

NEW YORK WORKERS' COMPENSATION ALLIANCE

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Farmingdale, New York
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Inquiry Contact:

Robert Grey
Grey & Grey, LLP
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November 27, 2017

Re: November, 2017 Proposed
Guidelines Concerning Schedule
Loss of Use

By Email: regulations@wcb.ny.gov

Regular Mail

ATTN: Heather McMaster
Workers' Compensation Board
328 State Street
Schenectady, New York 12305

Dear Ms. McMaster:

I am attaching a four-page document that provides detailed comments regarding the Board's November, 2017 proposed guidelines.

Although we believe that the November guidelines represent a significant improvement as compared to the September guidelines, we still have two significant concerns that we hope can be addressed.

First, while we do not object to the establishment of a 35% schedule loss of use as a baseline for total joint replacement surgery, we believe that all range of motion deficits should be considered

in addition to that figure. Not only would this be appropriate as a matter of medicine, it would help preserve the availability of the provisions of Workers' Compensation Law § 15(3)(v) for injured workers, which would be consistent with the purpose of the law in ensuring appropriate compensation for loss of wage-earning capacity.

Second, we object to the elimination of the special considerations for tears of the medial meniscus and the rotator cuff. The Legislative mandate was for a revision of the guidelines based on advances in medicine that result in better outcomes. The current guidelines assign a schedule loss of use for meniscal or rotator cuff tear with or without surgery, and are clearly intended to assign some compensation for the anatomical damage resulting from the injury. The elimination of the special consideration is thus unaffected by medical advances, since it depends on the nature of the injury regardless of treatment.

We have several other concerns, as well as some positive comments, which are included at greater length in the attached document.

Thank you again for your careful consideration of our previous comments in connection with the September proposals, and for taking this letter and the attachment into account in reviewing the November proposal.

On behalf of the WCA Board of Directors,

Robert E. Grey
Chair