



# Client Alert

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## Authorizing Medical — Significant Board Rule Change

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The State Board of Workers' Compensation periodically implements amendments to its procedural Rules. Effective July 1, 2017, the Board implemented a major change to Rule 205, which we anticipate will have a profound impact on how quickly employers and insurers must respond to disputes involving authorized medical treatment.

Specifically, the new Rule allows an employee to file a Petition on Board Form WC-PMT requiring an employer to “show cause” why certain medical treatment or testing recommended by the authorized treating physician has not been authorized. As a prerequisite to filing the Petition, the request for medical treatment must have been submitted to the employer or insurer at least 5 business days before the Petition can be filed. The Petition will trigger the issuance of a notice from the Board of a telephonic conference before an Administrative Law Judge, to be scheduled for a date and time not more than 5 business days from the date of Petition.

Postponements of the scheduled conference call will be granted for good cause only, and any party requesting a postponement of the conference call must propose an alternate date within 5 business days of the original conference call date. Moreover, the requesting party must certify the opposing party is agreeable with such date. It is also important to note that failure of any party to participate in the conference does **not** preclude a ruling on the Petition. Thus, the Administrative Law Judge may still be moved to rule even if one side does not participate or claims to be unavailable for the call.

Alternatively, in lieu of scheduling a conference call, the employer and insurer have the option to authorize the treatment by completing Section C of the form WC-PMT or controverting the treatment by completing Section D of the same form. The filing of a controvert on the form WC-PMT serves as notice the medical treatment/testing at issue is being denied for the specific reasons stated and no other forms need to be filed. Any scheduled conference call will be cancelled upon completion of the form.

If the conference call takes place, the purpose of the call will be for the employer/insurer to show cause why the treatment or testing at issue has not been authorized. The Administrative Law Judge may then issue an Interlocutory Order which addresses authorization of the treatment or testing at issue. If the Administrative Law Judge agrees the treatment or testing in question should be authorized, the Order will require the employer/insurer to provide written authorization to the medical provider.

The Interlocutory Order will take effect absent a timely objection which is actually a request for hearing. Hence, the filing of a WC-14/Request for Hearing within 20 days will operate as a temporary stay. If the objecting party fails to request a hearing within 20 days, the Interlocutory Order will become final and will be construed as consent to payment.

While the practical implications of the Rule changes remain to be seen, it is clear the intent of Rule 205 is to create an expedited timetable for resolution of medical issues. In light of this new rule, it is crucial for employers and insurers to act in a prompt and decisive manner when requests for treatment are submitted, as any delay may result in an immediate conference call with an Administrative Law Judge, including the possibility of an adverse decision. The underlying basis for the Rule change appears to arise out of concerns medical treatment is unnecessarily delayed by neither formally authorizing nor formally denying same. The previous language of the Rule apparently did not adequately address these concerns. Whether this new approach works better or not, the immediate result is we are now dealing with a strict time constraint and a new, formal mechanism for resolving disputes over medical authorization. We will keep you updated as the Board implements the Rule changes, and we will be happy to discuss any issues or concerns.

If you wish to further discuss these changes, please contact a Swift, Currie, McGhee & Hiers' attorney at 404.874.8800 or via our website, [swiftcurrie.com](http://swiftcurrie.com).

*The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.*