

**ADVISORY NO. 54**

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**TOPIC: MAXIMUM MEDICAL IMPROVEMENT/TERMINATION OF BENEFITS**

We are attaching TWCC Advisory 92-05. This is a very important memorandum which offers concise (but very cumbersome) procedures and instructions on what to do when a carrier doctor (RME) finds Maximum Medical Improvement (hereinafter called MMI).

We have prepared the attached checksheet (see Exhibit 1). We have developed a continuous form letter (see Exhibit 2) which can be completed chronologically and will document your efforts. PLEASE ADAPT THIS CONTINUOUS FORM TO YOUR COMPANY'S USE. The idea is to have all documentation on one page, if possible. We expect unrealistically strict requirements from the commission for compliance. **YOUR RIGHT TO USE YOUR DOCTOR'S OPINION WILL BE SERIOUSLY UNDERMINED IF YOU DO NOT FOLLOW THESE PROCEDURES.**

A recurrent question is whether you must go back and resume temporary income benefits on cases prior to the above-referenced memo. It is our opinion that, with the commission directing opposite action in the past by refusing to set cases for BRC on the MMI issue, and advising carrier to terminate benefits without a hearing, we could reasonably differentiate the pre-August 12, 1992 handling. Each case should be evaluated by its own facts. If you wish an individual opinion, please send a file for review.

A final issue is whether the Executive Director has the statutory authority to create, in essence, a rule. He probably does not and he is calling the announcement an "advisory." However, the commissioners have indicated in an open meeting that a rule will be adopted along these lines and an employer commissioner was very concerned about "unilateral" action by carrier in terminating compensation after a RME found MMI. It is our opinion that the appeals panel is definitely leaning in the direction of a hearing prior to termination of benefits.

In short, this procedure is coming and this is not a battle we recommend fighting at this time.

**RECOMMENDED PROCEDURES WHEN REQUIRED MEDICAL EXAMINATION  
PHYSICIAN (RME) CERTIFIES MMI**

1. Upon receipt of carrier physician's examination report (RME), immediately send TWCC-69 report to treating doctor. Send a copy to the commission and claimant and ask for treating doctor's agreement or disagreement (See Exhibit 2 -- continuous form letter).
2. Continue to pay some form of Income Benefits (TIBs or IIBs).
3. Treating Doctor Responses:
  - a. If treating doctor agrees with carrier doctor regarding certification of MMI, it is our opinion that TIBs can immediately be terminated. File TWCC 21 timely.
  - b. If treating doctor responds within 17 days and disagrees with carrier doctor, send response to carrier doctor and ask carrier doctor if the response of the treating doctor changes his opinion (see Exhibit 2 -- form letter with a "yes" or "no" or "other" blank for carrier doctor to sign).
  - c. If treating doctor **DOES NOT RESPOND** within 17 calendar days from date of your request, then do the following: (see Exhibit 2 -- form letter)
    - i) Request commission's assistance in obtaining response from treating doctor;
    - ii) Ask commission to designate a doctor;
    - iii) Request BRC using properly completed TWCC-45.
4. Diary file for 20 days. If the case is not set by that time:
  - a. Call disability determination officer; and
  - b. Complain in writing (send a copy to Flahive, Ogden & Latson).
5. Continue paying TIBs until BRC. If you disagree with the designated doctor, you are still entitled to a BRC and CCH, as well as ultimate Judicial Review even though the commission may pressure you to give up this right. Designated doctor is presumptive weight, but not conclusive.



**EXHIBIT 1**