by either party for a formal hearing, the mediator shall determine whether the dispute between the parties exceeds an amount of two thousand five hundred dollars ($2,500). If the mediator determines it does not, a Mediation Conference Order shall be issued scheduling a Mediation Conference within 30 days of the date of said determination.

**II.** The Mediation Conference shall be informal, nonbinding, and strictly confidential. The mediator is authorized to compel attendance at the conference, but is not authorized to compel settlement. The mediator is not authorized to disclose any conference proceedings or communications.

**III.** Attendance by the parties, and/or a representative of each party having full authority to settle all issues, is required. Sanctions may be imposed upon any party wilfully failing to attend a Mediation Conference without good cause. Sanctions may include dismissal, default, and/or fines as provided in Ark. Code Ann. § 11-9-706 (1996 Repl.).

**IV.** Mediation Conferences may be conducted by telephone conference call or in person, in the county where the accident occurred, (if the accident occurred in Arkansas) unless otherwise agreed to by the parties, or otherwise directed by the Commission.

**V.** Following the conference, the Report of Mediation Conference (Form **R**) shall be placed in the file and copies sent to the parties. The file shall then be returned to the Clerk of the Commission for further disposition prior to being returned to open general files.

**VI.** The Mediation Conferences shall be conducted according to policies and procedures approved and published by the Arkansas Workers' Compensation Commission.

**VII.** If All parties agree to voluntary mediation, the Arkansas Workers' Compensation Commission will provide mediation services regardless of the amount in dispute. (Approved September 9, 1997, effective January 1, 1998; amended September 20, 2001.)

**Rule 36**

# A VOLUNTARY PROGRAM FOR DRUG-FREE WORKPLACES

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# Rule 36

## I. PURPOSE AND SCOPE

***Ark. Code Ann. § 11-14-101***

A. Purpose. The purpose of this rule is to promote voluntary drug-free workplaces in accordance with Act 1552 of 1999, in order that employers in this state may be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the costs, delays and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. It is also the purpose of this rule that drug and alcohol abuse be discouraged and that employees who choose to engage in drug or alcohol abuse face the risk of unemployment and being precluded from receiving workers' compensation medical and indemnity benefits .

***Ark. Code Ann. § 11-14-101***

B. If an employer implements a drug-free workplace program which includes;
   1. Notice,
   2. Education, and
   3. Procedural requirements for testing for drugs and alcohol, in accordance with this rule, then the covered employer may require the employee or job applicant to submit to a test for the presence of drugs or alcohol.

***Ark. Code Ann. § 11-14-101***

C. If a drug or alcohol is found to be present in the employee's system at a level prescribed by this rule, or if an employee refuses to submit to a test for dugs or alcohol, the employee may be terminated and be precluded from receiving workers' compensation medical and indemnity benefits.

***Ark. Code Ann. § 11-14-101***

D. If a drug or alcohol is found to be present in the job applicant's system at a level prescribed by this rule, or if a job applicant refuses to submit to a test for drugs or alcohol, the covered employer may refuse to hire the job applicant.

E. Employers who adopt a drug-free workplace program as prescribed herein, and are annually accepted by the Division as having such a program, shall qualify for a workers' compensation premium credit as described in Section XV of this rule.

***Ark. Code Ann. § 11-14-103***

F. Scope: The provisions of this rule apply to all employers in the State of Arkansas subject to provisions of the workers' compensation laws who qualify for the drug-free workplace program.

G. The application of the provisions of this rule is subject to the provisions of any applicable collective bargaining agreement.

## II. POLICIES

***Ark. Code Ann. § 11-14-104***

A. It is intended that any employer required to test its employees pursuant to the requirements of any federal statute or regulation shall be deemed to be in conformity with this section as to the employees it is required to test by those standards and procedures designated in that federal statute or regulation. All other employees of such employer shall be subject to testing as provided in this rule in order for such employer to qualify as having a drug-free workplace.

***Ark. Code Ann. § 11-14-103***

B. Nothing in this rule is intended to authorize any employer to test any applicant or employee for alcohol or drugs in any manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.

C. Nothing in this rule shall be construed to require an employer to test, or create a legal obligation upon an employer to request an employee or job applicant to undergo drug or alcohol testing.

D. Nothing in this rule shall be construed to prohibit an employer from affording an employee greater protection than provided herein.

E. A covered employer is not barred from conducting more extensive testing (including random testing) provided the employee/job applicant's constitutional rights are not infringed.

***Ark. Code Ann. § 11-14-108***

F. No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug or alcohol testing.

G. Nothing in this rule shall be construed to amend or affect the employement-at-will doctrine.

## III. DEFINITIONS

***Ark. Code Ann. § 11-14-102***

A. "Alcohol" as used in this rule shall have the same meaning as in the federal regulations describing procedures for the testing of alcohol by programs operating pursuant to the authority of the United States Department of Transportation as currently compiled at 49 Code of Federal Regulations (C.F.R.) Part 40.

***Ark. Code Ann. § 11-14-102***

B. "Alcohol test" means an analysis of breath or blood, or any other analysis which determines the presence and level or absence of alcohol as authorized by the

United States Department of Transportation in its rules and guidelines concerning alcohol testing and drug testing.

***Ark. Code Ann. § 11-14-110***

C. "Certified laboratory" means a laboratory licensed and approved as outlined in this rule (Section VII).

***Ark. Code Ann. § 11-14-102***

D. "Chain of Custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

***Ark. Code Ann. § 11-14-102***

E. "Confirmation test", "confirmed test", or "confirmed drug or alcohol test" means a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

***Ark. Code Ann. § 11-14-102***

F. "Covered employer" means a person or entity that employs a person, is covered by the workers' compensation laws and maintains a drug-free workplace pursuant to this rule. This rule shall have no effect on employers who do not meet this definition.

***Ark. Code Ann. § 11-14-102***

G. "Director" means the director of the Health and Safety Division of the Workers' Compensation Commission.

***Ark. Code Ann. § 11-14-102***

H. "Division" means the Health and Safety Division of the Workers' Compensation Commission.

***Ark. Code Ann. § 11-14-102***

I. "Drug" means any controlled substance subject to testing pursuant to drug testing regulations adopted by the United States Department of Transportation. A covered employer shall test an individual for all such drugs in accordance with the provisions of this rule.

***Ark. Code Ann. § 11-14-102***

J. "Drug or Alcohol Rehabilitation Program" means a service provider that provides confidential, timely, and expert identification, assessment and resolution of

employee drug or alcohol abuse.

***Ark. Code Ann. § 11-14-102***

K. "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered by a certified laboratory for the purpose of determining the presence or absence of a drug or its metabolites or alcohol pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation.

***Ark. Code Ann. § 11-14-102***

L. "Employee" means any person who works for a salary, wage, or other remuneration for a covered employer, and shall include individuals who are temporary or leased employees as defined herein.

***Ark. Code Ann. § 11-14-102***

M. "Employee Assistance Program" means an established program capable of providing:

1. Expert assessment of employee personal concerns;
2. Confidential and timely identification services with regard to employee drug or alcohol abuse;
3. Referrals of employees for appropriate diagnosis, treatment and assistance; and
4. Follow-up services for employees who participate in the program or require monitoring after returning to work.

If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program.

***Ark. Code Ann. § 11-14-102***

N. "Employer" means a person or entity that employs a person and is covered by the workers' compensation laws.

O. "First aid treatment" means treatment as defined by 29 CFR 1904.12(d).

***Ark. Code Ann. § 11-14-102***

P. "Initial drug or alcohol test" means a procedure that qualifies as a "screening test" or "initial test" pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation.

Q. "Injury" means any work-related accident requiring more than first-aid treatment.

***Ark. Code Ann. § 11-14-102***

R. "Job Applicant" means a person who has applied for a position with a covered employer and has been offered employment conditioned upon successfully passing a drug or alcohol test, and may have begun work pending the results of the drug or alcohol test.

***Ark. Code Ann. § 11-14-102***

S. "Medical Review Officer" or "MRO" means a licensed physician, pharmacist, pharmacologist or similarly qualified individual, employed with or contracted with a covered employer, who has knowledge of substance abuse disorders, laboratory testing procedures and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.

T. "Presence of drugs or alcohol" means levels of drugs, alcohol or metabolites in the body at or above the cutoff levels established by Department of Transportation (DOT) as published in 49 CFR Part 40 or elsewhere.

***Ark. Code Ann. § 11-14-102***

U. "Reasonable Suspicion Drug Testing" means drug or alcohol testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience.

***Ark. Code Ann. § 11-14-102***

V. "Safety-Sensitive Position" means a position involving a safety-sensitive function pursuant to regulations governing drug and alcohol testing adopted by the United States Department of Transportation. "Safety-sensitive position" means, with respect to any employer, a position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to carry a firearm, perform life-threatening procedures, work with confidential information or documents pertaining to criminal investigations or work with controlled substances, or a position in which momentary lapse in attention could result in injury or death to another person.

***Ark. Code Ann. § 11-14-102***

W. "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs or their metabolites.

X. "Temporary Employee", "Leased Employee" and "Employee Leasing Firm" means the same as defined in Ark. Code Ann. § 23-92-302.

Y. "49 CFR Part 40" means the most current version of 49 CFR Part 40.

## IV. WRITTEN POLICY STATEMENT: NOTICE TO JOB APPLICANTS AND EMPLOYEES

***Ark. Code Ann. § 11-14-105; 101-14-101***

A. It is a requirement of the drug-free workplace program that, prior to testing, the employer give a one-time written policy statement to all employees and job applicants. A model notice and policy may be obtained from the Division. This model notice and policy may be modified by the employer. However, any such notice must contain:

1. A general statement of the covered employer's policy on employee drug and alcohol abuse, which must identify:

    a. That it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body;
    b. The types of drug or alcohol testing an employee or job applicant may be required to submit to; and
    c. The actions the covered employer may take against an employee or job applicant on the basis of a positive, confirmed, verified drug or alcohol test result;

2. A statement advising the employee or job applicant of the existence of this rule;
3. A statement explaining the protections available to employees under this rule as outlined in Section IX;
4. A general statement concerning confidentiality;
5. The consequences of refusing to submit to a drug or alcohol test;
6. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and/or local drug and alcohol rehabilitation programs;
7. A statement informing the employee or job applicant of his responsibility to notify the laboratory of any administrative or civil action brought pursuant to this rule;
8. A list of all classes of drugs for which the covered employer may test;
9. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the applicable court;
10. That this notice complies with the requirements for notice under Section I.

***Ark. Code Ann. § 11-14-105***

B. A covered employer shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug-free workplace program is being implemented and the effective date of the program.

***Ark. Code Ann. § 11-14-105***

C. A covered employer shall include notice of drug and/or alcohol testing on vacancy announcements for positions for which drug and/or alcohol testing is required. A notice of the covered employer's drug and alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's personnel office or other suitable locations.

***Ark. Code Ann. § 11-14-105***

D. A covered employer may rescind its coverage under this rule by posting a written and dated notice in an appropriate and conspicuous location on its premises.

1. The notice shall state that the policy will no longer be conducted pursuant to this rule;
2. The employer shall provide sixty (60) days written notice of the rescission to the employer's workers' compensation insurer and the Division. Such notice shall be sent by certified mail;
3. The rescission shall become effective no earlier than sixty (60) days after the date of the posted notice.

## V. TYPES OF TESTING

***Ark. Code Ann. § 11-14-106***

A. This rule does not preclude an employer from conducting any lawful testing, including random testing, of employees for drugs or alcohol that is in addition to the minimum testing required under this rule.

***Ark. Code Ann. § 11-14-104***

B. An employee who is not in a safety-sensitive position may be tested for alcohol only when the test is based upon reasonable suspicion.

***Ark. Code Ann. § 11-14-104***

C. An employee in a safety-sensitive position may be tested for alcohol use at any occasion as described in this section.

***Ark. Code Ann. § 11-14-106***

D. To the extent permitted by law, a covered employer who voluntarily establishes a drug-free workplace is required to conduct the following types of drug and alcohol tests.

## Rule 36

1. Job applicant drug and/or alcohol testing:
   After a conditional offer of employment, a covered employer:

a. Must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive, confirmed, verified drug test as a basis for refusing to hire a job applicant;
b. May conduct limited testing of applicants, but only if it is based on a reasonable classification basis, in accordance with this rule;
c. May, but is not required to, test job applicants for alcohol;
d. May test an employee for any drug as set out in Section VII and at any time set out in Section V of this rule;
e. Shall limit such testing for public employees to the extent permitted by the Arkansas and federal constitutions.

***Ark. Code Ann. § 11-14-106; 11-14-102***

2. Reasonable suspicion drug or alcohol testing:
   A covered employer must require an employee to submit to reasonable suspicion drug or alcohol testing.

   a. Specimen collection for reasonable suspicion testing must be done within a reasonable time after the precipitating incident; for alcohol, it must be done within eight (8) hours of the incident and, for drugs, it must be done within thirty-two (32) hours of the incident;
   b. Among other things, reasonable suspicion shall include such facts and inferences as may be based upon:

      (1) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;
      (2) Abnormal conduct or erratic behavior while at work, or a significant deterioration in work performance;
      (3) A report of drug or alcohol use, provided by a reliable and credible source;
      (4) Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer;
      (5) Information that an employee has caused, contributed to or been involved in an accident while at work; or
      (6) Evidence that an employee has used, possessed, sold, solicited or transferred drugs or used alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery or

equipment.

***Ark. Code Ann. § 11-14-106***

c. Within twenty-four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier, the covered employer must make a written record of the observations leading to a controlled substance or alcohol reasonable suspicion test. A copy of this documentation shall be given to the employee upon request, and the original documentation shall be kept confidential by the covered employer pursuant to Section XII and shall be retained by the covered employer for at least one (1) year.

***Ark. Code Ann. § 11-14-106***

3. Routine fitness-for-duty drug or alcohol testing.

a. A covered employer must require an employee to submit to a drug or alcohol test if, as a part of the employer's written policy, the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or is scheduled routinely for all members of an employment classification or group.

b. A public employer may require scheduled, periodic testing only of employees who:

(1) Are police or peace officers;
(2) Have drug interdiction responsibilities;
(3) Are authorized to carry firearms;
(4) Are engaged in activities which directly affect the safety of others;
(5) Work in direct contact with inmates in the custody of the Department of Correction; or
(6) Work in direct contact with minors who have been adjudicated delinquent or who are in need of supervision in the custody of the Department of Human Services.

***Ark. Code Ann. § 11-14-106***

c. This rule does not require a drug or alcohol test if a covered employer's current personnel policy on July 1, 2000, does not include drug or alcohol testing as part of a routine fitness-for-duty medical exam. If such testing is included, it must be done on a nondiscriminatory manner.

d. Routine fitness-for-duty drug or alcohol testing of employees does not apply to volunteer employee health screenings, employee wellness programs, programs mandated by governmental

agencies, or medical surveillance procedures that involve limited examinations targeted to a particular body part or function.

***Ark. Code Ann. § 11-14-106***

4. Follow-up drug testing. If the employee in the course of employment enters an employee assistance program for drug or alcohol-related problems, or a drug or alcohol rehabilitation program, the covered employer must require the employee to submit to a drug or alcohol test, as appropriate, as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the covered employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two-year period after successful completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested.

***Ark. Code Ann. § 11-14-106***

5. Post-accident testing. After an accident which results in an injury, the covered employer shall require the employee to submit to a drug or alcohol test in accordance with this rule. Post accident specimen collection for alcohol testing shall be done within eight (8) hours of the accident. Post accident specimen collection for drugs shall be done within thirty-two (32) hours of the accident.

## VI. REFUSAL TO TEST

***Ark. Code Ann. § 11-14-108***

If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, this section does not abrogate the rights and remedies of the employee or job applicant as otherwise provided in this rule.

## VII. TESTING PROCEDURES AND LABORATORY REQUIREMENTS

***Ark. Code Ann. § 11-14-107***

A. Pursuant to 49 CFR Part 40, a covered employer shall test as specified in this rule for:

1. Amphetamines;
2. Marijuana (cannabinoids);
3. Cocaine (benzolylecgonine);
4. Opiates (codeine, morphine, heroin);
5. PCP (phencyclidine); and
6. Alcohol.

B. The cutoffs established by the United States Department of Transportation and published in 49 CFR Part 40 or elsewhere shall be used for determination of presumptively positive tests and confirmation test.

C. The following shall be performed in accordance with the procedures provided for by the United States Department of Transportation rules for workplace drug and alcohol testing compiled at 49 CFR, Part 40, Subpart B and Subpart C for drugs and alcohol, respectively:

1. Split-sample method of collection;
2. Security of the collection site;
3. Privacy of the individual;
4. Collection control;
5. Chain of custody procedures, which include integrity, identity and retention of the specimen;
6. Transportation of the specimen;
7. Testing; and
8. Reporting.

D. Except for Sub-Section VII (E.) (of this rule) and Sub-Section IX (B.) (of this rule), the procedures for laboratory reporting and medical review officer and reporting of specimen test results shall be in accordance with those described in 49 CFR, Parts 40.29 and 40.33.

E. Any specimens with evidence of dilution, contamination, tampering, or any question normally requiring a medical review officer opinion shall be reported to the medical review officer for disposition. The medical review officer may determine the need to re-test, re-collect, order more extensive testing, or otherwise modify the collection or testing procedure to ensure adequate and appropriate testing.

***Ark. Code Ann. § 11-14-110***

F. A laboratory may not analyze initial test specimens unless:
   1. The laboratory is licensed and approved by the Arkansas Department of Health, using criteria established by the United States Department of Health and Human Services as guidelines for modeling the state drug free testing program pursuant to this section, or the laboratory is certified by the United States Department of Health and Human Services or the College of American Pathologists; and
   2. The laboratory complies with the procedures established by the United States Department of Transportation for a workplace drug test program or such other recognized authority approved by the Director.

***Ark. Code Ann. § 11-14-110***

G. Confirmation tests may only be conducted by a laboratory that meets the requirements of subsection (F) and is certified by either the Substance Abuse and Mental Health Services Administration or the College of American Pathologists forensic urine testing programs.

H. The Arkansas Department of Health may license and approve any new laboratory to analyze initial or confirmation test specimens under the provisions of this rule and may charge a fee, not to exceed two thousand dollars ($2,000), for the license and approval of the new laboratory The fees set forth in this section shall be cash funds of the Arkansas Department of Health and shall be deposited as provided in Ark. Code Ann. § 19-4-801 through § 19-4-816.

## VIII. COST OF TESTING

***Ark. Code Ann. § 11-14-107***

A covered employer shall pay the cost of all drug and alcohol tests, initial and confirmation, which the covered employer requires of employees. An employee or job applicant shall pay the costs of any additional drug or alcohol tests not required by the covered employer.

## IX. EMPLOYEE PROTECTION

***Ark. Code Ann. § 11-14-105***

A. The employer shall provide procedures for the employee or job applicant to confidentially report to the medical review officer the use of prescription or nonprescription medications after being tested, but only if the testing process has revealed a positive result for the presence of drugs or alcohol.

***Ark. Code Ann. § 11-14-105***

B. An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result. If an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall then report the positive test result to the covered employer. An employee may then contest the drug test result pursuant to Sub-Section IX (F.) of this rule.

***Ark. Code Ann. § 11-14-105***

C. Employees and job applicants must be given a reasonable opportunity to consult with a medical review officer for technical information regarding prescription and nonprescription medicine.

***1 Ark. Code Ann. § 1-14-107***

D. A covered employer may not discharge, discipline, refuse to hire, discriminate against or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been confirmed and verified by a medical review officer.

***Ark. Code Ann. § 11-14-107***

E. A covered employer shall not discharge, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the covered employer, for a drug-related or alcohol-related problem if the employee has not previously tested positive for drug or alcohol use, entered an employee assistance program for drug-related or alcohol-related problems or entered a drug or alcohol rehabilitation program. A covered employer may select the employee assistance program or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee's participation in the program. However, nothing in this rule is intended to require any employer to permit or provide such a rehabilitation program.

***Ark. Code Ann. § 11-14-101***

F. Within 30 days of termination, an employee shall be entitled to contest the test results before the Arkansas Department of Labor by filing written notice with the Arkansas Department of Labor.

## X. EMPLOYER PROTECTION

***Ark. Code Ann. § 11-14-108***

A. An employee or job applicant whose drug or alcohol test result is confirmed as positive in accordance with this rule shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state or local handicap and disability discrimination laws.

***Ark. Code Ann. § 11-14-108***

B. A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this rule is considered to have discharged, disciplined or refused to hire for cause. Nothing in this rule shall be construed to amend or affect the employment-at-will doctrine.

***Ark. Code Ann. § 11-14-108***

C. No physician-patient relationship is created between an employee or job applicant and a covered employer or any person performing or evaluating a drug or alcohol test, solely by the establishment, implementation or administration of a drug or alcohol testing program. This section in no way relieves the person performing the test from responsibility for acts of negligence in performing the tests.

***Ark. Code Ann. § 11-14-108***

D. Nothing in this rule shall be construed to prevent a covered employer from establishing reasonable work rules related to employee possession, use, sale or solicitation of drugs or alcohol, including convictions for offenses relating to drugs or alcohol, and taking action based upon a violation of any of those rules.

***Ark. Code Ann. § 11-14-108***

E. This rule does not operate retroactively, and does not abrogate the right of an employer under state law to lawfully conduct drug or alcohol tests, or implement lawful employee drug-testing programs. The provisions of this rule shall not prohibit an employer from conducting any drug or alcohol testing of employees which is otherwise permitted by law.

***Ark. Code Ann. § 11-14-108***

F. If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant. However, this subsection does not abrogate the rights and remedies of the employee or job applicant as otherwise provided in this rule.

***Ark. Code Ann. § 11-14-108***

G. This rule does not prohibit an employer from conducting medical screening or other tests required, permitted or not disallowed by any statute, rule or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with this rule. If applicable, such drug or alcohol testing must be specified in a collective bargaining agreement as negotiated by the appropriated certified bargaining agent before such testing is implemented.

## XI. SUBSTANCE ABUSE EDUCATION/AWARENESS

A. Employee Education/Awareness Required for Certification.

1. Covered employers are required to provide to all employees educational materials which explain the requirements of this section and the employer's policies and procedures with respect to these requirements.

   a. The employer shall ensure that a copy of this material is distributed to each employee prior to the start of the drug-free workplace program, and to each employee hired or transferred into locations

covered by the drug-free workplace program.

b. Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

2. Required content. The materials to be made available to employees shall include detailed discussion of at least the following:

   a. The identity of the person designated by the employer to answer employee questions about the materials;
   b. Sufficient information about safety-sensitive functions performed by employees to make clear what period of the work day the employee is required to be in compliance with this rule;
   c. Specific information concerning employee conduct that is prohibited by this rule;
   d. The circumstances under which an employee will be tested for alcohol and/or drugs under this part;
   e. The procedures that will be used to test for the presence of alcohol and drugs, protect the employee and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee, including post-accident information, procedures and instructions required by this part;
   f. The requirement that an employee submit to alcohol and drug tests administered in accordance with this rule;
   g. An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences;
   h. The consequences for employees found to have violated the employer's drug-free workplace program, including the requirement that the employee be removed immediately from safety-sensitive functions;
   i. The consequences for employees in safety-sensitive positions found to have an alcohol concentration above the cut-off limits defined by this rule;
   j. Information concerning the effects of alcohol and drug use on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee or a co-worker); and available methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

3. Optional provision. The materials supplied to employees may also include information on additional employer policies with respect to the use of alcohol or drugs, including any consequences for an employee found to

have a specified alcohol or drug level, that are based on the employer's authority independent of this rule. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

4. Certificate of receipt. Each employer shall ensure that each employee is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the employee.

B. Training for Supervisors

1. Each covered employer shall ensure that all persons designated to supervise employees receive at least sixty (60) minutes of training on alcohol misuse and receive at least an additional sixty (60) minutes of training on drug use.
2. The training will be used by the supervisor to determine whether reasonable suspicion exists to require an employee to undergo testing under Section V. of this rule.
3. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs.

## XII. CONFIDENTIALITY

***Ark. Code Ann. § 11-14-109***

A. All information, interviews, reports, statements, memoranda and drug or alcohol test results, written or otherwise, received by the covered employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under Ark. Ann. Code § 11-14-109 or Ark. Ann. Code § 11-9-409

B. Employers shall furnish the following information to both the Commission and their insurance carrier upon request: the name of the testing laboratory, third party administrator and MRO being used (including contact information); and summary reports indicating the total number, types and results of tests conducted during a specific period. The testing laboratory is authorized to verify these reports to the Commission and insurer.

***Ark. Code Ann. § 11-14-109***

C. Covered employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug or alcohol test results shall keep

all information confidential. Release of such information under any other circumstance is authorized solely pursuant to a written consent form signed voluntarily by the person tested, unless:

1. Such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section;
2. Relevant to a legal claim asserted by the employee; or
3. Is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding.

D. The consent form must contain, at a minimum:

1. The name of the person who is authorized to obtain the information;
2. The purpose of the disclosure;
3. The precise information to be disclosed;
4. The duration of the consent; and
5. The signature of the person authorizing release of the information.

***Ark. Code Ann. § 11-14-109***

E. Information on drug or alcohol test results for tests administered pursuant to this rule shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding.

***Ark. Code Ann. § 11-14-109***

F. This rule does not prohibit a covered employer, agent of such employer or laboratory conducting a drug or alcohol test from having access to employee drug or alcohol test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section, or when the information is relevant to its defense in a civil or administrative matter. Neither is this section intended to prohibit disclosure among management as is reasonably necessary for making disciplinary decisions relating to violations of drug or alcohol standards of conduct adopted by an employer.

***Ark. Code Ann. § 11-14-109***

G. A person who discloses confidential medical records of an employee, except as provided in this rule, shall be deemed guilty of a Class C misdemeanor, as provided by Act 1552 of 1999.

## XIII. DRUG FREE PROGRAM APPROVAL PROCESS

A. It is the sole responsibility of the employers applying for Commission review of their drug-free workplace programs to submit accurate applications. Neither the

Commission nor the insurer is responsible for validating compliance with the program other than to assess whether the program components as submitted comply with Rule 36. However, both the Commission and the insurer have the right to assess actual compliance with the program.

***Ark. Code Ann. § 11-14-104***

B. Any employer wishing to acknowledge compliance with the provisions of this rule shall annually complete and submit an application (on a form approved by the Director) to the Division. After review of the completed form, the Division will notify the employer of acceptance or any deficiencies that must be corrected.

C. Substantial compliance in completing and filing the form with the Director shall create a rebuttable presumption that the employer has established a drug-free workplace program and is entitled to the protection and benefit of Ark. Code Ann. § 11-14-104-112.

D. Prior to receiving any premium credit from an insurer pursuant to Ark. Code Ann. § 11-14-104-112, all employers requesting premium credits shall provide the Commission acceptance form to their insurer.

E. If a covered employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this rule, the covered employer shall not be eligible for premium credits as specified in Section XV.

F. All covered employers qualifying for and receiving premium credits provided under this rule must be reported annually by the insurer to the Director on a form approved by the Director.

## XIV. APPEAL PROCESS

A. Each employer submitting a drug-free workplace program to the Division for review but which program is not accepted by the Division may obtain a review of the Division staff's findings by the Director.

B. Each insurance company receiving notice that a client company has obtained acceptance of its drug-free workplace program by the Division may obtain a review of the findings made by the Director of the Division.

C. The Director of the Division shall cause a record to be made of all submissions by the party or parties, and findings made by the Director.

D. An employer or insurance company may request a review by the Chief Executive

Officer (C.E.O.) of the Commission of the findings made by the Director.

E. An employer or insurance company may request a review by the Full Commission of the findings made by the C.E.O.

F. A request for review by the Director of the Division, the C.E.O. or the Full Commission shall be in writing, setting out the grounds for review. A request for review of a decision of the Director of the Division, the CEO or the Full Commission shall be filed with the Clerk of the Commission within fifteen (15) days of receipt of such decision. The Director of the Division , C.E.O. or the Full Commission, as applicable, shall decide the issues within fifteen (15) days of receipt of the request for review, based on the written record made with the Director.

G. The Arkansas Insurance Department will be promptly notified by the Clerk of the Commission of requests for review by the Full Commission. The results of Full Commission reviews will be forwarded to the Arkansas Insurance Department for review and any appropriate action.

## XV. RATING PLANS

***Ark. Code Ann. § 11-14-112***

The Insurance Commissioner shall approve rating plans for workers' compensation insurance that give a premium credit to employers that implement a drug-free workplace program pursuant to this rule. The plans must take effect January 1, 2000, must be actuarially sound, and must state the savings anticipated to result from such drug testing. The credit shall be at least five percent (5%) unless the Insurance Commissioner determines that five percent (5%) is actuarially unsound. This premium credit shall not be available to employers who do not maintain their drug-free workplace program for the entire workers' compensation insurance policy period.

## XVI. SEVERABILITY.

If any provision of this rule or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

## XVII. EFFECTIVE DATE.

This rule shall become effective November 1, 1999; revised effective September 20, 2001).

# Rule 37

# OCCUPATIONAL CARPAL TUNNEL SYNDROME

## I. Authority and Purpose

Pursuant to Act 1281 of 2001, an additional section, Arkansas Code Annotated 11-9-117, has been added to empower the Arkansas Workers' Compensation Commission, in accordance with its rule-making authority, to enact medical diagnostic and treatment guidelines regarding occupational carpal tunnel syndrome. These guidelines are based upon the joint recommendation of the Arkansas AFL-CIO and the Arkansas State Chamber of Commerce.

## II. Applicability and Effective Date

This rule and the guidelines set forth herein shall be applicable to all claims for workers' compensation benefits regarding occupational carpal tunnel syndrome filed with the commission on or after September 20, 2001.

## III. Introduction

Carpal tunnel syndrome (CTS) is caused by compression of the median nerve at the wrist. Occupational CTS (OCTS) assumes a work-relatedness. Compared to non-occupational CTS, OCTS patients are younger and have generally less severe changes on nerve conduction studies (NCS), and are about equally male or female. Diabetes, pregnancy, hypothyroidism, and rheumatoid and other inflammatory arthritides are health problems occasionally associated with CTS.

## IV. Diagnosis

A. Initially, patients may have mild, intermittent symptoms usually of a few weeks duration without objective signs of median nerve dysfunction. The intermittent symptoms include numbness, tingling or pain in the hand that occur with use of the hand and at night. Patients with persistent CTS have objective findings on examination or symptoms that fail to improve with conservative treatment, usually within four weeks.

B. Clinical Findings

1. Symptoms

    a. Paresthesias in the hand – usually the first three digits of the hand. However, patients often don't discriminate between some or all of the digits. Symptoms appropriate to the median nerve distribution are sensitive (0.93 or 7% false negative) but also have low specificity (0.25 or 75% false positives).

b. Pain in the hand, forearm, upper arm.
c. A feeling of weakness or clumsiness of the hand.

2. Signs or objective findings
   a. Decreased sensation in the median nerve distribution (two-point discrimination has a sensitivity of 0.23 but a specificity of 0.82).
   b. Weakness is usually difficult to demonstrate in mild CTS. Thenar atrophy indicates more severe CTS.
   c. Tinel's sign (sensitivity = 0.62, specificity = 0.66).
   d. Phalen's sign (sensitivity = 0.73, specificity = 0.36).
   e. Abnormal nerve conduction studies.
   f. Even in patients with NCS-established OCTS, the exam may be normal.

3. If the NCS changes are mild to moderate, conservative management with splinting, medication, and job modification could be continued for four to eight weeks.

4. Surgical decompression of the carpal tunnel (carpal tunnel release) is considered if there is:

   a. Failure to improve with conservative management and there are corroborative NCS findings, or
   b. Progression of symptoms during conservative management and there are corroborative NCS findings, or
   c. Atrophy or significant NCS abnormality.

5. In general, if a patient has symptoms that are thought to be from OCTS but has no objective verification of OCTS, including no abnormality on NCS, then that patient has likely reached maximum medical improvement at no longer than eight weeks of conservative management under the care of a medical or osteopathic physician.

## V. Nerve Conduction Studies

A. Nerve conduction studies are the recognized standard for the diagnosis of CTS. The following recommended criteria are adapted from those of the State of Washington Department of Labor & Industry. Other criteria may be utilized as long as such criteria have a sound basis in the peer-reviewed literature.

1. Median palmar latencies (palm to wrist at 8 cm.)
   Abnormal latency > 2.2 msecs.
   Median minus ulnar palmar latency abnormal > 0.3 msecs.

2. Median motor latency (wrist to APB at 8 cm.)
   Abnormal latency > 4.5 msecs.
   Median minus ulnar motor distal latency abnormal > 1.8 msecs.

3. Median sensory distal latency (wrist to digit at 14 cm.)
   Abnormal latency > 3.5 msecs.

4. Fourth digit sensory distal latency (wrist to digit at 14 cm.)
   Median minus ulnar sensory latency difference abnormal > 0.5 msecs.

B. In general, a complete study would include median and ulnar palmar latencies and median and ulnar motor nerve conduction studies, with hand skin temperature > 30 degrees C. No more than 10% of CTS patients will have normal standard NCS. These patients likely have mild median nerve impingement that may occur only with use of the hand. EMG is rarely needed for the diagnosis of CTS. If there is prominent concern for cervical radiculopathy, structural studies might be indicated.

## VI. Work-relatedness

A. Carpal tunnel syndrome occurs both from intrinsic or patient factors (e.g. small carpal tunnel from arthritis or congenitally, metabolic derangement, etc.) and extrinsic factors, which for Occupational CTS would be job activities. That is, if the predominant cause of the CTS is from job activity, then the CTS is work-related.

B. Job activity that regularly requires extensive use of the hands may be an appropriate exposure. Such activity involves repetitive hand use, especially:

1. for prolonged periods;
2. against force;
3. with strongly vibrating equipment;
4. with repeated wrist flexion, extension, deviation, forearm rotation, or constant firm gripping;
5. or, with awkward hand or wrist positions.

## VII. Management

A. Initial Management

1. Wrist splinting to maintain the wrist in a neutral position at night and when the hand is engaged in substantial activity.
2. Medication–usually an NSAID.
3. Job modification.
4. Steroid injection into the carpal tunnel may offer short-term improvement, but only 22% maintain the improvement (in a non-occupational CTS setting). A short, tapering course of oral corticosteroid has been shown to offer significant symptomatic improvement in patients with mild to moderate CTS. (Neurology, 1988, 51:390-393).

B. Progress

If there is failure to improve with initial management, or if there is a more severe presentation of pain, swelling, weakness, or numbness, then more aggressive measures may be needed, including nerve conduction studies.

Nerve conduction studies (NCS) or specialist referral are obtained when there is:

1. Failure to have improvement of symptoms after four weeks of conservative management, or
2. Progression of symptoms during treatment, or
3. Significant abnormality on examination, especially atrophy, or
4. Time loss on the job.

The NCS are likely to be more sensitive if performed when the patient is still engaged in his usual occupation under normal working conditions.

(Approved August 29, 2001; effective September 20, 2001.)

## Rule 38

## THIRD-PARTY ADMINISTRATORS

Act 1757 of 2001 amended Arkansas Code Annotated §11-9-302, to provide that third-party administrators shall, at the time of qualifying to act as such, pay to the Workers' Compensation Commission ("Commission") the sum of one hundred dollars ($100). In addition, the Commission may assess a third party administrator an annual fee of one hundred dollars ($100). The Commission hereby exercises its authority under Act 1757 to impose said annual renewal fee of one hundred dollars ($100) on third-party administrators.

For purposes of this rule, "third-party administrator" means any person, firm, or partnership which collects or charges premiums or fees, or receives remuneration in any form in exchange for adjusting or settling claims, or otherwise providing administrative services concerning workers' compensation coverage in this State. The term does not include:

a) companies which are licensed workers' compensation carriers, except to the extent that they engage in claims and administrative activities for which they or companies, including self-insurers, in their corporate family do not bear a direct risk.

b) self-insurers which self administer their claims and administrative activities, except to the extent that they engage in claims and administrative activities for which they or companies, including licensed workers' compensation carriers, in their corporate family do not bear a direct risk.

c) attorneys engaged in the representation of claimants or respondents in cases of controverted workers' compensation claims.

(Approved August 29, 2001; effective September 20, 2001.)