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April 18, 2023

Workers' Compensation Advisory Committee  
c/o Kamerron Slay  
Commission Secretary  
Industrial Commission  
Via Email: [Kamerron.slay@iic.idaho.gov](mailto:Kamerron.slay@iic.idaho.gov)

**RE: Proposed Change to JRP 3.B Requiring Claimants to Sign a Medical Release Form**

Dear Advisory Committee Members,

We write to respectfully object to and express our concerns regarding the proposed changes to JRP Rule 3.B as drafted (most recent draft attached hereto as Exhibit A). There are several issues and areas of concern that will be addressed below.

The proposed changes state that the purpose is "To facilitate the exchange of medical information anticipated by Idaho Code 72-432(11)." The statute, in full, reads as follows:

(11) All medical information relevant to or bearing upon a particular injury or occupational disease shall be provided to the employer, surety, manager of the industrial special indemnity fund, or their attorneys or authorized representatives, the claimant, the claimant's attorneys or authorized representatives, or the commission without liability on the part of the physician, hospital or other provider of medical services and information developed in connection with treatment or examination for an injury or disease for which compensation is sought shall not be privileged communication. When a physician or hospital willfully fails to make a report required under this section, after written notice by the commission that such report is due, the commission may order forfeiture of all or part of payments due for services rendered in connection with the particular case. An attorney representing the employer, surety, claimant or industrial special indemnity fund shall have the right to confer with any health care provider without the presence of the opposing attorney, representative or party, except for a health care provider who is retained only as an expert witness.

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Of note, that statute applies to medical information “**relevant to or bearing upon** a particular injury or occupational disease...**for which compensation is sought.**” (emphasis added) To our knowledge, most, if not all, disputes over claimants refusing to sign or provide release forms have to do with Defendants seeking blank release forms or information that is not relevant to the subject claim. For example, if a claimant brings a claim for a rotator cuff injury, medical records regarding dental care, OB/GYN care, a foot injury, a prior back injury, etc. are not relevant to the subject injury. As drafted, the proposed changes do not address relevancy which is the focus of the statute. Therefore, the proposed changes do not fulfill the purpose of the statute from which they are supposed to be derived.

Of course, the unrelated records may be relevant if and when the claimant brings a claim for total permanent disability. The JRP and Idaho Rules of Civil Procedure (IRCP) already provide a mechanism for Defendants to discover and obtain information that may be relevant to their defense of a claim, whether it be for medical benefits or for total permanent disability. The proposed changes to JRP 3.B appear to circumvent JRP 7 and the IRCP as applicable to discovery practices before the Commission. Rather than show that the information sought is “reasonably calculated to lead to the discovery of admissible evidence,” as is the scope outlined by IRCP 26.b.1.A, Defendants can simply “request” for claimant to sign a release and claimant “shall” do it or face sanctions.

In addition, the proposed changes to JRP 3.B shift the burden of proof to claimants to show that private and irrelevant information should be protected. Currently, the burden is on Defendants to show that the information sought is “reasonably calculated to lead to the discovery of admissible evidence” by bringing a Motion to Compel. The status quo successfully functions in dealing with the isolated cases of claimants refusing to sign release forms. As the colloquialism goes, “If it ain’t broke; don’t try to fix it.” The Workers’ Compensation Act is to be liberally construed in favor of the employee “in order to effect the object of the law and to promote justice.” Haldiman v. American Fine Foods, 117 Idaho 955, 956 793 P.2d 187 (1990). Needlessly shifting the burden upon claimants does not honor the spirit or intent of the Act, and runs contrary to 100 years of Idaho Supreme Court precedent.

Additionally, the proposed changes to JRP 3.B do not allow for protection of claimants for relevancy but for “undue annoyance, embarrassment, or oppression.” The term “undue annoyance” is not defined or addressed in Idaho Supreme Court case law. In order for the proposed change to be consistent with the current JRP, ICRP, and the statute, it should allow for protection for relevancy.

If the proposed changes are going to be implemented against the protests and will of the claimants’ bar, we request certain changes be made. The proposed changes should be amended to include an exception for relevancy, for the reasons outlined above. There should also be a requirement placed upon Defendants to produce to claimants the records obtained with the release forms within a certain time period; perhaps 7 to 14 days following receipt. The reason for this is to prevent the current practice of some of the Defense bar, as follows:

Defense obtains a release form signed by claimant.

Defense obtains records with said release form and does not provide the records to claimant or claimant's attorney.

Defense confronts the claimant during claimant's deposition with records that neither claimant nor his attorney have ever seen.

This practice is an obvious abuse of release forms. If the proposed changes to JRP 3.B are going to be implemented, there must be limits placed upon Defendants to stop this abuse.

Additionally, any release form that claimants will be required to sign should be a form approved by the Industrial Commission. A current practice of some of the Defense bar is to write their own release forms, some of which authorize the obtaining of information that goes way beyond the scope of IRCP 26.b.1.A. If claimants are going to be required to sign release forms "requested" by the Defendants, there should be some limits placed upon Defendants to stop the abusive use of release forms.

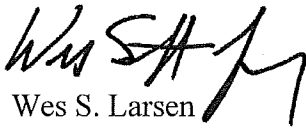
Thank you for your consideration of our objections and concerns.

Sincerely,

JAMES, VERNON & WEEKS, P.A.



Stephen J. Nemeec  
Attorney at Law



Wes S. Larsen  
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**B. Medical Release**

To facilitate the exchange of medical information anticipated by Idaho Code 72-432(11), if requested to do so by a party defending a complaint, an injured worker shall execute such medical release(s) as may be required by a medical provider in order to release medical records to the party defending the complaint. A release submitted to an injured worker for signature shall identify the medical provider from whom medical information is sought. An injured worker who objects to a request to execute such release(s) may file a motion for protective order pursuant to JRP 3(F) within 30 days following such request. The Commission may, for good cause shown, enter an order to protect an injured worker from undue annoyance, embarrassment, or oppression. Should an injured worker refuse to execute such medical release(s) after having been requested to do so, or after having been denied a protective order by the Commission, no action may be taken by worker in the prosecution of the complaint during the period of refusal. An opposing party who uses a release(s) executed pursuant to this rule to obtain the medical information of an injured worker shall provide one true and correct copy of all medical information so obtained to the injured worker, free of charge.

*Comments*

1. A release may list more than one provider.

*Exhibit A*