

To: Labor Committee

By: Injuredworkersday.org/

February 26, 2013 Revised

(Original portions February 23, 2010)

Where in the Administrative Agency CT WC Statute are Depositions permitted?

Where in the Administrative Agency CT WC Statute is language Curative or Palliative written?

Where in the Administrative Agency CT WC Statute is Surveillance permitted?

Where in the Administrative Agency CT WC Statute is Telephone Denial of Benefits by Workers Compensation Commissioners permitted? Denial Phone Memo attached.

These are the results of Connecticut official's treatment/benefits denials to work related injury of accepted claims.

Denied mental health & benefits, man threatens commit playground massacre.

Denied mental health & benefits mother stabs daughter.

Denied benefits, blinded nurse handcuffs self to Middletown WC office building.

Denied benefits man hangs self in hallway, wife discovers.

Denied benefits man dies in surgery due to medical delays by WC.

Denied benefits, subjected to deposition, man collapses with heart attack and dies at deposition.

Denied benefits, family goes in \$100,000 debt for medical treatment.

Denied benefits, upon appeal to CRB, WC Chairman dismisses case due to claimant instability.

California – 57 y/o man opens fire on Workers Compensation Office over WC benefits denial.

New York – 35 y/o kills 8 persons on Long Island Railroad over WC benefits denial.

The effects on family

"It's totally devastating to a family, it literally rips them apart."

"I'm not getting any benefits. My wife and I couldn't get along because of financial problems. I wound up getting divorced losing my house and so I don't live at the house any more. I had to move out."

"The insurance company, backed up by Workers Compensation, is able to arbitrarily cease medical treatment, physical therapy, surgeries and medication without consequence"

" In six years of delays and denials, her case management through workers compensation has been barbaric, uncivilized, detrimental and unconscionable." Treating Physician

"Wife begs for help, save our family. BSOF. Writes letter to Workers Compensation Commissioner who dismisses her as a liar." Result – Divorce and screwed up children.

"Discarded and forgotten by their employers, denied medical coverage by the workers' compensation insurers; many have been left to die, slowly and agonizingly..."

Depraved Indifference, Patrice Woepfel

S.B. # 61 Opposition – Reasonable and Necessary authority to Commissioners.

- It is my opinion that the inclusion of "Reasonable and Necessary" plenary (new assessment of medical facts) authority of review now gives the same authority to the Workers Compensation Commissioners that the doctors only now have in WC Sec. 31-294d. Here is (f) one of the major changes in SB # 61 Raised Bill to the current statute.
- (f) The Workers' Compensation Commission shall have plenary authority for review of decisions with respect to the provision or denial of medical care under any plan approved by the chairperson under subsection (d) of this section and may determine whether such medical care is reasonable or necessary.

Under Sec. 31-294d of the Workers Compensation Act following, the physicians only have the authority to determine what is reasonable or necessary.

(a)(1) The employer, as soon as the employer has knowledge of an injury, shall provide a competent physician or surgeon to attend the injured employee and, in addition, shall furnish any medical and surgical aid or hospital and nursing service, including medical rehabilitation services and prescription drugs, **as the physician or surgeon deems reasonable or necessary.** The employer, any insurer acting on behalf of the employer, or any other entity acting on behalf of the employer or insurer shall be responsible for paying the cost of such prescription drugs directly to the provider.

In a Workers Compensation case I spoke to you about in 2008, here is the Compensation Review Board Opinion by the Chairman.

"Whether a proposed surgical procedure is reasonable . . . is a question of fact for the commissioner to resolve." Chairman Workers Compensation John Mastropietro CASE NO. 5164 CRB-8-06-11 VANNOY-JOSEPH v. STATE OF CONNECTICUT

Obviously the Chairman already believes the Workers Compensation has the authority to determine what is reasonable and necessary.

Also in Vannoy the Chairman has stated. "We remand the trial commissioner's decision after clarifying the standard of scientific evidence needed to approve an unconventional surgical procedure."

The medically **reasonable or necessary** treatment recommended by the doctors is presently worthless due to the dilatory Workers Compensation practices subjecting treatment delays for years.

If the spirit of Sec. 31-294d was operating per statute, injured workers would be receiving immediate and continuing care.

- The 1993 legislation requiring all WC Commissioners be lawyers made the WC Statute into a Civil Process like Superior Court, but without rules. The present Workers Compensation Commission operates upon Case Precedents they fabricated in Compensation Review Board decisions. In Vannoy 5164 CRB-8-06-11 the Workers Compensations Commissioner have exceeded the boundaries of reasonable and necessary and made themselves scientists.
- This proposal SB # 61 to give Workers Compensation Commissioner authority for reasonable and necessary medical treatment decisions will make WC Commissioners doctors.
- The best thing this committee can do for Injured Workers is the authorize a review to determine if we are currently getting the benefits deserved under present statutes before initiating unwarranted changes.

I oppose Raised Bill 907 (2013)- "Act concerning additional requirements for an employer's notice to dispute reasonable care for an employee under the Workers' Compensation Act."

In the 22 years I have had an accepted claim in Connecticut Workers Compensation I have had the commissioner deny me at least twice medical benefits without the slightest consideration for due process, a meaningful hearing or presentation of evidence. In 2005 the commissioner refused to examine the evidence I presented or permit me to bring into witness my treating physician. The commissioner refused to view MRI results and ordered laptop turned off and unplugged from the wall outlet! It is my experience that commissioners are unqualified to make life decisions regarding injured workers and their families. I know, I lost mine, but hey, that was only one person and who cares.

Recognizing there may be times when the employer could legitimately be concerned about a certain case, maybe they should have an appeal process but this process should be exclusive of Workers Compensation with the remedy Superior Court in order to protect Injured Workers.

Appealing to State of Connecticut Superior court assures injured worker Due Process and the right to present evidence at a meaningful hearing which does not occur in the present administrative agency. Bear in mind, there are legal cost for the Injured Worker in either venue.

The existing Workers Compensation Statute gives the determination of reasonable and necessary medical treatment to the treating physician exclusively.

Section 31-310b Average Weekly Wage of General Assembly Member - (Code for your elected Legislator and Senate Representative) For purposes of workers' compensation the average weekly wage of a member of the General Assembly shall be construed to be the average weekly earnings of production and related workers in manufacturing in the state as determined by the Labor Commissioner in accordance with the provisions of section 31-309. For the purposes of this section, there shall be no prorating of benefits because of other employment by a member of the General Assembly."

As we heard in 2010 testimony by former Workers Compensation Commission Michael Miles the existence of a 1997 Chairmans' directive clarified the reasonable and necessary medical treatment covering all recommended treatment for the same injury and prior approvals are not required to expand treatment or medications. The belief was that Connecticut Injured Workers would be receiving the medical treatment they needed and on a timely basis in order to hasten recovery and treatment of pain to save families and jobs if the 1997 directive had been followed to present.

I propose the follow wording be substituted in Raised Bill 907 (2013) to facilitate this goal:

"If an employer or insurer in the State of Connecticut chooses to contest the reasonable and necessary medical treatment of an accepted claimant under The Workers Compensation Act, then that employer may appeal to the State of Connecticut Superior Court. 1.) The employer shall bear all costs associated with the appeal, including employee legal costs. 2.) The employee will have automatic counter claim of unfair dealing and business practices, along with non-dealing in good faith claim against employer. Retroactive to January 1, 1991, the employee may appeal to Superior Court where employer has denied medical treatment recommended by the treating physician including mandatory No. 1.) proceedings. "

A bad faith legislation is needed in Workers Compensation to compensate for the now inequitable trade off exclusive remedy. A former proposal by Labor Committee that died in Judiciary is attached and included this language:

"the exclusivity of remedy provided by this section shall not apply to an action against an insurer, third-party administrator or self-insured employer for breach of the covenant of good faith and fair dealing in the handling of claims under this chapter or for violation of chapter 704 or section 38a-815." <http://www.cga.ct.gov/2008/FC/2008HB-05626-R000237-FC.htm>

Curative and Palliative -

"We have in past cases addressed the subject of the "curative/palliative" distinction upon which the compensability of this medical treatment hinges, and have explained that it is a factual matter as to whether medical care satisfies the "reasonable and necessary" standard of § 31-294d C.G.S. *Zalutko v. Danbury Hospital*, 4229 CRB-7-00-4 (May 23, 2001). "Reasonable medical care is that which is curative and remedial. Curative or remedial care is that which seeks to repair the damage to health caused by the job even if not enough health is restored to return to work. Any therapy designed to keep the employee at work or to return him to work is curative. Similarly, any therapy designed to eliminate pain so that the employee can work is curative." CASE NO. 4499 CRB-8-02-2 *CARROLL v. FLATTERY'S LANDSCAPING, INC.*"

The following are Connecticut Court decisions of Workers Compensation. You will not find these quoted in Compensation Review Board or Formal Hearings.

Workers' Compensation Act is liberally construed in favor of employee and is to be interpreted with sufficient liberality to carry into effect its beneficial purpose and to prevent defeat of this purpose by narrow and technical definition. *Infante v. Mansfield Construction Co.* (1998) 706 A.2d 984, 47 Conn. App

Purpose of Workers' Compensation Law is to compensate worker for injuries arising out of and in the course of employment, without regard to fault, by imposing form of strict liability on employer. *Dowling v Slotnik* (1998) 712 A2nd 396, 244 Conn. 781.

Under Workers' Compensation Act, employee surrenders his right to bring a common law action against employer, thereby limiting employer's liability to statutory amount, in return, employee is compensated for his or her losses without having to prove liability. *Doe v. Yale University* (2000) 748 A.2d 834, 252 Conn.641.

Humanitarian and remedial purposes of workers' compensation law counsel against an overly narrow construction that unduly limits eligibility for workers' compensation, and thus courts do not construe the law to impose limitations on benefits that the law itself does not specify clearly. *Gartrell v Department of Corrections* (2001) 787 A2d. 541, 259 Conn.29

Construing the Workers Compensation Act liberally advances its underlying purpose, i.e., to provide financial protection to the claimant and his family. *Laliberte v. United Sec., Inc.* (2002) 801 A.2d 783, 261 Conn. 181.

Workers' Compensation Act is remedial and must be interpreted liberally to achieve its humanitarian purposes. C.G.S.A. § 31-275 et seq.

Gil v. Courthouse One, 687 A.2d 146 Conn.,1997

Since Workers' Compensation Act is remedial statute, Supreme Court should not impose limitations on benefits provided for disabled worker that statute itself does not clearly specify. C.G.S.A. § 31-275 et seq.

Laliberte v. United Sec., Inc., 261 Conn. 181 Conn.,2002

By recognizing limitations not delineated by the legislature, a court risks denying the beneficent purposes of the Workers' Compensation Act. C.G.S.A. § 31-275 et seq.

Infante v. Mansfield Construction Co., 706 A.2d 984 Conn.App.,1998

Workers' Compensation Act is liberally construed in favor of employee and is to be interpreted with sufficient liberality to carry into effect its beneficial purpose and to prevent defeat of this purpose by narrow and technical definition. C.G.S.A. § 31-275 et seq.

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Testimony of former Commissioner Miles to Labor and Public Employees Legislative Committee February 23, 2010.

"On May 27, 1998, the previous chairman of the Workers' Comp issued a memorandum, 98-08 stating that once a physician is authorized to treat a patient under the Workers' compensation Act the physician may continue to treat the claimant without certification as long as the treatment is within the guidelines of the medical protocols.

I don't believe that that happens under the current administration. There's no enforcement. There's no (inaudible) to the remedial nature of the act which -- which -- number one requires that an injured worker receive reasonable treatment as well as benefits for lost time from work. So I would support this bill."

Public Hearing full minutes of testimony

<http://www.cga.ct.gov/2010/LABdata/chr/2010LAB00223-R001400-CHR.htm>

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"There is nothing that the law or any legislator or attorney can do to make your life whole again in the Connecticut Workers Compensation system from a job related injury.

There is no system here in CT to enable us to say you are 100% whole again".

"It is terrible, IT STINKS, that the workers compensation law cannot make injured workers whole"

"Workers Compensation is a Judicial System - the Commissioners are Judges" Representative Melissa Olson(2009)

The replacement of the constitutional right to access to the courts was the workers' compensation scheme. It was supposed to be a fast, sure and adequate benefit replacement. It is neither fast, nor sure, nor adequate. It hasn't been so since the Report of the National Commission on State Workers' Compensation Laws said so in unanimous agreement in 1972.

"Construing the Workers Compensation Act liberally advances its underlying purpose, i.e., to provide financial protection to the claimant and his family. Laliberte v. United Sec., Inc. (2002) 801 A.2d 783, 261 Conn. 181."

The present Workers Compensation system is depraved indifference! Depraved Indifference Woeppel (2008)

The Report of the National Commission on State Workers' Compensation Laws said so in unanimous agreement in 1972. The Congress finds the following:

(1) The full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workers' compensation as well as an effective program of occupational health and safety regulation.

(2) The vast majority of American workers and their families are dependent on workers' compensation for their basic economic security in the event such workers suffer injury or death in the course of employment.

(3) In 1972, the National Commission on State Workmen's Compensation Laws found that the system of State workers' compensation laws was 'inequitable and inadequate'. Since that time, changes in reductions in State workers' compensation laws have increased the inadequacy and inequitable levels of workers' compensation benefits.

Serious questions exist concerning the fairness and adequacy of present workers' compensation laws.

Are You Sick & Tired Of Rampant Insurer Fraud That Goes Unchecked?

Judges who ignore it!

Legislators who condone it!

Insurance Commissioners who closes their eyes to it!

Attorneys who look the other way while their clients are victimized by it!

The type of fraud that destroys and ruins the lives of injured workers and their families!

Where in the Workers Compensation Statute does it say:

- 1.) Commissioners may make formal decisions to terminate employee benefits over the telephone to unrepresented employees?
- 2.) Commissioners may disregard the statutory law of the treating physician to determine reasonable and necessary medical treatment?
- 3.) Commissioner may terminate benefits at an informal hearing without raising by employer and while the employee is unrepresented and the employer is represented?
- 4.) Commissioners may determine "scientifically approved treatment"?