

STATEMENT OF POLICY
REGARDING DISCLOSURE OF
CLAIMANTS' MEDICAL INFORMATION

This statement will describe, for California employers and other interested parties, the policy of Majestic Insurance Company regarding disclosure of medical information about employees who have filed workers' compensation claims. We have adopted this policy in light of an amendment to California Labor Code Section 3762 that became effective January 1, 2000. That code section sets forth the "Employer's Bill of Rights."

Labor Code Section 3762(a) provides that the insurer shall discuss with the employer all elements of the claim file that affect the employer's workers' compensation premium, and shall supply copies of documents that affect the premium. However, a new subdivision (c) has been added to the statute which provides that an insurer may not disclose medical information about workers' compensation claimants, with limited exceptions.

Specifically, subdivision (c) of Labor Code Section 3762 provides that a workers' compensation insurer is prohibited from disclosing or causing to be disclosed to an employer any medical information (as defined in the statute) about an employee who has filed a workers' compensation claim, with the following two exceptions:

(1) If the diagnosis of the employee's injury would affect the employer's premium, then the insurer may disclose that diagnosis to the employer.

(2) Medical information regarding the employee's injury may be disclosed if necessary for the employer to modify the employee's work duties.

"Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a health care provider regarding a patient's medical history, mental or physical condition, or treatment. (Cal. Civil Code § 56.05(f).)

"Individually identifiable" means information that, alone or in combination with other publicly available information, reveals the employee's identity.

In keeping with the statutory requirements summarized above, it is our policy not to disclose to an employer, either directly or indirectly, any medical information as defined above about an employee who has filed a workers' compensation claim, except when such disclosure is expressly permitted by one of the foregoing exceptions.

The following are examples of how our policy will be implemented:

- We will delete protected information from medical reports provided to the employer. If deleting that information is impractical, we will provide a summary or extract of the information that we are permitted to disclose.
- In claims reviews that we conduct with employers and their representatives, we will not disclose medical reports in their entirety. We will not share protected information contained in those reports either verbally or in writing.
- If the employer has electronic access to our claim file, complete medical information will not be available. If it is impractical to delete the protected information from the electronic file, employer access to the file will be denied.

Other situations may arise in which there are questions regarding an employer's right to receive claimants' medical information. We will resolve those issues on a case-by-case basis according to our understanding of the applicable statutory requirements.

Our policy as set forth above applies with respect to disclosure of claimants' medical information to employers, their insurance brokers and consultants retained by employers to advise them regarding their workers' compensation claims.

We reserve the right to modify our policy as set forth above at any time. If you have any questions, please contact Donald R. Bellinger, Vice President, Claims.