

## **An Overview of the Changes to the Rules and Regulations of the State Board of Workers' Compensation Which Took Effect September 1, 2019**

The State Board of Workers' Compensation (SBWC) recently released its 2019 Rules and Regulations (Board Rules) which took effect September 1, 2019. There are several amendments to the Board Rules, most of which are minor changes. For example, the new Board Rules formally require removal of social security numbers from any Board Form. In practice, however, that has already been done, at least when filing in IMCS. If you are not filing via EDI and/or are using pre-saved Board Forms, make sure those forms are updated to the most recent versions, which can be found on the SBWC's website. (<https://sbwc.georgia.gov/forms/board-forms>)

Another interesting change this year is the addition of Board Rule 201(a)(1)(iii), which allows for posting of the panel of physicians online. This new rule allows for "electronic publication" of the information on the panel of physicians and the bill of rights via on-line access. The rule reads, in part, "[w]hen posting via electronic publication, the employer shall provide a website or free application with access instructions to the employee. In the event the employee has no internet access, the employer shall provide the employee with access to the panel. On-line posting shall not eliminate the requirement of posting the panel of physicians on the business premises of the employer."

Clearly the most interesting change this year, especially for employers and insurers, is to Board Rule 205(c). That rule, as we knew it before the 2019 amendments, was added on July 1, 2017. It was created to provide a mechanism for employees to force employers and insurers to decide, within 5 business days, whether to authorize or controvert treatment ordered by the authorized treating physician (ATP). Upon the filing of a Board Form WC-PMT, which could only be filed by an employee or his or her attorney, a telephone conference with an administrative law judge (ALJ) was scheduled to occur no later than 5 business days after the filing of the WC-PMT instructing the employer and insurer to show cause why the treatment recommended by the ATP had not been authorized. To avoid the conference call with the ALJ, the employer and insurer could, before the call, file a Form WC-PMT either authorizing or controverting the treatment.

The July 1, 2017 addition of Rule 205(c) changed the way *all* parties handled referrals made by the ATP. Time has demonstrated the WC-PMT proved a valuable tool for employees as almost 90% of all WC-PMTs filed were resolved without the need for the conference call. On the other hand, employers and insurers were frustrated that employees gained a mechanism to forcing the employer and insurer to make a quick decision on a referral made by the ATP, yet there was no quick remedy for an employer and insurer to compel an employee to cooperate with authorized medical treatment.

Before the September 1, 2019 rule change, the method to compel an employee to comply with medical treatment was to file a WC-102d Motion to Compel formally asking an ALJ to issue an Order instructing the employee to cooperate with medical treatment. If, after getting an Order from the judge the employee still did not cooperate, then the employer and insurer could move to suspend benefits pursuant to Board Rule 200(c)(1). Unfortunately, the formal process to compel cooperation and/or suspend benefits could

take several weeks, if not months, while the employee continues receiving income benefits.

The 2019 amendment to Board Rule 205(c) changes the game once again. Under the new rule, the employer and insurer can now file a WC-PMT by using a newly created form, WC-PMTb. Board Rule 205(c) is now bifurcated into Board Rule 205(c)(1), a portion of the former rule wherein an employee can file a WC-PMT, and Board Rule 205(c)(2), which reads:

When an appointment has been scheduled for the Employee with an authorized treating physician and Employee has been provided with at least 5 business days advance notice of such appointment but failed to attend, the Employer/Insurer may file a petition to show cause why an order should not issue directing the Employee to attend the appointment. (Section B of WC-PMTb). The Petition shall request the Board to issue a notice of a show cause telephonic conference before an Administrative Law Judge to be scheduled for a date and time not more than 5 business days from the date of the Petition.

Like when an employee files a WC-PMT, upon filing a WC-PMTb, a telephone conference will be scheduled with an ALJ. During the call, the employee must show cause why he or she failed to attend the visit. The judge, at his or her discretion, may issue an Order directing the employee to attend an appointment with, or a referral made by, the ATP.

Unlike when an employee files a WC-PMT, where an employer and insurer can authorize or controvert treatment to forego the conference call with the judge, there does not appear to be an action that an employee can take to avoid the telephone conference. We expect this process will run more smoothly when the employee is represented by counsel, but that getting an unrepresented employee on a telephone conference may prove more challenging. However, we assume that if the employee does not participate in the conference call, the employer and insurer can still get an Order compelling the employee to cooperate with medical treatment or attend the requested appointment, and if the employee does not attend, the employer and insurer should then be able to move to suspend income benefits, again saving several weeks in the process.

Additionally, while there is presumably nothing stopping an adjuster from filing a WC-PMTb either via ICMS (if they have access to the form in ICMS) or in paper, and participating in the conference call, we would recommend a referral to defense counsel who can make sure the form is properly supported with admissible evidence and has experience making the legal arguments to the ALJ.

There are still many unknowns with the new Board Rule 205(c)(2) and Board Form WC-PMTb. One of the pressing questions is whether the ALJ, during the telephone conference, can/will issue an Order authorizing the employer and insurer to suspend income benefits under Board Rule 200(c)(1) *if* the employee does not attend the treatment. Based on the plain language of Board Rule 205(c)(2), it seems the only remedy

that can be had from the telephone conference is an Order to attend a visit with, or referral by, the ATP. Then, if the employee does not comply, to suspend income benefits, the employer and insurer arguably must still file a WC-102d Motion to Suspend Benefits.

Another question is whether the employer and insurer can file more than one WC-PMTb and, if so, at what point the ALJ can Order suspension of income benefits if the employee complies with the initial Order but then does not cooperate moving forward. If the employee fails to attend the appointment(s) ordered by the ALJ, can the employer and insurer seek a remedy other than another Order to attend an appointment, or will a Motion or a hearing be required? It seems for now, the best way to suspend income benefits under Rule 200(c)(1) for non-compliance will still be to file a formal motion.

We will certainly learn more about the new rules as litigation emerges. In fact, as of the drafting of this summary, the new Board Form WC-PMTb is not yet on ICMS or even available for download from the State Board website. In the meantime, however, if you have an employee who is receiving income benefits and not complying with medical treatment, we recommend scheduling a return visit with the ATP, giving the employee at least 5 business days' notice, then having your attorney file the WC-PMTb to force the employee to answer to a judge why s/he is not cooperating with authorized medical treatment, and to request an expedited Order compelling the employee to cooperate with medical treatment. At the very least, it will start a conversation with the employee or opposing counsel to get the claim moving in the right direction.

If you have any questions concerning any of the newly effective Board Rules, or any other issues, please do not hesitate to contact us.

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