

# All About Claims

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Division of Workers' Compensation  
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Executive Director

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*All About Claims* is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims handlers. Please send comments or suggestions for future topics to JoAnne Ibarra at 303.318.8790 or by e-mail to [JoAnne.Ibarra@state.co.us](mailto:JoAnne.Ibarra@state.co.us).

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## ***Governor Appoints Jeff Wells to Executive Director of Labor & Employment Position Former Workers' Compensation Judge Replaces Vickie Armstrong***

Governor Bill Owens has appointed Jeffrey M. Wells to the office of Executive Director of the Colorado Department of Labor and Employment. Wells will assume the office on January 14 when the Governor is sworn in for his second term.

Prior to this appointment, Wells served as Deputy Executive Director of the department for four years following a ten year stint as an Administrative Law Judge for the Division of Administrative Hearings, hearing workers' compensation cases in the Colorado Springs and Pueblo area.

A former legislator, Wells served in the Colorado Senate for 16 years. He was elected Senate Majority Leader in 1986 and served in that position for twelve years, the longest stretch in Colorado history. The new Executive Director says that of his four terms in office, he is most proud of the work he's done on behalf of the state's education system. Among his achievements was the School Finance Act that he carried in the Statehouse for almost a decade providing important financial increases for Colorado's K-12 system.

The road to Well's current position, though not a plan by design, took several prophetic turns that would lead him to Colorado and a career in law and politics. While studying at the University of Florida, a notice in the school newspaper that the deadline for the admissions test to law school was soon approaching caught the eye of the future Executive Director. Wells had already received a degree in mathematics from Duke University and was working on an MBA, but "for whatever reason, I just decided to sign up," he says.

On the morning of the test, he found many of the other students nervously clutching copies of *How To Prepare For The Law School Admissions Exam*. "I didn't even know such a book existed," he laughs. With characteristic aplomb, he sat down and took the exam. When the results were posted, Wells had achieved an almost perfect score.

The score came to the attention of the Assistant Dean of Florida University's Law School who urged him to consider a career in law. "That's not my goal," Wells argued. "I'm here for an MBA." But given the Dean's attention, he asked for a favor. "I would like to take one particular law course, the one on Contract Law," he admitted. "Could I get into that class?" The Dean told him he would see what he could do.

He returned a short time later with Well's schedule in hand. "I got you into Contract Law," the Dean said. "I'm also having you take Civil Procedure. And here's a list of courses I want you to take next semester."

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## ***Use of Nurse Practitioners and Physicians Assistants***

By Mary Ann Whiteside, Director

In an effort to provide guidance on the practical applications of the Colorado Workers' Compensation Act, we are publishing Director's interpretations of statutes and other factors affecting the system, in the form of *Interpretive Bulletins*. The purpose is to provide greater levels of consistency and predictability as to how the Colorado system is intended to operate. While the opinions do not have the force and effect of rule, they are offered as navigational tools to clarify and simplify processes, create efficiencies, and to reduce litigation.

If you have questions regarding this information or issues you would like to see addressed in future bulletins, please direct your inquiries to Mary Ann Whiteside, Director of the Division of Workers' Compensation, at 1515 Arapahoe St. Tower II, 4th floor, Denver, CO 80202, FAX 303.318.8049, or email at [MaryAnn.Whiteaside@state.co.us](mailto:MaryAnn.Whiteaside@state.co.us).

This interpretative bulletin addresses the utilization of nurse practitioners and physician assistants in Colorado workers' compensation cases. Disputes concerning the utilization of nurse practitioners and physician assistants will necessarily have to be reviewed on a case-by-case basis and in many instances, findings of fact may have to be made to resolve these disputes. This interpretive bulletin is intended to provide general guidance on the use of nurse practitioners and physician assistants to determine specific medical issues that arise in workers' compensation cases in Colorado.

The Colorado Workers' Compensation Act ("Act") and the Workers' Compensation Rules of Procedure provide as follows:

C.R.S. § 8-42-105(2)(b) requires a statement from the attending physician regarding the employee's inability to work resulting from a work injury or disease;

C.R.S. § 8-42-105(3) requires a statement from the attending physician regarding the employee's ability to return to regular or modified employment;

C.R.S. § 8-42-107(8) requires that the authorized treating physician determine when the employee reaches maximum medical improvement, whether the employee has sustained permanent medical impairment, and if Level II accredited, the degree of permanent medical impairment.

Rule IX.C.1.d. permits the termination of temporary total disability benefits in certain specific situations based on a statement from the authorized treating physician that the claimant has reached MMI; or is able to return to regular employment; or that the employment offered is within the claimant's physical restrictions.

Physician assistants are often utilized in physicians' offices to perform some of these functions under the supervision of the authorized treating physician. § 12-36-106(5), C.R.S., allows

physician assistants to work under the supervision of a licensed physician. The question is, which functions may a physician delegate to the physician assistant and still be in compliance with the statutory requirements of the Workers' Compensation Act? The case law in this specific area contains a very limited discussion of the issues. For example, the Industrial Claim Appeals Office has determined that in a release to return to work situation, "medical restrictions imposed by a physician's assistant may be considered to be medical restrictions imposed by the treating physician". Terry v. Captain D's Seafood Restaurant, W.C. No. 4-226-464, (ICAO, December 9, 1997). See also Bassett v. Echo Canyon Rafting Expeditions, W.C. No. 4-260-804, (ICAO, April 3, 1997). The testimony of a physician assistant, who had examined the claimant and determined that she was not injured or incapacitated, was accepted in a workers' compensation proceeding. Simms v. ICAO, 797 P. 2d 777 (Colo. App. 1990).

Based on the limited discussion available, it appears that a physician's assistant may impose medical restrictions for purposes of return to work and may offer an opinion as to the claimant's medical condition. It is the Director's position that although a physician assistant may be utilized in these instances, the authorized treating physician remains responsible for the supervision of any physician assistant performing any of these functions and for the reporting required under the Workers' Compensation Act. The identity of the authorized treating physician or physicians must be clear to all parties at all stages of the proceedings. Accordingly, the Director suggests that it would be advisable for the physician to counter sign any Physician's Report of Workers' Compensation Injury (Form WC164), opinions regarding return to work or any other reports relating to benefits issued by a physician's assistant.

Nurse practitioners also may be utilized by physicians to perform some of the functions required under the Workers' Compensation Act. This utilization of the nurse practitioner raises questions regarding the delegation of these functions and the physician's compliance with the statutory requirements of the Workers' Compensation Act. Pursuant to § 12-38-111.5, C.R.S., a nurse practitioner may be included in the advance practice registry. An advanced practice nurse may be granted prescriptive authority while working under a collaborative agreement with a licensed physician. Although only a limited discussion is available, nurse practitioners' opinions in workers' compensation have not been generally accepted as those of the authorized treating physician. The Industrial Claim Appeals Panel did not reach the question of whether a nurse practitioner's opinion concerning medical restrictions is a sufficient basis for granting or denying disability benefits in Lester v. Skill Staff of Colorado, W.C. No. 4-225-745 (ICAO, August 31, 1995). However, the Panel determined in a subsequent decision that a restricted duty offer approved by a nurse practitioner rather than the authorized treating physician, as required by Rule IX.C.1.d., was not a reasonable basis for the respondents to believe they were entitled to terminate temporary disability benefits in accordance with the rule. Brown v. Manfredi Motor Transit, (ICAO, September 21, 2001).

Based upon the case decisions on the topic, it appears that the appellate courts draw a distinction under the Colorado Workers' Compensation Act between the scope of authority of physician assistants and nurse practitioners. Accordingly, the Director suggests that it would be advisable for the physician to counter

sign any Physician's Report of Workers' Compensation Injury (Form WC164), opinions regarding return to work or any other reports relating to benefits issued by a nurse practitioner.

The statutes and rules of procedure that govern workers' compensation require that the determinations of maximum medical improvement and permanent medical impairment, including a finding that there is no medical impairment, must be rendered by the authorized treating physician, or in some instances, a Level II accredited physician. While a physician may utilize physician assistants and nurse practitioners for determining medical restrictions for return to work purposes and opinions as to medical condition, the ultimate responsibility for these decisions remains with the physician.

## ***Reviewing Accomplishments for the Past Year***

The state deficit reminds us that more than ever, we must validate our existence as a public entity through the provision of vital services. In doing so, we reflect on the accomplishments for the Division of Workers' Compensation (DOWC) for the year 2002:

- ✓ The DOWC has helped thousands of Colorado employers, large and small, save millions of dollars every year through free risk management programs and services—\$13 million saved last year, and over \$100 million this past decade. These programs and services are expected to continue to prevent millions in accident costs as well as the pain and suffering associated with workplace injuries. The programs and services have promoted greater cost savings for Colorado insurers as well—translating into reduced system costs for all of the state's businesses and industries.
- ✓ The DOWC's oversight of insurance claims management activity has detected payment mistakes totaling millions of dollars. Over \$2.5 million in underpayments to the state's injured workers, and over a quarter of a million dollars of overpayments made by insurers were identified last year alone. It's anticipated that the DOWC will continue to detect over \$2.5 million in incorrect payments next year as well. Proactive services by Division staff to educate insurance claims managers are expected to reduce the occurrence of overpayments and underpayments—with real savings expected for all system stakeholders.
- ✓ Through the application of the Medical Fee Schedule, promulgated in rule by DOWC, medical bills were reduced by over \$48 million last year. DOWC staff further contribute to medical cost savings by providing expert assistance with billing inquiries; and updating medical treatment guidelines, and utilization standards.
- ✓ DOWC efforts to resolve disputes between parties related to claims have resulted in thousands of settlements each year, thus reducing further litigation. Over 3,500 pre-hearing and settlement conferences were held last year alone. This reduction in litigation reduces system costs for stakeholders.

- ✓ On over 75,000 occasions, DOWC staff responded directly to inquiries to the Division's customer service unit last year. Another 355,000 contacts were made to the Division's website. The demand for information services from the division is expected to grow significantly.
- ✓ DOWC staff identify thousands of employers annually who appear to be operating with no workers' compensation insurance. Last year, over 18,500 contacts were made to investigate employers' insured status. Only two percent (374) of these initial contacts remain unresolved. This ongoing effort ensures that instances of injuries to workers' without insurance coverage are minimized, which in turn reduces the socialization of these costs across the rest of the workers' compensation system.
- ✓ Two programs administered by DOWC to provide medical care and/or compensation payments to some of the most seriously injured workers in Colorado, the Major Medical Fund and the Subsequent Injury Fund, realized substantial savings through settlement of existing cases. Over \$3.8 million were saved over the past two years alone.
- ✓ Through effective oversight and support, the DOWC has continued to promote the success of Colorado's workers' compensation self-insured employers. Despite uncertain economic conditions, and an adverse risk financing market, Colorado's self-insured employers last year realized a cash flow advantage of \$117 million cumulatively as a result of self-insured derived savings. Continued management of employer self-insurance activity by DOWC staff is essential to the success of the concept in our state.

## ***Division Receives Public Information Award for Annual Report***

The International Association of Industrial Accident Boards and Commissions (IAIABC) has selected the *Work Related Injuries in Colorado, 1999*, as the first place award winner in the information products category for 2002.

The publication, generally referred to as the annual report, is the work of the Research & Statistics Unit and is a compilation of information that is intended to address the most frequently asked questions by customers about work related injuries in Colorado.

The data for the report are derived from the state's main frame computer, which contains a broad range of information on workers' compensation lost-time claims, including information from first reports of injury and position statements that either deny or admit liability for the claim, as well as data on hearings and other adjudication activity.

Because analyses for prior years have shown that for Colorado about 80% of lost-time claims are filed in the year of the injury, while the remaining 20% are filed in subsequent years, with the overwhelming majority of these in the year immediately following the year of injury, the extract for the publication was

run in late December 2000. This made it possible to capture the vast majority of claims filed with a 1999 date of injury, thereby offering the most complete picture possible of lost-time claims for that calendar year.

Around 350 hard copies of the annual report are sent each year to customers who include carriers, employers, law firms, the media, and the workers' compensation agencies of other jurisdictions. The report is also available on the Division's website at [www.coworkforce.com/DWC/](http://www.coworkforce.com/DWC/) Look for *Work Related Injuries in Colorado, 2000*, to be made available soon. For more information on this or any other publication, contact the Division Communications Unit at (303) 318.8790.

### ***Final Payment Notice Form Will Be Changing***

The Final Payment Notice, form WC 25, will be changing to ensure compatibility with Electronic Data Interchange (EDI) transmissions. The Division is implementing an electronic version of the Final Payment Notice in July 2003 using the IAIABC standard format. A major principle in the Division's implementation of EDI is to ensure that electronic and paper reporting have the same requirements. Having the same requirements for paper and EDI submissions helps ensure the accuracy of the data and consistency of enforcement. When the EDI transmission is implemented, the new Final Payment Notice form will also be implemented. We will update you on the final implementation date.

The Final Payment Notice is completed and filed with the Division whenever a claim is closed by settlement or a final order of the Director, Administrative Law Judge, or court. The

Final Payment Notice is used by the Division to gather minimal cost information for statistical purposes. A copy of the Notice need not be filed with claimant.

The new form with detailed instructions can be found as the insert to this newsletter. If you have any questions or concerns as you are implementing changes to your systems to accommodate the new form, please contact our Customer Service Unit at 303.318.8700.

### ***Governor Appoints Jeff Wells*** *continued from page 1*

Wells looked puzzled. "Well," the Dean said matter-of-factly, "I just admitted you to Law School." Wells had been admitted to law school without actually applying for it.

After completing his MBA and graduating from law school, he worked as a prosecuting attorney and then as a legislative bill drafter for the Florida Senate—work that would ultimately set the stage for a later career in politics.

Following relocation to Colorado and lengthy stints in private practice and as Deputy County Attorney, where he oversaw the juvenile justice system in El Paso County, Wells entered politics in 1982, running for State Senate.

Today he's enthusiastic about yet another career destination, his appointment as Executive Director for Governor Owens' second term. It's a new challenge, one that will draw on his extensive background in law and policy making.

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