



Understanding the Law Regarding Your Right to Choose Your Treating Health Professional - Your Duty to Cooperate in WSIB Directed Medical Assessments – And Employers Obligation to Pay the Ambulance Invoice

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A frequent member inquiry relates to the selection of a treating health professional. Section 33 of the *Workplace Safety and Insurance Act* (WSIA), codifies a workers right to select the treating physician. It's a right given under law, so don't give this up!

In most instances a worker will attend their Family MD's office, or registered health professional, such as a physiotherapist or chiropractor, who also have the authority to submit a Form 8, Health Professionals Report to WSIB.

In urgent care situations, EMS (ambulance) will take you to the nearest admitting hospital. Notwithstanding your right to choose your treating physician, common sense dictates that you should continue being followed by the hospital specialists (e.g., fracture clinic), until you recover and are discharged as a patient. Unfortunately, a number of members do not have a Family MD, so you're hostage to whomever is available at a medical clinic. However, if you suffer a work injury, it helps to have one health professional coordinate treatment and provide continuity of care.

Right to Select your Health Professional

33. (1) A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.

Who Pays the Ambulance Invoice? (the Employer)

Some of us have likely received an invoice in the mail after an EMS call to our home, or if you've been taken from work via ambulance. Hospitals and Ministry of Health guidelines stipulate the patient receives the invoice (\$45) for a hospital admission by EMS. Although a hospital invoice will be sent to an injured worker (patient), section 38 of the *WSIA* set out an employers' obligation to pay for transportation to a hospital or physician. If you receive an ambulance invoice, please forward this to your employer for payment.

Transportation to hospital, etc.

38. (1) At the time an injury occurs, the injured worker's employer shall provide transportation for the worker (if the worker needs it) to a hospital or a physician located within a reasonable distance or to the worker's home. The employer shall pay for the transportation.

Obligation to Co-operate in WSIB Medical Assessments

Section 13(1) of the *WSIA* stipulates that a worker who sustains an injury in an accident arising out of and in the course of employment is entitled to benefits. However, injured workers are also legally obligated to co-operate in health recovery initiatives as set out in section 34(1).

Another source of controversy arises when WSIB directs an injured worker to attend an assessment at one of their Specialty Clinics, even though an injured worker is being assessed and treated by their own General Practitioner and/or Specialist.

Notwithstanding an injured workers right to select their own treating health professional, you still have a legal obligation to attend WSIB coordinated medical assessments and/or treatment programs. Many WSIB Specialty Clinics are staffed with top-notch specialists, who may recommend surgery, however, ultimately, it is your right to be followed by the physician/specialist of your choice.

Moreover, injured workers also have the right to elect or decline surgery, which is not tantamount to non-cooperation. Clearly, your decision should be informed, and predicated on some rationale, such as fear of infection, etc. Please note that in February 2016, a member underwent routine CTS surgery, and sadly, passed away within 48 hours due to a sepsis infection, in which the cause of death was in all probability materially related to a work injury. But for the work related CTS, he wouldn't have underwent surgery. That's the reason hospitals request each patient sign a consent form acknowledging the risks associated with surgery.

Reduction in LOE Benefits for Non-co-operation

An injured workers obligation to participate and co-operate in WSIB directed medical assessments, is set out in sections 34 and 35 of the *WSIA*:

Duty to co-operate

34. (1) A worker who claims or is receiving benefits under the insurance plan shall cooperate in such health care measures as the Board considers appropriate.

Failure to comply

(2) If the worker fails to comply with subsection (1), the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance continues.



Board request for health examination

35. (1) Upon the request of the Board, a worker who claims or is receiving benefits under the insurance plan *shall submit to a health examination* by a health professional selected and paid for by the Board.

Failure to comply

(2) If the worker fails to comply with subsection (1) or obstructs the examination without reasonable cause or excuse, the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance or obstruction continues.

The duty to co-operate is also reinforced in Policy Document No. 22-01-03, *Workers' Co-operation Obligations* (12-Oct-2004) which provides in part as follows:

A worker who is receiving benefits under the insurance plan, or who is entitled to do so, is required to:

- provide the WSIB with any information necessary to adjudicate the claim co-operate in health care measures the WSIB considers appropriate *undergo an examination by a health professional selected and paid for by the WSIB*

Worker non-co-operation - Notice of non-co-operation

It is important to note that non-cooperation attracts serious penalties, particularly the denial of LOE benefits. Even though there are safeguards in place so a worker is warned of the consequences, and given an opportunity to comply, if the WSIB determines that a worker is not co-operating, the decision-maker notifies the worker of the:

- obligation to co-operate
- finding of non-co-operation, and
- consequences of this finding (i.e., the reduction and/or suspension of benefits).
- Notice is given verbally (if possible), and confirmed in writing *in every case*.

Employer Requested IME's

Employers also have a right to request an injured worker attend an employer requested Independent Medical Examination (IME), which is paid for by the employer. Although this happens infrequently, employers do have this right, subject to certain stipulations, found in section 36 of the *WSIA*.

Employer request for health examination

36. (1) Upon the request of his or her employer, a worker who claims or is receiving benefits under the insurance plan shall submit to a health examination by a health professional selected and paid for by the employer.

Objection

(2) Despite subsection (1), the worker may object to undergoing the examination or to the nature and extent of the examination requested by the employer. The worker shall notify the employer of his or her objection.

Request to Board

(3) Within 14 days after receiving the worker's objection, the employer may request that the Board direct the worker to submit to the examination and, if necessary, that the Board determine the nature and extent of the examination.

Decision final

(4) A decision of the Board under this section is final and is not appealable to the Appeals Tribunal.

Failure to comply

(5) If the worker does not comply with a direction of the Board made under subsection (3), the Board may reduce or suspend payments to the worker under the insurance plan while the non-compliance continues. 1997, c. 16, Sched. A, s. 36.

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Alcoholics Anonymous

A closed AA service meeting will be available at 1377 Lawrence Ave. East 8pm every Friday night. All Alcoholics welcome.

Victoria Day

Victoria Day is a Statutory Holiday to be observed on **Monday, May 22, 2017**. If your employer asks you to work on this day, you must be paid double time for working!