

§309. Subpoenas; evidence; discovery

1. Subpoenas. Any board member or designee of the board may administer oaths and any board member or designee of the board may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books, papers and photographs relating to any questions in dispute before the board, any matters involved in a hearing or an audit conducted pursuant to section 359. Witness fees in all proceedings under this Act are the same as for witnesses before the Superior Court. When a witness, subpoenaed and obliged to attend before the board or any member or designee of the board, fails to do so without reasonable excuse, the Superior Court or any Justice of the Superior Court may, on application of the Attorney General made at the written request of a member of the board, compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from that court or a refusal to testify in the court.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

2. Evidence. The board or its designee need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. The board or its designee shall admit evidence if it is the kind of evidence on which reasonable persons are accustomed to relying in the conduct of serious affairs. The board or its designee may exclude irrelevant or unduly repetitious evidence.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

3. Witnesses; discovery. All witnesses must be sworn. Sworn written evidence may not be admitted unless the author is available for cross-examination or subject to subpoena; except that sworn statements by a medical doctor or osteopathic physician relating to medical questions, by a psychologist relating to psychological questions, by a chiropractor relating to chiropractic questions, by a certified nurse practitioner who qualifies as an advanced practice registered nurse relating to advanced practice registered nursing questions or by a physician's assistant relating to physician assistance questions are admissible in workers' compensation hearings only if notice of the testimony to be used is given and service of a copy of the letter or report is made on the opposing counsel 14 days before the scheduled hearing.

Depositions or subpoenas of health care practitioners who have submitted sworn written evidence are permitted only if the administrative law judge finds that the testimony is sufficiently important to outweigh the delay in the proceeding.

The board may establish procedures for the pre-filing of summaries of the testimony of any witness in written form. In all proceedings before the board or its designee, discovery beyond that specified in this section is available only upon application to the board, which may approve the application in the exercise of its discretion.

[PL 2015, c. 297, §10 (AMD).]

4. Contempts before board. A person may not, in proceedings before the board disobey or resist any lawful order, process or writ; misbehave during a hearing or so near the place of hearing as to obstruct the hearing; neglect to produce, after having been ordered to do so, any pertinent document; or refuse to appear after having been subpoenaed or, upon appearing, refuse to be examined according to law.

If any person violates this subsection, the board shall certify the facts to a Justice of the Superior Court in the county where the alleged offense occurred and the justice may serve or cause to be served on that person an order requiring that person to appear before the justice on a day certain to show cause why the person should not be adjudged in contempt by reason of the facts so certified. The justice shall, upon the appearance of that person, in a summary manner, hear the evidence as to the acts complained of and, if it is such as to warrant doing so, punish that person in the same manner and to the same extent as for a contempt committed before the justice, or commit that person on the same conditions as if the

doing of the forbidden act had occurred with reference to the process of the Superior Court or in the presence of the justice.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 2005, c. 99, §1 (AMD). PL 2015, c. 297, §10 (AMD).

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