NATIONAL ASSOCIATION
OF WORKERS' COMPENSATION JUDICIARY
COMPARATIVE ADJUDICATION SYSTEMS PROJECT

AUTHORITY FOR ADMISSIBILITY OF MEDICAL REPORTS: COMMENTS, FINDINGS, AND A FIFTY-STATE CHART

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I. Introduction

A tension has long existed in workers' compensation between the desire for expediting litigation and the interests of due process. The source of the tension is simple. Workers' compensation is social insurance, and a key purpose is to speed wage loss replacement and medical benefits to the injured worker. Still, in virtually all states, by design, the program is adversarial. Two private parties, employee and employer, are engaged in a dispute with one another over property rights. In this type of system, a due process hearing is required to resolve the contest.

A major example of this tension is reflected in the rules surrounding whether a signed medical report of a health care provider (or evaluation physician) may be admitted into evidence, despite its status as *objected-to* hearsay. By tradition, of course, no judge of any court can *finally determine* rights based solely upon hearsay – the ability to cross-examine is thought to be essential to due process.[1]

The Larson treatise has long characterized the majority rule as allowing the admission of reports, though permitting the party against whom the report is submitted to cross-examine if he or she so demands.[2]

The increase in workers' compensation litigation of the late 1970's and 1980's – which followed the renowned liberalization of laws shortly *before* – caused reformers in many states to become interested in refining the rules surrounding the admissibility of reports. The usual motive of such reformers was, and is, to remove, whenever possible, the need for physicians to testify personally (live or by trial deposition), and hence to avoid the attendant costs and delays.

This article, prepared as a part of the NAWCJ's effort to compare workers' compensation laws in their adjudication-intensive aspects, seeks to:

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[1] *Allen v. K-Mart*, 528 S.E.2d 60 (N.C. Ct. App. 2000) (while rules of evidence do not govern Commission, "Cross-examination of an opposing witness for the purpose of showing his bias or interest is a substantial legal right, which the trial judge can neither abrogate nor abridge to the prejudice of the cross-examining party.").

[2] Arthur Larson, *Larson's Workers' Compensation Law*, § 127.02 (2012).

- Identify the issues that are implicated in liberalizing the admission of reports;
- Determine the patterns of statutory and regulatory treatment of the issue; and
- Present in tabular form the findings of our research.

What follows are summary comments and preliminary findings. The author (Torrey) welcomes additions, clarifications, or outright corrections – before we publish, and post, what we hope will be a definitive recounting of the various laws, regulations, and rules, on the issue.

The reader should note that this discussion surrounds admissibility of medical *reports*, as opposed to physician and hospital *records*. Virtually all states seem to treat records as a category of business records and facilitate easy authentication and admission of the same. The treatment of reports, though often treated in the same law or regulation as are records, is usually different.

II. Policy Issues Surrounding Admissibility of Reports

Whether a medical report is admissible in a compensation case is an issue driven by statute and/or regulation. The Larson treatise is correct, notably, in positing that the majority approach is presumptive admission. In fact, the states which don't accommodate the practice via statute, including Pennsylvania (outside of small claims), New Jersey, Delaware, and Kansas, are the tiny minority. These propositions are easily confirmed by the table which follows.

The issue thus becomes whether the party against whom the report is being submitted has the right of cross-examination. Here, too, one encounters the overwhelming majority rule – such cross-examination is allowed. This result should be of no surprise given the adversarial nature of compensation systems.

The statutes and regulations on the issue vary on how they facilitate the submission of reports, yet respect the right to cross-examination. The patterns that can be discerned among statutes and regulations are discussed briefly in the next section.

The critical *policy issue* implicated by admissibility of reports is the reliability of such documents and the value of cross-examination. Are the values of simplifying and expediting litigation *worth* tightly regulating the right of cross-examination?

Courts have had occasion to speak on this issue. The West Virginia Supreme Court memorably admonished, "Ordinarily the cross-examination of expert witnesses does little to illuminate the issues that are to be decided by the Commissioner, the Appeal Board, and, finally, this court."[3] The Kansas Supreme Court, on the other hand, declared with equal force, "The workers' compensation system has been well served by requiring the opinions of experts to be based on testimony subject to cross-examination …." [4]

The first position has as its foundation the conviction that, because the case is being entertained by an administrative law judge, presumed to be expert and sophisticated, cross-

[3] *UMWA v. Lewis*, 309 S.E.2d 58 (W. Va. 1983).

[4] *Roberts v. The J.C. Penney Co*., 949 P.2d 613 (Kan. 1997).

examination is of diminished importance, or could even be dispensed with altogether. This is a strain of thinking that has long been held among some administrative law scholars.[5] And, of course, many believe that signed reports of a professional are inherently reliable.[6] The second is animated by the conviction that cross-examination – the "Refiner's Fire" – is invaluable in most cases to better establish, as near as possible, the truth of the matter in dispute.

Other policy issues exist as well. In Pennsylvania, for example, at least some members of the claimants' bar oppose a reform that would allow presumptive admissibility of reports. They argue that the defense will invariably propose to submit the report of a professional IME physician who will have authored a beautiful, indexed, multiple-page report. Claimant, meanwhile, will be at the mercy of the treating physician (claimant's invariable expert in the Pennsylvania practice), who may have only issued the most bare-boned of reports. These attorneys fear that the practice will devolve to the WCJ assessing medical reports by mere weight.

III. Patterns of Statutory and Regulatory Treatment of the Issue

As foreshadowed above, statutes, regulations, and rules vary with regard to how they facilitate the submission of reports, yet at once provide for the right to cross-examination. Some state statutes are, notably, explicit in their intent that litigation of cases on reports is favored. Among the states that feature such declarations are Arkansas and Nebraska. Perhaps Nebraska Rule 10 is the most principled of these provisos, as it comes accompanied by a statement of *reasons* for the rule:

> The Nebraska Workers' Compensation Court is not bound by the usual common law or statutory rules of evidence; and accordingly, with respect to medical evidence on hearings before a single judge of said court, written reports by a physician or surgeon duly signed by him, her or them and itemized bills may, at the discretion of the court, be received in evidence in lieu of or in addition to the personal testimony of such physician or surgeon ….
>
> [A] sworn statement or deposition transcribed by a person authorized to take depositions is a signed, written report for purposes of this rule.
>
> A signed narrative report by a physician … shall be considered evidence on which a reasonably prudent person is accustomed to rely in the conduct of serious affairs. The Nebraska Workers' Compensation Court recognizes that such

[5] *See, e.g.*, the Wisconsin case *Gehin v. Wisconsin Group Ins. Bd*., 692 N.W.2d 572 (Wis. 2005) (uncorroborated hearsay evidence alone does not constitute substantial evidence), in which the dissent asserts that in administrative law proceedings hearsay alone should, in certain cases, be sufficient to support fact-findings.

[6] *See, e.g.*, Nebraska Workers' Compensation Court Rule 10. This rule casts a vote for reliability. In providing for the admissibility of medical reports, this Rule states, "The Nebraska Workers' Compensation Court recognizes that such narrative reports are used daily by the insurance industry, attorneys, physicians and surgeons and other practitioners, and by the court itself in decision making concerning injuries under the jurisdiction of the court." This rule is also quoted at length later in this paper, at Section III.

> narrative reports are used daily by the insurance industry, attorneys, physicians and surgeons and other practitioners, and by the court itself in decision making concerning injuries under the jurisdiction of the court.
>
> Any party against whom the report may be used shall have the right, at the party's own initial expense, of cross examination ….[7]

The next section of this article (an appendix) is a table that sets forth critical aspects of state rules surrounding admissibility of medical reports. From this analysis, at least ten *additional* features may be discerned:

- Most workers' compensation statutes provide that the WCJ shall not be bound by the common law or statutory rules of evidence. (CA, LO, MO, MS, UT, VT, LHWCA). This is a downright historic formulation found, notably, in the earliest statutes.[8] A statute that features this language, or a variation on the same, surely enables the agency to formulate a rule allowing for presumptive admissibility of medical reports.

- A typical formulation is that a medical report is admissible, but the party proposing the report must notify the other side a certain period of time in advance. (CA, FL, GA).

- A similarly typical formulation allows the medical report into evidence, but indicates that the party against whom it is submitted may cross-examine on its (or his or her) motion. (CO).

- A well-developed statute of the latter type specifically provides for which party must bear the expense of the testimony or deposition. (AK, AR, IA, ME, MS).

- Another well-developed statute of this type requires that the report be under affidavit or some other type of certification. (CO, LO, MS, RI).

- A few well-developed statutes set forth what a report must include before it can be considered for admission. (AK, CA, MN).

- At least two states acting on the latter principle prescribe and publish forms which are intended to be used *in litigation*. (KY, NM).

- Rules may differ on admissibility in terms of whether the proceeding at issue is *preliminary* or *final*. In many preliminary settings, a jurisdiction which would otherwise exclude a medical report *allows* admission. (KS, PA).

[7] Nebraska Workers' Compensation Court, Rule 10.

[8] In Pennsylvania, an early (1919) amendment to the law was addition of the phrase, "but all findings of fact shall be based only upon competent evidence." David B. Torrey, *The Rules of Evidence Under the Pennsylvania Workmen's Compensation Act: Sources and Theoretical Considerations*, 29 DUQUESNE LAW REVIEW 447, 484 (1991).

- Some state laws specifically state that expert and other testimony may be undertaken by deposition. Rules of this sort seem to have been promulgated to avoid arguments being heard that the WCJ must observe personally all lay and expert testimony. (CO, IA, MN, NC).

- A few states direct that the medical expert who has already prepared a report is not to testify to the same (that is, read his report), at time of deposition. (AK, CA).

APPENDIX

NATIONAL ASSOCIATION OF WORKERS' COMPENSATION JUDICIARY COMPARATIVE ADJUDICATION SYSTEMS PROJECT

WORKERS' COMPENSATION (WC)
FIFTY STATES, DISTRICT OF COLUMBIA, LHWCA (2013)
AUTHORITY FOR ADMISSIBILITY OF MEDICAL REPORTS[*]
DR = Direct Statute or Rule on Point?

State	DR?	Pertinent Statute/Reg./Rule	General Rule	Caselaw
AL	No	Ala. Code § 25-5-81(f)(4) (special workers' compensation rule facilitating admission of medical *records* in advance of trial, though preserving right of cross-examination).	Workers' comp. cases litigated in civil court bench trials; generally, rules of evidence are as established in civil cases. Still, many cases litigated on reports as parties stipulate to their admissibility: "if opinion is particularly controversial, then the doctor's deposition would likely be taken anyway."	*JTH v. WRH*, 628 So.2d 894 (Ct. Civ. App. 1993) (while hospital and physician records are admissible at trial under civil rules, "Statements in a hospital record concerning the cause or manner of injury, which do not refer to diagnosis or treatment, are inadmissible hearsay."); *Ex parte American Color Graphics*, 838 So.2d 385 (Ala. 2002) (trial court erred in relying on voc. expert who in turn relied upon objected-to medical reports).
AK	Yes	Alaska Stat. § 23.30.135 (judge "not bound by common law or statutory rules," and codifying a hearsay exception for statement of deceased worker; 8 Alaska Admin. Code 45.120(k) ("The board favors the production of medical evidence in the form of written reports, but will, in its discretion, give less weight	Although regulation sets forth agency preference, if a hearsay objection is lodged party offering the report must make physician available for cross-	*Geister v. Kid's Corps, Inc.* (*Alaska Nat'l Ins. Co.)*, AWCB Case No. 200400770 (No. 045, June 6, 2007) (WC Appeals Commission applying *Smallwood* rule).

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		to written reports that do not include [certain enumerated inclusions.]").	examination at its expense. At one time, lodging such objection was called "Smallwooding" an opponent – hearsay objection lodged to any report, as a matter of tactics. *See Frazier v. H.C. Price*, 794 P.2d 103 (Alaska 1990).	
AR	Yes	Ark. Code § 11-9- 04(c) (ii) ("evidence may include verified medical reports which shall be accorded such weight as may be warranted from all the evidence of the case."); Rule 20(4)(a)-(b) (detailing process of submitting reports, assuring right of cross-examination, but placing on objecting party burden of paying fee).	Reports admissible; if cross-examination desired, party objecting must bear cost.	*Tutt v. International Paper Co.*, 2004 Ark. App. LEXIS 918 (Ct. App. Ark. 2004); *Britt v. D&A Performance (Star Ins. Co.)*, No. G010758 (AWCC, 9/19/2011). [Both cases applying authorities].
AZ	Yes	Ariz. Rev. Stat. § 23-941 (ALJ not bound by common law or statutory rules of evidence); R20-5-155 (G)-(H) (party seeking to cross-examine author of medical report filed into evidence shall request subpoena; If a party fails to timely request a subpoena, party waives right to cross-examine; in such cases, ALJ "shall admit the medical … report in evidence.").	Reports admissible but right of cross-examination preserved. Physicians appear personally in court, though telephone testimony may also be allowed.	*Lopez v. Industrial Commission*, 785 P.2d 98 (Ct. App. Arizona 1989) ("parties to an industrial commission case have a fundamental right to cross-examination.") (court setting side an award).
CA	Yes	Cal. Labor Code § 5708 (WCJ and Board not bound by common law or statutory rules of evidence); Cal. Labor Code § 5703(a) (2) (physician reports admissible when accompanied by affidavit); (g) (testimony from earlier, like decision, also admissible; (h) certain medical treatment protocols also admissible); 8 CCR § 10606 (addressing medical reports as evidence, stating Board preference for same, and inclusions thereof); 8 CCR § 10608 (addressing filing and service of reports). *See also* Cal. Labor Code § 4628 (detailing persons qualified to examine employee and prepare a report).	Reports admissible.	*Valdez v. Warehouse Demo Services*, 207 Cal. App. 4th 1 (Cal. App. 2012) (appeal pending) (report from a physician who was not part of employer's panel was admissible in evidence).
CO	Yes	C.R.S. § 8-43-210 ("medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown.").	Reports admissible; cross-examination permitted.	*Puncec v. City of Denver*, 475 P.2d 359 (Ct. App. Colorado 1970) ("It has long been axiomatic that cross-examination is a right, and not a mere privilege…. This right is fundamental to our judicial system, and although its scope may be restricted, within the sound discretion of the court,

				it cannot be denied.").
CT	No	Conn. Gen. Stat. § 31-298 (commissioners not bound by ordinary common law or statutory rules of evidence).	TBD	*Giaimo v. New Haven*, 778 A.2d 33 (Ct. 2001) (while commissioner was not bound by the statutory or common law rules of evidence, his evidentiary rulings must comport with requirements of due process) (implying that a hearsay objection to a medical report would have required its exclusion). *See also Testone v. C.R. Gibson* Co., *et al*., 969 A.2d 179 (Ct. App. Ct. 2009) (to same effect).
DE	No	19 Del. C. § 2348(i) ("If either party or the Board seeks to utilize the medical testimony of an expert, it may do so; provided, that prompt and adequate notice to the opposing party or parties is given. Medical testimony of an expert may be presented by: deposition; by live testimony at the hearing; by telephonic testimony at the hearing; or by videotape.").	No provision for reports as evidence; depositions are common and in effect the default approach. On occasion, physicians will testify live before the Board or hearing officer.	*Reliable Corp. v. Sierra*, 1999 Del. Super. LEXIS 354 (Del. Super. 1999) (findings on critical medical issues cannot simply be based upon the reading of the record of a doctor's report."). *See also Glanden v. Land Prep., Inc*., 918 A.2d 1098 (Del. 2007) (IAB did not rely on impermissible hearsay).
FL	Yes	Florida Statutes § 440.29(4) ("All medical reports of authorized treating health care providers relating to the claimant and subject accident shall be received into evidence by the judge of compensation claims upon proper motion. However, such records must be served on the opposing party at least 30 days before the final hearing. This section does not limit any right of further discovery, including, but not limited to, depositions.").	According to JCC Shore-Medina (8/2012), "The statute has carved an exception to the hearsay rule and permits medical reports to be admitted without testimony if the report is first shown to the opposing party 30 days before they are offered. This does not preclude, however, the other party from deposing the physician/medical provider if so desired…. Not all medical testimony is admissible whether by report or otherwise. The statute limits the admissible medical testimony to only the authorized medical providers,	*Vaughn v. Broward General Med. Center*, 2012 Fla. App. LEXIS 21759 (Fla. 1st D.C.A. 2012) (JCC erred in admitting and independently relying upon certain correspondence over claimant's authenticity and hearsay objections) (citing *ITT/Palm Coast Utilities v. Douglas*, 696 So.2d 390 (Fl. 1997) (section 440.29 applies only to authorized treating physicians, and not in context of an original claim where liability has been contested at the outset and hence physician by definition was not authorized). *See also Tutor Time Child Care/Learning Centers v. Patterson*, 91 So.3d 264 (1st Dist. 2012) (statutory proviso extends to records as well as reports, and if party follows tender requirement, hospital records under this section need not be further authenticated as required under other provisions of

			independent medical examiners and expert medical advisor (a physician designated by the JCC to break the tie in opposing medical opinions)."[9]	Florida law…. "[T]he clear purpose of this statute is to streamline the evidentiary process and do away with the necessity of calling a records custodian to introduce certain medical records.").
GA	Yes	OCGA § 34-9-102(e) (providing for admission of "any medical report or document signed and dated by an examining or treating physician or other duly qualified medical practitioner," and setting forth necessary elements of the same – but also providing that this is so "subject to the right of any party to object to the admissibility of any portion of the report and subject to the right of an adverse party to cross-examine the person signing the report and provide rebuttal testimony within the time allowed by the administrative law judge…." In addition, "Medical records that will be tendered into evidence must be provided to opposing parties at least 10 days before the hearing.").	Reports admissible; cross-examination permissible.	*Hart v. Owens-Illinois, Inc*., 302 S.E.2d 701 (Ga. Ct. App. 1983) (explaining that cross-examination is a constitutional right); *Commercial Union Ins. Co. v. Crews*, 229 S.E.2d 14 (1976) (purpose of amendment permitting admission of medical reports was to reduce time and cost involved in workers' compensation cases); *Southwire Co. v. Cato*, 347 S.E.2d 656 (1986) (report admissible under this section even when authored by records-review expert answering hypothetical questions).
HI	Yes	*See* HRS § 386-86(b) (providing for proceedings upon workers' compensation claims). *See also* Hawaii Admin. Rule, § 12-10-75 (d) ("Reports for a medical examination by a physician chosen by the employer or employee not requiring a director's order shall be provided to all parties within fifteen calendar days after receipt and no later than fifteen calendar days prior to the scheduled date of hearing, whichever is sooner. Failure to	Administrative rule and case at right suggest that reports are admissible and that practice is standard.	Rule discussed in *Hinojosa v. Dorvin D. Leis Co*., No. AB2005-528(M) *et al.*, 2007 HI Wrk. Comp. LEXIS 57 (HI Labor & Indus. Relations Appeal Bd. 2007).

[9] **Florida**: According to Judge Lorenzen (12/2012), section "440.(4) provides that all medical reports of authorized health care providers are admissible into evidence if a party makes a proper motion to admit them (most of the parties file written motions) and if they are provided to the opposing party at least 30 days before final hearing. *Tutor Time* [cited above] cleared up an authentication issue and now it's clear if the medical reports are from an authorized doctor, the attorney offering them doesn't have to go through the exercise of deposing a records custodian from the doctor's office to authenticate them; as long as the attorney makes a motion to admit them and gives copies to the opposing side 30 days before trial, the records just come into evidence. *As to IME doctors*: Section 440.13(5)(e) says that no opinion other than that of an authorized, an IME or an EMA is admissible. *Tutor Time* says the attorney has to authenticate the report of the IME doctor in addition to moving for admission and exchanging it 30 days before final hearing with the other side. So the attorney has to take the deposition of a records custodian for the doctor. (There was a split of opinion among the judges about whether this depo was required; now we know it is). *Finally, with regard to the EMA*, his or her role is not covered by that case. However, section 440.13(5)(e) makes the opinion admissible, and section 440.13(9)(d) requires the doctor to send the original report to the JCC and copies to the two attorneys. I don't require further authentication because I have the original report and I rule that there can be no question of it being authentic … but there are undoubtedly some of my peers who refuse to admit it without authentication."

		provide the required copies may result in the director denying inclusion of the report in the director's decision.").		
ID	Yes	Rule X(G) ("Any medical report(s) existing prior to the time of hearing, signed and dated by a physician, or otherwise sufficiently authenticated, may be offered for admission as evidence at the hearing. The fact that such report(s) constitutes hearsay shall not be grounds for its exclusion from evidence."). *Note*: Agency website shows that revisions to rule are pending. *See* http://www.iic.idaho.gov/index/Proposed_JRP_Revisions.pdf	Reports admissible; cross-examination permitted. According to Referee Marsters, "experts may be deposed post-hearing, as if they were testifying at the hearing. The logistics of this process clearly allow for cross-examination, but the procedure does not specifically provide for rebuttal. A party seeking such an opportunity would need to seek leave, and I have not seen this happen.").	*Jones v. Emmett Manor*, 997 P.2d 621 (Idaho 2000) (medical records which support causation can be legally competent evidence; oral testimony not required, and certainly where no objection was raised). Note: the uninsured defendant may have been "grasping at straws" in this appeal.
IL	Yes	§ 820 ILCS 306/16 (stating, *inter alia*, "The records, reports, and bills kept by a treating hospital, treating physician, or other treating healthcare provider that renders treatment to the employee as a result of accidental injuries in question, certified to as true and correct by the [same] … showing the medical and surgical treatment given an injured employee by [same] … shall be admissible without any further proof as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters. There shall be a rebuttable presumption that any such records, reports, and bills received in response to Commission subpoena are certified to be true and correct. This paragraph does not restrict, limit, or prevent the admissibility of records, reports, or bills that are otherwise admissible. This provision does not apply to reports prepared by treating providers for use in litigation."). *See also* Rule 7030.70(a) ("The Illinois common law rules of evidence and the Illinois Evidence Act [820 ILCS 305] shall apply in all proceedings had before the Industrial Commission, either upon arbitration or review, except to the extent they conflict with the Workers' Compensation Act, the Workers'	Reports of treating physicians are admissible over a hearsay objection. A 2011 case [at right] states, *inter alia*, "Medical reports that are created to assist in the treatment of a claimant's injury, as opposed to those prepared for litigation purposes, are trustworthy and may be admitted over a party's hearsay objections."	*American Steel Foundries v. WC Comm'n*, 2011 Ill. App. Unpub. LEXIS 1751 (Ill. App. Ct. 2011) (citing *Fencl-Tufo Chevrolet*, 523 N.E.2d 926 (Ill. App. 1988)).

		Occupational Diseases Act [820 ILCS 310], or the Rules Governing Practice Before the Industrial Commission.").		
IN	Yes	Indiana Code Ann. § 22-3-3-6(e) ("Notwithstanding any hearsay objection, the worker's compensation board shall admit into evidence a statement that meets the requirements of this subsection unless the statement is ruled inadmissible on other grounds.").	Reports admissible; cross-examination permitted.[10]	*Borgman v. Sugar Creek Animal Hosp*., 782 N.E.2d 993 (Ind. Ct. App. 2002) (employer's IME physician need not have examined claimant to have report admissible under this section).
IA	Yes	Iowa Code § 86.18(1) (admonishing that evidence and procedure are to be "as summary as practicable"), and authorizing depositions as evidence; 876 IAC 4.18 (providing generally for medical evidence and discovery and stating, inter alia, "Any relevant medical record or report served upon a party in compliance with these rules prior to any deadline established by order or rule for service of the records and reports shall be admissible as evidence at hearing of the contested case unless otherwise provided by rule. Any party against which a medical record or report may be used shall have the right, at the party's own initial expense, to cross-examine by deposition the medical practitioner producing the record or report and the deposition shall be admissible as evidence in the contested case.").	Reports admissible; cross-examination permitted at objecting party's expense.	*Thorson v. Larson Mfg. Co., Inc.*, 682 N.W.2d 448 (Iowa 2004) (court referencing rules as to tender of reports and admissibility of same, ultimately reversing and remanding to allow claimant to submit her theretofore excluded medical report).
KS	Yes	K.S.A. § 44-519 ("Except in preliminary hearings … no report of any examination of any employee by a health care provider … and no certificate issued or given by the health care provider making such examination, shall be competent evidence in any proceeding"); K.S.A. § 44-516 (providing generally for the medical examination by a neutral health care provider and judge's duty to review report of same); K.A.R. § 51-9-6 (2012) (re: neutral physician and reports thereof); K.A.R. § 51-3-5a (2012) (re: procedure for preliminary hearings).	(1) For ***Preliminary Hearing*** litigation, medical reports come into evidence without any "Certification" or testimony by the doctors; (2) For ***Final Award*** litigation and ***Post Award*** litigation, physician expert ***opinions*** must enter the record via physician testimony	*Roberts v. The J.C. Penney Co.,* 949 P.2d 613 (Ks. 1997) ("The workers' compensation system has been well served by requiring the opinions of experts to be based on testimony subject to cross-examination, and if this is to be changed [the legislature should do so.] …. If lesser standards are to be adopted, we are confident they can be provided for by legislative action after full public involvement."); *Mikesell v.*

[10] **Indiana** (historical note). In Indiana, the Court of Appeals held in 1991 that an objection on grounds of hearsay to a medical report was cognizable – and admission of the same over a hearsay objection could result in reversible error. Thereafter, the statute was amended as quoted above. *See Brown Tire Co. v. UAC (McKim)*, 573 N.E.2d 901 (Ind. Ct. App. 1991).

			(never live – always by deposition).[11]	*Keim TS, Inc.*, 281 P.3d 1147 (Kansas Ct. Appeals 2012) (Board did not commit error by considering independent medical examiner's report without supporting testimony).
KY	Yes	K.R.S. § 342.033 **(**"In a claim for benefits, no party may introduce direct testimony from more than two physicians without prior consent from the [ALJ]….. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician…."); K.A.R. § 25.010(1), (2) (regulation treating submission of medical reports generally, noting and prescribing use of special medical report forms, and providing further that "an administrative law judge may permit the introduction of other reports."; …."); K.A.R. § 25.010(2) (7) ("If a medical report is admitted as direct testimony, an adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.").	Reports admissible; cross-examination permitted at objecting party's expense. The Kentucky practice features prescribed forms for use in litigation. Still, according to Judge Alvey (1/2012), "These forms are utilized in 50%, or fewer cases. Reports prepared by a physician which cover the essential elements necessary – existence of an injury, causation, impairment, restrictions and treatment – are allowed."	*Union Underwear Co. v. Scearce*, 896 S.W.2d 7 (KY 1995) (approving predecessor statute noted at left, and holding that "administrative due process does not require that the cost of cross-examination be borne by the proponent of the direct examination…. If the claimant is required to produce, at claimant's expense, the physician for cross-examination, the introduction of medical reports as direct testimony … would be eliminated. In each case the employer would demand the production of the physician at a deposition for cross-examination, and the claimant would [now] compound the cost by having the physician prepare the written report and also appear for deposition. This would defeat the purpose of the amended … statute of providing for the swift and inexpensive resolution of compensation claims.").
LO	Yes	LSA RS 23:1317 (stating, *inter alia*, "The WCJ … shall not be bound by technical rules of evidence or procedure … but all findings of fact must be based upon competent evidence …."); LSA RS 23:1315(E, F, G) (providing for potentially admissible certified medical records and stating, *inter alia*, "The	Medical reports admissible over hearsay objection; cross-examination allowed, with costs borne by party calling the witness.	*Williams v. Orleans Parish Sch. Dist.*, 61 So.3d 48 (Ct. App. 2011) (court affirms Judge's ruling that claimant not allowed to admit medical records into evidence because they were not certified – as provided for in statute at left);

[11] **Kansas**: According to Attorney Kim Martens (1/2013), "In final and post-award litigation, other medical and hospital records which contain information which a testifying physician might rely on (for example the history provided by a claimant contained in some prior records) *can be used* and relied upon by a testifying physician in formulating their opinions even though the underlying provider that took the history contained in the other records, does not testify. There is also a set of exceptions to the rule that in final award and post-award litigation, the report (and opinions) of a physician cannot be considered unless that physician testifies – that exception is 'Court Ordered' medical evaluations under 44-516 and/or 44-510e(a)."

		records shall be accompanied by the certificate of the health care provider or other qualified witness, stating … the following: (1) That the copy is a true copy of all records described in the subpoena; (2) That the records were prepared by the health care provider in the ordinary course of the business of the health care provider at or near the time of the act, condition, or event. … F. If the health care provider has none of the records described, or only part thereof, the health care provider shall so state in the certificate, and deliver the certificate and such records as are available…. G. The health care provider shall be reimbursed by the person causing the issuance of the subpoena, summons, or court order …."); La. Admin. Code tit. 40, § 6209 (referring to the testimony of medical personnel and stating, inter alia, "A. Expert medical testimony may be admitted by: … 1. certified medical records; 2. deposition; 3. oral examination in open court proceedings; however, no more than two physicians may present testimony for either party except by order of the judge ….").		*Dick v. B & B Cut Stone Co., L.L.C.*, 917 So.2d 1191 (La. Ct. App. 2005) (to same effect).
ME	Yes	39-A M.R.S.A. § 309(2),(3) (specifically exempting Hearing Officer from the Rules of Evidence, directing instead that evidence is to be admitted if it is "…the kind of evidence on which reasonable persons are accustomed to relying in the conduct of serious affairs…."); 39-A M.R.S. § 312 (indicating that report of independent medical examiner is to be submitted to the Board, which is to accept the findings of same "unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings…."); Rule 15(4) (addressing deposition testimony by experts; same must be scheduled before testimonial hearing and be complete within 45 days of same); CMR 90-351-004 (WC Regulations) (providing that "[a]ny [atty] may set a deposition of the independent medical examiner prior to the hearing or subsequent to the hearing with permission of the hearing officer";	Reports admissible; cross-examination allowed, with party objecting to report to bear costs of same. In practice, objections based on hearsay are said to be rare, and parties stipulate to reports.[12]	

[12] According to Portland attorney Elizabeth Smith, "While we will occasionally take a medical provider's deposition, it is never to authenticate a report or opinion, but rather to try to generate more favorable evidence by pointing out errors in patient history or other issues that may have been unknown to the provider at the time the report was generated."

		and providing also that the deposition fee of the witness "shall be borne by the requesting party.").		
MD	Yes	Md. Code Ann., Cts. & Jud. Proc. Art. 101, § 11 (providing that commission is not to be bound by the usual common law or statutory rules of evidence); COMAR 14.09.01.14 (obliging party to reveal in advance nature of medical reports that will be tendered); COMAR 14.09.01.11 (procedure with regard to report of independent examiner); COMAR 14.09.01.26 (addressing expert testimony).	Medical reports admissible; depositions said to be rare. On appeal from Commission to civil court, where trial *de novo* is available, civil rules apply, as noted at right.	*Chadderton v. M.A. Bongivonni, Inc*., 647 A.2d 137 (Md. Ct. Spec. App. 1994) (clarifying that medical reports are not admissible upon *appeal* and *de novo* trial in circuit court; objecting party has right of cross-examination).
MA	Yes	Mass. Ann. Laws ch. 152, § 11A (indicating, *inter alia*, that impartial physician's report shall constitute prima facie evidence of the matters contained therein," but also noting that "[e]ither party shall have the right to engage the impartial medical examiner to be deposed for purposes of cross-examination.").	Medical reports can be read by judge at informal conference that precedes hearing, but at hearing impartial's report is the only one to be considered. As noted at left, right of cross-examination is preserved.	*Claim of Higgins*, 948 N.E.2d 1228 (Mass. 2011) (employee had the right to receive IME report, and to be able to use the same to assist in cross-examination of impartial physician).
MI	Yes	MCL § 418.841 (in "small claim," "Medical reports may be used as evidence."); Mich. Admin. Code § 418.55 (dealing with "admission of records, reports, memorandum, and data compilation," requiring 45 days advance notice of intent to submit, and further stating, "Any party objecting to an exhibit under this rule shall provide written objection to all parties not less than 21 days before the hearing, for which a proof of service shall be completed and retained by the objecting party. An objecting party may schedule cross-examination in response ….").	Medical reports admissible; cross-examination allowed.	*Yakowitch v. Dept. of Consumer & Indus. Services et al.*, 608 N.W.2d 110 (Mich. Ct. App. 2000) (rejecting argument that only the Michigan Supreme Court could promulgate rules of evidence).
MN	Yes	Minn. Stat. § 176.411 (judge not bound by common law or statutory rules of evidence, and "hearsay which is reliable is admissible"; depositions permitted); Minn. Stat. § 176.155, pt. 5 (establishing rules with regard to testimony by physicians, including those appointed by agency, and also stating, "In all other cases all evidence related to health care must be submitted by written report …. A party may cross-examine by deposition a physician or health care provider who has examined or treated the employee. If a physician or health care provider is not available for cross-examination prior to the hearing and the physician's or health	Reports admissible; cross-examination allowed, with costs borne by party seeking cross-examination.	*Henchal v. Federal Express Corp*., (Mn. Ct. WC Appeals 2008); *see* http://www.workerscomp.state.mn.us/2008/Henchal-01-30-08.html (addressing judge's evidentiary ruling).

		care provider's written report is submitted at the hearing, the compensation judge shall, upon request of the adverse party, require the physician or health care provider to testify at the hearing or to be present at a post hearing deposition for the purpose of being cross-examined by the adverse party."); Minn. Rule No. 1420.2900 (rules governing medical evidence, including inclusions of report); Minn. Rule No. 1420.2200 (dealing with discovery, and also noting, "The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, § 176.155, subd. 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.").		
MS	Yes	Miss. Code. Ann. § 71-3-55(1) (commission not bound by common law or statutory rules of evidence); CMSR § 49-000-002, Rule 2.9 (providing for the admission of medical records and reports and establishing at length requirements for same, including proviso that party seeking to call physician must bear expense of same; and also noting, "The Commission intends for this rule to pertain to narrative notes and reports composed and generated by the physician in the ordinary course of medical practice.").	Reports admissible, when accompanied by affidavit; cross-examination permitted. With regard to motions for medical treatment, same are heard telephonically and medical records which are attached to the motion and/or response are considered.	*Georgia-Pacific Corp. v. McLaurin*, 370 So.2d 1359 (MS 1979) (recommending what became rule 49-000-002).
MO	Yes	V.A.M.S. 287.550 ("All proceedings before commission to be simple, informal, and summary, and without regard to the technical rules of evidence …."); V.A.M.S. 287.210(7) (providing for inclusions of report, and stating, "testimony of a treating or examining physician may be submitted … by a complete medical report and shall be admissible without other foundational evidence subject to compliance with the following procedures. The party intending to submit [such] medical report in evidence shall give notice at least sixty days prior to the hearing to all parties and shall provide reasonable opportunity to all parties to obtain cross-examination testimony of the physician by deposition. … The party offering the report must make the physician available for cross-examination testimony by deposition not later than seven days before the matter is set for hearing, and each cross-examiner shall compensate the physician for the	Reports admissible; cross-examination allowed, statute prescribing sharing of costs. Although reports allowed, depositions said to be common. According to Attorney Korte (1/2013), "It is far more common for experts to testify by deposition, even if the direct exam consists of little more than having them identify their report and their *curriculum vitae* and answer a few foundational questions before submitting to a	

		portion of testimony obtained in an amount not to exceed a rate of reasonable compensation taking into consideration the specialty practiced by the physician.").	detailed cross-exam."	
MT	Yes	Rule 24.5.317 (provides for admissibility of reports of both treating and examining physicians, subject to right of cross-examination: "the objecting party will be allowed to depose or subpoena the author of any such records for purposes of cross-examination.").	Medical reports admissible; cross-examination allowed.	*Miller v. Maurine Frasure, d/b/a/ O'Haire Motor Inn Rest.*, 871 P.2d 1302 (Mont. 1994) (explaining the regulation summarized at left, and commenting that the rule, in allowing cross-examination, "acknowledges due process cross-examination concerns ….").
NE	Yes	Nebraska Workers' Compensation Court, Rules of Procedure, Rule 10 (noting that the Nebraska [WC] court is not bound by the usual common law or statutory rules of evidence, allowing for the admission of medical and other specialty reports, and imposing on party seeking to cross-examine the "initial expense" of same).	Medical reports admissible; cross-examination allowed.	*Johnson v. Ford New Holland*, 575 N.W.2d 392 (Neb. 1998) (explaining rule); *Baucom v. Drivers Mgt., Inc*., 686 N.W.2d 98 (Neb. Ct. App. 2004) (court applying Rule 10).
NV	No	Nev. Rev. Stat. § 616C.350 (obliging physicians who treat injured workers to testify before workers' compensation authorities); Nev. Rev. Stat. § 616C.355 (though not referring to medical matters, provision allows for submission of affidavits and declarations which the party proposes to introduce into evidence, and allowing for potential cross-examination); NAC § 616D.050 (providing that at hearings, "any relevant testimony or other evidence may be admitted, except where precluded by law, if it is reasonably reliable," and also providing that the rules of evidence as included in Nev. Rev. Stat. Chapter 233B shall apply at workers' compensation hearings).	Reports said to be routinely admitted. (TBD).	
NH	Yes	N.H. Rev. Stat. § 541-A:33(stating that "rules of evidence shall not apply," and further providing, "Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence…. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing … any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially."); N.H. Code Admin. R. Lab. 525.03(c) (to same effect	Reports admissible.	*See Appeal of Anheuser-Busch* Co., 940 A.2d 1147 (N.H. 2008) (reflects parties litigating case on reports).

		as statute).		
NJ	No	N.J. Stat. § 34:15-56 (judge not bound by the rules of evidence); N.J.A.C. 12:235-4.12(b) (limited ability of judge to refer to reports in making "recommendations regarding permanent disability.").	Medical reports of experts only submitted if both parties agree; if not, testimony must be taken; in permanency cases, however, reports are often stipulated to.	*Paco v. American Leather Mfg. Co*., 516 A.2d 623 (N.J. Super. 1986); *Brown v. Monmouth Crossing/Central State*, 2008 N.J. Super. Unpub. LEXIS 692 (N.J. Super. 2008); *Nisivoccia v. County of Essex*, 2009 N.J. Super. Unpub. LEXIS 2310 (N.J. Super. 2009). (All holding that objected-to hearsay in medical report excludable).
NM	Yes	N.M. Stat. § 52-5-7 (addressing testimony in general, allowing for interrogatories, but requiring that any "discovery procedure" be undertaken only with permission of judge; statute also provides, "the [WCJ] may assess against the employer the fees allowed any expert witness … whose examination of the claimant, report or hearing attendance the [WCJ] deems necessary for resolution of the matters at issue."); 11 NMAC 4.4.12.6.2 (providing for the admission of certain reports: "A Form Letter to HCP [*i.e*., a report on a form prescribed by the agency] completed by an authorized HCP, may be admitted into evidence. The employer shall pay the costs for completion of the Form Letter … (3) Medical records identified in the pre-trial report and exchanged shall be admitted into evidence, unless an objection is preserved."). *See also* 11 NMAC 4.4.12.6.1; 11 NMAC 4.4.12.7.1; 11 NMAC 4.4.12.15.1.	The "Form Letter to HCP" is filed as a matter of course with the Workers' Compensation Administrator. Such reports seem admissible. (TBD)	*Padilla v. Intel Corp*., 964 P.2d 862 (N.M. Ct. App. 1998) (suggesting that while report of authorized HCP is admissible, reports of others may not be).
NY	Yes	NY CLS Work Comp § 21 (presumptions) ("In any proceeding for the enforcement of a claim for compensation under this chapter, it shall be presumed in the absence of substantial evidence to the contrary … that the contents of medical and surgical reports introduced in evidence by claimants for compensation shall constitute prima facie evidence of fact as to the matter contained therein.").	Reports admissible, cross-examination allowed. According to Atty Weiss, however, "decisional law has established that this right is not absolute. The party must have evidence, lay or medical, that contradicts the report in some respect in order to be able to exercise the right to cross-examine."	*In re Claim of Roselli v. Middletown Sch. Dist*., 534 N.Y.S.2d 535 (N.Y. App. Div. 1988) (court reverses and remands in case where Board refused to allow defendant to cross-examine physician).
NC	Yes	N.C. General Statutes § 97-26.1 (providing, *inter alia*, Commission with power to establish maximum fees for	Medical reports not admissible over hearsay objection.	*Goff v. Foster Forbes Glass Div.*, 535 S.E.2d 602 (Ct. Appeals N.C. 2000) (where

		preparation of medical reports); *id.*, § 97-80 (authorizing use of depositions); 4 N.C.A.C. 10A.0612 (entitled "depositions and additional hearings," imposing deposition costs on defendants in certain situations, and also stating, "(b) In cases where a party, or an attorney for either party, refuses to stipulate medical reports and the case must be reset or depositions ordered for testimony of medical witnesses, a Commissioner or Deputy Commissioner may in his discretion assess the costs of such hearing or depositions, including reasonable attorney fees, against the party who refused the stipulation.").	Still, according to leading practitioner Patterson, "in practice, we stipulate many medical records and reports into evidence. But typically there are depositions from the principal medical witnesses. Most of the litigation is not on reports. In my claims, most of the depositions are sought by the attorney who is offering the physician in support of his or her position." According to practitioners Patterson and Zabroski, the sanctions referred to at left are well-known but not often imposed.	Commission denied employer – who had raised hearsay objection – the right to cross-examine claimant's medical expert, it committed reversible error); *Allen v. K-Mart*, 528 S.E.2d 60 (N.C. Ct. App. 2000) (to same effect, with court also stating that, while rules of evidence do not govern Commission, "Cross-examination of an opposing witness for the purpose of showing his bias or interest is a substantial legal right, which the trial judge can neither abrogate nor abridge to the prejudice of the cross-examining party.").
ND	Yes	N.D. Century Code § 28-32-24 (noting, among other things, " 5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention; 6. Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.").	TBD	*Howes v. No. Dakota Workers' Comp. Bureau*, 429 N.W.2d 730 (N.D. 1988) (rejecting claimant's argument that Bureau was obliged to pay for the costs of cross-examination of physician).
OH	Yes	O.R.C. 4123.10 ("The industrial commission shall not be bound by the usual common law or statutory rules of evidence … but may make an investigation in such manner as in its	Reports admissible before commission, but not so in *de novo* appeal to trial court.[13]	*Jefferson v. CareWorks of Ohio, Ltd*., 953 N.E.2d 353 (Ohio App. 2011) (indicating that Ohio commission and trial court governed by

[13] **Ohio**: *A conundrum.* According to attorney Don Lampert (1/2013), "In Ohio there are no rules of evidence before the IC. Once in court the normal Civil Rules and Rules of Evidence apply so reports can be utilized for cross-exam but are not "the best evidence" for a testifying expert. In fact a common conundrum is where the expert has rendered an Extent of Disability report before the IC (where he has to assume the claim has been correctly allowed),

		judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of such sections.").		different standards for the admission of evidence). For case that seems to limit the right of cross-examination, see *LTV Steel Co. v. Indus. Comm'n*, 748 N.E.2d 1176 (Ohio Ct. App. 2000).
OK	Yes	Oklahoma Workers' Compensation Court Rules Nos. 20, 28 (providing for admissibility and content of reports, and establishing that it is party seeking cross-examination that bears expense of same; Rule 28 establishes special procedure for costs of deposing court-appointed physician).	Reports admissible, cross-examination permitted, with objecting party in most instances bearing costs of same.	*Brown v. Mom's Kitchen, LLC*, 96 P.3d 808 (Okla. 2004) ("Unless an objection to the hearsay nature of a medical report and request for cross-examination by deposition is timely made, any hearsay objection to the medical report is deemed to be waived.").
OR	Yes	ORS § 656.310 (2) ("The contents of medical, surgical and hospital reports presented by claimants for compensation shall constitute prima facie evidence as to the matter contained therein; so, also, shall such reports presented by the insurer or self-insured employer, provided that the doctor rendering medical and surgical reports consents to submit to cross-examination. This subsection shall also apply to medical or surgical reports from any treating or examining doctor who is not a resident of Oregon, provided that the claimant, self-insured employer or the insurer shall have a reasonable time, but no less than 30 days after receipt of notice that the report will be offered in evidence at a hearing, to cross-examine such doctor by deposition or by written interrogatories to be settled by the Administrative Law Judge.").	Reports admissible; cross-examination allowed. A special procedure is established for reports and testimony of out-of-state physicians.	*Zurita v. Canby Nursery*, 838 P.2d 625 (Or. Ct. App. 1992) (court interpreting section, holding that only medical items in a report were admissible; hearsay statements regarding the cause of an injury contained in medical reports is objectionable and does not constitute prima facie evidence of causation).
PA	Yes	Section 422(c) of the Workers' Compensation Act, 77 P.S. § 835 (providing that medical report admissible if period of disability in question is fewer than 52 weeks, and also stating, "Where any claim for compensation at issue … exceeds [52] weeks of disability, a medical report shall be admissible as evidence unless the party the report is offered against objects to its admission."); Section 413(a) of the Act, 77 P.S. §774(1) (allowing physician's affidavit of recovery to be admitted into evidence for	In small claim (fewer than 52 weeks of disability claimed), medical report admissible over hearsay objection; in all other cases, WCJ to exclude report upon objection, and *party seeking admission* must make healthcare provider	*Montgomery Tank Lines v. WCAB (Humphries)*, 792 A.2d 6 (Pa. Commw. 2002) ("We note that while Section 422(c) of the Act allows hearsay medical reports into evidence … , if the party against whom the report is offered believes the amount at issue warrants the expense, the party can schedule the deposition of that medical expert. In effect, Section 422(c) of the Act

and then is being cross-examined in court (where he's testifying against the additional condition and the opposing attorney attempts to cross-examine with the prior report where he said the condition is allowed.) The solution is a Motion in Limine."

		purposes of supersedeas hearing); 34 Pa. Code § 131.42(a)(2) (providing that WCJ can consider physician reports at supersedeas hearing).	available for cross-examination. *Note*: At a "supersedeas" hearing, where employer seeks an immediate stay on benefits pending a final ruling, WCJ may consider medical reports.	merely shifts the costs of taking the deposition to the party objecting to the report.").
RI	Yes	R.I. Gen. Laws § 28-35-21(a) ("The certified copy of the record of a licensed health care facility … or of any health care provider or medical personnel licensed to practice … shall be admissible as evidence in any workers' compensation proceeding. The determination of the admissibility of such evidence shall be made pursuant to … [certain] provisions of [title 9, the "Medical Affidavit statute"] … and the Rhode Island Rules of Evidence); R.I. Gen. Laws § 9-19-27 (the R.I. "Medical Affidavit statute," providing in detail for how medical and hospital records, and reports, shall be treated as evidence; rule states, *inter alia*, "The adverse party shall be entitled at the expense of the proponent of the affidavit to a reasonable opportunity for cross-examination, not to exceed one hour at the office of the physician or other expert witness. Additional time for cross-examination shall be at the adverse party's expense….").	Reports admissible if submitted consistent with Medical Affidavit statute. However, party objecting to report may oblige proponent to sponsor first hour of testimony. *See Gerstein v. Scotti*, 626 A.2d 236 (R.I. 1993). Rule quoted at left said to have codified *Gerstein*. *See* Peter J. Comerford, *Medical Affidavit Update*, 61 R.I. Bar Journal 25 (Nov./Dec. 2012).	*See Ocean State Job Lot v. Idarraga*, No. W.C.C. 2009-05442 (W.C. Ct. App. Div. 2010) (court distinguishing *Gerstein*). *See* http://www.courts.ri.gov/Courts/workerscompensationcourt/AppellateDivision/Decisions/09-05442(March2012).pdf.
SC	Yes	S.C. Code of Regulations R. 67-67-612(B) (setting forth requirements for a written expert's report to be "admitted as evidence at the hearing," including tender requirements (15 days by moving party, 10 days by non-moving party); and also providing that a hearsay objection is still cognizable); R. 67-67-612(A) provides, meanwhile, "nor shall this regulation be construed to limit a party's right to call a witness (lay or expert) or present evidence (lay or expert) in the form of a deposition."	Reports admissible; cross-examination permitted.	*See Butler v. The State Accident Fund*, 2012 WL 4210328 (S.C. Work Comp. Comm. 2012) (reflecting commissioner allowing into evidence claimant's medical report – in form of questionnaire – as it had been tendered to defendant within ten days before hearing.).
SD	Yes	S.D. Codified Laws § 62-2-18 ("Any medical record, correspondence, medical bill, and expert report and correspondence	Reports admissible; cross-examination permissible.[14]	

[14] **South Dakota**: According to Director James Marsh (1/2013), "In practice, physicians are always deposed after the report appears; in fact lately, because our [appellate] courts have said they will review depo testimony de novo,

		is admissible as evidence."); S.D. Codified Laws § 19-16-8 (stating that in smaller claim tort cases and in comp proceedings, "the written report of any practitioner of the healing arts … may be used for all purposes in lieu of deposition or in-court testimony of such practitioner … provided that the report … has attached to it an affidavit signed by the practitioner … which verifies that the report constitutes all of his report, and that if called upon to testify he would testify to the same facts, observations, conclusions, opinions, and other matters as set forth in such report with reasonable medical probability…."; Right to depose physician also preserved in this rule).		
TN	Yes	Tenn. Code § 50-6-235(c) (1) (providing for admissibility of medical reports – "direct testimony" – via a prescribed report form, requiring affidavit to accompany same, and allowing cross-examination); Tenn. Code. § 50-6-235(c) (2) (obliging proponent of such sworn statement to provide notice "not less than … 20 days before the date of intended use," and stating further, "If no objection is filed within ten .. days of the receipt of the notice, the sworn statement shall be admissible as described in this subsection …. In the event that a party does object, then the objecting party shall depose the physician within a reasonable period of time or the objection shall be deemed to be waived.").	Reports admissible. Cross-examination allowed, with party objecting obliged to move forward with deposition.	*Nelson v. Magnetic Separation Systems, Inc*., 2001 Tenn. LEXIS 92 (S. Ct. Tenn. 2001) (noting genesis of reports rule: "That code section allows parties to present medical evidence in workers' compensation cases without incurring the ever-growing costs of taking medical depositions" – but ultimately holding that physician's failure to prepare comporting report could be waived by party's failure to object).
TX	Yes	Tex. Lab. Code § 410.165(a) ("The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Conformity to legal rules of evidence is not necessary."); Tex. Lab. Code § 410.165(b) ("A hearing officer may accept a written statement signed by a witness and shall accept all written reports signed by a health care provider.").	Reports admissible.	
UT	Yes	Utah Code Ann. § 34A-2-802(1) (workers' compensation authorities not bound by the usual common law or statutory rules of evidence); Utah Code Ann. § 34A-2-802 (2) ("The commission	Reports admissible. In practice, live medical testimony is rare and few hearsay objections are lodged	Utah applies the "residuum rule." In this regard, although Commission may receive and consider any kind of evidence that may throw

giving a litigant a second crack at trying the case on appeal, many times the doctor testifies live at the hearing (clear error is then required to reverse on appeal, in effect shifting the litigation cost from the appeal back to the hearing.)"

		may receive as evidence and use as proof of any fact in dispute all evidence … including the following: (b) reports of attending or examining physicians, or of pathologists; …(e) hospital records in the case of an injured or diseased employee."); Rule R602-2 (contemplates submission of medical reports).	to medical reports. According to Judge Hann, "Medical opinion disputes, by rule, are sent to Commission-appointed medical panels. For that reason, we do not have any medical testimony at our hearings."	light on a pending claim, there must be a residuum of evidence, legal and competent in a court of law, to support an award, and a finding cannot be based wholly upon hearsay evidence. *See Hackford v. Indus. Comm'n*, 358 P.2d 899 (Utah 1961). To the same effect, see *Yacht Club v. Utah Liquor Control Comm'n*, 681 P.2d 1224 (Utah 1984).
VT	Yes	21 V.S.A. § 604 (commissioner not bound by common law or statutory rules of evidence; and providing also, "Declarations of the deceased employee concerning his or her accident may be received in evidence and shall be sufficient to establish the accident and the injury, if corroborated by circumstances or other evidence."); Rule 7.1300 ("All relevant medical records and reports will be admitted into evidence [assuming proper exchanges] … before the pretrial conference….); Rule 7.1500 (dealing with expert testimony, and allowing depositions); Rule 7.1010 ("Hearsay is admissible provided that it is of a type commonly relied upon by prudent people in the conduct of their affairs, conforms to the requirements of this Rule, and the opposing party has had sufficient notice of it to verify its accuracy.").	Reports admissible in administrative proceedings. Hearsay would be a cognizable objection on appeal to trial de novo in civil court. According to Hearing Officer Phillips, "Written reports always come in as a joint medical exhibit." Still, live, telephonic, and deposition testimony by physicians is not unusual: "[K]ey doctors typically testify as well." Also, "If the parties agree to submit a doctor's testimony by deposition, typically whichever party initially requested the depo pays for it. Often what happens is that one party does a discovery deposition of the opposing party's medical expert, then later they both agree to submit that in lieu of live testimony. Occasionally the party whose expert it is reluctant to go with the discovery depo, in which case that party will schedule and pay for	

			a preservation depo."	
VA	Yes	Workers' Compensation Commission Rule 2.2 (dealing with evidentiary hearings and stating, in part, "(2) Reports and records of physicians and reports of medical care directed by physicians may be admitted in evidence as testimony by physicians or medical care providers. Upon timely motion, any party shall have the right to cross-examine the source of a medical document offered for admission in evidence…. (4) Medical reports, records or deposition portions designated by the parties or included by the Commission will be admitted into evidence."). *See also* Rule 1.8(g) (provision addressing depositions and party's right to adduce same); Rule 4.2 (provision addressing filing of medical reports).	Reports admissible; cross-examination allowed.[15]	*See generally Stokes v. Monogram Snacks Martinsville*, 2012 Va. App. LEXIS 90 (Va. Ct. App. 2012) (referring to Rule 2.2, court remarks, "We have, of course, held that the commission may consider hearsay evidence, including medical reports of a hearsay nature.").
WA	No	Wash. Rev. Code. § 51.52.102 (allowing for cross-examination of additional evidence Board on its own motion may develop); WAC 263-12-115 ("The industrial appeals judge on objection or on his or her own motion shall exclude all irrelevant or unduly repetitious evidence and statements that are inadmissible pursuant to WAC 263-12-095(5). All rulings upon objections to the admissibility of evidence shall be made in accordance with rules of evidence applicable in the superior courts of this state."); WAC 263-12-125 (Applicability of court rules in appeals to Board]…. "Insofar as applicable, and not in conflict with these rules, the statutes and rules regarding procedures in civil cases in the superior courts of this state shall be followed.").	According to agency website, "In most cases, a doctor will be required to appear in person to testify. Doctor's notes and letters may not be received into evidence if a party objects to it as hearsay…. Each party is responsible for arranging for their doctors and other witnesses to testify, and for paying witness fees."	*In re Bradley K. Thomas*, 2009 WL 1504257 (Wash. Bd. Ind. Ins. App. 2009) (IAB rejecting claimant's appeal, pointing out that his medical proofs were hearsay).
WI	Yes	Wis. Stat. Ann. § 102.17(d)1 (contents of certified medical and surgical reports by physicians[, etc.] … presented by a party for compensation constitute prima facie evidence as to the matter contained in those reports, subject to any rules and limitations the department prescribes ….").	Report admissible. However, according to Atty Domer, "while the report is presumptively admissible without the [physician's] testimony (the form is called "report in	*Aurora Consolidated Health Care v. LIRC*, 794 N.W.2d 520 (Wis. Ct. App. 2010) ("If the legislature had intended to permit cross-examination of the independent medical examiner, it could have done so. Indeed, in other sections of the Worker's Compensation

[15] **Virginia**: According to Deputy Commissioner Szablewicz (1/2013), "We vary rarely see physicians actually called as witnesses at hearings. 'Last minute' medicals are sometimes a problem and generally we will keep the record open for a period of time following a hearing if a party wishes to depose a physician in response to a recently issued medical report…."

			lieu of testimony"), if the opponent objects, when the form is filed, indicating they want the [physician] to testify, then he must testify or satisfy the other options (deposition), as in Pennsylvania."	Act the legislature explicitly provides the right to cross-examine a witness, *see Wis. Stat.* § 102.17(1)(d)1 (providing that physicians presented by a party shall be subject to cross-examination) ….”).
WV	No	W. Va. Code **§** 23-1-15 **(**Insurance Commissioner not bound by the usual common-law or statutory rules of evidence); W. Va. CSR § 85-7-5.2 (“Evidentiary depositions may be taken and read as in civil actions in the circuit court of this state); *id.*, 5.3 (“Except to the extent required by statute or by this rule, all hearings under this rule will be conducted in accordance with [various civil rules] as those rules would apply to a trial court sitting without a jury.”); *id*., 5.5 (providing, *inter alia*, “when necessary to ascertain facts … [evidence normally inadmissible in civil court is admissible] if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing officer shall be bound by the rules of privilege recognized by law….”); *id*., 5.7 (“Every party shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.”).	TBD	
WY	Yes	Wyo. Stat. § 16-3-108(a) (providing that “testimony may be received in written form subject to the right of cross-examination); Wyo. Stat. § 16-3-108 (c) (“A party may conduct cross-examinations required for a full and true disclosure of the facts and a party is entitled to confront all opposing witnesses.”).	Reports admissible; cross-examination allowed.	*Hansen v. Mr. D’s Food Center*, 827 P.2d 371 (Wyo. 1992) (written medical report was admissible in workers’ compensation hearing where opposing counsel had notice of report, had a copy of the same, was afforded the right to cross-examine the doctor who prepared the report and, after insisting upon the right to cross-examine, waived that opportunity at the close of the hearing by failing to exercise it).
DC	Yes	§ 32-1520(g) of the Act (“All medical reports submitted by the claimant or any other interested party shall become part of the record, except that the Mayor shall have the discretion to require the testimony at the hearing of any reporting	Medical reports admissible.	*Estes v. Best Western Capitol Skyline*, CRB No. 07-11, AHD No. 06-143, OWC No. 611820 (Feb. 6, 2007) (relying on *James v. D.C. Department of Employment*

		physician. Copies of all medical reports submitted shall be supplied to any party upon request.").		*Services*, 632 A.2d 395 (D.C. Ct. App. 1993). This case stands for the proposition that in D.C. cases, hearsay may be admissible unless it is irrelevant, immaterial, or unduly repetitious. *See also Washington Metropolitan Area Transit Auth. v. D.C. Dept. of Employment Services*, 827 A.2d 35 (D.C. Ct. App. 2003) (revealing claimant relying on medical reports, with court also holding that claimant had no duty to depose his own physician, particularly where defendant had not rebutted presumption of causation with testimony of its own expert).
Long-shore	No	33 U.S.C.A. § 923(a) ("In … conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter ….").	Reports admissible.[16]	*Bell Helicopter Int'l, Inc. v. Jacobs (OWCP)*, 746 F.2d 1342 (8th Cir. 1984) ("*ex parte* medical reports may constitute substantial evidence where the opposing party did not exercise 'his right to subpoena the reporting physician and thereby provide himself with the opportunity for cross-examination of the physician.' … Such hearsay evidence alone may therefore support an agency determination…. A residuum of corroborating evidence of the type admissible in a jury trial is no longer required.").

[16] **Longshore Act:** According to attorney Kawczynski, "As the to [expert medical reports], I would say they are also generally admissible too unless the party opposing the admission articulates a reason why they want to cross-examine the expert. Some judges short circuit that process with a pre-trial order that says the report is considered their direct testimony and then the opponent has the right to cross-examine the doctor. This makes for much shorter depositions…."