Justice & Health Partnership Workshop Series: How to Assist Injured Workers

A Guide for Healthcare Providers in Ontario

Presented by the Community Advocacy & Legal Centre

Presented by CALC

- We are a non-profit community legal clinic and provide **FREE(!!)** legal advice, assistance and representation to people living on a low income.
- We provide service to Hastings County, Lennox & Addington County, Prince Edward County + Tyendinaga Mohawk Territory.
- Our main office is in Belleville, but we have satellite offices in Trenton, Madoc, Marmora, Tweed, Bancroft, Picton, Napanee and Amherstview.
- We are funded primarily by Legal Aid Ontario (LAO).

How Can CALC Help?

- We provide legal services in the following areas:

Tenant Rights

Consumer & Debt Law

Income Security (OW, ODSP, CPP)

Employment and WSIB

Human Rights and Education

Seniors Issues (incld. Powers of Attorney and Wills)

- We also do Public Legal Education, Law Reform and Systemic Advocacy.

- We do not practice long or short term disability law, immigration law, family law, criminal law, real estate, or estates law.

Objectives of this presentation

- To help healthcare providers understand how to work with patients who have work-related injuries
- To understand the approach to worker's compensation that requires direct physician input
- To increase knowledge of the scope and of the limits of the role of the treating practitioner in worker's compensation
- To explore ethical challenges that arise in helping patients navigate the WSIB system.

How to Help

- W Why your help matters
- S Screen
- I Intervene
- B Be detailed

Why your help matters

- Most cases turn on medical evidence. Without the help of their treating practitioner, injured workers may lose their benefits.
- Getting onto WSIB benefits:
  - Helps minimize poverty
  - Historic compromise
  - Holds employers—the proper payors—responsible

Reality: WSIB by the numbers

- WSIB Claims in 2014
  - 233,645 reported injuries
  - 53,688 lost time injuries
  - 15,210 permanent impairments
- Under-reporting
  - 1994 OMA member survey: 51% had patients request not to report to the WCB an apparent work-related injury in past 6 months
  - 2001 cross Canada survey: 40% of workers eligible for workers' compensation do not submit a claim
  - 2014 Manitoba survey: over 30 per cent of workers who suffered a work injury requiring more than five days of lost time did not claim lost earning benefits

Reality: the benefits system(s)

- Loss of earnings
- Permanent impairment/disability
- Health care benefits
  - What might be covered:
    - Physio treatment
    - Maintenance treatment
  - Don't be surprised if what you prescribe isn't covered
- Travel Expenses (For specialists, etc.)

Screen

- Ask ALL patients:

  "Do you think this condition has anything to do with your work, past or present?"

- Most of the time it IS obvious
- But – sometimes it's not always obvious
- Ask even if there is a pre-existing condition – e.g. did something at work make this worse?

What does work-related really mean?

- Arising out of employment
- Arising in course of employment
- Significant contributing factor
- Is it “more likely than not” that work played a role in the injury/illness?
  - Scientific certainty is not required

Reality: What counts as a worker's comp injury anyway?

- Personal injury by accident
- Accident:
  - Chance event
  - Wilful act of other than worker
  - Disablement
  - Occupational disease
- Arising out of and in the course of employment
- Secondary injury
- Aggravation – pre-existing
- Recurrence or second injury

Case Studies on compensable injury

- Fall off ladder while on the job
- Exposure to chemicals/carcinogens at work that cause lung cancer in a worker who smokes
- Fall at home (Underlying compensable injury)
- Prior injury
- Psychological conditions arising from workplace injury

Doctor's Legal Obligations

- Under the *Workplace Safety and Insurance Act (WSIA)*
  - Obligation to report
    - Under WSIA s.37, must promptly give the WSIB information about the health care provided to a worker who is claiming benefits from a work-related injury/illness, even if consulted with respect to the health care about a workplace injury/illness
  - Chart notes as a response
    - Tempting to respond to WSIB request for information by providing copies of chart notes, but doing so often provides personal information that should remain between the doctor and the patient, and creates a permanent record of sensitive information within the Board file and will be provided to the ER.
  - Limits on disclosure
  - When responding can say what is in chart notes that relates to the injury
    - Ideally dictate letter to explain relevant things
      - One alternative

Disclosure

- Must promptly give the WSIB the relevant personal health information that the WSIB may require or that the patient requests be provided
- Can provide personal health information to WSIB and/or employer (for employer, only a report re functional abilities) without patient's consent
- Can take position that patient ought to be made aware of the disclosure and notify patient about the disclosure
- Not liable for providing information in accordance with the *WSIA* and *PHIPA* unless he or she acts maliciously

Healthcare Providers as Advocates

Advocacy

- A healthcare provider should advocate for their patients to advance patients' health care interests - e.g. navigating the health care system

- In providing third party reports, such as reports for a workers' compensation claim, the College expects a doctor to be objective and impartial

So you have Screened – but what if…

- The worker has clearly had a work related injury and they do not want to report it, even though there is a good chance it will cause loss of work time down the road, because they are afraid the employer will find ways to get rid of them (often very well justified)
  - Discuss the options for the injured worker
  - Refer the injured worker for legal advice on protections
- There is uncertainty about the work-relatedness
  - Submit the WSIB Form 8 if you suspect this is work related
- Medical certainty is not required

Intervene

- Assist with Claims & Appeals
  - Physicians are the transmitters of medical information, not the deciders of entitlement
  - Without the necessary medical information, injured employees may be denied the WSIB benefits to which they are entitled.
  - Consider the need for time to heal in return to work situations.
  - Give reasons, not just opinions.

Battle of Opinions

- Keep in mind, treatment providers' opinions may be ignored by WSIB
- BUT your opinion could mean a great deal at the Workplace Safety & Insurance Tribunal (where injured workers can appeal WSIB decisions), so be patient

The horns of a dilemma: case study

- Whether Injured worker should follow WSIB's direction or follow the doctor's advice:
  - Peter is a labourer who has been off work on WSIB benefits for several months due to a complex fracture of the left leg, the orthopaedic surgeon reports Peter is progressing with crutches but the fracture is still not weight bearing, the WSIB has told Peter the employer has light office duties sitting or standing and he must return to work, it is December and you have advised Peter to stay off work until the next visit to the orthopaedic surgeon because the activities involved in travelling to/from work and working present a high risk of re-injury to the fracture site
- What is the patient to do? What can the physician do?

Problems for Patients and Doctors

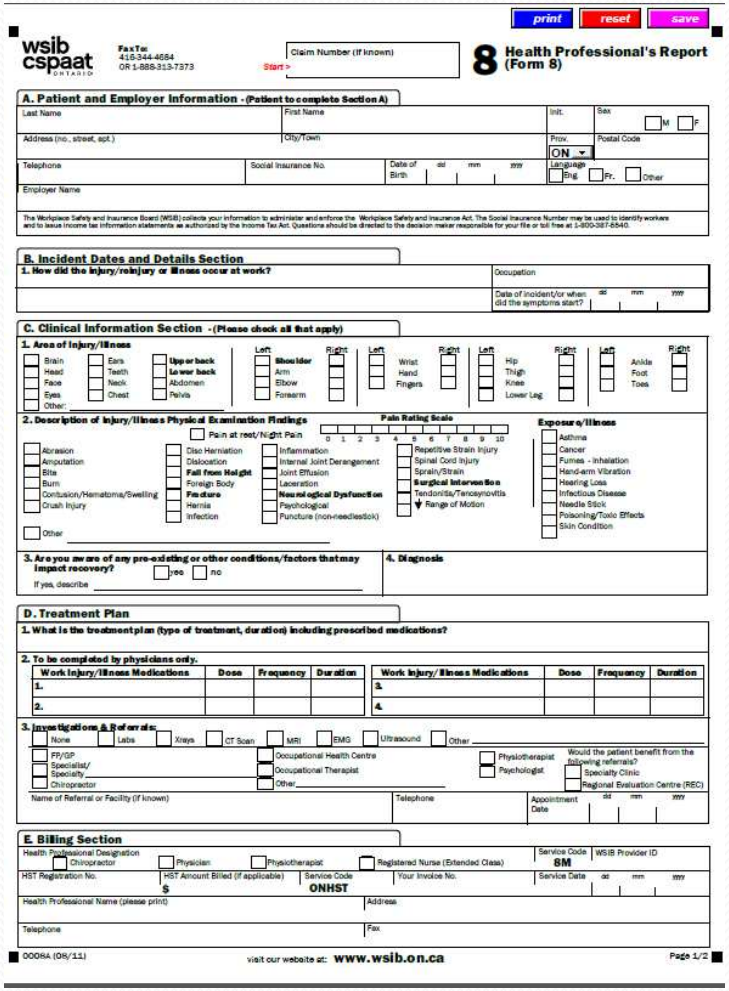
- For patients
  - If doctor's advice is not followed, can be penalized under WSIA
    - Injured workers obligation to cooperate with medical advice
- For doctors
  - Not enough just to say person cannot return to work, must have considered modified duties and explain why it is a problem
  - Can document client's condition just prior to return to work and document any problems with return to work

Be detailed

- Details matter!
  - Sometimes the smallest detail is key to gaining entitlement for the injured worker.
- Remember:
  - The workplace need only make a “significant contribution” to the development of the injury or illness to be compensable.
    - Need not be “the most significant” factor
    - Need only be “a” significant contributing factor

An Approach to Forms

- Know: WSIB definitions, employment history
- Understand: the process: the forms, who assesses, appeal process
- Stay Up-to-Date: with developing issues in WSIB
- Don't take it personally when your opinion is not followed by WSIB adjudication



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FaxTo: 416-344-4684 OR 1-888-313-7373

Claim Number (If known)

Start >

8 Health Professional's Report (Form 8)

A. Patient and Employer Information - (Patient to complete Section A)

Last Name | First Name | Init. | Sex M F

Address (no., street, apt.) | City/Town | Prov. ON | Postal Code

Telephone | Social Insurance No. | Date of Birth dd mm yyy | Language Eng Fr. Other

Employer Name

The Workplace Safety and Insurance Board (WSIB) collects your information to administer and enforce the Workplace Safety and Insurance Act. The Social Insurance Number may be used to identify workers and to issue income tax information statements as authorized by the Income Tax Act. Questions should be directed to the decision maker responsible for your file or toll free at 1-800-387-6540.

B. Incident Dates and Details Section

1. How did the injury/reinjury or illness occur at work?

Occupation

Date of incident/or when did the symptoms start? dd mm yyy

C. Clinical Information Section - (Please check all that apply)

1. Area of injury/illness

Brain, Head, Face, Eyes, Other: | Ears, Teeth, Neck, Chest | Upp or back, Lower back, Abdomen, Pelvis | Left/Right: Shoulder, Arm, Elbow, Forearm | Left/Right: Wrist, Hand, Fingers | Left/Right: Hip, Thigh, Knee, Lower Leg | Left/Right: Ankle, Foot, Toes

2. Description of Injury/Illness Physical Examination Findings

Pain at rest/Night Pain

Pain Rating Scale 0 1 2 3 4 5 6 7 8 9 10

Abrasion, Amputation, Bite, Burn, Contusion/Hematoma/Swelling, Crush Injury, Other | Disc Herniation, Dislocation, **Fall from Height**, Foreign Body, **Fracture**, Hernia, Infection | Inflammation, Internal Joint Derangement, Joint Effusion, Laceration, **Neurological Dysfunction**, Psychological, Puncture (non-needlestick) | Repetitive Strain Injury, Spinal Cord Injury, Sprain/Strain, **Surgical Intervention**, Tendonitis/Tenosynovitis, Range of Motion

Exposure/Illness: Asthma, Cancer, Fumes - Inhalation, Hand-arm Vibration, Hearing Loss, Infectious Disease, Needle Stick, Poisoning/Toxic Effects, Skin Condition

3. Are you aware of any pre-existing or other conditions/factors that may impact recovery? yes no

If yes, describe

4. Diagnosis

D. Treatment Plan

1. What is the treatment plan (type of treatment, duration) including prescribed medications?

2. To be completed by physicians only.

Work Injury/Illness Medications	Dose	Frequency	Duration	Work Injury/Illness Medications	Dose	Frequency	Duration
1.				3.			
2.				4.			

3. Investigations & Referrals:

None, Labs, Xrays, CT Scan, MRI, EMG, Ultrasound, Other

FP/GP, Specialist/ Specialty, Chiropractor | Occupational Health Centre, Occupational Therapist, Other | Physiotherapist, Psychologist | Would the patient benefit from the following referrals? Specialty Clinic, Regional Evaluation Centre (REC)

Name of Referral or Facility (If known) | Telephone | Appointment Date dd mm yyy

E. Billing Section

Health Professional Designation: Chiropractor, Physician, Physiotherapist, Registered Nurse (Extended Class) | Service Code 88M | WSIB Provider ID

HST Registration No. | HST Amount Billed (if applicable) $ | Service Code ONHST | Your Invoice No. | Service Date dd mm yyy

Health Professional Name (please print) | Address

Telephone | Fax

0008A (08/11) visit our website at: www.wsib.on.ca Page 1/2

The Form 8

Which form?

Submit the **Form 8** if you suspect this is work related. Medical certainty is not required.

- Nature of injury:
  - What parts of the body are affected by the injury?
  - List all body parts injured, not just the major ones.
  - Is this a psychological injury?
  - Has a secondary condition resulted?
  - If there was a pre-existing condition, what has changed?
  - Talk to worker to make sure everything is covered, no matter how small
  - Where multiple issues, make sure all issues are listed

The Form 8, cont'd

- History of onset:
  - When did the injury/illness/disease occur?
    - Occupational disease
    - Gradual onset
    - Can write a note instead of date
  - What is the mechanism of injury?
  - List job details if you have them – what was worker doing at onset?
  - How long is the injury expected to last?
  - Is the condition expected to improve or deteriorate?

The Form 8, cont'd

- Job details:
  - What were the pre-accident job duties?
  - Is the modified job appropriate for the injury?
  - What is the exposure history? For example, to prolonged repetitive motion and force or to chemicals and toxic agents?

The Form 8, cont'd

- Restrictions/limitations:
  - Physical limitations on ability to walk, stand, sit, etc.
  - Psychological restrictions
  - Need for reduced hours/endurance
  - Suitability of modified work duties that are offered – do these duties exceed medical restrictions?

The Form 8, cont'd

- Quantifiable changes:
  - Is there decreased range of motion?
  - Have any medications been prescribed?
  - What is their effect?
  - How to deal with conditions that are not "objectively measurable"

Form 26 Progress Report

- Things to include
  - Is recovery proceeding as planned?
  - Graduated hours/Return to Work discussions – time to heal
- Pitfalls
  - If new diagnosis, or change in diagnosis – must explain
  - Full recovery expected by _____ - Problematic
  - Conditions impacting RTW – Problematic
  - Real issue is whether workplace condition is still significant contributing factor

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Workplace Safety & Insurance Board
Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

Fax To:
416-344-4684
OR 1-888-313-7373

26 Health Professional's Progress Report (Form 26)

Section 37 of the Workplace Safety and Insurance Act authorizes you to release this information to the WSIB. Please answer all questions in black ink or type and return by fax to (416) 344-4684 or 1-888-313-7373.

Claim Number

Worker's name | Date of Incident (dd/mmm/yyyy)

When work injury/illness occurs, focus on return to usual activity including return to safe and appropriate work is best practice. Most workers who experience soft tissue injury are able to remain at work.

Return to Work Information

1. ☐ This worker can resume Regular duties. Start date (dd/mmm/yyyy) Are graduated hours required? If yes, please specify _____

☐ This worker can begin Modified duties. Start date (dd/mmm/yyyy) Are graduated hours required? If yes, please specify _____

☐ Pain should not be the only medical restriction. Is there any other reason this worker cannot return to work at this time?
Please provide details and expected return to work date:

2. Please indicate the worker's functional abilities in relation to the workplace injury.

A. Full functional abilities ☐

B. Some functional abilities

	Able to	Not Able to		Able to	Not Able to
Bend/Twist	☐	☐	Push/Pull	☐	☐
Climb	☐	☐	Sit	☐	☐
Kneel	☐	☐	Stand	☐	☐
Lift	☐	☐	Use of Public Transportation	☐	☐
Operate Heavy Equipment	☐	☐	Use of Upper Extremities	☐	☐
Operate a Motor Vehicle	☐	☐	Walk	☐	☐

Other Limitations due to: ☐ Environmental Conditions ☐ Medication ☐ Use of Protective Equipment

Additional comments on abilities (e.g. maximum repetitions, maximum weight, maximum time to be considered).

Clinical Information and Treatment Plan

3. Please indicate change in the patient's condition since last visit. ☐ Recovered ☐ Improving ☐ Worsening ☐ Unchanged
If worsening, provide details on the patient's condition:

4. Current diagnosis.

5. Are you aware of any pre-existing or other conditions/factors that would impact return to work or recovery? ☐ Yes ☐ No
If Yes, describe (e.g. psychosocial, medications).

6. Prognosis - Please select one of the following choices:
- ☐ Fully recovered now.
- ☐ Partially recovered now and full recovery is anticipated in approximately _____ weeks.
- ☐ Partially recovered now, continuing to improve. Full recovery not yet known.
- ☐ Full recovery not expected.

7. What is the current treatment plan (type of treatment, interventions, duration)?

Billing Section

Health Professional Designation: ☐ Chiropractor ☐ Physician ☐ Physiotherapist ☐ Registered Nurse (Extended Class) | Service Code **26M** | WSIB Provider ID

HST Registration No. | HST Amount Billed (if applicable) $ | Service Code **ONHST** | Your Invoice No. | Service Date dd mmm yyyy

Health Professional Name (please print) | Address

Health Professional's Signature | Telephone | Fax

Continuity Report – REO8

- Form 8 or REO8 - when to use which form
- Things to include
  - What has changed in the injured worker's condition?
  - Are the changes quantifiable?
  - Job details as of the recurrence

The Functional Abilities Form

- Things to include
  - Restrictions/limitations:
  - Physical limitations on ability to walk, stand, sit, etc.
  - Psychological restrictions
  - Need for reduced hours/endurance
  - Suitability of modified work duties that are offered – do these duties exceed medical restrictions?
  - Effect of injury on ability to get to worksite
- Pitfalls
  - Try to get written job description or Physical Demands Analysis

Role of Practitioner

- Where is the limit of the Practitioner's role?
  - Stick to the medical
  - Remain neutral
  - CPSO directives
- Conversations with Board are recorded and show up in file
- While waiting for Board decision, should continue treatment – look into other options for treatment

Role of Advocate

- What can Legal clinics/OWA do?

REFERRALS and RESOURCES

- Does your patient need legal help or help in proving work-relatedness?
  - Legal clinics
  - Office of the Worker Adviser
  - Unionized employees
  - Occupational health clinics for Ontario workers (OHCOW)
  - LAMP Community Health Centre

Questions?

Contact Us

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