



*All About Claims* is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims practitioners. Please send comments or suggestions for future topics to Lise Maes by emailing [lise.maes@state.co.us](mailto:lise.maes@state.co.us).

## Measuring Success - Loving What You Do



In our continuing series highlighting the judges of the Prehearings and Settlement unit, we visit with Tom McBride, who made a natural transition into public service following a career as an acknowledged expert, author, and leader in the Colorado workers' compensation community.

### *Tell us a little about yourself.*

I started in Workers' Compensation back in Ohio around 1972. Prior to that, I worked my way through college while working nights as a child care worker in a children's hospital in Dayton. That was my first exposure to state employment. I did that until I graduated. After I graduated, I started teaching at my former high school in Cleveland. I taught English and Speech and coached football for about 6 years. During the latter part of that tenure

of teaching, my dad was an attorney and he was encouraging me to consider going to law school. So I thought, 'Okay, well, I'll take a run at that.' Actually, my wife and I both applied and were admitted at the same time, but then she became pregnant and didn't go, and I did go. So I continued to teach for awhile while I attended night law school. When I left teaching, I joined the Bureau of Workers' Compensation in Ohio and I did that until I graduated from law school.

When I graduated from law school, I joined a third party claims administrator and I did that work until I was hired away by a law firm in Cleveland and then did workers' comp defense work for that law firm until I moved to Colorado in 1981. When I moved here, at that time I was hired by Ron Jaynes, Dick Glassman, and Jim Carpenter - that was the firm. I stayed with that group about 17 years. At that point in time, Pam Musgrave, myself, and my wife who had been working as a clerk at our firm while she was in law school out here, set up our own firm and we were in practice from 1999 until 2005 when I joined the Division. That came about because MaryAnn Whiteside, who was the Director at that time, posted a solicitation for a job position as a prehearing judge. I applied and I didn't get it. Craig Eley got it, but MaryAnn invited me to lunch to discuss a different position. To make a long story short, I went to lunch, and of course, MaryAnn — being the persuasive person that she is — convinced me that I should abandon private practice and join the Division. I became a regulatory analyst and worked with Coverage Enforcement and Carrier Practices. Then around 2008, I was doing some part

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time work in the Prehearing Unit, and then I moved full time to Prehearings in the latter part of that year. That's where I continue to remain, at least for the time being until I decide to retire or somebody decides to change my occupation for me. As far as interests are concerned, my interests are fairly eclectic. I'm an inveterate motorcycle rider. I've had a number of them during the course of the years. I'm a private pilot - instrument rated. At one time, a social partner and I had an airplane. We had it for a number of years and we flew all over



the place in it, but we eventually ended up selling it. So I'm not very active as pilot despite the fact that I have those ratings — the private pilot and the instrument rating. So motorcycling and flying — those are my extracurriculars.

### *What background experiences led you to becoming an attorney?*

As I indicated, my Dad was a lawyer, a tax attorney — as a matter of fact, he had his own practice. He was part of the *greatest generation* and in the Second World War in naval intelligence. When he left naval intelligence, and went into non-military service, he joined the Internal Revenue Service and was an audit agent for the I.R.S. while attending law school at night. Then he went to law school and then set up his own practice and continued to do that until about five years before he died.

Some folks find it interesting that both my wife Chris and I decided to go to law school at the same time. We both took the LSATs – she scored higher than I did, of course. We were both admitted to law school, but because of the family circumstance she was in, only I went to law school at the time. She eventually went, but not until we had moved to Denver and she went to DU.

While I was with Glassman, Jaynes and Carpenter, she was a law clerk with us there. We've been married 47 years, so we're coming up on 50 years. When I left teaching and joined the Ohio Bureau of Workers' Compensation, it was really instrumental in me developing an interest in workers' compensation.

From the point I was admitted to practice in Ohio (which was in 1975) until today, I've practiced workers' compensation law almost exclusively. I represented injured workers or respondents - mostly respondents - over the course of those years. I have done other legal work like Title 7 litigation and federal court litigation, but that's a minuscule part of the practice I had when I was in active practice.

### *You were in private practice with your wife, what was that experience like?*

I really enjoyed it. It was an excellent experience. I actually miss her presence during the day. When we were together, it was an absolute joy. I relied heavily on her for insight; I have tunnel vision and she's much more expansive in her view of things. We have a great relationship, period, but we also had a great working relationship. We both enjoyed each other's time and I can remember people saying to me 'I don't know how you can stand to be with your wife 24 hours a day.' Well, I have a unique wife and it's just a pure joy. That's one of the downsides of the Division - I don't get to see her during the day. I miss her and it's always a joy to see her at the end of the day.

### *What led you to become an Administrative Law Judge here at the Division?*

In many respects, I was guided by the Director's intention, and I think that was primarily developmental from what was happening at the legislature at the time: looking for increasing enforcement issues on the Coverage Enforcement side, developing a fines mechanism in Carrier Practices because that was one of the directives that the legislature had told the Division. But I was with Coverage Enforcement first and then Carrier Practices. There was a melding of my responsibilities - I was never doing both at the same time, although I think in retrospect, that was kind of what MaryAnn had in mind.

It was an eye opener for me. I had some preconceived notions because of my interaction with Division personnel over the course of the years, while I was in practice. I really had an awakening when I came to work and was impressed with how bright



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people were, how insightful they were, and really how enjoyable they were to work with. So I enjoyed that time with Coverage Enforcement and Carrier Practices. I think because it was so new and so different than practicing law and there was just a great group of people in both of those sections.

On the Coverage Enforcement side, Paul Tauriello, the current director, describes what I did for Coverage Enforcement and Carrier Practices as being — he says I’m the architect of the system that we’re using now for Coverage Enforcement and for Carrier Practices. I developed the outline for the mechanism that’s used to receive data concerning insurance coverage to identify who doesn’t, to notify those who don’t, and then to put into place a mechanism to bring those folks into compliance. We try to do it by encouragement initially, and if we can’t do it by encouragement, then we try to do it by making it difficult to be in practice or business without having the coverage. That’s where the fining matrix and the methodology was developed to provide a vehicle to do that.

The Carrier Practices unit had been running pretty efficiently when I came on. But then it became clear that because of the changes in the legislature, they wanted some kind of a fining mechanism imposed for recurrent violations of the statute by insurance carriers. So we developed a Claims Compliance Audit Guide; it’s available on the web and it’s pretty detailed on what needs to be done, what Carrier Practices looks at for compliance purposes, what the consequences are if you have an audit, and the results of the audit are not favorable to you. To make a long story somewhat shorter, the more offenses that you develop, the tighter the fining restrictions become. So the costs go up. Again, the motivation was to get folks in compliance. That unit runs an educational element too. When the auditors go out and meet with the folks on site, at the insurer, they have a wealth of information about what we look at, why we look at it that way, how we do what we do, and what you ought to be doing. They impart that information, so that’s kind of a two-edged sword. Yeah, we’ll check to see that you’re doing it, but if you’re not doing it the way you should be doing it, we’ll tell you here’s how you need to do it. So, I think that’s a good result.

*Is there any particular Workers’ Compensation case in which you argued that stands out or has made an impact in your work in the Division today?*

For me, the big case I had was the *Christie v. Coors Transportation* case. That’s the one that I argued in the Colorado Supreme Court. This is one where I felt we did a great job for the client that we represented. There was a change in the standard for permanent total disability in 1991 where the legislature basically said if you earn any wages, you can’t be permanently and totally disabled. This was the case that tested that statutory provision. I argued the case to the Supreme Court; my wife and I worked together on the briefs. We had Amicus with us on that - I can’t even remember how many we had. On the other side, the claimant had a number of Amicus parties as well. We just had a ton of lawyers involved in that case. We prevailed at the Court of Appeals. The Court granted certiorari on it. I think I argued the employer’s side of that case in ’96, but the decision came out from the Supreme Court in ’97. It stood for the proposition

that the standard adopted by the legislature is the standard that applies in Colorado for permanent total disability.

*What are some of the accomplishments, either personal or public, of which you are most proud?*

Ron Jaynes, Tom DeMarino, and I did the Colorado Workers' Compensation Law and Practice. A copy of which, incidentally, I still have on my bookshelf down in my office. Mind you, we did that in '84, and then we had annual editions until - I think the last one was in '97 - and then it wasn't published any longer after that. But I still have people that come up to me - recently, somebody from the Springs came up for a settlement conference. At the settlement conference, this lawyer said to me, 'I still rely on your book', meaning the treatise. I said to him, 'You know that thing hasn't been supplemented since 1997 so if you're relying on the law in that book, you're about 20 years behind the times.' He said, 'Well, I still find it handy.'

We never made any money on it and we were reminded of that by the publisher every time a new version came out, but it was fun doing it and fun working with DeMarino and Jaynes on it. Not only was it a treatise on workers' compensation, but through all of the subsequent editions, all of the pertinent changes in the law developed by the cases that came out, were addressed. Annually, there were supplements that came out that contained all the cases since the prior edition of the book came out. So it was always current, up to the point when it was last published. Every time the legislature decided to tweak it, we would make a change and incorporate that into the supplementation. It was a lot of work keeping on top of things. Then, of course, Doug Phillips and his spouse were approached by Westlaw, the big law publisher, and they put out a treatise as well and the consensus among the three of us at that time was if West is going to go with them, we're not going to stay on top of doing this. So, then it lay fallow then after 1997.

Actually, people would say, 'I checked your bible.' I only had it quoted back to me one time. I was representing a client and had a position. She was representing the other side. My position on the point in question was A, her position was B. I said, 'Where did you ever get that wacky idea?'

'That wacky idea,' she said, 'is from your book.' And she pulled out the chapter in the book. Now,

*"I said, 'Where did you ever get that wacky idea?' 'That wacky idea,' she said, is 'from your book.' And she pulled out the chapter in the book." That was a little disconcerting. I should've just kept my big mouth shut."*

I hadn't written that, but my name is on the book and somebody did. Jaynes or DeMarino did, and I had our words quoted back to me in support. That was a little disconcerting. I should've just kept my big mouth shut.

I'm also very proud of that experience having gone to night school and putting myself through both undergrad and law school. Then the other things: it was challenging getting the ticket to fly, and the different instrument ratings, those were also challenging.

*If you had to do it over again, is there anything you would change about the work you do?*

Not a thing. I've always enjoyed what I've done. I've been very fortunate, very lucky.

*As a man who has had some measure of success in both the private and public sectors, what advice would you give a person who is seeking career satisfaction?*

The emphasis I would place on career satisfaction — for me, it's really simple — do what you love and try to do it with someone you love. You run into people who just are not happy folks because they're not doing what they want to do. My feeling is: if you don't like it, don't do it. If you like it, then do it and do it well and if you can find somebody who agrees with you and wants to do it that way too, then marry them or live with them.

Fortunately, I've been able to do that. It's just been a really great experience for me. I also really enjoy the people with whom I work. That's a real positive thing here, in particular. It's a great group of people.

# New “Medical Treatment Guidelines Reference Guide for Adjusters” on the Horizon!

Medical Treatment Guidelines Supervisor, Barbara Fahmy, has some new plans in store for the Division’s Medical Treatment Guidelines (“Guidelines”). Claims adjusters should look for a new electronic resource, the *Medical Treatment Guidelines Reference Guide for Adjusters*, to be rolled out in the near future.

Throughout her tenure with the Guidelines, Barbara acknowledges that the guidelines have become longer and more complex in order to accommodate the dramatic increase in scholarly literature for treatments and diagnostic procedures.

“Another thing that has made them more complex is the clinical decision-making process that the physicians and other providers have to go through in order to maximize potential for alleviating the effects of the injury and maximizing potential for return to work,” Barbara says.

The four most important elements to be featured in the new guide include: procedures or services which require **Prior Authorization** and subject the adjuster to a tight seven-day turnaround to admit liability for payment or get a practitioner’s written opinion that forms the basis for the denial; a list of **“Not Recommended”** procedures - those for which there is strong evidence of no short or long term benefit or which may be contraindicated in certain cases; **Indications** (both diagnostic and therapeutic) of when an adjuster should ask the medical provider to review the efficacy of current treatment based on the Guidelines; and **Time Parameters** that are specific to treatment duration and will be impacted both by claimant compliance and availability of services.

Barbara hopes that the long term results from the *Medical Treatment Guidelines Reference Guide for Adjusters* will include improved readability, reduction of errors, and more widespread use of the guidelines among claims adjusters.



For now, Barbara is working diligently on the *Low Back Reference Guide for Adjusters* and hopes to make a draft available for circulation within the next couple of months. By offering the Low Back Guidelines first, Barbara hopes to receive constructive feedback that will guide her in the creation of the remaining 8 Medical Treatment Guidelines.

In a nutshell, adjusters can look forward to the guide’s focus on:

- Prior Authorization
- “Not Recommended” Procedures
- Indications for Interventions
- Time Parameters



# Adding Efficiency to the Settlement Process

Recently, a new workers' compensation claim settlement approval process was implemented. The streamlined electronic process was a response to the Governor's request that all units of the state investigate ways to cut red tape and burdensome regulations. Judge Craig Eley of the Director's Office explained:

“What we were able to do was get beyond the need to have original signatures, which always required the filing of a paper settlement document.

The rules of procedure required that three copies of the settlement documents be filed, each with original signatures of the injured worker, the worker's attorney (if any), and the insurance company's attorney or claims representative. This rule probably harkened back to the days when original signatures were thought to be a protection against forgery. But we realized that the odds of forgery in a settlement were minuscule, and even if it occurred and a worker's claim was settled without his or her permission, our system would permit the worker to have a hearing to straighten it out. We also considered that many documents are used in transactions these days that bear digital or photocopied signatures, with few reported societal ill effects. So once we got beyond the 'we've always done it this way' mindset regarding signatures, we looked into how to make the settlement approval procedure better, quicker, and more efficient for everybody.

Previously, the procedure could take a couple of weeks, when all the mailing times were considered. Once we decided we could do without original signatures, there was no real impediment to having the documents created by the defense attorney, emailed to the claimant's attorney and eventually emailed to all the parties that need to sign it. So that is how it is done now, and then the last party to sign the settlement scans the document with all the signatures and emails it to the Division for approval.

This new procedure involves no runners, no mail delays, and the turn-around time at the Division is usually less than an hour. A paper copy is printed for the Division file, and the approved settlement document is emailed to the parties.

To accomplish this, it was required that the Division of Workers' Compensation change its existing rule, which we did. Our efforts were endorsed by the General Assembly when it later changed the Workers' Compensation Act to specifically allow non-original signatures on settlement documents and the transmission of those documents to the Division by email.

This has proven to be a win-win for everyone involved, including the Division. We no longer have to mail copies of the settlement documents to the parties, and our customer service desk walk-in traffic has been considerably reduced. The delivery of benefits to the injured worker is expedited (occurring in days rather than weeks) and the cost to the parties of runners, mailing, etc. is reduced or eliminated. This comports with the legislative declaration which appears in the Workers' Compensation Act 'to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers.' ”

# A Revised Vision for the Physicians' Accreditation Program



Physicians' Accreditation is excited to expand its educational programs to include more non-physician providers, such as physician assistants, nurse practitioners, physical and occupational therapists, and psychologists. As non-physician providers play an increasing role in the delivery of quality healthcare services to injured workers, especially in rural and mountain areas, offering training to help these providers effectively navigate the workers' compensation system has similarly become more important.

Though only a few months into expansion efforts, the Division has seen increased attendance from non-physician providers who audited the most recent Level I Accreditation seminar in July 2014. Providers appreciated gaining valuable information and insights

on the chronology of an injured worker's case, causation, billing, utilization of Colorado's medical treatment guidelines, application of workers' compensation rules and quality report documentation. A new feature at this year's seminar was training on application of the protocols for measuring spinal range of motion according to the **AMA Guides, 3rd Edition, Rev.**

Going forward, this workshop will be a part of the Level I curriculum because it is especially useful for physical and occupational therapists (or other non-physician providers) who provide these measurements to physicians who perform impairment ratings.

Expanding outreach and educational efforts to non-physician providers who work in the workers' compensation system is a new focus for Physicians' Accreditation. This is consistent with the unit's commitment to ensure its education programs remain timely and relevant, and ensure that all providers are equipped with the tools they need to effectively treat injured workers and ultimately provide injured workers with the highest quality healthcare.

## Upcoming 2015 Stakeholders Meetings

January 8, 2015 ♦ February 12, 2015 ♦ March 12, 2015 ♦ April 9, 2015 ♦ May 14, 2015

Thursdays, 4:00 p.m. - 6:00 p.m.

Conference Room 7D

633 17th Street, Suite 700

Denver, CO 80202

The Division of Workers' Compensation will host a series of stakeholder meetings for our annual review of Rules 16 & 18. Discussion will be open for all aspects of the rule including our proposed final transition from the **Relative Values for Physicians (RVP)** relative value scale to Medicare's **Resource Based Relative Value Scale (RBRVS)**.

The schedule for this year's meetings is provided below and will include a teleconference option. Please contact [Debra Northrup](#) if you or a representative of your organization would like to attend so that we can ensure adequate accommodations are available or provide you with the teleconference number.

## In Other News...

# OSHA Update: New Reporting Requirements Start January 1

Beginning January 1, 2015, there will be a change to what covered employers are required to report to the Occupational Safety and Health Administration.

**Employers will now be required to report all work-related fatalities within 8 hours and all in-patient hospitalizations, amputations, and losses of an eye within 24 hours of finding out about the incident.**

Previously, employers were required to report all workplace fatalities and when three or more workers were hospitalized in the same incident.

The updated reporting requirements are not simply paperwork, but have a life-saving purpose: they will enable employers and workers to prevent future injuries by identifying and eliminating the most serious workplace hazards.

Employers have three options for reporting these severe incidents to OSHA. Employers can call their **nearest area office** during normal business hours, call the 24-hour OSHA hotline at 1-800-321-OSHA (1-800-321-6742), or they can report online at [www.osha.gov/report\\_online](http://www.osha.gov/report_online). For more information and resources, including a new **YouTube video**, visit **OSHA's webpage** on the updated reporting requirements.

\*Employers under Federal OSHA's jurisdiction must begin reporting by January 1. Establishments in a state with a state-run OSHA program should contact their state plan for the implementation date.

### Starting January 1, 2015:

**All employers\* must report to OSHA:**

- All work-related fatalities within 8 hours

**Within 24 hours, all work-related:**

- Inpatient hospitalizations
- Amputations
- Losses of an eye