

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

PUBLIC HEARING

Wednesday, September 3, 2014  
Elihu Harris State Office Building Auditorium  
1515 Clay Street  
Oakland, California

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Reported by: Richard H. Parker

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21  
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23  
24  
25

INDEX

Jason Schmelzer	5
Jeremy Merz	10
Mark Gearheart	11
Diane Worley	16
Rose Turner	21

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1 (Time Noted: 10:02 a.m.)

2 MR. ROBBINS: Good morning. Good morning. For those of  
3 you who are hiding in the back, can you hear me or do I need a  
4 microphone?

5 VOICE: We can hear you.

6 MR. ROBBINS: That's what I thought.

7 This is the time and place noticed for public comments  
8 on the proposed changes to the benefit notice regulations for  
9 workers' compensation.

10 As stated in the rulemaking, if the comment period  
11 ends by 12:00 noon, we will not have an afternoon session.

12 My name is James Robbins. I'm an attorney for the  
13 Division of Workers' Compensation. To my far left is Destie  
14 Overpeck who you probably all know is our acting administrative  
15 director. To my immediate left is George Parisotto who is our  
16 acting chief counsel. And to my right is Maureen Gray who is  
17 our regulations coordinator.

18 This poor gentlemen down here is our court reporter  
19 who will be transcribing the proceedings today.

20 There are two sign-in sheets over to the side. One is  
21 just a general sign-in sheet to let us know that you are here.  
22 The second is a sign-up sheet if you would like to submit  
23 comments to us today.

24 Now, if you don't sign one of the comment -- if you  
25 don't sign one of the sign-in sheets or submit comments either

1 in writing or here today, you will not get notice of any  
2 potential changes to the rulemaking. If you do sign up or if  
3 you submit comments, you will get notice of any -- a 15-day  
4 hearing period on any changes we make to the proposed  
5 regulations.

6 Now, if you submit a comment in writing, feel free to  
7 highlight it today or it's not necessary to completely read it  
8 into the record.

9 If you'd like to give us written comments, you can  
10 either do it here, submit it upstairs on the 18th floor or  
11 e-mail it or fax it to us by 5:00 o'clock today.

12 We give equal weight to written or oral comments so it  
13 doesn't matter on the form.

14 If you -- Oh. Please, for the help and assistance of  
15 our court reporter, if you're going to make comments today, if  
16 you have a business card, please give him one so he has your  
17 name. If you have an unusual last name, please spell it. I  
18 was born and raised on the East Coast so I tend to talk a  
19 little faster. Please remember that the poor gentleman has to  
20 take everything down and give him a break from time to time.

21 We have a sign-in sheet for people who want to make  
22 comments.

23 Cynthia -- if I mispronounce your name, I apologize --  
24 Woelke from State Fund.

25 MS. WOELKE: I'm not making comments.

1 MR. ROBBINS: Oh. This is just general. Okay. Oh, okay.  
2 I'm sorry. I'm looking at the wrong thing.

3 Oh. Then Jason Schmelz, I think, from --

4 MR. SCHMELZER: Yeah, sorry. I didn't write very clearly.

5 MR. ROBBINS: That's okay. If you've ever seen my  
6 handwriting, you have absolutely nothing to apologize for. But  
7 please, given my mispronunciation of your last name, spell it  
8 for the court reporter.

9 MR. SCHMELZER: I didn't bring you a business card, but I  
10 will when I walk back up there. Sorry. Didn't have my coat  
11 on.

12 MR. ROBBINS: No problem.

13 MR. SCHMELZER: I didn't feel like putting it back on.

14 **JASON SCHMELZER**

15 Thank you. Jason Schmelzer spelled -- come on.  
16 That's an easy one, right -- spelled S-C-H-M-E-L-Z-E-R; Jason  
17 Schmelzer. I almost -- almost took my wife's last name when I  
18 got married.

19 So I'm here representing the California Coalition on  
20 Workers' Compensation which is a coalition of employers,  
21 private and public, from across the state; a good-sized board,  
22 large companies, large employers.

23 First just want to thank the Division for working on  
24 the regulations, working on this package. We think it's a good  
25 step forward. Also, this is kind of flowing out of a lot of

1 work that's been done in previous years through the commission  
2 on health and safety in workers' compensation and the  
3 legislature with, you know, AB 335 by Jose Solorio. I just  
4 wanted to acknowledge that as well.

5           Broadly, I think that we can kind of look back to  
6 those processes, those earlier processes, you know, the  
7 commission report, and that legislation and the legislative  
8 process to kind of guide us. I think the idea at that point  
9 was that, you know, an examination of benefit notices, kind of  
10 including the Applicant attorneys, labor, employers, came to  
11 some conclusions. One, that there was too much information  
12 being thrown at injured workers at one time. It was hard to  
13 understand. It was probably leading to more confusion and  
14 conflict and strife than, you know, being informative and  
15 useful for injured workers.

16           And the idea was, I mean, to the extent that we can to  
17 kind of claw some of that back and just provide the most  
18 necessary information at the time that it's needed and help  
19 kind of reduce the noise from an injured worker perspective and  
20 make sure that they have the proper information.

21           And from an employer perspective, I think it leads to  
22 less dispute, you know, less ambiguity, less concern about the  
23 process. We know that this can be a very concerning and  
24 overwhelming process for injured workers. We were hoping to  
25 quiet some of that down and get rid of, you know, some of the

1 noise that is sometimes associated with the process.

2 So very much appreciate kind of moving in that  
3 direction what the division is doing with the regulations in  
4 that regard.

5 I think what we hope is that you keep that in mind as  
6 you move forward, you know, to the extent that we can take  
7 extraneous information and take it out from in front the  
8 injured worker and just provide them what the need at the time.  
9 That would be great.

10 I think in AB 335 there was a discussion of kind of a  
11 booklet that would be available, both hard copy and on an  
12 Internet website, and maybe, you know, the benefit notices  
13 would reference, you know, a page number or something in that  
14 booklet; you know, for more information go to this section.  
15 And that's where you can drop all of that extra information on  
16 them. But when they get that notice, it's quick and readable  
17 and understandable. We support moving in that direction.

18 A few specific comments about the regulations. Throw  
19 something at me if you need me to slow down. I'm not from the  
20 East Coast, but I talk fast as well.

21 One, on electronic delivery of the benefit notices.  
22 Section 9810(h) -- I want to say -- (l). Unless that's  
23 supposed to be an (i). They both indicate that the claims  
24 administrator can send benefit notices either to the injured  
25 worker or the Applicant attorney upon their documented

1. agreement. The way that it reads it seems as though it's upon  
2 documented agreement by the Applicant attorney or by the  
3 injured worker. And what we wanted it to say -- just be  
4 clarified to say upon agreement of both parties. We don't want  
5 to be a situation where maybe one claims administrator isn't  
6 set up to provide electronic delivery of notices, but the  
7 Applicant attorney or the injured worker requests that and it  
8 can't be done. And there is maybe some confusion about what  
9 the regulations require. So we were hoping that that could be  
10 clarified.

11           Less of a -- a recommendation or a request and more of  
12 a concern is how claims administrators are going to deal with  
13 information flowing back electronically. You get maybe a  
14 notice where -- where there's some requirement that an injured  
15 worker or an Applicant attorney respond in some way to the  
16 claims administrator. And we're wondering how that's going to  
17 work. Are they going to, you know, click reply to the e-mail.  
18 And you know, what if it's not the appropriate box, you know,  
19 on a reply.

20           So we want to work through some of those issues. You  
21 know, how do you deal with information coming back. Does there  
22 need to be something in the electronic communication that says,  
23 hey, this is -- this is a one-way street. You know, you're  
24 going to have to provide your response back to the claims  
25 administrator in the traditional way or do we somehow need to

1 grapple with that and understand what that looks like. So both  
2 the injured worker, the claims administrator, and other folks  
3 that are going to be, you know, engaging electronically kind of  
4 have an understanding of what that's supposed to look like.

5 One note on 98 -- 9811(d), the definition of  
6 dependent. The last sentence we think should be struck. It  
7 basically reads -- I'm not going to read this for you. But the  
8 last sentence reads, and includes "the parent or legal guardian  
9 of a minor dependent child." And we just thought that should  
10 be struck just because that alone does not qualify someone as a  
11 dependent. We didn't think that it was useful or necessary.  
12 So it's just that after the comma that last sentence and it's  
13 in our -- our written comments. But I just wanted to provide  
14 that to you.

15 One more thing I'll say and then I'll make room for  
16 other people. As far as the implementation timeline, I think  
17 the last time the benefit notices were modified there was a 120  
18 days of lead time that were provided to claims administrators  
19 to make sure that they could make all of the programming  
20 changes that they needed to make and, you know, do all of the  
21 internal training that needed to be done.

22 Depending upon the nature and extent of the final  
23 changes to the regs, we would say we'd appreciate that as a --  
24 as kind of a baseline. If there could be more than that, 150,  
25 180, whatever it is, we think that would be useful to make sure

1 that everybody kind of understands the rules of the road.  
2 Especially if we're kind of going down this -- this offramp  
3 into electronic communications. I think we really need to take  
4 the time to make sure that the proper training is done, all of  
5 the understanding that needs to occur occurs and it kind of  
6 rolls out smoothly so we don't tend to defeat the purpose and  
7 muddy communications as we're -- as we're taking our first  
8 steps in -- in that direction.

9 So with that, I've submitted comments electronically  
10 on behalf of the Coalition and I appreciate your time.

11 MR. ROBBINS: Thank you. Anyone else that wants to submit  
12 comments?

13 JEREMY MERZ

14 Microphone is a little short. Jeremy Merz on behalf  
15 of the California Chamber of Commerce. We're an association  
16 representing about 14,000 businesses throughout the state. We  
17 are on the same Coalition letter referenced by Mr. Schmelzer so  
18 I won't retread a lot of ground. I just wanted to come up and  
19 make a couple comments.

20 First, thank the Division for promulgating these regs.  
21 Certainly there's a heavy workload in light of SB 863. So  
22 getting these regs out, finding the time for that, we thank you  
23 for that and effectuating the legislation of 2011.

24 I would associate most of my -- the technical concerns  
25 that Mr. Schmelzer just shared, and I'd reference the comments

1 we submitted in the letter.

2 We are generally supportive of the overall direction  
3 of the regulations. We think they hit kind of the macro points  
4 that CHSWC put out. But we would -- definitely I think the  
5 electronic communications, how that's going to work between  
6 claim adjuster and injured worker, we think needs to be fleshed  
7 out a little bit more.

8 And I really wanted to highlight the implementation  
9 period. I've heard this from a lot of my members. Again,  
10 supportive of moving more toward an electronic world,  
11 electronic communications, but the time that's going to take to  
12 implement, system implementations, training, electronic  
13 upgrades. We reference back to the 120 days kind of as a  
14 minimum from the last round of benefit notice regulations. We  
15 would suggest that these are a little bit more complex so we  
16 would look and urge 150 days to 180 days for implementation.

17 And with that, I won't take up too much more time.  
18 Again, we did submit a letter for -- a comment letter that was  
19 referenced earlier. So thank you.

20 MR. ROBBINS: Thank you. Mark Gearheart.

21 MARK GEARHEART

22 Thank you. Good morning. Good morning. My name is  
23 Mark Gearheart. I represent the California Applicants'  
24 Attorneys Association which is probably well-known to all of  
25 you. But we're a statewide organization of lawyers who

1 advocate for disabled workers and for justice.

2 We want to thank the Division or their work on these  
3 regulations. We have a few concerns that I'd like to touch on.

4 One is Labor Code Section 138.4 subdivision D requires  
5 that the Division, both on its website and at district offices,  
6 provide material in plain language that describes the overall  
7 compensation system and the rights and obligations of employees  
8 and employers at every stage.

9 Subdivision C says each notice must reference this  
10 material. This is statutory. We don't see any provision in  
11 the proposed rules that identifies or defines what  
12 informational materials have been developed and made available  
13 on the website or in the district offices. And we don't see  
14 any rules requiring the notices to include that information or  
15 explain how to access it.

16 These notices -- well, the other point is the statute  
17 makes clear that each notice has to reference the informational  
18 material and we think it would probably be better if each  
19 notice had attached to it the full explanation or, at a  
20 minimum, an easy way to access it on the web, not a reference  
21 to the Division's website where you then have to navigate  
22 through and maybe you'll find it, maybe you won't.

23 These claims go on for years and getting a notice at  
24 the beginning of the case that has that information and then  
25 not being provided the information again later is not terribly

1 helpful. With all the delays from IMR, from the broken panel  
2 QME process, we all know these claims go on for years. So  
3 folks need to get this information over and over again. And  
4 that's required by the statute and we think the regs need some  
5 significant revisions to comply with that concern.

6 Second concern we have is what appears to be  
7 discrimination against Spanish-speaking workers in these  
8 regulations. Labor Code Section 124(b) requires that all forms  
9 and notices given to the employees shall be in English and  
10 Spanish. It's not optional.

11 The intent of the rules is to make sure that the  
12 Spanish-speaking workers have the same information or access to  
13 the same information. This is a huge part of our labor force.  
14 It looks like from these regs a lot of the information is going  
15 to be coming up on the DWC website and the notices will say,  
16 well, go to the website if you want to know more. The website  
17 is all in English. I don't think that complies with 124(b) and  
18 I think it discriminates against a huge part of the workforce.

19 Another problem is the amendments to Section 9812  
20 indicate that if the employer sends out a notice that the  
21 adjuster agrees with the treater's decision about, say, the end  
22 of temporary disability or similar things, the employee of  
23 course has the right to request a panel QME if they disagree,  
24 but it doesn't require the form to be attached any more. You  
25 have to contact the claims examiner, an adverse party who

1 typically their own attorney can't even get ahold of on the  
2 phone.

3 That's what happens to me when I get down here at the  
4 Board. You know, I talk to the defense lawyer. Oh, I can't  
5 get the adjuster. I don't know where they are. I don't know  
6 how the injured worker is going to get them on the phone or why  
7 they have any motivation to send them a QME panel request, let  
8 alone to do it timely.

9 Those QME panel requests have to be attached with  
10 instructions to that notice, otherwise what's going to happen  
11 is the worker is going to get the notice. They're going to  
12 call the adjuster and the carrier is going to say we never got  
13 a call. We have no messages. We never heard from them and  
14 they're not going to do anything and the time is going to run  
15 out. I just don't think that's a very good idea.

16 And then oddly I share some of the concerns expressed  
17 by Mr. Schmelzer about the electronic system. One problem is,  
18 I don't think the Division has thought through some of the  
19 problems with electronic service. The mailbox rule doesn't  
20 apply. It's electronic. When does the 10 days or whatever the  
21 time limit is start to run? How do we know when somebody got  
22 it? What if the e-mail bounces back? What's the obligation of  
23 the carrier, if any, at that point? What if some of the  
24 information is confidential? Is there going to be a log of  
25 these things? Is it going to be produced upon demand?

1 I think there's a lot of complicating factors. I'm  
2 not against the electronic communications. I think it's  
3 probably the way to go, but I would echo some of the concerns  
4 from my colleagues on the other side of some of these disputes  
5 that maybe we should slow down a bit. Maybe we need to have  
6 encrypted communications with a log.

7 These are legal documents. They have consequences.  
8 Most law firms will not accept service of documents  
9 electronically. That's a standard on a lot of the notices of  
10 representation you get. There's a lot of problems with  
11 electronic communications. They don't have the same privacy  
12 protections as mail because the legal system has not kept up  
13 with technology. E-mails may or may not be confidential.  
14 That's a big controversial topic.

15 So I think maybe we need to take a pause and think  
16 about how that's going to work. Because if the rules go in the  
17 way they are now, I can see litigation over whether the notice  
18 was sent, when it was sent, whether it was received, what the  
19 time frame is to respond. None of that's addressed.

20 The claim form, in respect to the electronic e-mail  
21 stuff, asks the worker to put down their e-mail and then has a  
22 box to check after that saying I'll take e-mail service instead  
23 of mail service. I think it's a little confusing. I think a  
24 lot of people are going to be in the mode of filling out the  
25 form; name, address, date of injury. Oh, e-mail. They'll put

1 it down before realizing that that may be agreeing to  
2 electronic service and waiving your rights to written service.

3 And there's a box to check, but that could very easily  
4 get obscured through a carbon paper or a fax smudge or somebody  
5 else checking it. I would suggest that if you're going to go  
6 that route, there be very a very clear opt-in procedure. In  
7 other words, it's not electronic unless there's a big notice  
8 that says if you want to waive your legal rights to written  
9 notice and agree to exclusive electronic service, please fill  
10 in your e-mail below. Something that makes it real clear that  
11 that's what we're doing, because I think the form now is a  
12 little -- it's subject to perhaps being misinterpreted.

13 But thank you for your time.

14 MR. ROBBINS: Thank you.

15 Diane -- I'm not sure of the last name.

16 MS. WORLEY: Worley.

17 MR. ROBBINS: Worley. Okay. Thank you.

18 MS. WORLEY: I'm sorry.

19 MR. ROBBINS: No problem.

20 MS. WORLEY: It's my handwriting. I apologize.

21 DIANE WORLEY

22 Good morning. I'm Diane Worley. I'm the director of  
23 policy implementation for the California Applicants' Attorneys  
24 Association. And first I just want to thank everyone in the  
25 Division who has worked so hard this past year on drafting and

1 revising and revising again the regulations that have been part  
2 of the rulemaking and implementation process for post-863 and  
3 although these aren't part of that, I celebrated my one-year  
4 anniversary yesterday with the California Applicants' Attorneys  
5 Association. So I appreciate all of the work that has gone  
6 into this because of the work I've had to do on the -- on the  
7 regulatory process.

8 I just handed in our written comments which are also  
9 going to be submitted electronically this afternoon, and I  
10 won't go into great detail as to what's in there. Mr.  
11 Gearheart did speak to some of the specifics, but I want to  
12 just say, in general, I see a lot of benefits in terms of going  
13 forward with an electronic process for accessing information.  
14 I think it's the age that we -- we live in.

15 The California Applicants' Attorneys Association  
16 doesn't oppose that, but I think there has to be a very  
17 carefully thought-out process in the regulations in terms of  
18 addressing any problems that may arise. And they will arise  
19 with regard to electronic service, electronic access. And we  
20 all know all the benefits of a computer age, but we also know  
21 all the difficulties. It doesn't always work well. You don't  
22 always receive your e-mails. Things bounce back that you try  
23 to send to people even though you think you have the right  
24 e-mail address. Things end up in a spam folder that you forget  
25 to check.

1           And when you're talking about benefit notices where an  
2 injured worker can lose all their rights if they don't act  
3 within a very short time frame, for example, ten days for a  
4 selecting a QME panel, there really has to be great  
5 consideration given to addressing what -- what happens when  
6 things go wrong.

7           And having said that, I don't want to repeat  
8 everything that Mr. Gearheart said, but I think initially the  
9 focus has to be on the fact that the benefit notices have to  
10 comply with the statute and the statute clearly says that there  
11 has to be a reference in each benefit notice with regard to  
12 finding a context to the meaning of the notice so the injured  
13 worker knows what it is about, a notice to the reference  
14 materials.

15           I recognize that the -- the regs dealing with the  
16 notice to employee's poster and the initial claim form contains  
17 a lot of detailed information about the -- the booklet that you  
18 can access on the website and information. But you can't avoid  
19 the responsibility of providing adequate notice to the injured  
20 worker by just providing it one time at the beginning of the  
21 case or assuming that an injured worker is going to be sitting  
22 in the lunchroom every day at their employer's workplace  
23 reading the notice. Many injured workers are off for months.  
24 They're not going to have access to the website information on  
25 that poster. They may lose that initial claim form like you

1 and I lose many paper things that we get that are very  
2 important documents that we search all over the house for them.

3 The other important thing is that this has to be  
4 easily accessible and I think very important the issue about if  
5 you're going to be provide a website, the DWC website is where  
6 a lot of this information is going to be. As Mr. Gearheart  
7 pointed out, it's just in English. So you're violating the  
8 statute providing the requirement that notices be in Spanish  
9 and English. So that's very important.

10 There should also be a requirement that if someone  
11 doesn't want to have access electronically that they can get a  
12 written copy of notices as an alternative. They can get a  
13 written copy of the -- of the booklet as an alternative if  
14 that's something that they're more comfortable with and they  
15 don't have a computer at home.

16 With regard to electronic notices, I know that as a  
17 former defense attorney before I left practice that the method  
18 that a lot of claims administrators were using for transmitting  
19 confidential medical information and reports was an encrypted,  
20 secure e-mail system which requires you to log in with a  
21 password. It's a nuisance, but I think what that did is it  
22 allowed the claims administrator to know it had been received.  
23 I think something like that with regard to electronic  
24 transmission of benefit notices could be helpful. If there's  
25 some way for a claims administrator to keep a log of service

1 and receipt so that if there's any problems with an injured  
2 worker or an attorney saying they didn't receive something,  
3 they have some electronic means of verifying when something was  
4 delivered, opened, and so forth.

5           On the issue with regard to some of the regulations  
6 requiring that the injured worker contact the claims  
7 administrator to obtain a form, that probably worried me the  
8 most of anything I read in there. I think that anyone who has  
9 ever had an experience through no one's fault of trying to  
10 reach a claims administrator, they're very busy. They rarely  
11 are able to answer their phone. Sometimes a defense attorney,  
12 it could take two, three days to get through. E-mail works  
13 well; works better sometimes.

14           So two notes on that is with regards to not ever  
15 requiring an injured worker to have to reach out to a claims  
16 department to get a form. That never should be. That always  
17 should be attached to the notice, particularly when you're  
18 talking about QME panel forms and when you have 10 days to take  
19 action, otherwise you lose all your rights.

20           Also the notices, I believe, now require that the  
21 claims administrators' telephone number and address be on the  
22 form and we recommend that the e-mail address also be provided  
23 because it's a very easy way to contact a claims administrator  
24 and there's no reason why it shouldn't be provided.

25           Those are all the comments I have. Thank you very

1 much for your time today.

2 MR. ROBBINS: Thank you. Rose Turner.

3 ROSE TURNER

4 Good morning. I do want to thank you for your hard  
5 work on this issue and all the other regulations related to the  
6 Department of Industrial Relations and the Department of  
7 Workers' Compensation.

8 I'm not an attorney. Maybe I'm an accidental  
9 attorney, but I'm not an attorney. I do, however, have a lot  
10 of experience in related fields like writing methods and  
11 procedures for large international corporations and tariffs  
12 which are very similar to this whole regulatory procedure here.

13 And I have, in administrative law in other areas, some  
14 experience and success in -- I have a landmark decision in  
15 social security administrative law. And I have a thank you  
16 letter from the attorney general of this state in another case  
17 where the hearing was held in this building many years ago  
18 thank you -- thanking me for my help and they had never had a  
19 case where they had every violation proved by their  
20 investigators. So I come from a background where  
21 problem-solving was my job, to make things work. And that's  
22 not happening here.

23 It seems to be the last thing that happens is that  
24 anybody wants to make this work and this is supposed to be to  
25 help the injured worker either to return to work if they're

1 able and when they are not, to relieve them of the consequences  
2 of their industrial injury.

3 One of the first things that needs to go into the  
4 benefits notices, because as it was noted earlier, these  
5 notices are oftentimes in workrooms and offices and an injured  
6 worker may never return to that office. So there are  
7 requirements, not only within the Labor Code but other laws  
8 within California, that require certain amount of notice and we  
9 know that the claims adjusters are impugned with knowledge by  
10 these statutes.

11 There's a thing called statutory presumption. So  
12 workers' compensation is not the exclusive remedy in all cases  
13 nor a small section of the Labor Code and regulations that are  
14 subject to change.

15 So it's very important, especially when the claims  
16 adjuster has knowledge that there may be other entitlements  
17 that the injured worker be given that in the first letter that  
18 they get. Those are benefits, whether they are from the DWC or  
19 DIR, or whether they're from another administrative department  
20 of the State of California or the federal government.

21 While the Labor Code and the regulations mention a few  
22 presumptive disabilities, there are in fact in the State of  
23 California -- and they are across the board to federal law --  
24 15 presumptive disabilities. And these are recognized by the  
25 State of California and also by the Workers' Compensation

1 Board. And yet, time and time and time again attorneys,  
2 judges, they all say that oh, no, that does not apply. You  
3 could have a final award of disability, get a hundred percent  
4 disabled based on your industrial injury, before it gets  
5 adjudicated in this realm, based on the exact same evidence.  
6 Because when a claim gets mismanaged, there are other  
7 opportunities.

8           When an injured worker's medical needs are not met  
9 timely or a claim is denied with that investigation, you know,  
10 they can go and apply for Medi-Cal and get it. They can apply  
11 for social security disability. They can apply for state  
12 disability. These things are not on that initial notice and  
13 there's other case law which shows that people in these  
14 positions have to give that type of notice.

15           I worked in a large building that had over 10,000  
16 people in it. There were four vendor closets that had all the  
17 mandated posters in it. You could work in that building for 20  
18 years and never enter one of those closets to find these  
19 notices that you were supposed to have.

20           So this is what happens to the injured worker who, you  
21 know, some people say, oh, they have too much information, but  
22 they need to have a certain amount of information up front.

23           The forms on the DWC site, aside from the whole site  
24 being hard to navigate -- it took me two hours to find the  
25 actual notice for this meeting, although I had heard about

1 it -- to actually find it. Okay.

2 The forms cannot be filled out if you're using  
3 FireFox. They can only be filled out if you're using Internet  
4 Explorer.

5 In EAMS the form for expedited hearing shows 31 lines,  
6 but you could only put in roughly 400 characters and I think  
7 that includes the spaces.

8 So you are under a deadline and you're trying to paste  
9 in the information that they told you at the EAMS class that  
10 you had to do and you had to have ready and it keeps bouncing.  
11 So you have to take it down, take it down, take it down. You  
12 can only check one box.

13 So if there are two issues, say, a problem with the  
14 benefits notice and a problem with utilization review that are  
15 both happening at the same time and are ongoing problems, you  
16 can only put in one and then your matter doesn't get heard.  
17 And it's the fault of the injured worker or the person who is  
18 assisting them if this form isn't filled out correctly.

19 The notices and the -- the time for the service, there  
20 are insurance companies and their adjusters who, several years  
21 back, made a big deal about moving out of state to Arizona so  
22 they then could have more time to serve these things so that --  
23 we have ten days to respond. They have 15 days to send it and  
24 they take every day of that 15 days of course because they're  
25 entitled to. So when you get it, you're already too late. And

1 they'll sign it with, you know, Bakersfield. That's in  
2 California, Kern County even. But they get their extra time  
3 and they serve it late if they serve it at all.

4           There was some language in here about serving benefits  
5 notices. I have a case where they never served it. They made  
6 a whole lot of decisions based on it and it wasn't correct.  
7 Went to three hearings regarding it. The opposing counsel  
8 never produced it. He only produced it after he lied to the  
9 judge and got a certain order. Then he produced it and it  
10 was -- it showed it was never served on me. And yet this goes  
11 on all the time.

12           I don't think the letter was written until sometime  
13 later. It had the wrong information and it had the vague  
14 language. I agree with your doctors. Your benefits ran out  
15 two months ago. Won't say which doctors. Don't say which  
16 reports. Don't say how they calculated it. Don't say how they  
17 estimated the permanent disability rates.

18           And I'm sorry if I hesitate once in a while. I was  
19 hit by a semi-truck a few years back and sometimes I have a  
20 problem with word finding. And if I get emotional, that's  
21 because of the same thing. I have what's called emotional  
22 lability or pseudobulbar affect. So if I start crying, it has  
23 no -- nothing to do with anything other than it's because I got  
24 hit by a truck and survived.

25           There are a number of issues here that these notices

1 simply don't cover. If they're going to terminate somebody's  
2 benefits, it definitely -- they need to show exactly what --  
3 and it can't just say, well, you put it on your letterhead.  
4 You know, you need to build a calculator in there. So they  
5 have to fill in and say this report had a, you know, WPI of X.  
6 This one had a WPI of X. This one had a WPI of X. And they  
7 are added, not combined. Or, you know, the Applicant has a  
8 presumptive disability according to blah, blah, blah, blah,  
9 blah. That needs to be in there.

10           You can't just say we're discontinuing your benefits  
11 because we've decided to intentionally misrepresent the  
12 material facts in the case so that we can deny you your  
13 permanent disability because you couldn't be in two places at  
14 one time; attend an AME when you were having surgery. I kid  
15 you not. That is what one of the claims is.

16           Not using 4658 to calculate it or to say you have 423  
17 weeks of disability that's expired and that doesn't happen  
18 until June of 2016 or judges -- there's nothing that allows you  
19 supposedly to bring an invalid termination letter to court  
20 other than to ask for sanctions.

21           MR. ROBBINS: Miss Turner.

22           MS. TURNER: Yeah.

23           MR. ROBBINS: You're getting into issues now that involve  
24 litigation and far outside the benefit notices.

25           MS. TURNER: I'm sorry.

1 MR. ROBBINS: Could I ask you to sort focus on the  
2 subject --

3 MS. TURNER: Okay. All right.

4 MR. ROBBINS: -- please. Thank you.

5 MS. TURNER: But if these items are missing, that's where  
6 it leads. It leads to abuse, you know. If you have vague  
7 language -- it's supposed to be liberally constructed in the  
8 benefit of the injured worker, not to the bottom line of the  
9 insurer. Okay.

10 There has to be some -- some meat here, some teeth  
11 where you can get in and say, okay, when you don't issue a  
12 proper benefits letter that there is an expedient way for an  
13 injured worker to have their benefits initiated, at least on a  
14 temporary basis. In other administrative departments it's  
15 called aid paid pending. And certainly a notice should be a  
16 reasonable amount of time before the termination, not after it.

17 Oh. One of the other options besides electronic  
18 communications should be direct deposit. That's one of the  
19 issues that, you know, comes up is how these are going to be  
20 paid. And oftentimes an injured worker has difficulty getting  
21 back and forth to the bank. They may not have access to a  
22 computer or not want to use a computer to receive their  
23 compensation, you know. They may prefer to have direct deposit  
24 so that they can call up on the phone and find out, okay, my  
25 check's in. Now I can write my money.

1           And there is a provision in the regulations, but if  
2 you're asked for it you're told, no, they don't have it. So  
3 that has to be one of the things that's in that initial letter  
4 is how you want to receive your compensation. Do you want it  
5 by direct deposit? Do you want it by a check? That has to be  
6 there because a disabled person, an injured worker, they may  
7 not be able to timely manage their money.

8           Let's see. As I said, 9815 on the very last page,  
9 corrected notice; I have five on my desk regarding the same  
10 item. Not a single one of the corrections on it is correct and  
11 this injured worker has been totally disabled since the date of  
12 injury. And this is an abomination that he should be denied  
13 his life pension that he's entitled to simply because the forms  
14 or the language for these benefits letters does not have any  
15 consequences associated with it or any requirements to make it  
16 clear what it is.

17           Anyway, thank you very much for listening to me.

18           MR. ROBBINS: Thank you.

19           MS. TURNER: And I'll maybe provide some written comments  
20 later. Thank you.

21           MR. ROBBINS: Thank you very much.

22           That, I think, is the last -- the last of the comments  
23 that were on the sign-in sheet. Give anyone else an  
24 opportunity that's thought of something else they would like to  
25 add.

1 My usual practice, because we're in the Bay Area and  
2 it's kind of hard to get here and once you get here, it's kind  
3 of hard to find parking and then you have to go through  
4 security, is to give it maybe another 15 minutes at which point  
5 if no one else shows up, I'll adjourn the hearing.

6 The notice clearly stated that if the hearing comments  
7 concluded by noon, there would be no afternoon session. So  
8 I'll ask Ms. Gray, our regs coordinator, to put a note on the  
9 door reminding people that they can submit their comments  
10 either electronically or by personal delivery to the Division.

11 At this point I will go off the record, close the  
12 hearing for now, wait for 15 minutes or so to see who shows up.  
13 But not by the clock in the back because that says it's a  
14 quarter to 5:00 and we should all be leaving and going home.

15 Thank you.

16 (Recess taken from 10:45 a.m. to 11:00 a.m.)

17 MR. ROBBINS: Okay. Let's go back on the record briefly.

18 It's now 11:00 o'clock. No one else has appeared to  
19 submit comments. So, as I stated earlier, it was my intent to  
20 allow any late arrivals to make their comments. There being no  
21 one here and no one has asked to make further comments, that  
22 concludes today's hearing.

23 I thank you all who are remaining for coming today for  
24 part of the process and remind you that anyone is able to  
25 submit comments in person, in writing, by close of business

1 5:00 o'clock today. And one last time, I'll remind you if you  
2 haven't done so already, please sign the sign-in sheets.

3 That concludes the hearing. Thank you very much.

4 (The proceedings adjourned at 11:01 a.m.)

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R E P O R T E R ' S C E R T I F I C A T E

I, Richard H. Parker, Official Hearing Reporter for the State of California, Department of Industrial Relations, Division of Workers' Compensation, do hereby certify that the foregoing matter is a full, true and correct transcript of the proceedings taken by me in shorthand, and with the aid of audio backup recording, on the date and in the matter described on the first page thereof.

*Richard H. Parker*

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RICHARD H. PARKER,  
Official Hearing Reporter  
of the State of California,  
Workers' Compensation Appeals Board

Dated: September 5, 2014  
Fresno, California  
/s/