

ONE VOICE

Joining Together For The Rights Of Injured Workers

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MD1, HP1, C-7; NOT JUST LETTERS AND NUMBERS - WHAT THEY SHOULD MEAN TO YOU...

LET'S HAVE A THIRD PARTY

If you are the party of the first part, and you have third party litigation with the party of the second part, and you become enriched by collecting from the party of the fourth part while reimbursing the interested party, you may or may not be able to party hearty or pay for future parties. Most of the time the medical provider to the party of the first part, at least if the first part is an injured worker, becomes an unrecognized party, gets broken parts, no parts at all, and is often left paying for the entire party. Confused? Welcome to Section 29 of the New York State Workers' Compensation Law.

The legislature enacted this provision to prevent injured workers from "double dipping"; getting paid by third party litigants for injuries suffered in the same accident that initiated their Workers' Compensation claim. Under this statute, carriers are permitted to lien the third party action to recoup monies paid to claimants for all expenses incurred and additionally, for all monies projected to be spent on the claimant's behalf. Any amounts above the lien and minus legal fees and expenses, goes to the patient. However, the patient may then become responsible for spending down this money to pay for his medical care. Why? Upon Section 29 settlement or judgment, all payments by the Workers' Compensation carrier stop. If you are owed money, before the third party settles, as the medical provider, even sums that were awarded to you by court decisions or in administrative hearings, forget about it. You are told to "seek remuneration from the patient".

If the patient receives a princely sum you would hope he/she does the right thing and pays your bill. That is if the patient has not left the country. And when the patient receives a small sum that is used for the necessities of life, who is going to pay the provider? This is compounded by the rule that permits the carrier not to inform the providers of the pending Section 29 settlement until they are off the hook. Neither do the patient's attorneys have any similar obligation. The medical services have been provided, but payment is not forthcoming.

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THE FOLLOWING ARTICLES ARE PRESENTED AS A WAY TO INFORM MEDICAL PRACTITIONERS AND PROVIDERS REGARDING ISSUES THAT MAY BE OF INTEREST TO THIS COMMUNITY.

FURTHER, WE WISH TO BRING TO THE PUBLIC'S ATTENTION THE PLIGHT OF INJURED WORKERS AS THEY TRAVERSE THE DISABILITY MEDICAL SYSTEM AS WELL AS THE LEGAL AND POLITICAL BATTLES THEY MUST ENDURE.

SHOULD YOU HAVE ANY QUESTIONS CONCERNING THIS PUBLICATION OR WISH TO CONTRIBUTE INFORMATION OR A RELEVANT STORY, PLEASE CONTACT US AS NOTED BELOW. ONE VOICE SPEAKS TO UNIFY THE INJURED AND THOSE WHO CARE FOR THEM AND CARE ABOUT THEM.



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If this is not corrected soon it will have a grave impact on the care and treatment of injured workers. If medical providers discover a Section 29 eligible patient, they will most likely withhold services that could be vital to the health and recovery of the worker. This could lead to increased costs to the entire population as these individuals seek treatment at more expensive venues such as the emergency room, which cannot deny care. So how can we change this inequity in the system? The Workers' Compensation Board is notified immediately of Section 29 injured patients. They could administratively and timely inform all medical providers so that they too could execute liens against any monies not paid by the carriers and collected by the patient. Alternatively, the law could be changed to insure payment of all outstanding and future medical bills at the time of any settlement or judgment. If both or either of these amendments fails to reach fruition, the system of treating our injured workers could crash.

CMSW is dedicated to working with other providers, labor unions, and the New York Committee on Occupational Safety and Health (NYCOSH) to make these changes a reality. In the meantime, we have endeavored to cope by using management techniques to limit our exposure to non-payment of claims. Let CMSW show you how to do the same. Call us today at (718) 626-4444 for information on our administrative workshop on this issue. Please see our web site cmswpc.com for the full version of this article. See the next months issue for the Workers' Compensation Board's response. What do you think they said? E-mail us at c4@cmswpc.com with your opinion.

WHAT'YA GONNA DO WHEN THEY COME FOR YOU!

What do you get when you have nothing and yet are ordered to give something anyway that you don't have? Jail. That was the result of the left court not knowing what the right court was doing. And neither cared.

Patient John Smith (pseudonym to protect the patient who would be persecuted even further) was severely injured at work on two occasions. As a result, he suffered a dislocated knee with torn ligaments, hip and back injuries including protruding vertebral disks, crushed elbows with nerve damage, and head and neck injuries, not counting the psychological consequences associated with the loss of everything normal. Additionally, Mr. Smith is taking strong narcotic pain killers just to accomplish the functions of daily life.

Every time Mr. Smith would see his doctors, they told him he couldn't work. Every time Mr. Smith saw the insurance company independent medical examiners, they told him nothing was wrong and he could work. Every time Mr. Smith had a hearing with the Workers' Compensation Board judges, it was decided he could not work. Therefore, he was legally disabled on Workers' Compensation according to the State of New York. Except for those in another part of the N.Y.S. Unified Court System known as Family Court.

Family Court is charged with protecting the rights and needs of our families and children. This is a laudable pursuit and certainly necessary to insure the interests of our society. However, it appears that they have no concept of the term disabled when it comes to those responsible for child support.

Mr. Smith fathered a "disabled" child by his girlfriend several years ago. For a time they lived together and Mr. Smith, with his earnings from work, supported the child. Then he was injured and couldn't work. His girlfriend sued for support and it was granted based upon the monies Mr. Smith was receiving from Compensation. This left Mr. Smith with barely any money for rent, and often, no food. Mr. Smith's family helped where they could. Sadly, one day Mr. Smith's father died in another state and he had to leave for the funeral. This resulted in a missed Workers' Compensation hearing, which the Court would not postpone. Mr. Smith's compensation benefits were subsequently cut off for nine months, the time it took to get another hearing and for payments to restart.

Mr. Smith provided proof to the Family Court that he was totally disabled and not receiving any benefits; justifying both with documentation from Compensation and his doctors. The Family Court told him to pay his ex-girlfriend \$1500 or go to jail. He had no money so they locked up this "disabled" "deadbeat" dad for thirty days, which would have been six months if his family did not intervene with the ransom to get him liberated. When he finally got his back money, he ended up having to give almost all of it to his ex-girlfriend. He had no money for food for two weeks.

Now Workers' Compensation has decreased his benefits by twenty-five percent. So Mr. Smith returned to Family Court to ask for a decrease in his support payments. The Court answered emphatically "NO" and additionally, ordered Mr. Smith to attend a court supervised job training program or face jail again. Mr. Smith had to spend his own money for transportation to the training program, the money he didn't have. The program said they had no room for him and that he would have to come back "daily" to wait to begin training, and then daily for training. He told them he had no money for transportation, at which time, they told him "they don't pay for transport, and if he doesn't report, they inform the court". Mr. Smith is now waiting to go to jail, again. He is applying for Social Security Disability and a designation of "totally disabled" by the federal government; his only chance not to go to jail and live a reasonable life. He wants to go back to work, BUT HIS DOCTORS SAID NO. Recently, Mr. Smith became so despondent that he declared his desire to die at his own hand.

The purpose of this story is not to support a failure to pay child support. However, it is necessary to highlight how becoming disabled from work is often more catastrophic than loss of money, health, and peace of mind. Debtor's prisons were outlawed many years ago. It would appear the only fair way to adjudicate multiple legal issues regarding injured workers would be to raise such cases to combined decisions by a higher court, such as the Supreme Court, with jurisdiction over the lesser courts. This is the only way to insure the health and welfare of all of our disabled citizens, adult and child.

Better to hunt in fields for health unbought Than fee the doctor for a auseous draught.

The wise for cure on exercise depend; God never made his work for man to mend.

Epistle to John Dryden of Chesterton. Line 92.

THE GOOD SON

Some of us see our children as a burden. More of us see our children as a gift. Some see our children and have no patience for them. And apparently, some don't see our children as real people.

Mr. Johnson (name changed to protect his privacy) has been employed by MTA New York City Transit as a bus driver for twenty years. Through seniority and merit, he was assigned a route offering nearly sixty hours of work, which provided Mr. Johnson and his family a nice stable living. One day, with a packed bus, a man decided he didn't want to pay to ride. When Mr. Johnson objected, the man punched him in the face several times. Mr. Johnson was able to wrestle with the man, incurring additional neck and back injuries until the man jumped out the bus window to escape. He was later apprehended by the authorities and sentenced to six months in jail.

Besides various maladies incurred as a result of the assault including stitches, Mr. Johnson suffered severe psychological trauma. So instead of the normally friendly driver who would joke with the regulars, he became depressed and scared. As a result, he could not return to work for both physical and mental ongoing disabilities that were evident. Mr. Johnson, as part of his compensation case, was required to appear for designated independent medical examinations, which he did for several months. One day last summer, he received a notice for a neurological IME that stated that he could film the visit if he chose to and that he could bring any person of his choosing to accompany him.

When he arrived at the IME neurologist's office, the secretary noticed that Mr. Johnson had brought his six year old son with him. She told Mr. Johnson that no "children" were permitted during the exam, even though his son was well behaved, and that he could come back the next day without him. Although Mr. Johnson told the secretary that the notice said he could bring anyone and that children were not explicitly excluded, she said no and insisted he come back tomorrow. As it turned out, when he called to come back the next day, the assistant said there were no available appointments and he would receive a rescheduling letter. Mr. Johnson did not receive a letter, but M.T.A. received a letter saying he was a "no show" for the appointment. As a result, M.T.A. cut off Mr. Johnson's payments for six weeks till he could undergo the I.M.E. examination. This did not help since he was also cut in his differential from sixty hours back to forty hours and his other disability policy carrier also began playing the "late payment" game.

Evidently, some employers will do anything to force their employees back to work and under their conditions. Monetary pressures for injured workers only add to their health related disabilities and compound their woes. Someone needs to teach IME physicians that being understanding of a patient's needs is tantamount to much needed charity. After all, it has been said that children are people too.



“The unbiased opinion of most medical men of sound judgment and long experience...[holds that] the amount of death and disaster in the world would be less, if all disease were left to itself.”

Harvard professor Jacob Bigelow, 1835.

THE SOUND OF A FALLING EMPLOYEE ...

There is a proverbial mantra that says, “What is the sound of a tree falling in the forest?” We know that the tree has to have made a crashing sound, but if there is nobody there to experience and hear it, did it actually make a sound? If an employer refuses to hear the complaint of an employee claiming she is injured as a result of her employment, did the injury actually occur? With manipulated evidence, the answer is possibly.

Many people believe in a work ethic. They give their all for their employer; work overtime, do the little things, provide a good days work. The employee expects reasonable compensation for their efforts as well as professional treatment under all circumstances from their employer. This is the American Way. Except when the employer decides to manipulate the rules. How, may you ask, can they do this? Simple, wear two hats and juggle them when needed.

Ms. Lopez (pseudonym to protect her already tortured soul) was a member of a hospital housekeeping staff for almost twelve years. During this time she had been a quality employee, followed the rules, and did her job admirably. One day, she was injured at work. While lifting a heavy bucket of water, something she did daily and repeatedly, she suddenly heard a pop and felt a severe pain in her back. She went to her supervisor (who was told the above story) and she was then escorted to the hospital’s own emergency room.

Subsequent testing showed that Ms. Lopez had a severe bulging vertebral disk with nerve compression in her spine. Because Ms. Lopez is a housekeeper, she was advised by her doctors that she could no longer perform any work that including heavy lifting or bending until her condition improved or she had surgery. Ms. Lopez had clearly told the emergency room personnel that she worked in their hospital and that she had been hurt doing her job. This was documented in the electronic ER intake form and again in the nurses triage notes. When Ms. Lopez asked her employer to file for Workers’ Compensation (WC) for her they demanded she sign a form in English, stating that she was not hurt on the job. Ms. Lopez speaks and understands almost no English, and she was not told the ramifications of signing the form or what the form meant in Spanish. The employer further told her to report for work or be fired. This was from the same supervisor who escorted her to the emergency room!

The hospital and WC carrier are denying that any benefits are due to Ms. Lopez. As a result, she has been unable to receive any income or benefits for months except some expired union benefits, as the hospital is threatening to terminated her. To prevent from losing her job, she was asked to obtain a doctor’s letter explaining her inability to work. This letter indicated that she was hurt at work. The employer called the doctor and refused to accept the letter under these conditions, refused to admit she had a work related injury, and accused Ms. Lopez of fraud and document alteration. Their documents that indicated Ms. Lopez's work injury were their copies and untouched! It will take many months of pain and many hearings, and then only if successful, until she will be able to support herself again. Ms. Lopez has witnesses, who if they are not too afraid to testify, will support her allegations and she will receive retroactive benefits. However, she will have been beaten into submission by the heavy handed behavior of the big employer. Taking advantage of employees who have little education, speak little English, and are suffering in pain is shameful.

Unions and associations try to inform their members on how to insure their health and welfare when injured on the job, and try to educate in language that the members can understand. This needs to be reinforced in the face of the overwhelming behavior of some employers toward their injured employees. After all, in regards to management, what is the sound of an employee falling with manipulated evidence? Music to their ears.

MEMORIES OF A PATIENT ENCOUNTER

You remember your first love and your first time making love. You remember your school days and that crowning sports achievement. You remember the good times and the bad times. However, you don't remember where you left your cell phone five minutes ago.

The memory is a tricky thing. As we age, most of us get "senior moments" as we forget simple and often obvious facts; the who, what, when, where, and why of childhood learning dissipates into a temporary haze. Recall is conceptual and related to self-effacing idioms or personalized anagrams. When questioned under actual, induced or implied stress witnesses often fail to correctly identify suspects or proffer accurate historical information. Sadly, many individuals answer improperly so as not to seem stupid or ill prepared leading to misinformation and dire consequences.

Cunning prosecutors can take advantage of this disparity and by properly coaxing a witness with leading questions and directed documentation, produce a desired answer favorable to their position. This is not illegal or even unethical when done within the boundaries of the rules of procedure. Similarly, it is not illegal for insurance companies to question patients regarding the dates that medical care was provided to them. However, asking injured patients suffering from chronic pain syndromes to identify factual historical information while under the influence of powerful mind altering prescription medications and strong narcotics ranks up there with asking an alcoholic, while still anedbriated, to give factual testimony with merit.

The result of these treatment date audits (Medical Treatment Verification) by carriers in the Workers' Compensation arena has resulted in some patients providing inaccurate or unreliable information. The insurance carrier may then take the position that the provider is fraudulently billing them for services never rendered. The consequences of failing to prove your case could result in some costly and prolonged litigation and depression.

So what's a poor little provider to do? If you've been caught with your hand in the cookie jar I know some good Kevorkian web sites you can check out. If you're an honest and quality medical provider like most of us, you create office procedures that will generate documentation that can stand the legal litmus test. Patients need to sign, sign, and sign some more each time they have an encounter with your practice. Keep quality and accurate records that are backed up often and appropriately.



History is replete with examples of what happens when any group of authorities do not have to answer to empirical evidence but are free to define truth as they see fit. None of the examples has a happy ending. Why should it be otherwise with therapy?"

Robert Todd Carroll, The Skeptic's Dictionary, entry on "repressed memorytherapy (RMT)"

ONE HAND HOLD'EM POKE HER

It takes a special person to care for other people; cleaning up their bodily fluids and keeping their spirits high under the most stressful of conditions. That is what faces a patient care assistant every day of work. When someone like this gets injured on the job, you would expect no less of those charged with their medical care. However, there are exceptions.

Ms. Jones (a pseudonym used so she won't read this and be reminded again) is a patient care assistant with more than twenty years experience. While turning a patient at work, the obese patient rolled over her injuring her arm and shoulder. Although tests showed nothing was broken, she continued to experience pain with probable nerve damage and had trouble using the arm to lift, a necessary part of her employment. EMG/NCV studies were ordered by her treating physician. Instead of having the tests done by her own doctor, a third party company, hired by the carrier intervened. They told the patient she was scheduled for the tests by a particular physician.

Ms. Jones went to the third party designated neurologist, Dr. Jeckyl (sic), for this test. His office was bustling with patients waiting for tests. Ms. Jones was called into the examination room and promptly given several tests by a technician involving mild electric shocks; expected but not intolerably painful. Then Dr. Jeckyl rushes in and proceeds to tell her to hold still. He then starts to probe her with needles. She is in severe pain. She is now bleeding. All Dr. Jeckyl can say is "hold still". Speed was of the essence since that is how Dr. Jeckyl makes his money; by processing quantity. Ms. Jones tells him she is in pain as he tells her he can't complete the test and she would have to do it again.

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ONE HAND HOLD'EM POKE HER

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Ms. Jones was so uncomfortable when she left her Dr. Jeckyl created ordeal, she went to her primary care physician. Dr. Lovely (sic) was appalled to find Ms. Jones arm severely discolored, bleeding and tender. She even photographed the arm as evidence. As a result of her treatment, Ms. Jones has developed post traumatic stress disorder. Not from her original injury (she loves her job and can't wait to get back to helping people), but from the mistreatment of Dr. Jeckyl! This is a lady who had the nerves to emergently deliver her own grandchild in her bathroom! Now she needs psychological care and has a prolonged disability with possible permanent fear of needles.

Of course based upon Dr. Jeckyl's report, the carrier will try to modify or deny benefits. Certainly cost containment is necessary, but it doesn't give the Workers' Compensation carriers the right to subcontract to designated third party physicians that treat patients like cattle. Anyway, if you were being paid to help your client defeat or minimize a claim, how "independent" are you going to really be? And further, to keep their costs down and prevent evidence of disability from being obtained by the patient's own physician, the carriers steer the patients to their own providers; without telling the patient they had a choice. My dog was always wonderful at taking quality food from any hand that offered it; however, she would still bite yours if I told her to.

KNOW YOUR RIGHTS WHEN YOUR INJURED ON THE JOB!

ONE VOICE

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