

Interpretive Bulletins

Director's Interpretations of Issues Impacting the Colorado Workers' Compensation System

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 Paul Tauriello, Director of the Division of Workers' Compensation, at 633 17th St. Suite 400, Denver, CO 80202, FAX 303.318.8632, or email at paul.tauriello@state.co.us.

USE OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS

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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 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.