

§ 9786. Petition for Change of Primary Treating Physician.

(a) A claims administrator desiring a change of primary treating physician pursuant to Labor Code Section 4603 shall file with the Administrative Director a petition, verified under penalty of perjury, on the “Petition for Change of Primary Treating Physician” form (DWC-Form 280 (Part A)) contained in Section 9786.1.

The petition shall be accompanied by supportive documentary evidence relevant to the specific allegations raised. A proof of service by mail declaration shall be attached to the petition indicating that (1) the completed petition (Part A), (2) the supportive documentary evidence and (3) a blank copy of the “Response to Petition for Change of Primary Treating Physician”, (DWC-Form 280 (Part B)), were served on the employee or, the employee’s attorney, and the employee’s current primary treating physician.

(b) Good cause to grant the petition shall be clearly shown by verified statement of facts, and, where appropriate, supportive documentary evidence. Good cause includes, but is not limited to any of the following:

(1) The primary treating physician has failed to comply with Section 9785, subdivisions (e), (f)(1-7), or (g) by not timely submitting a required report or submitting a report which is inadequate due to material omissions or deficiencies;

(2) The primary treating physician has failed to comply with subdivision (f)(8) of Section 9785 by failing to submit timely or complete progress reports on two or more occasions within the 12-month period immediately preceding the filing of the petition;

(3) A clear showing that the current treatment is not consistent with the treatment plan submitted pursuant to Section 9785, subdivisions (e) or (f);

(4) A clear showing that the primary treating physician or facility is not within a reasonable geographic area as determined by Section 9780(e).

(5) A clear showing that the primary treating physician has a possible conflict of interest, including but not limited to a familial, financial or employment relationship with the employee, which has a significant potential for interfering with the physician’s ability to engage in objective and impartial medical decision making.

(6) Where the primary treating physician is a chiropractor, a clear showing that the employee has received more than 24 chiropractic visits, unless the employer has authorized, in writing, additional visits. For purposes of this subdivision, the term “chiropractic visit” means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management.

(c)(1) Where good cause is based on inadequate reporting under subdivisions (b)(1) or (b)(2), the petition must show, by documentation and verified statement, that the claims administrator

notified the primary treating physician or facility in writing of the complete requirements of Section 9785 prior to the physician's failure to properly report.

(2) Good cause shall not include a showing that current treatment is inappropriate or that there is no present need for medical treatment to cure or relieve from the effects of the injury or illness. The claims administrator's contention that current treatment is inappropriate, or that the employee is no longer in need of medical treatment to cure or relieve from the effects of the injury or illness should be directed to the Workers' Compensation Appeals Board, not the Administrative Director, in support of a Petition for Change of Primary Treating Physician.

(3) Where an allegation of good cause is based upon failure to timely issue the "Doctor's First Report of Occupational Injury or Illness," Form DLSR 5021, within 5 working days of the initial examination pursuant to Section 9785(e)(1) or (e)(2), the petition setting forth such allegation shall be filed within 90 days of the initial examination.

(4) The failure to verify a letter response to a request for information made pursuant to Section 9785(f)(7), failure to verify a narrative report submitted pursuant to Section 9785(f)(8), or failure of the narrative report to conform to the format requirements of Section 9785(f)(8) shall not constitute good cause to grant the petition unless the claims administrator submits documentation showing that the physician was notified of the deficiency in the verification or reporting format and allowed a reasonable time to correct the deficiency.

(d) The employee, his or her attorney, and/or the primary treating physician may file with the Administrative Director a response to said petition, provided the response is verified under penalty of perjury and is filed and served on the claims administrator and all other parties no later than 20 days after service of the petition. The response may be accompanied by supportive documentary evidence relevant to the specific allegations raised in the petition. The response may be filed using the "Response to Petition for Change of Primary Treating Physician" form (DWC-Form 280 (Part B)) contained in Section 9786.1. Where the petition was served by mail, the time for filing a response shall be extended pursuant to the provisions of Code of Civil Procedure Section 1013. Unless good cause is shown, no other document will be considered by the Administrative Director except for the petition, the response, and supportive documentary evidence.

(e) The Administrative Director shall, within 45 days of the receipt of the petition, either:

(1) Dismiss the petition, without prejudice, for failure to meet the procedural requirements of this Section;

(2) Deny the petition pursuant to a finding that there is no good cause to require the employee to select a primary treating physician from the panel of physicians provided in the petition;

(3) Grant the petition and issue an order requiring the employee to select a physician from the panel of physicians provided in the petition, pursuant to a finding that good cause exists therefor;

(4) Refer the matter to the Workers' Compensation Appeals Board for hearing and determination by a Workers' Compensation Administrative Law Judge of such factual determinations as may be requested by the Administrative Director; or

(5) Issue a Notice of Intention to Grant the petition and an order requiring the submission of additional documents or information.

(f) The claims administrator's liability to pay for medical treatment by the primary treating physician shall continue until an order of the Administrative Director issues granting the petition.

(g) The Administrative Director may extend the time specified in Subsection (e) within which to act upon the claims administrator's petition for a period of 30 days and may order a party to submit additional documents or information.

Note: Authority cited: Sections 133, 139.5, 4603, 4603.2, 4603.5 and 5307.3, Labor Code.
Reference: Sections 4600, 4603, 4604.5, and 4603.2, Labor Code.