



NEW
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STATE

Workers'
Compensation
Board



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**Workers'
Compensation
Board**



Provider Compliance Dos and Don'ts

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AGENDA

1 Introduction

2 Medical Director's Office (MDO)

3 Provider Compliance
Committee (PCC)

4 Health Provider Discipline
Unit (HPDU)

5 Misconduct Defined

6 HPDU Sanctions

7 Role of Board Attorneys

INTRODUCTION

Need to know:

- Providers must be authorized by the Workers' Compensation Board (Board) to treat or to perform Independent Medical Examinations (IME) of injured workers (*WCL §13-b*).
- Providers may have disciplinary issues prior to authorization or during their authorization period.
- Provider compliance and discipline is a joint effort between the Board's Medical Director's Office (MDO) and the Office of General Counsel (OGC).



MDO'S PROVIDER ADMINISTRATION & COMPLIANCE UNIT

- Processes applications for Board authorization (~200-300/month) to:
 - Treat injured workers
 - Perform IMEs of injured workers
 - Both
- Processes applications for all provider types
- Processes periodic re-registration every 2 or 3 years, depending on provider type, and coincides with license re-registration
- Processes requests for specialist designations
- Staffs the Provider Compliance Committee





PROVIDER COMPLIANCE COMMITTEE

- Collaborates with MDO and OGC
- Meets weekly to process problem applications
- Evaluates complaints against providers
- Make referrals to OGC's Health Provider Discipline Unit (HPDU)

PROVIDER ADMINISTRATION & COMPLIANCE UNIT

Typical reasons an application for **authorization** might be denied:

- Incomplete application
 - E.g., intentional omission of documentation from prior disciplinary actions
- Current/pending/past disciplinary actions
 - Addressed case-by-case via logic/flow diagram
 - Nature, severity, recency, transparency, resolution, etc.
- Prior negative history with the Board
- Failure to meet qualifying standards
 - E.g., education and training



PROVIDER ADMINISTRATION & COMPLIANCE UNIT

Typical reasons an application for **re-registration** might be denied:

- Interim disciplinary actions
- Interim HPDU investigation into potential provider misconduct
- Negative interim history with the Board
 - Failure to disclose same on re-application
- Failure to maintain qualifications
 - e.g., Board certification for independent medical examiners



MDO'S PROVIDER COMPLIANCE & DISCIPLINE UNIT

■ Typical complaints addressed by the Provider Compliance Committee:

- **IME behavior:** E.g., “rough” IME causing pain; doctor not using goniometer
- **IME report:** Factually inaccurate, opinions deferred to a Workers’ Compensation Law Judge (WCLJ)
- **IME process:** Status of IME facility; availability of chaperones or ability to record exam
- **Provider is retiring/leaving:** Patient “abandoned”



MDO'S PROVIDER COMPLIANCE & DISCIPLINE UNIT

- **Typical complaints addressed by the Provider Compliance Committee (cont'd):**
 - Provider directly billing workers' compensation patient
 - Provider not testifying, submitting prior authorization requests (PAR), etc.
 - Provider not adhering to the Workers' Compensation Board's *New York Medical Treatment Guidelines (MTGs)*
- **Sources of complaints:** Examinees, patients, attorneys, WCLJs
- **MDO action:** MDO correspondence, tracking/flagging, OGC referral



HEALTH PROVIDER DISCIPLINE UNIT (HPDU)

Who we are:

- Part of the Board's Office of General Counsel (OGC)
- Investigate potential medical provider misconduct
- Take administrative action (e.g., suspension, removal)
- Submit referrals to the Department of Health (DOH), State Education Department (SED), and Workers' Compensation Fraud Inspector General (WCFIG), as appropriate
- Advise the MDO regarding possible denial of authorization
- Support defense of *Article 78* proceedings against the Board



HPDU (cont'd)

How does HPDU investigate misconduct?

- Correspondence (ask the provider)
- Notices to Produce (obtain documents)
- Interrogatories (ask for sworn answers under oath to formal questions)
- Notice of Interview (provider comes to Schenectady, NY, for a formal interrogation)



HPDU: WHAT IS MISCONDUCT?

***WCL §13-d* defines misconduct as instances where providers have:**

- Been found guilty of professional misconduct or incompetency.
- Exceeded the limits of professional license.
- Made materially false statements in application for authorization.
- Failed to submit full or truthful medical reports.
- Knowingly made a false statement as to a material fact in a medical report or otherwise.
- Solicited professional treatment of an injured worker.



HPDU: WHAT IS MISCONDUCT? (cont'd)

- Refused to appear for a deposition or respond to WCB correspondence or order (See *WCL § 13-d(2)(f)*).
- Solicited or received kickbacks or payments from third party (See *WCL § 13-d(2)(g)*).
 - **This is a misdemeanor crime** (*WCL § 13-d(2)(h)*)
- Engaged in fee splitting.
 - **This is a misdemeanor crime** (*WCL § 13-d(2)(h)*)
- Committed violations of professional misconduct (physicians and physician assistants) or unprofessional conduct (other licensed health care providers), as listed in Education Law and Rules of Board of Regents.



HPDU: WHAT ARE THE SANCTIONS?

Temporary suspension occurs:

- When chair's designee "may believe" misconduct has occurred
- During an HPDU investigation or as a result of an investigation
- After action by the DOH or SED without a finding or admission of guilt (e.g., provider "does not contest")



HPDU: WHAT ARE THE SANCTIONS? (cont'd)

Authorization removed/revoked when:

- Provider is found guilty or admitted guilt in a disciplinary matter with DOH's Office of Professional Medical Conduct or SED's Office of the Professions.
- HPDU has found a violation of WCL or other law or regulation.



Levi v. NYS WCB — the Appellate Division of the Supreme Court of New York, Third Department (3d Dept.), ratified the Board's authority to remove provider's authorization after reasonable investigation by Board found misconduct. 212 A.D.3d 126 (3d Dept. 2022)

HPDU: WHAT ARE THE SANCTIONS? (cont'd)

Voluntary resignation:

- Offered to providers facing temporary suspension or removal/revocation
- Deny application at registration time



Habif v. NYS WCB — the 3d Dept. ratified the Board's authority to deny provider's application after reasonable investigation by Board found misconduct. 206 A.D.3d 1322 (3d Dept. 2022)

HPDU: WHAT CAN BOARD ATTORNEYS DO?

The Board's attorneys work to:

- Identify patterns of provider misconduct.
- Document instances of provider misconduct.
- Communicate with HPDU and MDO regarding misconduct encountered during hearings/records of hearings.



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