

1 STATE OF CALIFORNIA
2 DEPARTMENT OF INDUSTRIAL RELATIONS
3 DIVISION OF WORKERS' COMPENSATION

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5
6 PUBLIC HEARING

7 Monday, October 7, 2013
8 The Governor Hiram Johnson State Office Building
9 Auditorium
10 455 Golden Gate Avenue
11 San Francisco, California

12 P A N E L

13 George Parisotto
14 Division of Workers' Compensation
15 Acting Chief Counsel

16 James Robbins
17 Division of Workers' Compensation
18 Industrial Relations Counsel

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20 Reported by: Lori Carson
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I N D E X

FLOYD MINANA	6
California Chiropractic Association	
THOMAS BARNES	10
Gallagher Bassett Services	

1 PUBLIC HEARING

2 SAN FRANCISCO, CALIFORNIA

3 MONDAY, OCTOBER 7, 2013

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5 MR. PARISOTTO: I think we can go ahead and begin. Good
6 morning. Thank you for coming today. It's nice to see such an
7 exceptional crowd on a Monday. My name is George Parisotto.
8 I'm the Acting Chief Counsel for the Division of Workers'
9 Compensation. I'm here on behalf of Acting Administrative
10 Director Destie Overpeck, who can't be with us here today.

11 This is the public hearing for the pre-designation of
12 personal physicians and reporting duties of primary treating
13 physicians and regulations, specifically the limitation on
14 chiropractors acting as a primary treating physician.

15 There are copies of the proposed regulations on the desk
16 which I believe is right over to my immediate right.

17 Please make sure that you sign the sign-in sheet and
18 indicate if you'd like to testify today.

19 I'd like to introduce the other DWC staff members who are
20 here today. To my right is James Robbins, an attorney with the
21 DWC Legal Unit. On my left is Maureen Gray, who is our
22 Regulations Coordinator, and Lori Carson, who is our Hearing
23 Reporter.

24 If you would like to testify, please come forward, give
25 your card to the court reporter -- give your card to Maureen.

1 All testimony today will be taken down by our reporter. If you
2 have any written testimony you would like to hand in, please be
3 sure to give them to Maureen.

4 I will call the names of anybody who checked they want to
5 testify. I will also check to see if anyone new has decided to
6 comment. This hearing will continue as long as there are
7 people present who wish to comment on the regulations but will
8 close at 5:00. I don't think we will be going that long. If
9 the hearing continues into the lunch hour, another remote
10 possibility, we'll take at least an hour break for lunch.

11 As I mentioned, written comments should be given to
12 Maureen if you have them or will be accepted by fax, email, or
13 delivery up until 5:00 on the Division's office -- at the
14 Division's office; and in case you need a reminder, the
15 Division's office is not here but actually in Oakland at 1515
16 Clay Street on the 17th floor. So if you do have written
17 comments, please be sure to take BART over and hand it in
18 there.

19 The purpose of this hearing is to receive comments on the
20 proposed amendments to the regulation, and we welcome any
21 comments you have about them. All your comments, both given
22 here today and those in -- and those submitted in writing, will
23 be considered by the Acting Administrative Director in
24 determining what revisions we may make to the regulations.

25 Please restrict the subject of your comments to the

1 regulations and to any suggestions you have for changing our
2 proposed amendments. Also, I was going to say limit your
3 comments to three minutes in length; but I think we'll waive
4 that today. If you'd like to talk for a little bit of time,
5 that's fine right now.

6 We will not enter into any discussions or give responses
7 to comments this morning, although we may ask for clarification
8 or ask you to elaborate further on any points you are
9 presenting.

10 So with the reminder to make sure that you are signed in
11 and if you wish to speak and you checked the box indicating
12 that, you can go ahead and begin.

13 MR. ROBBINS: The fact that Maureen has walked back up
14 here with empty hands suggested that no one has checked the box
15 that they want to make any comments. Anybody have any
16 comments?

17 Okay. It was stated in the rule making notice that we
18 would continue until the last comment; and if the session did
19 not extend past noon, there would be no afternoon session. My
20 practice has always been to wait about 20, 25 minutes in case
21 people had problems parking or anticipated a BART strike, they
22 got lost in traffic, or they're trying to make their way over
23 from Oakland. So unless George has some objection, I think
24 we'll give it until 10:30, at which point we will close the
25 record and end there.

1 MR. PARISOTTO: I find that to be an excellent suggestion.
2 Let's go ahead and do that.

3 MR. ROBBINS: If anyone else has some good jokes, wants to
4 talk about music, otherwise, you're welcome to join us for the
5 next 25 minutes and see what happens. Thank you.

6 (A recess was taken at 10:05 a.m., and proceedings resumed
7 at 10:22 a.m.)

8 MR. ROBBINS: We're back on the record now. A gentleman
9 has actually shown up within the window to make a comment.

10 If you'd like to come up please? If you could give your
11 business card to Maureen, who's down on the far end there.
12 You're welcome to make your comment from the lectern.

13 DR. MINANA: Okay.

14 MR. ROBBINS: I'd ask you to please introduce yourself,
15 spell your last name if it's not something common so the
16 reporter can get it, and then please make your comments.

17 FLOYD MINANA

18 DR. MINANA: Good morning. My name is Floyd Minana,
19 M-I-N-A-N-A. I'm a practicing chiropractor in San Mateo,
20 California; and I'm here representing the California
21 Chiropractic Association. We have a couple of comments on
22 the -- regarding this proposed rule making. There's a couple
23 of things in the information -- informative digest and policies
24 statement that we dispute.

25 The biggest issue is the DWC is defining -- is

1 interpreting legislative intent to define every chiropractic
2 visit as implying treatment. It was clear from the debate in
3 SB 863 and even going back, which -- this was instituted back
4 in SB 899 -- that the legislature intended that chiropractic
5 treatment be limited to 24 treatments. The word that was used
6 in the bill, of course, is "visit". The DWC has interpreted it
7 to mean that every visit must be a treatment, but this is
8 absolutely not true. The rule making says that after 24
9 visits, a chiropractor can no longer act as a primary treating
10 physician. A chiropractor can continue monitoring the
11 patient's progress and perform evaluation and management
12 services without providing the treatment. This provides the
13 benefit of continuity. An injured worker, after 24
14 chiropractic visits, is not miraculously well and not in need
15 of more treatment. He may need physical therapy. He, perhaps,
16 has not exhausted the 24 physical therapy visits. He can have
17 24 acupuncture visits, and the chiropractor can act as PTP
18 during that time period.

19 There are several implications to cutting off the
20 chiropractor as PTP after 24 visits. The injured worker now
21 has to secure a new PTP. This results in increased costs to
22 the system. It's an inconvenience to the injured worker.

23 More to the point, back in -- earlier this year, a Rand
24 study was produced and presented to the Commission on Health
25 and Safety in Workers' Compensation regarding opioid use.

1 Opioid use is increasing dramatically, and one of the reasons
2 that -- our experience is that physical medicine has been
3 limited. Physical medicine is a very effective pain control
4 procedure. After a patient -- after an injured worker with
5 chronic pain has exhausted his 24 chiropractic treatments, he
6 is left with a choice of what to do for his pain. Often he
7 medicates himself with over-the-counter pain medication, which
8 has side effects. But, more often than not, it seems they are
9 turning to opioids; and opioid use is increasing. This is not
10 in the best interest of the injured worker, certainly, and is
11 not in the best interest of the system in general. There are
12 -- can be secondary causes. Of course, the use of the opioid
13 medications -- if they have side effects, if they have
14 secondary effects, these are industrially compensable; and the
15 system will start seeing increased costs just because you want
16 to cut off chiropractors at 24 visits.

17 The other issue is that the digest says that there is no
18 economic loss in this rule making to any party. Well, in fact,
19 there is economic loss to chiropractors since their treatment
20 is being limited, or their patient encounter is being limited,
21 to 24 visits. So they are suffering an economic loss. There
22 is some undefined economic loss potentially. It wasn't
23 explored through the system. When this injured worker now has
24 to reconnect with another PTP, be it a medical doctor or an
25 osteopath, and that's an -- that's an increase in cost which

1 wasn't explored.

2 So we think that these are two things that really need to
3 be looked at more carefully. This is a long standing issue
4 with us that the chiropractor is disrespected. We are
5 considered physicians in the workers' compensation system. We
6 are QME's. I'm a QME. We can do evaluations. We can do
7 management; and it's in the best interest of the workers and to
8 the system to allow the chiropractor to remain as PTP, and the
9 injured workers are not being well served by having their
10 relationship with their chiropractor terminated after 24
11 visits.

12 MR. ROBBINS: Thank you very much, Doctor.

13 DR. MINANA: Thank you.

14 MR. ROBBINS: This gentleman here -- would you like to
15 enter your comment into the record you made informally during
16 the break, the request for implementation time?

17 MR. BARNES: It doesn't apply today, does it?

18 MR. ROBBINS: No; but if you'd like to get the comment
19 into the record, you're more than welcome to.

20 MR. BARNES: Sure.

21 MR. ROBBINS: If you have a business card, if you could
22 give it to Maureen; and then please state your name for the
23 record.

24 UNIDENTIFIED SPEAKER: (Inaudible.)

25 MR. ROBBINS: The advantage of getting into the record

1 means that you're on the record, and we are required by law to
2 respond to and consider those comments. So I encourage people,
3 if they have a comment, to please give it to us.

4 THOMAS BARNES

5 MR. BARNES: Good morning. My name is Thomas Barnes --
6 B-A-R-N-E-S. I am the Vice President of Network Management for
7 Gallagher Bassett Services. In that role for Gallagher
8 Bassett, I am responsible -- our term is certified networks
9 across the country. In this state, there would be medical
10 provider networks, or MPN's, or other states, like Texas,
11 across the entire country. I'll say one thing: California is
12 the one state that actually has a limitation to chiropractic
13 treatment. Also, it's the only state that I've seen actually
14 include interpretive services, which is not what we've seen in
15 other states; but that's not for today's testimony.

16 What I had commented earlier today was the timing of the
17 regulations, whereas the process of a first and second comment
18 period -- and then you go through the Office of Administrative
19 Law; and these regulations are then all effective January 1st.
20 The thing is for a company such as Gallagher Bassett, or as
21 myself -- I am the DWC liaison for close to 300 MPN's for all
22 of our clients here in California -- is that then we have a
23 very short window to make sure we have all of the things
24 accomplished in time, for an example, the introduction of the
25 medical access assistant. There's some changes to the

1 definition of the MPN contact. We have the MPN complaint form.
2 Also, then you have the dealing with the petitions for
3 hearings, the RAM reviews, and a number of other things.
4 These are all processes and procedures that we now have had put
5 in place.

6 I seem to recall in the regulations that material
7 modifications need to be done on the existing MPN's within four
8 years of the last approval; but that will force us, as a
9 company, to make sure we get all of our applications modified
10 well within the first quarter of 2014 because of all the new
11 additions.

12 So there's going to be a lag time for us to service our
13 clients and, also, the injured workers who would actually be
14 looking for assistance from medical care because -- I mean the
15 goal is to return the employee back to work. Simply, that is
16 -- I think that is the common goal for everybody; but it is a
17 hinderance for us now to make sure we have all of the
18 information, put systems in place, the toll free numbers, the
19 contact people, the weekends, everything else well before
20 January 1st because we have to wait until the final regulations
21 are there to see exactly what we need to do.

22 So a request on behalf of my company, and I think perhaps
23 in the industry, is perhaps we should have like an
24 implementation time schedule like going into the first quarter.

25 I recall from last week there was a -- Stephanie Alaris

1 [phonetic] from Coventry testified at the interpreter's
2 meeting; and what she had indicated was that things at
3 Coventry, as like other networks have to do, have to go through
4 and obtain all the acknowledgment letters. Then they have to
5 go back and do all the geocoding. And then for changes in
6 material -- the modification to the existing MPN application
7 and employment application which was -- all those activities
8 are sequential. One has to happen before the other. You just
9 can't get it all done by January 1st. So perhaps any
10 consideration on a staggered implementation would be beneficial
11 for all.

12 Thank you for your time.

13 MR. ROBBINS: Thank you very much. Anyone else? By my
14 watch, it's now 10:32. Since we did have the doctor that
15 arrived slightly late, why don't we give it five more minutes
16 just in case anyone else is still trying to come. And at that
17 point, we'll close the record; and the hearing will be over.
18 Thank you.

19 (A recess was taken at 10:30 a.m., and proceedings resumed
20 at 10:35 a.m.)

21 MR. ROBBINS: Okay. We're back on the record. It's now
22 10:35 a.m. As I stated at the beginning of the hearing, it was
23 stated in the rule making notice that the hearing would proceed
24 as long as there were people making comments. It appears that
25 the last comments have been made. No one else here wishes to

1 make a comment on the record? Seeing no response, that
2 concludes today's hearing. There will be no afternoon session.
3 If, however, anyone wants to submit a comment, we'll take it by
4 email, fax; or it can be personally delivered to the Division's
5 headquarters.

6 I thank you all for coming, and that concludes our
7 proceeding for today.

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10 (Whereupon, proceedings concluded at 10:35 a.m.)

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CERTIFICATION

I, Lori Carson, Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that I stenographically reported the public hearing identified on the cover page of this transcript and, with the aid of backup audio recording, transcribed the proceeding via computer aided transcription to create this full, true, and correct transcript of the proceedings.

LORI A. CARSON
Official Hearing Reporter
Workers' Compensation Appeals Board

Date
Santa Rosa, California