Release of Information in California:
Worker’s Compensation

E-book Series, 4 of 12

The Release of Information (ROI) in California is a series of 12 E-books that will help you navigate and understand the complex state and federal laws, as well as best practices related to managing and releasing protected health information. The ROI E-book series contains content that falls under HIPAA, federal regulations, and is specific to California state laws.
Table Of Contents

Acknowledgments ...................................................................................................................... III

ROI E-book Series ..................................................................................................................... IV

Forward ....................................................................................................................................... V

Introduction ................................................................................................................................. 1

History of workers’ compensation ................................................................. 1
Sources of law ............................................................................................................................. 2

Workers’ compensation benefits .................................................................................. 3
Employee injury ...................................................................................................................... 3

Disclosures of protected health information for workers’ compensation purposes .... 5
Disclosures without individual authorization ................................................................. 5
Disclosures with individual authorization ....................................................................... 6
Minimum necessary ................................................................................................................ 6

Workers’ Compensation Appeals Board ................................................................. 7
Organization of California Workers’ Compensation Appeals Board ......................... 7
Appeal to Workers’ Compensation Appeals Board ....................................................... 7
Refusal to authorize medical treatment ........................................................................ 8
Refusal to authorize surgery or tests ............................................................................... 8
Refusal to provide benefits ................................................................................................. 8
Insufficient benefits ............................................................................................................. 8
Insufficient medical care .................................................................................................... 8

Depositions and subpoenas for medical records ....................................................... 9
Definitions related to Workers’ Compensation Appeals Board ....................................... 9
Deposition subpoena .......................................................................................................... 10
Investigatory subpoena (non-depositon subpoena) ......................................................... 12
Subpoena duces tecum (non-depositon subpoena) ........................................................ 13
Affidavit/declaration .......................................................................................................... 14
Service ................................................................................................................................. 15
Notice to consumer ............................................................................................................. 15
HIPAA – Satisfactory assurance/qualified protective order ............................................. 16
Witness fees ......................................................................................................................... 17
Accepting subpoena .......................................................................................................... 17
Mailing of records ............................................................................................................. 18
Conclusions ......................................................................................................................... 18
Resources .............................................................................................................................. 19
<table>
<thead>
<tr>
<th>Exhibit/Document</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibits A-M</td>
<td>20-38</td>
</tr>
<tr>
<td>Claims Flow Chart</td>
<td>20</td>
</tr>
<tr>
<td>Employer’s Report of Occupational Injury or Illness</td>
<td>21</td>
</tr>
<tr>
<td>Doctor’s First Report of Occupational Injury or Illness</td>
<td>22</td>
</tr>
<tr>
<td>Workers’ Compensation Claim Form and Notice of Potential Eligibility</td>
<td>23</td>
</tr>
<tr>
<td>Authorization to Use/Disclose Protected Health Information</td>
<td>24</td>
</tr>
<tr>
<td>Form DWC-WCAB – 1A – Application for Adjudication</td>
<td>26</td>
</tr>
<tr>
<td>Readiness to Proceed</td>
<td>31</td>
</tr>
<tr>
<td>Deposition Subpoena for Personal Appearance/Production of Documents</td>
<td>33</td>
</tr>
<tr>
<td>Subpoena Duces Tecum</td>
<td>34</td>
</tr>
<tr>
<td>Declaration of Authority or Declaration of Custodian of Records</td>
<td>35</td>
</tr>
<tr>
<td>Sample Affidavits/Declaration Showing Good Cause</td>
<td>36</td>
</tr>
<tr>
<td>Proof Of Service For Service By Mail Or Personal Service</td>
<td>37</td>
</tr>
<tr>
<td>Notice to Consumer or Employer</td>
<td>38</td>
</tr>
<tr>
<td>Self-Assessment Quiz</td>
<td>39</td>
</tr>
</tbody>
</table>
Acknowledgements

The California Health Information Association (CHIA) Board of Directors extends its appreciation for the development of this E-book to:

Instructor

Michele D. Kirby, RHIA, CHPS, has over 25 years’ experience working in the field of health information management. Michelle became a Registered Health Information Technician (1994) and now is a Registered Health Information Administrator. Michele is also certified in health care privacy. Michelle is the Dignity Health North State’s Facility Privacy Official.

The CHIA Board of Directors also extends their appreciate to the CHIA Publications Committee who has secured and reviewed these e-books over the years, volunteering their time, effort and input as they reviewed drafts of the e-books as an editorial board. And special thanks to Gayle Old-Smith, RHIA, CHIA Copy Editor, who spent many hours diligently reviewing this e-book.
Release of Information in California E-book Series

The Release of Information (ROI) in California is a series of 12 E-books that will help you navigate and understand the complex state and federal laws, as well as best practices related to managing and releasing protected health information. The ROI E-book series contains content that falls under HIPAA, federal regulations, and is specific to California state laws.

Each ROI E-book includes an overview of the topic and extensive references. Self Assessment Quizzes are designed in multiple-choice and true/false format, and assess your understanding of the subject matter. A link to the Quiz is provided with each purchased E-book, and corrected answers will be displayed so you can receive automatic feedback.

Upon completion of the Self Assessment Quiz, a Certificate of Completion (CEU) will be made available to download and print. You will not be able to access the Certificate after exiting the Quiz, so be sure to download it immediately and retain as evidence of the earned continuing education.

<table>
<thead>
<tr>
<th>Product Code</th>
<th>Release of Information in California:</th>
<th>CEU’s Offered</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-book 001</td>
<td>Introduction **</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 002</td>
<td>General Releases</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 003</td>
<td>Medical Records and the Court System</td>
<td>Three</td>
</tr>
<tr>
<td>E-book 004</td>
<td>Workers Compensation</td>
<td>Three</td>
</tr>
<tr>
<td>E-book 005</td>
<td>Elder, Dependent Adult &amp; Child Abuse</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 006</td>
<td>Coroner’s Office</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 007</td>
<td>Public Health Agencies</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 008</td>
<td>Business Associates</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 009</td>
<td>Government Agencies</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 010</td>
<td>Inmates</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 011</td>
<td>Law Enforcement</td>
<td>Two</td>
</tr>
<tr>
<td>E-book 012</td>
<td>Special Health Records</td>
<td>Two</td>
</tr>
</tbody>
</table>

** CHIA recommends you read the Release of Information in California: Introduction E-book first. This E-book is offered at no charge and includes the “Glossary of Terms” that is used in all subsequent ROI E-books.

Additional CHIA Resources

To view sample pages or purchase these E-books, or to view more details about CHIA’s publications and Webinar Replays, visit [www.CaliforniaHIA.org/Resources](http://www.CaliforniaHIA.org/Resources)
Forward

The purpose of this E-book is to provide accurate and authoritative information on proper and adequate disclosure of health information. The California Health Information Association (CHIA) is not engaged in rendering legal services, and providing legal advice is beyond the scope and intent of the E-books.

Release of Information in California: Workers’ Compensation

Medical records play a very important part in lawsuits; health information staff and custodians of records need to understand what is required when medical records are sought as evidence. Medical records can play a part in a malpractice lawsuit, an injury lawsuit, or a variety of other types of lawsuits.

This E-book will provide the student with basic information about how court systems work and the important role for the medical record plays within the courts.

Student Learning Outcomes and Objectives

Upon completion of the Release of Information in California: Workers’ Compensation E-book, students will be able to understand what roles medical records play within the legal system and what legal processes should be followed. These are important issues and the health information staff and custodians of records must understand the legal requirements in order to comply with the various types of requests for medical records that may be received by a health care provider:

- Understand the role of medical record documents in a Workers’ Compensation case.
- Reference federal and state laws that pertain to workers’ compensation issues.
- Recognize the benefits to which an employee is entitled under workers’ compensation insurance and employer requirements.
- Understand release of patient information for a workers’ compensation claim.
- Understand how the Workers’ Compensation Appeals Board is structured and its function.
- Understand the components of a valid subpoena and how to comply in a workers’ compensation case.
Release of Information in California: Workers’ Compensation Subpoenas

Introduction

Each year in California, there is approximately three-quarters\(^1\) of a million work-related injuries and illnesses reported to the California Division of Labor Statistics and Research, Department of Industrial Relations.\(^{2}\) California workers’ compensation laws were designed to ensure that prompt and appropriate medical care is provided to workers who have suffered from a work-related injury or an illness. Payment for treatment and care of such injuries or illnesses is provided through workers’ compensation insurance without deductibles, co-payments, or premium payments by the injured or ill worker. In California employers are required to have workers’ compensation insurance for their employees.\(^3\)

The majority of workers’ compensation claims are resolved without any problems. However, at times there may be a disagreement between the claims adjuster and the worker regarding whether the injury or illness was sustained while working on the job or how much in benefits the worker is entitled to receive. Disputes may lead to litigation in order to resolve the issue(s) in question. This module will provide the student with basic information related to claims brought before the Workers’ Compensation Appeals Board and the role of Health Information Management staff in complying with requests for information for workers’ compensation cases.

History of workers’ compensation

Workers’ compensation is the oldest social insurance program. It was adopted in most states, including California, during the 1910s. It is a “no fault” system, meaning that injured employees need not prove the injury was someone else’s fault in order to receive workers' compensation benefits for an on-the-job injury.\(^4\)

Workers' compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of coworkers in most accidents.

The workers' compensation system is based on a trade-off system between employees and employers. Employees are supposed to receive the limited statutory workers’ compensation benefits promptly for on-the-job injuries or illnesses, and in return, the limited workers’

---

\(^1\) California Division of Labor Statistics and Research, Department of Industrial Relations. *Occupations Injuries and Illnesses, 2001 Data*. 2003. Available at [www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr)

\(^2\) Commission on Health and Safety, Workers’ Compensation Medical Care in California: System Overview, August 2003.

\(^3\) *Id.*

\(^4\) [http://www.dir.ca.gov/DWC/Employer.htm](http://www.dir.ca.gov/DWC/Employer.htm) 10/27/11
compensation benefits are the exclusive remedy for injured or ill employees against their employer, even when the employer negligently caused the injury or illness.\textsuperscript{5}

This no-fault structure was designed to--and in fact did--eliminate the then prevalent litigation over whether employers were negligent in causing workers' injuries. Litigation is now over other issues, such as whether the injury or illness was sustained on-the-job or how much an injured or ill worker is entitled to receive in benefits.

The role of the Workers’ Compensation Appeals Board is to exercise all judicial powers vested under the Labor Code. Despite the name, all workers’ compensation matters (not just appeals) are handled by the Workers’ Compensation Appeals Board. The Workers’ Compensation Appeals Board also functions to review petitions for reconsideration of decisions by workers’ compensation administrative law judges and regulation of the adjudication process.

Sources of law

To understand the role that medical record documents play in regard to workers’ compensation, it is important to understand some of the sources from which federal and state law come.

- 45 CFR 164.512(l) – A covered entity may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers’ compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

- 29 CFR Parts 1904-1928 – The purpose of this rule is to require employers to record and report work-related fatalities, injuries, and illnesses. Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an Occupational Safety and Health Administration rule has been violated, or that the employee is eligible for workers' compensation or other benefits. The rest of the parts speak to the roles and responsibilities of the Occupational Safety and Health Administration.

- California Civil Code § 56.10(c)(8)-(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:
  - Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.
  - Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her

\textsuperscript{5} Ibid.