

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL (“WSIAT”) GUIDE: WSIAT-INITIATED ASSISTANCE FOR MEDICAL ISSUES

This Guide:

- Provides an overview of the different types of WSIAT-initiated assistance that can be provided in relation to medical issues arising in WSIAT appeals.
- Describes the Medical Liaison Office and explains the roles of the WSIAT’s Medical Counsellors and Medical Assessors.

The processes outlined in this Guide may be varied as appropriate in any appeal in the sole discretion of the assigned “WSIAT adjudicator”, including the WSIAT Chair, Vice-Chair or Panel.

This Guide is meant to provide information only and the decisions referenced are not an exhaustive overview of relevant jurisprudence.

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1. Introduction and Statutory Authority

Medical issues arise in the majority of WSIAT appeals. In many appeals, the medical issues arising are relatively straight-forward. However, in some appeals, the medical issues arising are quite complex.

Pursuant to sections 131 and 132 of the *Workplace Safety and Insurance Act, 1997* (the “*WSIA*”), the WSIAT has broad discretionary powers to control its own proceedings and determine its own practice.

Section 134 of the *WSIA* specifically provides the WSIAT with the authority to seek assistance from “health professionals”¹ on its own initiative at any time before or during a WSIAT proceeding when determining matters of fact.

Pursuant to its broad powers, the WSIAT has established procedures to receive assistance from “Medical Counsellors” and “Medical Assessors” in relation to straight-forward and/or complex medical issues arising in appeals. Assistance from Medical Counsellors and Medical Assessors is coordinated through the WSIAT’s Medical Liaison Office.

WSIAT-initiated assistance in relation to medical issues can include:

- Requesting additional medical information if a gap in the medical record is noted.
- Adding a WSIAT Medical Discussion Paper to the appeal record.
- Adding “Supplemental Medical Literature” to the appeal record.
- Requesting assistance from a Medical Assessor.

The assistance provided by the Medical Liaison Office, Medical Counsellors and Medical Assessors helps the WSIAT achieve its goals to provide quality adjudication and well-reasoned decisions in accordance with the principles of natural justice.

Parties or representatives who have questions or concerns with respect to any part of a WSIAT appeal are encouraged to raise these issues as soon as possible.

¹ “Health professional” is defined in section 2 of the *WSIA* as “a member of the College of a health profession as defined in the *Regulated Health Professions Act, 1991*”. The WSIAT seeks assistance from “Medical Counsellors” and “Medical Assessors”, which include individuals falling within the “health professional” definition, as well as other medical professionals. Medical Counsellors and Medical Assessors are described in further detail in Sections 3 and 4.

2. Medical Liaison Office

The WSIAT's Medical Liaison Office ("MLO") is part of the WSIAT's Tribunal Counsel Office ("TCO"). The MLO Manager oversees the MLO and is assisted by MLO Officers. The MLO Manager and MLO Officers are all experienced registered nurses.

The MLO plays a central role in providing assistance in relation to medical issues that arise in WSIAT appeals.

Some of the assistance that MLO provides includes:

- Providing guidance and direction as outlined in this Guide to WSIAT staff with respect to medical issues arising in WSIAT appeals.
- Coordinating the WSIAT-initiated assistance obtained from the WSIAT's Medical Counsellors and Medical Assessors.
- Overseeing the creation and review of the WSIAT's Medical Discussion papers.
- Leading and supporting medically-focused educational activities for WSIAT staff and adjudicators.

MLO does not interact directly with the WSIAT's adjudicators. All directions from a WSIAT adjudicator are provided to MLO via a WSIAT staff member.

MLO also does not interact directly with parties or representatives. Communications to and from parties or representatives are provided to MLO via a WSIAT staff member.

3. Medical Counsellors

The WSIAT's Medical Counsellors are a group of highly qualified medical specialists who serve as consultants to the WSIAT, working closely with the MLO. The WSIAT's adjudication is significantly enhanced through the consultation services provided by the Medical Counsellors.

Currently there are five Medical Counsellors with expertise in the following areas: Neurology, General Surgery, Psychiatry, Orthopaedic Surgery and Internal Medicine.

In addition to being highly qualified in their specialized medical areas, Medical Counsellors are required to be impartial.² Accordingly, during the recruitment process, both the qualifications and impartiality of Medical Counsellors are assessed to ensure that they satisfy the requirements of the role.

Medical Counsellors are initially retained to provide consulting services for a specified term which can be extended provided that the Medical Counsellor continues to meet the necessary requirements of the role and is interested in continuing to provide assistance to the WSIAT.

Some of the assistance that the WSIAT's Medical Counsellors provide with respect to medical issues that arise in appeals includes:

- Reviewing appeals that are identified as raising complex medical issues and making recommendations as to what additional medical information would be helpful to obtain, whether supplemental medical literature should be added to the appeal record and/or whether assistance from a Medical Assessor should be obtained.³
- Aiding in the recruitment of new Medical Assessors.
- Assisting with the creation and review of WSIAT Medical Discussion papers.
- Leading and supporting medically-focused educational activities for WSIAT staff and adjudicators.

More information about the role of the WSIAT's Medical Counsellors is explained in other parts of the Guide.

The WSIAT's Medical Counsellors do not interact directly with the WSIAT's adjudicators, parties or representatives and instead communicate through the MLO.

² For more information about the impartiality of the Medical Counsellors, see Section 5, "Impartiality and Avoiding Conflicts of Interest".

³ All recommendations made by a Medical Counsellor are included in the Hearing Ready Letter that is provided to the parties and WSIAT adjudicator assigned to decide the appeal.

4. Medical Assessors

The role of the WSIAT's Medical Assessors is distinct from the role of the WSIAT's Medical Counsellors. Individuals cannot act as both a Medical Counsellor and a Medical Assessor at the same time. However, it is not uncommon for former WSIAT Medical Assessors to be recruited to be Medical Counsellors.

Unlike the WSIAT's Medical Counsellors, Medical Assessors provide assistance in response to specific requests made by a WSIAT adjudicator in an individual appeal. The WSIAT's general process for obtaining assistance from a Medical Assessor is described in Section 10, "Medical Assessor Assistance". Medical Assessors also occasionally assist with educational activities for WSIAT adjudicators and staff, as well as creating or revising WSIAT Medical Discussion Papers.

WSIAT Medical Assessors include individuals who fall within the specific definition of "health professional" as defined in the *WSIA*, as well as other types of experts, such as medical professionals that practice outside of Ontario or those who are not members of a College of a health profession, such as epidemiologists.

Regardless of whether a Medical Assessor falls within the specific "health professional" definition, the WSIAT carefully assesses the qualifications and impartiality of all potential Medical Assessors to ensure that they are highly qualified medical professionals in good professional standing.

The qualifications and the impartiality of those medical professionals who agree to be nominated as candidates for becoming Medical Assessors are considered by the WSIAT's Medical Counsellors as well as the WSIAT's Advisory Group. Similar to the Medical Counsellors, Medical Assessors are retained to provide assistance for a specified term which can be extended by mutual agreement.

WSIAT Medical Assessors do not interact directly with the WSIAT's adjudicators, parties or representatives, except for when a Medical Assessor must examine the worker as part of providing her or his opinion. All communication with a Medical Assessor is conducted through the MLO.

5. Impartiality and Avoiding Conflicts of Interest

The WSIAT is the final level of appeal in the Ontario workplace safety and insurance system. The WSIAT has been specifically designed to be completely separate and independent from the Workplace Safety and Insurance Board (“WSIB”). The WSIAT’s independence from the WSIB is critical to ensuring that its adjudication is fair and conforms to the principles of natural justice.

As set out above, the Medical Counsellors and Medical Assessors who provide assistance to the WSIAT are required to be highly qualified medical professionals. In light of this expertise, it is not unusual for WSIAT Medical Counsellors and Assessors to provide expert medical assistance to organizations or individuals other than the WSIAT.

Medical Counsellors and Medical Assessors who provide medical assistance outside of the WSIAT context must ensure that all aspects of their medical and professional practice do not create potential conflict of interests that would threaten the WSIAT’s independence from the WSIB or the fairness of the WSIAT’s adjudication.

Accordingly, Medical Counsellors and Assessors who provide assistance to the WSIAT must consider whether any assistance that they provide to the WSIB and/or in relation to workplace safety and insurance issues generally creates a potential conflict of interest that would threaten their impartiality. For example, providing advice to the WSIB or another similar organization with respect to policy or governance positions could potentially create a conflict of interest.

In addition, except with the written consent of the parties, Medical Assessors cannot provide assistance in a specific appeal if the Medical Assessor has previously examined or treated the worker whose claim is the subject of the appeal, or treated a member of the worker’s family. A Medical Assessor is also restricted from providing assistance if the Medical Assessor has acted as a consultant in the treatment of the worker or as a consultant to the employer. This restriction also extends to Medical Assessors who are a partner to another medical professional that has examined, treated or consulted with respect to the worker, the worker’s family or the employer. This approach conforms to the restrictions set out in section 134(5) of the *WSIA*.

Subject to the restrictions set out above, Medical Counsellors or Assessors that provide treatment to workers with active WSIB claims in the same manner that treatment is provided to non-WSIB patients would likely not be in a conflict of interest.

Questions regarding potential conflicts of interest can be directed to the WSIAT’s General Counsel in writing.

6. Pre-Hearing MLO Review

Part of the WSIAT's initial screening process involves WSIAT staff⁴ reviewing appeals to determine whether they are medically complex.⁵

Appeals that are determined to be "medically complex" are sent to MLO for a pre-hearing review. In most cases, this review is performed by a MLO Officer. MLO's pre-hearing review takes place after the appeal record has been created.

Appeals that are medically complex may also be reviewed pre-hearing by one (or occasionally more) of the WSIAT's Medical Counsellors.

Following the review MLO may:

- a) Identify additional medical information or documents that should be obtained. See WSIAT Practice Direction, "*Medical Information Requested by the WSIAT*".⁶
- b) Recommend that a WSIAT Medical Discussion paper be added to the appeal record.⁷
- c) Recommend that supplemental medical literature be added to the appeal record.⁸
- d) Identify the potentially complex medical issues and/or medical areas of concern at that time and recommend that a Medical Assessor provide assistance.⁹

⁴ WSIAT staff in this context generally refers to members of the Office of the Vice-Chair Registrar. TCO lawyers also provide assistance for particularly complex appeals.

⁵ "Medically Complex" appeals include complex occupational disease appeals and appeals involving new, rare or unique medical conditions.

⁶ MLO Officers and Medical Counsellors can identify additional medical information or documents that should be obtained. WSIAT staff can also request additional medical information during the substantive pre-hearing review process. For certain types of appeals, for example, occupational disease claims, WSIAT staff ensure that specific information outlined in WSIAT-created checklists is included in the appeal record.

⁷ MLO Officers and Medical Counsellors can recommend that a WSIAT Medical Discussion paper be added to the appeal record. WSIAT staff also routinely add WSIAT Medical Discussion papers to an appeal record when certain medical issues are raised in the appeal that relates to one of the WSIAT's Medical Discussion papers.

⁸ Only Medical Counsellors recommend that supplemental medical literature be added to the appeal record.

⁹ Only Medical Counsellors may make recommendations that a Medical Assessor provide assistance.

All MLO recommendations are outlined in the Hearing Ready Letter that is sent to the parties and provided to the WSIAT adjudicator assigned to decide the appeal.

7. WSIAT Medical Discussion Papers

The WSIAT prepares Medical Discussion Papers in order to make general information about medical issues that commonly arise in WSIAT appeals easily available to parties, representatives and WSIAT adjudicators. Medical Discussion Papers are intended to provide a balanced, broad and general overview of a medical topic that can be understood by individuals that are not medical professionals.

Each Medical Discussion Paper is written by a well-qualified medical professional who has been selected by the WSIAT for her or his specific expertise.

Medical Discussion Papers are based on the current medical knowledge available at the time of writing and are reviewed and updated on a periodic basis as appropriate. Medical Discussion Papers are not, however, intended to be the most up to date authority on a medical issue or topic, and are not peer reviewed. If specific, up to date medical information is required in a WSIAT appeal, the WSIAT adjudicator can request supplemental medical literature and/or seek assistance from a Medical Assessor.

Medical Discussion Papers may be added to the WSIAT record pre-hearing by a MLO Officer or Medical Counsellor, and are also routinely added by WSIAT staff members when certain medical issues arise in an appeal. The WSIAT adjudicator may also direct that a Medical Discussion paper be added to the appeal record pre or post-hearing, and parties may also submit Medical Discussion papers to be included in the appeal record.

A WSIAT adjudicator may consider and rely upon the medical information set out in a Medical Discussion Paper, but the WSIAT is not bound by a Medical Discussion Paper in any particular case. It is always open to parties to an appeal to rely on or distinguish a Medical Discussion Paper, or to challenge it with alternative evidence. Parties may make these submissions in writing or orally during the appeal proceeding as directed by the WSIAT adjudicator.

Copies of the WSIAT's Medical Discussion Papers are available in the Ontario Workplace Tribunals Library. Medical Discussion Papers are also available to the public through the WSIAT website.

8. Supplemental Medical Literature

As outlined above, in some cases a Medical Counsellor may recommend that supplemental medical literature be included in the appeal record during MLO's pre-hearing review. Supplemental medical literature can include a medical text excerpt, a medical article, a study (for example, epidemiological) or medical definitions.

Supplemental medical literature may be added to an appeal record to provide:

- Information about the issue of causation.
- Information about a worker's underlying medical condition.
- More up to date medical information about a relevant medical issue arising in the appeal.
- Relevant epidemiological evidence.
- Information to supplement a WSIAT Medical Discussion paper.

Supplemental medical literature is included for the benefit of the parties, representatives and WSIAT adjudicators. A short description as to why the supplemental medical literature is being added to the appeal record is included in the Hearing Ready Letter that is provided to the parties and WSIAT adjudicator and includes a note that the supplemental medical literature has been selected by the MLO.

The addition of supplemental medical literature does not bind the WSIAT adjudicator. Therefore, it is always open for the parties in an appeal to submit evidence in support of their case, present their position with respect to the evidence and make submissions as to whether the supplemental medical literature should be relied upon by the WSIAT adjudicator.

Supplemental medical literature may also be added to an appeal record pre or post hearing at the request of a WSIAT adjudicator.

A request for supplemental medical literature may be appropriate as an alternative to obtaining a Medical Assessor report when the medical issues in the case are generic in nature and/or less complex than those that require an opinion from a Medical Assessor.

WSIAT adjudicators that wish to request supplemental medical literature from MLO will send the request in the form of a pre or post-hearing memorandum to the appropriate individual. The request will then be forwarded to MLO. Medical Counsellors will conduct a literature search and provide relevant supplemental medical literature to be added to the appeal record.

When supplemental medical literature is provided by MLO, the standard practice is for parties to be given an opportunity to make submissions with respect to the

supplemental medical literature during the appeal proceeding as directed by the WSIAT adjudicator.

9. At the Hearing

As outlined above, any recommendations made by the MLO Officers or Medical Counsellors pre-hearing are set out in the Hearing Ready Letter that is provided to the parties and WSIAT adjudicator assigned to decide the appeal. Medical Discussion papers and supplemental medical literature that are recommended to be included are also added to the appeal record pre-hearing.

The WSIAT adjudicator assigned to decide an appeal will ultimately determine how a particular hearing will proceed. Regardless of the hearing format, parties will be given an opportunity to present evidence and make submissions in writing, orally or both. The WSIAT adjudicator will consider the evidence presented and in the appeal record, as well as the submissions of the parties, and then make findings of fact upon which they will base their decision.

The more that parties proactively prepare for hearings, the less likely it is necessary to take steps post-hearing, which can unnecessarily prolong the appeal process.

Therefore, parties should be prepared to address all medical evidence in the appeal record at the hearing, including WSIAT Medical Discussion papers or supplemental medical literature that has been added to the appeal record by the WSIAT or the other party pre-hearing.¹⁰ Similarly, unnecessary delays can be avoided if parties are prepared at the hearing to address issues relating to potentially seeking assistance from a Medical Assessor.¹¹

Ultimately, it is in the discretion of the WSIAT adjudicator to determine whether it is necessary to consult a Medical Assessor and also determine what questions should be asked, what findings of fact are relevant and the composition of the Assessor Brief. It is also always in the discretion of the WSIAT adjudicator to determine the best way to provide parties with an opportunity to make submissions in the appeal.

¹⁰ The Hearing Ready Letter proactively informs parties to be prepared to address these issues during the hearing process.

¹¹ For hearings in which oral evidence is not required, parties can make these submissions in writing.

10. Medical Assessor Assistance

a. Overview and Purpose of Medical Assessor Assistance

Medical Assessor assistance helps the WSIAT fulfil its mission by ensuring that WSIAT adjudicators have the necessary information to make well-reasoned decisions.

Although the report of a Medical Assessor will be considered by the WSIAT adjudicator, the Courts have recognized that the Medical Assessor does not make the decision on appeal (*Hary v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2010 ONSC 6795 (CanLII) (Ont. Div. Ct.)). The actual decision to allow or deny an appeal is the sole preserve of the WSIAT adjudicator.

The opinion of a Medical Assessor is therefore not intended to be determinative of an appeal. Instead, the issues in an appeal must be decided by the WSIAT adjudicator based on all of the evidence and relevant law. Parties to an appeal have the right to rely on, or to argue against, the opinion in a Medical Assessor report.

Obtaining a Medical Assessor report can be time-consuming and expensive. The WSIAT must utilize its resources in a responsible manner.

In order to promote efficiency, ensure fairness and obtain valuable Medical Assessor reports, it is important that the Medical Assessor process outlined in this Guide generally be adhered to in order to avoid unnecessary delay and the inefficient expenditure of resources, subject to the discretion of a WSIAT adjudicator to vary the process as determined appropriate.

Parties who have concerns or questions with respect to any aspect of the process for obtaining assistance from a Medical Assessor are encouraged to raise these concerns and questions as soon as possible with the appropriate individuals.¹²

¹² Key contacts are set out in Section 12.

b. Factors Considered when Determining Whether to Seek Assistance from a Medical Assessor

Some of the factors that may be considered by the WSIAT adjudicator when determining whether to seek assistance from a Medical Assessor include:

- Whether a Medical Counsellor has made a recommendation to obtain the opinion of a Medical Assessor;
- Whether there are conflicting medical opinions from different health professionals on record, including treating health professionals and other experts;
- Whether there is uncertainty regarding the diagnosis;
- Whether the medical condition at issue is rare or unique;
- Whether the scientific evidence regarding the medical condition is still developing;
- Whether there is sufficient medical evidence in the file addressing the condition being considered in the appeal;
- The quantity and quality of the medical opinions in the claim record, including a consideration of the qualifications and expertise of the health professionals who provided reports and relatedly, the likelihood that a Medical Assessor would be in a better position to assess the issues;
- Whether the issues raised in the claim are novel in the WSIAT's jurisprudence.

It is in the discretion of the WSIAT adjudicator to determine whether assistance from a Medical Assessor is required. *Decision No. 2692/15* (December 30, 2015); *Decision No. 184/15* (March 2, 2015); *Decision No. 128/13I* (September 6, 2013).

Once a WSIAT adjudicator has made the decision that it is necessary to obtain the opinion of a Medical Assessor, the instructions of the WSIAT adjudicator will be set out in an interim decision.¹³

¹³ In the majority of appeals, the instructions for obtaining Medical Assessor assistance will be set out in an interim decision. However, in some cases, taking into account the particular circumstances of the appeal, the WSIAT adjudicator may utilize her or his discretion and issue instructions to obtain assistance from a Medical Assessor in a post-hearing memorandum instead of an interim decision

c. Interim Decision

The interim decision will include relevant findings of fact and questions for the Medical Assessor.

The WSIAT adjudicator will make relevant findings of fact for the Medical Assessor to rely upon when preparing their report so that the Medical Assessor may provide a meaningful opinion with respect to the questions asked. The relevant findings of fact can relate to the worker's accident history, previous medical history, etc. *Decision No. 128/13I* (September 6, 2013).

The WSIAT adjudicator will also determine the questions that they want the Medical Assessor to answer.

Questions posed to a Medical Assessor do not exist in a vacuum and must be read in context to each other, as well as the findings of fact. *Decision No. 2254/11IR* (August 13, 2013).

In every case, questions for a Medical Assessor will be tailored to the specific factual circumstances of the appeal. A WSIAT adjudicator can seek assistance from MLO with respect to drafting the questions by submitting a written request to MLO to review or suggest questions. The written request, which will be in the form of a post-hearing memorandum, will be provided to the parties.

The issues in an appeal must be decided by the WSIAT adjudicator taking into account the relevant evidence as well as the law. Therefore, the questions posed by the WSIAT adjudicator to a Medical Assessor will focus on medical issues and not the legal issues to be determined in the appeal. *Decision No. 1731/07IR*, (February 12, 2008).

In general, the findings of fact and questions for the Medical Assessor will be set out as concisely and specifically as possible in order to utilize the Medical Assessor as efficiently as possible and also maximize the usefulness of the Medical Assessor report.

Medical Assessors are encouraged to seek clarification from the WSIAT adjudicator with respect to the findings of fact and/or questions in the interim decision when there is any ambiguity. Requests for clarification and all other communication between the Medical Assessor and the WSIAT adjudicator are conducted through the MLO.

d. Additional Medical Information and Examination of Worker

In some cases, it may be necessary for additional medical information to be obtained in order to allow the Medical Assessor to complete her or his report. If additional medical information is deemed to be necessary by the WSIAT adjudicator, this direction can be set out in the interim decision.¹⁴

MLO may also identify additional information that may be obtained. In these cases, the WSIAT adjudicator will be informed about the recommendation to obtain the additional information and will provide direction as to whether the information should be obtained.

In more rare circumstances, it may also be necessary for the Medical Assessor to examine the worker in order to complete her or his report. Where a medical examination is required, MLO will communicate with the Medical Assessor and WSIAT staff to make the necessary arrangements.

¹⁴ A request for additional medical information that is separate from a request for assistance from a Medical Assessor could also be set out in a post-hearing memorandum.

e. Selection of Medical Assessor

Upon receiving the interim decision from the WSIAT adjudicator, MLO will select a Medical Assessor in an appropriate area of expertise to prepare the requested Medical Assessor report.

MLO selects a Medical Assessor by taking into account the following factors:

- The nature of the request and the required expertise to respond to the questions posed by the WSIAT adjudicator;
- The availability of potential Medical Assessors;
- The geographic location of the potential Medical Assessor,¹⁵ and;
- The need to avoid conflicts of interest.

If there is no appropriate Medical Assessor available on the WSIAT's roster, MLO will seek assistance from an off-roster medical expert. The Medical Counsellors provide guidance to MLO in these circumstances.

MLO's recommendation for the selection of the Medical Assessor is then provided to the WSIAT adjudicator for approval. The Medical Assessor's curriculum vitae ("CV") is provided to the WSIAT adjudicator for review, as well as the parties. As the WSIAT adjudicator is ultimately responsible for directing how the Medical Assessor process will unfold, the final decision whether to accept MLO's recommendation of a particular Medical Assessor rests with the WSIAT adjudicator determining the appeal.

Parties who have legitimate concerns with respect to the selection of a particular Medical Assessor should raise those concerns as soon as possible. In general, a Medical Assessor will not be removed without a compelling reason, such as a prior relationship between the Medical Assessor and a party. *Decision No. 1263/101* (October 2, 2012).

¹⁵ Especially when there is a possibility that the Medical Assessor will need to examine the worker, MLO will utilize best efforts to choose an appropriate Medical Assessor who practices in close proximity to where the worker lives in order to reduce unnecessary travel.

f. Worker's Consent

Prior to any materials being sent to the Medical Assessor, the worker will be asked to provide consent to disclose her or his personal health information to the Medical Assessor for the preparation of their report.¹⁶ In all cases, regardless of whether the worker or the employer has initiated the appeal, the WSIAT will make diligent efforts to obtain the consent from the worker for the disclosure, even in circumstances when the worker is not participating in the appeal or is non-responsive. See *Decision No. 1917/171* (March 2, 2018).

In most cases, a worker's personal information will only be disclosed to a Medical Assessor after she or he has provided their consent. In all cases, the relevant information will also only be provided to the Medical Assessor for the sole purpose of providing her or his opinion.

In the rare cases in which a worker does not provide consent for the disclosure of her or his personal information, the WSIAT adjudicator will determine whether the information should be ordered to be disclosed to the Medical Assessor in the absence of the worker's consent. In making this determination, the WSIAT adjudicator will consider the importance of the report from the Medical Assessor for the determination of the appeal, as well as whether the worker has objected to the release of the material and the basis for the objection. *Decision No. 1917/171* (March 2, 2018).

In those cases where a Medical Assessor requests to examine the worker after reviewing the request and/or Medical Assessor Brief, the worker will not be asked to sign a second consent. MLO will contact the worker when arranging the Medical Assessor's examination and the examination will be scheduled at a mutually convenient time for both the worker and the Medical Assessor. If a worker refuses to be examined by the Medical Assessor, this will be referred to the WSIAT adjudicator for a decision in accordance with the provisions of the *WSIA*.¹⁷

¹⁶ For appeals involving deceased workers, consent to disclose the worker's personal health information will be requested from the properly authorized party acting on behalf of the worker's estate.

¹⁷ Pursuant to section 134(6) of the *WSIA*, a worker can be required to submit to an examination by a health professional. If a worker fails to comply with section 134(6) or obstructs an examination without reasonable cause, pursuant to section 134(8), the worker's payments under the insurance plan and the right to a final decision can be suspended by the WSIAT while the non-compliance or obstruction continues.

g. Preparation of Medical Assessor Brief

A Medical Assessor Brief is prepared by MLO in all requests for Medical Assessor assistance.

The focus of the material in the Medical Assessor Brief is medical information.

Materials that will be included in a Medical Assessor Brief include:

- The Interim decision;
- All medical documents, including medical information in the case materials, as well as supplemental medical material, text excerpts/literature, discussion papers, etc.;
- WSIB memoranda regarding medical opinions from WSIB Consultants, includes nursing assessments related to the medical injury;
- All forms related to the medical issue;
- Any documents related to the job description, physical demands analysis (PDA), workplace reports related to the medical issue on appeal, occupational health reports;
- All vocational rehabilitation reports related to the medical injury on appeal;
- All reports related to the assessment/non-economic loss (“NEL”) quantum for the accepted permanent impairment (“PI”) (if applicable).

Duplicate copies of documents are not included in a Medical Assessor Brief and the best copy of any report is always included. The WSIB ARO decision will generally not be included.

Information in the Medical Assessor Brief is usually organized in chronological order in the following sections:

1. Interim decision
2. Forms (Forms 6, 7, 8)
3. Medical Information
4. Medical Literature
5. WSIB Memorandum
6. Correspondence
7. Vocational Rehabilitation/ Work Transition (if applicable)
8. Non-Economic Loss (if applicable)
9. Related Claim File (if applicable and organized as set out above).

The creation of a Medical Assessor Brief is not intended to provide a party with an opportunity to re-argue its position in an appeal. Ultimately, the WSIAT adjudicator has the authority to weigh and select what evidence is relevant for the Medical Assessor. *Decision No. 1149/0412, (October 8, 2009).*

In certain circumstances, the WSIAT adjudicator may deem it appropriate for a draft of the Medical Assessor Brief to be sent to the parties so that they may have an opportunity to provide submissions about the contents of the Brief. In those circumstances, the draft Medical Assessor Brief and the submissions of the parties will be sent to the WSIAT adjudicator to make a final decision about the compilation of the Brief.

In most appeals, the Medical Assessor Brief will be compiled in accordance with the standard procedure and it will be unnecessary to the parties to be given an opportunity to provide submissions about the contents of the Medical Assessor Brief. Creating a consistent process for preparing the Medical Assessor Brief will help streamline the medical assessor process and eliminate unnecessary delay.

h. Medical Assessor Report

Once the Medical Assessor has completed her or his report and provided it to MLO, the report will be forwarded to the WSIAT adjudicator who will determine whether the Medical Assessor's report is complete or if additional assistance is needed. If additional information is needed, the WSIAT adjudicator may outline the necessary information in a post-hearing memorandum.

Once the WSIAT adjudicator has determined that the Medical Assessor's report is complete and no other information is necessary, the parties will then be provided with an opportunity to make submissions. Submissions may address the Medical Assessor report as well as any other issue identified by the WSIAT adjudicator, such as whether reply evidence in response to the Medical Assessor report should be accepted.

After submissions are received, the WSIAT adjudicator will issue a final decision regarding the appeal, unless further post-hearing work is required.

i. Party Request for Medical Assessor Assistance

In some cases, a party or representative may wish to make a request for the WSIAT to obtain assistance from a Medical Assessor.

Parties should make these requests as early as possible during the appeal process and provide reasons in support of the request. As set out above, ultimately, it is in the discretion of the WSIAT adjudicator to determine whether it is necessary to obtain assistance from a Medical Assessor.

Parties are also encouraged to make diligent efforts to obtain evidence that they believe is relevant and necessary as early as possible during the appeal process in order to avoid unnecessary delay in the adjudication of the appeal. Parties may request assistance from the WSIAT if they encounter difficulty in obtaining relevant evidence.

11. Timelines

There are many factors that impact how long the processes outlined in this Guide will take to complete.

In general, obtaining assistance from a Medical Assessor will usually take several months in light of the various steps involved which includes selecting a Medical Assessor, obtaining consent from the worker, preparing a Medical Assessor Brief and receiving the final report from the Medical Assessor.

This timeline can be prolonged for a number of different reasons, including delays in obtaining consent from the worker and/or relevant medical documents, a lack of available and appropriate Medical Assessors to provide the necessary assistance, a request to examine the worker and the need for additional clarification. Any delays in the process of obtaining assistance from a Medical Assessor will be communicated to the WSIAT adjudicator and parties.

As outlined above, the general adherence to the processes outlined in this Guide will help promote efficiency and avoid unnecessary delay, although a WSIAT adjudicator may always utilize their discretion to vary the processes as deemed appropriate. Parties who proactively prepare for hearings, complete steps in the process and raise questions or concerns as early as possible during the appeal process will help eliminate or reduce unnecessary delay.

12. Key Contacts

General questions or comments concerning this Guide and WSIAT-initiated assistance for medical issues can be directed to the WSIAT's General Counsel in writing.

Questions or concerns relating to a specific appeal should be directed to the WSIAT staff member with carriage of the appeal.

Other inquiries can be directed to the WSIAT's Call Centre at 416-314-8800 or 1-888-618-8846, 8:00 a.m. to 5:00 p.m., Monday to Friday.