

ADVISORY NO. 71

TOPIC: SELECTION OF DOCTOR

Section 4.63 of the Texas Workers' Compensation Act took effect January 1, 1993. Section 4.62 of the Act expired on December 31, 1992. There were different interpretations as to how this change would affect a claimant trying to switch doctors after 1-1-93 if the date of injury occurred on or before 12-31-92. The Commission's interpretation of this change is outlined in the attached Memorandum to all Carriers. *The Commission's interpretation of the change in the Statute requires all injured workers who desire to change doctors to follow Section 4.63 regardless of their date of injury.* We urge and recommend that our clients follow the Commission's interpretation in this regard.

We would recommend that the attached Memorandum from the Commission be duplicated and provided to all Carrier Representatives involved in the Workers' Compensation process. In summary, the changes from Section 4.62 to Section 4.63 will involve the following:

Only the doctors on a list of doctors approved by the Commission can provide medical treatment in a workers' compensation case except for an emergency situation. All doctors (medical doctor, osteopath, optometrist, dentist, podiatrist and chiropractor) currently licensed in Texas are *automatically* on the list. We anticipate that the Commission will eventually publish a list of those doctors *excluded* from the Commission's approved list. Out-of-state doctors must apply to the Commission for permission to be included on the list.

The claimant is now only entitled to one choice of physician rather than two. The claimant can select the initial choice physician without Commission approval. However, once the initial choice has been made, any subsequent request to change physician must be approved by the Commission. Furthermore, unlike Section 4.62, *a change in physician requiring approval must now come from the Commission and no longer from the Carrier.* In other words, even if the Carrier is not opposed to the change, the claimant must obtain permission from the Commission to make the change. All such requests for a change in doctor must be made in writing on Commission Form TWCC-53. Telephone requests will be honored only in unusual situations. Form TWCC-50, which was used under Section 4.62, is now obsolete and can longer be used.

Finally, and very importantly, effective 1-1-93, *a claimant may not change doctors for the purpose of securing a new impairment rating or medical report.* Until an official rule is adopted, the criteria that the Commission will use for authorizing selection of an alternate treating doctor are listed in the attached instructions from the Commission. Please note that the attached instructions are directives to Commission Staff as to how Section 4.63 will be administered by the Commission.

NOTE: Please interline your copy of all new law Texas Workers' Compensation Manuals by deleting the following sentence in the Editor's Comments:

FLAHIVE, OGDEN & LATSON

"Effective for injuries which occur on and after 1/1/93"

The Commission has interpreted the law to mean that Section 4.63 applies likewise to all new law cases.