



# 2026 WORKERS' COMPENSATION CONFERENCE

COMMEMORATING THE 25<sup>TH</sup> ANNIVERSARY OF 9/11

OCTOBER 16 — ALBANY, NY



Workers'  
Compensation  
Board



Workers'  
Compensation  
Board

# PROVIDER COMPLIANCE AND DISCIPLINE



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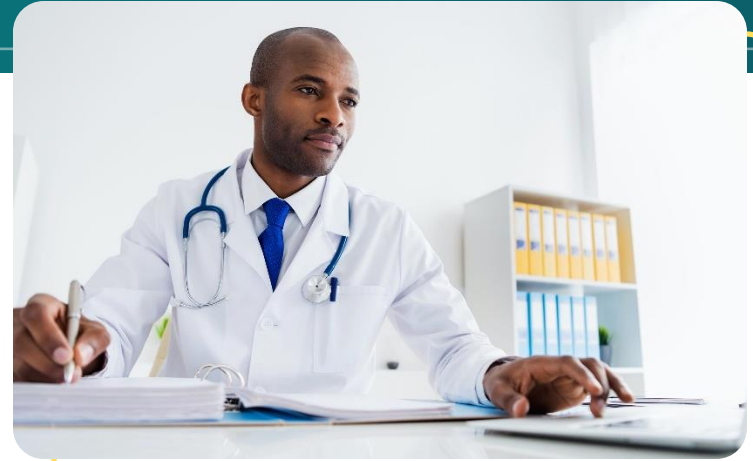
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# Introduction



# UNIVERSAL AUTHORIZATION

## Need to know:

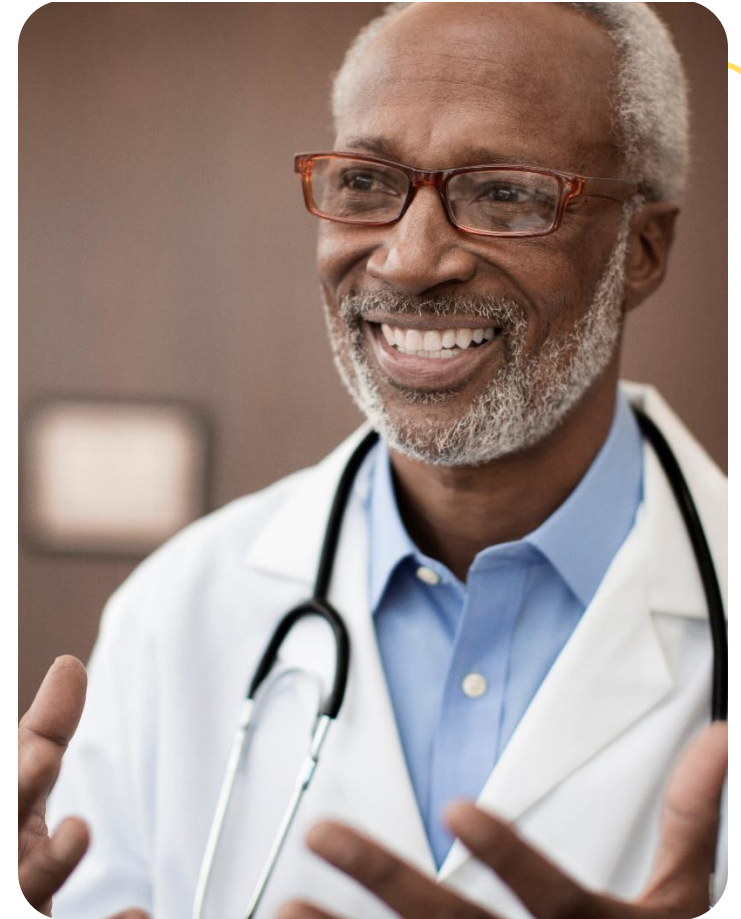
- The NYS Legislature passed “Universal Authorization” in 2026, which will go into effect on January 1, 2028. Until then, health care providers must still be “authorized” by the New York State Workers’ Compensation Board (Board) to treat or to perform Independent Medical Examinations (IMEs) of injured workers (NYS WCL §13-b).
- Starting January 1, 2028, all eligible, licensed providers in good standing will be deemed authorized to treat injured workers.
- IME providers will still need separate Board authorization.



# TODAY'S DISCUSSION

## Will cover:

- How to become authorized under the current structure and remain able to render care to injured workers until January 1, 2028
- How the Board operates in terms of provider compliance and “disciplinary” issues
  - Joint effort between the Board’s Medical Director’s Office (MDO) and the Health Provider Discipline Unit (HPDU) of the Office of General Counsel (OGC)





# Health Provider Administration & Compliance Unit





# HEALTH PROVIDER ADMINISTRATION & COMPLIANCE

## Who we are and what we do:

- Part of the Board's Medical Director's Office (MDO)
- Currently, process applications for Board authorization (~200-300/month) to:
  - Treat injured workers
  - Perform IMEs of injured workers
  - Treat and perform IMEs
- Process applications for all provider types
- Process periodic re-registration every 2 or 3 years, depending on provider type, and coinciding with license re-registration
- Process requests for specialist designations
- Staff the **Provider Compliance Committee**

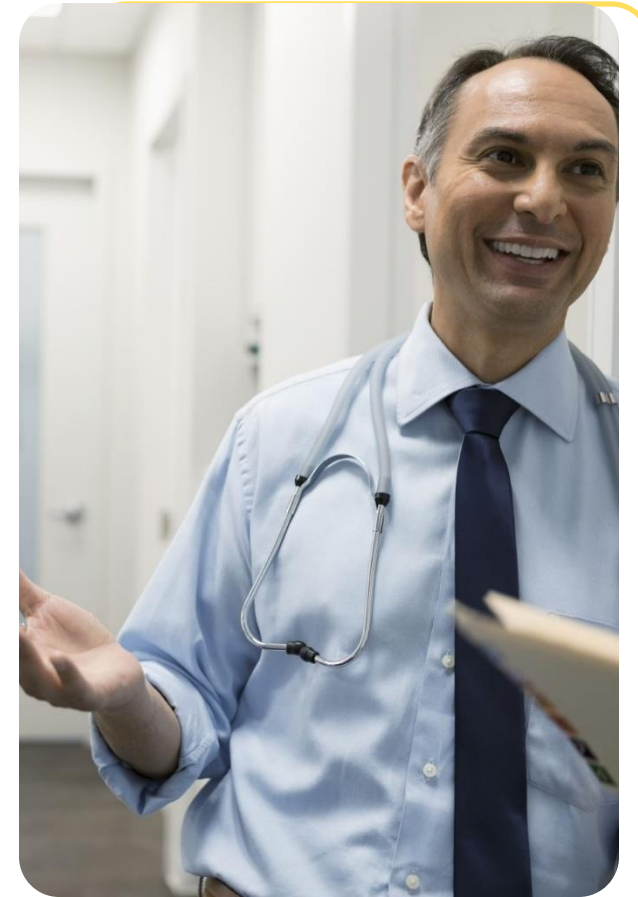




# HEALTH PROVIDER ADMINISTRATION & COMPLIANCE

## Once Universal Authorization takes effect:

- Health care providers will no longer need to apply for Board authorization to treat injured workers
- IME providers will still be required to apply for authorization, as additional certifications are needed
- The Board will retain the power to **exclude** problematic providers
  - The Board will publish the list of excluded providers





# Provider Compliance Committee



# PROVIDER COMPLIANCE COMMITTEE (PCC)

- Collaborates with MDO and OGC
- Meets weekly to process problem applications
- Evaluates complaints against providers
- Makes referrals to OGC's Health Provider Discipline Unit (HPDU)





# AUTHORIZATION DENIAL REASONS

## Typical reasons an **initial** application for **authorization** is denied:

- Past or current/pending disciplinary actions with Dept. of Health's Office of Professional Medical Conduct (OPMC) and/or State Education's Office of the Professions (OOP)
  - Addressed case by case based on nature, severity, recency, transparency, resolution, etc.
- Negative prior history with the Board (e.g., history of unauthorized treatment)
- Incomplete application
  - E.g., omission of documentation from prior disciplinary actions (omissions are deemed intentional)
- Failure to meet qualifying standards
  - E.g., education and training



# RENEWAL DENIAL REASONS

## Typical reasons an application for **renewal** is denied:

- Negative interim history with the Board
- Interim disciplinary actions (OPMC/OOP)
  - Failure to disclose same on re-application
- Interim HPDU investigation into potential provider misconduct
- Failure to maintain qualifications
  - E.g., Board certification for independent medical examiners



# COMMON COMPLAINTS

## Typical complaints addressed by the PCC

### ■ Regarding treating health care providers:

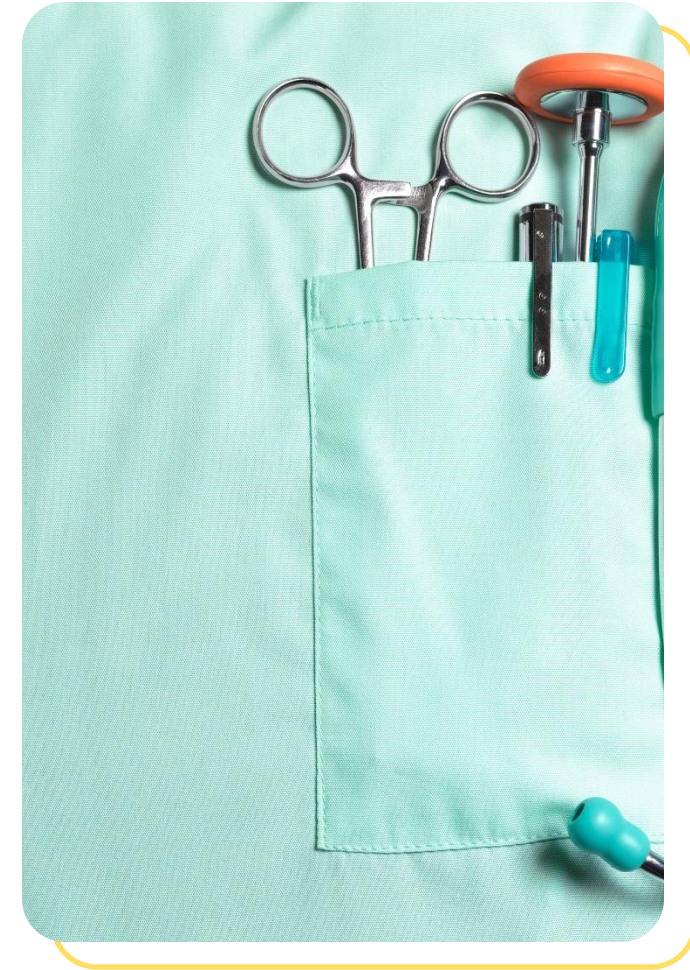
- Refusal to treat
- Failure to complete *Doctor's Report of MMI/Permanent Impairment (Form C-4.3)*
- Refusal to testify
- Failure to submit records to the case file
- Failure to submit prior authorization requests (PARs), e.g., for medication or physical therapy
- Direct billing of patient in violation of NYS WCL § 13-f
- Not adhering to the *NY WC Medical Treatment Guidelines*
- Provider is retiring/leaving: Patient “abandoned”



# COMMON COMPLAINTS (cont'd)

## ■ Regarding IME physicians:

- **Behavior:** “Rough” IME causing pain; doctor not using goniometer; disrespectful, inappropriate
- **IME report:** Factually inaccurate, opinions deferred to a workers’ compensation law judge (WCLJ)
- **IME process:** Status of IME facility; availability of chaperones or ability to record exam; long wait time; too many examinations/day; unsanitary conditions; cursory examination





# COMPLAINT SOURCES & MDO ACTIONS

## Sources of complaints

Examinees

Patients

Attorneys

Workers' Compensation Law  
Judges (WCLJ)

Insurers

Inspector General referrals

## MDO actions

MDO correspondence

Tracking/flagging

OGC referral



# Health Provider Discipline Unit





# HEALTH PROVIDER DISCIPLINE UNIT (HPDU)

## Who we are and what we do:

- Part of the Board's Office of General Counsel (OGC)
- Investigate potential medical provider misconduct
- Take administrative action (e.g., suspension, removal)
- Submit referrals to the Department of Health (DOH), State Education Department (SED), and Workers' Compensation Fraud Inspector General (WCFIG), as appropriate
- Advise the MDO regarding possible denial of authorization
- Support defense of *Article 78* proceedings against the Board





## How does HPDU investigate misconduct?



- Correspondence (ask the provider)
- Notices to Produce (obtain documents)
- Interrogatories (ask for sworn answers under oath to formal questions)
- Notice of Interview (a provider comes to Schenectady, NY, for a formal interrogation)



# HPDU: ROLE OF BOARD ATTORNEYS

## **The Board's attorneys work to:**

- Identify patterns of provider misconduct.
- Document instances of provider misconduct.
- Communicate with HPDU and MDO regarding misconduct encountered during hearings/records of hearings.

# MISCONDUCT DEFINED

HPDU



# WHAT IS MISCONDUCT?

## **NYS WCL §13-d defines misconduct as instances where providers have:**

- Been found guilty of professional misconduct or incompetency by licensing authority
- Exceeded the limits of professional license
- Made materially false statements in application for authorization
- Failed to submit full or truthful medical reports
- Knowingly made a false statement as to a material fact in a medical report or otherwise
- Solicited professional treatment of an injured worker





# WHAT IS MISCONDUCT? (cont'd)

- Refused to appear for a deposition or respond to Board correspondence or order (see NYS WCL § 13-d(2)(f))
- Solicited or received kickbacks or payments from a third party (see NYS WCL § 13-d(2)(g))
  - **This is a misdemeanor crime** (NYS WCL § 13-d(2)(h))
- Engaged in fee splitting
  - **This is a misdemeanor crime** (NYS WCL § 13-d(2)(h))
- Committed violations of professional misconduct (physicians and physician assistants, see Education Law § 6530) or unprofessional conduct (other licensed health care providers, see *Rules of Board of Regents Part 29*)

**SANCTIONS**

HPDU



# SANCTIONS: TEMPORARY SUSPENSION

## Temporary suspension occurs:



- When Chair's designee "may believe" misconduct has occurred
- During an HPDU investigation or as a result of an investigation
- After action by the DOH or SED without a finding or admission of guilt (e.g., provider "does not contest")
- See NYS WCL § 13-d(4)



# SANCTIONS: LOSS OF AUTHORIZATION

## Authorization removed/revoked when:

- Provider found guilty or admitted guilt in a disciplinary matter with DOH's OPMC or SED's OOP (See NYS WCL § 13-d(5))
- HPDU found other misconduct under NYS WCL § 13-d



*Levi v. NYS WCB* — The Appellate Division of the Supreme Court of New York, Third Department (3d Dept.), ratified the Board's authority to remove provider's authorization after reasonable investigation by Board found misconduct. 212 A.D.3d 126 (3d Dept. 2022)



# SANCTIONS: VOLUNTARY RESIGNATION



- Offered to providers facing temporary suspension or removal/revocation
- Avoids publication of adverse facts
- Can resign one or both types of authorizations (treat / perform IMEs), depending on type of misconduct

# SANCTIONS: DENIAL OF APPLICATION FOR RENEWAL

- Any finding of misconduct during prior renewal period
- Repeated violations of regulations:
  - Improper submission of *Request for Decision on Unpaid Medical Bills (Form HP-1.0)* (12 NYCRR § 325-1.25)
  - Improper submission of PARs — inappropriately selecting “None of the Above” therapeutic category (12 NYCRR § 441.5)
  - Acting in capacity as carrier physician for Level 2 Variance PAR reviews (12 NYCRR § 324.3)
  - Failure to reply to Board letters



*Habif v. NYS WCB* — The 3d Dept. ratified the Board’s authority to deny provider’s application after reasonable investigation by Board found misconduct. 206 A.D.3d 1322 (3d Dept. 2022)



# Scenarios: Is it misconduct?





# SCENARIO #1: IS IT MISCONDUCT?

The Board's MDO receives a complaint from an insurer that a provider has prescribed medication outside the drug formulary without submitting a Med PAR. The MDO sends the provider a letter asking for an explanation.

The letter was sent to the provider's last address on file with the Board, but the provider left the practice and never updated her contact information. The practice does not forward the letter to the provider, and the letter goes unanswered.

Has the provider committed misconduct?

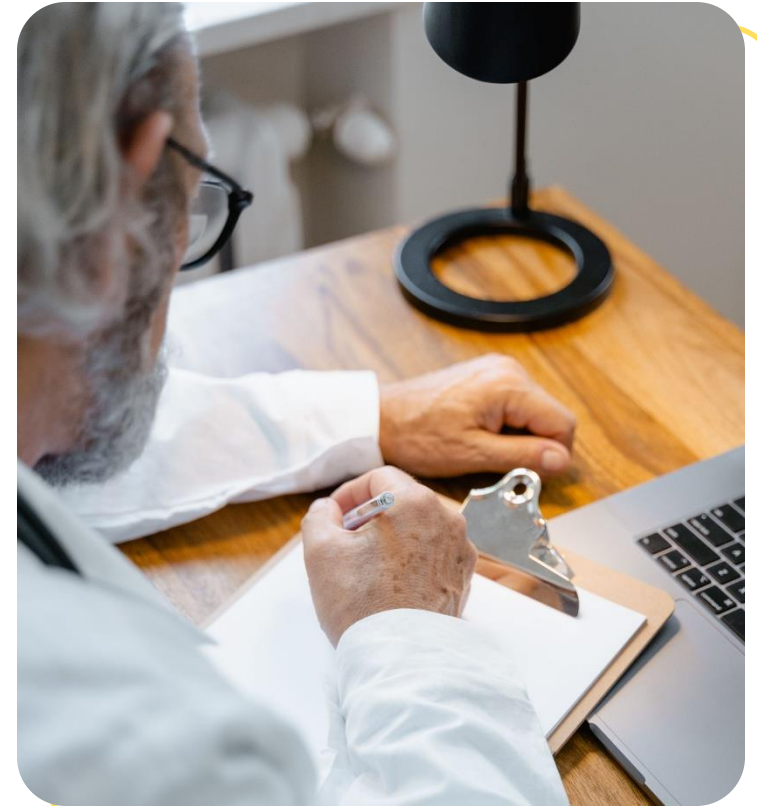


## SCENARIO #2: IS IT MISCONDUCT?

**Provider has been a chiropractor for 30 years and holds no other licenses.**

**For the past 15 years, provider has been under contract with “Med-Review, Inc.” to perform reviews of Variance PARs to determine medical necessity.**

**Is the Provider doing anything wrong?**



## SCENARIO #3: IS IT MISCONDUCT?

Provider is a busy orthopedic surgeon and always has a staff member renew his credentialing on his behalf.

Right after renewing in 2023, the provider was investigated by OPMC after a patient complained that he made sexual advances during an examination. The provider claims complete innocence and that he was “set up” but decides not to contest the allegations. OPMC issues a censure and reprimand in 2024.

The provider’s staff person was unaware of the OPMC action and completes his WCB renewal application in 2025 without checking the box re: the disciplinary finding. WCB denies his application.

Is this misconduct? Does the provider have any recourse?





## SCENARIO #4: IS IT MISCONDUCT?

Provider just started his own chiropractic practice and is trying to drum up business. He decides to send out a blast letter to every attorney in the vicinity stating that he is by far the best chiropractor within 50 miles, has equipment that “nobody else” has, and knows how to document a workers’ compensation claim that “gets around” the PAR rules so claimants could get more treatment and back to better health.

Has the provider done anything wrong?





## SCENARIO #5: IS IT MISCONDUCT?

Provider has retired from treating patients and now only conducts workers' compensation IMEs. Provider started out conducting 15-20 IMEs/day but due to increasing pressure from IME vendors, the provider has seen his daily load of exams increase to over 40 IMEs.



Over time, multiple claimants file complaints about the provider rushing through their exams, not using a goniometer, and writing reports with significant inaccuracies. Due to these complaints, the Board investigates and finds that the provider's IME reports contain numerous instances where exam times were documented as overlapping one another.

At time of renewal, the Board denies his application for authorization. The provider brings an Article 78 challenging the denial.

**Will the provider be successful?**

# MEDICAL DIRECTOR'S OFFICE

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**THANK YOU**

