

# In A New York State Of Pain



By Josh Bloom — January 9, 2018



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American Council friend and pain management specialist Aric Hausknecht, MD recently copied me on a letter to his colleagues regarding [proposed changes](#) [2] in New York State's Pharmacy Formulary **(1)**.

*Dear Colleague,*

*The NYS WCB [Worker's Compensation Board] has proposed Draft Regulations for NYS Pharmacy Formulary that will have catastrophic consequences for WC patients, providers and their representatives. I strongly suggest that you review this draft and voice your opinion.*

*Aric Hausknecht, MD January 4, 2017*

Hausknecht is referring to proposed legislative changes that were specified in a December 27, 2017, [letter](#) [2] from Clarissa M. Rodriguez, the Chair of the Workers' Compensation Board. Rodriguez, a Democrat from Queens County, NY invited public comment on the proposed legislation until February 26, 2018. Hausknecht sees some troubling language in the revision of Section 440.2 of Title 12 of NYCRR (New York Codes, Rules and Regulations), especially rule 441.4 Prior Authorization (Utilization Review) for Non-Preferred or Unlisted Drug, which clearly limits the ability of physicians to prescribe appropriate drugs **(1)** for injured workers (emphasis mine).

*"When a medical provider determines that a Non-Preferred drug or unlisted drug, or a brand-name drug with a generic equivalent, is appropriate for the claimant and medically necessary, **the medical provider shall seek prior authorization prior to prescribing or dispensing.**"*

*Section 441.4 (a) of Title 12 of NYCRR (New York Codes, Rules and Regulations)*

It becomes immediately obvious that injured workers are going to be adversely impacted by this rule change. Government has inserted itself between the physician and the pharmacy. Nothing good can come from this. Dr. Hausknecht believes that the requirement of prior authorization will affect injured workers in two ways - Causing suffering by delaying patient access to pain medication and extending the time of absence of the injured worker.

*In my opinion, these goals will not be accomplished by this draft and the overall strategy is intrinsically flawed. This draft will negatively impact injured workers, obstruct access to medical care/prescriptions, delay recovery/return to work, and ultimately result in increased costs for employers, carriers and the Board.*

But 441.4 (a) is hardly the only concern in this new legislature. Section 441.4 (b) erects another bureaucratic wall between doctors and their patients:

*"The medical provider may request a prior authorization from the insurance carrier or self-insured employer. The request may be made orally or in writing. The carrier or self-insured employer shall approve or deny this request within four calendar days."*

*Section 441.4 (b) of Title 12 of NYCRR (New York Codes, Rules and Regulations)*

In other words, before an injured worker can receive "Non-Preferred drugs" (translation: opiates), the request must be approved by an insurance company (or the company itself company if it is self-insured). Knowing what we know about the constant battle between insurance companies and physicians, it is all but certain that procedural wheels will turn very slowly. Which brings up Section 441.4 (c), perhaps the most troubling part of the proposed legislation.

*If the carrier or self-insured employer denies the request, the medical provider may seek review by the Board through the medical director's office or, when requested, through the conciliation process.*

*Section 441.4 (c) of Title 12 of NYCRR*

Hausknecht calls this section "preposterous," because it will inevitably add even more during which patients or injured workers will have access to the drugs they need by adding yet another layer of bureaucracy to a process which is already too slow.

*"There is no form or procedure in place for a provider to "seek prior authorization". There is no procedure in place for the carrier or self-insured employer to "approve or deny this request within four calendar days". **This determination must be made by a qualified medical professional with a review of appropriate medical records. There is no chance that this could be accomplished within 4 days.**"*

It is obvious that there is a built-in four day time period during which injured workers will not be

able to get strong painkillers when presumably when they need them most. This is lunacy. But it gets worse. Four days, as bad as it is, will almost certainly be worse. Hausknecht writes"

*"Furthermore, if the carrier or self-insured employer denies the request, the medical provider may seek review by the Board...If [the drug] is not preferred and the carrier is unresponsive or denies coverage/authorization, the prescription will not be filled. **Any form of administrative review or directive by the Board would take weeks or months to complete.**"*

But in reality, the situation is even worse because "the determination to approve or deny Rx coverage is not necessarily made by a qualified medical professional such as a doctor or a nurse, may or may not be based on review of the pertinent medical records and in many cases will likely be an arbitrary decision by an unqualified, uninformed insurance claims adjustor."

So, a worker who is seriously injured in a construction accident will probably have to wait until he is already better to get drugs he or she needed right after the accident based on a decision by someone who is unqualified to make it? Can you say "insane?"

The atrocity that New York State is proposing to enact into law is hardly an isolated event. States all over the country are enacting similarly Draconian measure, while people in pain sit back and helplessly watch what their government is doing in the name of "helping" them.

Finally, if you think that Aric Hausknecht is the type of doctor who casually tosses opiate scripts at people you would be dead wrong:

*"In most instances, I would agree that opioid use should be avoided or limited. However, it is undeniable that some patients will require opioids for longer than 7 days to manage their pain. In my practice, I see many [workman's compensation] patients who are in severe pain following traumatic injuries such as fractures requiring surgical repair, skull fracture/intracranial bleed requiring surgical evacuation, crush injuries of hands/feet, and 3rd-degree burns. Many times I am the first doctor they will see after discharge from the hospital. **Generally, this patient population requires more than seven days of opioid analgesia.**"*

Which is exactly what states are forbidding with their ill-advised, cruel, and scientifically flawed policies. Instead of putting an extra onus on fine physicians like Dr. Hausknecht, why don't we leave them alone and let them do their jobs without foolish and pointless laws that will help no one but hurt many?

What New York is proposing is a disgrace.

*Aric Hausknecht, M.D. is a New York-based neurologist and pain management specialist who currently practices at Complete Care, a community-based outpatient clinic. Dr. Hausknecht's training included stints at Memorial Sloane Kettering Cancer Center, NY Hospital Cornell Medical Center, Beth Israel Medical Center, and Mount Sinai School of Medicine, all in New York. He is board certified in neurology and certified in pain management.*

## NOTES:

(1) The NY State Formulary is a list of drugs approved for use by workman's compensation patients.

(2) There are **ZERO opioids** <sup>[3]</sup> in the NY State Formulary. The Formulary is (partially) for people who are **hurt**. Huh?

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[2] [http://www.wcb.ny.gov/content/main/SubjectNos/sn046\\_1012.jsp](http://www.wcb.ny.gov/content/main/SubjectNos/sn046_1012.jsp)

[3] <http://www.wcb.ny.gov/drug-formulary-regulation/DRAFT-MTG-Formulary.pdf>