Wisconsin Worker's Compensation Claims

The HIPAA Privacy Rule and Its Impact on Wisconsin Worker's Compensation Claims

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1.0 In General

The federal Health Insurance Portability and Accountability Act (HIPAA) of 1996[1] consists of two major parts. Title I protects health insurance coverage for workers and their families when they change or lose their jobs. Title II consists of the Administrative Simplification provisions of HIPAA, that require the Department of Health and Human Services (HHS) to establish national standards for electronic health care transactions and national identifiers for providers, health plans, and employers. Adopting these standards was intended to improve the efficiency and effectiveness of the nation's health care system by encouraging the widespread use of electronic data interchange in health care. Title II of HIPAA also addresses the security and privacy of health data.

HIPAA required the Secretary of HHS to recommend privacy standards for health information to Congress 12 months after enactment. If Congress did not enact privacy legislation within three years of enactment, then the Secretary was to promulgate privacy regulations for individually identifiable electronic health information. Congress failed to meet its self-imposed deadline so HHS had to come up with the privacy regulations.

HHS adopted its final Standards for Privacy of Individually Identifiable Health Information'' (''Privacy Rule'') on December 28, 2000. However, the Privacy Rule as adopted was subject to a great deal criticism from a variety of groups. HHS then adopted modifications to the Privacy Rule, effective October 15, 2002.[2]

HIPAA is administered by the U.S. Department of Health & Human Services (HHS). Many of the provisions of HIPAA are administered by the HSS Centers for Medicare & Medicaid Services (CMS).[3] However, the HHS Office for Civil Rights (OCR) is responsible for implementing and enforcing the Privacy Rule.[4]

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[1] Public Law 104-191.

[2] Federal Register,Vol. 67, No. 157, Aug. 14, 2002, available at: http://www.cms.hhs.gov/hipaa/hipaa2/regulations/privacy/finalrule/privrulepd.pdf. The "final" Privacy Rule (45 C.F.R. Parts 160 and 164), as amended, is available at: http://www.hhs.gov/ocr/combinedregtext.pdf or http://www.cms.hhs.gov/hipaa/hipaa2/regulations/privacy/default.asp.

[3] The Centers for Medicare & Medicaid Services (CMS) was formerly known as the Health Care Financing Administration (HCFA). The name was changed in 2001.

[4] There is a lot of useful information available from the OCR's Web page on Medical Privacy — National Standards to Protect the Privacy of Personal Health Information at http://www.hhs.gov/ocr/hipaa/.

In December 2002 the OCR released its guidance document explaining significant aspects of the Privacy Rule.[5] The effective date for the HIPAA privacy regulations is April 14, 2003, for all covered entities except small health plans.[6] The effective date for small health plans is April 14, 2004.[7]

The HIPAA Privacy Rule has been very expensive for health care providers to implement.

> A federal law, set to take effect April 14, is costing health care providers billions of dollars as it aims to protect the privacy of patients' medical records.
>
> The Health Insurance Portability and Accountability Act of 1996, known as HIPAA, was conceived by Congress as a way to encourage health care providers to electronically submit Medicare bills to the federal government.
>
> But the law's scope has grown and it will now require hospitals, physicians and health insurers to also strictly guard the confidentiality of all patient medical records.[8]

The HIPAA Privacy Rule provides substantial penalties for violation so that health care providers are taking it very seriously. Because health care providers are so concerned about complying with the Privacy Rule, it is likely to impact adversely on the investigation, management, and defense or prosecution of worker's compensation claims, even though it is not actually intended to apply to worker's compensation claims.

2.0 Covered Entities and Excepted Benefits

The Privacy Rule applies to "covered entities."

> *Covered entity* means:
>
> (1) A health plan.
>
> (2) A health care clearinghouse.
>
> (3) A health care provider who transmits any health information in electronic form in connection with a transaction covered by this subchapter.[9]

It is also important to understand what types of organizations are *not* included as covered entities.

> (2) *Health plan* excludes:

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[5] *OCR Guidance*, by the Office for Civil Rights, U.S. Department of Health & Human Services, Dec. 3, 2002 (http://www.hhs.gov/ocr/hipaa/privacy.html).

[6] HIPAA defines this as a health plan with annual receipts of $5 million or less. 45 C.F.R. 160.103 Definitions.

[7] 45 C.F.R. 164.534 Compliance dates for initial implementation of the privacy standards. Federal Register, Vol. 66, No. 38, Feb. 26, 2001, available at: http://www.hhs.gov/ocr/hipaa/dates.pdf.

[8] *Privacy law costs providers billions*, Milwaukee Journal Sentinel, Feb. 24, 2003 (http://www.jsonline.com/bym/News/feb03/120679.asp).

[9] 45 C.F.R. 160.103 Definitions.

> (i) Any policy, plan, or program to the extent that it provides, or pays for the cost of, excepted benefits that are listed in section 2791(c)(1) of the PHS Act, 42 U.S.C. 300gg-91(c)(1);[10]

The above cross-reference to the Public Health Service Act then defines "excepted benefits" as follows:

> (c) Excepted benefits
>
> For purposes of this subchapter, the term "excepted benefits" means benefits under one or more (or any combination thereof) of the following:
>
> (1) Benefits not subject to requirements
>
> (A) Coverage only for accident, or disability income insurance, or any combination thereof.
>
> (B) Coverage issued as a supplement to liability insurance.
>
> (C) Liability insurance, including general liability insurance and automobile liability insurance.
>
> *(D) Workers' compensation or similar insurance.*
>
> (E) Automobile medical payment insurance.
>
> (F) Credit-only insurance.
>
> (G) Coverage for on-site medical clinics.
>
> (H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.[11]

[Emphasis added.]

When the Privacy Rule was first released in December 2000, it was accompanied by a preamble that discussed and explained the provisions of the Privacy Rule.[12] As noted in the preamble to the new federal regulations under HIPAA:

> **Section 164.512(l)—Disclosures For Workers' Compensation**[13]
>
> The NPRM did not contain special provisions permitting covered entities to disclose protected health information for the purpose of complying with workers' compensation and similar laws. *Under HIPAA, workers'*

[10] 45 C.F.R. 160.103 Definitions.
[11] 42 U.S.C. § 300gg-91(c)(1).
[12] When the Privacy Rule was first released in its original form in December 2000, HSS made it available on the Internet as a PDF file that was a total of 1535 pages. The "preamble" consisted of the first 1394 pages. The preamble is available in four parts at: http://www.cms.hhs.gov/hipaa/hipaa2/regulations/privacy/default.asp. (Note that when you download each separate part, there is link at the end to download the next part.)
[13] The cited subsection, "(l)," is a lower case "L" and not a numeral one.

compensation and certain other forms of insurance (such as automobile or disability insurance) are "excepted benefits." Insurance carriers that provide this coverage are not covered entities even though they provide coverage for health care services. To carry out their insurance functions, these non-covered insurers typically seek individually identifiable health information from covered health care providers and group health plans. In drafting the proposed rule, the Secretary was faced with the challenge of trying to carry out the statutory mandate of safeguarding the privacy of individually identifiable health information by regulating the flow of such information from covered entities while at the same time respecting the Congressional intent to shield workers' compensation carriers and other excepted benefit plans from regulation as covered entities.

In the proposed rule we allowed covered entities to disclose protected health information without individual consent for purposes of treatment, payment or health care operations — even when the disclosure was to a non-covered entity such as a workers' compensation carrier. In addition, we allowed protected health information to be disclosed if required by state law for purposes of determining eligibility for coverage or fitness for duty. The proposed rule also required that whenever a covered entity disclosed protected health information to a non-covered entity, even though authorized under the rule, the individual who was the subject of the information must be informed that the protected health information was no longer subject to privacy protections.

Like other disclosures under the proposed rule, the information provided to workers' compensation carriers for treatment, payment or health care operations was subject to the minimum necessary standard. However, to the extent that protected health information was disclosed to the carrier because it was required by law, it was not subject to the minimum necessary standard. In addition, individuals were entitled to an accounting when protected health information was disclosed for purposes other than treatment, payment or health care operations.

In the final rule, we include a new provision in this section that clarifies the ability of covered entities to disclose protected health information without authorization to comply with workers' compensation and similar programs established by law that provide benefits for work-related illnesses or injuries without regard to fault. Although most disclosures for workers' compensation would be permissible under other provisions of this rule, particularly the provisions that permit disclosures for payment and as required by law, we are aware of the significant variability among workers' compensation and similar laws, and include this provision to ensure that existing workers' compensation systems are not disrupted by this rule. We note that the minimum necessary standard applies to disclosures under this paragraph.

Under this provision, a covered entity may disclose protected health information regarding an individual to a party responsible for payment of workers' compensation benefits to the individual, and to an agency responsible for administering and/or adjudicating the individual's claim for workers' compensation benefits. For purposes of this paragraph, workers' compensation

> benefits include benefits under programs such as the Black Lung Benefits Act, the federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act.
>
> *Additional Considerations*
>
> We have included a general authorization for disclosures under workers' compensation systems to be consistent with the intent of Congress, which defined workers' compensation carriers as excepted benefits under HIPAA. We recognize that there are significant privacy issues raised by how individually identifiable health information is used and disclosed in workers' compensation systems, and believe that states or the federal government should enact standards that address those concerns. [Emphasis added.]

Preamble to the Privacy Rule (December 2000), at pages 340-343.

> With respect to excepted benefits, the rules below operate as follows. (*Excepted benefits include accident, disability income, liability, workers' compensation and automobile medical payment insurance.*) *Excepted benefit programs are excluded from the health care component (or components) through the definition of "health plan."* If a particular organizational unit performs both excepted benefits functions and covered functions, the activities associated with the excepted benefits program may not be part of the health care component. For example, an accountant who works for a covered entity with both a health plan and a life insurer would have his or her accounting functions performed for the health plan as part of the component, but not the life insurance accounting function. See § 164.504(c)(2)(iii). *We require this segregation of excepted benefits because HIPAA does not cover such programs, policies and plans, and we do not permit any use or disclosure of protected health information for the purposes of operating or performing the functions of the excepted benefits without authorization from the individual, except as otherwise permitted in this rule.* [Emphasis added.]

Preamble to the Privacy Rule (December 2000), at pages 177-178.

Finally, it should be noted that once health care information is released by a covered entity to a party that is *not* a covered entity, the records are then no longer subject to the Privacy Rule. That is, there is nothing in the Privacy Rule that carries over the protected status of the health care information once it has been released by a covered entity. On that basis, once a worker's compensation insurer obtains such health care information from a covered entity, the worker's compensation insurer may then use that information to investigate, manage or defend a worker's compensation claim in the same manner that it did before the Privacy Rule.[14]

[14] The HIPAA Privacy Rule implicitly acknowledges that once records are disclosed, they lose the protection of the Privacy Rule. For example, 45 C.F.R. 164.508 lists the required elements for a valid authorization for the disclosure of protected information. One of the required elements is a notice to the patient as to, "The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart." 45 C.F.R. 164.508(c)(2)(iii).

3.0 Interaction with Worker's Compensation Claims

3.1 Release of Records Without a Signed Authorization

3.11 Exception in the Privacy Rule for Disclosures Under State Law

If the Privacy Rule applied to worker's compensation claims, then the provisions of the Worker's Compensation Act for automatic waiver of the physican-patient privilege[15] would be preempted by the requirements of the new federal regulations, so that insurers and employers would always need a valid authorization signed by the employee before they could obtain treatment records on the claim.

However, the Privacy Rule provides for disclosure of health care information on worker's compensation claims, without an authorization signed by the patient, to the extent authorized or required by state law. 45 C.F.R. 164.512 provides:

> **§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.**
>
> A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.
>
> . . .
>
> (l) *Standard: disclosures for workers' compensation.* A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.[16]

As described in the OCR guidance document*:*

> **Disclosures Without Individual Authorization**. The Privacy Rule permits covered entities to disclose protected health information to workers' compensation insurers, State administrators, employers, and other persons or entities involved in workers' compensation systems, without the individual's authorization:

[15] Wis. Stat. § 102.13(1)(d) & (2)(a).
[16] The cited subsection, "(l)," is a lower case "L" and not a numeral one.

- As authorized by and to the extent necessary to comply with laws relating to workers' compensation or similar programs established by law that provide benefits for work-related injuries or illness without regard to fault. This includes programs established by the Black Lung Benefits Act, the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act. See 45 CFR 164.512(*l*).

- To the extent the disclosure is required by State or other law. The disclosure must comply with and be limited to what the law requires. See 45 CFR 164.512(a).

- For purposes of obtaining payment for any health care provided to the injured or ill worker. See 45 CFR 164.502(a)(1)(ii) and the definition of "payment" at 45 CFR 164.501.[17]

3.12 The Automatic Waiver Provisions of the Wisconsin Worker's Compensation Act

The Wisconsin Worker's Compensation Act (WCA) contains an automatic waiver of any physician/chiropractor/psychologist/dentist/podiatrist-patient privilege that would otherwise apply. Wis. Stat. § 102.13(1)(d) provides:

> (d) Subject to par. (e):
>
> 3. Notwithstanding any statutory provisions except par. (e), any physician, chiropractor, psychologist, dentist or podiatrist attending a worker's compensation claimant for any condition or complaint reasonably related to the condition for which the claimant claims compensation may furnish to the employee, employer, worker's compensation insurer, or the department information and reports relative to a compensation claim.

Wis. Stat. § 102.13(2)(a) further provides:

> (2)(a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

Attached Appendix B is my own suggested form *Notice as to Release of Confidential Health Care Information on Worker's Compensation Claims*. I recommend enclosing a copy of the form with letters to health care providers when you are requesting patient health care records on

[17] *OCR Guidance Explaining Significant Aspects of the Privacy Rule*, by the Office for Civil Rights, U.S. Department of Health & Human Services, Dec. 3, 2002 (http://www.hhs.gov/ocr/hipaa/privacy.html).

a worker's compensation claim, and you are relying upon the automatic waiver provision of the Worker's Compensation Act. The form explains the Wisconsin law and its interaction with the HIPAA Privacy Rule.

There are no published appellate decisions to give us any guidance on the scope of the automatic-waiver provisions of the WCA. However, there is an interesting unpublished decision by the court of appeals in *Wistrom v. Employer's Ins. of Wausau*, No. 01-0412 (Wis. Ct. App. Nov. 20, 2001).[18] In *Wistrom*, the treating physicians opined that the injured employee was addicted to pain medications. They recommended that he discontinue his prescription regimen and begin a new treatment program. A claims adjuster for the worker's compensation insurer wrote to a pharmacist to advise that the insurer would be disputing liability for any further payments on the employee's prescription for pain medication, and the adjuster attached a copy of the medical documentation supporting the insurer's position. The employee resolved his worker's compensation claim on a compromise settlement and then sued the worker's compensation insurer and the claims adjuster, alleging wrongful disclosure of medical records, invasion of privacy, and intentional infliction of emotional distress. The circuit court granted a motion for summary judgment, dismissing the employee's claims. The court of appeals affirmed and held that under Wis. Stat. § 102.13(2)(a), the employee waived any privilege attached to the medical records because they related to a condition that was part of a worker's compensation claim.

3.13 Problems in Applying the Statute — Which Records are "Reasonably Related"

There are some serious problems with the present statutory standard as to health care information that is "reasonably related to any injury for which the employee claims compensation." The statute is impractical because the standard is too subjective. Furthermore, health care records custodians are ordinarily not in a position to make a meaningful determination as to what records are "reasonably related" because:

- ✓ they have no real understanding of worker's compensation law and the issues that arise under the law,
- ✓ they do not have nearly enough information about the facts and issues on any specific claim to know what records are reasonably related to that claim, and
- ✓ they usually do not have medical training that would allow them to make informed decisions as to which records are significant on a specific claim.

For example, an employee claims to have sustained an employment injury to the low back and seeks treatment from an orthopedic surgeon. The worker's compensation insurer should be able to obtain those records with the automatic waiver provisions of the statute. However, the insurer finds out that the employee first consulted his primary care physician for the low back condition, and was then referred to the orthopedic surgeon. The insurer requests records from the primary

[18] Note that this is an unpublished decision. Only a limited number of the decisions by the court of appeals are published. Wis. Stat. § 809.23 provides that,

> An unpublished opinion is of no precedential value and for this reason may not be cited in any court of this state as precedent or authority, except to support a claim of res judicata, collateral estoppel, or law of the case.

care physician, but is informed the records can't be released because the employee did not report the condition to have resulted from an employment injury. Thus, the records of the primary care physician are reasonably related the worker's compensation claim, but the health care records custodian believes the records are not related because the employee failed to provide to any history of an employment injury.

The problem is illustrated by considering examples of some other situations that arise:

Example 1: The employee reports an accidental injury to the low back in the course of the employment on a specific date, and seeks treatment from a physician. The physician has treated the employee for low back problems on numerous occasions in the last five years, including several specific incidents of injury, but none of the previous low back problems were claimed to be from an employment injury. Those records of treatment for previous low back problems would be reasonably related to the present claim, because they present a causation issue as to whether the present low back condition was the result of the employment injury. If there is pre-existing *degenerative* condition of the low back, then there is an issue as to the application of the *Llewellyn* standard.[19] Even if the present low back condition was the result of the employment injury, there is then an issue as to the nature and extent of injury, insofar as continuing problems may at some point be solely a consequence of the pre-existing condition. If there is pre-existing permanent disability, then there may be issues as to allocation. Unfortunately, health care records custodians invariably have no understanding of how those records of pre-injury treatment for low back problems are reasonably related to the present claim.

Example 2: The employee is diagnosed with carpal tunnel syndrome. The condition is claimed to be a result of the employee's occupational exposure in performing highly repetitive job tasks over a period of time. There are a variety of underlying medical conditions that may be significant in determining whether the condition is the result of the occupational exposure or is instead solely a consequence of the underlying medical condition.[20] Health care records custodians don't have nearly enough medical training to make a determination as to which records are reasonably related to such claim. Indeed, whether those records of treatment for underlying medical conditions are significant in determining the cause of the carpal tunnel syndrome can only be determined after the records have been obtained by the worker's compensation insurer and submitted to a physician for an opinion on the causation issue.

Example 3: The problem is far worse in complex cases. For example, assume that the employee is diagnosed with fibromyalgia and the condition is attributed to an employment injury. Fibromyalgia is diagnosed on the basis of complaints of widespread pain, and pain with

[19] *Lewellyn v. ILHR Department*, 38 Wis. 2d 43, 58-59, 155 N.W.2d 678 (1968). As noted in *Lewellyn*, evidence of prior trouble has high probative value on the question of extent of progression of a degenerative disease and the time and extent of aggravation or "breakage" if either is a question. *Lewellyn*, 38 Wis. 2d at 60.

[20] See, for example, Peter A. Nathan, M.D., and Richard C. Keniston, M.D., *Carpal Tunnel Syndrome and Its Relation to General Physical Condition*, Hand Clinics, Vol. 9, No. 2, at 260 (May 1993), Occupational Diseases of the Hand; and Richard T. Katz, M.D., *Carpal Tunnel Syndrome: A Practical Review*, American Family Physician, May 1, 1994, Table 2 at 1373.

numerous tender points spread throughout the body.[21] There are a whole host of medical problems that are attributed to fibromyalgia.[22] What if the employee's condition is instead the result of some totally different disorder? A mental condition such as a somatization disorder may provide an alternative explanation for the patient's complaints. The patient may have a whole host of medical problems that have been extensively investigated without identifying any medical cause.[23] To be able to effectively diagnosis such a condition it is first necessary to obtain copies of extensive medical records documenting treatment for a wide variety of conditions. Once the records have been obtained and reviewed by a physician, only then it is possible to determine if the records are reasonably related in providing a basis for an alternative diagnosis such as a somatization disorder.

The problems with the present statute will be severely exacerbated by implementation of the Privacy Rule. Therefore, the present Wisconsin statute needs to be extensively revised to define exactly what health care information is to be disclosed without an authorization, since the Privacy Rule permits disclosure as provided by state law. The present standard as to "reasonably

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[21] *1990 Criteria for the Classification of Fibromyalgia* by the American College of Rheumatology (http://www.rheumatology.org/research/classification/fibro.html) describes widespread pain, with pain at tender points in at least 11 of 18 sites throughout the body.

[22] "In addition to persistent pain, most patients exhibit chronic fatigue and a variety of other somatic complaints. The clinical features of fibromyalgia include:

- Widespread pain with allodynia and hyperalgesia
- Fatigue and a feeling of weakness
- Other constitutional symptoms
- Poor sleep
- Dysesthesiae/paresthesiae
- Cognitive difficulties (e.g., memory, concentration)
- Auditory/vestibular/ocular complaints
- Chronic rhinitis/"allergies"
- Palpitations
- Regional pain (e.g., headache, atypical chest pain, pelvic pain/dyspareunia, temporomandibular disorder [TMD], myofascial pain)
- Irritable bowel syndrome
- Subjective sense of joint swelling"

John B. Winfield, MD, *Pain in Fibromyalgia*, Rheumatic Disease Clinics of North America, Vol. 25, No. 1, pgs. 55–79 (Feb. 1999).

[23] A somatization disorder is a syndrome described by diagnostic criteria found in DSM-IV, the current diagnostic and statistical manual published by the American Psychiatric Association:

> The essential feature of Somatization Disorder is a pattern of recurring, multiple, clinically significant somatic complaints. A somatic complaint is considered to be clinically significant if it results in medical treatment (e.g., the taking of medication) or causes significant impairment in social, occupational, or other important areas of functioning. The somatic complaints must begin before age 30 years and occur over a period of several years (Criterion A). The multiple somatic complaints cannot be fully explained by any known general medical condition, the physical complaints or resulting social or occupational impairment are in excess of what would be expected from the history, physical examination, or laboratory tests (Criterion C). There must be a history of pain related to at least four different sites (e.g., head, abdomen, back, joints, extremities, chest, rectum) or functions (e.g., menstruation, sexual intercourse, urination) (Criterion B1). There must also be a history of at least two gastrointestinal symptoms other than pain (Criterion B2). . . . There must be a history of at least one sexual or reproductive symptom other than pain (Criterion B3). . . . Finally, there must also be a history of at least one symptom, other than pain, that suggests a neurological condition. . . .

related" is simply too vague and subjective to be practical, especially in the context of the Privacy Rule.

3.2 Release of Records With a Signed Authorization

The HIPAA Privacy Rule includes specific elements that must be contained in a valid authorization for the disclosure of protected health information. 45 C.F.R. 164.508 provides, in part:

> **§ 164.508 Uses and disclosures for which an authorization is required.**
>
> . . .
>
> **(b) Implementation specifications: general requirements.**
>
> (1) Valid authorizations.
>
> (i) A valid authorization is a document that meets the requirements in paragraphs (a)(3)(ii), (c)(1), and (c)(2) of this section, as applicable.
>
> (ii) A valid authorization may contain elements or information in addition to the elements required by this section, provided that such additional elements or information are not inconsistent with the elements required by this section.
>
> (2) Defective authorizations. An authorization is not valid, if the document submitted has any of the following defects:
>
> (i) The expiration date has passed or the expiration event is known by the covered entity to have occurred;
>
> (ii) The authorization has not been filled out completely, with respect to an element described by paragraph (c) of this section, if applicable;
>
> (iii) The authorization is known by the covered entity to have been revoked;
>
> (iv) The authorization violates paragraph (b)(3) or (4) of this section, if applicable;
>
> (v) Any material information in the authorization is known by the covered entity to be false.
>
> . . .
>
> **(c) Implementation specifications: Core elements and requirements.**
>
> (1) Core elements. A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.

(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) Required statements. In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information paragraph (c)(2)(i)(A) of this section is included in the notice required by § 164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

> (iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart.
>
> (3) Plain language requirement. The authorization must be written in plain language.
>
> (4) Copy to the individual. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

You need to keep in mind that Wisconsin law already requires various specific elements to be included in a valid informed consent for disclosure of health care information.[24] There is considerable overlap between the elements required under the Wisconsin statute and the HIPAA Privacy Rule. However, a valid authorization for the disclosure of protected health information must comply with both the Wisconsin statute *and* the HIPAA Privacy Rule.

The Wisconsin Worker's Compensation Division provides a Voluntary and Informed Consent for Disclosure of Health Care Information form (WKC-9488), and the Department presently requires signing of the form when the employee refuses to do so. The Department revised the form to comply with the HIPAA Privacy Rule. The revised WKC-9488 (Rev. 5/2003) is attached as Appendix C. The revised form is now two pages, so the employee needs to sign and date the form at the bottom of each page. If the box for Option B (Physical and Other) is checked on the form, then the employee also needs to sign in the box below Option B.

4.0 Problem Areas — Disclosure Limited to Minimum Necessary

The Privacy Rule generally requires that a covered entity is only to disclose the minimum necessary health information in order to accomplish a specific purpose. We then have the issue as to whether the minimum necessary standard applies to worker's compensation claims. This is going to create a lot of confusion, because the answer is yes and no. Sometime it does apply, and sometimes it does not apply on worker's compensation claims.

The best explanation of this issue appears with the final modifications to the Privacy Rule, as published in the Federal Register in August 2002. HHS notes that a number of commentators expressed concern about application of the minimum necessary standard to disclosures for worker's compensation purposes. HHS responded to those concerns by stating:

> *Response:* The Privacy Rule is not intended to disrupt existing workers' compensation systems as established by State law. In particular, the Rule is not intended to impede the flow of health information that is needed by employers, workers' compensation carriers, or State officials in order to process or adjudicate claims and/or coordinate care under the workers' compensation system. To this end, the Privacy Rule at § 164.512(l) explicitly permits a

[24] Wis. Stat. § 146.81(2).

> covered entity to disclose protected health information as authorized by, and to the extent necessary to comply with, workers' compensation or other similar programs established by law that provide benefits for work-related injuries or illnesses without regard to fault. The minimum necessary standard permits covered entities to disclose any protected health information under § 164.512(l) that is reasonably necessary for workers' compensation purposes and is intended to operate so as to permit information to be shared for such purposes to the full extent *permitted* by State or other law.
>
> Additionally, where a State or other law requires a disclosure of protected health information for workers' compensation purposes, such disclosure is permitted under § 164.512(a). A covered entity also is permitted to disclose protected health information to a workers' compensation insurer where the insurer has obtained the individual's authorization pursuant to § 164.508 for the release of such information. The minimum necessary provisions do not apply to disclosures *required by law* or *made pursuant to authorizations*. See § 164.502(b), as modified herein.
>
> Further, the Department notes that a covered entity is permitted to disclose information to any person or entity as necessary to obtain payment for health care services. The minimum necessary provisions apply to such disclosures but permit the covered entity to disclose the amount and types of information that are necessary to obtain payment.[25] [Emphasis added.]

Thus, the minimum necessary standard does apply when information is disclosed on a worker's compensation claim as *permitted* by state law. However, the minimum necessary standard does *not* apply when disclosure is *required* by state law,[26] or when disclosure is made pursuant to an valid authorization signed by the signed by the patient.[27]

In Wisconsin, Wis. Stat. § 102.13(1)(d) states that treating practitioners *may* furnish information and reports to various parties on a worker's compensation claim. Since that section is permissive, the minimum necessary standard would appear to apply. However, the automatic waiver provision of Wis. Stat. § 102.13(2)(a) states that health care providers, "*shall*, within a reasonable time after written request by the employee, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employe claims compensation." [Emphasis added.] Thus, disclosure pursuant to the automatic waiver provision of Wis. Stat. § 102.13(2)(a) is mandatory rather than permissive, so the minimum necessary standard does *not* apply.

Other anticipated problems arising out of implementation of the Privacy Rule are discussed in an excellent white paper by Greg Krohm for the International Association of Industrial Accident

[25] Federal Register, Vol. 67, No. 157, Aug. 14, 2002, at 53198, available at: http://www.cms.hhs.gov/hipaa/hipaa2/regulations/privacy/finalrule/privrulepd.pdf.
[26] 45 C.F.R. 164.502(b)(2)(v).
[27] 45 C.F.R. 164.502(b)(2)(iii).

Boards and Commissions (IAIABC): *HIPAA and Workers Compensation: A Response Plan for State Administrative Agencies.*[28]

5.0 Sources for Additional Information

There is great deal of useful information available on the Internet. Some basic sources include:

Centers for Medicare & Medicaid Services (CMS) — HIPAA Web Page:
http://www.cms.hhs.gov/hipaa/hipaa2/default.asp

HHS Office for Civil Rights — HIPAA Web Page:
http://www.hhs.gov/ocr/hipaa/

HIPAA — Collaborative of Wisconsin
http://www.hipaacow.org/home/home.aspx

American Medical Association (AMA) — HIPAA Web Page:
http://www.ama-assn.org/ama/pub/category/4234.html

6.0 Conclusion

The HIPAA Privacy Rule, if correctly interpreted and applied, is not supposed to impact on the investigation, management, and defense or prosecution of worker's compensation claims. The Privacy Rule expressly provides for disclosures of patient health care information as required by state law. Thus, disclosure of such information, without an authorization signed by the patient, is still permitted by the existing statute in the Worker's Compensation Act.[29] Likewise, disclosure pursuant to a signed medical authorization should also not be a problem, provided that the authorization is drafted to comply with the requirements of the Privacy Rule.

Two major problem areas may be anticipated. First, there are going to be health care providers who do not correctly interpret and apply the Privacy Rule, and who fail to understand the interaction of the Privacy Rule with state law on worker's compensation claims. It is very likely there will be problems arising out of misguided attempts to provide only the "minimum necessary" information to comply with a request for records, in situations where that standard does not apply.

Second, there are some long-standing problems with the Wisconsin statute that authorizes disclosure of health care information of worker's compensation claims without a signed medical authorization.[30] The present standard as to records that are "reasonably related" is too vague and

[28] *HIPAA and Workers Compensation: A Response Plan for State Administrative Agencies,* International Association of Industrial Accident Boards and Commissions (IAIABC), available at:
http://iaiabc.org/Publications/HIPAA%20Implementation%20Problems.doc
[29] Wis. Stat. § 102.13(2)(a).
[30] Wis. Stat. § 102.13(2)(a).

subjective to be workable, especially in view of the state statute's interaction with the Privacy Rule. The Worker's Compensation Advisory Council needs to recommend amending the present statute to clarify and expand the definition of what records are to be provided under that statute.

Finally, there will be some situations in which health care providers take unreasonable positions in refusing to release health care records. Therefore, you need to be aware that Wis. Stat. § 102.13(2)(b) provides that:

> Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

Therefore, as a last resort, you have the right to sue the health care provider in circuit court to compel disclosure of the patient health care records under the Worker's Compensation Act. On such a lawsuit in circuit court the health care provider is liable for the usual court costs, *plus* your reasonable attorney fees.

Attorney Philip Lehner
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About the author . . .
Philip Lehner received his undergraduate degree from Northwestern University in 1970 and his J.D. from the University of Wisconsin Law School in 1973. He is a member of the Racine firm of Hankel, Bjelajac, Kallenbach, Lehner & Koenen, LLC. His practice is limited exclusively to the defense of worker's compensation claims for employers and insurance carriers throughout the state. He is a frequent lecturer and author on Wisconsin worker's compensation law and claims management. He served as the chairperson of the Wisconsin Manufacturers & Commerce (WMC) Worker's Compensation Council for 1994–1999. He served as the president of the Wisconsin Association of Worker's Compensation Attorneys for 2003.

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OCR HIPAA Privacy
December 3, 2002

DISCLOSURES FOR WORKERS' COMPENSATION PURPOSES
[45 CFR 164.512(l)]

Background

The HIPAA Privacy Rule does not apply to entities that are either workers' compensation insurers, workers' compensation administrative agencies, or employers, except to the extent they may otherwise be covered entities. However, these entities need access to the health information of individuals who are injured on the job or who have a work-related illness to process or adjudicate claims, or to coordinate care under workers' compensation systems. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by the Privacy Rule. The Privacy Rule recognizes the legitimate need of insurers and other entities involved in the workers' compensation systems to have access to individuals' health information as authorized by State or other law. Due to the significant variability among such laws, the Privacy Rule permits disclosures of health information for workers' compensation purposes in a number of different ways.

How the Rule Works

Disclosures Without Individual Authorization. The Privacy Rule permits covered entities to disclose protected health information to workers' compensation insurers, State administrators, employers, and other persons or entities involved in workers' compensation systems, without the individual's authorization:

- As authorized by and to the extent necessary to comply with laws relating to workers' compensation or similar programs established by law that provide benefits for work-related injuries or illness without regard to fault. This includes programs established by the Black Lung Benefits Act, the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act, and the Energy Employees' Occupational Illness Compensation Program Act. See 45 CFR 164.512(l).

- To the extent the disclosure is required by State or other law. The disclosure must comply with and be limited to what the law requires. See 45 CFR 164.512(a).

- For purposes of obtaining payment for any health care provided to the injured or ill worker. See 45 CFR 164.502(a)(1)(ii) and the definition of "payment" at 45 CFR 164.501.

Disclosures With Individual Authorization. In addition, covered entities may disclose protected health information to workers' compensation insurers and others involved in workers'

compensation systems where the individual has provided his or her authorization for the release of the information to the entity. The authorization must contain the elements and otherwise meet the requirements specified at 45 CFR 164.508.

Minimum Necessary. Covered entities are required reasonably to limit the amount of protected health information disclosed under 45 CFR 164.512(l) to the minimum necessary to accomplish the workers' compensation purpose. Under this requirement, protected health information may be shared for such purposes to the full extent authorized by State or other law.

In addition, covered entities are required reasonably to limit the amount of protected health information disclosed for payment purposes to the minimum necessary. Covered entities are permitted to disclose the amount and types of protected health information that are necessary to obtain payment for health care provided to an injured or ill worker.

Where a covered entity routinely makes disclosures for workers' compensation purposes under 45 CFR 164.512(l) or for payment purposes, the covered entity may develop standard protocols as part of its minimum necessary policies and procedures that address the type and amount of protected health information to be disclosed for such purposes.

Where protected health information is requested by a State workers' compensation or other public official, covered entities are permitted to reasonably rely on the official's representations that the information requested is the minimum necessary for the intended purpose. See 45 CFR 164.514(d)(3)(iii)(A).

Covered entities are not required to make a minimum necessary determination when disclosing protected health information as required by State or other law, or pursuant to the individual's authorization. See 45 CFR 164.502(b).

The Department will actively monitor the effects of the Privacy Rule, and in particular, the minimum necessary standard, on the workers' compensation systems and consider proposing modifications, where appropriate, to ensure that the Rule does not have any unintended negative effects that disturb these systems.

Refer to the fact sheet and frequently asked questions on this web site about the minimum necessary standard, or to 45 CFR 164.502(b) and 164.514(d), for more information.

OCR HIPAA Privacy
December 3, 2002

DISCLOSURES FOR WORKERS' COMPENSATION PURPOSES

Frequently Asked Questions

Q: Won't the HIPAA Privacy Rule's minimum necessary standard impede the ability of workers' compensation insurers, State administrative agencies, and employers to obtain the health information needed to pay injured or ill workers the benefits guaranteed them under the State workers' compensation system?

A: No. The Privacy Rule is not intended to impede the flow of health information to those who need it to process or adjudicate claims, or coordinate care, for injured or ill workers under workers' compensation systems. The minimum necessary standard generally requires covered entities to make reasonable efforts to limit uses and disclosures of, as well as requests for, protected health information to the minimum necessary to accomplish the intended purpose. For disclosures of protected health information made for workers' compensation purposes under 45 CFR 164.512(l), the minimum necessary standard permits covered entities to disclose information to the full extent authorized by State or other law. In addition, where protected health information is requested by a State workers' compensation or other public official for such purposes, covered entities are permitted reasonably to rely on the official's representations that the information requested is the minimum necessary for the intended purpose. See 45 CFR 164.514(d)(3)(iii)(A).

For disclosures of protected health information for payment purposes, covered entities may disclose the type and amount of information necessary to receive payment for any health care provided to an injured or ill worker.

The minimum necessary standard does not apply to disclosures that are required by State or other law or made pursuant to the individual's authorization.

Q: Does an individual have a right under the HIPAA Privacy Rule to restrict the protected health information his or her health care provider discloses for workers' compensation purposes?

A: Individuals do not have a right under the Privacy Rule at 45 CFR 164.522(a) to request that a covered entity restrict a disclosure of protected health information about them for workers' compensation purposes when that disclosure is required by law or authorized by, and necessary to comply with, a workers' compensation or similar law. See 45 CFR 164.522(a) and 164.512(a) and *(l)*.

Q: Does the HIPAA Privacy Rule permit a health care provider to disclose an injured

or ill worker's protected health information without his or her authorization when requested for purposes of adjudicating the individual's workers' compensation claim?

A: Covered entities are permitted to disclose protected health information for such purposes as authorized by, and to the extent necessary to comply with, workers' compensation law. See 45 CFR 164.512(l). In addition, the Privacy Rule generally permits covered entities to disclose protected health information in the course of any judicial or administrative proceeding in response to a court order, subpoena, or other lawful process. See 45 CFR 164.512(e).

Q: I am a health care provider and my State law says I have to provide a workers' compensation insurer, upon request, with an injured workers' records that relate to treatment or hospitalization for which compensation is being sought. Am I permitted to disclose the information required by my State law?

A: Yes. The HIPAA Privacy Rule permits a covered entity to disclose protected health information as necessary to comply with State law. No minimum necessary determination is required. See 45 CFR 164.512(a) and 164.502(b).

Q: My State law says I may disclose records, relating to the treatment I provided to an injured worker, to a workers' compensation insurer for purposes of determining the amount of or entitlement to payment under the workers' compensation system. Am I allowed to share this information under the HIPAA Privacy Rule?

A: Yes. A covered entity is permitted to disclose an individual's protected health information as necessary to comply with and to the full extent authorized by workers' compensation law. See 45 CFR 164.512(l).

Q: My State law says I may provide information regarding an injured workers' previous condition, which is not directly related to the claim for compensation, to an employer or insurer if I obtain the workers' written release. Am I permitted to make this disclosure under the HIPAA Privacy Rule?

A: A covered entity may disclose protected health information where the individual's written authorization has been obtained, consistent with the Privacy Rule's requirements at 45 CFR 164.508. Thus, a covered entity would be permitted to make the above disclosure if the individual signed such an authorization.

Notice as to Release of Confidential Health Care Information on Worker's Compensation Claims

Wis. Stat. § 102.13(2)(a) provides that:

> **(2)** (a) An employee who reports an injury alleged to be work-related or files an application for hearing waives any physician-patient, psychologist-patient or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding ss. 51.30 and 146.82 and any other law, any physician, chiropractor, psychologist, dentist, podiatrist, hospital or health care provider shall, within a reasonable time after written request by the employee, employer, worker's compensation insurer or department or its representative, provide that person with any information or written material reasonably related to any injury for which the employee claims compensation.

HIPAA Privacy Rule

Note that the HIPAA Privacy Rule specifically authorizes disclosures of protected health information that are required under the provisions of the Worker's Compensation Act, as cited above. 45 C.F.R. § 164.512 provides:

> **§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.**
>
> A covered entity may use or disclose protected health information *without the written authorization of the individual*, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.
>
> . . .
>
> (l) *Standard: disclosures for workers' compensation.* A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

Also note that the "minimum necessary" standard does *not* apply to such disclosures that are required by state law. 45 C.F.R. § 164.502(b)(2)(v). If an authorization signed by the patient is enclosed with this letter, the minimum necessary standard also does *not* apply to disclosures pursuant to such an authorization. 45 C.F.R. § 164.502(b)(2)(iii).

Finally, you should also be aware that Wis. Stat. § 102.13(2)(b) provides, in part:

> Any person who refuses to provide certified duplicates of written material in the person's custody that is requested under par. (a) shall be liable for reasonable and necessary costs and, notwithstanding s. 814.04 (1), reasonable attorney fees incurred in enforcing the requester's right to the duplicates under par. (a).

Notice as to Limitation on Charges for Copies of Health Care Records on Worker's Compensation Claims

Note that Wis. Stat. § 908.03(6m)(c)3 and Wis. Admin. Code § HFS 117.05 do *not* apply to worker's compensation claims. Wis. Stat. § 908.03(6m)(c)3 is part of the rules of evidence and on worker's compensation claims it is superceded by the statute from the Worker's Compensation Act that appears below. Wis. Stat. § 908.03(6m)(c)3 allows the Department of Health and Family Services to set the rate on charges for copies of health care records, and that rate is established by Wis. Admin. Code § HFS 117.05. Since Wis. Stat. § 908.03(6m)(c)3 does not apply to worker's compensation claims, the corresponding administrative rule, § HFS 117.05, also does not apply.

The Wisconsin Worker's Compensation Act limits charges for copies of records requested on a worker's compensation claim. *Charges for copies are limited to a maximum charge of $.45 per page, plus the costs of actual postage.* There is a minimum charge allowed of $7.50, plus actual postage. The limitation on charges is pursuant Wis. Stat. § 102.13(2)(b):

> A physician, chiropractor, podiatrist, psychologist, hospital or health service provider shall furnish a legible, certified duplicate of the written material requested under par. (a) upon payment of the actual costs of preparing the certified duplicates, not to exceed the greater of 45 cents per page or $7.50 per request, plus the actual costs of postage.

Voluntary and Informed Consent for Disclosure of Health Care Information

The provision of your social security number is mandatory under Wisconsin Statutes and will be used to identify the claimant. Failure to provide it may result in penalties or delayed payment of benefits. Personal information you provide may be used for secondary purposes [(Privacy Law, s. 15.04(1)(m)].

Department of Workforce Development
Worker's Compensation Division
201 E. Washington Ave., Rm. C100
P.O. Box 7901
Madison, WI 53707-7901
Telephone: (608) 266-1340
Fax: (608) 267-0394
http://www.dwd.state.wi.us/wc/
e-mail: DWDDWC@dwd.state.wi.us

By law, all health care providers must provide to any employee, employer, worker's compensation insurer or their representative any information reasonably related to any alleged work injury. However, determining the relationship of prior medical records to a work injury can be difficult and time-consuming. Therefore, to assist in the timely investigation of your claim, this document authorizes the health care provider to release medical information without attempting to determine the extent of its relationship to your alleged work injury.

You are not required to sign this document. You may refuse to sign this document without jeopardizing your right to collect worker's compensation benefits. However, by assisting in the investigation of your claim, you are likely to receive benefits quicker than if you refuse to authorize the release of medical information.

Health Care Provider Name		Street Address	
P. O. Box	City	State	Zip Code
Patient (Employee) Name		Employer Name	
Patient Social Security Number - -	Patient Birth Date	WC Claim No.	

The patient named above hereby authorizes the health care provider named above to disclose all records checked below in its possession relating to the patient's health, treatment and evaluation to:

Name and Address of Party Authorized to Receive Protected Information

or its designated representatives, and to furnish to them a legible, certified duplicate of all records, writings, reports, test results and x-rays in its possession containing such information. This authorization includes *all* records, reports, correspondence, or other materials in the possession of the health care provider authorized, even if those materials were not generated by the health care provider, and the redisclosure of such materials is hereby authorized. This release is for use in the investigation, preparation, evaluation, and/or hearing of the worker's compensation claim described above.

CHECK ONE:

☐ **A.** **Physical Only**. Release all records, correspondence, and any other information from whatever source regarding the patient's physical health, treatment and evaluation including, but not limited to, any made or provided by any physician, nurse, chiropractor, osteopath, dentist, physical therapist, hospital, or any other health care provider.

This consent constitutes a waiver of any privilege created by state or federal statute, regulation, rule or other authority, including but not limited to Wis. Stat. §§ 146.81 and 146.82, and 45 C.F.R. § 164.508.

☐ **B.** **Physical and Other**. Release all records, correspondence, and any other information from whatever source regarding the patient's physical and mental health, drug and alcohol abuse, HIV and AIDS tests, treatment, and evaluation including, but not limited to, any made or provided by any physician, psychiatrist, psychologist, nurse, chiropractor, osteopath, dentist, physical therapist, hospital or any other health care provider.

This consent constitutes a waiver of any privilege created by state or federal statute, regulation, rule or other authority, including but not limited Wis. Stat. §§ 51.30, 146.025, 146.81 and 146.82, 42 C.F.R., Chap. 1, subpart C, § 2.31 and 45 C.F.R. § 164.508.

Patient Signature (or Person Authorized to Sign for Patient) — for Option B:

Patient Signature (or Person Authorized to Sign for Patient):	Date:

WKC-9488 (R. 12/2003)

Exhibit C

In signing this consent form, I acknowledge that I understand that:

- I am authorizing release of the records and information listed above.
- I am waiving any privilege that may otherwise prevent disclosure of the records and information listed above.
- I understand that the health care provider named above, whom I am authorizing to disclose my protected health information, may not condition my treatment, payment, enrollment or eligibility for benefits (if applicable) on whether I sign this authorization, except: (1) if my treatment is related to research, or (2) health care services are provided to me solely for the purpose of creating protected health information for disclosure to a third party.
- I may revoke this authorization at any time by a written request to the party authorized above to receive information, except that the party authorized above to receive such information may rely upon any personal health information received before the revocation of this authorization.
- I may obtain a copy of the disclosed records and information, upon written request to the party authorized above to receive information, at no charge to me.
- My personal health information disclosed pursuant to this authorization may be redisclosed and may no longer be protected by federal law. My personal health information may be released to any of the following: the employer, the worker's compensation insurer, the Department of Workforce Development, other parties to this matter or their attorneys; the Labor and Industry Review Commission; any court on any action or proceeding relating to this matter; experts retained or consulted by any party; and any of their agents, employees, or representatives. I specifically authorize and consent to any such disclosure and redisclosure.
- I am entitled to a copy of this consent form after I sign it.

If you have any questions about this document, you should contact the Worker's Compensation Division at (608) 266-1340. You should not sign this document if the name of the health care provider is blank.

This consent is subject to revocation at any time. If not revoked, this consent is effective for two (2) years from date signed. This authorization expressly waives any requirement that it must be used within a certain number of days after the date of signing, or that it must be dated within any time period before the date it is used. This authorization shall also extend to records of future treatment, after the date of signing of this authorization, as long as such treatment occurs while this authorization is still in effect. A photocopy copy shall be as valid as the original.

Patient Signature (or Person Authorized to Sign for Patient):	Date:
If not signed by patient, authority/designation to sign is based on the fact that the patient is: ☐ A minor ☐ Incompetent ☐ Disabled ☐ Deceased ☐ Other:	