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STATE OF CALIFORNIA  
Department of Industrial Relations  
  
PUBLIC HEARING  
Workers' Compensation Proposed Regulations  
[Administrative Penalties Pursuant to  
Labor Code Section 5814.6](#)  
Title 8, California Code of Regulations  
Sections 10225-10225.2  
[Utilization Review Enforcement](#)  
Title 8, California Code of Regulations  
Sections 9792.11- 9792.15  
  
June 29, 2006 -10:00 a.m.  
Oakland, California

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P R O C E E D I N G S

CARRIE NEVANS: It is a few minutes past 10:00 a.m.,

so let's go ahead and get started with today's public hearing.

In this public hearing, we're going to be discussing two different sets of regulations. The first set that we will discuss will have to do with Labor Code Section 5814.6, revolved around unfair business practices and unreasonably denying payment of compensation. My hunch is there is probably not very many people here to testify on that particular set of regulations. Most of you are probably here on the ones related to the Utilization Review penalties. We'll get to those in just a couple of minutes.

Just a couple of opening comments. We do have a court reporter here. So I ask that when you come up, first you state your name, and then you spell it, and if you are reading from a statement or relying on a statement, if you could please leave a copy of that with the court reporter when you finish your testimony.

And if you happen to be speaking too fast, the court reporter will signal me, and I might stop you for a few seconds or ask to you slow down.

At this time, is there anyone here who wishes to

1 testify regarding the regulations on Labor Code Section  
2 5814.6?

3 It looks like Roger Davis.

4 ROGER DAVIS: I'm here.

5 CARRIE NEVANS: He's here.

6 ROGER DAVIS: First, I would like to say good morning  
7 to the panel and good morning to the audience.

8 I'm here to protest my feelings about the bill that  
9 was passed in the assembly at the last minute, prompted  
10 mostly by the insurance companies. This bill was -- This  
11 law which was SRS 899 was passed April 15th of '04; and it's  
12 just too broad, and it is also dismantles the old system  
13 almost completely, the California constitution for workers  
14 that are injured are supposed receive reasonable and  
15 necessary medical care, and relief from the effects of the  
16 injury, and adequate compensation. This insurance company,  
17 when I was injured has approved of some care, but some care  
18 they have haven't. So they've been selective, and when I  
19 have an acute episode or a flare-up of this injury, they  
20 refused about two and a half years ago for me to go to a  
21 chiropractor. Although having gone to a QME in Berkeley,  
22 that doctor again gave me an MRI, and it was recommended by  
23 that doctor that I continue going to the chiropractor.

24 CARRIE NEVANS: Mr. Davis, I'm really sorry to  
25 interrupt you, but I have a feeling your testimony relates

1 to Utilization Review, and the actual public hearing we're  
2 holding right now has to do with Labor Code Section 5814.6,  
3 which is a different set of regulations.

4 ROGER DAVIS: And that is?

5 CARRIE NEVANS: That has to do with when the judge  
6 finds and has an order that an insurer has unreasonably  
7 delayed payments, then when there are two or more of those  
8 at a single adjusting location, there is a special set of  
9 penalties that can apply for unfair business practices.

10 ROGER DAVIS: I thought this would fall under that  
11 category in that I was denied medical treatment for  
12 chiropractic specifically, but I've been allowed other care.  
13 I can't understand why I would be allowed care in some  
14 fashion by some doctors and not others.

15 CARRIE NEVANS: And again, I think that that has to do  
16 Utilization Review, and the treatment guidelines which is  
17 kind of all tied into Utilization Review, so my --

18 ROGER DAVIS: Well, my attorney has filed with the  
19 Appeals Board, and that was dated December 12th of '05, and  
20 it hasn't come to -- It hasn't taken place.

21 But I'll get out of your hair.

22 CARRIE NEVANS: Okay, but you come back up when we get  
23 to the Utilization Review and finish your statement.

24 ROGER DAVIS: Thanks.

25 CARRIE NEVANS: Steve Cattolica.

1           STEVE CATTOLICA: Thank you. Good morning. My name  
2 is Steve Cattolica. My name is spelled C-a-t-t-o-l-i-c-a.  
3 I represent the California Society of Industrial Medicine  
4 and Surgery and the California Society of Physical Medicine  
5 and Rehabilitation. This particular remark I have to say  
6 about my written version of all of these remarks I have to  
7 make today will have to be delivered this afternoon if  
8 that's all right. But with respect to the regulation  
9 10225.(1)(a), wherein administrative penalties for  
10 violations of Labor Code 5814 can be assessed, our only  
11 question is why the violator will be given essentially one  
12 free bite of the apple before the administrative penalties  
13 are invoked? We believe that the first violation, if it is  
14 egregious enough to be call a violation and have a penalty  
15 assessed, that the administrative penalties should also be  
16 assessed right at the very first time.

17           Thank you.

18           CARRIE NEVANS: Lori Kammerer.

19           PERSON FROM AUDIENCE: You are on penalty regs. right  
20 now. Are you still on 5814?

21           CARRIE NEVANS: Okay. We're still on 5814.

22           Okay. Phil Vermeulen.

23           PHIL VERMEULEN: Vermeulen. I followed in her lead.

24           CARRIE NEVANS: I had a feeling 5814.6 would be a  
25 short hearing.

1 Dr. Steve Schumann.

2 STEVE SCHUMANN: Same thing.

3 CARRIE NEVANS: Diane Przepiorski.

4 DIANE PRZEPIORSKI: I think we've all followed in that  
5 same situation.

6 CARRIE NEVANS: Jason Schmezzzer.

7 JASON SCHMEZZER: Same thing.

8 CARRIE NEVANS: Peggy Sugarman?

9 PEGGY SUGARMAN: Thank you.

10 I'm Peggy Sugarman. I'm here as is a spokesperson for  
11 Injured Workers, [Votersinjuredatwork.org](http://Votersinjuredatwork.org). It's non-profit  
12 organization representing injured workers, and my comments  
13 on this particular set of regulations is going to be very  
14 brief, because most of what I have to say is about the  
15 Utilization Review Regulations. So my comments today are to  
16 thank you for getting these out there, to support their  
17 adoption as soon as possible, and to make one suggestion for  
18 improvement. I understand that the Division has made  
19 administrative decisions to require Workers' Compensation  
20 Judges offices to submit copies of all findings and awards  
21 or findings and orders on 5814 of violations; and in the  
22 past, and I don't know if that's true today, some judges  
23 have been reluctant to do this for fear that they might be  
24 singling out a defendant, and considered not, you know,  
25 subject to a preemptory challenge. We suggest that you take

1 the policy you have in existence today requiring them to  
2 submit all 5814 penalties and put that in regulation, and  
3 make that an administrative perfunctory process, so that the  
4 judges don't have to make a decision whether to turn  
5 something in, or they don't have to remember this function  
6 is part of the normal process for the workers' compensation  
7 judge's secretary that that be in the regulations -- that  
8 the the secretary do this as part of their normal process.  
9 Okay.

10 I'm sorry. I know these hearings are tough for the  
11 court reporters, because they're not the normal Court.

12 Thank you, very much.

13 CARRIE NEVANS: Thank you, Peggy. At this time, is  
14 there anyone else who wishes to give testimony on proposed  
15 regulations relating to Labor Code Section 5814.6?

16 DAVID ROCKWELL: Good morning, I'm David Rockwell.  
17 I'm president of the California Applicant's Attorney  
18 Association. We just have a couple of comments. I've  
19 turned in written comments. I would echo Ms. Sugarman's  
20 comment about requiring judges to report on penalties as  
21 part of a regulation, rather than simply a policy. We also  
22 believe that it would be important to extend -- to consider  
23 the 5-year period which is referred to in 10225.1(i), to 10  
24 years, because of the length of the time that the process  
25 may occur may take to actually get these findings done and



1 over with, and those are really the only major changes we  
2 would suggest.

3 Thank you.

4 CARRIE NEVANS: Thank you.

5 I have a couple more people who did sign in under this  
6 particular set of regulations. I'm going to call your name  
7 just to make sure. Doris Padilla.

8 DINA PADILLA: The name is Dina. Sorry. That's the  
9 way I wrote.

10 CARRIE NEVANS: Sorry.

11 DINA PADILLA: I just wanted to make a couple of  
12 remarks today right now. D-i-n-a, P-a-d-i-l-l-a. I'm from  
13 Voices Best Injured Worker Advocate Group. I want to know  
14 if this meeting first of all was sent out to the public, or  
15 if it was just sent out to VIW?

16 CARRIE NEVANS: All regulatory hearings are noticed to  
17 the public.

18 DINA PADILLA: Could you let me know how that was  
19 done, because I couldn't find it, and neither could other  
20 folks?

21 DESTIE OVERPECK: Well, it is done on our web site.  
22 We post the notice, and it is also posted on the Office of  
23 Administrative Law.

24 DINA PADILLA: Do you post it on your web site?

25 DESTIE OVERPECK: And anyone who requests, if you

1 would like to be on our list, just let us know, and we'll  
2 make sure you get email notice at well.

3 DINA PADILLA: Yeah, I've filled them out three times.  
4 I haven't gotten anything yet.

5 STEVE ZELTZER: It was on your webb site?

6 DESTIE OVERPECK: Yes.

7 NINA BARTHOLOMEW: I didn't find it. I found it on  
8 July 6. That's the only one I found.

9 CARRIE NEVANS: When you're on DWC's webb site, you  
10 want to go specifically to the Rule Making page, and that's  
11 where all the notifications are posted.

12 DINA PADILLA: To what page?

13 CARRIE NEVANS: Rule Making.

14 DINA PADILLA: Okay. All right. It is one of the  
15 things I wanted to say real quickly. I thought I would come  
16 back later, but as with any penalty, we should --

17 CARRIE NEVANS: Slow down --

18 DINA PADILLA: I'm talking too fast?

19 CARRIE NEVANS: -- for the court reporter.

20 DINA PADILLA: I'm sorry. It's that in the last 14  
21 years even with injured workers, one of the things that we  
22 found about penalties, and penalties were not being sought  
23 after, and that means in all areas the judges deferred  
24 penalties. Penalties were included into the C and R, which  
25 was to be absorbed by the employer. Our attorneys would not

1 file penalties. If they did, they were waived. So when  
2 they make a penalty, if they want to make sure that that  
3 gets enforced, and they need to go through the system to  
4 systemic preventing penalties, because eventually either the  
5 employer is going to pay it, or the insurance carriers pay  
6 it. Neither one of them want to pay it, like they don't  
7 want to pay a lot of other things.

8 CARRIE NEVANS: Someone else from Voices Best? I  
9 can't read the first name. The last name looks like maybe  
10 Rhodes.

11 CATHON ADAMS RHODES: Good morning, Panel. My name is  
12 Cathon Adams Rhodes R-h-o-d-e-s, and I'm an injured worker  
13 from the University of Davis, UCD Med Center, and I was  
14 injured in 1993 and was not given any penalty back pay  
15 money, and I was only offered on at a trial hearing for a  
16 finding and awards, no benefits, no penalties, no anything,  
17 no medical care, no follow-up, and I feel that, you know,  
18 penalties should be assessed to the due to the fact that the  
19 injured worker is left without money, without care, and  
20 without a cost of living.

21 Thank you.

22 CARRIE NEVANS: Thank you.

23 Also, we have someone with the last name of Adams,  
24 also from Voices.

25 CATHON ADAMS RHODES: Same name, sorry.

1 CARRIE NEVANS: Okay. Steve Zeltzer.

2 STEVE ZELTZER: My name is Steve Zeltzer. I'm chair  
3 of the California Coalition for Workers Memorial Day. First  
4 of all, I want to support Dina's and some of the other  
5 people in this room that this has not been properly  
6 notified, noticed of people, about this hearing. There are  
7 many injured workers who could give testimony about the  
8 corruption of the workers' comp. system, and they have to be  
9 notified about this. In fact, the only way you could find  
10 out about this really by going on the Internet is to go to  
11 the Voters Injured at Work Web Site and we're safe, and I  
12 think it is a problem and problematic that a hearing of this  
13 nature is only found at Voters Injured at Worked Web Site.  
14 It is a problem. There are a lot of other people who need  
15 to know about this hearing, because it is important. It  
16 affects injured workers in California and what's going to  
17 happen to them. So I hope in the future there is more  
18 publicity, more notice about this hearing and other  
19 hearings.

20 First of all, I have a concern -- We have a concern  
21 about the whole enforcement procedure of workers' comp.  
22 Firstly, judges we believe are tainted. There are a large  
23 number of judges, workers' comp. judges, who are from the  
24 work from the insurance industry. They're not representing  
25 really the injured workers of California. They're going

1 along with the insurance companies in the penalties.  
2 They're listening to the insurance companies. They're not  
3 going after forgeries and criminal activity by the insurance  
4 companies against the injured workers. We consider that  
5 that is a problem and should be addressed by any regulation  
6 as far as enforcement of penalties against the violations or  
7 violators of the law.

8         The other -- There are some other points. First of  
9 all, also, we believe that the problem with enforcement is  
10 the problem of the insurance industry really running the  
11 workers' comp. programs. There is a Fraud Assessment  
12 Commission, State Commission in the Department of Insurance.  
13 This fraud assessment commission is run by William Zachary.  
14 He is the chairman, who is the vice-president of workers'  
15 compensation at Safeway, and we feel that this Commission,  
16 by the way, dispenses -- they just dispensed 22 million  
17 dollars to district attorneys in California to investigate  
18 insurance fraud. There is a large amount of fraud and  
19 violation of workers rights, injured worker's rights, and  
20 these insurance companies are not being gone after by this  
21 commission and by the district attorneys of California.

22         And we think that as far as penalties being enforced,  
23 we need an independent agency, and we need -- that is  
24 actually going to enforce the law against the insurance  
25 companies with they refuse to pay injured workers. That's

1 no longer happening in California. They've deregulated  
2 workers' comp. under 899, Senate Bill 889. The workers'  
3 comp. has been deregulated, and as a result of that, the  
4 insurance companies are basically refusing to pay workers  
5 who they admit have been injured on the job. They're  
6 stalling on payments to these workers; and basically what is  
7 happening is cost shifting in this industry, and that is  
8 that the insurance companies are and self-insured companies  
9 like Seventh Day Adventists and Safeway are forcing workers  
10 to go to the SSI, to go to disability insurance, and to go  
11 to public hospitals to get their care taken care of. And  
12 what you have is a massive cost shifting in the insurance  
13 industry by these insurers under 889, in which the public,  
14 the taxpayers are paying for costs that should be borne by  
15 the insurance companies and self-insured employers, and we  
16 think that that is not resolved at all by this penalty.

17 I think that there should be like triple penalties for  
18 employers who force workers to go to a public agency for  
19 service, or force them to go to SSI or disability or a  
20 public hospital to get their care taken care. There are  
21 many workers that we're working with who are at public  
22 hospitals, psychiatrists and others, because their insurance  
23 carriers refuse to pay.

24 We believe there should be penalties, triple penalties  
25 against employers and insurance companies when they force

1 workers to go to the public agencies to get their health  
2 care costs and other costs taken care of. There is nothing  
3 in this act about penalizing insurance companies and  
4 insurance agencies; and we also in this penalty phase, we  
5 also believe there needs to be legislation that the  
6 penalties against insurance carriers and self-insured  
7 employers cannot be mitigated in settlement agreements with  
8 lawyers.

9         You know, what is happening to many injured workers is  
10 that they're being told by the lawyers that they need to  
11 settle, precipitously, really, so that the attorney can get  
12 their fee. That's what we're talking about. We're talking  
13 about lawyer's fees, really. So lawyers are pressuring the  
14 injured worker to go through to make a precipitous  
15 settlement, so the lawyer gets paid off, the deputies'  
16 office -- the injured work is taking a loss. His injuries  
17 are not covered. He's not getting proper compensation, and  
18 the penalties are being mitigated under that settlement.  
19 That's part of the settlement. You're going to drop the  
20 penalties. We think this should be illegal.

21         If there is a violation of the law by insurance  
22 companies and self-insured employers, they should be  
23 penalized regardless of the settlement. That's their  
24 problem. That's their violation, and we also believe in the  
25 law there should be a criminal phase against the employers

1 if there is a period, consistent period of violating the law  
2 where they have a record of three or more, there should be  
3 criminal measures and penalties against the employer or  
4 against the insurance carrier for a record, a systemic  
5 record of violating the law. We think that needs to be a  
6 criminal penalty, and these insurance executives and  
7 self-insured carriers who persistently violate injured  
8 workers' rights need to be put in jail, because these  
9 workers are going through hell. They're losing their homes,  
10 some of them are committing suicide. At Gallagher Bassett,  
11 a worker just committed suicide, an elevator operator,  
12 because he couldn't get pain medication. Is this bill going  
13 address that? This is the second time with Gallagher  
14 Bassett that a worker has committed suicide as a result of  
15 not having their pain taken care of. Is this bill going to  
16 address that? Are these changes going to address that? We  
17 believe there need to be criminal penalties against  
18 insurance companies and self-insured employers, who have a  
19 record of violating the rules as far as compensating injured  
20 workers and their families, and that that should be part of  
21 the penalties against insurance companies for violating the  
22 rights, because what you have presently is a systemic  
23 disregard by insurance companies and self-insured employers  
24 of workers' rights and taking care of workers in a timely  
25 way.



1           As a result of that, workers' injuries are  
2 deteriorating. If you don't get your injury taken care of  
3 in a proper amount of time, in a quick amount of time, what  
4 happens to the injury is it deteriorates, it gets worse.  
5 And we have a situation here where workers are spending  
6 years trying to get approval for their injuries to be taken  
7 care of. What kind of treatment is that? Is there any  
8 penalty against that, against the deterioration of workers'  
9 injuries because of the stalling by insurance companies and  
10 self-insured employers? I don't think so. I don't think  
11 so. So we think that this has to be completely, really  
12 reassessed, and that the penalties need to really address  
13 the criminal actions of insurance companies and self-insured  
14 employers.

15           And the last I would say that -- that again injured  
16 workers need though know about these hearings, and it should  
17 go on the workers' compensation web site as well, because a  
18 lot of workers go to that web site.

19           Thank you.

20           (Audience clapping.)

21           CARRIE NEVANS: I think this person down in front in  
22 the brown, I think you wanted to speak on 5814.6.

23           NINA BARTHOLOMEW: Yes, I did. My name is Nina  
24 Bartholomew. I'm a former attorney now disabled.  
25 B-a-r-t-h-o-l-o-m-e-w. I was -- I'm not an injured worker

1 in the sense that my disability arose outside the context of  
2 work. However, for the past 14 years, I've closely observed  
3 and participated in assisting Letrice Holley, who is an  
4 injured worker. I represented her before I became disabled,  
5 and since she has carpal tunnel, I've typed most of her  
6 documents subsequently. And I've had a chance to very  
7 closely observe the system in operation. I just glanced at  
8 this this morning as I came in, so these comments are  
9 spontaneous. It is based on my observations of the system.

10 This is what I have to say. The law itself is  
11 appalling, because the solution that is apparent here is  
12 that workers are defrauded. In response to workers being  
13 defrauded, the Department of Insurance gets to make a slush  
14 fund for itself without any promises to help the workers who  
15 were defrauded. Not only that, but the creation of the  
16 slush fund is by the burden of creating, it is the placed  
17 on the shoulders of injured workers who have to go to into  
18 the Workers' Compensation Board, and at their own efforts  
19 and expense try to get these judgements against insurers.  
20 Most of these workers are struggling to survive themselves.  
21 Many injured workers can't get attorneys to represent them  
22 at all. They're representing themselves. When they call  
23 the number at the Workers Compensation Appeals Board, a lot  
24 of times, they can't get through on the phone, and when they  
25 do get through on the phone, the person who is there is not

1 an attorney and most of the time gives false or inaccurate  
2 information.

3           PERSON IN AUDIENCE: Or none.

4           NINA BARTHOLOMEW: Yeah, or none and really is  
5 engaging in unlicensed practice of the law, which is another  
6 issue. So how is it exactly that these injured workers are  
7 supposed to take upon themselves the burden of enforcing and  
8 taking actions against insurers for fraud, which are the  
9 predicate to any kind of penalties being posed whatsoever.  
10 I think it is absurd, and it is appalling that you would  
11 propose that. And I would say that in the event an 800  
12 number with attorneys answering it to take calls from people  
13 who have been defrauded to make a thorough record of what  
14 kind of fraud is going on. To begin with, I don't think the  
15 Department of Insurance can even, you know, probably address  
16 the issue of fraud in the context of the workers'  
17 compensation without getting an accurate feel for just how  
18 much a fraud insurers are committing, and to reduce the  
19 amount that they're willing to look at to a tiny fraction of  
20 cases in which an injured worker who may be in constant pain  
21 day after day, you know, may be struggling -- may be  
22 struggling just to survive, can bring against the insurer  
23 and get a result is just, it is not serious. It is not as  
24 serious to address fraud.

25           There should be an independent agency within the

1 Department of Insurance to whom workers can turn outside the  
2 workers' compensation administration than WCAB. The WCAB is  
3 overburdened as it is. It takes a very long time for them  
4 to get hearings. Many workers have no idea of how to  
5 request a hearing before the WCAB. You know, it is not as  
6 though when a person becomes disabled, there is in any  
7 requirement of the law that's enforced that the worker is  
8 entitled receive from their employer, you know, a handbook  
9 that tells them what their rights are and includes the  
10 necessary forms so they even know what to do. Many of them  
11 don't know what to do. They can't find at an attorney to  
12 represent them. So how is that going to create any kind of  
13 a system where it -- What's going to result in happening is  
14 creating a fraudulent record that, oh, it is not so bad the  
15 insurer is not committing that much fraud, because what  
16 records are they going to be looking at? A very tiny  
17 fraction of unrepresented records.

18         If you really want to know how much fraud is being  
19 committed by insurers, you have got to have that hot line.  
20 You've got to have someone who can take down the reports.  
21 And then you need to investigate. Now, I was at the fraud  
22 commission that the other gentleman mentioned. I was at  
23 that meeting where they handed out 22 million dollars. They  
24 handed out that 22 million dollars before even hearing  
25 public comment, and much of the comment -- You know, that's

1 another legal issue that should be examined, whether or not  
2 it is lawful to do any hearings that are required to have  
3 public comment to make all the decisions before the public  
4 comment is heard. You know, it is another example of the  
5 kind of fraud that injured workers experience. But they  
6 handed it out and didn't make any provisions whatsoever that  
7 insurers will be brought to heel for the fraud that they  
8 commit, and yet District Attorneys aren't expected to  
9 investigate fraud, but insurers got 22 million dollars to do  
10 it, or rather they're saying that 22 million dollars to  
11 investigate workers and employers. Where are the funds to  
12 investigate the fraud committed by insurers? Where are  
13 they? Uh-huh (affirmative). And that's why now since the  
14 legal system and the fraud system in this state is  
15 systematically corrupted by the handout of fraud grants  
16 which are utilized solely to investigate workers and  
17 employers and really serve to protect and insulate insurance  
18 from any kind of criminal investigation, and I think this  
19 particular regulation should include a section that requires  
20 the Department of Insurance to refer any insurer addressed  
21 under this section to the Department of Justice for a  
22 racketeering investigation. The racketeering is, you know,  
23 a complex law, but basically, it requires a few predicate  
24 actions, typical of which are mail fraud and wire fraud.  
25 Now, when an insurer is conspiring to defraud workers of

1 benefits, frequently they're using the telephone, they're  
2 using the mails.

3 PERSON IN AUDIENCE: Yes.

4 NINA BARTHOLOMEW: When the fraud insurer --

5 CARRIE NEVANS: Can I ask members of the audience not  
6 to make comments during people's testimony? It is very  
7 distracting to the court reporter. She's is unsure whether  
8 she should capture those comments. So please make your  
9 comments separately. Come up and make them after the other  
10 speakers.

11 NINA BARTHOLOMEW: So when they defraud insurers of  
12 benefits, they most often committed Federal crimes of wire  
13 fraud and mail fraud, which could result in criminal  
14 prosecution for racketeering. Now, if this Department of  
15 Insurance is serious about about preventing fraud against  
16 the workers and getting workers paid, then certainly there  
17 is no reason that this section cannot include a mandatory  
18 referral to the Department of Justice of those insurers who  
19 are found being engaged in fraud that most likely involves  
20 Federal crimes of wire fraud and mail fraud. They have the  
21 resources to investigate it. The injured worker does not.  
22 The injured worker can't even defend himself most of the  
23 time. So to place the burden of this all on the injured  
24 worker is just wrong you know. This is an insurer's dream.  
25 And then, of course, I read the thing -- I just read this

1 this morning when I came in. I didn't have the opportunity  
2 to study carefully the exact wording of 5814.6. I don't  
3 know exactly what it says. But it is all possible. I do  
4 think there should be a section that says those workers who  
5 are found to have been defrauded, and on the basis of whose  
6 cases these penalties are imposed, should have a  
7 preferential entitlement to the use of these funds for their  
8 rehabilitation. And I know that something about these funds  
9 are supposed to be used to promote workers returning to  
10 work. I mean, what is that for? Advertisements? Hey, you  
11 lazy workers, get back to work. Everyone is a malingerer.  
12 You know, just get up and get to work again. Is that what  
13 it means to promote?

14 CARRIE NEVANS: The Return-to-work Fund is a fund  
15 that's established in law that reimburses employers with 50  
16 or fewer employees for modifications they make, whether  
17 temporary or permanent, to bring an injured worker back to  
18 work. That is what the Return to Work Fund is.

19 NINA BARTHOLOMEW: Thank you, very much. That allows  
20 me to make a more intelligent comment which is that if the  
21 injured workers who are defrauded don't benefit from these  
22 penalties, but if you referred these people -- these  
23 insurers for criminal prosecution, maybe it would inhibit  
24 some fraud, and in the long run, the majority of workers  
25 would see a result. Here we have everybody benefits, and

1 the worker is left out in the cold, while the work and the  
2 benefit -- the work to get these penalties is placed first  
3 and foremost on the backs of the workers. This is wrong,  
4 and I also say if you go on section 10225.1(b) and (c) and  
5 compare it to (a), it's very ambiguous and unclear, because  
6 it appears that the Administrative Director might be  
7 authorized to conduct some kind of parallel proceedings. It  
8 is not clear what he is supposed to do. Maybe it should be  
9 clarified to set up one system and say what it is that they  
10 have to do.

11 So I think that pretty well covers it. Once again, it  
12 is ineffective, offensive. And by the way, I think it does  
13 also raise an issue if you don't put in the criminal  
14 prosecution referral, it does raise an issue of a  
15 constitutional issue regarding equal protection of the law.  
16 You're fine as in promoting the prosecution of workers and  
17 the prosecution of employers. What are you doing about  
18 crimes committed by insurers in this state, except seeing  
19 them make a profit on them and helping employers make money  
20 out of it through this fund. It is disgraceful, and it is  
21 shameful.

22 PERSON IN AUDIENCE: Yes.

23 (Audience clapping.)

24 CARRIE NEVANS: Just a point of clarification. The  
25 Fraud Commission is under the Department of Insurance, the



1 Division of Workers' Compensation doesn't have any control  
2 over the activities of the Fraud Commission or how their  
3 grant money is allocated. So just as a point of  
4 clarification.

5 Okay. I have another person here who signed in on  
6 5814.6. It looks like the name might be Victor. Is there  
7 someone here named Victor who wants to testify on these  
8 particular regulations? Okay. Do I have anyone else who  
9 wishes to testify on 5814.6.

10 PERSON IN AUDIENCE: He's coming.

11 CARRIE NEVANS: Oh, he is coming.

12 VICTOR ROMEROS: My name is Victor. I'm going to  
13 speak in Spanish, because I don't speak English.

14 CARRIE NEVANS: Is there anybody here who could  
15 interpret in Spanish for the benefit of the court reporter.

16 FRANCISCO JIMENEZ: I try.

17 PERSON IN AUDIENCE: Do you have interpreters here? No  
18 interpreters?

19 PERSON IN AUDIENCE: No.

20 CARRIE NEVANS: We will bring interpreters if people  
21 contact us beforehand if they need an interpreter. But we  
22 didn't receive any contact with that.

23 FRANCISCO JIMENEZ: Victor Romeros. I am Francisco  
24 Jimenez. J-i-m-e-n-e-z. Can we continue?

25 VICTOR ROMEROS (through Interpreter Francisco

1 Jimenez): I have injury in my work. It was very bad. I  
2 have been with this injury for the last ten years. I have  
3 been problems with my lawyer.

4 CARRIE NEVANS: Problems.

5 VICTOR ROMEROS (through Interpreter Francisco  
6 Jimenez): Troubles with my lawyer. My lawyer abandoned me  
7 at the end of the case. I've been looking for how can I  
8 trace my workers comp., and I didn't find anybody who wants  
9 to take care of my case in the last months. It is very  
10 frustrating for me.

11 Thank you, very much.

12 CARRIE NEVANS: Thank you, Victor.

13 Paula Morgan.

14 DESTIE OVERPECK: I think she just walked out.

15 CARRIE NEVANS: I'll call her again. Up here, you  
16 have comments on 5814.6?

17 LATRICE HOLLEY: Hi, my name is Latrice Holley. Last  
18 name is spelled H-o-l-l-e-y, L-a-t-r-i-c-e, two words.

19 I became disabled under workers' comp. in 1992; and  
20 the insurer in my case, as you propose here, did every  
21 tactic available to delay payments, stop payments, refuse  
22 payments, and I applied through the system to get the  
23 penalties. I got a portion of them two years after we  
24 settled in 1995, and when you address this bill on the  
25 penalties for temporary disability, you need to have a clear

1 accounting.

2           One of the major issues I had with my insurer was a  
3 complete, concise check number, check date, accounting,  
4 because they refused to give that to not only the lawyer,  
5 the administrative judge who asked for it, my lawyer who had  
6 represented me, and to all of my requests. So these are  
7 issues that need to be addressed in this law, because you're  
8 asking for penalties, and the penalty phase should go even  
9 further. They delayed paying my doctor, years. They  
10 haven't paid my current doctor in about four years, and I  
11 settled for my medical. So they need to be addressed much  
12 more severely, and this law does not really even come  
13 anywhere near close, and as far as penalties are concerned,  
14 it should be a greater penalty not just to the insurer, but  
15 a bonus to the injured worker. Everything that the insurer  
16 is penalized should actually be duplicated to the injured  
17 worker in the penalty part, and I think that would be a  
18 greater deterrent for them doing it, because workers do have  
19 to learn to document when they're being defrauded when these  
20 practices occur, and there is little out there to show them  
21 what to do and how to do it. So that's all, just you need  
22 to act on it.

23           CARRIE NEVANS: Thank you.

24           (Audience clapping.)

25           CARRIE NEVANS: Paula Morgan.

1           PAULA MORGAN: Paula, P-a-u-l-a, last name Morgan,  
2 M-o-r-g-a-n, and I am representing myself personally, and  
3 would like to concure with most of the speakers on behalf of  
4 injured workers that have been presenting today,  
5 particularly, Steve Zeltzer, and I would like to also point  
6 out that even the notification internally was not clear  
7 today when I went to the central desk to find out where this  
8 hearing was. It was not even presented as a workers'  
9 compensation or anything to do with this bill or Utilization  
10 Review. It was not clear. I kind of stumbled into the  
11 auditorium, and the only way I was notified was by Voters  
12 Injured at Work.

13           I would like to be brief and just as I said concure  
14 with what has been said today. I have -- can give personal  
15 examples to almost everything that Mr. Zeltzer did describe,  
16 but in the interest of time we'll just say that I have a  
17 9-and-a-half-year case. And through that time, the  
18 insurance company has and my employer has just preceded with  
19 impunity with denying, delaying, demurring, deferring  
20 treatment. Any treatment that I had that was substantive, I  
21 had to go to Court for. My current treating physician will  
22 no longer take any workers' compensation cases, because he  
23 cannot get treatment for them, and that's what he says, I  
24 would love to take your case, but I can't get treatment, and  
25 his is a very well-established and high-profile sports

1 clinic in the Peninsula.

2 Further, my case was settled. The agreed-upon medical  
3 examiner put mine at 100 percent due to the injury. Still I  
4 had to fight for everything and wound up giving up medical,  
5 because I just couldn't get treatment. I now am ready to go  
6 to Court to get my mileage after 9 and a half years, mileage  
7 for prescribed medical treatment. This is what the  
8 insurance company is now deferring on, and what they're  
9 trying to do is throw everybody I've ever seen at me on the  
10 case listing, as well as the physicians' bills that they say  
11 were too high for their schedule.

12 It has been a horrid experience. I've been  
13 discriminated against at work. I'm a Ph.D. I have lost so  
14 much by the mistreatment at my work and just the overall  
15 demoralization. And why can they do this? Because the  
16 insurance company can work with impunity. They have nothing  
17 to hold them -- their feet to the fire to say that they have  
18 to pay for treatment. They can get away with it all. They  
19 have no penalties that they're going to get held to paying.  
20 So they can do it, and this is just the way that the State  
21 of California allows and supports these insurance companies,  
22 and I would say, please give them the treatment the rest of  
23 us have to have, which is obey the law, conform to the law,  
24 and not take 90 days for a 30-day time limit approval, not  
25 ignore everybody and push out even paying their most basic

1 costs of mileage to injured workers for 10 years.

2 (Audience clapping.)

3 CARRIE NEVANS: Are there any other speakers who would  
4 like to speak on --

5 LATRICE HOLLEY: I just have one sentence I forgot to  
6 say.

7 Hi, I'm Latrice, again. There is one thing on the  
8 bill that you need to take out. On the third page, no  
9 penalty shall be based on conduct occurring before June 1st,  
10 2004. No, grandfather it, that one.

11 CARRIE NEVANS: We really can't do anything that's not  
12 in the actual piece of legislation. So you can't.

13 LATRICE HOLLEY: You can't address that?

14 CARRIE NEVANS: We can't go back over that.

15 LATRICE HOLLEY: Thank you. I think when you write  
16 that into a law, it is really unfair for the injured workers  
17 who are -- who have been going through this process for  
18 years and sometimes at least 10 years.

19 CARRIE NEVANS: Any other testimony on -- Right here  
20 please?

21 MARIE MUSAWWIR: Hello, my name is Marie Musawwir. My  
22 case is under the first name Shahidah Musawwir,  
23 M-u-s-a-w-w-i-r, is the last name, and Shahidah, that's the  
24 name, the first name which my case is under, but I go by  
25 Maureen, S-h-a-h-i-d-a-h.

1           And I am a victimized injured worker, like the rest of  
2 the injured workers who spoke up here, and my experience has  
3 been horrific. And the problem that I've had with the  
4 insurance company is pretty much the same thing, denial of  
5 benefits, termed life with -- my temporary disability  
6 benefits were terminated illegally, and it was based on  
7 fabricated reports that the insurance company tried to claim  
8 that my present condition is really a condition that was due  
9 to my previous injury, my previous workers' comp. injury,  
10 and the requirements or the guidelines for diagnosing my  
11 present injury consists of localized pain, and I have a  
12 record of all of the complaints that I made, the injured  
13 worker, I think, is Patient Questionnaire. I have records  
14 of that that I showed the judge, that I never complained  
15 about lower body pain, and this is the diagnosis that the  
16 insurance company wanted to come up with, that I had  
17 fibromyalgia, which was a condition that I did have. And  
18 they fabricated reports, claimed that I saw doctors who I  
19 had never seen, that I had appointments that I had never  
20 gone to, and just numerous violations of fraud, and I tried  
21 to address this.

22           This has been over a year now, going on two years with  
23 with Judge Jacqueline Duncan in San Francisco, and she has  
24 been preventing me from having a hearing to prove that the  
25 fraud that the insurance company -- the insurance company

1 committed and the cover-up of my previous lawyer, and then  
2 another lawyer that I was referred to through the lawyer  
3 referral service. I was referred -- I called because I  
4 couldn't get anything done with my case through this judge.  
5 She was -- and I consider her to have -- now to have -- She  
6 has been obstructing justice in my case, and I'm going to  
7 make a complaint to you. I contacted one of the government  
8 agencies that oversees different government agencies, and  
9 she told me to contact Carrie Nevans, and I am in the  
10 process of preparing a complaint to you about all of the  
11 fraud and the obstruction of justice by the judge,  
12 Jacqueline Duncan, who is over my case in San Francisco.

13         She's prevented me from having a hearing. I've been  
14 requesting a hearing, and not only did she prevent me from  
15 having a hearing to address the fraud at the time when I  
16 came to her about the fraud issues, but she's allowed the  
17 insurance company to add additional, fraudulent reports  
18 since then, and I've seen her with my own eyes plotting with  
19 them right in the courtroom, and I knew she was doing it,  
20 and I have a tape I asked for. I asked her to tape the  
21 session. This was February 28th, and she had requested that  
22 I negotiate my settlement with an information and assistance  
23 officer, and I found out that this was illegal. When I got  
24 into the conference room, she -- Oh, also, she arranged for  
25 me to retain a lawyer without my permission on that day,



1 February 28th, and when I got into the conference room, they  
2 tried to -- what is his name? Edwardo Santana. I'm calling  
3 out names, because I want something done about this.  
4 Edwardo Santana at the Workers' Compensation Appeals Board  
5 in San Francisco tried to get me -- to pressure me and  
6 compel me to accept a fraudulent medical evaluation of  
7 Dr. Victoria Barber, and I pointed to him just one of the  
8 fraudulent reports that she had prepared for this  
9 evaluation. It was a doctor who she claimed that I saw that  
10 I had never seen before, and he tried to get me to accept it  
11 anyway. They used all kinds of intimidating tactics. It  
12 was a humiliating experience.

13 I saw about five doctors now. I had a doctors for two  
14 years refuse to give me a medical evaluation or a  
15 physician's treating report, and then what happened was this  
16 is one of the fraudulent reports that they added. They  
17 couldn't get any of the doctors who treated me to agree with  
18 them on this fibromyalgia condition, because it didn't  
19 comply with the guidelines. All of of my complaints, they  
20 didn't fit into the guidelines for diagnosing fibromyalgia,  
21 and so what they did is they fabricated another report. And  
22 I addressed this to -- and I have the proof -- I addressed  
23 this to Judge Jacqueline Duncan. This is what she has been  
24 saying at every Court hearing. She's been saying, well,  
25 they're mistakes that they got my records mixed up with

1 someone else's. How could someone be a qualified medical  
2 examiner with tons of reports that have been mixed up with  
3 someone else's? How could you be qualified to examine  
4 patients? This is just unbelievable, the corruption that is  
5 going on through the Workers' Compensation Appeals Board.

6 I am so frustrated. But I'm so ashamed to be an  
7 American and see this stuff going on and nothing being done  
8 about it. I never thought with all that we have gone  
9 through with discrimination against minorities, women, and  
10 people within certain classes, and we have not woken up. We  
11 are still doing the same thing. It is the same thing as  
12 slavery what we're doing to injured workers. We're  
13 persecuting injured workers for being injured, and I'm just  
14 disgusted, and I'm sure everybody else is. I can't believe  
15 that people could sit on a board like this and not do  
16 anything about it. You have families, you have children,  
17 and you have loved ones. Would you want your loved ones to  
18 go through what we're going through?

19 And right now, I don't have an income. I don't know  
20 how I'm going to survive next month. I've been living off  
21 of my children because they cut off my temporary benefits.  
22 I have been complaining to Judge Duncan that my condition is  
23 worsening. They illegally cut off my temporary benefits  
24 based on numerous fraudulent reports, and now my problem is  
25 I have tendonitis. I have been paying someone to do my

1 typing, and I've recently started trying to do my typing  
2 again because I don't have any money, and I have to get this  
3 report in. I have -- I'm in a very serious situation. I'm  
4 about the lose everything I have, which is not much. This  
5 is just unbelievable that the way that we're persecuted, and  
6 you're not doing anything. Everybody is turning their head  
7 the other way. And I'm very angry because I don't know what  
8 I'm going do do about my situation. I've been living off of  
9 my children. It is not right I have live off of them.

10 But anyway, Carrie Nevans, I will be getting this  
11 report to you. But it is going to take while because of the  
12 problems I'm having.

13 Also, Judge Duncan came into the room there. I told  
14 her I'm having problems with my eyesight. My eyesight was  
15 not the problem. If I could have gotten help -- If I could  
16 have gotten help early on like I should have, I would not  
17 have problems with my eyesight right now. She told me,  
18 well, you can't -- There is nothing you can do about that.  
19 You can't consider this in the evaluation when I refused to  
20 accept Dr. Victoria Barber's evaluation. The attorney, he  
21 comes to the Workers' Compensation Appeals Board like he  
22 runs the place, and he knows they just keep adding all these  
23 false reports, and I've got the evidence to prove that  
24 doctors -- they've got doctors helping them, trying to  
25 protect Dr. Victoria Barber. They're adding false reports

1 to corroborate her reports.

2           But anyway, the penalties is not enough. The wrong  
3 that has been done to the injured workers -- We need these  
4 people convicted. They need to be prosecuted, and they need  
5 to go to jail like injured workers who fraud -- who commit  
6 fraud and abuse the system. They need the same punishment  
7 and worse, because they're in an authoritative position, and  
8 they're bound by law. They're bound by the ethics of their  
9 profession. Anyway, that's all I have to say.

10           (Audience clapping.)

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1 CARRIE NEVANS: We will resume under Labor Code  
2 Section 5814.6 penalties. Jack Harrison.

3 JACK HARRISON: Good morning. My name is  
4 Jack Harrison and I'm an attorney and a candidate for  
5 attorney general of the State of California for the Peace  
6 and Freedom party. Years ago I worked in Workers'  
7 Compensation. I stopped doing that because even under the  
8 old law you really couldn't get enough compensation for the  
9 injured worker, and if you wanted to get a settlement any  
10 period of time you ended up waiting on penalties. It didn't  
11 sit right with me, so I stopped doing it. Under the newer  
12 laws, it's even worse. Penalties are not effective if they  
13 are not forced on me. If it's not obligatory to pay the  
14 penalty if you can waive it, what good is it? And if I was  
15 elected and worked in the attorney general's office, I would  
16 go after those insurance companies, not all of them, but  
17 many of them drag on and the adjustors simply won't settle.  
18 They do any number of things. They bring in doctors to say  
19 things. Other people, and anybody's represented workers  
20 knows that there are people on the other side you can settle  
21 the case pretty reasonably on the phone. Get an AME, pop  
22 pop pop you are done. Those days seem to have passed. When  
23 the insurance companies and their counsel and their  
24 adjustors simply refuse to settle easy claims, claims if  
25 another client came in with another company would be

1 settled. There is not very much doubt A, the client had an  
2 injury; B, the injury is work related; C, they need medical  
3 treatment; D, they need to get some money. God help the  
4 poor person who didn't have English, you know. No matter  
5 what you said, it also became difficult insurance companies  
6 paying each other; not every company. And most people in  
7 this room know who in the business does it. Those people  
8 should be prosecuted. The idea of an insurance adjustor  
9 defrauding people and pay the \$800.00 fine, that's not a  
10 disincentive to do it. And I hear some of the names of some  
11 of the judges and some of the insurance counsel who are now  
12 on the insurance company's side. They went to school with  
13 me. New companies in California. They were progressive  
14 lawyers once. They switched because they couldn't make a  
15 living representing injured workers. And it is a very  
16 difficult thing to do. I think we have to get a system  
17 change and I think that people will recommend that all  
18 penalties be mandatory to be paid with a check at closing or  
19 72 hours thereafter. Thank you.

20 TOM CONDIT: My name is Tom Condit, C-o-n-d-i-t. I'm  
21 the Peace and Freedom party candidate for State Insurance  
22 Commissioner. I don't have prepared remarks because I mainly  
23 came here today to learn. But part of what came up during  
24 the testimony is something I want to comment on, and that is  
25 the question of the Fraud Assessment Commission which quite

1 right it is under the Department of Insurance, rather sort  
2 of under the Department of Insurance. It's very membership  
3 is a secret. You can't find out on any State Web site who  
4 is on the damn thing. But last year the State auditor  
5 issued a report on problems with fraud assessment and  
6 Workers' Compensation, which found among other things, that  
7 a large amount of money, which insurance companies had  
8 collected as fraud assessments was unaccounted for, was  
9 unknown when turned over to the State. The estimate was  
10 maybe 30 million, because there's no procedure for tracking  
11 this stuff. And the other problem they found which is  
12 relative to these hearings is that there was no systematic  
13 reporting from Labor Standards Enforcement to the Division  
14 of Workers' Compensation on what are the persistent  
15 violations of workplace safety rules by employers. Because  
16 that relates to the question of whether you are dealing with  
17 willful misbehavior on the part of employers in terms of the  
18 penalties which would be assessed on them. If they then  
19 after that willful misbehavior engaged in willful  
20 misbehavior of not paying their Workers' Comp things -- I  
21 think people have to realize most accidents at least at work  
22 are not really accidents. They are really foreseeable  
23 consequences of sloppy procedures. People who pay attention  
24 learn ways to avoid accidents. This body, for instance,  
25 knows there is a limit to how long a court reporter should

1 be typing before there will be a problem, and you switch off  
2 and give the previous court reporter a break. A lot of  
3 employers willfully refuse to recognize that kind of fact,  
4 and then they and their insurance companies claim that well  
5 there's really no such thing as repetitive stress injury.  
6 It's all hallucination workers have. Their wrists bother  
7 them for some other reason. I think that you need to be  
8 thinking of a way of two things, one is how to get Labor  
9 Standards Enforcement to give you more consistent input so  
10 that we can deal with these things on a preventative basis  
11 rather than on hassling with how we deal with the outcome,  
12 and the other is to see if there's some way to adopt a  
13 regulation which will, in fact, increase workers' comp  
14 penalties against employers if the employers are willful  
15 violators of labor safety laws. Thank you.

16 WILLIAM ENGLAND: Good morning. My name is William  
17 England, E-n-g-l-a-n-d. I am an injured worker. My case  
18 has been going since 1997. I was injured -- as with most  
19 industrial injuries, my injury was as a result of a  
20 repetitive action. There was no trauma. It was just  
21 completely injured during that time. Since '97, I have yet  
22 to have an evaluation of a doctor not questioned. I have  
23 had to go to court at least four times where the insurance  
24 company refused to pay, but they would always pay as soon as  
25 we got to court. For two years and five orthopedic surgeons



1 before my first operation on my left shoulder, I  
2 subsequently had five operations on that shoulder all as a  
3 result of my job. One operation on this shoulder is as a  
4 result of my job, two operations on my cervical spine.  
5 Gallagher Bassett has done everything in its power to  
6 prevent me getting any kind of treatment. The latest thing  
7 for diagnosis the doctor asked for a myelogram, a CAT scan,  
8 and an EMG. They decided to authorize the myelogram and CAT  
9 scan. They wouldn't authorize the EMG which the doctor  
10 needs to make an evaluation of my current nerve condition  
11 caused by the job and by the subsequent operations. If  
12 anybody wants to take the trouble to find it, most workers  
13 give up because the insurance company plays a game of deny  
14 deny, deny, deny until the worker says to hell with it, I  
15 will go with the pain. We can't get the diagnosis. They  
16 tell me I'm going to have lifetime medical because of my  
17 injuries. What good is that if my doctors can't get the  
18 diagnosis. If they can prove the doctor to be fraudulent,  
19 take the doctor to court. But if they are honorable  
20 doctors, then the insurance company should recognize the  
21 recommendations, otherwise what is the point of it? Why  
22 the insurance company denies, denies, denies, it is because  
23 Gallagher Bassett, that's their game plan. It took me two  
24 years, five orthopedic surgeons, three of which were the  
25 insurance company ones. They weren't going to authorize the

1 operation until we went to court. If we're going to correct  
2 anything, we got do something about making the insurance  
3 companies fulfill their responsibilities to the worker.

4 CARRIE. NEVANS: Is there any other testimony on the  
5 regulations for Labor Code Section 5814.6? Did you  
6 previously testify? Are you coming back?

7 DINA PADILLA: I am coming back. I need to say a  
8 few things. My name is Dina Padilla. I am from VOICES,  
9 and I am also a congressional candidate for the 11th  
10 District for the Peace and Freedom party. The reason I got  
11 involved is because the insurance companies' debacle we had  
12 to put up with for all these years for injured workers. Is  
13 there a lady here by the name of Destie Lee Overpeck?

14 DESTIE OVERPECK: That's me.

15 DINA PADILLA: Thank you. Okay. I guess I didn't  
16 get a chance to say what I wanted to say because I couldn't  
17 remember if I recognized you from the last hearing, but I  
18 came to -- I wrote to your office. First, I wrote to the  
19 Ethics Committee to complain about the judge. The second  
20 time I wrote to get the judge recused and also I accused her  
21 of judicial misconduct. One of my problems was, of course,  
22 is because the judge was definitely not impartial. She ran  
23 with fraudulent doctors' reports which Destie Lee said she  
24 was going to go ahead and basically give her informal  
25 counseling. When I went to court to bring that issue up to

1 get her recused, they said they were not going to give her  
2 that slap on the wrist, because due to her independentness  
3 of doctors' reports -- okay. Now, I just got the last  
4 letter earlier this year, I believe it was, that my case was  
5 closed and that they couldn't see any judicial misconduct.  
6 I got news for you. There's tons of it, just as there is  
7 with other judges. Judge Duncan is the type of Judge who  
8 will say, "Settlement, that's all I want to hear," but today  
9 the last several times I had tried to get into trial I had  
10 got a serious and willful since 1988 -- I'm sorry '89, a  
11 serious and willful, and she told me the last time, several  
12 times she said, "I want a trial to prove my serious and  
13 willful." I already had a trial in the case which she  
14 trashed, I mean trashed. I could feel it. They sent my  
15 file to the WCAB to the judicial -- it didn't make it to  
16 judicial counsel that I made my complaint to. It went to  
17 the Ethics Committee. They ripped my file apart. Part of  
18 it went to the Ethics Committee and the other part stayed in  
19 Sacramento.

20 CARRIE NEVANS: Could you table your testimony to the  
21 regulations on Labor Code Section 5814.6?

22 DINA PADILLA: Okay. What I'm talking about 5814.6  
23 and any other penalty does not get acknowledged. The  
24 serious and willful, they already told me, if I go to court  
25 and want a trial, she will penalize me and sanction me for

1 going to trial. Now, this applies to anybody who wants to  
2 have a 5814.6, a 132a, a 5814. People are being threatened  
3 and intimidated by judges to get their penalties, because  
4 there are penalties. I know one woman who had nine 132a's.  
5 You know where it went. She never got a trial on it. The  
6 trial was stopped on the first day, the second day. What we  
7 need here is a tracking mechanism of every penalty that has  
8 been filed, because it goes to the WCAB and that's where it  
9 stays. There should be somebody looking through every  
10 single case in those files and looking to see what penalties  
11 have been filed, and that they don't just get waived or  
12 tossed out or get forgotten or get deferred or never seen  
13 the light of day. The 5814, there's many people -- every  
14 injured worker I know should have a 5814.6, and if the  
15 insurance carrier uses 5814, that's multiple. It's a full  
16 species. It's multiple penalties. Any penalty, just like  
17 if they go after fraud for the injured worker, the penalty  
18 should be considered a part of a fraud issue because they  
19 are not paying, they are not doing this, they are not doing  
20 that. That's fraud. Because you say you are going to do  
21 it, that's part of your business. It's the fiduciary  
22 responsibility of the insurance company. They should be  
23 going to jail on a misdemeanor. The 132a is a misdemeanor.  
24 How many district attorneys have actually acted upon it?

25 CAROL MITCHELL: Okay. My name is Carol Mitchell,

1 M-i-t-c-h-e-l-l. I was injured in '96. I was an  
2 unrepresented worker, and I did win my case on my own with  
3 the owner, injured at work against Gallagher. But my  
4 question is, is the Utilization Review. It says I could  
5 call them and I did. They were in Texas. The doctor making  
6 the final decision was in Connecticut.

7 CARRIE NEVANS: Excuse me. That's the subject of our  
8 second public hearing. The Utilization Review penalties.  
9 This is specific to Labor Code 5814.6 penalty.

10 CAROL MITCHELL: Okay.

11 CARRIE NEVANS: Okay. Thank you. Is there anyone  
12 else who has comments on Labor Code Section 5814.6  
13 penalties?

14 STEVE ZELTZER: Yeah. Steve Zeltzer, Z-e-l-t-z-e-r.  
15 Just a point of information about this Commission and the  
16 Department of Industrial Relations which is under this  
17 Commission. The Department of Industrial Relations is in  
18 charge of regulating the self-insured employers, and  
19 presently Nurse Barb Parker (phonetic) sued against  
20 John Rhea (phonetic) for refusal to enforce regulations --

21 CARRIE NEVANS: A point of clarification. They are  
22 administered under the Office of Self-Insurance Plans not  
23 under the Division of Workers' Compensation.

24 STEVE ZELTZER: The Department of Industrial  
25 Relations is responsible for regulating self-insured

1 employers. That's why there is a law suit in federal court,  
2 as a matter of fact, for the failure of the director,  
3 John Rhea, to enforce the regulations against self-insured  
4 employers. It wasn't thrown out of federal court.

5 CARRIE NEVANS: Could you please table your comments  
6 to Labor Code Section 5814.6?

7 STEVE ZELTZER: I am just raising a question about  
8 regulations and who is regulating who. This Commission and  
9 this Department is in charge of regulations as well as the  
10 Department of Insurance. That's a fact. Thank you.

11 CARRIE NEVANS: Any other testimony on Labor Code  
12 Section 5814.6? Okay. In just a few minutes we are going  
13 to move to the Utilization Review penalty. At this time I'm  
14 going to ask Susan Guard, information officer, to come up  
15 and make a brief presentation about how to be notified of  
16 events in the regulatory process.

17 SUSAN GARD: Good morning, everybody. Susan Gard,  
18 G-a-r-d. I am in the Division of Workers' Compensation,  
19 public information officer, and I just wanted to give folks  
20 a little bit of information about where they can find  
21 notices for public hearings. This Department of Industrial  
22 Relations' web site is at DIR.CA.GOV. On the left-hand  
23 side, there's a navigation bar. One of the links is  
24 proposed rule making. From the Department of Industrial  
25 Relations' web site you can click on proposed rule making to

1 get notification of all the rule making that the Department  
2 is doing. Also, the Division of Workers' Compensation web  
3 site. So from DIR.CA.GOV/DWC, there's a link to proposed  
4 rule making. On the DWC web site you can click there to go  
5 directly to all the rule making that the Division of  
6 Workers' Compensation specifically is administering. The  
7 best way to get notification about any of the rule making we  
8 are doing is to subscribe to News Line. So if you have  
9 access to e-mail, you can click on our link to News Line in  
10 the left-hand navigation bar. We will send you directly an  
11 e-mail about any of the rule making, the public hearing, any  
12 time there's an issue related to rule making or we take some  
13 action we send out a news line on that. Just to give folks  
14 an idea of what it looks like, this is the rule making page  
15 and here is a copy of the News Line. So what it does is the  
16 News Line basically is an informational bulletin and it lays  
17 out exactly what we are doing and it gives the date, the  
18 time, and location of the public hearing. So I made some  
19 copies of this and there is little packets on the table. If  
20 there are not enough and people want some more, I will be  
21 here until the end of the hearing. Just give me a heads up  
22 and I will go back and make a copy for you. Additionally,  
23 I want to mention that you folks that have signed in on the  
24 list today, there are two different things you do when you  
25 come in. You sign in that you are present at the public

1 hearing, and you could also sign in if you want to make  
2 testimony on the rule making. If you sign in with us today,  
3 we will send you notification about this particular rule  
4 making, 5814.6 and then also the UR regulation. But in  
5 order to get notification about all of the regulatory  
6 processes the best thing to do is to subscribe to the News  
7 Line, and you will get information directly to you. One  
8 other thing we will and can do better is post notification  
9 in the lobby so when folks come into the building -- I know  
10 it's a big building, and we should have done a better job  
11 about making sure security staff were aware of where the  
12 public hearing was today, and also we can post notification  
13 in the lobby on that.

14 AUDIENCE MEMBER #1: Excuse me. How much is the fee  
15 for the News Line?

16 SUSAN GARD: There is no fee. It's free.

17 AUDIENCE MEMBER #2: What about people who can't  
18 hear?

19 SUSAN GARD: If you write to us, if you sign up  
20 on the list today, we will send information to you via US  
21 mail. It is a lot more paperwork, so you will get actual  
22 copies of drafts regulations in the mail.

23 AUDIENCE MEMBER #2: Okay. I was curious for other  
24 people how people can they get notified?

25 SUSAN GARD: If you have some suggestions about that



1 why don't we chat, okay. Anybody else have questions?

2 Thank you.

3 CARRIE NEVANS: Okay. At this point we're are going  
4 to move straight into the second hearing. The subject of  
5 this public hearing is penalties regarding the Utilization  
6 Review process. Just one comment on the prior hearing and  
7 this one also, we will be accepting written comments until  
8 5:00 p.m. today. So if you have something you want to  
9 submit, you have until the end of the day to do that. Okay.  
10 At this time as we return to the UR penalties, I'm going to  
11 ask Rodger Davis to return to complete his testimony. Are  
12 you ready to come back up, Mr. Davis? Are you ready to come  
13 back up and finish up on Unitization Review?

14 RODGER DAVIS: Yeah, sort of. No, I'm done.

15 CARRIE NEVANS: Okay. The next person signed up to  
16 talk about Utilization Review is Laurie Kammerer.

17 LAURIE KAMMERER: Am I at the right place at the  
18 right time? Thank you, Madam Director.  
19 Laurie Kammerer. I just handed my card and the testimony. I  
20 will make my comments very brief because you received them  
21 both electronically and E-mail. I did want to edify a  
22 couple of points that have been shared by my clients and  
23 many of the public that we work with. I'm speaking on  
24 behalf of CompPartners and Med-Ex which are health care  
25 organizations as well as Concentra which is another health

1 care organization provider, and I wanted to comment on to  
2 make five brief points on Section 9792.11(J). This has to  
3 do with the five calendar days of reporting all of the  
4 sources, the locations, the records of all the UR. We would  
5 like to recommend that you move that from five days to ten  
6 days to give the providers, third-party administrators, etc.  
7 a little more time to get the information together. In some  
8 cases if an injury or an injury -- a request occurs on a  
9 weekend or a holiday, this would equate to about two days to  
10 be able to get the records to the Administrative Director or  
11 to the investigator.

12         The second issue that we were looking at is Section  
13 9792.12, Section A3, and we were looking at the concern on  
14 the pattern of practice. The amount of the penalty should  
15 be in proportion to the number of violations. We're hoping  
16 that you will reconsider that it's not just per violation,  
17 but it is in proportion to the number of violations that  
18 there is a pattern of practice.

19         The third point I wanted to make is the potential  
20 approval of care that are not medically necessary as the UR  
21 entities approve care rather than face penalties due to  
22 alleged non-compliance. We're concerned that there may be  
23 medical care provided unnecessarily, unnecessary surgeries  
24 that someone might approve UR instead of or approve medical  
25 treatment instead of facing the penalties due to the

1 non-compliance.

2           The -- let's see. The fourth point that I wanted to  
3 make was the discussion portion that you have under  
4 section -- sorry, it's the section -- well, it's the  
5 section, I believe, it's still in 9792, Sections A4 through  
6 A8. One of the concerns we have is the discussion with the  
7 treater. Will the treater accept the call of the provider?  
8 We're concerned that there may be some protocols that need  
9 to be adopted on the treater contacting the -- I'm sorry on  
10 the reviewer contacting the treater that maybe we should  
11 have, you know, given a certain amount of business days  
12 during business hours, etc. In other words, the reviewer  
13 may not get the call or may not have time to call the  
14 investigator back.

15           Finally, the last thing that is important is the  
16 deficiency issue states the portion of the medical guideline  
17 criteria. That has to do with ACOEM guidelines and other  
18 treatment guidelines. We were concerned and we remain to be  
19 concerned as there are copyright violations for many of  
20 these guidelines where either copies or a written section as  
21 to why the treatment was denied or delayed must be given.  
22 We're concerned about the copyright violation, so then we  
23 can address that.

24           I thank you very much for taking our comments.

25           CARRIE NEVANS: Thank you. Phil Vermeulen.

1 PHIL VERMEULEN: Good morning. My name is  
2 Phil Vermeulen representing Acclamation Insurance Management  
3 Services and Allied Managed Care. You have my comments, but  
4 there were a couple of points I wanted to make. No. 1,  
5 first and foremost, the injured worker is our number one  
6 concern here. To do that, you have got to make sure that  
7 were not chilling the whole process and our concern is that  
8 we propose UR regs, that no company will perform UR in the  
9 future, so we cannot urge enough that we got to go back and  
10 look at these proposed regulations in depth. To do that I  
11 would strongly urge we start from scratch from a broad range  
12 of everyone who is an interested party in putting together  
13 an advisory task force, put together regulations that work  
14 for truly the injured worker, and make sure the process is  
15 in the best interest of everyone.

16 AUDIENCE MEMBER #3: Get the insurance company out of  
17 it.

18 CARRIE EVANS: Okay. At this point I am going to  
19 make a comment. Everyone in this room has listened  
20 respectfully to every speaker, and I expect that to continue  
21 for the remainder of the day. If people cannot conduct  
22 themselves in a respectful manner, I'm going to ask them to  
23 leave the room.

24 PHIL VERMEULEN: Thank you. I appreciate that.  
25 That is absolutely the truth.

1           We also correct Ms. Kammerer, she said changing from  
2 five to ten days. That is 14 days would be recommended.  
3 Again, we have our specific comments in there, and I -- we  
4 can talk about them again. The bottom line is we absolutely  
5 urge to get a staple group together, put together  
6 regulations that truly accomplish what we are all setting  
7 out here to do. Thank you.

8           CARRIE NEVANS: Our next sign-in witness is  
9 Dr. Steve Schumann.

10          DR. STEVEN SCHUMANN: Good morning,  
11 Steven Schumann, physician representing Concentra Medical  
12 Centers as the medical director of MPN, I speak as a  
13 practicing physician and one who has performed also  
14 Utilization Review and I speak also for Ted Blatt, M.D. who  
15 is the Medical Director from Blue Cross of California,  
16 Workers' Compensation, who could not be present today.

17          We're concerned about the five-day time frame  
18 prescribed in Title 8 CCR 9792.12(b)(5) for the claims  
19 adjustors to make a determination concerning request for  
20 authorization of medical services. Five days are not  
21 sufficient to assure communication between reviewing and  
22 treating physicians.

23          In cases where the request is submitted with all  
24 accompanying medical information and does not pass  
25 guideline, by mandating a penalty be imposed if the decision

1 is not made within five business days may well discourage  
2 rather than foster communication between the requesting  
3 reviewing and treating physicians. Our experience is that  
4 this time frame often permits only one attempt at contact  
5 before determination is made. If the treating physician is  
6 not readily available, the denial to termination is made and  
7 likely the request is non-certified.

8         A best practice quality standard is to foster direct  
9 communication between reviewing and treating physicians if a  
10 requested service cannot be certified per guidelines. Cases  
11 should be evaluated on a basis of evidence-based medical  
12 guidelines and collaborative discussion in each case. Such  
13 communication between treating and reviewing physicians  
14 potentially results in additional information or review of  
15 case details that impact the treating physician's  
16 decision -- excuse me, the reviewing physician's decision  
17 and may result in certification of the request with optimal  
18 medical care subsequently achieved to the patient's benefit.

19         We recommend, therefore, that 9792.12(b)(5) should  
20 allow for the time frame to extend to the 14 calendar days  
21 without penalty if there's documentation of contact or  
22 specific attempted contact between the reviewing and  
23 treating physicians. This extended time frame, however,  
24 should not be used in any manner to delay service, rather  
25 only to assure physician-to-physician contact that is

1 intended to enhance patient care. Thank you.

2 CARRIE NEVANS: Diane Przepiorski.

3 DIANE PRZEPIORSKI: Good morning. Thank you for the  
4 opportunity to be here today. My name is Diane Przepiorski,  
5 P-r-z-e-p-i-o-r-s-k-i. It may be one of the more difficult  
6 ones you have today.

7 CARRIE EVANS: You can understand why I  
8 pronounced it that way.

9 MS. PRZEPIORSKI: Yes. We represent orthopedic  
10 surgeons throughout California. We just cannot more  
11 strongly urge the Department to move forward with these  
12 violations. This hearing is particularly timely this week.  
13 I spent Tuesday evening three hours with three large  
14 orthopedic groups in the inland empire area that are on the  
15 verge of dropping out of the Workers' Comp system. I tried  
16 to convince them that these findings and penalties are on  
17 their way, and that they should hang in there and give the  
18 Division a chance to try to reign in the inappropriate UR  
19 activities. They just feel helpless in trying to advocate  
20 and to gain the necessary medical treatment for the patient,  
21 and they are in a moral dilemma. They have -- you know, the  
22 physicians are supposed to render whatever care they feel is  
23 medically necessary regardless of payment or any other  
24 issues. They can't, because it's now to the point where  
25 they can't decide that they have to move forward with the

1 surgery because the hospitals won't go along with it, the  
2 anesthesiologist won't show up. They cannot get the  
3 treatment that they morally feel is necessary for their  
4 patients, and they are very troubled by that, and their only  
5 recourse is either to drop out of the system and just not be  
6 part of it for fear ultimately they are going to be held  
7 liable for the outcomes or to, you know, they are talking  
8 about developing information sheets that they can give their  
9 patients to tell them what their rights are and, you know,  
10 have them appeal for expedited hearings, and, you know,  
11 honestly, that is really not the right answer either. That  
12 is just going to clog up the court system and they really  
13 just feel very helpless.

14         Yesterday, I met with ten office managers from large  
15 orthopedic groups from around the State, the same sentiment.  
16 You know, we talked about the UR calls and providers not  
17 being available. I know I get reports and complaints that  
18 the UR people call. The physician's office staff says,  
19 "Well, just wait a minute. Let me go get the surgeon." It  
20 happens to be a time when the surgeon is in the office and  
21 not in surgery. And then the UR people say, "Well, just  
22 wait a minute, my UR doc is no longer available. They just  
23 got on another line. We will call you back at a certain  
24 time." Of course, they never call back. Then what happens  
25 is the report comes in, the treating physician is not



1 available, service denied. You know, we just don't have  
2 time in the health care system these days to waste  
3 everybody's time in this -- just this circle that goes round  
4 and round and does nothing to accomplish better care for  
5 injured workers. As I said, we cannot urge the Division  
6 more strongly to move forward with something to at least  
7 start. It may not be the perfect solution, but something to  
8 start to reign in the gamesmanship that is being played in  
9 inappropriate activities.

10         There are two comments. I have handed in some other  
11 comments. There are two issues that I would like to bring  
12 to your attention. One is, I just want this done on a  
13 federal level with Medicare CMS Investigations. They use  
14 funds that are collected through the audit process to beef  
15 up more audit activities. We would certainly urge the  
16 Division to take the funds that are collected in this  
17 process and put it back into the audit process so that  
18 you -- we think that is the best deterrent to inappropriate  
19 activity on all sides and that is the first thing.

20         The second thing is, you know, over the years it's  
21 very hard for providers to know that it certainly seems to  
22 us that administrative penalties, administrative costs,  
23 penalties, whatever that is assessed to the carrier often  
24 finds their way into being reported as additional medical  
25 treatment costs. We find this to be very inappropriate. It

1 blurs what treatment costs that Division is really spending  
2 on actual treatment to care and we would urge the Division  
3 to take some caution, perhaps put language in the regulation  
4 that would absolutely prohibit carriers, self-insured  
5 employers, TPA's, whoever is doing reporting to the Division  
6 that they must report these fines and penalties just as what  
7 they were, fines and penalties, and they are not able to add  
8 those into the medical treatment costs.

9 Thank you very much.

10 CARRIE NEVANS: Okay. Our next person signed up is  
11 Jason Schmelzer.

12 JASON SCHMELZER: I will spell it for you,  
13 S-c-h-m-e-l-z-e-r. I'm here representing California  
14 Manufacturers Technology Association and we represent close  
15 to 1,000 manufacturing based businesses across the State.

16 A couple of points. First of all, Utilization Review  
17 should be used as a way to get injured workers appropriate  
18 treatment, back to work as quickly as possible.

19 Specifically, in the manufacturing industry we face a  
20 situation where we have a very high-skilled workforce that  
21 are well paid, provided with great benefits. Some of my  
22 larger companies have 500 or 600 positions open at a time.  
23 We need -- Utilization Review should not be used as a tool  
24 to delay treatment or stop treatment from being provided.  
25 It's very important for us that the appropriate treatment is

1 provided so people can get back to work.

2 I'm going to limit my comments I gave you, exhaustive  
3 comments you are going to be agitated to read. First of  
4 all, I am going to 9792(m). The current wording the  
5 Administrative Director gave provided the Administrator  
6 written description of the factual information of the  
7 complaint.

8 CARRIE NEVANS: Slow down.

9 JASON SCHMELZER: I'm sorry, I talk fast. We would  
10 like to see any time there is a complaint filed that is  
11 going to lead to an investigation, we would like to see the  
12 claims administrator provide you with that information. We  
13 only see it as fair and in that context.

14 Under the same section 9792(m), there is a section  
15 further on down basically says, after there's a complaint  
16 and a response from the claims administrator that the  
17 Administrative Director basically can decide whether to move  
18 forward or end the investigation. We would like to see a  
19 time frame included for that. I would not have any  
20 recommendations. You would know better than I. We just  
21 don't want to leave it a completely open-ended process. We  
22 don't think that works for injured workers, we don't think  
23 it works for claims administrators or employers. We would  
24 like to see that defined a little more clearly.

25 The next section is 9792.12(a)(3). This is a section

1 talking about \$5,000.00 penalty for a decision to modify or  
2 deny an authorization request with the procedure servicing  
3 product outside of the scope of practice for professional  
4 competence. This may be my organization was not quite clear  
5 on this, but it is within the scope of practice of the  
6 reviewing physician. We would like to see it clarified  
7 outside the professional comments. We would like see that  
8 term a little more defined within the regulations so we know  
9 exactly when this applies and how it applies.

10 The next section is 9792.12(a)(7). This is a  
11 \$5,000.00 penalty for failing to respond to request for  
12 authorization. I know this is something we talked about  
13 with your office before. What we think -- one of the major  
14 problems I faced when I was a claims examiner is that we  
15 have such an inflow of paper. I remember the days of just  
16 having gigantic stacks of paper on my desk. One of the  
17 hardest things to do is to catch every single paper that had  
18 a request for treatment. The one thing we would like to see  
19 is DWC forms similar to a PR-1 or PR-2 that is specifically  
20 for a request for authorization. That way a claims examiner  
21 will notice that piece of paper, even put it on a different  
22 color paper. It should have all of the appropriate  
23 information that the UR will need to approve or deny the  
24 request, what section of the medical treatment guidelines  
25 the doctor is referring to, or if they are going outside of

1 the guidelines, list the other guidelines, list the section  
2 of guidelines. I think this would really speed up the  
3 process. It would be easier for doctors and claims  
4 administrators and injured workers. The goal of these  
5 regulations should be to speed the use of Utilization Review  
6 as a tool. We would like to see a little bit more of that  
7 philosophy injected into the process. My biggest problem I  
8 think in the regulations is the multiple instance penalty.  
9 I think it can be cleared up pretty easily. One of the  
10 issues is you have the scaled penalties, you know, between  
11 one and ten penalties cost you this much. We're not sure  
12 how those actually apply. Is it per audit, is it per claims  
13 office, is it per year, is it per -- is it forever? Without  
14 having that -- having people be aware of that, you really  
15 don't know what your exposure is, and frankly, you don't  
16 know what kind of deterrent you are facing. We would like  
17 to see that clarified.

18         The second issue that I actually just figured out the  
19 other night when I was writing up these comments. The way  
20 the scale is set up, if it's going to be per audit or per  
21 claims location, since you have that ten to -- 1 to 10, 10  
22 to 20, 21 to 40, and then over 40, if you have two separate  
23 claims organizations, the same one, like I heard mentioned  
24 earlier they have five or six claims examiners who do all  
25 the work, and say Gallagher Bassett, they have larger

1 operations. If those two operations violate at the same  
2 rate, say one out of every 100 possible violations, the  
3 larger claims organization is going to be penalized higher  
4 because of the scale. There is actually less of an  
5 incentive for the smaller claims organizations to comply  
6 with regulations or what have you. So if you are doing it  
7 per audit or per office, you are going to punish larger  
8 organizations and shield smaller organizations for the same  
9 rate of violation. That doesn't do anybody any good. It  
10 should be across the board, the same violations gets the  
11 same punishment. I would like to see that clarified as  
12 well. We would be happy to work with your office on how to  
13 do that.

14 The second issue, same area, is the scale of the  
15 penalties as I mentioned the 1 to 10 is \$300.00, 11 to 20.  
16 When I read it, it could be me, I wasn't clear on, are the  
17 first ten violations lower than and the second ten, the  
18 second amount, the third amount, and then anything over 40,  
19 that amount, or is it if you have 11 penalties, all 11  
20 penalties or if you have 11 violations, are all 11  
21 violations at the second amount? If you have 41 violations,  
22 are all 41 violations at the 6400 mark? We just wanted to  
23 see a little bit of clarification on how that scale applies  
24 within the number of violations.

25 The penalty adjustment factors, 9792.13. Our concern

1 was basically that -- no disrespect to the Administrative  
2 Director intended whatsoever. This provides a lot of  
3 discretion to the Administrative Director. We would like to  
4 see something a little bit more structured on how litigation  
5 factors are going to be applied in penalty situations. I  
6 imagine the injured workers would like to see that as well  
7 too. Depending upon who the Administrative Director is that  
8 should be applied rather subjectively and as time goes on we  
9 want to make sure the mitigation factors are applied across  
10 the board. I don't think anybody in here could really be  
11 comfortable on how the mitigation factors are set up until  
12 we know they are going to be applied. We would like to see  
13 that issue dealt with as well.

14 Almost the last issue is the liability for penalty  
15 assessments. This is Subsection C of 9792.14. The big  
16 question I have about this, the first thing that popped into  
17 my head was, California Insurance Guarantee Association,  
18 CIGA. CIGA serves as a safety net for injured workers whose  
19 insurance companies are insolvent. The insurance code  
20 currently sets up kind of a protection for CIGA in the event  
21 that the insurance company handling the claims for penalties  
22 that arose before CIGA was handling the claims. I sent this  
23 off to CIGA and tried to get a response from them. I didn't  
24 get a clearer response, but my concern is CIGA under this  
25 section should be liable for penalties that they themselves

1 didn't commit. I don't have the answer for what the  
2 solution to that is, but since CIGA serves as a safety net  
3 organization for injured workers, we would like to see at  
4 least the Division look at your statutory authority to see  
5 what kind of protection could be offered to CIGA, not for  
6 violations they commit, but for violations that are in the  
7 claims when they get them.

8         And a big issue was -- getting back to how it's very  
9 important to us and injured workers to get back to work. We  
10 don't want to see the regulations endanger the application  
11 or the useful application and the reasonable application of  
12 medical treatment guidelines. That was one of the main  
13 basis for the reforms is getting appropriate treatment,  
14 consistent treatment to injured workers. Our concern is  
15 that the compounding effect of these penalties would very  
16 much discourage the use of Utilization Review, and I'm sure  
17 there is plenty of debate in this room about whether medical  
18 treatment guidelines are a good thing -- whether or not they  
19 are a good thing. The fact of the matter is they are in the  
20 law. We would hate to see a situation where the regulations  
21 are so strict that actual reasonable use of medical  
22 treatment guidelines is no longer desirable.

23         And then just an overall comment. My background is in  
24 claims. I am used to doing everything possible to  
25 understand and adhere to the law. It's incredibly



1 complicated. I know a lot of you out there have had  
2 horrible situations occur. I can name off a couple myself  
3 from my claims experience. One of the things that really  
4 cuts down on these types of situations is very specific and  
5 clear regulations and rules. I would love to see the DWC go  
6 through and test these out with some organizations, say what  
7 would you do to comply with these regulations. You know,  
8 how do you plan on with this product, looking at this and  
9 changing your behavior and modifying your behavior. We want  
10 to make sure that the regulations that you put out are  
11 easily understood by everybody, so everybody knows where  
12 they stand and how the rules are going to be applied when,  
13 where, etc. Part of that has to do with definitions. I  
14 know a lot of the definitions in this set of regulations is  
15 based on the initial Utilization Review regulations. I  
16 think there could be some more definition included into  
17 these regulations or if you want to go put it into the other  
18 Utilization Review regulations just to make everything a  
19 little more clear for people. It would really cut down, I  
20 think, on the enforcement of regulations and also make it  
21 easier for claims organizations to comply with regulations.

22 I would also agree with Mr. Vermeulen's comment about  
23 setting up an advisory task force where everybody would sit  
24 down and have a conversation about this. I think it would  
25 be very useful to the Division and I think it would also be

1 very useful to everybody in the room. With that, I will end  
2 my comments.

3 CARRIE EVANS: Thank you. The next person I have  
4 signed up is Sally King.

5 SALLY KING: Good morning. My name is Sally King,  
6 S-a-l-l-y, K-i-n-g. You will pardon me, I have a little bit  
7 of laryngitis.

8 I'm here kind of wearing two hats today because I'm  
9 here on behalf of my husband, Ralph, R-a-l-p-h, E. Jones,  
10 J-o-n-e-s, and he's an injured worker, injured in the year  
11 2002 on his job in the capacity as a winery tasting room  
12 manager in the Valley of Napa. I had a difficult time,  
13 because I have to live with someone who is injured and yet  
14 my background is as an RN, Utilization Review, quality  
15 assurance, nursing director, pediatric nurse, orthopedic  
16 nurse, and director of Utilization Review and quality of  
17 assurance for Aetna at one time, and later I was with Blue  
18 Cross of California as an analyst. So I look at things kind  
19 of in two views. The first view is I empathize with my  
20 husband tremendously because he's in terrible pain all of  
21 the time, and his case started in the year 2002 as I stated  
22 in the beginning. He has waited four years for his surgery  
23 to be permitted. And during that course of time, he has  
24 gone through an AME and a QME. He has had three separate  
25 trials. He has been denied multiple times for medical

1 therapy and treatment. He has been denied physical therapy.  
2 He has been approved for physical therapy. He has had his  
3 physical therapy discontinued. He has had his salary cut  
4 off. He had to go to court to have his salary returned. He  
5 has been placed on permanent and stationary disability. He  
6 has gone to an AME by the other side's insurance company's  
7 attorneys, and been made temporary and began to receive the  
8 rest of his pay.

9         So I would just like to point out -- I will put on my  
10 cheaters here -- I have a couple of statements to make of  
11 which I don't have copies for you, so you will have to go  
12 with it, I guess, with all do regard to the panel. It was  
13 written here back in the year of 2003 that my husband was  
14 seen and the judge now has a 33 percent rating, and he is  
15 collecting permanent disability benefits at the time when he  
16 should still be having active treatment with regard to his  
17 lumbar spine. I would like to point out that many of you  
18 have made comments about the desperate position between  
19 Utilization Review and physicians making their  
20 qualifications as to what a patient needs or doesn't need.  
21 I don't know about you, but it just seems like common sense  
22 to me that when you to go a physician, and you are injured,  
23 and you need help, that physician has had four years of  
24 medical school, training, been certified, had  
25 X amount of time as a treating physician, been Board

1 certified by the Workers' Compensation Board, and is or is  
2 not on their list and if you are lucky they are, and if you  
3 are lucky you actually get a good physician. With all of  
4 that withstanding, it would be just common sense to me that  
5 a patient would walk in who has had an L-5, S-4 injury who  
6 has had a torn deltoid muscle and a torn rotator cuff injury  
7 and they would be treated. Unfortunately, the insurance  
8 company denied the complaint of the torn deltoid and rotator  
9 cuff because there was no evidence to suggest there was any  
10 needed medical priority for this treatment. They also  
11 denied physical therapy. Later for some unknown reason,  
12 which we never discovered, his surgery was suddenly  
13 approved. His main complaint, however, was his L-4, S-5 and  
14 he waited four years for that. In the course of that time,  
15 he had an MRI, and EMG, and a myelogram, he had a discogram,  
16 he had a botched epidural done by a physician that should  
17 never have been on any panel, and the course of that proved  
18 that there was an injury. This is something the panel  
19 should be really aware of, is that we are now at the point  
20 where we are saying people have to be truly injured. I mean  
21 you are either injured or you are not injured, and I don't  
22 know of many people who get up in the morning and say, "Hey,  
23 you know what, it's Tuesday morning, I think I am going to  
24 go out and get an injury. On that day my life is going to  
25 be good, I'm going to be in a lot of pain, and I can stay

1 home for three years." I just don't think people do that.  
2 My experience as an RN is people don't want to be in the  
3 hospital. The only reason you are in the hospital is for  
4 nursing care. You are not there for doctor care. You can  
5 drive in and out for doctor care. It's done every day.  
6 Mastectomies, hysterectomies, you are in, you are out, you  
7 are gone. You are in the hospital for nursing care. And,  
8 you know, I suppose I could go on and give you multiple  
9 information. This is only one of three files I keep on him,  
10 but I think it's important to note that when someone comes  
11 and they are injured they need to be treated.

12 Let me give you just an example to kind of bring it  
13 down to just dirt level. If your car broke down on the side  
14 of the road and you called on your cell phone, you got a tow  
15 truck, and the tow truck pulled your car in. What would  
16 happen? The first thing that would happen is tell me what  
17 the heck is going with my car. It would be diagnosed by  
18 some tech person. They put it on a machine. They decide  
19 what is wrong with your car and they say, "Hey, you know  
20 what, I will tell you what Ms. Nevans, your car has this,  
21 this and this wrong with it. If you want to drive it you  
22 are going to have to get it fixed." So what would you do?  
23 You would get your car fixed. There isn't a tech out there  
24 at Jiffy Lube or GMC or any of the other agencies that would  
25 say, you know what, your car is really screwed up here.

1 We're going to keep it for four years. In four years you  
2 can have your car back. I will tell you why, because we  
3 just can't approve this car being repaired. We know more  
4 about our cars than we know about our own bodies. Having  
5 been in claims, I also had a chance as the other gentlemen  
6 spoke, and I will tell you the reason I got out of nursing  
7 was because I had to turn down families, turn down treatment  
8 of patients that desperately needed it, because somewhere in  
9 the code it stated this can't be done for this person. And  
10 the human being that was standing before me obviously needed  
11 the treatment, and there was a code that just said you can't  
12 do it. This is what has happened to my husband, and I will  
13 tell you that we have gone -- my greatest victory as I call  
14 it, is that he finally went to the AME that was suggested at  
15 the court hearing and the Liberty Mutual Insurance Company.  
16 Their attorney would not allow us to go to the physician  
17 that we wished to go to, so they sent us to their own  
18 physician who stated to us, "Are these people on drugs?"  
19 Your husband needs help and he needs it now. Four years  
20 later as it has been discussed by another gentlemen, his MRI  
21 showed such damage over that four-year period with such  
22 deterioration, that he was no longer feeling in his legs, he  
23 no longer had any feeling in his toes, he was having  
24 problems walking, severe depression, falling easily. He  
25 can't use a crutch because we never knew when he was going

1 to fall. They put him on Neurontin which is used for mild  
2 treatment of back problems. The problem with Neurontin is  
3 that Neurontin is a drug that is used for other patients  
4 with other problems, and when you get to a certain level  
5 people can't remember when they walk out the front door if  
6 they were coming into the front door or they were leaving,  
7 so his dosage had to be reduced, his pain level went up. I  
8 have seen him when he discussed with me late at night that  
9 killing himself would be better than going through the pain  
10 that he is going through. From a nursing standpoint, I had  
11 to switch gears and go into my psychology because I used to  
12 work in a lock down unit. It's difficult to be both an  
13 objective RN who has the background trying to deal with the  
14 lay person who has an injury. The injuries that we are  
15 seeing today are people who are here, and my husband, are  
16 people who have faces and names who had great positions, who  
17 were supporting their families, who were doing what they  
18 were supposed to do. And in the case of men, men seem to  
19 validate everything by who they are, what they do and how  
20 often they do it, how much money they make, and if they can  
21 provide for their family. When you watch a man disintegrate  
22 and deteriorate in front of your eyes to the point where he  
23 folds up in a bed -- and may I just point out he did get his  
24 surgery. He received his hospital bed 30 days after the  
25 surgery. So we had to put milk crates on the floor and the

1 board and pillows because the bed the doctor has been  
2 requesting for four years has been denied because there is  
3 no medical reason for it. The hospital bed that they sent  
4 him was so terrible that it broke within the first hour he  
5 was in it, and the following day they had to actually  
6 deliver a hospital bed that was of any value. He has been  
7 in that hospital bed. We continue to use it, and if I have  
8 anything to do with it, he will have it for a full year at  
9 \$200.00 a month, which would be the cost that it would have  
10 cost the insurance company to provide the mattress and box  
11 spring he could have been sleeping on for the last four  
12 years, and he could have continued to use to this day.

13           In closing to the panel, I hope that you take these  
14 Utilization Review comments and the comments that people  
15 make here are very passionate, and they are passionate  
16 because they are about people, not statistics, although we  
17 form statistics by all of the data we give to you. But  
18 every single person who is sitting in here either knows  
19 someone who is injured, is injured, or knows someone who has  
20 died because of their injury. My neighbor just died because  
21 of an injury that would not be approved by Utilization  
22 Review. And our Utilization Review by the way is done in  
23 Dover, Delaware. Our medication prescriptions go between  
24 the physician and the pharmacy in Jacksonville, Florida.  
25 The Utilization Review person who does your Utilization



1 Reviews is not a nurse. That is not uncommon. I saw that  
2 at Aetna. Aetna did not use Utilization Review nurses.  
3 They used just regular folks that got hired. If they  
4 disapproved someone, then it came to an RN for review. That  
5 was a secondary review. And I can tell you that when you  
6 have people out there making decisions about your life and  
7 judges who do not know anything about medicine but who go on  
8 how many doctors say what, and now it's two doctors against  
9 three or three doctors against four, there is a total break  
10 down in the system. All we ask for as injured workers and  
11 as families of injured workers, is that we get to have the  
12 same kind of medical care that the NBA, the NFL and  
13 congressmen in this country receive, and that is your  
14 interior fix. Unless you want your car to be kept for four  
15 years, I'm suggesting to the mechanics now just keep the  
16 damn cars, most especially if you know it's somebody that is  
17 involved in politics. Keep their car. Make them  
18 uncomfortable. This is where we're going to finally have to  
19 have it happen, and until someone here on the panel or one  
20 of the judges or somebody else is injured, severely injured  
21 enough, I don't think it's going to change. But I  
22 appreciate your time and all your efforts, and I look  
23 forward to seeing changes that will really, really effect  
24 the outcome of good patient care. Thank you.  
25

1 MS. NEVANS: Our first witness up is Steve Cattolica.

2 STEVE CATTOLICA: Welcome back everybody. My name is  
3 Steve Cattolica spelled C-a-t-t-o-l-i-c-a. I work with the  
4 California Society of Industrial Medicine and Surgery and  
5 California Society of Physical Medicine and Rehabilitation.

6 First of all, I want to just remind the Division that  
7 we will be providing written comments later today, so I'll  
8 just be outlining the points, and we'll see, but before I  
9 get to that, I'd like to echo Diane Przepiorski's comments  
10 with respect to physicians' frustration with the system, the  
11 attrition that's taking place, and the inevitable lack of  
12 access that's going to follow closely behind that.

13 With respect to the regulations themselves, we're  
14 pretty clear that there are a number of violations that have  
15 taken place. It can be proven and you already, perhaps,  
16 received complaints about it. We believe that the employers'  
17 utilization review plans that are at fault should not go  
18 without some consequence. So, we'd like to suggest language  
19 to the effect that based on current complaints, if after  
20 it's discovered that the complaints are accurate, that those  
21 employers' utilization plans will be subject to targeted  
22 audits, at the discretion of the administrative director,  
23 for at least one calendar year after the point at which they  
24 are found in violation; because I realize current  
25 violations -- before the regulations go in place you can't

1 fine them according to regulations -- but you can put them  
2 on notice if somebody's watching, and you can do that  
3 without any further complaint. In other words, that  
4 utilization review firm should know that you can walk in the  
5 front door any day.

6 We also are somewhat disappointed that the regulations  
7 at this point don't prescribe a hard and fast process and  
8 procedure to file complaints and to be told what the results  
9 are. We would suggest that there be a concrete, not overly  
10 bureaucratic, but certainly swift, process and procedure  
11 described in the regulations that everybody can point to,  
12 and know exactly what to do, and in what order the results  
13 would be forthcoming.

14 We believe overall that the penalties, albeit in some  
15 respects it might sound like a lot of money, but, in fact,  
16 are not really the kind of -- at a kind of level that might  
17 get peoples' attention. And as an example, 9792.12 letter  
18 (a) calls for a maximum penalty of \$50,000 for some  
19 infractions, but it prescribes no minimum. We think that  
20 that's a little too wide of a range. We would suggest that  
21 any time a maximum is called for that the division have a  
22 policy of prescribing a minimum at the same time, and that  
23 the minimum be in a very narrow range in comparison to the  
24 maximum, something on the order of, let's say, 80%; and I  
25 would only add that with that specific section, \$50,000,

1 although it means a lot to my family, and probably to  
2 everybody in the room, that's only the cost of the average  
3 indemnity claim. I don't know how much of a deterrent that  
4 truly is.

5         In the same vein, under the multiple violations  
6 category, some of those fines are virtually invisible. They  
7 range in some respects from \$10 per violation to no more  
8 than \$150, and the California Manufacturers' point is well  
9 taken. There's no way that someone can actually know  
10 whether it is per occurrence, per office, or how it is  
11 really to be prescribed, but just taken on its face, it  
12 appears that especially at the very highest end where there  
13 are 40 or more violations -- first of all, 39 of them  
14 shouldn't have happened -- but the point is that once there  
15 are 40 the penalty is capped, which means that for the 40th  
16 through the 50th the fine actually goes down -- and surely  
17 the fact insensitive, if that's the right way to put it --  
18 multiple violations because they get to be worth less and  
19 less.

20         We would, instead, ask the division to prescribe a set  
21 penalty per multiple violation, and we're not going to  
22 prescribe the amount at this point, but that it graduate and  
23 would become larger as the number of violations grows, so  
24 rather than a set amount, that for each and every there's a  
25 dollar attached to it, so that, in fact, the more of them

1 there are, the more it hurts.

2           And lastly, we just would like to emphasize to the  
3 division that the speediest implementation possible is  
4 what's necessary. Physicians and their injured workers are  
5 at their wits end in many respects, and John Wooden, famous  
6 basketball coach for UCLA, I think, said it best when he  
7 said you need to be quick but not in a hurry. Take and  
8 consider the opinions and information you were given today,  
9 but act quickly to put it in place, and once in place,  
10 please be sure that the process -- that the audit process  
11 and process of assessing penalties is swift and sure. Thank  
12 you.

13           MS. NEVANS: Thank you. Next we have Ernest Medeiros  
14 and Peggy Sugarman and Kelly.

15           PEGGY SUGARMAN: Good afternoon. My name is Peggy  
16 Sugarman, S-u-g-a-r-m-a-n. I'm a consultant in the field of  
17 workers' compensation and spokesperson today for Voters  
18 Injured At Work.org.

19           Voters Injured At Work.org is a non profit  
20 organization whose board of directors is made up 7  
21 individuals whose lives have been negatively affected by  
22 failures of today's workers' compensation system. And we're  
23 here today to urge you to enact the regulation that  
24 penalizes claims administrators for failing to properly and  
25 correctly authorize medical treatment prescribed by treating

1 physicians, and I just want to start out commenting about  
2 some of the other folks that have testified.

3       The standards for utilization review, as you know,  
4 have already been in place. Employers or claims  
5 administrators already have known for quite some time how  
6 the process is supposed to work, what the notices are  
7 supposed to say, what guidelines are relied upon, the  
8 specific time frames. The time to do a forum probably was  
9 then, and that these penalty regulations are simply looking  
10 to see whether those existing regulations have already been  
11 followed, and I agree with Diane Przepiorski and Steve  
12 Cattolica, speed is of the utmost importance.

13       I expected that employers and insurers might argue  
14 today that the regulations are onerous, and so I just want  
15 to start out considering a few facts about costs. The  
16 latest workers' comp. insurance rate and bureau figures show  
17 insurer profits in 2004 and in 2005 to exceed the total cost  
18 of compensation benefits, and that includes medical  
19 treatment and hospitalization. These profits are estimated  
20 at \$10.6 billion for 2004 and \$8.8 billion for 2005, and in  
21 addition these profits do not even include what they would  
22 earn on the investment income. We believe that these  
23 profits have been directly at the expense of injured workers  
24 who commonly report severe financial losses, including loss  
25 of cars, homes, the filing of bankruptcy and homelessness,

1 and even suicide.

2           In addition, in 2005 WCIRB figures show that fees paid  
3 to defense attorneys for insurers in 2005 have increased by  
4 31.6%, while fees paid to workers' attorneys increased very  
5 slightly -- looks like about 1%. \$550 million were paid to  
6 defense attorneys by insurers who get paid by the hour to  
7 litigate, up from \$418 million paid to them in 2004, always,  
8 of course been quite a bit more than workers' attorneys, and  
9 today that discrepancy is getting even larger. By contrast  
10 our attorneys do not, in general, get paid to fight for  
11 medical treatment requests, so it is important to remember  
12 at this point who profits by the litigation. It is not in  
13 the injured worker.

14           We ask that you keep this in mind when considering  
15 complaints from insurers who were willing to increase  
16 payments to their attorneys rather than provide medical  
17 treatment to injured workers', and I'm attaching in our  
18 submission today copies of the WCIRB graphs showing these  
19 figures.

20           I preface what I have to say today with those figures  
21 because delays in the provision of medical treatment caused  
22 by inappropriate utilization review conduct, given the new  
23 limits imposed by Labor Code Section after 4656(c)(1), leave  
24 injured workers' without any compensation whatsoever when  
25 needed treatment is finally granted. And for those in the

1 audience, that is a section in SB 899 that now limits  
2 workers' temporary disability benefits to no more than,  
3 except in a very few specific circumstances, no more than  
4 104 weeks from the date of the first payment. So, that  
5 means that even in that 104 week period -- once you get the  
6 temporary disability check, and maybe go back to work for a  
7 period of time, but eventually your injury causes a need for  
8 surgery or some other medical treatment, at the end of that  
9 104 weeks, even if you still need that treatment, you are no  
10 longer entitled to temporary disability benefits. So,  
11 again, underscoring that delays in medical treatment are  
12 very costly to injured workers.

13 To illustrate this problem I have here with me today  
14 Mr. Ernest Medeiros, III, and I'm going to thank him for his  
15 willingness to testify, but let me give you a little bit of  
16 background about his case.

17 Mr. Medeiros was injured on April 19th, 2004, which is  
18 the day that the governor signed SB 899. He was working for  
19 Ames Transportation Services as a truck driver and unloader.  
20 His treating physician, Dr. Jeffrey Ko requested  
21 authorization for surgery on June 28, '04. The request was  
22 ignored by defendants. Dr. Ko repeated his request on  
23 8/16/04, 9/20/04, and defendant's lack of response forced  
24 Mr. Medeiros to go to an Expedited Hearing in October of  
25 '04, where defendant stipulated at that time to authorize



1 the surgery. So, we're talking 19 weeks after the initial  
2 request had been made before they provided the surgery.

3 After that, there were additional diagnostic studies  
4 ordered by Dr. Ko in December of 2004, and again in January  
5 of 2005. Again, no timely response forcing Mr. Medeiros to  
6 another Expedited Hearing requested in February and  
7 scheduled for May of '05. Now, again, just prior to the  
8 hearing, defendants agreed to authorize the tests which were  
9 subsequently performed more than 20 weeks after the initial  
10 request was made.

11 As a result of the diagnostic tests, Dr. Ko made a  
12 request for additional surgery because pedicle screws that  
13 were used to stabilize his spine were pushing on the nerves,  
14 and yet, again, defendants failed to respond. A third  
15 Expedited Hearing was requested, whereas defendants,  
16 predictably, authorized surgery, but only after the hearing  
17 was scheduled. These delays cost Mr. Medeiros a full 46  
18 weeks of the 104 weeks of total temporary disability  
19 benefits allowable to him under the Labor Code.

20 It is my understanding that they are not also  
21 advancing any permanent disability at this point because, of  
22 course, he's still temporarily disabled. Mr. Medeiros has  
23 required additional pain management care for his condition,  
24 is still temporarily disabled, but is now without any  
25 indemnity benefits to support him; and according to Mr.

1 Medeiros, Dr. Ko believes that prompt responses to the  
2 requests for treatment could have prevented this; and I  
3 bring this example to you in support of heavy penalties for  
4 failure to respond to the request for medical treatment that  
5 you have in your regulations today.

6 It is very important that you consider no response,  
7 that defendant cannot be allowed to sit on their hands when  
8 a treatment request has been made.

9 I find defendant's conduct inexcusable, and I enclose  
10 a copy of the trial brief on this case to support this; and  
11 at this point I would like to ask Mr. Medeiros to come up  
12 and see if he wants to make a few comments about the impact  
13 of the these delays on his life, and then I'll come back.

14 MR. ERNEST MEDIEROS, III. Hello. My name is Ernest  
15 Medeiros, M-e-d-e-i-r-o-s, the third. Again, I was injured  
16 April 19th of 2004. I've had surgery, had many delays, and  
17 like she said my temporary total disability, or whatever you  
18 want to call it, was cut off. I'm receiving no payments  
19 right now. Right now I'm in the process of getting ready to  
20 put my house up on the market, because I can't afford to  
21 keep it anymore, not having any income. That's all I have  
22 to say, thank you.

23 PEGGY SUGARMAN: Thank you. Regarding failure of  
24 defendant to appropriately respond to requests for medical  
25 treatment authorization, I have another document that I'm

1 submitting to you. It is a trial judge's Opinion on  
2 Decision in favor of an injured worker named Theodore  
3 Kozenko, K-o-z-e-n-k-o, and against State Compensation  
4 Insurance Fund.

5         Mr. Kozenko was employed by Harley Davidson of  
6 Lancaster, suffered severe injuries as a result of a motor  
7 vehicle accident on a motorcycle, industrially related and  
8 accepted case. His treating doctor could not find evidence  
9 after surgery that there was a surgical union, and so the  
10 treating doctor wanted additional tests and an MRI, as well  
11 as another consultation on a right foot injury, and the  
12 reviewer denied the MRI using the ACOEM Guidelines. Now,  
13 Judge Lisa Sussman noted that the MRIs, according to ACOEM,  
14 certainly can be appropriate when there is evidence of  
15 tissue insult or nerve impairment, and she ordered all the  
16 diagnostic tests to be performed, but in her report, and I'm  
17 attaching, again, a copy of her Opinion on Decision, she  
18 says, and I quote, that "The denial of care that was sent  
19 does not indicate the basis for the denial of said request,  
20 nor is the referred to physician's explanation attached to  
21 the letter as required by the California Code of  
22 Regulations, Section 9792.9(b)(4)," and she goes onto say,  
23 "Further, defendant's denial of treatment completely fails  
24 to address the requests for referral of applicant to a  
25 psychiatrist and one to Dr. Blitz," which was for the foot

1 surgery.

2           So, I ask you, what has happened to common sense. If  
3 there's been a surgery and no evidence that the surgery  
4 fusion has taken hold, and they need an MRI to figure it  
5 out, who would deny that? But, it's happening. Even ACOEM  
6 provides for this kind of diagnostic testing, so it's fine  
7 to rely on treatment guidelines, but let's at least read  
8 them correctly and let's at least penalize them for mis-  
9 reading them where there should be no mistake.

10           Defendant in this case, and they're the largest  
11 insurance carrier in the State of California, utterly failed  
12 to understand how to deliver medical care; and I repeat,  
13 penalties for this conduct should be severe.

14           We have Mr. Alan Wexler who is a member of Voters for  
15 Injured Workers.org, he's an ambassador down in the Southern  
16 California area, as is Sally King, who's testified here  
17 earlier. People who visit legislators try to keep them up  
18 to date on what's happening to injured workers in their  
19 districts.

20           Mr. Wexler is 100% disabled from his industrial  
21 injury. It's an older injury. He was injured in 1995 and  
22 was awarded lifetime medical care; and he, as a result of  
23 the utilization, or misuse, of the utilization process,  
24 found himself in an ultimate catch 22 situation as a result  
25 of Cambridge Management's utilization review process. Now,

1 in his case, the pain management physician -- and he's got  
2 RSD and a number of problems -- recommended facet blocks and  
3 multiple injections in various nerves because of the RSD,  
4 and these were denied by a physicians review network in a  
5 report that states in part, "I have received no call back  
6 from the treating physician in regards to questions I had  
7 about this case. Specifically, whether the neck injury was  
8 part of his industrial settlement." Now, I'm going to sort  
9 of stop in the middle of this quote because I found that  
10 first response disturbing.

11 It's not the U.R. doctor's role -- and that's already  
12 in your standards -- to determine whether or not the  
13 requested treatment is or is not industrial. That is a  
14 separate question, and so here we have a case where they  
15 were questioning it from the get-go, and again that's  
16 inappropriate.

17 He goes on to say that there's another denial that  
18 says, "However, review of the literature indicates that  
19 facet joint injections have no proven long term value in the  
20 lumbar spine." So, okay, the blocks were disapproved.  
21 Subsequently, to try to help the individual, the treating  
22 physician then requested the trial for implantable spinal  
23 cord stimulator. The same reviewing company denied the  
24 request with this statement. "From the available  
25 information it is not clear whether the patient needs a

1 spinal cord stimulator for the RSD in the lower extremities  
2 or for the low back pain and radiculopathy. There is no  
3 mention that this patient has been tried on epidural  
4 steroids to see if this can bring relief to the patient."  
5 So, they refused the blocks in the first one, and then they  
6 refused the subsequent treatment because he hadn't had the  
7 blocks. I want to add that Mr. Wexler's physician requested  
8 a consultation for chronic depression and suicidal ideation  
9 on two occasions in November 2004, and according to the  
10 record, and again I have copies of these U.R. reports  
11 attached to our response, and I have a copy of Mr. Wexler's  
12 physician referral for a consultation to a psychiatrist for  
13 suicidal ideation. They approved it the following May --  
14 I'm sorry the following March of '05 -- and at what point  
15 they finally agreed to one consultation. According to Mr.  
16 Wexler, there was a report written that suggested he needed  
17 quite a bit of help, but that recommendation was ignored.

18         The last example that I wanted to share with you today  
19 is Mr. Robert Sedam, S-e-d-a-m, a helicopter mechanic who  
20 also add 100% permanent disability due to his industrial  
21 injury, and this was a stipulated case, 100% case. Mrs.  
22 Kelly Sedam is here today and their two children are hear as  
23 well, Nicole and Jared. They drove up today, this morning,  
24 from Dinuba, and Mrs. Sedam will testify here today. But,  
25 to give you just a little bit of background, Mr. Sedam

1 suffered a failed neck surgery with complications, lumbar  
2 radiculitis, closed rib fractures, he suffered from  
3 seizures; and his treating physician, Dr. Salazar was  
4 extremely concerned about a compensable consequence of his  
5 surgeries, which is that of a blood clot. He felt that Mr.  
6 Sedam's life was in danger, and I have copies of his report  
7 attached to this submission that we have; and he continues  
8 to say in various reports that he felt that this was an  
9 industrial condition and literally is begging for AIG  
10 Insurance Company to provide a specialist to monitor him.  
11 Finally, in desperation, he was able to get him -- he  
12 actually saw his family doctor, I believe, to monitor  
13 equipment in. That, in fact, AIG was paying for, even  
14 though they were not paying for the specialist, and Dr.  
15 Salazar reported on 2/1/06 that, again, he believed the  
16 anti-coagulation problem was industrial.

17       They failed to authorize the specialist for this life-  
18 threatening problem, and in February of '06, suddenly, and  
19 without apparently following any utilization review  
20 procedure, denied all medications at the end of February.  
21 An Expedited Hearing was scheduled for June 20th, 2006, but  
22 Mr. Sedam was unable to attend. He died of a blood clot  
23 earlier this month. The hearing went forward and the  
24 workers' compensation judge told Mrs. Sedam that because of  
25 the 240 week limitation, she was not entitled to any death

1 benefits for her or their two children.

2           So, I'm going to stop at this moment, and come back,  
3 and allow Mrs. Sedam to give her statement.

4           KELLY SEDAM: Good morning. I appreciate the  
5 opportunity to speak to you today. My name is Kelly Sedam,  
6 and those are my two children. We drove up from the Central  
7 Valley today to be here with you. My husband, Robert, was  
8 injured as she said. He was a helicopter mechanic for 26  
9 years. He worked for the Fresno Highway Patrol. He was  
10 their chief mechanic when he was injured. AIG Insurance,  
11 his workers' comp. carrier agreed that he was 100% disabled  
12 from his injuries, and stipulated to lifetime medical care  
13 in 2003.

14           He had two failed neck surgeries, caused his neck to  
15 collapse. A third salvage surgery was required to try to  
16 repair the damage. He developed multiple problems as a  
17 result, including severe pain, seizures, infection, and  
18 blood clot. This is all while going through the workers'  
19 comp. process, and fighting them for the treatment that he  
20 required. He was prescribed as many as 10 to 12 medications  
21 for the pain, and his associated problems, but with the help  
22 of Dr. Salazar, his primary care workers' comp. physician,  
23 he eventually was able to improve to the point where he did  
24 not have to take any more of the opiate, very addictive  
25 medications. Dr. Salazar was extremely concerned and



1 worried about a blood clot issue that started in May of  
2 2005. He advised us he had requested that AIG let Robert  
3 see a specialist in November 2005 to deal with the blood  
4 clot. He believed that it was caused by his workers' comp.  
5 related injury, and subsequent treatment.

6 AIG had paid for all previous hospitalizations,  
7 treatment and Coumadin. I had to even administer the  
8 Heparin at home because they wouldn't pay for a home care  
9 nurse. He had Heparin medication -- they paid for that --  
10 and when AIG did not authorize the referral to the  
11 specialist, and Robert started bleeding from his ears, I  
12 rushed him to Dr. Salazar who was concerned, so concerned  
13 and worried about Robert's life that he told us to find --  
14 or go to our family doctor that would treat him outside the  
15 workers' comp. system, which would have to be paid by his  
16 Medi-Care. This also meant we would have to pay for part of  
17 his care, which we did.

18 In February 2006 the adjuster for AIG, after we had  
19 called in his refills for his medications, and we called the  
20 pharmacy to see if we could pick them up, and they told us  
21 they had all been denied, that the adjuster for AIG denied  
22 authorization for Robert. All of his medications -- because  
23 she said -- and that was to me on the phone after I called  
24 her -- that why were they denied, and she said that my  
25 doctor, Dr. Salazar, Robert's doctor, was trying to submit a

1 nonindustrial claim, and said she would not authorize any  
2 meds at all until she figured out what all of Robert's  
3 medications were for, who was prescribing them, and for what  
4 reason. They were stopped immediately. No notification.  
5 For one week, for only 4 of his meds, I had to go down, and  
6 it was over \$500 that we had to pay for them. This went on  
7 for 2 weeks. As a result of Dr. Salazar being so worried  
8 for Robert's life, he was trying to find a doctor to monitor  
9 him, even though AIG wouldn't pay for it.

10 AIG, is my understanding, did not send anything to a  
11 review process that I'm aware of. The medications were  
12 denied solely by the adjuster, at her discretion. In  
13 addition, numerous requests for doctors for Robert went un-  
14 answered back to November of 2005.

15 Around this time, also, my husband had tried to cash  
16 out his award. He told me several times, "Kelly, AIG --  
17 they're trying to kill me off." He was afraid that -- of  
18 the blood clot condition. He told me on numerous occasions  
19 he was scared and he would die from a blood clot, and that  
20 the children and I would be left with nothing.

21 His fears became a reality. He was 54 years old and he  
22 passed away on June 12th. The cause of death was DVT, deep  
23 vein thrombosis, blood clots to his heart, which caused  
24 immediate cessation of his heart and lungs. I'm sorry. I  
25 believe that if AIG had responded to Dr. Salazar's urgent

1 requests for Robert to see a specialist, he might be alive  
2 today.

3 I only told you about a small portion of the fights  
4 I've had with AIG on the phone, and what they put us  
5 through, but most important portion is that it had the most  
6 devastating impact on our lives. These adjusters cannot be  
7 allowed to play with peoples' lives, and must be held  
8 responsible for their actions. I hope and pray that you  
9 force these companies to do what they are supposed to do.  
10 My children are without the only father they've known, and  
11 I'm without my husband, but AIG won't have to pay any more,  
12 and it will cost them less, and it's cheaper for them now.  
13 I'm left -- everything stops as of June the 12th.  
14 Everything stops. I have no income. It ceases.

15 We went to the hearing board. I had to go on the 20th  
16 of June to the workmen's comp. hearing board -- Appeals  
17 Board. It was an Expedited Hearing on why they hadn't  
18 approved his -- and paid. We had a home care worker that  
19 would come in. They would not pay her for 2 and 3 months at  
20 a time. This went on consistently. We battled with them to  
21 pay her on a regular basis so she wouldn't quit. I got  
22 there and I asked them for a death benefit and was told  
23 because he died after 4.6 years from his injury, he was  
24 not -- we were not entitled to anything. Zero. His Social  
25 Security stopped. He got his last payment June 2nd. My

1 income -- that's it. Zero. And they're responsible. They  
2 are responsible for what happened to him.

3 This isn't just what happened over the last -- this  
4 has been going on since -- for 6 years. The last 2 have  
5 been the worst. It has been the absolute worst fighting  
6 these people every step of the way for something they have  
7 signed off on, and said he was 100% disabled, and were to  
8 provide him 100% medical care for his injuries.

9 Thank you for listening to me.

10 PEGGY SUGARMAN: I'm approaching almost 30 years of  
11 experience in the California workers' compensation system,  
12 and I'm appalled at what's happened to our system.  
13 Opponents might argue that our evidence is only anecdotal,  
14 and we're not the ones with access to all the information,  
15 nor money to fund a study. We can only provide proof of our  
16 allegations and hope that you take the responsibility  
17 seriously to regulate behavior of claims administrators,  
18 which with the affirmation of Labor Code Section 5814 has  
19 basically made it, in some cases, cheaper to pay a penalty,  
20 or not do something, than it is to do the right thing.

21 So, we thank you for your patience, and I want to make  
22 a few suggestions on the specifics of the proposal and I  
23 think overall what I see in these proposals -- and, again  
24 with all due haste I hope something is put into place --  
25 but, what I see is a passive system that you have put in

1 place here, where, you know, if you happen to find  
2 violations in an audit, or you happen to get complaints  
3 in -- and again not a very clear process for how to get a  
4 complaint in -- but, what I think needs to be done is to  
5 have a more active system of surveillance of claims  
6 behavior; and as I was writing all of these up and looking  
7 at all the documents --

8 I have more documents here being faxed to me as early  
9 as this morning. One is an Opinion On Decision in a case of  
10 Von's Grocery Company, applicant Terry DeWitt, which says in  
11 the Opinion On Decision that the removal of a ganglion cyst  
12 was denied, and the defendants were saying that the  
13 applicant failed to object within 20 days, but the judge  
14 says the 6/23/05 utilization review from Dr. Sax indicates  
15 that the excision of ganglion cyst to the left wrist is  
16 denied because, "We have not been authorized by the payer  
17 employer to review requests for ganglion cyst surgery," and  
18 the judge goes on to say there is no actual denial in the U.  
19 R. review other than the statement that they are not allowed  
20 to review the request; and, so, it occurred to me when I'm  
21 going through all of these, and I highlighted the statements  
22 for your review, that you really have a treasure trove of  
23 information.

24 These are cases where judges have heard the problems  
25 of utilization review, they have looked at all the notices,

1 they heard from defendants and applicants, so our suggestion  
2 here, and it's one I hope you will take very seriously, is  
3 that like our comment on 5814.6 regulations, that you  
4 require administratively all findings and awards of  
5 treatment authorized, where the judge has found that the  
6 utilization review procedures have not been followed, and  
7 that would, I think, more immediately give you a belter  
8 system of surveillance. It is not a perfect solution by any  
9 means because it certainly relies on workers to take the  
10 case to court, and again you've heard from Mr. Medeiros about  
11 the impact of delays, as well as Mrs. Sedam, whose husband  
12 died as a result of basically failures to respond. So --  
13 but, we think that at least that would be a step in the  
14 right direction to make an administrative process for all  
15 findings and awards for medical treatment to be sent to the  
16 administrative director and medical unit for review.

17 We also believe that the overall penalties are simply  
18 too low, and request that you resist pleas from the  
19 insurance companies to lower them. They simply have no room  
20 to imply that penalties will either increase premiums or  
21 otherwise cause problems that they themselves cannot  
22 rectify; and perhaps, with some serious oversight, that  
23 would be a needed incentive to get them to conduct  
24 utilization review programs with integrity.

25 I want to support the California Orthopedic

1 Association's comments and the comments of Steve Cattolica.  
2 I want to thank Sally King, again Voters injured at Work  
3 ambassador, he's also treasurer of the Solano County  
4 Republican Central Committee. Voters Injured at Work is  
5 working on both sides to try and come up with solutions to  
6 this. We see that penalties and surveillance are really  
7 needed to make sure claims administrators are doing what  
8 they're already required to do by regulation, and thank for  
9 your time.

10 CARRIE NEVANS: The next person we have signed up  
11 is -- Chris is the first name and I can't tell if the last  
12 name starts with an R or a D. Is that Dictell?

13 CHRIS DICHTEL: Dichtel. Hi, my name is Chris Dichtel,  
14 that's D-i-c-h-t-e-l. I was injured at work on January of  
15 2003 after working nearly 15 years in the San Francisco  
16 indecipherable with Local 510. During this time, at one  
17 point I was the editor of [indecipherable] called the  
18 WingNut, which had articles about worker safer,  
19 miner safety --

20 CARRIE NEVANS: I think you're speaking a little too  
21 quickly for our court reporter.

22 CHRIS DICHTEL: Sorry [indecipherable]. It had a  
23 pretty good reputation in the industry along those lines.

24 Sorry. Upon injury I was sent to the company's  
25 physical therapy unit for 3 weeks, signed off as back to

1 work with a knee sprain. Something like 6 weeks after that,  
2 in the parking lot, giving my girlfriend a hug, my knee gave  
3 out completely, put me in a fetal position on the couch.  
4 Went back to the clinic, told that same story to him, his  
5 response was can't help you it's not work related. Same  
6 knee, same spot, insisting that it was no relationship  
7 between those two incidents.

8       Two years yet in front a workmen's comp. to justify I  
9 had a workmen's comp. injury, the insurance company backed  
10 off seconds before the court and said okay it's workmen's  
11 comp. By that time my insurance had run out. I had to go  
12 get a second opinion on my own nickel, and finally some 2  
13 1/2 years after that -- actually, again got the case in  
14 front of the workmen's comp. board, and once again they  
15 backed off and signed off as to lifetime medical on the  
16 knee.

17       So, now I come back to my doctor, who all this time  
18 has been treading water trying to keep things okay. In the  
19 meantime he even sent a request for a bone scan and an  
20 x-ray -- immediately denied. Very sketchy reasons given  
21 saying why are you requesting both knees, and the report  
22 shows the left knee is doing better. The left knee was  
23 never even in question in any of this. It had nothing to do  
24 with the case at all, and as I understand it from the  
25 doctor, both knees being tested is absolutely routine



1 procedure, which anyone involved in the industry should  
2 know. But, my own doctor and his assistant's attempts to  
3 contact them, like my entire history with that, is mostly  
4 entirely non response.

5 I finally managed to get through to them myself. The  
6 adjuster -- this is, again, Gallagher Basset -- who says,  
7 well, what is it you're asking about? And I said, well,  
8 don't you have this on your paper, and my doctor sent a  
9 request to you over 3 weeks ago. She goes and looks, and  
10 comes back, and says, oh, well you already had x-rays. I  
11 said yes, that was like 2 years ago. He's trying to come  
12 back around and see the condition of it now again? So she  
13 goes well, I'm going to send it out, and they're usually  
14 pretty quick about this, and that's actually when I got the  
15 denial by a doctor that I was completely unable to get them  
16 to call him back. When they finally got through to somebody  
17 in the office, she said I'm here, but the adjuster's reports  
18 basically staying in contact with the doctor -- that was  
19 never done, and, so, I fell back in a lawyer's lap.

20 So, for 3 1/2 years after my injury, after having  
21 gotten lifetime medical on the knee, I'm still trying to get  
22 the most basic treatment on that thing without success. And  
23 I see my doctor and my lawyers spinning their wheels on both  
24 sides of me, and I'm dangling in the middle, and I feel like  
25 I'm one of the lucky ones, because I don't have a family to

1 support. I'm not losing a house over this. I lost my job.  
2 I lost my health insurance, but I just feel like I'm one of  
3 the lucky ones. That's terribly pathetic. I think it's  
4 immoral, demoralizing, and wrong. Like I said, I'm one of  
5 the lucky guys because this is not -- I can stand, I can  
6 walk. I'm not in a bed in a hospital, but I still think  
7 this entire thing is completely generating into a morally  
8 reprehensible situation. That's all I have.

9 CARRIE NEVANS: Okay. The next person we have signed  
10 up to testify regarding U. R. penalties is Dina Padilla.

11 DINA PADILLA: I don't have much more to say other  
12 than the fact that anybody who commits suicide, or dies  
13 because of lack of care, the situation deteriorates. This  
14 should be the biggest penalty of all. 5814, 5814.6 clearly  
15 wouldn't be enough. But, also, anybody who's been involved,  
16 to me, is like aiding and abetting when they make decisions  
17 on peoples' lives, and it causes suicide or death, that  
18 there should be criminal charges. This is no different than  
19 what happens in other aspects of health care, but to me, as  
20 far as I'm concerned, they need to go after anybody who  
21 makes these decisions that results in anybody's premature  
22 death.

23 CARRIE NEVANS: Okay the next person scheduled to  
24 testify on the U. R. penalty is Latrice Holley.

25 LATRICE HOLLEY: Holley spelled H-o-l-l-e-y, Latrice,

1 L-a-t-r-i-c-e. As you know, I've spoken before. I was  
2 injured in '92, and under the system in which I brought to  
3 have penalties in place it was always abused, always abused;  
4 and the penalties you're asking now they're saying that they  
5 may not be enough. The time period isn't enough. It's  
6 enough. You actually need to add more.

7         Very simple, my best example is recently I was sent a  
8 letter from my insurance company, the workers' comp.  
9 insurer, who told me my treating physician, a Dr. Woods, had  
10 declared me healthy, and the problem is I saw Dr. Woods as a  
11 QME one time, for 2 hours, in 1992. My treating physician,  
12 who I gave notice, with the receipt back for certification  
13 in the mail, has been Dr. Lee, and had been for several  
14 years, and a Dr. Stinson.

15         These abuses in the system needs to have clearer  
16 sanctions firmly, because when I called Dr. Woods, who  
17 incidentally had not been practicing in California in 8  
18 years, had been residing in Baltimore, Maryland at the  
19 Harbor Hospital, he couldn't remember me. He says I don't  
20 treat you. Until I faxed to him his report from 1992.

21         Now, every day I get problems or -- not every day --  
22 regularly from the insurer asking to buy back my medical.  
23 Every year -- 3000, 4000. I settled for a lesser workers'  
24 comp. settlement to keep my medical, and there's nothing in  
25 place to protect injured workers from this. I knew how much

1 it was worth under the current law, which was back in '95.  
2 I settled for far less than that was initially offered, and  
3 when you have adjusters come and send investigations or  
4 forms, have it under sworn penalty and perjury, so the  
5 person and the insurer can be responsible. They cannot say  
6 that was an inadvertent error, a rogue adjuster. Nothing  
7 that they send out, nothing that they attest to has to be  
8 signed, because if you notice, on the workers' comp. forms  
9 that you get to injured workers, we all have to sign it  
10 under penalty of perjury everything is true and correct. It  
11 should work that way to the industry, and that will assist  
12 this burden documenting their frauds, their abuses, and  
13 there for keeping a current record on the individuals  
14 involved, and that's all I have to say right now.

15 CARRIE NEVANS: Okay, the next person signed up on  
16 utilization review testimony is Nina Bartholomew.

17 NINA BARTHOLOMEW: Nina Bartholomew,  
18 B-a-r-t-h-o-l-o-m-e-w, N-i-n-a. I think it should be  
19 mentioned on the record how much money Latrice Holley gave  
20 up to keep her medical records -- keep her medical  
21 benefits -- and I just checked with her. It is \$40,000 in  
22 permanent disability that she had been offered, which she  
23 gave up to keep her medical benefits at the 1995 levels for  
24 the rest of her life, and has not received payment for  
25 medical expenses for at least 4 years.

1           Now, I looked over these proposed regulations and  
2 these are my comments:

3           9792.11 in Investigation Procedure (a) and (b). The  
4 only requirement in terms of the investigation is review of  
5 insurers' documents. That imports into the regulation a  
6 presumption of credibility in favor of the insurer, and a  
7 presumption in favor of the privacy of insurers' records,  
8 and I don't think there's any reason to import those into  
9 the records, because insurers notoriously falsify records,  
10 make records disappear, and withhold records, and carefully  
11 arrange what they produce.

12           I think a few things need to be changed in 9792.11 (a)  
13 and (b). To begin with, as far as the insurers' records are  
14 concerned, each and every document submitted should be  
15 signed under penalty of perjury, and the person who's  
16 gathering up the records and submitting them should sign a  
17 statement under penalty of perjury describing themselves as  
18 the custodian of records, and certifying not only that these  
19 are accurate copies, and a complete copy of the file -- and  
20 all that should be done under penalty of perjury.

21           I and Latrice personally spoke to a supervisor in the  
22 Fraud Division of the Department of Insurance, and 20 years  
23 of experience, and he told us, that even at the Department  
24 of Insurance Fraud Division, they doesn't have a single  
25 expert in place who's capable of giving an opinion on

1 examination of an insurance file, as to whether or not that  
2 insurance file is complete; and in fact, with respect to  
3 Latrice's case, we then had to seek out a disability --  
4 licensed disability analyst, licensed by the Department of  
5 Insurance. There are, I think, about 50 of them in the  
6 entire state, and before the Department of Insurance will  
7 give you the name of one, they want you to pay them \$50,  
8 which is very strange. It took Latrice a great deal of  
9 effort to even find one, and when she got him to look at the  
10 records, the fee was in the thousands of dollars, and he  
11 only included the absolutely -- they left out about 25,000  
12 pages, and not only that, but they had very carefully, you  
13 know, selected, picked, and chosen, and covered up with  
14 little stickees -- and so those are the games that they  
15 play.

16         So, to review, you know, records which could be  
17 fraudulent, that's not an investigation. Everything should  
18 be under penalty of perjury. Moreover, you need to put in  
19 some requirements that put a check on fraud by the insurers.  
20 To begin with, and I think it is very important, that the  
21 department does keep on staff a licensed disability analyst  
22 to examine the documents turned over in its utilization  
23 process, and to determine whether or not they do appear to  
24 be full, accurate, and complete records; and there are some  
25 very basic things they can look at. For example, are the

1 records in chronological order or do some letters have --  
2 there's a 5 page letter and pages 1 and 2 are missing. They  
3 can look at that, and somebody has to know what they're  
4 looking at. Secondly, the worker should have some input  
5 into this. Why is the worker continually excluded? It's  
6 like the worker doesn't exist in the process of  
7 investigation. The investigation is supposed to be being  
8 done by the government, not the insurer, so the workers need  
9 to be invited in here. If an investigation is being  
10 conducted, that investigation -- the worker should be  
11 notified, and there should be some specific requirements  
12 that the worker is contacted, that the worker is given an  
13 opportunity to inspect the records turned over by the in-  
14 surer to determine whether or not they're accurate, to be  
15 given an opportunity to give input into the investigation as  
16 whether those records are accurate, complete, and true; and  
17 we can't ignore the fact that the worker may have records  
18 which are critically important to the investigation, and  
19 they aren't given an opportunity for the worker to present  
20 those records to you, and those should be mandated just as  
21 much as the review of the insurer's records. A mandate to  
22 contact the worker, to give them an opportunity to review  
23 the records that were submitted, provide them a copy of  
24 those records at no charge to them, and to be able to submit  
25 their own records and their own comments. That's a real

1 investigation. This is a white-wash that's provided in this  
2 whole area. If we assume that the insurers are saints and  
3 angels, and all these documents are true, maybe that would  
4 be justified. We can't assume that because it's just not  
5 true.

6       Next of all, I'd like to go on to 9792.12. I think  
7 there's something that's -- there's a penalty here that is  
8 omitted that ought to be considered by the board, and that  
9 is the penalty that by operation of law the treatment  
10 request is granted. If there is, for example, no response  
11 within X number of days. A subsection should be set up to  
12 that effect. These penalties really in addition to the fact  
13 they're really just a business expense for the insurance  
14 industry and won't really have any affect on them, certainly  
15 doesn't do anything to actually address the problems that  
16 workers' have, and an appropriate instance should be  
17 considered to impose a penalty of automatic approval, or  
18 maybe even in a particular case from now on everything that  
19 that worker wants is automatically approved by operation of  
20 law, and I'm not sure to what extent that type of penalty  
21 could be put in, but it should be considered.

22       And on the second MPN statement calling for criminal  
23 penalties in cases when suicides and deaths -- certainly,  
24 once again, referral for criminal prosecution would be an  
25 appropriate penalty. That should be considered.



1           There was as prior speaker who mentioned that a  
2 maximum \$50,000 and no minimum -- the maximum, that was a  
3 good point, and I want to second that, but, also, the  
4 maximum of \$50,000 -- you think about the cost of medical  
5 care today. How much do you get for \$50,000? You know, a  
6 couple of procedures. You know, if they can get away with  
7 denying 2 procedures, you know, they can make up the  
8 \$50,000. It's not a significant penalty.

9           Now on with 9792.13 under section (d) there's an  
10 opportunity to convey -- evade -- evade penalties by blaming  
11 the worker for not cooperating. What's really interesting  
12 about that is that the same procedure -- proceeding -- that  
13 you can think about blaming the worker for not cooperating  
14 so don't have to pay a penalty, there's no requirement that  
15 you notify the worker that the hearing is taking place. How  
16 is the worker supposed to be able to come in there and tell  
17 you that he did cooperate? He doesn't get a chance to do  
18 that, so that's pretty easy. The worker doesn't about it,  
19 the insurer shows up, and boom, the worker didn't cooperate.

20           There's something else that's really missing, very  
21 seriously missing, and that is additional penalties and  
22 penalty adjustment under are 9792.13 for aggravated behavior  
23 by the worker -- I mean aggravated behavior by the insurer.  
24 What if the worker could demonstrate that the insurer  
25 intentionally lied? For instance, subjected him to abuse by

1 its employees, falsified records, intentionally and  
2 purposely denied treatment that they knew they had to  
3 approve; for example, by at the last moment before the  
4 hearing changing their position. That's good evidence of  
5 that. None of those things are listed in 9792.13 as a  
6 factor for aggravating -- as a factor in aggravation to  
7 increase or adjust the penalties. So, the worker's conduct  
8 is an example for an excuse for the insurer to receive a  
9 lesser penalty, but the insurer's conduct is not examined  
10 for a reason to grant a larger penalty. That needs to be  
11 corrected.

12 Under 9792.14 I notice that assessments are all  
13 directed at the entity -- and I haven't had an opportunity  
14 to review -- read the Labor Code Section and some of these  
15 materials prior to coming here today, but I think that some  
16 consideration should be given to imposing penalties on  
17 individual employees, or considering it in addition to  
18 imposing it on the company itself. That might have more  
19 affect on deterring the type of behavior that these  
20 penalties are intent to deter.

21 Unfortunately, in this state, we don't licensed  
22 insurance adjusters, as in many other states they're  
23 licensed, so the adjusters have no motivation whatsoever to  
24 be honest, and that's something that should be considered.

25 Going to 9792.15(a), I mean (d) --

1 HEARING REPORTER: Did you say B or D? B as in boy,  
2 or D as in dog?

3 NINA BARTHOLOMEW: I said D, as in dog. So there's a  
4 requirement that the Order to Show Cause be served on the  
5 employer and the administrator. There's no requirement that  
6 the order be served on the injured worker involved in the  
7 case. That needs to be corrected. The injured worker is an  
8 interested party. He should be notified. He should be  
9 there, due process requires it.

10 If we go on to (g) we see that the insurer is allowed  
11 to submit a response that is not verified. In other words,  
12 he's allowed to make false statements with impunity. What  
13 is the point of engaging in the procedure if people are not  
14 being honest? That needs to be changed. Any answer  
15 submitted by the employer should be signed under penalty of  
16 perjury. It should be verified. You know, when -- as  
17 someone else previously mentioned, when a worker submits  
18 documents, they're required to do so with some verification,  
19 and the insurer should be treated similarly.

20 Now, I notice under (j) that the statement that the  
21 administrative director can issue subpoena to the attendance  
22 of people residing within the state. That is the law.  
23 However, that did bring to mind one important thing that I  
24 think serious consideration should be given to by this  
25 board, and that is a requirement that all utilization review

1 take place within this state, and that all documents  
2 relating to utilization review take place within this state,  
3 because the reality is, that all they have to do is move it  
4 out of the state, and then you can't investigate, you can't  
5 find out what happened. So, that needs to be addressed. If  
6 the subpoena power is within the state, which it is, that  
7 otherwise there's some right needs to be sought with the  
8 federal court and the congress, U. S. Congress, to create  
9 some kind of federal law that allows individual boards to  
10 seek help from the federal courts to issue a subpoena for  
11 records that are outside the state, and I think at least one  
12 other person here has mentioned the fact that their  
13 utilization review took place across state lines.

14 Now, once again -- now section (r) is the next one I  
15 want to go to -- also 9792.1 -- I think I got out of order  
16 here. I missed 9792.12 (r), which is another one that I  
17 wanted to address, and that one relates to the proposal that  
18 there should be language that says that the attorney's fees  
19 will be deducted from awards of disability benefits if  
20 someone consults an attorney. Now, again, I'm not familiar  
21 with the statute that this regulation relates to, but I  
22 would say that many of these people that we've heard from  
23 today have a final settlement -- a final settlement granting  
24 them lifetime medical. So, this becomes extremely  
25 ambiguous, and I think the situation needs to be clarified,

1 and reconsidered; that if someone has a lifetime award of  
2 medical benefits, goes in and gets an award stating that  
3 this benefit has to be provided, and if that person has to  
4 retain an attorney to enforce that settlement, then it  
5 doesn't make any sense that the cost of that attorney will  
6 be deducted from the disability benefits. In fact, one of  
7 the penalties that should be placed on the insurer is a  
8 penalty that he would have to pay the attorney fees, and  
9 otherwise, once the medical benefits is awarded, the person  
10 still can't have treatment because the cost of the attorney  
11 will come out of the cost of the treatment, and then the  
12 treatment isn't paid for. So, it defeats the purpose. So,  
13 this is very perplexing.

14 Now, I also want to address the issue of the ACOEM  
15 Guidelines. One of the first speakers today mentioned the  
16 fact there are copyright issues with respect to quoting the  
17 ACOEM Guidelines in any of these utilization review  
18 decisions. Now, I know once SB 899 first passed, and the  
19 reason I learned about the ACOEM Guidelines is because I  
20 tried to get a copy. We found it impossible to get a copy  
21 because the cost of the guidelines was somewhere north of  
22 \$150, \$165, \$185; and, I always understood that any laws  
23 that are passed by the State of California regulations have  
24 to be published. You know -- and yet the ACOEM Guidelines  
25 are privately published, and held privately, and now this

1 person that was speaking here earlier today is, in fact, you  
2 know, indirectly suggesting that because of the copyright  
3 issues, perhaps, you should reconsider the requirement that  
4 specific portions of the ACOEM Guidelines that are relied on  
5 denying treatment should be stricken from any decisions; and  
6 I hope that you will not do that. I think that the proper  
7 action to take, since the ACOEM Guidelines have been in  
8 place and been utilized for so long, and I think much longer  
9 than they originally intended to be used, that they make  
10 demand on these ACOEM Guidelines be considered, because how  
11 are people supposed to respond -- to attempt to deny them  
12 treatment based on the ACOEM Guidelines if they can't read  
13 them -- couldn't find them in any law library -- maybe  
14 they're there now. People cannot argue over whether or not  
15 they're entitled to treatment based ACOEM Guidelines if they  
16 can't see them and read them, and that is a serious issue.  
17 So, if there's a copyright issue, perhaps you should give  
18 some consideration to taking whatever steps are necessary to  
19 obtain a license, or take eminent domain on the ACOEM  
20 Guidelines so that people have access to them, instead of  
21 restricting them.

22         Now, the last thing that I want to address is the  
23 issue of the hearings themselves under 9792.15 -- let's  
24 see -- (n). It states here that written documents can be  
25 submitted, and it states that oral testimony should be heard

1 under penalty of perjury, but where is the requirement here,  
2 also, that the documents be submitted under penalty of  
3 perjury, and that they all be properly sworn and submitted  
4 by the custodian of records who testifies to the accuracy of  
5 the copies? That's a deficiency here too.

6 I see that under (o), oral testimony shall be taken  
7 only on oath or affirmation. Without that done, I don't see  
8 the oath. So why should these documents be submitted if  
9 they are not under penalty of perjury, and I want to add  
10 that when these documents are submitted under penalty of  
11 perjury, there also needs to be set up a system whereby a  
12 worker who detects perjury in them can request the  
13 department to make a referral for criminal prosecution for  
14 that perjury, otherwise, without enforcement, the perjury  
15 requirement would be meaningless. That's everything. Thank  
16 you very much for your attention.

17 CARRIE NEVANS: That's everyone who signed up  
18 currently on the Utilization Review Testimony Sign-in Sheet.  
19 Is there anyone else here who would like to give testimony?

20 VOICE FROM AUDIENCE: I signed up.

21 CARRIE NEVANS: Okay, maybe there's a sheet over there  
22 that I didn't get, because I only have two, and I've gone  
23 through all the mail.

24

25

1           MR. ZELTZER: Okay. My name is Steve Zeltzer. I'm  
2 the Chair of the California Coalition for Workers Memorial  
3 Day, and I wanted to comment about this topic, Utilization  
4 Review, we're dealing with here today, because at this  
5 hearing we heard from the Association of Orthopedic  
6 Surgeons, that they are not going to be doing in the future  
7 anymore surgeries on workers in California -- injured  
8 workers in California, because they're not getting paid.  
9 They're not being authorized by the insurance companies.  
10 Now, I think that's a state of emergency for the people of  
11 California and injured workers, when the Orthopedic Surgeons  
12 Association says that they can't do it anymore; they can't  
13 operate within the system. And I think that that's what  
14 we're dealing with, a state of emergency, which is not going  
15 to be resolved simply by a couple more rules or regulations.  
16 There's a crisis and a collapse of the whole workers' comp  
17 system in front of our faces. That's what we're seeing  
18 here.

19           Now, we also learned today that brother -- brother  
20 Sedam was murdered, really, by insurance company, by  
21 withholding medication, by withholding medical services. I  
22 ask this Commission, I think you need to file criminal  
23 charges or have a hearing and file criminal charges against  
24 the A -- AIG for murder. That's what we heard today; that  
25 they consciously murdered an injured worker so they wouldn't



1 have to pay his medical expenses. Is that what we heard  
2 today? In the testimony? Is that what we heard? Murder?

3 The amazing thing is this month there was another  
4 murder. There was a murder of William Bill Goddard, of  
5 Gallagher Bassett -- he was insured by Gallagher Bassett,  
6 and he committed suicide because he could not get his pain  
7 medication.

8 What are you going to do about Gallagher Bassett? I  
9 think there need to be criminal charges, and these  
10 executives have to be put on trial and then put in jail for  
11 their murders. That's what I think the people of California  
12 and the working people of California need to hear from this  
13 Commission, that criminal activity by the insurance  
14 companies, terror tactics and murder by the insurance  
15 companies is going to be addressed by this Commission.

16 Unfortunately, there are no criminal penalties in your  
17 proposed rules. In other words, the destruction that has  
18 been indicated here in testimony by workers, the  
19 deterioration of their injuries, the destruction of their  
20 lives and their families, all you're going to do is you're  
21 going to tap them on the hand? What is \$10,000? What is  
22 \$15,000 to insurance companies that make billions of  
23 dollars? What are we talking about here? Companies who are  
24 making billions of dollars, and you're going to give them a  
25 \$50,000 fine? Maybe? In order to get that fine, you have

1 to roll through hoops. This is not a serious action to  
2 punish criminal activity. This is not a serious action.

3         The other thing is the question of these insurance  
4 companies, who come here today and said that they're doing  
5 the best they can. Well, I think that if they continually  
6 violate the laws which results in injury and death of  
7 workers, they should have their license pulled to operate in  
8 California. That should be part of legislation. Take away  
9 their license to operate. These insurance companies have no  
10 right to operate in California, if they have a systemic  
11 record of violating insurance laws and not covering workers.  
12 That should be one of the penalties that we propose for  
13 remedying the problem of injured workers.

14         The other thing is that, you know, there needs to  
15 be -- there's a cost shifting, and this is not an accident,  
16 this is not a big mystery. This is not something all  
17 disconnected, it's all very confused. There's a very  
18 conscious cost-shifting plan by these insurance companies to  
19 shift their cost to the public. And we need to find out,  
20 for example, these workers who are testifying who are not  
21 getting medical care, where are they going, some of them?  
22 They're going to SSI. They're going to MediCare. They're  
23 going to other government agencies, city agencies, to get  
24 services. So there's a cost-shifting scheme of the  
25 insurance companies to shift their cost. I think there has

1 to be penalties for that. Big penalties. Because they're  
2 defrauding the public. They're defrauding the people of  
3 California by cost-shifting their legitimate expenses, which  
4 they promised when they sold this insurance, that they would  
5 cover the cost of injured workers. They're not doing that.  
6 So there needs to be penalties against these companies for  
7 cost-shifting, conspiring to defraud the public is really  
8 what's going on.

9 Now the other thing is the problem of these insurance  
10 companies is a systemic problem. And we've all been heard  
11 about Warren Buffet giving all this money away from the  
12 goodness of his heart. Well, it just turns out Warren  
13 Buffet gave hundreds of thousands of dollars to Governor  
14 Schwarzenegger in his election. And what do you think that  
15 that money was for? That money was for 899. That was money  
16 for deregulating the insurance company. This Commission and  
17 the Administrative Boards of California are controlled by  
18 Governor Schwarzenegger on behalf of Warren Buffet and the  
19 insurance companies, because that is who is benefited by the  
20 deregulation of workers' comp.

21 So I think that there has to be an outside  
22 investigation and independent Federal investigation. I  
23 think this Commission should call on the Attorney General of  
24 the United States to set up an independent commission to  
25 investigate the insurance fraud going on in workers' comp,

1 and the conflict of interest. When you have William Zachary  
2 on the Fraud Insurance Commission, and you have the  
3 executive from the State Workers' Compensation Board on this  
4 Commission, which is to investigate themselves, and they're  
5 being charged with insurance fraud? How are you going to  
6 handle proper oversight and regulation?

7 AUDIENCE MEMBER: It's a joke.

8 MR. ZELTZER: So I think that this Commission, if it  
9 really wants to solve it's problems, has to propose serious  
10 penalties, criminal penalties, taking away the license of  
11 these insurance companies, and also call for the Federal  
12 government for an independent investigation of the workers'  
13 comp industry. I think that's absolutely critical.

14 And I think that the -- that these workers who've  
15 died, these workers who've been injured, the workers here,  
16 who've suffered basically pain and hell, no fault of their  
17 own, because of death, murder, because of their injuries,  
18 this is unacceptable. And the root cause, the root cause of  
19 this is the insurance industry. And that's why these  
20 reforms that you're even proposing, mild as they are, aren't  
21 going to get to the root of it. The root of it is the  
22 insurance industry makes money by not taking care of people,  
23 and they're running the health care industry and they're  
24 running the health in the workers' comp and the health in  
25 California. That's the problem.

1           We have an insurance industry, and they're not here  
2 anymore; the insurance executives have left; the crooks who  
3 are stealing from the people of California, they're not here  
4 anymore. But these people are stealing from the people of  
5 California, and these people are running the health care  
6 industry which prevents working people from getting proper  
7 medical care. And that is a systemic problem, and that is a  
8 problem that is not going to be addressed simply by fining  
9 them a couple of dollars. Thank you.

10          MS. OVERPECK: Thank you. Angela Cross? Oh.

11          MR. ROCKWELL: Do you have the first page? I signed  
12 up on the first page.

13          MS. OVERPECK: What's your name?

14          MR. ROCKWELL: David Rockwell.

15          MS. OVERPECK: Why don't you go ahead, and I'll come  
16 to Angela next, and I'll look and see what happened to that  
17 list.

18          MR. ROCKWELL: I'm David Rockwell. I'm President of  
19 the California Applicants' Attorneys Association. Given in  
20 the context of what we heard today about the tragic death of  
21 Mr. Sedam, I want to open up with -- I'm going to take  
22 something out of my presentation. I've worded my  
23 presentation. Under Multiple Instance Penalties, item  
24 number 1, it says, for each instance in which an expedited  
25 review decision is requested and appropriate, for the

1 failure to make a decision in a timely fashion, not in  
2 excess of 72 hours, after receipt of the information  
3 reasonably necessary to make the determination, the fine is  
4 \$200 for 10 or fewer violations. The expedited review  
5 decision by statute and 4610 is designed when there's an  
6 imminent and serious threat to the life or health of the  
7 injured worker.

8         Imagine if Mr. Sedam had been approved or had -- or if  
9 this procedure had been followed, and there was no question  
10 that he needed that medicine, they would have had to do that  
11 within 72 hours. What is the fine for Mr. Sedam's death  
12 under these proposed regulations? Two hundred dollars  
13 maybe? It should at least be a single instance penalty for  
14 denial of -- for an improper -- for the failure to follow  
15 the provisions of the statute for an expedited review.  
16 That, that is criminal.

17         I spend much of my time at the Workers' Comp Board  
18 fighting Utilization Review. A lot of times I get there and  
19 there's finally an attorney on the case, and they've caved  
20 in. They say, no, this was not done timely or it was done  
21 incorrectly or, well, we were wrong and we agree.

22         I have one case that's a year and-a half old, and I  
23 have been up there six times on Utilization Review issues  
24 for a woman who was severely injured in a car accident.  
25 Every time I go up there, they say, "Okay. We'll do it."

1 There's talk before by Ms. Sugarman about the increases in  
2 attorneys' fees. It's because the defense attorneys are  
3 spending their time and being paid by insurance companies to  
4 go to these expedited -- to go to these expedited hearings  
5 on UR denials. That's what's happening. That's why they're  
6 quite happy to see the further delay in this case. And the  
7 insurance carriers would rather pay their attorneys than to  
8 pay for your care.

9           Claim frequency is down 40 percent in the last --  
10 since the passage of SB 899. Forty percent. Do we really  
11 believe that 40 percent fewer workers are being injured, or  
12 is it more likely that 40 percent -- that workers understand  
13 what's going on and go get care somewhere else and don't  
14 even bother filing for workers' comp? That is what's more  
15 likely.

16           We've heard many comments, good comments about what's  
17 wrong with these regulations, and I want to touch on some  
18 more of those before I move on.

19           First of all, this -- even though there were emergency  
20 regulations regarding Utilization Review in effect for the  
21 last year and-a-half, these penalties will only affect  
22 those, as I understand it, that occur on and after August 1,  
23 2006, the onset of these regulations. So that means that  
24 the carriers who are engaged in this action for the last two  
25 years skate. And they get by with these kind of things

1 which have cost already a person his life.

2 I touched already on the problem with the serious --  
3 imminent and serious threat to the health of the injured  
4 worker, and I would like to add that as well, there should  
5 be multiple, where they're multiple -- there should be  
6 emphasis also on determining whether multiple problems have  
7 been created in one file; that is if I have -- my client has  
8 been denied on multiple occasions wrongfully, and I had to  
9 make trips up there and she has as well, losing time from  
10 her family and from work, there should be increased  
11 penalties where the same file has been mishandled  
12 inappropriately for so often. That means that the insurance  
13 carrier has a bad adjustor ruining the life of an injured  
14 worker, and they shouldn't get off with that.

15 I have written comments, and I'm just going to pass  
16 over those briefly and pass them out, but I echo the  
17 comments made earlier that there's -- there is no procedure  
18 set forth for anyone, an injured worker or his or her  
19 attorney, in filing a claim, a complaint. And, again, as  
20 emphasized by other speakers, what is the involvement of the  
21 injured worker in that?

22 The discretion in the penalty amounts is as, even the  
23 representative of the CMTA stated, in the discretion given  
24 to the Administrative Director there are not sufficient  
25 criteria to determine how that discretion is to be



1 exercised. There is, for example, the statute or the  
2 regulations speaks of the medical consequences or gravity of  
3 the violation. What exactly? How? What's to guide her in  
4 determining whether she should order the top end of the  
5 penalty or the lower end, or nothing? How does one measure  
6 the good faith of the insurance carrier? Either you  
7 followed the law or you didn't.

8 I agree with the comments of Mister -- I'm sorry, the  
9 representative from CSIMS, Mr. Cattolica, that said -- when  
10 he said there should be a minimum penalty for these  
11 violations. The carriers are already laughing because of  
12 the changes to 5814. This has not stopped them from  
13 laughing at the effects of their misfeasance on injured  
14 workers. Comments were made, that I join in, about blaming  
15 the injured workers for delay and not getting the injured  
16 worker a chance to respond to that. That makes no sense to  
17 me whatsoever.

18 I strongly disagree with representatives of the  
19 employers when they said that they needed more time and they  
20 shouldn't be penalized and that they should be allowed up to  
21 the maximum 14 days. We're dealing with people's health  
22 here. And that cannot be any more delay than necessary.

23 With that, I'll turn in my written remarks and  
24 conclude. I have seen too much of the delay hurt my  
25 clients. I have seen delay by this Administration in

1 refusing to come up in a timely fashion with adequate  
2 medical treatment guidelines; it's taken them too long to  
3 come up with even these regulations. And they should be  
4 enacted as quickly as possible and with more teeth in them.  
5 Thank you.

6 MS. OVERPECK: Angela Cross.

7 MS. CROSS: So, I really am kind of disheartened  
8 coming up here, and I really don't think that my words are  
9 going to make much of a change, just because that's my  
10 experience as being an injured worker in the system, that  
11 you can keep spewing things, you can point out faults, you  
12 can say I subpoenaed them for records, they never answered  
13 me. You can take that to the judge, you know, the head of  
14 the judge. I don't know how someone gets elected Judge of  
15 the Year, but, you know, I've had very, what I would  
16 consider -- you know, I went in front of one judge, and he  
17 -- it was right when the ACOEM Guidelines changed, and there  
18 was a shift. There was an en banc decision made, and he  
19 just last-minute said, "Well, there's this decision made and  
20 I'm going to give this to you, and then you can figure it  
21 out." This was after I had requested -- it was supposed to  
22 be an expedited hearing. It was scheduled for a mandatory  
23 conference. I wrote numerous letters trying to get it  
24 changed. That wasn't changed, and the judge just instantly  
25 continued to delay it by not rescheduling it. After there

1 was no communication, he said, "Well just -- I'll turn it  
2 over to the A&I (sic) Office. You guys can both go review  
3 it. She knows all about it." A&I Office knew nothing about  
4 it, that Willette and A.U. frickin' case.

5         And there's been no accountability for me, for any  
6 actions done. And I don't really know, you know, do you  
7 guys really care? I mean are you really going to be able to  
8 make a change? Are you really going to go to these people,  
9 these judges who are supposed to be upholding the law when  
10 you tell them that "I subpoenaed records," they didn't  
11 answer to them. "I subpoenaed all these records to  
12 represent my case." They haven't answered them. And the  
13 judge says, "Well, I'm only interested in this one record."  
14 Now that was about six months ago. They still haven't  
15 answered that. I wrote to the judge. She said, "Inform me if  
16 you don't get this record." I wrote a letter. No one has  
17 done anything. It all falls on deaf ears.

18         And, physically, I feel like I'm being discriminated  
19 by the Workers' Comp Appeals Board now, because I cannot  
20 keep up physically with my upper body restrictions on  
21 corresponding, everything that I need to do and say with  
22 people. And I've outreached to them, and I've said I need  
23 extended times to, you know, state my case. I need -- I  
24 really need someone to, you know, I hate to say it, but  
25 hold my hand. The A&I Officer is not -- no disrespect to

1 the A&I Officer that was here, but on numerous times, the  
2 A&I Officer did not know how to digest the law or even  
3 understand the law, and I agree on numerous times tried to  
4 find ACOEM Guidelines when they were used against me. I  
5 could not find them. I went to the A&I Office. There  
6 should be a copy of Guidelines that are used to make your --  
7 against you, in the A&I Office. There is not. It's very  
8 dysfunctional system. And even now when I go into the A&I  
9 Office, which I kind of just stopped doing because it just  
10 seems relatively pointless, I ended up with a copy of the  
11 judge's ACOEM Guidelines to bring out to the copy machine,  
12 in which you can only make copies if you have a card that  
13 you can only get for \$40 that you have to find -- sign a  
14 form to get.

15       So there's really no way that an unrepresented worker  
16 can legally -- Like I just can't -- there's -- economically  
17 I'm at a major disadvantage, and for me to go through the  
18 process of getting reimbursement for expenses that I've  
19 done, it takes more paperwork. I can only generate so much  
20 paperwork. I can only keep my mind on so many things at one  
21 time and pull them altogether. I can only handle the issue  
22 that they're denying all these treatments, that they're --  
23 got these penalties, and I did file grievances with numerous  
24 people involved in this case from the QMEs; I haven't  
25 figured out quite yet how to file a petition against the

1 State Bar for the inappropriate actions by the defense  
2 counsel, but there's been numerous ones, and there's not  
3 enough direction for people that are unrepresented.

4         And as an unrepresented person, who settled with a 40  
5 percent disability with a Compromise and Release with open  
6 medical, I cannot get a lawyer at this point in time. There  
7 is no way for me to access a lawyer. Mentally, I am having  
8 a harder time digesting. I have to take more painkillers.  
9 And I have all my treatments. When I settled with that  
10 Compromise and Release, I was getting a lot of treatments  
11 that were helping me move forward and stay out of pain. Now  
12 I have to take morphine sulfate, and I don't know where the  
13 direction is going, and it's devastating to hear that people  
14 are dying.

15         And I do feel like one of the lucky ones, because, you  
16 know, I can stand here. You know, I can stand here. But I  
17 have a constant pain that is in my body that hasn't been  
18 addressed, and I went to my treating doctor whose a hand  
19 specialist, because when this first happened I worked with  
20 my hands doing wood finishing. I was very proud of my  
21 abilities, and I have lost that ability to -- I have lost  
22 the ability to brush my fuckin' hair. I mean, look! This  
23 is what I came today with, my hair like this [speaker  
24 demonstrating] because it hurts my upper back to brush  
25 through my hair. And I was getting house cleaning help when

1 I settled, and I was getting several other therapies that  
2 really helped, and now I'm getting nothing and fighting for  
3 acupuncture, and dealing with a defense counsel that is  
4 blatantly abusive and aggressive; has said to me in the  
5 courtroom in front of the judge, "Stop acting like a  
6 lawyer." He's accused me of now, to a psychological QME, he  
7 wrote a very obnoxious letter, which he has yet to send me  
8 anything that he sent to the QME ten days prior, stating  
9 that I had litigation-mydrosis (sic), or some type of thing,  
10 that I had a problem because I was trying to represent  
11 myself, and, you know, I feel very wronged when I am  
12 wronged. And I don't just like to lay down and let shit  
13 happen.

14 I really think there needs to be some serious  
15 accountability, and I don't know how to incorporate that. I  
16 know you guys do not have an easy job ahead of you, by any  
17 means. I don't even know how you take all this information  
18 and put it into something, but what is dumbfounding to me is  
19 that these laws that are proposed and that these laws that  
20 have already been implemented and have been applied to me  
21 retroly (sic) which I find dumbfounding and illegal, are  
22 still in need of serious comments that have been made here,  
23 serious things that with regards to the fact that this is  
24 workers' compensation, and is supposed to support injured  
25 workers, there are major things that have been left out of

1 these, that I cannot believe that these were even allowed to  
2 be implemented and accepted without the considerations that  
3 have been stated today. I mean these seem like very basic  
4 concepts.

5         Then, also, just briefly looking through this, the  
6 whole concept that, you know, \$6,400 for more than 40  
7 violations. How many violations do you get before you're  
8 fired? You know, it's really ridiculous. You know. It's  
9 bullshit is what it is. And I apologize, but I really do  
10 appeal to you guys to implement some serious change and  
11 bring in the Federal Courts on these and get some serious,  
12 you know, evaluations into what is going on. Do you really  
13 want California to go down a pool -- a pool of crap? You  
14 know, we are going into. We need to be for the people and  
15 not for the insurance companies.

16         AUDIENCE RESPONSE: Thank you.

17         MS. OVERPECK: All right. Jo Cinq-Mars? Jo Cinq-Mars?  
18 Is there anybody else who had wanted to speak, who has not  
19 yet spoken? Okay, sir. Come up here and then you can say  
20 your name into the microphone, please, sir.

21         MR. LEEDIE: My name is Michael Leedie. The last name  
22 is spelled L-E-E-D-I-E. I'm not that familiar with the  
23 regulations that are being proposed, but it's pretty clear  
24 to me that in terms of the monetary punishment, this is  
25 woefully inadequate.

1 I myself was injured in 2004, at the end of 2004, and  
2 I went to the company doctor, was treated, went through a  
3 nine-month period of rehabilitation and went -- was returned  
4 to work. And I was doing okay for about a month. And then  
5 some of the same problems came back on me. But I only got  
6 one visit with my treating physician, and then the trouble  
7 started. I can't -- I'm not going to go through all the  
8 details, because most of you here who are injured workers  
9 are aware of the kinds of problems and everything that  
10 everyone stated here are the same kinds of things that  
11 I -- It was like de ja vu. I thought I was the only one.

12 I consider myself fortunate. I have a wife who  
13 happens to be working right now. She has a private health  
14 plan, and it's just this last two weeks I decided that I  
15 needed to do it that way, try to get the care that I needed  
16 through a private health care plan. But what if I didn't  
17 have that option? What if I were a person who just didn't  
18 have it?

19 I'm not working now, because -- I'm not on disability.  
20 I'm just decided I'm not going to injure myself anymore. I  
21 need to find a way to take care of myself. And it's because  
22 of, probably because of some claims examiner who was trying  
23 to make a name for himself, and he denied coverage, denied  
24 care for me, and he didn't even use the UR process, and as  
25 far as I know, he never went to Utilization Review, that



1 literally had problems with Utilization Review, and I didn't  
2 even have that option.

3           So I'm -- first of all I want to say that  
4 Ms. Bartholomew's comments, I agree with everything she  
5 said; just add that as part of what I agree to see happen.  
6 Also, what Ms. Sugarman said.

7           A friend over here, I don't remember his name.

8           MR. ZELTZER: Zeltzer, Steve Zeltzer.

9           MR. LEEDIE: Mr. Zeltzer. He mentioned criminal  
10 penalties. We talked about the issues of penalties for  
11 perjury and ensuring that when these claims examiners submit  
12 information concerning a case, that they do it under the  
13 penalty of perjury and that those -- any punishment that  
14 should be severe, should go straight to the top, not just to  
15 the, you know, the claims examiners, or whoever else gets  
16 these documents concerning the case, but it needs to go to  
17 the CEO, the people who make these policies that create this  
18 health of people who are working right now.

19           I didn't even know about an injured worker not being  
20 able to, you know, defend themselves on their own behalf in  
21 the case of an investigation. That's outrageous. If you're  
22 accused of a crime, at least you have an opportunity to  
23 confront your accuser. What is this? What kind of country  
24 are we living in now, where we can't even fight for our own  
25 rights? You know. That's ridiculous.

1           So the heaviest penalties that are politically  
2 possible, let's do this, because the insurance companies are  
3 way out of line. I don't know what happened, but it seemed  
4 like the Legislature just fell down on bended knees when  
5 Schwarzenegger started talking about the girlie man or  
6 something. I don't know what their problem was, but, you  
7 know, just -- they just went crazy. And now we're suffering  
8 from it.

9           I consider myself fortunate. But I must tell you, you  
10 see me hobbling around here, but two -- two or three years  
11 ago, I was running two, three miles a day, and I sorely miss  
12 that. I sorely miss it.

13           Criminal charges. The heaviest penalties possible. I  
14 mean don't -- 40 -- what is that? 40 divided by -- into  
15 \$6,400? I can pay that.

16           So, as I said, I'm not that -- I'm not as familiar  
17 with the regulations that are being proposed here, but it's  
18 clear -- it's clear that it's not adequate, the damages that  
19 the workers are suffering from this end.

20           And I have to agree in the case of Mister -- I forgot  
21 the gentleman's name from down south. That is murder. That  
22 is murder. And we definitely have to find a way to make the  
23 insurance companies accountable for the problems that  
24 they're causing for the people, including death. And their  
25 theory is just wait until somebody dies and just gives up.

1 I'm taking poison right now to keep me -- keep me  
2 functioning. I don't want to do that. I want to be healed.  
3 I want to be healed. I don't want to have to take morphine  
4 sulfate or Naproxen so I can just get around and take care  
5 of my business. I want to be healed. That's all the people  
6 want. They're not trying to get money. They just want --  
7 they just want to be healed. That's all.

8 So, as I said, I have three -- three comments that I'm  
9 going to add to the final, the young lady in the green suit,  
10 I agree with her, too. I don't know her name, but, what's  
11 your name, please?

12 MS. HOLLEY: Latrice Holley.

13 MR. LEEDIE: Latrice Holley. Add her comments, too,  
14 please, to mine, because they spoke quite well for me. So  
15 that's all I have to say.

16 MS. OVERPECK: Did -- Wait one second. Did Jo  
17 Cinq-Mars come back in? No. Okay. Is there --. Yes?

18 AUDIENCE MEMBER: I need to speak on this. I wanted  
19 to know --

20 MS. OVERPECK: I'm sorry, if you're going to speak,  
21 please come up here, because the court reporters have to  
22 take down what you're saying.

23 MS. MUSAWWIR: My name is Marie Musawwir.  
24 M-U-S-A-W-W-I-R. And my case is under my first name  
25 Shahidah, S-H-A-H-I-D-A-H Musawwir. And I wanted to know if

1 this bill also applies to not just medical --

2 (INTERRUPTION IN PROCEEDINGS BY

3 COURT REPORTER - DISK REPLACEMENT NECESSARY)

4 MS. MUSAWWIR: I wanted to know if also that these  
5 regulations apply to the vocational rehabilitation benefits?

6 MS. OVERPECK: No. These only apply to UR review.

7 MS. MUSAWWIR: Okay. All right. I just wanted to  
8 mention something. People are -- I'll be brief. People are  
9 convicted. They're -- they go to jail and they're  
10 prosecuted and convicted for writing bad checks. And  
11 usually that doesn't hurt. That doesn't cause illness or  
12 the death of someone. But with these insurance companies,  
13 they're doing -- what they do is far, far greater, has a --  
14 has a devastating impact not only on the injured worker, but  
15 the families and friends and all the people who associate --  
16 have some association with the injured worker. And nothing  
17 is being done to the individuals who make the ultimate  
18 decision that affect the injured worker. And that's what  
19 needs to be done.

20 They need to pinpoint the person who is responsible  
21 for making this decision that had affected the injured  
22 worker or that had committed the fraudulent -- committed  
23 fraud, falsified reports, withheld information or, etc. And  
24 pinpoint that person and have that person prosecuted and  
25 convicted, if that person is found guilty, which most likely

1 that person will be.

2           And we all have cases, all of us who are here, I'm  
3 sure that we all have cases where somebody can be pin-  
4 pointed, but the only thing that is going to make -- make  
5 the people in the insurance industry change is that they  
6 have to have some personal loss themselves, like we have.  
7 And until that happens, it can't just be a loss from the  
8 insurance company, because they'll have a way to make --  
9 make up that money.

10           I worked for -- the company that I worked for that I  
11 got injured at, Providian Financial, has umpteen lawsuits  
12 against them. And now they went bankrupt, and they were  
13 bought out by Washington Mutual, where they just kept  
14 investing their money, cheating, lying to the people, had us  
15 reading reports, scripts which were false. And they were  
16 able to generate a lot of money from these false claims, and  
17 then when it came time for people to -- to -- I also -- I  
18 was like a -- an insurance representative, it was for credit  
19 protect, for their credit, and I knew that they would not  
20 pay these people. They would try to get them to sign up for  
21 the credit protection, and all of us knew that they weren't  
22 going to go pay them. Only a few people. They have to show  
23 some kind of compliance. But most of the people, they were  
24 saying, "We couldn't find your records. We couldn't do this  
25 or we couldn't do that."

1           So what needs to happen is that the the person has to  
2 be identified who is responsible for these so-called reports  
3 missing. And that person has to experience personal loss.  
4 If they don't, if they're not convicted, if somebody is not  
5 convicted, then they don't care, because they know that the  
6 company is going to absorb the costs, and they're going to  
7 keep doing it. And the company can always -- from all those  
8 people that they're cheating, they know that they've got  
9 some grace period to reinvest the money that they're -- that  
10 -- all the money that they're making from denying people  
11 their claims. So that is not going to have an impact on  
12 changing the insurance companies, like someone being  
13 convicted or being prosecuted and convicted for the crime.

14           Like I said, people who write checks, they go to jail.  
15 And these are usually lower income people, or people of  
16 lower income status, but when it comes to judges -- and also  
17 judges need to be pinpointed for not complying with the law.  
18 And they need to be convicted. Just like everybody else.  
19 If they made a decision that is not -- that has affected a  
20 person's life, or their benefits, then they need to be  
21 convicted, just like a person writing checks.

22           People -- people -- their -- injured workers'  
23 families, like I said, their families are affected, the  
24 people that they love, their children, and these judges are  
25 making these decisions and -- at the Workers' Compensation

1 Appeals Board and just -- just outright, blatantly violating  
2 the law, and nothing is being done about it. And that's --  
3 that was my point.

4 MS. OVERPECK: Thank you. All right. Ms. Padilla?

5 MS. PADILLA: I'm listening to a lot of stories like  
6 this for the last 14 years --

7 (INTERRUPTION BY COURT REPORTER. AUDIENCE CELL PHONE  
8 INTERRUPTION. UNABLE TO HEAR SPEAKER.)

9 MS. PADILLA: Dina Padilla for Voices and Coalition  
10 of Injured Workers, Peace and Freedom Congressional  
11 Candidate. I've been listening to these stories for 14  
12 years, and I want to say the worst thing that happened, and  
13 I think I brought it up last meeting, was a woman was -- was  
14 -- received a death threat from the insurance carrier  
15 adjustor. Now we've been all over. We've been to the  
16 Department of Insurance. We set it in front of FIC. We've  
17 been to an assembly member's office. Niello's office. We've  
18 been to the Sheriff's Department. And to-date, nothing has  
19 been done. And I'm going to go on record to say that if I  
20 had made a threat to that insurance carrier, adjustor, I  
21 would be in jail today, because District Attorney of  
22 Sacramento said that is considered a terrorist act.

23 So there should be criminal and penalties -- criminal  
24 charges and penalties for that. And then also when a person  
25 first gets injured, they have a severe injury, if the

1 employer doesn't send the person immediately to the  
2 hospital, where they don't have to go drive on their own, in  
3 their own car, or wait several hours before they are able to  
4 go, there should be penalties for that.

5         And the State of California, the last 14 years that I  
6 know, has to me been complicit. They've been going along  
7 with legislation through the agencies, not addressing all  
8 these injured workers' problems. And all I can see is, I  
9 see things getting extremely worse. When you start talking  
10 about people that are not getting their care, people  
11 committing suicide, people dying because they're not getting  
12 their care, people going homeless, I mean the list just goes  
13 on. It's an awful list. It's unconscionable. And it's  
14 unconscionable for the State of California to allow this.

15         So, whatever your power is, whatever you can do, this  
16 message needs to be related to Governor Schwarzenegger and  
17 every legislator and ever state agency, they need to  
18 understand that you cannot -- cannot destroy and destruct  
19 people's lives.

20         MS. OVERPECK: Are there any other comments at this  
21 time? Peggy?

22         AUDIENCE INDIVIDUAL: I just have a couple of  
23 technical --

24         MS. OVERPECK: Oh, I'm sorry.

25         MR. ZELTZER: This woman hasn't spoken. This is an



1 injured worker.

2 MS. OVERPECK: Wait until you get up here, so the court  
3 reporter can hear you.

4 MS. STEVENSON: Our comments will be very brief. I'm  
5 Ellen Stevenson and --

6 MS. MYERS: I'm Elizabeth Myers, M-Y-E-R-S. Elizabeth  
7 M-Y-E-R-S.

8 MS. STEVENSON: I'm on a lot of medication. This is my  
9 nursing assistant. And I'm an injured worker. And I'm  
10 going to be very brief about what I'm saying. I wasn't  
11 planning on speaking here today. Rather, I just came down  
12 and what I noticed, when Dina Padilla brought this up, that  
13 was her last comment, was regarding terrorism.

14 I have been a victim of terrorism to the point where  
15 my life -- I'm afraid for my life. And my nursing assistant  
16 here will describe some things, because I can't do it right  
17 now. Emotionally I'm too traumatized.

18 But one of the things that happened to me last year,  
19 and I will put this on record, it was the most -- just  
20 shattered me was, on my way to the State Panel QME, and I  
21 had doctors' reports that I had trouble getting from UCLA  
22 doctor neurosurgeon Dr. Larry Khoo stating I needed a  
23 cervical revision surgery. That meant a major multi-level  
24 surgery on my neck and a lumbar surgery. Big dollars to the  
25 insurance company. Also, too, I was carrying with me

1 evidence of brain damage. I had a serious closed-head  
2 injury, gastrointestinal ulcers in my stomach and intestines  
3 and nerve damage in all four extremities, and also spinal  
4 core compression in my neck. My adjustor Alan Lowgie  
5 (phonetic spelling) from Sedgwick CMS L.A. Unified School  
6 District, took away my driver. They hadn't really given me  
7 a driver. They were supposed to have. Instead, I had home  
8 health care, and I was using my 24 hours of home health care  
9 to have that person drive me to and from medical  
10 appointments. Three days prior to that particular PQME  
11 appointment, I received notification from the owner that --  
12 of the home health care, I was not allowed to be driven to  
13 any medical appointments.

14 I was alone in a car at 1:30, 2:00 o'clock in the  
15 afternoon on a clear day, no rain, and I was waiting  
16 lawfully to make a turn, and I was hit by a Mercedes running  
17 full speed into the rear-end, back end of my car hit so  
18 hard, it slammed me into the vehicle, Cadillac SUV in front  
19 of me. I was in a metal neck brace. Had I not been in a  
20 metal neck brace, with the amount of compression already on  
21 my spinal cord in my neck, I would have died. I would've  
22 been dead.

23 I was going to the panel QME. There were no other  
24 doctors' reports to say, you know, to say, no, there's  
25 nothing wrong with her, because I wasn't represented.

1           So, I -- they -- the guy, that was going to be a  
2 hit-and-run, the lady -- I was dazed -- the lady in front of  
3 me got out of her vehicle and ran down. He was arrested. I  
4 was -- after that, I was hospitalized for almost two weeks  
5 in the hospital. And the insurance carrier denied the case.

6           Dr. Shiffman's (phonetic spelling) office didn't even  
7 write it up, even though I called him from the accident  
8 scene and told him repeatedly, including in the last time I  
9 saw him, PQME appointment for my spine, that why didn't you  
10 write up that I was hospitalized for almost two weeks with a  
11 severe spinal thing, because it was more spinal injuries?  
12 It was the first time I was on a walker. I had to use a  
13 cane. I got out of there. For some reason, the PQME office  
14 wasn't even writing down. And he said, "Well it's not our  
15 fault." He said, "You know, we can't say who's  
16 responsible." I said, "Well, it happened in your office."  
17 And I said, "That's part of my medical history." Yet, he  
18 refused to put it in his report that I had -- I was hit so  
19 hard.

20           MS. MAUREEN GRAY: Could you stop for a moment? I'm  
21 sorry.

22           MS. STEVENSON: After that, everything when I got out  
23 of the hospital, it was the weird calls to the home and then  
24 I had a caregiver driving me to and from, and our cars  
25 were -- it was, you know, were almost smashed in two, driven

1 off the road. I had a caregiver quit, she was so afraid the  
2 first time she was in a car with me. Dive-bombing, like  
3 other cars dive-bombing my car. Something even more is that  
4 -- Elizabeth will talk about what she has observed, because  
5 I can't go into it right now. I don't have the heart.  
6 She'll tell you a little bit more.

7 MS. MYERS: The first of this month, Ellen had refills  
8 on a lot of meds, pain meds, psych meds, just meds so she  
9 could digest her food, just food supplements and Pedialyte  
10 and Resource. It's a liquid food just to survive.

11 (INTERRUPTION BY COURT REPORTER REQUESTING  
12 SPEAKER REPEAT)

13 MS. MYERS: Pedialyte and Resource. It's a liquid  
14 food. And she was denied that. And when Ellen went through  
15 withdrawal, I went through withdrawal with her. And anybody  
16 whose been in withdrawal, for any pain meds, and she's on  
17 several and then psych meds, it's a terrible thing. It's a  
18 terrible thing. Okay. She's -- She's going through  
19 withdrawal. Now, she files on a Monday. Monday a week ago,  
20 right? She files on Monday a lawsuit against --

21 MS. STEVENSON: The claims adjustor, the attorney, the  
22 insurance company, the employer for fraud and the guy who  
23 hit me.

24 MS. MYERS: Okay. And --

25 MS. STEVENSON: Civil, and also finally for workers'

1 comp. I was so afraid to file the Application for  
2 Adjudication, I filed it on the last day. I was scared. I  
3 was afraid. I knew there would be consequences. And I also  
4 filed for a serious and willful, because they took away my  
5 driver, and the State Panel QME had ordered a driver to and  
6 from all medical appointments. The doctors didn't want me  
7 driving. And yet they took away my person who was supposed  
8 to drive, so I filed also serious and willful. The civil  
9 case I filed in Superior Court on the same day. And I was  
10 afraid for the consequences. She'll go into what happened.

11 MS. MYERS: So, Wednesday night, a shared cat -- Ellen  
12 and the neighbor share this cat. Now, Ellen leaves her  
13 window open. The cat goes in and out constantly, in and out  
14 of Ellen's apartment. The other owner is never there. You  
15 can't tell it's a shared cat. I mean this place with her  
16 cat and her house, it's there all the time. It disappeared  
17 Wednesday night of last week. She files Monday. The cat  
18 disappears Wednesday night. Thursday -- I come and go from  
19 work -- I cross this grassy area. I cross this grassy area,  
20 and there's no body. No body. There's no cat. There's  
21 nothing there. The other owner crosses three times back and  
22 forth, going back and forth to the parking lot. You'll see  
23 the flower represents the corpse, cuz the Animal Control  
24 picked it up. We -- us, just us two. Now there's a doctor,  
25 too, whose been in and out; other residents, in and out all

1 day. The body is not there. I leave in the afternoon. I  
2 come back, I find the other owner sobbing about seven  
3 o'clock, six o'clock, seven o'clock. She just found the  
4 cat. Well, her and I had both left about a quarter-to-five,  
5 five o'clock. It wasn't there. I crossed the grass. The  
6 cat wasn't there. This is a half of a cat. No blood. No  
7 fur. One-half of a cat in the middle of a big huge grassy  
8 area, 30 feet from the apartments and 50 feet from the road.  
9 No blood. No fur. Guts in tact. Okay? Guts in tact.  
10 There are straight incision cuts on the cat. There are  
11 straight incisions on the cat. We drove to Camario after  
12 the body was retrieved and took photographs, because they  
13 picked it up. The guts, you can see in here is half the  
14 cat. Here's a real good picture of half the cat. There's  
15 two-thirds of it here. This cat was known by Ellen. This  
16 cat disappears Wednesday night. No one sees it anywhere  
17 anytime after that. And within a two -- one and-a-half to  
18 two-hour period, it shows up. And these photographs show  
19 where Ellen would walk, or I would walk out to my truck, to  
20 her car, and would actually pass where this cat was found.

21 (MS. STEVENSON WHISPERING COMMENTS TO MS. MEYERS)

22 MS. MYERS: Yeah. Yeah. It was in pretty bad shape,  
23 behind there, really far.

24 Ellen's lost her home health care for two weeks at a  
25 time. When I first met Ellen, I came in just for two hours

1 and all she asked for was to take my trash out and do my  
2 dishes. I couldn't even walk into the apartment. She had so  
3 much trouble doing everything. I am so grateful to be able  
4 to work for Ellen and help her. She's very rewarding. And  
5 she's not only my patient, she's my friend.

6 MS. STEVENSON: This is just brief, but I know I'm not  
7 the only one that's terrorized. I was in Court recently.  
8 It usually happens right before a hearing, that they  
9 withhold medications that are serious. One of the big ones  
10 that they withheld from me for over twenty days, and I went  
11 through serious very painful withdrawal was Lorcet, and  
12 that's for nerves and seizures and things like that.

13 MS. MYERS: And we forgot to mention the next Tuesday,  
14 she had a --

15 MS. STEVENSON: A hearing.

16 MS. MYERS: -- a hearing. So between her filing and  
17 the hearing, the cat shows up.

18 MS. STEVENSON: Well, you know, it's one of those  
19 things where it's been a long series of harassments. This  
20 is only a few things. There are other things that have  
21 happened along the way. But I think that in many cases, and  
22 I hear it from other people, that these insurance carriers,  
23 the adjustors, have stooped to the level of terrorism. And  
24 I have -- when I hear other people have almost been run off  
25 the road, well, same here, except I was actually ran. My

1 car has not been fixed. The undercarriage and the metal of  
2 that car is still severely dented in. For six months I lay  
3 on the couch trying to figure out what was going on. I was  
4 so sick that I couldn't get up and make it to the Court.  
5 And when I do make it to the Court, I get run around down  
6 there. There are judges down there, and you were in  
7 recently.

8 MS. MYERS: Yeah.

9 MS. STEVENSON: I went in for an expedited on medical  
10 and on total temporary disability. None of that was heard.  
11 Instead she pandered to the defense attorney.

12 MS. MYERS: She was accused of not filing in a timely  
13 manner, and thank God, in this pile of paper in front of  
14 her, she picks up this sheet she needs to prove, "Yes, I did  
15 file in a timely manner, and these are the things we are  
16 going to discuss right now." The judge wouldn't listen. She  
17 accused her of not filing timely. Then when she proved she  
18 did, and showed the issues on the form, the judge refused to  
19 discuss any of it.

20 MS. STEVENSON: That was Blais in Santa Monica, and  
21 it's scary. Judge Blais in Santa Monica. We should know  
22 who these judges are and we should be careful.

23 MS. OVERPECK: Could I please remind the people sitting  
24 down, that the court reporter can't take down more than one  
25 voice at a time. And so you need to stay silent while the



1 speakers are speaking.

2 MS. STEVENSON: Judge Blais is spelled B-L-A-I-S. And  
3 the frightening thing about her is that the panel QME report  
4 she had there, she took it and said I'm sending you to all  
5 of my own -- all of my doctors. I have seen my own  
6 psychiatrist for several years, my own internist, my own  
7 gastroenterologist, my own this and that, my own neurol --  
8 she says, "Oh, no. We're going to take this." And it's  
9 already almost a finished report and she said, "No. I'm  
10 going to have you reassessed by my doctors."

11 MS. MYERS: What about the double report? There was  
12 a double report. I was sent into Dr. Shiffman's office. Is  
13 he the QME?

14 MS. STEVENSON: Yes.

15 MS. MYERS: And I was handed a report for Ellen's  
16 determination. She received one in the mail. The one in  
17 the mail was signed and dated and had the paragraph stating  
18 she received 100 percent industrial?

19 MS. STEVENSON: Yeah, 100 percent industrial.

20 MS. MYERS: The one I was handed that I walked into  
21 Shiffman's office for was not only reformatted, but the  
22 entire paragraph giving her 100 percent disability was  
23 missing.

24 MS. STEVENSON: Was missing.

25 MS. MYERS: It was handed to me. It wasn't a mistake

1 or an accident. And when the judge was reading it, she  
2 commented on the reformatting, and we kept waiting and  
3 waiting for her to get to the paragraph that was missing.  
4 And she wasn't almost finished, to say anything and I said,  
5 "Hey there's a paragraph missing" or you did. There's a  
6 paragraph missing.

7 MS. STEVENSON: And then she hand-stamped -- It was not  
8 a signature stamp --

9 MS. MYERS: It was signed --

10 (SPEAKERS TALKING OVER ONE ANOTHER)

11 MS. STEVENSON: It was a -- an electronic stamp, which  
12 is improper for a PQME report. They have to be hand-signed.  
13 And it was not -- the date was not executed on it. The  
14 proper forms weren't filed and, you know, I asked the judge  
15 for some kind of relief for discovery. I noticed some other  
16 people had filed Subpoena Duces Tecums. Nothing has been  
17 produced. I have the same problem with my case. It's been  
18 going on over six years. I'm really sick. I need medical  
19 care. I need some surgery before I become totally crippled  
20 for life. And I still don't have a production of documents.  
21 I have mentioned that to Judge Blais. I asked her for  
22 relief on that. She just -- just went -- breezed right over  
23 it. You know, even though there is also a Court order in  
24 the file from another judge telling the opposition Dean  
25 Stringfellow, that he is to produce records, it still hasn't

1 happened. And the defense attorneys, the claims adjustors,  
2 are getting away with a lot and nobody is doing anything  
3 about it.

4 Oh, apparently when I was in Court, too, Dean  
5 Stringfellow sat in the back of the courtroom, in Santa  
6 Monica courtroom. Judge Blais sat at the table in front.  
7 She berated me continually on the record. There's a  
8 recording -- a tape-recording of it. I'm going to give it  
9 to the Americans for Disabilities, because I have a head  
10 injury. I said, "Please, you're talking too fast. I can't  
11 understand you. You're giving me a headache." And that  
12 won't show up on a court transcript, but on that tape-  
13 recording it will. And she was abusive. She yelled at me  
14 and the defense attorney did nothing but sit in the back,  
15 and then one of the people that I had with me was watching  
16 him, and he was giving her hand gestures like signals up,  
17 when it came to not recalculating my TTD properly. She said  
18 she wasn't going to do that. Apparently he was doing the  
19 thumbs up to her. Now, I don't think that's proper  
20 courtroom protocol.

21 PERSON IN AUDIENCE: It's mean.

22 MS. STEVENSON: So I, you know, I meant to be very  
23 short here. I apologize to this panel here. I wasn't  
24 prepared, and it's been a bit chaotic. If I ever speak  
25 again, I promise you it will be prepared. Thank you.

1 MS. MYERS: Well, in order to help Ellen, I rented my  
2 own vehicle so she could lay down in the back seat of the  
3 truck and we left at 3 o'clock this morning. And she  
4 virtually layed in the back of the truck the entire trip  
5 just to be here. So it took a lot out of her. And I know  
6 that when we're done, she's just going to be a puddle.  
7 She's just going to be a puddle. You know. It's took a lot  
8 of out of her to be here.

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1           TOM CONDIT: My name is Tom Condit. C-o-n-d-i-t. I  
2 have just two short comments on aspects of previous  
3 testimony.

4           Roy Kamerer, speaking on behalf of Comp Partners  
5 Medics and Concentra -- I love these modern corporate names;  
6 they take me back to my days as a teenage science fiction  
7 fan -- said that it might be a problem to require reviewers  
8 to actually say which section of the ACOEM Guidelines they  
9 were denying treatment under, because that could conflict  
10 with the copyright in the ACOEM Guidelines. Now, I'm not an  
11 intellectual property lawyer, and I doubt that anybody else  
12 in the room is, but I've had extensive experience in quoting  
13 copyrighted material, both in print and broadcast media.  
14 And I can tell you that not even the pit bulls from Pacific  
15 Legal Foundation would be prepared to argue that that  
16 wasn't -- that quoting the actual section of the medical  
17 guideline you're denying medical treatment under does not  
18 constitute fair use under the Digital Millenium Copyright  
19 Act. But suppose it did. I mean suppose it was illegal to  
20 quote it. Then what they would be arguing is that people  
21 should be denied medical treatment on the basis of  
22 information that can't be provided to them, because it's  
23 secret, in which case, instead of outsourcing the review to  
24 Delaware, why not outsource it to Guantanamo Bay? It's  
25 essentially the same principle.

1           Secondly, Casem Schneltzer from the California  
2 Manufacturers Association suggested that under  
3 9792.12(a)(7), the Division should require a specific form  
4 for physicians to request treatment under. And he suggested  
5 that maybe it could be a specific color. Because, he said,  
6 in the mass of paper which reviewers get, how can they pick  
7 out what is actually a request for utilization approval?  
8 Aside from the fact that the utilization reviewers are  
9 supposed to be professionals of some sort and should be able  
10 to recognize a request for medical treatment when they see  
11 one, maybe in a specific form means that if the doctor  
12 doesn't have that form on hand, they can't request the  
13 medical treatment. Making it a specific color means that  
14 the request has to be sent by mail or courier rather than  
15 faxed or e-mailed as a PDF, imposing an additional delay in  
16 the treatment.

17           I think it would be extremely useful if the Division  
18 would develop a guideline for the kind of information that  
19 medical providers should give to utilization reviewers and  
20 post that on your website not as a mandatory form, but in  
21 order to make sure, as they say in police circles, everybody  
22 is on the same page.

23           But -- Maybe I spent too long in the Marine Corps,  
24 but specific forms, to me, are -- normally constitute a  
25 formula for delay. And I think Ms. Sugarman has a few

1 things that are more substantive to deal with.

2 MS. OVERPECK: Thank you.

3 PEGGY SUGARMAN: Peggy Sugarman, S-u-g-a-r-m-a-n,  
4 spokesperson for workers injured at work.

5 I just have some technical comments that I neglected  
6 to put into my written testimony.

7 Section 9792.11(f), application of the utilization  
8 review investigation, basically taking penalties and  
9 applying them to conduct as of August 1st, 2006. I'm  
10 assuming that's your target date to put these regulations in  
11 place. Similarly, to the prior regulatory proposals to make  
12 the 5814.6 penalties applicable to the effective date of the  
13 new 5814 statute, these regulations should also be  
14 applicable to conduct that has been required in regulations  
15 since 12-1-04, as far as I can tell, when the utilization  
16 standards were already -- were adopted on an emergency  
17 basis. So, basically, claims administrators would know what  
18 the process is supposed to be since that time. And these  
19 regulations are only assessing penalties based on conduct  
20 that they deem -- with which -- the regulations with which  
21 they were supposed to comply since that time. So we request  
22 that you make these regulations -- these penalties  
23 retroactive to that date.

24 Same section, 9792.11(m). In this section, you allow  
25 the claims administrator to respond upon receipt of a

1 written description to the Administrative Director basically  
2 responding to the complaint. We suggest that you add  
3 language in the section that they should respond under  
4 penalty of perjury and, in addition, that you consider that  
5 when certain things had not occurred properly, with the  
6 worker perhaps not attending a medical appointment or some  
7 such argument, that you require them to show proof that they  
8 have submitted -- or they are reimbursed for medical mileage  
9 or finding that there simply is an underlying complaint that  
10 medical mileage is not being paid either in advance or  
11 promptly reimbursed. So whatever response you get from the  
12 claims administrator when an investigation is occurring, (a)  
13 penalty of perjury and (b) making sure that they have done  
14 what they are supposed to do in terms of ensuring that the  
15 worker can cooperate.

16 Section 9792.12(b)(1): I'm going to echo David  
17 Rockwell's comments. A failure to make a decision in a  
18 timely fashion for an expedited review, which is a  
19 72-hour -- supposed to be a 72-hour process, should not be a  
20 multiple-instance penalty; that should be a single-instance  
21 penalty with just as severe a penalty as you can muster.

22 In addition, I'm also not clear how these penalties  
23 would be assessed, whether \$200 for ten or fewer violations  
24 is the total for up to ten violations, or if  
25 it's -- as you say, for each instance, it's 200 for ten,



1 which is 2,000. I mean I can't tell. So however you are  
2 grouping these, single or multiple penalties, you need to  
3 clarify how that would be calculated.

4 I had one other.

5 Okay. Just to wrap up, there's been a lot of good  
6 suggestions here today, many of which are not within your  
7 jurisdiction. The one thing that I think could help a lot  
8 in helping injured workers with the utilization review  
9 process is to have an ACOEM Guidelines with every  
10 Information and Assistance Officer available at the Workers'  
11 Compensation Appeals Board so they can go in and look and  
12 read them themselves. These are expensive books. And even  
13 though I agree that -- I don't think there would be  
14 copyright problems. That's kind of a simple argument for  
15 the employers, the medical providers, to make. Certainly  
16 workers should have access to that book when they can't  
17 afford to pay for it.

18 Thank you.

19 MS. OVERPECK: All right. Are there any other  
20 comments at this time?

21 DINA PADILLA: I want to remark on the penalty of  
22 perjury.

23 We have doctors that write penalty of perjury; they  
24 sign their name. I would like to know how many doctors have  
25 been gone after for violation of penalty of perjury. We had

1 five people in the Department of Insurance and the District  
2 Attorneys' offices last year. What we did is we presented  
3 the doctors' reports where they were falsified. And I had  
4 mentioned to the District Attorney that injured workers do  
5 get taped and they do get cameras on. And then the District  
6 Attorney says that the federal government is not as harsh as  
7 California is in terms of taping somebody without their  
8 knowledge.

9 Well, when I brought this to the attention of the  
10 Department of Insurance criminal investigators, they had  
11 said that -- I had brought up the tapes, and they said that  
12 these tapes were, in fact, not in existence anymore. I  
13 said, "Why?" And she said that they erase them. So I think  
14 that that's criminal activity. Because when somebody sits  
15 there and gives the doctor information and their testimony  
16 in their medical-legal doctor's report, that those tapes  
17 should be saved. They shouldn't be erased. Because, to me,  
18 that's under the Insurance Code and Penal Code to deny  
19 benefits. And I think it's 1871.4 Insurance Code, and the  
20 Penal Code is 550(b)(1) and (2) or -- I'm not exactly sure  
21 on that. But if they're going to be erasing material  
22 evidence and sit there and write their own report and it has  
23 nothing to do with what the injured worker said was stated  
24 or showed in an exam, that's criminal, as far as I'm  
25 concerned. It's major fraud, it's criminal, because it

1 hides evidence, material evidence. And medical-legal  
2 doctors, they come under that penalty of perjury. I'd  
3 really like to see how many doctors have been prosecuted for  
4 penalty of perjury.

5 So I really question the penalty of perjury. And I  
6 think that everybody should sign it, but there should be a  
7 follow-up on that as well.

8 MS. OVERPECK: Could you just state your name again,  
9 please, since we have a new court reporter?

10 DINA PADILLA: I'm sorry. Dina Padilla.

11 THE REPORTER: Spell it for me.

12 DINA PADILLA: Dina, D-i-n-a, Padilla, P-a-d-i-l-l-a.  
13 And I'm from Voices California Injured Worker Memorial Day,  
14 and I'm also candidate for the 11th District, Peace and  
15 Freedom Party.

16 MS. OVERPECK: Thank you.

17 DINA PADILLA: You're welcome.

18 MS. OVERPECK: Any additional comments?

19 CATHON RHODES ADAMS: Good afternoon to the Board. My  
20 name is Cathon Rhodes Adams. Cathon is spelled C-a-t-h-o-n.  
21 Rhodes is R-h-o-d-e-s. Adams is A-d-a-m-s.

22 We're speaking right now to the utilization review.  
23 And in your petition here, we want to address that under the  
24 discretion of the insurance adjuster.

25 I was an injured worker in 1993 from a slip-and-fall,

1 which inevitably was the result of a herniated disk. I had  
2 a slip-and-fall on the shuttle of the University of Davis,  
3 which they ended up addressing as a lumbar strain. In  
4 September of '94, I was treated by the pain management  
5 department, which resulted in a dural puncture of the --  
6 resulting from a cortisone injection which they tried and  
7 treated under a lumbar strain.

8 Well, after going to trial -- They only tried me  
9 under the May of '94 case. But after the case was closed  
10 and we get by the Judge and giving me -- you know, closed  
11 under the Compromise and Release, I was in -- all my  
12 benefits, medical under the utilization review, my TENS unit  
13 was stopped immediately. No reason given other than I have  
14 to have a doctor's prescription in order to get this  
15 reinstated. Meanwhile, they will allow me to have a doctor.  
16 They took away my treating physician under fraudulent  
17 paperwork through the WCAB, which then, in turn, left me  
18 without a treating physician from 1997 until the present.  
19 But I was supplied with a TENS supply kit during that time  
20 up until the hearing, and then it was taken away.

21 Now, that's totally unfair. How are we going to say  
22 that we go to utilization review and get supplies and  
23 medical treatment and medication and they, in turn, have an  
24 insurance adjuster that can deny you your rights and take  
25 away your treatment? That's totally unfair. And then when

1 we sit back and we say, "Well, okay" -- Like the lady here  
2 on her pain medicine. Okay. You say I have a L4-L5 sciatic  
3 nerve, I have cervical strain, I have a T4-T6 injury. And  
4 then when I tell them that I'm in pain, you know, 9-plus,  
5 they go, "Oh, we don't believe that. That's utterly  
6 impossible. You'd have to have a third-degree burn to have  
7 that kind of pain." But they're going to treat you for a  
8 lumbar strain.

9           Who do we go to? What doctor are you going to get  
10 that's going to treat you when your own utilization  
11 administrator is going to deny all of your medical? And I'm  
12 one of the lucky ones. As the gentleman said,  
13 (unintelligible). I was able to get up and walk. Some  
14 people die. I'm one of the lucky ones. And I think, you  
15 know, each and every one of us have told our story today  
16 that we want you to consider these proposals that are here.  
17 We got a copy of the NCA 99 no sooner than they all put it  
18 in effect that night at 3:00 o'clock in the morning, which  
19 happened to be in the right place at the right time. But  
20 everyone's not that fortunate. The cases and the attorneys  
21 and these Judges, they did not do that. They spoke --  
22 "Okay. Well, we're sorry it happened to you," pat you on  
23 the head and send you away. That's not the way our system  
24 works. You're talking about people here.

25           I had a friend in L.A. that died from not having

1 received medical care. He was an injured worker. But  
2 nobody -- This is swept under the rug. And now I hear what  
3 you're saying. If by any chance it's over the -- What is  
4 it? -- hundred and four weeks, his wife and daughter now  
5 will not be allowed to get his survivor benefit. I need to  
6 call Terry and tell her that. That's not fair. We sat and  
7 we listened, but the injured worker first have to be one  
8 that has been there.

9         And I want to thank you for letting us come in and  
10 share our point of view, because we go by the Labor Codes,  
11 too. Where the Judge says, "You have a right to choose your  
12 own doctor," and then you have an insurance adjuster that  
13 says, "No, you can't." I've had stenographers that came in  
14 and transcribed my trial -- Okay? -- and typed in the wrong  
15 information. I was one of the fortunate ones that -- I was  
16 able to go buy my transcript. That's not fair. And we  
17 worked hard, and everyone can't go pay for that transcript.  
18 But I was -- thank God, I was in the position to be able to  
19 do so. But don't we find that she made a mistake? Maybe  
20 she wasn't having a good day. But if she wasn't, it affects  
21 me. Because how will I have that undone?

22         One thing I did have, I had four witnesses. We go in  
23 a group so that we can make sure what is being said and done  
24 is accurate. But my QME, I went to him. So it came up  
25 "Well, why don't you videotape your physical?" Well, it's

1 like "Hm. Possibly a good idea." The QME says that the  
2 U.C. Med Center was doctor shopping. They pulled a doctor  
3 out of retirement out of Utah, gave him a storefront of a  
4 medical building and they had him to do a medical exam on  
5 me. He going to tell me I look like a chicken and I have a  
6 herniated disk. Come on.

7           It's time to really be real and listen to injured  
8 workers. They have something to say. I mean right now,  
9 under your utilization review, I still have no care, I still  
10 have no medical because of our insurance adjusters being  
11 able to dictate to whom, where and when you get it and if  
12 you get it. And it's not fair. And consider that when you  
13 go back and re-write your proposals, that there are injured  
14 workers out here that do care.

15           Thank you.

16           MS. OVERPECK: Thank you.

17           Are there any other comments?

18           All right. Then we will stop. Thank you all very  
19 much for coming and participating in today's hearing.

20           FROM THE FLOOR: Thank you for extending the time.

21           (Simultaneous colloquy.)

22           MS. OVERPECK: Here's the process. These were the  
23 initial draft regulations for the two different sets. We  
24 take back all the comments you've given us. They're all  
25 down in the transcript. And we've also received written

1 comments. And we review them all and then we consider them  
2 and make changes to the proposals. And anyone who signed up  
3 as being interested today will receive what the next version  
4 is. And that next version will go out for another 15-day  
5 comment period. We don't have another oral hearing, but  
6 people can write in any additional comments. And then the  
7 process continues on until we're satisfied with a proposal.

8 All right. Can we go off the record so the court  
9 reporter can stop?

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