

## ADVISORY NO. 176

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### TOPIC: EXCHANGE OF DOCUMENTS

This law firm has been closely monitoring the duty of carriers to exchange documents. That duty is very clear prior to the benefit review conferences and contested case hearings. Rule 142.13 requires that before a CCH, a party exchange the following:

- (A) All medical reports and reports of expert witnesses who will testify at the hearing;
- (B) All medical records;
- (C) Any witness statements;
- (D) The identity and location of any witness known to have knowledge of relevant facts; and
- (E) All photographs or other documents which a party intends to offer into evidence at the hearing.

The Appeals Panel has considered their duty and concluded that the evidence could not be admitted because of the failure to exchange.

This firm supports full disclosure and complete exchange of all documents covered by the rule. Any document provided by you to us, and contained in your file at the time that we are required to make an exchange, and potentially within the purview of this rule will be exchanged by this firm.

This will include exchange of peer reviews. It will include private opinions of medical providers retained by you. We encourage you to make these exchanges when the rule calls upon you to make them. We believe that full disclosure is contemplated under the rules of the Commission, and plaintiff's counsel will undoubtedly contend that it is mandated by the duty of good faith and fair dealing as well.

If, however, you are opposed to the disclosure of a document that appears to be compelled by the rules, and in particular with respect to private medical opinions retained by you as a peer review of either your medical payment obligation or indemnity obligation, you may instruct us to withhold disclosure. This instruction should be in writing. If in writing, and received by us prior to the time that we are required to make the disclosure, we will honor the request.