

CHECKLIST

H. Depositions: Upon the filing of a complaint and by written stipulation of the parties, good cause is presumed and depositions may be taken of the worker, employer representative, authorized HCP, and any provider of an independent medical examination.
the deposition.

1. (1) Reasonable notice shall be deemed to be not less than five days prior to the date set for

2. (2) The original deposition transcript shall be kept by the party who noticed the deposition.

(3) The parties shall make a good faith effort to obtain a completed and signed form letter to HCP prior to setting the deposition of the HCP.

(4) Deposition testimony of authorized HCPs shall be admissible in lieu of live testimony.

(5) Depositions of other witnesses identified by the parties may be admissible, if noticed for use at trial, provided that nothing prohibits either party from issuing a subpoena to order the deposed witness to testify at trial.

(6) A party intending to use a deposition shall notify the other party of the intended use at least 10 days prior to trial. Any objection to the use of the deposition shall be determined at the adjudication hearing.

(7) The party that notices a deposition may request the return of the original transcript after final disposition of the case. The clerk may return a transcript or any exhibits tendered to the submitting party or its attorney. If no request for the deposition or exhibits is received, the deposition or exhibits will be destroyed. Notice of intent to destroy exhibits is published in the New Mexico bar bulletin.

1. PERSONAL DATA

- Name
- Age
- Address
- Telephone number
- Social Security number

2. WORK HISTORY

- Employer
- Dates of employment
- Job description
- Reason for termination
- Earning history (average weekly wage, pay periods, increments of pay, average daily earnings, earnings of comparable employees, value of fringe benefits)

3. EDUCATIONAL BACKGROUND

- Formal education
- Special job training or experience
- Reading and writing proficiency
- Military training

4. MARITAL HISTORY

- Names and addresses of former spouses
- Reason marriage(s) terminated
- Children
 - names
 - addresses
 - ages
 - physical and mental status
 - support paid
 - support ordered to be paid
 - Alimony payments

5. PRIOR AND SUBSEQUENT ACCIDENTS, INJURIES, AND ILLNESSES

- Dates and places
- Doctors
- Hospitals
- Describe how it happened
- Describe the injuries and damages
- Effect, if any, on work
- Effect on personal life
 - family obligations
 - hobbies

6. CLAIMS HISTORY

- Any previous claims or lawsuits
 - name of attorney
 - where filed
 - when
 - result
- what degree of incapacity was claimed and was it alleged to be permanent

7. PRIOR CRIMINAL RECORD

- What arrested for
- What charges filed
- Where
- Name and address of officer
- Name and address of witness
- Result of charges

8. ACCIDENT FACTS

- Narrative statement of what happened
- How could accident have been avoided
- Establish employer's safety instructions, if any
- Establish accident facts
 - time
 - place
 - history given to physicians, etc.
 - witnesses
 - whether under influence of alcohol or drugs at time of injury
- Any alcoholic beverages consumed before the accident
 - when
 - where
 - how much
 - who else knows about it

Case Note

Shields v. Burlington N. & Santa Fe Ry. Co., 818 N.E.2d 851 (Ill. App. Ct. 2004). Party entitled to discovery of videotaped re-enactment by nonparty, specifically employer and workers' compensation carrier, who hired consulting expert.

9. INJURY SUSTAINED

- What history did you give to your doctors
- Ask to see the injured area (if visible)
- What is Plaintiff claiming about the injury
- Objective and subjective evidence immediately after accident
- Pain, location, type, severity
- Other sensations
- Attempts to continue work
- Complaints stated
 - to whom, when, where

- Injury limited to what area
 - establish areas not injured
- Names and addresses of people who helped
 - first aid
 - Emergency Medical Technicians
 - nurses
 - bystanders
- Other family members with similar problems

Case Notes

Estridge v. Waste Mgmt., 33 S.W.3d 167 (Ark. 2000). Arkansas recognizes two types of compensable injuries: accidental and gradual onset. An accidental injury is caused by a specific and identifiable incident.

Heptinstall v. Asplundh Tree Expert Co., 137 S.W.3d 421 (Ark. Ct. App. 2003). An occupational disease is only compensable when the disease results in disability or death arising out of the course of the occupation or employment.

Lopez v. Adm'r, Pub. Employees' Ret. Sys., 20 P.3d 568 (Alaska 2001). If one or more possible causes of a disability are occupational, benefits will be awarded, where the record establishes that the occupational injury is a substantial factor in the employees disability regardless of whether a nonoccupational injury could independently have caused disability. A work-related injury can be a substantial factor in an employees disability if it aggravates the symptoms of an underlying health condition, even if it has no effect on the underlying health condition itself.

10. MEDICAL TREATMENT

- Doctors seen
- Hospitalization
- Emergency room care
- Special tests performed
 - X-rays
 - EMG
 - myelograms
 - therapy
 - medications
 - braces
 - slings
 - traction
 - bandages

11. PLAINTIFF'S OPINION OF MEDICAL TREATMENT

- Did you receive proper treatment
- Did you receive adequate treatment
- Were you satisfied with the people who treated you
- Were they people of your own choice
- In your opinion is any of your present incapacity the result of improper treatment

- If so, who treated you improperly
- Give basis for your opinion
- How should it have been different

12. PRESENT INCAPACITY

- Narrative description of present incapacity
- Give the changes in your life
 - work
 - family obligations
 - sweep, mop, carry groceries, hold children, yard work, vegetable or flower gardens, carry out garbage, wash dishes, make beds, sewing, cooking, etc.
 - hobbies
 - pain
 - nervousness
 - sleep patterns
 - driving
 - weight changes
 - walking
 - lifting
 - stooping
 - bending
 - climbing
 - standing
 - sitting
 - watching television
 - thinking
 - talking
 - hearing
 - feeling
 - smelling
 - seeing
- How much trouble from prior or subsequent injuries, diseases, and illnesses as to each of above items
- Physicians' recommendations or restrictions
 - work
 - family obligations
 - hobbies
- What recommendations have not been followed
- Present medications and treatments

13. COLLATERAL SOURCES

- Have you filed for benefits from unemployment, Social Security, hospitalization, disability insurance, or retirement
 - when
 - where
 - did you tell them anything that is not true
 - what did you tell them about your condition
 - what did you tell them about your ability to work

14. IMPROVEMENTS

- Are you getting better
- Are your physicians now helping you
 - why do you keep going to see them
- Does any part of your body feel better
 - what part
 - how is it better

15. WORK ATTEMPTS

- Jobs applied for
 - when
 - where
 - type job
 - review applications
- What do you think you can do
- Are you willing to seek retraining and new work
- Can you
 - drive a car or truck
 - operate an elevator
 - park cars
 - work as night security guard
 - do telephone solicitations
 - operate a keyboard
 - perform janitorial services
 - be a self-serve station attendant
 - wash dishes
 - baby-sit
 - work as sales person
 - work as a cashier
- How are you supporting yourself and family
- How do you plan to support yourself and your dependents in the future

16. COST OF LIVING/HARDSHIP

- House or apartment payments
- Utilities
- Food
- Cigarettes
- Alcoholic beverages
- Medications
- Physicians, chiropractors
- Hospitals
- Automobiles
 - how many; makes, models
 - payments
 - repairs
 - gasoline, oil, grease
 - wash
 - insurance (collision, comprehensive and liability)

- Insurance
 - life
 - hospitalization
 - disability
 - cancer
 - personal liability
 - fire and theft
- Other income (part time employment, Social Security, royalties, leases, rental, investments, spouses income)
- Savings
- Payments
- Unpaid bills
- Attorney's fees and expenses
- Spouse's employment, education, work experience, earnings
- Can Plaintiff live on the workers' compensation weekly benefits
- Extent of hardship in not receiving a lump sum or increased advance payments

17. MISCELLANEOUS

- Willingness to be examined by another physician
- Willingness to submit to surgery or other treatment
- Willingness to let Defendant's attorney talk to physicians, etc. and get report
- Review Plaintiff's pleadings and ask questions about the allegations
- How much money do you want in this case
- What do you plan to do with any money you get
- Are you seriously claiming to be permanently injured
- Are you seriously claiming to be permanently incapacitated
- Are you seriously claiming to be totally unable to work
- Where are you planning to live if you get any money out of this case
- Has Plaintiff kept any diary of events (ask to produce and copy it)
- Review last Sunday's classified ads seeking workers
- Did Plaintiff see it before? Are there any jobs mentioned in the ads that the Plaintiff can do?
- Have you understood the questions
- Do you want to change any of your answers

CONCLUDING CHECKLIST

1. Has witness signed and dated any diagrams or drawings made during deposition?
2. Have all exhibits been marked and given to court reporter to attach to deposition?
3. Has court reporter been advised as to whether party wants to buy a copy of deposition?
4. When does court reporter anticipate the deposition will be ready?
5. Has name and address of court reporter been obtained for future reference; has it been determined what court reporting firm, if any, employs reporter?