

**ADVISORY NO. 347**  
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**TOPIC: COMPLIANCE & PRACTICES NOW ACTIVELY ENFORCING  
ACT AGAINST HEALTHCARE PROVIDERS**

Historically, Compliance & Practices has penalized workers' compensation carriers for the slightest infractions, while ignoring other violations – some of them serious, against other participants in the system. That has now changed. As we noted in the August 2002 *FOLIO*, the Commission has begun examining the failure of providers to properly complete TWCC-73s.

In the last few months, eight percent of all violation referrals processed by TWCC's C&P Division have been against providers for failing to properly complete TWCC-73s! This is a substantial shift in the policy at TWCC.

TWCC will work any complaints presented against providers for failing to timely complete required reports such as TWCC-69s (Assessment of Impairment) and TWCC-73 (Work Status Reports).

Moreover, TWCC is interested in a provider's failure to properly complete the form in its substantive parts. Particularly, if the doctor is of the opinion that the employee is unable to return to work at full duty, **the doctor is required to provide an estimated date of expiration for the restrictions, and to provide a specific explanation of how the conditions prevent the employee from returning to work.** It is not enough that the employer does not have light duty work. That is not the test; rather, as noted in the preamble to Rule 129.5:

[W]hen making a decision about the employee's work status the doctor is not supposed to be influenced by whether the employer has a specific position available. The job of the doctor is to identify what the employee's restrictions are and then let the employer attempt to find appropriate work.

This is a responsibility of the treating doctor or examining doctor completing the TWCC-73. A TWCC-73 is not properly completed if it fails to explain in Part 3, any restrictions identified in Part 2. Failure to provide a complete form when required constitutes an administrative violation and subjects the doctor to a potential penalty of up to \$500 per incomplete form. Continued noncompliance by the doctor can lead to penalties of up to \$10,000 and removal from the Approved Doctors List.

Be sure, however, that referrals are based upon noncompliance with the appropriate rule. For example, the failure of the claimant to sign the TWCC-73 is not a violation of the rule and a referral should not be made on that basis.

FLAHIVE, OGDEN & LATSON

Send those TWCC-73s to Calvin Shannon, Medical Audit, Compliance & Practices Division, 4000 South IH-35, MS -11, Austin, Texas 78704, with a generic letter of referral stating the substantive equivalent of the following:

Please review the attached documents for possible noncompliance with the healthcare provider's reporting responsibilities under the Act and Commission Rules.

In the event the actions of the medical provider suggest that the provider is not efficiently utilizing medical care, or is rendering impairment ratings inconsistent with the extent of the injuries indicated by other credible evidence, we recommend that it be referred to the Medical Quality Review Panel. Although the MQRP is unlikely to act upon any specific referral, they will consider the information when reviewing the healthcare provider's application to the Approved Doctors List.