

ADVISORY NO. 323
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**TOPIC: CERTIFICATION OF MMI AND IMPAIRMENT
ON OLD CASES**

Unless the Court of Appeals in a subsequent case reaches a different result than the decision in *Fulton v. Associated Indemnity*, the 90-day rule has been abolished for all cases. Since January 1, 2002, the 90-day rule has been deleted by TWCC for all certifications which were not final by that date. As a result, carriers may anticipate a number of cases in which claimants have their old dates of MMI and impairment ratings reviewed by new doctors. This advisory reviews the appropriate carrier response to those new certifications.

Reports From a Doctor Other Than Designated Doctor

If there is a prior medical report upon which you were entitled to rely, you may continue to rely upon that report. You have no duty to act upon the new TWCC-69. You are permitted to rely upon a TWCC-69 by a treating doctor or a TWCC-69 by a non-treating doctor that become “final” under the 90-day rule. Although the *Fulton* case overturned the 90-day rule, the court of appeals did not overturn prior authority that a carrier could act upon a “final” certification pending the receipt of a designated doctor report. Any defense to the payment of TIBs that predated the newly received report remain just as valid after the report is received.

If the new TWCC-69 is the first report certifying MMI and impairment, within five days of receiving the report, the carrier must either accept the impairment rating and initiate benefits, or dispute the impairment rating and reasonably assess the benefits owed. TEX.LAB.CODE §481.121(c). Note that only an authorized doctor may now certify MMI. Doctors authorized to certify MMI include a treating doctor, a doctor to whom the claimant is referred by the treating doctor for the purpose of certification, and a designated doctor. For RMEs appointed on or after January 2, 2002, an RME doctor may certify MMI and impairment only after a designated doctor’s certification. The carrier should not rely upon a report from a doctor not qualified to certify MMI and impairment.

Designated Doctor

Of course, an employee may elect to simply request that TWCC appoint a designated doctor. The opinion of the designated doctor is entitled to presumptive weight.