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PRE-DESIGNATION OF PERSONAL PHYSICIAN

The law allows for the injured employee to select their personal physician in advance of a work injury or illness as their pre-designated personal physician. Pre-designation is one of the most aggravating of the medical benefits and raises the most questions from employers during our educational sessions. In this paper, we are going to lead you through your legal duties and share the questions most asked by employers.

The law also allows for the employee to notify you, in writing, if they wish to be treated by their personal chiropractor or acupuncturist.

DUTY OF THE EMPLOYER

At the time of hire, or by the end of the first pay period (CCR 9880, 9782(b)), the employer is to provide each employee with information about their workers' compensation rights, including the employee's right to pre-designate their personal physician or notify you they wish to be treated by their personal chiropractor or acupuncturist.

The employer may use the State's optional forms (Form 9783 for physician; Form 9783.1 chiropractor/acupuncturist) *OR* the employer may create their own form *OR* the employee may provide you the information on the back of a napkin or a scrap of paper.

The employer, within one day of knowledge of injury/illness, should direct the employee to the employer's designated first injury clinic *OR* the employee's valid pre-designated physician.

Why would I send the employee to our clinic and not directly to their pre-designated physician?

Sometimes the pre-designated physician cannot see the employee quickly, or has changed their policy regarding treating workers' compensation. It is important to have your employee evaluated and/or receive treatment as quickly as possible.

If I send the employee to our first injury clinic, are they giving up their right to see their pre-designated physician?

No. They can still go to their pre-designated physician as soon as the employee can get an appointment with them. However, the employee may decide to continue to treat with your first injury clinic and not seek care from their pre-designated physician.

What if the employee notified us in writing or via the optional form of their wish to be treated by their personal chiropractor or acupuncturist?

The right of the employer is to send the employee to your designated first injury clinic. THEREAFTER, the employee may seek treatment with their personal chiropractor or acupuncturist.

What if we didn't give the employee their rights regarding pre-designation at the time of hire?

Send the employee to your first care clinic. If the employee litigates or discovers they were not provided their rights, they (or their attorney) can then take control of their medical treatment and select a physician to treat them. You should also insure you give all your employees information about their rights if you discover they have not been provided in the past.

HINT: Have each employee sign or initial receipt of any new hire documents including the information entitled "Facts About Workers' Compensation" which includes the pre-designation information and the optional form. There may be a time where we request this information to defend the claim.

What if we have a Medical Provider Network (MPN), can the employee pre-designate?

Yes. Remember, if the employee pre-designates, you do not have medical control of the claim. If you have an MPN, you retain lifetime medical control.

If you do not have an MPN, the employee has the right to change their treating physician after 30 days without a pre-designation.

Do I have to notify my employees annually about their right to pre-designate?

No. Only at the time of hire and if the State's Rules and Regulations would require re-notification due to a change in the law. However, if your policy is to remind or notify your employees annually, you may do so.

What if my employee insists on pre-designating more than one doctor?

The law is silent. The employee must provide a valid completed form for each personal physician.

DUTY OF THE EMPLOYEE

The employee is to complete either the optional form or your form and return it to you **PRIOR** to any injury or illness. They may select their personal physician who:

- Is the employee's personal medical doctor (M.D.) or doctor of osteopathic medicine (D.O.) or medical group who
- Has previously directed the employee's medical treatment, retains their medical records AND
- Is a Board certified or Board-eligible internist, pediatrician, obstetrician-gynecologist or family practitioner.
- The employee must provide the employer with the doctor's name, address, phone number

- The employee must obtain the signature of the physician OR from the physician's designated employee OR provide some other documentation that the physician agrees to be pre-designated.

NEW: As of January 1, 2013, the employee must have health care insurance for injuries or illnesses that are not work related. The health care coverage can be provided by their employer, their spouse's employer, a purchased policy, etc.

DUTY OF THE PRE-DESIGNATED PHYSICIAN

- ✓ The physician agrees to be pre-designated prior to the injury/illness.
- ✓ The physician MAY sign the optional form or your form/or the back of the paper sack, as documentation of such agreement OR, the physician may authorize a designated employee of the physician to sign on his/her behalf.
- ✓ If the physician or designated person does not sign the form, there must be other documentation that the physician agrees to be pre-designated **prior to the injury** in order to satisfy this requirement.

What if the employee doesn't obtain the physician's signature or if the physician refuses to sign the form or provide other documentation?

The pre-designation must meet all the requirements to be valid.

Can the employer or TPA contact the employee's pre-designated physician to determine if the physician agrees to the pre-designation?

No. **UNLESS** you have the express written consent from the employee in advance of contacting their physician. (CCR 9780.1(f))

Define "Personal Physician."

- ✓ The employee's regular physician and surgeon
- ✓ Licensed pursuant to Chapter 5, Division 2, beginning with Section 2 of the Business and Professions Code (which, by the way, partly states that the physician is licensed to provide drugs, use devices, penetrate human tissue, sever human tissue)
- ✓ Who has been the employee's primary care physician and has previously directed the medical treatment of the employee **AND**
- ✓ Who retains the employee's medical records including their medical history
- ✓ It may include a medical group

What if an employee wants to inform me of their wish to be treated by their personal chiropractor or acupuncturist?

If you do not have an MPN, the employee may be able to change their treating physician to their personal chiropractor or acupuncturist following a work injury/illness AND after they have been directed to your first injury clinic. The employee must provide the employer the name and address of their personal chiropractor or acupuncturist in writing, prior to the injury. After the employee's treatment has been initiated with another physician (generally your first injury clinic) the employee may request to have their treatment transferred to their personal chiropractor or acupuncturist.

NEW: A chiropractor cannot be the employee's treating physician after they have received 24 chiropractic visits. The term "visits" means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management. Once the employee/patient has received 24 chiropractic visits, and they still require medical treatment, the employee will have to select a new physician who is not a chiropractor.

If you have an MPN, the employee can request a change to a chiropractor or acupuncturist only WITHIN your MPN. (CCR 9783.1) If they have received 24 chiropractic visits as noted above, the employee will have to select a physician within the MPN who is not a chiropractor.

If the employee has notified us they have a personal chiropractor or acupuncturist, does the employee have to wait 30 days to make the change from our first care clinic?

No. They can do it any time after they have been seen by your first injury clinic.

Is there a mandatory form for the employee to use to notify us of their personal chiropractor or acupuncturist?

No. There is an optional form, Form DWC 9783.1 entitled *Notice of Personal Chiropractor or Personal Acupuncturist* OR you can create your own OR the employee can provide the information on the back of a napkin or scrap of paper.

Does the Chiropractor or Acupuncturist have to sign the form?

No. There is no requirement for a signature, only that the employee gives you the name, address and telephone number and the employee sign the form AND;

- ✓ The chiropractor (DC) or acupuncturist (LAC) must be the employee's regular chiropractor or acupuncturist
- ✓ The DC or LAC must have directed the employee's treatment and
- ✓ Retains the employee's records and history.