

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 80202-3660, fax 303.318.8049, or email at paul.tauriello@state.co.us.

Exercising Independent Medical Judgment in the Workers' Compensation System

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At the heart of the workers' compensation system is the responsibility to provide reasonable and necessary medical treatment for work place injuries. The role that physicians play in the system is pivotal. Physicians participating in the workers' compensation system provide medical opinions on a myriad of topics; some of which strictly involve treatment and some which impact underlying legal determinations. Doctors are involved in all aspects of the system; including the initial determination that a work-related injury has occurred, the injured worker's ability to return to work, the course and efficacy of treatment, the date of maximum medical improvement, and the level of permanent impairment that resulted from the injury. In rendering these opinions, physicians are expected to exercise objective, independent medical judgment, and not to be pressured by any outside influence. The Division sees no conflict between the standards the medical community is sworn to meet and the goal of the workers' compensation system to assure the quick and efficient delivery of benefits to an injured worker.

It is well accepted that, at times, there will be disagreement between physicians on medical diagnosis, course of treatment or expected outcome. These types of medical disagreements occur in virtually all health care arenas. Ultimately, when there is a dispute in the workers' compensation system it is often the role of an administrative law judge (ALJ) to assign legal consequences to medical opinions, even when the matter in dispute is a medical determination. After hearing all the evidence, expert and otherwise, the ALJ will decide whether the evidence is persuasive enough to warrant the benefits sought or relief requested. In making such a decision an ALJ will often find the opinion of one medical expert to be more persuasive than another. This does not mean that either physician deviated from acceptable medical practice. A difference in professional

medical opinions should not result in being threatened with any type of sanction. The “less persuasive” medical expert should not be subjected to a medical malpractice claim, action by the medical board or a penalty claim under the Workers’ Compensation Act. The General Assembly has explicitly recognized this in the area of permanent impairment by granting immunity from civil liability to any physician who determines impairment ratings, absent the showing of malice or bad faith on the part of the rating physician.

If a physician allows his/her medical opinion to be influenced by outside pressures, deviates from what is required, or acts in bad faith, he or she may have to face appropriate sanctions. Situations may arise where actions for breach of standard of care or penalties for clear violations of the Workers’ Compensation Act are appropriate. However, an honest difference of opinions between physicians or the fact that the case is resolved in favor of one expert’s opinion over another does not warrant such actions. A physician that complies with the Workers’ Compensation Rules and Statutes and exercises objective medical judgment in a reasoned manner should not be subject to costly threats of sanctions which have minimal basis.