

EXAM SPECIFICATIONS FOR WORKERS' COMPENSATION LAW

PURPOSE OF THE EXAM. The purpose of the certification exam is to require an applicant to demonstrate substantial knowledge of significant legal concepts and corresponding skills in workers' compensation law.

EXAM FORMAT. The exam consists of a three-hour morning session with three essay questions each worth 100 points and a three-hour afternoon session with 100 multiple choice questions (10 of which involve professional ethics) each worth 2 points. The required passing score is **350**. The essay portion of the exam may be taken by laptop (supplied by the examinee) or by writing. Answers to the multiple choice questions will be documented by the applicant on a scantron answer sheet supplied by TBLS.

ESSAY QUESTIONS. Essay questions consist of a fact pattern followed by a series of questions (usually 4-6) for an applicant to answer. Essays are designed to require an applicant to recognize and analyze issues in the fact pattern and explain how those issues should be resolved. The fact patterns will involve situations you would likely encounter in your practice. Essays typically involve issues relating to course and scope of employment, compensable injuries and allowable benefits, and medical conditions/extent of injuries. Applicants should make sure to provide the specific information each question asks for and to communicate as clearly as possible. An organized, clearly written answer using complete sentences will almost always receive a higher score than a choppy, disorganized one. In order to pass the exam, applicants must be able to clearly express answers in a manner that would be persuasive to the decision-maker in a case.

MULTIPLE CHOICE QUESTIONS. These questions are designed to test a breadth of issues in the specialty area and require an applicant to select the **best** available answer option.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES. An applicant in workers' compensation law is expected to understand all aspects of the determination of the rights and duties of employees, employers, health care providers and insurance carriers as provided in the Texas Workers' Compensation Act. The knowledge, skills and abilities required of a workers' compensation law applicant are set out below.

NOTE: NOT ALL TOPICS LISTED BELOW WILL BE COVERED ON ANY GIVEN EXAM. APPLICANTS WILL BE TESTED ON RULES AND LAWS IN EFFECT AT THE TIME OF THE EXAM UNLESS OTHERWISE SPECIFIED.

1. Course and Scope of Employment

- a. Workers' Compensation Doctrines
 - (1) Access Doctrine
 - (2) Special Mission
 - (3) Travel To and From Work
 - (4) Personal Comfort and Convenience
 - (5) Violation of Employer Rules
 - (6) Last Injurious Exposure
 - (7) Deviation and Incidental Deviation

- (8) Idiopathic Injury
- (9) Accidental Injuries
- (10) Occupational Diseases
- (11) Extent of Injury
- b. Insurance Carrier Defense
 - (1) Act of God
 - (2) Personal Animosity
 - (3) Intoxication
 - (4) Social, Athletic, or Recreational Event
 - (5) Intent to Harm Self or Others
- c. Employment and Coverage
 - (1) Employee Status
 - (2) Independent Contractors
 - (3) Volunteers
 - (4) General Contractors
 - (5) Subcontractors
 - (6) Borrowed Servant
 - (7) Special Employees
 - (8) Staff Leasing Services Act "Leased" Employees
 - (9) Temporary Common Workers Act Employees
 - (10) Firefighter Cancer Cases and the Statutory Presumption

2. Workers' Compensation Benefits-Indemnity Benefits

- a. Amount of Benefits
 - (1) Average Weekly Wage (All Employees)
 - (2) Multiple Employments
 - (3) Interest
 - (4) Recoupment
 - (5) Contribution
 - (6) Allowable liens
- b. Types of Benefits
 - (1) Temporary Income Benefits
 - (2) Impairment Benefits
 - (3) Supplemental Benefits
 - (4) Lifetime Income Benefits
 - (5) Death Benefits
- c. Claimants/Beneficiaries
 - (1) Death Beneficiaries
 - (2) Sub-claimants
 - (3) Subrogation
 - (4) Liens

3. Workers' Compensation Benefits-Medical Benefits

- a. Entitlement Issues (Scope of Coverage)
- b. DWC Medical Fee Guidelines
- c. Treatment Guidelines

- d. Pre-authorization and Concurrent Review Requirements
- e. Prohibition Against Private Claims
- f. Rules for Prescription Medications
 - (1) Initial Pharmaceutical Coverage
 - (2) Employee Rights to Reimbursement
 - (3) Generic v. Brand Name Drug

4. Workers' Compensation Benefits -Doctors

- a. Role of Treating Doctor
- b. Role of Designated Doctor
- c. Required Medical Examination Doctors
- d. Referral Doctors
- e. Doctors Lists and Training
- f. Peer Review Doctors
- g. Utilization Review Agents
- h. Sanctions Against Doctors

5. Disability

- a. Entitlement
 - (1) Definitions
 - (2) Producing Cause and Sole Cause
 - (3) Pre-existing and Subsequent Injury
 - (4) Termination for Just Cause
 - (5) Bona Fide Offer of Work
 - (6) Concurrent Employment
 - (7) Post Injury Earnings
- b. DWC Procedures
 - (1) DWC-73/ Work Status Report
 - (2) RME Doctor
 - (3) DWC-69/Certification of Impairment and Maximum Medical
 - (4) Improvement

6. Timely Reporting/Timely Disputing

- a. Claimant Responsibilities
 - (1) Reporting an Injury
 - (2) Reporting an Occupational Disease
 - (3) Filing/Claim for Compensation
 - (4) Good Cause for Delay
 - (5) Dispute of MMI Date and Impairment Rating (90 day rule and exceptions)
- b. Carrier Responsibilities (including governmental and certified self-insureds)
 - (1) Dispute of Compensability
 - (2) Dispute of MMI Date and Impairment Rating
 - (3) Dispute of SIBs Entitlement

7. Employer Rights and Responsibilities

- a. Specific Rights under Sec. 409.011
- b. Waiver of Right to Contest Compensability
- c. Report of Injury to Carrier
- d. Supplemental Report of Injury to Carrier
- e. Wage Statement

8. Specific Medical Conditions/Injuries

- a. Special Rules/Case Law
 - (1) Mental Trauma Injuries
 - (2) Heart Attack
 - (3) Stroke
 - (4) Hernia
- b. Impairment Ratings
 - (1) AMA Guides
 - (2) Effect of Pre-existing Condition

9. Dispute Resolution (DWC and SOAH)

- a. Indemnity Benefits
 - (1) Benefits Review Conferences
 - (2) Contested Hearings
 - (3) Appeals to DWC Appeals Panel
 - (4) Agreements
 - (5) Arbitration
 - (6) Settlements
 - (7) Deadlines for DWC Dispute Resolution
- b. Medical Benefits
 - (1) Prospective and Retrospective Review
 - (2) Role of the IRO
 - (3) Role of the Medical Quality Review Panel (MQRP)
 - (4) Review by the Medical Review Division
 - (5) Procedure and Standing for Filing a Dispute
 - (6) MDR Hearings in the Field Office-Jurisdiction for Fee disputes and for Medical Necessity Disputes
 - (7) Procedure for conducting MDR Hearings and Evidence
 - (8) Review by SOAH
 - (9) SOAH Rules
 - (10) Settlements
 - (11) Agreements
 - (12) Spinal Surgery
 - (13) DWC Fee Guidelines
 - (14) Official Disability Guidelines
- c. Practice and Procedure for Indemnity and Medical Disputes
 - (1) Venue
 - (2) Jurisdiction

- (3) Parties
- (4) Discovery
- (5) Motion Practice
- (6) Evidentiary Rules
- (7) Attorney's Fees
- (8) Standing
- (9) Evidence-based medicine

10. Medical and Anatomic Terms

- a. Anatomy of the Human Body
 - (1) Orthopedic Anatomy
 - (2) Neurologic Anatomy
 - (3) The Muscle Structure
- b. Diagnosis of Illness and Injury
 - (1) Spinal Injury Diagnosis
 - (2) Upper Extremity Diagnosis
 - (3) Knees, Shoulders, Hips (Large Joints)
 - (4) Feet, Hands, Elbows (Small Joints)
 - (5) Head Injuries
 - (6) Psychological Diagnosis
 - (7) Occupational vs. Ordinary Diseases of Life
- c. Clinical and Diagnostic Testing
 - (1) Orthopedic and Neurological Clinical Tests
 - (2) Diagnostic Tests
 - (3) Medical Charting Terms

11. Judicial Review

- a. Exhaustion of Administrative Remedies
- b. Jurisdiction
- c. Parties
- d. Venue
- e. Standard of Review
- f. Pleadings
- g. Discovery
- h. Motion Practice
- i. Evidentiary Considerations
- j. Voir Dire
- k. Jury Questions
- l. Third Party Actions/Subrogation
- m. Limitations
- n. Attorneys' Fees

12. Legal and Compliance

- a. Administrative Violations
- b. Penalties

- c. Hearing Procedures
- d. Judicial Review

13. Return to Work

- a. Disability Management
- b. The Medical Disability Advisory, Workplace Guidelines for Disability Duration Medical Disability Advisory (MDA)
- c. Official Disability Guidelines (Treatment in Workers' Comp Official Disability Guidelines (ODG))
- d. Return-to-Work Account for Small Employers
- e. Required Treatment Planning and Guidelines

14. Networks

- a. Networks and Injured Employees in Networks
- b. Non-Networks and Injured Employees Not in Networks
- c. Out-of-Network and Injured Employees Out-of-Network

15. General Powers and Duties of Division and Commissioner

16. Office of Injured Employee Counsel

- a. General Powers and Duties
- b. Ombudsman Program

17. Self-Insurance

- a. Requirement for Certification
- b. General Powers and Duties

18. Administrative Violations

- a. Prohibited Acts
- b. Penalties
- c. Procedures

19. Third Party Liability

- a. Recovery in Third-Party Action
 - (1) Carrier's Reimbursement Calculation
 - (2) Claimant's Recovery Calculation
 - (3) Liens
- b. Attorneys' Fees in Third-Party Action
 - (1) Calculation of Fees for Representation of Claimant
 - (2) Calculation of Fees for Representation of Carrier
- c. Advance Against Future Benefits
 - (1) Calculation of Advance Amount
 - (2) Exhaustion of Advance Amount
 - (3) Carrier Resumption of Benefits

20. Exemplary Damages

- a. Elements of Cause of Actions
- b. Damages Calculation

21. Non-Subscription/Non-Subscribers

22. Legislative Changes

23. Subsequent Injury Fund

24. Other Remedies for Injured Workers

- a. Third Party Negligence
- b. Employer Negligence/Gross Negligence
- c. Intentional Injury by Employer or Co-employee
- d. Non-Subscriber Negligence

25. Definitions

- a. General Definitions
- b. Definition of Employee
- c. Definition of Intoxication

26. The Texas Disciplinary Rules of Professional Conduct. The ethics questions regarding this topic will involve an array of hypothetical fact situations which will cover several different aspects of ethical issues that arise in the practice of law. The questions will not be limited to the practice of any one specialty area, and consequently, an applicant is advised to be familiar with all provisions of the TDRPC.

SKILLS.

An applicant must demonstrate the ability to:

- Communicate effectively and persuasively to clients, counsel and courts
- Develop and evaluate strategies for solving a problem or accomplishing an objective
- Analyze and apply legal rules and principles
- Analyze, sort and use facts; plan and direct factual investigations
- Organize and manage a legal task efficiently within time constraints
- Represent a client consistent with applicable ethical standards
- Invoke and utilize the procedures normally required in the area of specialty including pleadings and filings