

## Sufficiency of Medical Opinions via “Check the Box” Questionnaires



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### Practice Areas:

- Workers' Compensation

In order for an injury to be deemed compensable, a claimant must present facts sufficient to show the alleged injury arose out of and in course and scope of employment. This often requires the submission of medical evidence by way of an opinion from a doctor or other health care provider relating the injury to the work accident.

S.C. Code Ann. § 42-1-160(G) defines “medical evidence” as “expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.” In recent years, the use of “check the box” questionnaires has become more prevalent, if not customary, leading many to question their sufficiency as “medical evidence.”

These questionnaires typically appear in a claim that involves any of the following:

- A dispute as to the causal relationship of an alleged injured body part,
- A dispute as to the attainment of maximum medical improvement,
- The need for medical treatment is contested; or
- A prior medical opinion is reversed or clarified

The questionnaires are typically three or four short statements regarding the issue(s) in dispute and provide the option for the health care provider to agree with the statement by checking “yes” or disagree by checking “no.” However, the questionnaires almost never contain further elaboration from the health care provider of how the opinion was reached or what objective medical evidence the opinion is based upon. While the claimant has technically produced an opinion from a health care provider, stated to a reasonable degree of medical certainty as required by statute, there is no real foundation for a hearing Commissioner to weigh the sufficiency of the opinion.

The use of medical questionnaires often is an efficient and effective tool to save time and money for all parties involved. The Commission has not promulgated a regulation nor given guidance on the use of medical questionnaires, and the questionnaires remain admissible as “medical evidence” at a hearing. However, the sufficiency of and probative value of “check the box” questionnaires to determine compensability of injuries, the need for medical treatment or surgery, as well as the changing or revision of a prior medical opinion remains debatable.

Stay tuned for the next edition of this blog, as it will discuss how elements of the medical questionnaire might be argued by the defense.

## **About Tom Bacon**

Tom Bacon is a shareholder with Collins & Lacy practicing in workers' compensation. During his seven years of practicing solely in this area of law, Tom has represented large and small businesses, insurance companies and uninsured employers, and he has successfully argued cases to the Full Workers' Compensation Commission, Circuit Court and Supreme Court. After earning his dual degree in Political Science and History at Furman University, Tom graduated from the University of South Carolina School of Law. Prior to joining Collins & Lacy, Tom was an attorney at a firm in Charleston, South Carolina.

## **About Collins & Lacy, P.C.**

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