



Injured Worker's Choice of Treating Physician

In the years I have worked for injured workers obtaining compensation, I have developed a long list of frustrations I have with Wisconsin worker's compensation systems. Fortunately, however, there are also a number of aspects of the system that I admire. One of those aspects is the law relating to the injured worker's choice of treating physician.

When Wisconsin's Worker's Compensation Act was first adopted in 1917 an employee had to accept the doctor chosen by the employer. If the employer failed to provide a competent doctor, the employee had unlimited choice. That system changed over the years to the current system that has been in place since 1977. Now the injured employee has the right to choose any two medical providers practicing within Wisconsin. The right to a second medical provider is a significant benefit of the system.

The law provides that partners and clinics are deemed to be one practitioner, and that treatment by a practitioner on referral from another practitioner is still treatment by one practitioner. With the diversification and specialization of medical treatment such that not every clinic can offer every specialty, this is a significant right. If, for example, an injured worker has a particular perplexing back injury, not only is the initial referral from the patient's internist to the orthopedist still covered, but further referrals to a neurologist and even to a second orthopedist in another city and different practice group are still considered within the patient's first choice, and should still be covered by the worker's compensation carrier.

Referrals within workers' compensation are different from requirements under a health insurance or HMO plan. Under worker's compensation, there is no requirement that referrals be within any particular doctor's group or clinic, only that the new doctor be someone who practices in Wisconsin. For example, if you know of a doctor in Minocqua you want to use, treatment by that doctor could not be denied simply because he or she is not in any particular group.

Under worker's compensation, it is only the self-referral to a completely new clinic or physician that counts as a second referral. Most people, though, never even get to the stage of exercising their rights to a second physician because they have trust in their regularly treating physicians.

It is important, especially for those of us in the stateline area, to remember that this freedom of choice applies only to physicians licensed and practicing in Wisconsin. Thus, while treatment by the doctor five hours away in Minocqua probably would be covered, the doctor fifteen minutes away in Freeport might not be covered.

There are exceptions to this restriction. In a 1996 case, the Wisconsin Supreme Court held that treatment by an out-of-state doctor had to be paid when it was on referral. If an in-state doctor treating an injured worker decides that only a particular out-of-state doctor can treat the condition, and refers the patient there, the employee's medical treatment with the out-of-state physician should be covered.

This restriction applies only to payment, and not necessarily for treatment. In a 1998 decision, the Wisconsin Supreme Court held that the "choice" refers to presentation





for payment. In that case, the injured employee had gone to four different doctors, trying to find someone who could not only diagnose but treat his injuries. When it came time to make his worker's compensation claim, however, the injured worker sought reimbursement for only the first and the fourth doctors, and accepted personal responsibility to pay the second and third doctors. The Court affirmed the right of employees to seek treatment from as many practitioners as they desire, without forfeiting the right to be reimbursed for the expenses related to any two practitioners.

It is critical to remember that worker's compensation is, as it says, about compensation. Wisconsin's laws are not perfect, but the legislative goal remains to provide someone with an injury with monetary compensation for lost wages or earnings, as well as compensation in the form of medical assistance to make as complete a recovery as possible. The courts continue to apply these principles as they interpret the laws to provide the injured worker with the maximum opportunity to make a complete recovery.

