

ARTICLE IX
Certification Committee

Section 1:

The Committee shall be responsible for the certification of members of the Bar of the Pennsylvania Supreme Court as Workers' Compensation Specialists in accordance with all requirements of the Pennsylvania Supreme Court, the Pennsylvania Bar Association Review and Certifying Board and the provisions of this Article.¹

Section 2:

a. Members of the Committee

1. The Committee shall consist of twelve members appointed by the Chair of the Section.
2. The Committee, Committee Chair and Committee Vice-Chair appointed by the Chair of the Section for the 2010-2011 Section year shall continue until they are reappointed or their successors are appointed.
3. Commencing with the 2011-2012 Section year all Committee members shall serve three-year terms and shall be eligible for reappointment for two additional three-year terms.
4. Committee members appointed for the 2011-2012 Section year shall draw lots to select four Committee members for one year terms, four Committee members for two-year terms and four Committee members for three-year terms. Committee members selected for one- or two-year terms shall be eligible for reappointment for two additional three-year terms.
5. The Chair of the Section shall appoint the Chair of the Committee from the membership of the Committee. The Chair of the Committee shall appoint the Vice-Chair of the Committee from the membership of the Committee.
6. The Chair of the Committee, or in the absence or inability to serve of the Chair of the Committee, the Vice Chair of the Committee, may appoint any Subcommittees and Subcommittee Chairs from the membership of the Committee which will facilitate the efficient functioning of the Committee.
7. All Committee members and other persons in any manner involved in the preparation, administration, or grading of the Examination specified in Section 8 of this Article of these By-Laws, except employees of Pennsylvania Bar Institute, grading the multiple choice questions contained in

the Examination, shall meet the qualifications specified in Section 3.2.5.3 of the Pennsylvania Bar Association Review and Certifying Board Guidelines or any subsequent revisions thereof.

Section 3:

a. Authority of the Committee

1. The Committee shall have authority to:
 - a) Amend or revise any of the provisions of Sections 6, 7, 8, 9 and 10 of this Article of these By-Laws provided that all amendments or revisions shall comply with all requirements of the Pennsylvania Supreme Court, the Pennsylvania Bar Association Review and Certifying Board and provided further that all Amendments or revisions are approved by at least three-quarters of the entire membership of the Committee.
 - b) Determine fees to be paid by an Applicant seeking certification or recertification as a Workers' Compensation Specialist.
2. The activities of the Committee shall be governed solely by the provisions of this Article of these By-Laws which shall supersede any other provisions of these By-Laws.

Section 4:

a. Meetings of Committee

1. The Committee shall meet at the call of the Chair or the Vice Chair.
2. Meetings may be held in person, by telephone conference call or by other available electronic means.
3. Seven members of the Committee shall constitute a Quorum.
4. Committee action at a meeting at which a Quorum participates may be taken by a majority of those Committee members participating in the meeting, except as otherwise specified in Sections 3, 6, 7 and 11 of this Article of these By-Laws.
5. Committee members may vote at a Committee meeting only by participating in the meeting.

Section 5:

a. Communication to Committee

1. All communication to the Committee shall be in writing and addressed to Certification Committee of the Section on Workers' Compensation Law, Pennsylvania Bar Association, P.O. Box 186, Harrisburg, PA 17108-0186.
2. The Committee may change or revise the address specified in Subsection a.1. of this Section by written notice to all Applicants for Certification or Recertification and Workers' Compensation Specialists addressed to the address specified as provided in Section 10: a.2. of this Article of the By-Laws.

Section 6:

a. Criteria for Certification:

1. An Applicant seeking certification as a Workers' Compensation Specialist must establish by appropriate documentation that the Applicant has:
 - a) Been admitted to practice in the Commonwealth of Pennsylvania and is actively engaged in the practice of law for a minimum of five (5) years
 - b) Devoted a minimum of fifty percent (50%) of his/her practice to the specialty field of workers' compensation
 - c) Directly participated over the past five (5) years in a minimum of seven (7) of the following categories of workers' compensation litigation:
 - (i) Claim Petitions
 - (ii) Fatal Claim Petitions
 - (iii) Specific loss claims
 - (iv) Utilization Review
 - (v) Occupational Disease claims under Section 108 of the Workers' Compensation Act
 - (vi) Termination Petitions

- (vii) Suspension Petitions
 - (viii) Modification Petitions
 - (ix) Compromise and Release proceedings
 - (x) Appeals Before the Workers' Compensation Appeal Board
 - (xi) Appeals Before the Commonwealth Court
 - (xii) Appeals Before the Supreme Court
- d) Directly participated in both direct and cross-examination of at least twenty-five (25) medical, vocational or other expert witness depositions
- e) The Applicant shall submit three (3) samples of any of the following documents which the Applicant personally authored:
- (i) Proposed Findings of Fact, Conclusions of Law and Brief submitted to a Workers' Compensation Judge
 - (ii) Briefs filed before the Workers' Compensation Appeal Board
 - (iii) Petition for Supersedeas and/or Answer to Supersedeas before the Workers Compensation Appeal Board and/or Commonwealth Court
 - (iv) Briefs filed with the Commonwealth Court or the Supreme Court
- f) The Applicant shall submit a detailed description of ten (10) cases involving the above matters including all information requested in the Application and shall further describe the nature of the action or proceeding, names and address of the counsel, names of the Workers Compensation judges, and any other information the Applicant may deem relevant
- g) The Applicant shall submit detailed documentation with regard to Mandatory Continuing Legal Education. At least seventy-five percent (75%) of the Mandatory Continuing Legal Education (MCLE) hours over the past five (5) years must be in the field of workers' compensation including, but not limited to, medical, trial advocacy, etc. A list of

approved examples of MCLE hours which qualify for the MCLE credit required by this subsection will be posted on the PBA website

- h) The Applicant shall submit a list, if any, of writings published in recognized publications in the field of workers' compensation
- i) Upon showing of exceptional circumstances, certain of the criteria specified in this Section may be waived by at least three-quarters of the entire membership of the Committee

Section 7:

- a. Applications for Certification and Recertification
 - 1. A Subcommittee of the Committee shall prepare an Application for Certification and an Application for Recertification which Application shall elicit all of the information necessary to determine whether the Applicant complies with all of the criteria specified in Section 6 of this Article of these By-Laws.
 - 2. The Application for Certification and the Application for Recertification and any revisions thereto shall be approved by a majority of the entire membership of the Committee.
- b. Any Applicant for certification or recertification shall have the right to appeal any actions or decisions relating to any Application in accordance with the following provisions:
 - 1. All Appeals by an Applicant must:
 - a) Be filed within 15 days from the date of receipt by the Applicant of written notice of the action or decision from which the Appeal is filed
 - b) Be mailed or delivered to the Certification Committee c/o Pennsylvania Bar Association, 100 South Street, P.O. Box 186, Harrisburg, PA 17108-0186
 - c) Specify the actions or decisions from which the Appeal is filed and the reasons for filing the Appeal and attach to the Appeal all documents of any nature to explain and support the Appeal

2. All Appeals shall be heard and decided by a Panel of at least three members of the Committee designated by the Chair of the Committee, none of whom were in any manner involved in the actions or decision which are the subject to the Appeal.
3. The Panel may, in its discretion, hold a hearing at which the Applicant is present or decide the Appeal based on any relevant information.

Section 8:

a. Certification Examination

1. Examination Parameters

- a) The examination shall be in written form only
- b) The examination shall be four hours in length
- c) The examination shall be composed of two essay questions and 100 multiple-choice questions
- d) The time allotment for each essay question shall be 45 minutes
- e) The total time allotment for the multiple-choice questions shall be 150 minutes

2. Subjects of Examination

- a) Preparation of all types of Petitions and Answers
- b) Elements of:
 - (i) Disability Claims
 - (ii) Specific Loss Claims
 - (iii) Death Claims
- c) Jurisdictional Issues
- d) Exclusions from coverage of the Workers' Compensation Act

- e) Occupational Disease Claims under Section 108 of the Workers' Compensation Act
- f) Exclusive Remedy
- g) Time Limitations
- h) Average Weekly Wage
- i) Depositions and Discovery
- j) Direct and Cross Examination of Fact Witnesses, Medical Witnesses, Vocational Rehabilitation Witnesses and other Expert Witnesses
- k) Presentation of Medical Evidence
- l) General Evidentiary Principles Applicable to Workers' Compensation Proceedings
- m) Supersedeas Fund and Subsequent Injury Fund Claims
- n) Offsets, Credits and Subrogation
- o) Interest, Costs, Attorney Fees and Penalties
- p) Change of Status (Suspension, Modification and Termination of Benefits)
- q) Commutation and Compromise and Release
- r) Mediation
- s) Briefs, Findings of Fact and Oral Argument before Workers' Compensation Judges
- t) Special Rules of Administrative Practice and Procedure before Workers' Compensation Judges
- u) Appeals to Workers' Compensation Appeal Board
- v) Original Petitions to Workers' Compensation Appeal Board

- w) Special Rules of Administrative Practice and Procedure before The Workers' Compensation Appeal Board
- x) Supersedeas before Workers' Compensation Judges, Workers' Compensation Appeal Board and Commonwealth Court
- y) Appeals to Commonwealth Court and Supreme Court
- z) Pennsylvania Rules of Appellate Procedure
- aa) Briefs and Oral Argument before Workers' Compensation Appeal Board, Commonwealth Court and Supreme Court
- bb) Pennsylvania Rules of Professional Conduct

3. Scoring

- a) Essay questions
 - (i) Maximum of 10 points per question
 - (ii) If the number of points in any Read when added to the number of points the Applicant scored on the Multiple-choice Questions totals 80 or more, the Applicant has passed the examination and no further Reads are necessary
- b) Multiple-choice Questions - 1 point per question
- c) Total Points — 120

4. Grading Procedure

- a) Essay Questions:
 - (i) If an Applicant scores 80 or better on the multiple-choice questions the essay questions will not be read
 - (ii) A grading matrix and suggested answers will be prepared for each essay question by the persons preparing the questions
 - (iii) First Read - The essay question answers will be scored by a Reader designated by the Certification Committee. Applicants who score a total of 69 or less points, including multiple-

choice question points, fail the examination and will not be afforded a Second Read of the essay question answers

- (iv) Second Read — An Applicant who scores a total of between 70 and 79 points, including multiple-choice question points, on the First Read of the essay question answers will be afforded a Second Read of the essay question answers by a different Reader designated by the Committee
- (v) Third Read - If after a Second Read an Applicant continues to score a total of between 70 and 79, including multiple-choice question points, the Applicant will be afforded a Third Read of the essay question answers by a different Reader designated by the Committee

b) Multiple Choice Questions:

- (i) Multiple choice questions will be graded by computer by the Pennsylvania Bar Institute based on correct answers supplied to Pennsylvania Bar Institute by the Committee

c) In order to receive a passing grade an Applicant must score 80 or more points on the entire examination

- (i) An Applicant who fails the first examination taken by the Applicant shall be permitted to retake the examination one additional time without permission of the Committee. Thereafter, permission to retake the examination must be granted by the Committee

d) Conducting and Revision of Examination and Security

- (i) The examination will be given annually or more frequently if circumstances require
- (ii) Examination questions will be revised annually to incorporate new developments and eliminate frequent annual repetition of questions
- (iii) Future examination essay questions and multiple choice questions will be prepared by a Subcommittee of the Committee and will be carefully reviewed to eliminate any unintentional biases

- (iv) Following preparation of each future examination questions, provisions will be adopted to restrict access to the examination to the persons preparing the examination and to those persons who are administrating and grading the examination

Section 9:

a. Terms of Certification and Recertification

1. The term of certification shall be five years. The certification shall automatically terminate at the end of five years unless an Application for Recertification is filed six months prior to the expiration of the certification.
2. At the beginning of the second, third, fourth and fifth years of Certification, the Certified Specialist shall pay the annual fee fixed by the Committee. After the end of each year of the second, third, fourth, and fifth years of the Certification, the Certified Specialist shall submit evidence within two months of the completion of nine hours of MCLE during the immediately preceding Certification Year in the fields as specified in Section 6:a.1.g) of this Article of these By-Laws. A list of approved examples of MCLE hours which qualify for MCLE credit required by this subsection will be posted on the PBA website. Hours of MCLE may not be carried forward to subsequent years. Upon showing of exceptional circumstances, the requirements of this subsection may be waived by at least three-fourths of the entire Committee.⁷
3. The Application for Recertification shall contain all of the information required in the initial Application for Certification.
4. If an Applicant for Recertification has complied with all of the requirements for initial Certification, except that no examination will be required for recertification, the Applicant will be recertified for a new term of five years.

Section 10:

a. Revocation of Certification

1. Certification may be revoked in the event the Applicant:
 - a) Has provided inaccurate or fraudulent information in the Application for Certification or in the Application for Recertification
 - b) Failed to comply with any of the Criteria specified in Section 6 of this Article of these By-Laws

- c) Retires or has been suspended or disbarred by the Supreme Court or has assumed inactive status as defined by the Supreme Court
 - d) Fails to promptly pay any fees adopted by the Committee in accordance with the provisions of Section 3:a.1.b) of this Article of these By-Laws
 - e) Fails to comply with the MCLE requirements specified in Section 9:a.2. of this Article of these By-Laws
2. A Workers' Compensation Specialist whose certification is being considered for revocation or has been revoked shall be notified of the reasons for the consideration for revocation or revocation by United States Postal Service, First Class Certified Mail Return Receipt Requested, Postage Prepaid, addressed to the Workers' Compensation Specialist at the address specified in the Application for Certification or in the Application for Recertification or at such other address as the Workers' Compensation Specialist has specified in writing to the Committee.

Section 11:

a. Appeal Procedures

1. Any Applicant for certification or recertification or any Workers' Compensation Specialist whose certification is being considered for revocation or has been revoked shall have the right to appeal any actions or decisions of the Committee or its Subcommittee under any of the provisions of this Article of these By-Laws in accordance with the provisions of this Section.
2. All Appeals by an Applicant or a Workers' Compensation Specialist must:
 - a) Be filed within 60 days from the date of receipt by the Applicant or Workers' Compensation Specialist of written notice of the action or decision from which the Appeal is filed
 - b) Be mailed or delivered to the Committee at the address specified in accordance with the provisions of Section 5 of this Article of these By-Laws
 - c) Specify the action or decision from which the Appeal is filed and the reasons for filing the Appeal.

3. All Appeals shall be heard and decided by a Hearing Panel of at least three members of the Committee designated by the Chair of the Committee, none of whom were in any manner involved in the action or decision which is the subject of the Appeal.
4. The Hearing Panel may, in its discretion, hold a hearing at which the Applicant or Workers' Compensation Specialist filing the Appeal is present or decide the Appeal based on any relevant written information.

¹ Article IX of the By-Laws approved by the Pennsylvania Bar Association Board of Governors on November 17, 2010.

² Article IX, Sections 6:a.1.i) and 7:b. added on July 19, 2012 by action of the Certification Committee in accordance with the provisions of Article IX, Section 3:a.1.a);

³ Article IX, Sections 8:a.4.a)(i); 8:a.4.a)(iii); 8:a.4a)(iv); 8:a.4a)(v); and 8:a.4.c) were amended on December 14, 2012 by action of the Certification Committee in accordance with provision of Article IX, Section 3:a.1.a).

⁴ Article IX, Sections 6:a.1.f); 6:a.1.g); 7:b.1.a); 7:b.1.c); 9: and 10:a.1.d) were amended or added on September 30, 2014 by action of the Certification Committee in accordance with the provision of Article IX, Section 3:a.1.a).

⁵ Article IX, Sections 7:b.; 9:a.2.;10:a.1.d) 10:a.1.e) were amended or added on September 24, 2015 by action of the Certification Committee in accordance with the provision of Article IX, Section 3:a.1.a).

⁶ Article IX, Section 8: a.3.a)(ii) was amended on December 15, 2015 by action of the Certification Committee in accordance with the provision of Article IX, Section 3:a.1.a).

⁷ Article IX, Section 9:2. was amended on September 29, 2016 by action of the Certification Committee in accordance with the provision of Article IX, Section 3:a.1.a).