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STATE OF CALIFORNIA

Department of Industrial Relations

Division of Workers' Compensation

PUBLIC HEARING

Tuesday, December 12, 2006
The Junipero Serra State Building
320 West 4th Street
Los Angeles, California

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Hearing Moderator

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Reported by: Barbara R. Brown

I N D E X

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STANLEY LEVINE 9
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PATRICK HUMPHREY 11
American All-Risk Loss Administrators

1 PUBLIC HEARING

2 LOS ANGELES, CALIFORNIA

3 TUESDAY, DECEMBER 12, 2006; 10:00 A.M.

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5 MS. NEVANS: Good morning. Welcome to this public
6 hearing on proposed regulations regarding benefit notices.

7 My name is Carrie Nevans and I'm the Acting Administrative
8 Director. My ears are completely blocked from the plane
9 this morning so I can't tell how loud I'm talking so I'm
10 going to try to read your lips when you're up there.

11 Maureen Gray is the Division's Regulations Coordinator so if
12 you have any questions or need anything, talk to her but
13 we're asking people to sign in and we'll call you up in the
14 order in which you've signed in.

15 I want to thank you for coming here today because your
16 input is a very important part of the regulatory process and
17 it's impossible for us to do regulations that really serve
18 the workers' comp community without your input. We'll be
19 here for as long as we have people here wanting to make oral
20 comments. We'll also take written comments and we'll take
21 written comments until 5 p.m. today. If you need to e-mail
22 those to us, if you don't have them here today and want to
23 e-mail something, let us know and we'll give you the address
24 to do that.

25 The purpose today is to receive comments on the

1 that's dedicated to bringing fairness and balance to
2 California's workers' compensation system. These are
3 important hearings.

4 It's extremely important that benefit notices are clear
5 and understandable so that injured workers are fully aware
6 of what work comp benefits are and what they must do to
7 receive those benefits. But injured workers are not experts
8 in this system so these notices must be written in a
9 language that they understand. This is particularly true
10 when the law sets up specific rights and responsibilities
11 for the injured workers.

12 The biggest example in these proposed regulations
13 involves new Labor Code section 4061.1. That section sets
14 up new 10-day time limits for an unrepresented worker both
15 to request a QME panel and to select a physician from the
16 panel. The proposed regulations do require that notices
17 inform unrepresented workers of these 10-day time limits.
18 However, if the notice doesn't highlight these new time
19 limits most injured workers will never see it. Quite
20 frankly, a lot of what injured workers receive from
21 insurance companies is almost unreadable and unless a notice
22 highlights something this important, most workers are not
23 going to see it.

24 Under Labor Code section 124, your division has a
25 statutory responsibility to, quote, "protect the interests

1 of injured workers who are entitled to the timely provision
2 of compensation," closed quote. To meet this goal, VIAW
3 recommends that any notice informing unrepresented workers
4 of their rights under section 4061.1 must include a
5 mandatory warning spelling out in plain English just what
6 the worker has to do and the warning can't be buried in the
7 middle of a complicated notice where most workers will never
8 see it. It must be right on top so that the workers will
9 see it and know what they have to do something right away.

10 The right to select the specialty of the QME is to
11 select a QME off the panel is critically important to an
12 unrepresented worker. That's why the Labor Code gives these
13 rights to the worker. But too many workers will lose those
14 rights unless they understand the new 10-day time limits in
15 the law. VIAW strongly urges that you revise these proposed
16 regulations to include a mandatory warning notice to
17 unrepresented workers to be placed prominently at the top of
18 the notice so that they will know that they have to take
19 action immediately.

20 Before I thank you for this I also wanted to mention
21 that perhaps a notice on the envelope containing the notice
22 a warning would be sufficient on the outside letting them
23 know that they only have ten days to respond because what I
24 anticipate is so many injured workers when they get their
25 mail, there is no telling what medical condition they're in.

1 If they're on meds and they take that and they just set it
2 over here and they open it up two weeks later and go, "Oh my
3 gosh, the ten days are gone." So perhaps a warning on the
4 envelope would be good. I want to thank you all for
5 allowing me to testify today.

6 MS. NEVANS: Thank you.

7 Okay. Our next person who's asked to testify is
8 David O'Brien.

9 **DAVID O'BRIEN**

10 MR. O'BRIEN: Thank you. I want to say a couple of
11 words. Maybe what I'm saying is not relevant, but on the
12 MPNs I would think that we need a paragraph or two toward
13 the end that would take care of the situation whereby
14 perhaps an IMR is already involved in the case at which time
15 the employer dissolved the MPN. I think somebody should
16 inform the IMR doc that she is no longer to proceed and to
17 take care of her bill.

18 And also there should probably be a paragraph, the
19 worker may be working her way up from the treating physician
20 to the second opinion to the third opinion. I think we need
21 something to --

22 REPORTER: I'm sorry.

23 (Speaker asked to slow down.)

24 MR. O'BRIEN: Oh, excuse me. If the worker is treating
25 with a treating physician and then goes up to the second

1 level opinion and the third level opinion, I think you need
2 something to stop that process if the MPN is dissolved. It
3 could be just a paragraph to make it clear that the worker
4 then is going free choice. And it's more important if the
5 process has gone to the IMR doc because she may have an exam
6 scheduled. So I think those two things should be covered.

7 On the issue of this notice business. I've gotten a
8 lot phone calls from a lot of my friends about another layer
9 of forms. I think the temporary disability information and
10 the permanent disability information and the supplemental
11 job displacement benefit information is adequately covered
12 under Labor Code section 3550 where all injured workers -- I
13 mean all workers on the day of hire or within the first pay
14 period get a booklet. That booklet is set forth in your
15 Regulations 9880. I think it's redundant to again give an
16 injured worker the temporary disability information all over
17 again and the P.D. information all over again.

18 We are the most form state in the nation. We have 97
19 forms we now mandate. We're going to add a couple more. I
20 would think that if you go back and look at Labor Code
21 sections 3550 and Regulation 9880 if all employers comply,
22 and I hope they do, then you won't need to give another
23 pamphlet out when my sister is injured explaining T.D.
24 because she already knows that. So I would just say that I
25 think that I love your notices and regulations are well

1 done, but I don't think it necessary to saddle employers
2 with another requirement to attach another pamphlet to those
3 notices. Thank you very much.

4 MS. NEVANS: Stanley Levine.

5 **STANLEY LEVINE**

6 MR. LEVINE: My name is Stanley Levine. I'm the
7 Cochair of the Regulations Committee from California
8 Applicants' Attorney's Association, and I want to begin by
9 thanking you because I think you've spent a lot time on
10 this, and our group went through this and we found some
11 changes that we wanted to make but we know this is a very
12 hard job. And so some of it is nit-picking but we still
13 have some issues with it, but again we thank you.

14 I agree with Mark Hayes in the issue of putting notice
15 to the unrepresented people because I think those people
16 aren't going to be able to see what is there and I agree
17 with him that they get mail and they don't open it up that
18 day, and I didn't think of it before but I think that it is
19 a good idea what he said about having something on the
20 outside of the envelope if that's possible to say
21 "Important, Read Now." We ended up putting in our paper to
22 you that in bold letters that you put something in there
23 that you will lose rights, that it is important that you
24 read something. You know, I can only go by my years of
25 practice with my clients and a lot of people I tell them

1 things, I go and I tell them again and again and they still
2 don't understand.

3 But I disagree with the idea that there's too many
4 letters. I think you have to keep on instilling that
5 because the great majority of people in this state are still
6 unrepresented and you're not having an attorney look at it.
7 So, therefore, I think the more letters you get that talk
8 about here are your rights, here's the papers that we have,
9 here's your temporary disability information, here's your
10 permanent disability information, eventually I think it will
11 soak in.

12 The osmosis is there and I think we have to look at it
13 that way because I think we're looking at people who do not
14 necessarily take the time, and a lot them can't read that
15 well anyway. So I think if you do it more you're doing the
16 right thing, and that's what I'm looking at. And I realize
17 the insurance industry and the self-insurance there is a
18 burden on them with this and that a lot of them don't like
19 all of the paperwork. But on the other hand if you look at
20 what's there, if you save a few people from making a major
21 mistake I think in the long-run, that is what we ought to
22 do.

23 The other comment I was going to make is about the
24 alternative dispute resolution that we also put in our
25 brief. The way it stands now you're saying that people have

1 limited access to attorneys. With the new rules that are
2 coming out it seems that attorneys are going to be allowed
3 in there all the time. So it depends on the group and what
4 they're doing but the older rules seem to take away
5 attorneys and not have them in this resolution. But the new
6 ones seem to have them in there, and I think you should
7 really consider that to change that wording as to what's
8 there but I'll leave our paper the way it is. And thank you
9 very much.

10 MS. NEVANS: Thank you.

11 American All-Risk Loss Administration. Could you leave
12 your card with your name with the court reporter.

13 MR. HUMPHREY: I'm terribly sorry, I did not bring one
14 with me.

15 MS. NEVANS: Okay. I can get a card from you.
16 Patrick Humphrey.

17 **PATRICK HUMPHREY**

18 MR. HUMPHREY: Patrick Humphrey. Good morning.
19 Just a couple of quick comments about the regulations that I
20 wanted to see clarified. Maybe you've already seen this.
21 On regulation proposed 9812(f)(2) which deals with revisions
22 of the P.D. benefit notice for injuries in 1991, 1992 and
23 1993, there is a provision that's added as part of the
24 mandatory QME language. We are to advise a represented
25 employee about if no agreement on an AME can be reached, the

1 injured worker may be evaluated by a QME pursuant to Labor
2 Code section 4062.2 but -- I'm not a lawyer but I'm
3 understanding that 4062.2 only pertains to injuries for date
4 of injury 1-1-05 and after. And if that's correct I don't
5 know why that would be part of a section of the notice that
6 clearly seems to pertain to injuries dated 1991, 1992 and
7 1993. It does pertain -- it would be appropriate for the
8 section for injuries 1-1-94 and after, but it seemed out of
9 place for the section concerning that window period if you
10 will, so I don't know if you looked at that or not.

11 There was one more question that I had. The last page
12 9813.1, the Notice of Supplemental Job Displacement notices
13 and it was Number 2, the Notice of Regular Work. And I was
14 actually pleased that the division has chosen to allow this
15 form, and I think that's Form 10003, to be used for the
16 purpose of an offer of regular work. And if that's made of
17 course in the form and manner prescribed by the Admin.
18 Director then, as I understand it, supplemental job
19 displacement benefit obligation has been fulfilled.

20 I just wanted to point out that as far as I know the
21 current notice clearly states at the top for injuries 1-1-05
22 and after, but if it's going to be used for injuries
23 occurring on or after January 1, '04, you may want to modify
24 that or get rid of that altogether. But if it's not been
25 changed, that seemed a bit out of place to me as well.

1 I have a comment about the forms. It is of course a
2 burden. We understand and certainly we anticipated that
3 there would be a need to translate in Spanish all of the
4 forms and notices. Certainly seems a lot of forms but I
5 have no issue with that. I wanted to ask though if the
6 division is contemplating a change to the current QME
7 Request Panel Form which still refers to the Industrial
8 Medical Counsel? And I don't even know that the address is
9 correct. In the past we've sent it to an address that, you
10 know, addressee unknown or cannot forward. I'm assuming
11 that the division is working on that as a part of these
12 notices.

13 Also, I didn't bring it with me, but ten years ago I
14 think the last time that there was a significant revision in
15 the benefit form, the division put out samples of forms. Is
16 it my understanding that the division will be doing that
17 again? Hopefully that's true. Samples and there were
18 instructions as well. They were very helpful for carriers,
19 for administrators to see how to word our forms. We
20 obviously need to change our forms significantly and any
21 instructions and samples of potential forms would be of
22 great help. That's all I have. Thank you.

23 MS. NEVANS: Destie tells me we will be putting samples
24 on our site.

25 MR. HUMPHREY: Thank you.

1 MS. NEVANS: Okay. That's everyone who signed in to
2 testify. Is there anyone else here who would like to make
3 comments?

4 (No response.)

5 MS. NEVANS: Okay. If not then we're going to conclude
6 the hearing. We will take written comments until 5 p.m.
7 today. We'll still be around for a few minutes after the
8 hearing if you want to come up and ask any questions or
9 anything. So thank you for coming today.

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C E R T I F I C A T I O N

I hereby certify that the foregoing is a full,
true and correct transcript of the proceedings taken by me
in shorthand on the date and in the matter described on the
first page hereof.

Barbara R. Brown
Official Reporter
Workers' Compensation Appeals Board

Date: December 14, 2006