



Texas Department of Insurance

Division of Workers' Compensation

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Memorandum

To: Workers' Compensation System Participants

From: Kerry D. Sullivan, Deputy Commissioner for Hearings

Date: January 20, 2015

Subject: Discovery Relating to Testifying Experts

The Division of Workers' Compensation (DWC) reminds system participants that parties in DWC dispute resolution proceedings are required to exchange "pertinent information" prior to benefit review conferences and contested case hearings. Pertinent information is inclusively defined to encompass "all information relevant to the resolution of the disputed issue or issues. . . ." 28 Tex. Admin. Code (TAC) §141.4(a). The exchange of this information is intended to facilitate agreed resolution of disputes and well-informed decision-making by the parties and the DWC.

Along with the required exchange of pertinent information, limited additional discovery is also authorized, including interrogatories in the form prescribed in 28 TAC § 142.19. The prescribed interrogatories contain standard, specified questions and up to five free-form questions. If the parties wish, they may use the free-form interrogatories to seek information regarding the identity of a testifying expert and the general substance of the expert's mental impressions and opinions—even if that expert has not prepared a written report. If the testifying expert did prepare a written report, the report would, of course, likely be subject to the exchange requirement discussed above.

Testifying experts are reminded that the term "peer review" is defined in 28 TAC §180.1 as "[a]n administrative review by a health care provider performed at the insurance carrier's request without a physical examination of the injured employee." Pursuant to 28 TAC §19.2002, health care providers performing peer reviews on medical necessity issues must generate a written report.

Hearing Officers will consider and rule on any case-specific objections to the free-form interrogatories. Hearing Officers will not allow parties to effectively shield the identity and opinions of testifying experts by listing an array of possible expert witnesses, only one of whom is actually expected to testify.

The DWC's approved interrogatories are available on the TDI website at <http://www.tdi.texas.gov/wc/rules/documents/clainterrcar.pdf> and <http://www.tdi.texas.gov/wc/rules/documents/carinterrcla.pdf>.

If you have questions regarding this memo, please call me at 512.804.4015 or e-mail me at Kerry.Sullivan@tdi.texas.gov.