

NEW YORK WORKERS' COMPENSATION ALLIANCE

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June 6, 2011

Re: Medical Treatment Guidelines

Chairman Robert Beloten
Workers' Compensation Board
111 Livingston Street – 22nd Floor
Brooklyn, New York 11201

Honorable Chairman Beloten:

We previously wrote to you on December 1, 2010 and again on April 12, 2011 regarding the Medical Treatment Guidelines.

We read with interest the press release indicating that the Board intends to take on the task of creating more Medical Treatment Guidelines, supplementing those it previously adopted upon the recommendation of the Insurance Department Task Force.

As you know, it continues to be our position that the Medical Treatment Guidelines violate the statutory requirement injured workers shall receive adequate care and treatment “for such period as the nature of the injury or the process of recovery may require.” Substituting that statutory requirement with a set of Guidelines that artificially

and uniformly imposes a standard of care is simply wrong, and it continues to be our position that the Guidelines and all associated regulation and process should be withdrawn.

Since we understand that the Board disagrees with our position, and that the Guidelines will remain in place until their validity is adjudicated in another forum, we are in favor of efforts undertaken to remediate the harm being done by the existing Guidelines and their application.

One area of concern identified in our most recent letter of April 21, 2011 was the misapplication of the existing Medical Treatment Guidelines to cases involving chronic treatment, and another was what we view as the retroactive application of the Guidelines to cases in which symptomatic treatment was previously approved.

The recent press release refers to the creation of Guidelines for chronic pain or treatment. The promulgation of proper guidelines for such cases that are consistent with previous authorization for symptomatic treatment could, in conjunction with other measures, help ameliorate the existing situation. We hope that the Board's Task Force will be mindful that workers who received decisions authorizing treatment in the past, or who stipulated to resolutions of their claims which included treatment authorization, should not have their rights vitiated at the whim of regulatory change. We also hope that such Task Force will bear in mind the basic mission of the Workers' Compensation Law to provide compensation and medical treatment for injured workers.

We hope that in addition to the creation of this Task Force, the Board will address other process issues, such as carrier failure to send copies of MG-2 denials to claimant attorneys; obligating employers and carriers to subpoena the treating physician for cross-

examination or to pay any fees associated with the physician's deposition or testimony; unifying variance and non-variance issues at hearings; and providing for payment to claimant attorneys for the time and effort associated with variance process.

Thank you for your careful consideration of these issues.

Very truly yours,

Robert E. Grey
Chair
Workers' Compensation Alliance