

TESTIMONY FOR WORKERS' COMPENSATION BILL # 5697 1-30-07

Madam Chair or Mr. Chairman and members of the Committee:

I would like to thank you for the opportunity to testify regarding Bill # 5697 and I would like to offer some suggestions to improve it, based on my experience trying to navigate through the Workers' comp system, and all that implies.

I have some concerns. As a teacher and a counselor. I am trained to think proactively, and my experience with insurance companies has taught me to think and look ahead to how they could manipulate this law to their advantage, and the disadvantage of the injured worker, as I have seen them do in the past.

The initial burden of proof is on the complainant for medical treatment . Once the compensability has been established, for justice to be served, insurance companies should not be able to deny medical treatment unless they have medical documentation that supports their denial.

My concern is this, it could work to the disadvantage of the injured worker if the insurance company uses this law to have the commissioner deny the medical treatment before all the medical reports are completed by the physicians, and even before the injury is found compensable.

The main problem , as I have experienced going through the WC system, is that the treating physician,( who has the education, extensive training and expertise in the specialty,) is the one who should determine what medical treatment the injured worker should receive, not the clerk behind the desk of the insurance company, who may not have more than a high school education, and has been trained to save the company money at any cost to the injured worker. Many of these clerk's promotions rely on how many claims they deny, and how much money they save the compny.

The treating medical physician should have the last word, not the insurance company clerk or the insurance company doctor, who they shop around for, and whose objectivity should be questioned, and for whom they pay substantial amounts of money to review other doctors reports, with the objective of bending an opinion in their favor.

I can only offer my personal experience as an example. I was injured breaking up a fight between two students trying to kill each other. I got in between them and had to hold them off for ten minutes with my arms outstretch while they were still trying to throw punches at each other, until security came from the parking lot some distance from the building, where I was on I was on the third floor. As a result I tore both rotator cuffs, have labrum tears in both shoulders and developed spurs and arthritis in both shoulders, which are all documented in MRI's. I also injured my neck , thoracic and lumbar spine, also documented on MRI's and bone scan. The doctors determined my injuries were work related. I took several years going through the chaotic system of the insurance



companies delaying the promised voluntary agreements confirming the insurance company agreed to the compensability. Despite these final agreements and my physicians repeatedly writing letters to the caseworker and answering her questions as to the compensability, the insurance company case worker continually filed form 43's for denial of medical treatment. The strategy is to keep filing denials of medical treatment to wear down the injured worker in pain, so they will give up, and walk away from their rights, in an attempt to save money for the company, while putting the injured worker's physical, mental health, and well being at risk.

My last denial of medical treatment took two years, and a formal hearing, and the insurance company was finally sanctioned for undue delay. What is not addressed is the toll that takes on the injured worker who is in pain, and the exacerbation of injury it causes. If the injured worker receives the treatment when prescribed by the treating physician who knows what they need, they have a better chance of getting the surgery or physical therapy and rehabilitation they need to return to work. The delay is not cost effective, it would seem more cost effective to just provide the treatment instead of the vast amounts of money spent by the companies, as is their right to yearly IME's and to doctor shop until they get the report they want, while the injured workers condition is deteriorating. I know in my case an IME doctor was paid \$ 2,500.00 to say there was no compensability, even though the medical evidence and MRI's proved otherwise. I was even sent as far as Stamford CT in a wheelchair, because my treating physicians in this area are Board certified, highly qualified, and respected, and some of the best in the area, and are used for IME's for other clients.

The insurance company may also argue their due process rights will be denied by the Commissioner, and lobby to kill the bill, and in the worst scenario, a Commissioner may deny treatment before all the medical evidence is completed, presented, and the claim found compensable.

.The Insurance company should not be able to deny claims at their whim, it should be the Insurance company who has to go to a formal hearing to exercise their right to deny,( once the claimant has met the burden of proof and the claim has been found compensable based on medical evidence).I am sure if this happened the delay would not only be shortened, but it would insure the injured worker received the needed treatment prescribed by the treating physician, and not have to endure the sometimes years of delay to the road to rehabilitation, and thus avoid the exacerbation of injury.

I have unfortunately experience more than one injury in the course of my employment breaking up fights, and failure to accommodate post my injuries to my ankle, knees wrist, hip etc. My case manager denied treatment despite my physicians constantly writing and answering her questions. She also ignored her own attorneys letters stating the form 43 was lifted, and continued to deny treatment, hence the sanction, but it took two years. We had sent a letter to her supervisor to no avail, giving her free license to continue doing the same with no consequence. I also had to file a discrimination claim for the lack of accommodation, post injuries. As is well documented in the press the CHRO does a poor job of processing those employment claims, and in order to get action within a more

reasonable time an injured worker would have to seek legal counsel at the cost of hundreds dollar an hour. Also to appeal a decision a worker has to pay a lawyer by the hour and pay costs of transcripts etc., which is difficult to do on a WC disability income that is fixed, unlike social security disability that has at least cost of living raises. I am now disabled from my injuries. I can't help but feel if I had received the treat my treating physicians prescribed when it was prescribed, and if I had been accommodated, I would be in better condition than I am now in chronic pain. one injury affecting the other, with my body having no place to compensate, and with all the extra expenses for transportation etc. that comes with disability.

It seems inappropriate that an IME doctor's 15 or 20 minute evaluation should override a treating physician whose knows the patient condition from treating them for a period o time, may have operated on them, as in my case, and has seen first hand the damage related to the injury, that can not be seen in a medical report. They are in the best position to determine treatment. Based on the experiences I have detailed above, these would be my suggestions for improvement of the bill:

1. the insurance company should not be able to deny medical treatment unless they have medical documentation presented at a formal hearing that supports their position.
2. The treating physician should determine what the injured worker should receive not the insurance carrier or his hired physician.
3. safe guards should be put in the bill to insure the commissioner cannot deny the claim before the claimant has an opportunity to prove compensability.
4. An insurance company's IME, should not be able to override a treating physician who is competent, and has treated the injured worker for a period of time, and the weight of the IME and its validity, should be considered in proportion the fact that the doctor has been hired by the insurance company to try to deny treatment.