

C. Issues Raised and Factual Basis for Controverting Claim (check all raised - see instructions on Page 4)

- | | |
|--|--|
| <input type="checkbox"/> Prima Facie Medical Evidence | <input type="checkbox"/> Causally Related Accident or Occupational Disease |
| <input type="checkbox"/> Accident within meaning of Workers' Compensation Law | <input type="checkbox"/> Causally Related Death |
| <input type="checkbox"/> Accident Arising Out Of and In the Course of Employment | <input type="checkbox"/> Proper Employer Entity |
| <input type="checkbox"/> Occupational Disease within meaning of Workers' Compensation Law | <input type="checkbox"/> Cancellation of Coverage |
| <input type="checkbox"/> Occupational Disease Arising Out Of and In the Course of Employment | <input type="checkbox"/> Proper Carrier |
| <input type="checkbox"/> Notice (Section 18) | <input type="checkbox"/> Subject Matter Jurisdiction |
| <input type="checkbox"/> Notice (Section 45) | <input type="checkbox"/> Timely Filing (Section 28) |
| <input type="checkbox"/> Employer-Employee Relationship | |

1. Specify the legal and/or factual basis which support the issue(s) raised above.

2. List all documents which will be used to support the issue(s) raised above.

Within the Board's file (give name and ID number): _____

Within the possession of the insurer but not in the Board's file (list and describe all documents): _____

3. List all witnesses (name, and if known, address and telephone number) which may be used to support the issue(s) raised above along with the information he/she/they will provide: _____

D. Certification

By signing in the spaces provided below, I certify that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances that the allegations and other factual matters asserted in controverting the claim or the defenses asserted have evidentiary support, or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Further, this Notice That Right to Compensation is Controverted is being filed under the following provision (check only one):

- | | |
|--|---|
| <input type="checkbox"/> Workers' Compensation Law Sec. 25(2)(a) | <input type="checkbox"/> Volunteer Ambulance Workers' Benefit Law, Section 50 |
| <input type="checkbox"/> Workers' Compensation Law Sec. 25(2)(b) | <input type="checkbox"/> Volunteer Firefighters' Benefit Law, Section 50 |
| <input type="checkbox"/> Workers' Compensation Law Sec. 21-a | |

Signature of Person Preparing Form: _____ Date: ____/____/____

Print Name: _____ Title: _____

Carrier's Legal Representative: _____ Date: ____/____/____

Print Name: _____ Title: _____

Designated carrier employee (see NYCRR 325-1.4) who receives requests for authorization of special medical services costing more than \$1,000:

Name: _____ Telephone No.: (____) _____

Filing of Notice of Controversy

This notice must be filed by the carrier or employer with the Chair, Workers' Compensation Board, on or before the 18th day after disability or within 10 days after the employer first had knowledge of the alleged injury, whichever period is greater. In the event that the Board sends a notice of indexing to the employer or the insurance carrier indicating that the Board has jurisdiction over the claim for compensation, the employer or carrier must file this form within 25 days, or risk a waiver of pleading certain defenses to the claim. If the initial certification is not signed by a legal representative, then before a legal representative may appear on behalf of the insurance carrier, the legal representative shall file and serve the required certification.

A copy of this notice, including these instructions, must also be mailed to the claimant, to his or her representative, if any, and to all health care providers treating the claimant simultaneously with its filing with the chair. As required by 12 NYCRR 363.12, a copy of this notice with medical report(s), if any, must also be furnished promptly to the disability benefits carrier.

Further Proceedings on this Controverted Claim for Compensation

The following procedure applies:

1. **Pre-Hearing Conference:** If the Board's file contains a medical report referencing an injury, the Board shall conduct a pre-hearing conference within thirty days of receipt of this notice. Parties must comply with all rules, regulations, and statutes regarding the pre-hearing conference.
2. **Pre-Hearing Conference Statement:** The Board directs the parties, except a claimant who has not retained a legal representative, to serve upon all parties of interest, and file with the Board, a pre-hearing conference statement no later than ten days before the date of the pre-hearing conference. If the claimant retains a legal representative ten days or more prior to the conduct of the pre-hearing conference, a pre-hearing conference statement must be served upon all parties of interest, and filed with the Board.
3. **Orders and Directions:** If the claim warrants further proceedings beyond the pre-hearing conference, the Workers' Compensation Law Judge or Conciliator shall make orders and directions, including but not limited to the conduct of depositions. If the insurance carrier requests an opportunity to have the claimant examined by an independent medical examiner (IME), the independent medical examination report must be completed, filed and served in accordance with WCL Section 13-b(4) and 137 and 12 NYCRR 300.2(d) at least three days before the date set by the Workers' Compensation Law Judge or Conciliator for the initial expedited hearing.
4. **Expedited Hearing(s):** The initial expedited hearing shall occur within 30 days following a pre-hearing conference at which the claimant is represented, where the testimony of the claimant and any lay witnesses shall be taken and recorded. Further directions, orders, and hearings may be scheduled according to applicable regulations.

To the Claimant:

Please be aware of the following:

1. **Benefits:** The party that filed this notice is disputing your entitlement to compensation and medical benefits.
2. **Legal Representation:** You may wish to retain a legal representative. He/She may not seek to collect payment directly from you. All fees will be set by a Workers' Compensation Law Judge, and deducted from the compensation you may receive.
3. **Pre-Hearing Conference:** As described above, a pre-hearing conference will be scheduled very soon. You must attend the pre-hearing conference, and any other hearings for which you receive notice.
4. **Claim for Compensation:** If you have not already done so, you should file a Claim for Compensation (Form C-3, VF-3 of VAW-3) with the Board. Follow the filing instructions on the appropriate form. Forms are available by calling the Board, or going to the Board's web site, at <http://www.wcb.ny.gov>.
5. **Disability Benefits:** Pending the determination of your claim for compensation and medical benefits, you may be entitled to receive certain benefits under the Disability Benefits Law, if your claim is disputed on the grounds that your disability is not the result of an on-the-job injury or illness, or is not the result of a line-of-duty injury (in volunteer firefighters' or volunteer ambulance workers' cases). In that event, you may be eligible for disability benefits payments, provided that a medical report indicating that you are disabled has been properly filed by your doctor with the insurance carrier listed in Section B of this form. If these benefits are payable, payments will be made directly by the disability benefits carrier, but such payments will be deducted from any award of workers' compensation, volunteer firefighters' or volunteer ambulance workers' benefits ultimately made. If within 45 days you do not receive disability benefits or do not receive a notice of rejection (Form DB-451), promptly contact the Board.
6. **Medical Bills:** Your doctor bills, hospital bills, and bills for any other treatment or services of a medical nature, will be paid by the employer or carrier, if your claim is found to be compensable. Do not pay these bills yourself pending a determination of compensability. Please note: The Doctor is permitted to ask you to fill out a notice which indicates that you may be responsible for medical costs in the event of your failure to prosecute your claim, or if your compensation claim is disallowed, or if an agreement pursuant to WCL Section 32 is approved (Form A-9).

IF YOU HAVE ANY QUESTIONS CONCERNING THIS NOTICE OR PROCESS, OR WITH RESPECT TO YOUR RIGHTS UNDER THE WORKERS' COMPENSATION LAW, OR THE VOLUNTEER FIREFIGHTERS', VOLUNTEER AMBULANCE WORKERS' OR DISABILITY BENEFITS LAWS, YOU SHOULD CONTACT YOUR LEGAL REPRESENTATIVE, IF YOU HAVE ONE, OR CONSULT THE NEAREST OFFICE OF THE BOARD. **ALWAYS USE THE CASE NUMBERS SHOWN ON THE FIRST PAGE OF THIS NOTICE, OR ON OTHER PAPERS RECEIVED BY YOU, IF YOU FIND IT NECESSARY TO WRITE OR CALL THE BOARD.**

SI USTED TIENE ALGUNA PREGUNTA RELACIONADA CON ESTA NOTIFICACION O PROCEDIMIENTO, O EN RELACION A SUS DERECHOS BAJO LA LEY DE COMPENSACION OBRERA, O DE BOMBEROS VOLUNTARIOS, TRABAJADORES DE AMBULANCIAS VOLUNTARIOS O LAS LEYES DE BENEFICIOS POR INCAPACIDAD, USTED DEBE ASESORARSE CON SU REPRESENTANTE LEGAL, SI LO TIENE, O CONSULTAR CON LA OFICINA MAS CERCANA DE LA JUNTA. **CITE SIEMPRE EL NUMERO DEL CASO O CASOS QUE APARECE AL DORSO DE ESTE AVISO, O EN OTROS DOCUMENTOS QUE HAYA USTED RECIBIDO PREVIAMENTE.**

To the Health Provider

The liability for this workers' compensation claim has not yet been determined. You will receive a Notice of Decision advising of the outcome. If the Board decides that the Insurance Carrier or Self-Insured Employer is responsible for this claim, you will receive payment and/or a written explanation from the carrier or self-insured employer as to its reasons for non-payment. Should the Board disallow this claim, the patient may be responsible for payment of medical expenses. If your bill has been disputed and if the decision is in your favor and the employer or carrier does not pay the amount awarded or provide a written explanation objecting to value related issue(s), within 30 days from the date of decision, you are entitled to file an HP-1 form applying for an administrative award. Should the carrier provide a written explanation within the 30 day period raising issue(s) of value of medical aid rendered, you are entitled to file for arbitration on Form HP-1, if communication does not resolve the issue(s). FILING FOR AN ADMINISTRATIVE OR ARBITRATION AWARD (FORM HP-1) PRIOR TO THE RESOLUTION OF THE ISSUE(S) INDICATED ON THIS FORM IS PROHIBITED.

To the Carrier of Self-Insured Employer

Section 114 of the Workers' Compensation Law provides, in part, that any employer or carrier, or any employee, agent, or person acting on behalf of an employer or carrier, who knowingly makes a false statement or representation as to a material fact for the purpose of avoiding provision of any payment or benefit under this chapter shall be guilty of a felony.

INSTRUCTIONS TO CARRIER

Please fill out the form completely and accurately. If the answer to any question is *not applicable*, indicate *n/a*. The Board will not accept or consider any C-7 form submitted without a complete certification, at Section D.

Section C. Factual Basis for Controverted Claim:

In order to controvert an issue, you must, at minimum, be able to factually support the following contentions. To controvert a particular issue, check the box, and specify the factual basis in the text area. The mere checking of the box, without providing the factual basis, is not sufficient to controvert an issue. The examples are provided below by way of illustration, and are not exhaustive:

- Prima Facie Medical Evidence -- That the medical report submitted on behalf of the claimant fails to reference an injury.
- Accident within meaning of Workers' Compensation Law -- That the alleged accident is barred, excluded, or not covered within the law. *For example*, that the accident is: barred by 2(7); an exacerbation of prior injury (no new accident); barred by 10(1), such as intoxication or off-duty athletic activity, or intentionally causing harm to self or others.
- Accident Arising Out Of and In the Course of Employment -- That the alleged accident did not occur while in the course of employment, such that it cannot be presumed that the accident arose out of the course of employment; OR that while the accident occurred in the course of employment, there is substantial evidence to rebut the presumption that the accident arose out of the course of employment. *For example*, that the claimant was injured while outside scope of employment, such as in an off-premises injury which occurred when claimant was not in portal to portal status.
- Occupational Disease within meaning of Workers' Compensation Law -- That the alleged occupational disease is barred, excluded, or not covered within the law. *For example*, that the disease is not a recognized condition; that there was no distinctive feature of employment.
- Occupational Disease Arising Out of and In the Course of Employment -- That the disease arose outside of employment. *For example*, the condition was caused by exposure or activity outside that which was experienced in the workplace.
- Notice (Section 18) -- That the employer received no notice; that there was improper notice (e.g. to co-workers not supervisor); or that the notice was not timely (beyond 30 days).
- Notice (Section 45) -- That the employer received no notice, that notice was given to an improper employer entity, or that notice was untimely (more than 2 years from the later of the date disablement or the date claimant knew-or-should-have-known of the occupational disease).
- Employer-Employee Relationship -- That there was no employer-employee relationship as defined by statute or case law. *For example*, that claimant was an independent contractor; that there was no covered employment, such as casual employment, certain domestic employment, or certain other activities as defined in WCL Sec. 3 Groups 12 through 24; General Municipal Law Sec. 207-a or c, that claimant does not fit the definition of employee under WCL Sec. 2(4); that claimant was an excluded employee such as a partner or certain corporate officers, or that the Board should be aware that there was more than one employer (dual employment which caused injury), or special-general employment. Note - a claim should not be controverted merely because claimant was concurrently employed at the time of injury as set forth in WCL Sec. 14(6), for determination of wages.
- Causally Related Accident or Occupational Disease -- That the medical and/or other evidence does not support the assertion that there is a causal link between the claimant's work and the alleged accident or occupational disease.
- Causally Related Death -- That there is no evidence that the decedent died in the course of employment, such that death is not presumed to have arisen out of the course of employment, and/or that the medical or other evidence does not support the assertion that there is a causal link between the decedent's work, or the decedent's established workers' compensation case, and death.
- Proper Employer Entity -- That the incorrect employer is named in the claim; or that there was more than one employer of the claimant. *For example*, claimant was not employed by the employer named in the claim; that there was dual employment which caused injury, (in which case, also check employer-employee). Note - a claim should not be controverted merely because claimant was concurrently employed at the time of injury as set forth in WCL Sec. 14(6), for determination of wages.
- Cancellation of Coverage -- That coverage was cancelled prior to the date of the accident or the date of disablement. *For example*, the carrier properly served a timely notice of cancellation, or notice of non-renewal, to the employer.
- Proper Carrier -- That coverage did not exist as of the date of the accident or date of disablement. *For example*, the policy had been cancelled, and new coverage was placed with a subsequent carrier; or that the carrier named had never provided coverage for the employer.
- Subject Matter Jurisdiction -- That the claim is not compensable under New York law. *For example*, that the employment did not exist in New York State and the accident occurred outside of New York State, or that claimant should receive federal compensation covering longshoremen, railway, or postal workers; or that General Municipal Law Sec. 207-a or 207-c covers the injury.
- Timely Filing (Section 28) -- That the claim was filed beyond two years from the date of accident or the date of disablement.

Please be advised that Workers' Compensation Law Section 114-a(3) provides that:

If the board or any court having jurisdiction over proceedings in respect of any claim for compensation determines that the proceedings in respect of such claim, including any appeals, have been instituted or continued without reasonable ground:

- (i) the cost of such proceedings shall be assessed against the party who has so instituted or continued the proceedings, which shall be payable to the board for administrative expenses pursuant to section one hundred fifty-one of this chapter;
- (ii) reasonable attorneys' fees shall be assessed against an attorney or licensed representative who has instituted or continued proceedings without reasonable grounds, which assessment shall be payable to the board for administrative expenses pursuant to section one hundred fifty-one of this chapter. Fees awarded under this provision may not be recouped from the party; and
- (iii) such assessments shall be in addition to any other penalty permitted under this chapter.

Claims for compensation, inquiries, medical and other reports should be sent directly to the Workers' Compensation Board at the address listed below:

NYS Workers' Compensation Board, Centralized Mailing, PO Box 5205, Binghamton, NY 13902-5205

Customer Service Toll-Free Line: 877-632-4996

Statewide Fax Line: 877-533-0337

Be sure to notify the Board of any change in address. For questions regarding medical authorization, please call Customer Service at the phone number given above.