

How to Counter a "Check the Box" Questionnaire



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Practice Areas:

- Workers' Compensation

In a previous post, Sufficiency of medical opinions via "check the box" questionnaires, I discussed the validity of using "check the box" questionnaires to address issues of compensability and future medical treatment in workers' compensation claims. As stated, the South Carolina Workers' Compensation Commission has not promulgated a regulation nor given guidance on the use of medical questionnaires, and "check the box" questionnaires remain admissible as medical evidence at a hearing. As such, when faced with a questionnaire addressing a material issue in the claim, there are certain measures that can be taken in response. As with most things in life, what you put in largely dictates what you get back.

Arguing Against the "Check the Box" Questionnaire – Since the "check the box" questionnaires are admissible, we can not object to their being submitted as part of the record or being considered in making a decision about the claim. However, we can argue that the questionnaire should not be given the same weight and credibility as other medical evidence. The most effective argument is to identify inconsistencies, if any, between the questionnaire and prior medical records from that provider or others. The downside to this approach is the Commissioner is not given a competing opinion or conflicting evidence upon which to rule in your favor.

The Reply Questionnaire – Following receipt of a "check the box" questionnaire, parties will sometimes prepare a responsive questionnaire to the doctor asking the doctor to address certain issues not raised or not fully explained in the "check the box" format. I do not find this to be a very useful method of gathering additional information or clarification given the initial criticisms of the questionnaires in general, namely the lack of probative value in addressing an important medical issue. Furthermore, the doctors will often reply "see prior response" or "see office note," which is vague and of little assistance.

Deposition of the Doctor – Taking a doctor's deposition allows the parties to present medical records to the doctor and question him/her at length about the basis of the opinion, in light of supporting or contradictory medical evidence, which usually clarifies the disputed opinion. While taking a doctor's deposition will often bolster or support the opinion given in the "check the box" questionnaire, it at least allows the parties, and more importantly the Commission, to fully comprehend the doctor's opinion and how he/she arrived at the opinion. On rare occasion, the deposition will allow us to present the doctor with some key medical evidence that he/she had not previously seen and causes him/her to change or drastically alter their opinion. Another, less immediate benefit of a deposition, is that it also may act as a basis for a reviewing court to consider when determining if the burden of proof has been satisfied in certain complex cases.

As long as “check the box” questionnaires are admissible as and considered as medical evidence before the Commission, they have to be treated in the same manner as other medical evidence. As such, don’t just simply discount them. Instead, respond to them in a manner that will allow for the opinion of the medical provider to be expounded in a clear, succinct fashion that addresses the medical evidence and how that objective medical evidence supports the opinion given. While depositions are more costly than the questionnaire, the old saying “you get what you pay for” certainly applies. Alternatively, if there are material inconsistencies in the questionnaire and prior records, allowing you to challenge the validity of the questionnaire, you may consider avoiding the deposition in favor of addressing the inconsistencies at a hearing.

About Tom Bacon

Tom Bacon is a shareholder with Collins & Lacy practicing in workers’ compensation. During his seven years of practicing solely in this area of law, Tom has represented large and small businesses, insurance companies and uninsured employers, and he has successfully argued cases to the Full Workers’ Compensation Commission, Circuit Court and Supreme Court. After earning his dual degree in Political Science and History at Furman University, Tom graduated from the University of South Carolina School of Law. Prior to joining Collins & Lacy, Tom was an attorney at a firm in Charleston, South Carolina.

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