

BULLETIN

Privacy, medical records, and the WCB

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I have developed neck and shoulder pain that I feel sure is the result of the repetitive actions required by my work. I put in a claim to the WCB. I understand that they will be getting records from my doctor. Can they do that without my permission?



The short answer is -yes." The WCB has extensive powers to obtain almost any information they want about your medical history once you have filed a claim. Their authorization is contained in the small box you sign at the bottom of the application form, or -Form 6" as it is known.

That declaration is, in part, as follows:

-I declare all the information I have given on this report is true and correct and I elect to claim compensation for the above mentioned injuries or disease.

-I authorize the Workers Compensation Board (the "Board) and Review Board to obtain or view, from any source whatsoever, including records of physicians, qualified practitioners, medical insurers or hospitals, a copy of records pertaining to examination, treatment, history and employment of the undersigned.

-Further, I acknowledge that the Board may disclose information from my claim to my employer for purposes of appeal, or may disclose such information to others in accordance with the law, including the Freedom of Information and Protection of Privacy Act."

The first thing the Board will do when you make a claim is to get the treatment records from your family physician and/or the treating physician who first saw you ... including doctors at the emergency department if you were seen there.

Typically the Board will ask for records going back approximately a year, but in some cases they may go back longer than that. If it becomes an issue, they may go back as far as they want.

For example, I once represented a worker (not an HSA member) who suffered a brain injury for which she was entitled to a pension.

The WCB felt that all the problems she was experiencing could not be attributed to the injury and wanted to know what her -baseline" mental condition was. They asked for her medical records, as well as her school records going back to when she was in primary school.

In cases where there is any dispute about which, if any, of your health problems are due to your work, the Board will get more extensive records.

They will likely contact every doctor you have seen with respect to the condition about which you are making a claim and get their treatment records.

If you know the Board will be contacting your doctor *write your doctor a note to go on your file expressly reminding her that she is authorized **only** to give the Board records pertaining to your work-related injury.*

Many doctors will send their complete file on a patient without any deletions whatsoever. I have seen people mortified by the release of medical records pertaining to issues completely unrelated to their compensable injury, such as sexual problems, mental and emotional history, history of sexual or child abuse or other intensely personal information.

A good doctor will black out anything unrelated to the claim and thus avoid acute embarrassment and distress for their patient.

You should also be aware that if there is an appeal *the employer will get a copy of everything provided on the file to the Board.*

As the employer is an -interested party" to any appeal (the rate they pay the Board goes up with each accident or occupational disease caused at their workplace) they are entitled to all documents we get.

Other agencies the Board may contact include LTD or other insurance plans and any other therapists you may have received service from.

All in all, the WCB has extensive powers to collect medical information about you. Be aware of these sweeping powers and take steps when you file your claim to ensure that all they get is what is related to the issue

before them.

Sarah OLeary handles WCB appeals on behalf of HSA members.

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