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September 22, 2008

Honorable Elizabeth Crum  
Acting Deputy Secretary for Compensation and Insurance  
Department of Labor & Industry  
651 Boas Street  
Harrisburg, PA 17121

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INDEPENDENT REGULATORY  
HEARING COMMISSION

Re: WCAB/WCJ Regulations - Comments

Dear Deputy Secretary Crum:

I am writing to you regarding the proposed Rule making set forth in the Pa. Bulletin 38 Pa.B. 4902, published Saturday, September 6, 2008, regarding the Special Rules of Administrative Practice & Procedures before Workers' Compensation Judges.

In particular, my critical comments and suggestions pertain to §131.53 **Procedures subsequent to the first hearing (current proposed language)** "dates of the medical examinations, if not scheduled prior to the first hearing actually held, shall be scheduled within 45 days after the first hearing actually held."

May I suggest rather than an iron clad rule, additional language be added to permit the Workers' Compensation Judge, upon good cause shown, to extend the time limit for the independent medical examination. This can be necessary because the complex nature of the alleged injuries may involve more than one independent medical examination by different specialists. There may be a delay in obtaining/exchanging medical records necessary to conduct the Independent Medical Examination. Also, the health of the Claimant, as well as the residence/physical location of the Claimant (i.e. out-of-state), may also be contributing factors for delay purposes. It is not unusual in the course of Workers' Compensation litigation that a new medical issue arises that may warrant a re-examination by Defendant's medical expert. Also, sometimes Claimant's counsel will delay the selection of his medical expert until after his client testifies and, on occasion, will arrange for a medical examination with a new expert upon discovering the treating physician is unavailable and/or declines to testify. My suggestion is to permit the Workers' Compensation Judge assigned to hear this case, the necessary flexibility "upon good cause" to extend the time deadline for the dates of medical examinations by both Claimants and Defendants. Thank you for your consideration of this comment and suggestion.

Very truly yours,



Thomas C. Lowry  
Attorney at Law