

December 21, 2022

Clarissa M. Rodriguez, Esq., Chair
New York State Workers Compensation
328 State Street
Schenectady, NY 12305-3201

Re: Wendy Wagner. WCB: 2770-9381. CC: 7630-6262. DOI: 3-10-77

DIAGNOSIS: Spinal Cord Injury. Intercostal Neuritis
Severe Autonomic Dysfunction Occipital Neuralgia
Cervical Myelopathy. Post Traumatic Neuropathy
Trigeminal Neuralgia. Ischemic Optic Neuropathy
Ophthalmic Migraine. Post Traumatic T7-10 Sclerosis
Costochondritis Cervical, Thoracic, L-S Radiculopathy

Dear Chair Rodriguez:

I was directed to a Workers Compensation Hearing, by Governor Kathy Hochul's office, Senator John Brooks, the Medical Treatment Guidelines Office, and by Chubb Group of Insurance Companies, as my only recourse and the appropriate place to seek **medical policy clarification of special needs** for my **Catastrophic work-related Injury**, pertinent to two new State Laws only now impacting my 45-year-old Workers Compensation case. If this is not the appropriate forum, please advise me where to go, since all of my efforts on the State level to seek help have just bounced me back to the Medical Treatment Guidelines Office.

I was injured at Bobley Publications on March 10, 1977: with injury to my head, neck, back and corneas, with Amnesia and miscarriage. My case was controverted for 8 years: with Chubb Insurance falsely claiming a 15.8. For years, I was refused medical care, hospitalizations, testing and doctors for grievous injury. My doctors were harassed and paid to drop my case, by their report.

After 4 1/2 years, evaluation at **Columbia Presbyterian Neurological Institute** including myelogram, determined that **my spinal cord was still bleeding**, with elevated spinal fluid protein. I was diagnosed with **spinal cord injury with severe autonomic dysfunction**. My condition was reported inoperable and permanent: with **damage to the central, autonomic (parasympathetic and sympathetic) and peripheral nervous systems, the 5th cranial nerve and brain stem**.

Workers Compensation eventually adjudicated my injury **Permanent Total**, with **Medical for Life and Physical Therapy for Life** (2 times a week for 2 hours each session). I have represented myself in Workers Compensation for over 40 years.

****The issues of concern today are Medical Exemption from the Medical Treatment Guidelines Law for an Atypical and Catastrophic Injury, and Special Needs Validation in the Medication Formulary Portal.****

The Medical Treatment Guidelines Law was **never** applied to my case by Chubb Group of Insurance Companies. I was told multiple times in 2014 by Nora Strobert, my Claims Examiner, that **"Management had a meeting and decided they would not apply the Medical Treatment Guidelines Law to your case because of the nature of your diagnosis."** They never did. When Managed Care came to Workers Comp, Ms. Strobert told me it would not be applied to my case, "Because of the way your case is adjudicated." In 2018 Michele Lopa, a Claims Supervisor at Chubb, was assigned to review my case because Christine Dilts, Claims Adjuster, challenged payment to the non-Workers Compensation doctor and requested a Hearing. After weeks researching, Michelle Lopa called me and told me, **"Nothing will change. Everything will go on as it has been all along."** She said she would send it to me in writing.

Christine Dilts sent me the enclosed payment letter dated 2-2-2018. In summary she said, "As a follow up to the conversation you had with my supervisor, Michelle Lopa... We have your total reimbursement request for Dr. Mazurek at \$2,350. Full reimbursement for those office visits was issued 1/26/2018.... **Please continue to submit your future receipts and medical notes as you have been doing. Once we receive and review, we will reimburse you accordingly.**" Ms. Lopa told me to call Workers Compensation and cancel the Hearing: tell them, "All issues were resolved." She continued supervising my case until 2021. Chubb claims she no longer works for them.

Since 1987, Chubb Group of Insurance Companies honored an **Agreement** they made with me **that I could go to a non-Workers Compensation Neurologist for my Workers Compensation Injury:** that he would submit Narrative reports and a Yearly report, that I would pay him and Chubb would reimburse me by check. Over the years Chubb honored this Agreement, all of his prescriptions, medical requests, equipment requests, and letters of medical necessity until March 2021, when they learned Dr. Alan Mazurek, my Neurologist of 33 years, retired. There is a **pattern of action** by scores of Chubb claims adjusters, supervisors, bill payers and vendors, canceled checks, and U.S. Mail payment documentation, that there was a longstanding Agreement. There is no possibility to deny this. In 1994 Chubb updated the Agreement to allow me to go to a Massage Therapist for Physical Therapy, because 75 physical therapists *refused to treat me*. Chubb is still honoring this part of the Agreement.

Susan Clark, Claims Investigator, admits in her report of 7-15-2022 that Chubb made and honored an Agreement on Dr. Mazurek, a non-Workers Compensation Neurologist, for 33 years. "Chubb can, and did at their discretion, allow you to treat with a physician, Dr. Mazurek, who did not otherwise participate in Workers' Compensation in New York. This was an **accommodation** extended to you due to the difficulty you had in identifying a doctor 33 years ago and was honored by Chubb until Dr. Mazurek's retirement." (letter from Chubb by Clark, 7-15-2022 enclosed)

As soon as Chubb "Management" learned that Dr. Mazurek had retired, I was hit with, "Management, John Jaroncyk and his team, are **coming down hard on your file** and finding many discrepancies." "We have been overpaying you since 1994." (*False.*) "There is nothing in writing about any Agreements." "What someone told you verbally means nothing." "Dr. Mazurek's reports are irrelevant now because he is retired." (*Dr. Mazurek's reports are medical history!*). **"Now that Dr. Mazurek retired, you have to follow the rules. You have to follow State Law."** (**which at this time had been in effect for 11 years and Chubb never implemented it in my case*)

So, **since 1987 CHUBB MADE SPECIAL ARRANGEMENTS** followed by every Chubb employee who touched my case **for me to get medical treatment**, because no Neurologist or physical therapist would treat me on Workers Compensation **due to the nature of my diagnosis** and the consequent symptoms, including loss of consciousness. I am constantly being told by doctors, "You are way over my head!"

But, when Chubb "Management" learned that Dr. Mazurek retired, they suddenly **DISCLAIMED** their non-Workers Compensation Neurologist Agreement of 1987 and their Medical Treatment Guidelines Law Decision of 2014. Chubb withdrew both of their **longstanding Executive Decisions**, insisting they never happened: that I have no proof; that I am asking Chubb to break the Law.

I have been told by two supervisors at Chubb Insurance that **if the Workers Compensation Hearing Judge makes a Decision that my Catastrophic Injury is an Exception to the Medical Treatment Guidelines Law, that Chubb will abide by the Judge's Decision.**

The following clause is from the Medical Treatment Guidelines Law:

"BODY PARTS NOT COVERED BY THE GUIDELINES

How will injuries to parts of the body not covered by the Medical Treatment Guidelines be handled by insurers?

Work related injuries not covered by the Medical Treatment Guidelines will be handled as they have been prior to the implementation of the Medical Treatment Guidelines. The provider should follow their normal standard of care and the normal Board rules and processes, including authorization of treatment in excess of \$1,000."

My primary diagnosis is **Spinal Cord Injury with Severe Autonomic Dysfunction**, a verifiable **Catastrophic Injury**. **My Severe Autonomic Dysfunction cannot be Codified. My symptoms, responses, reactions, vitals, are erratic, atypical, abnormal, adverse, unpredictable, contradictory, reverse, paradoxical, and complex.** In addition to requiring continuing treatment, **I require immediate, urgent treatment on an episodic basis for severe exacerbations of multiple diagnoses from the on-the-job injury.** I also go into Autonomic Dysreflexia, which is life threatening and must be treated on an urgent basis.

I do not have dysautonomia. My **spinal cord** was **INJURED** in an on-the-job fall at **C2-3, T7-8 and L5, S1**. ***It continued to Hemorrhage for 4 ½ years***, causing devastating damage to the **central, autonomic (parasympathetic and sympathetic) and peripheral nervous systems**. It affects my heartbeat, breathing, blood pressure, circulation, thermoregulation, immune and lymph function, gastrointestinal and digestive function, level of consciousness, vision and mobility: the function and response of every bodily system.

For instance, I am in intractable pain 24/7, as if I am being crushed and torn apart at the same time. Since the on-the-job injury in 1977 at Bobley Publications, I have experienced bradycardia, tachycardia, irregular heartbeat, palpitations, hypothermia, heat intolerance, my oxygen level and blood pressure plunge from the pain and pressure in my spine. I have extremely severe chest pain from the intercostal neuritis, the costochondritis and from the sclerosis (scar tissue) at T 7,8, all determined to be neurological, not cardiac. I have severe difficulty breathing from the intense pressure in my spine: determined to be neurological. I can't breathe in and out normally. When I pass out it is difficult to get a pulse on me. My white blood cell count goes to 1700 with the pain. My pulse goes to 180 and my oxygen level to 50. In 1985 my pulse peaked at 250 for several weeks during an autonomic attack. Severe muscle spasms and gross swellings break my bones, tear cartilage, trigger blood clots and vascular rupture, and trigger lymph and immune reactions, dysfunction and consequences. I have excruciating trigeminal migraines lasting 3 days that can be triggered by touch, motion, chewing, an incoming weather front, and cause swelling of the face, eye, palate, tongue and throat. (Dr. Alan Mazurek 12-11-2018 enclosed)

Due to autonomic dysfunction, I have atypical, exaggerated, often reverse, reaction to most medications, and anesthesia. I have been in anaphylactic shock three times.

I was told by physicians at Columbia Presbyterian Neurological Institute, Saint Francis Hospital, and Sloan Kettering Institute NYC, that **THE MOST IMPORTANT THING FOR MY CONDITION IS TO CONTROL THE PAIN**. The appropriate protocol for a condition like mine is **prevention**, and **treating the symptoms on an urgent basis** when exacerbations are triggered. My Neurological system must be kept **calm and stable** and not triggered or irritated, because the consequences are very dramatic and long term. Dr. Mazurek's reports document, "It is life threatening for a doctor who is not familiar with her condition to treat her." Doctors readily admit **they don't know what to do for my condition and most refuse to treat me**. *I have been told by physicians that my case is one in a million.*

My condition cannot be Codified, nor must my treatment be delayed, limited and denied, by Legislation that was clearly written as guidance for normal, typical, non-catastrophic injuries, with the focus on an expedited recovery, and return to work.

The Workers Compensation Medication Formulary Portal facilitators need to **validate my medical history**: including **response/reaction aberrations from severe autonomic dysfunction**, medication sensitivities, medication allergies, scores of very severe medication reactions over the years, and the fact that medication has put me into anaphylactic shock three times.

The Portal needs to Authorize **the medications that I take on a regular basis**, because **I can tolerate them and they are effective** for my work-related conditions, instead of denying my medications because I cannot take their alternative choice.

Presently, **the Workers Compensation Medication Portal is denying, delaying my established, prescribed, documented, medications**: even when they are properly put through the Workers Compensation Medication Portal by a certified Workers Compensation Provider. **This has dramatically cut off critical aspects of my medical care and is effectively CUTTING ME OUT of the Workers Compensation system pertinent to medical care**, without benefit of a Workers Compensation Hearing or appeal to the New York State Supreme Court, Court of Appeals, when **I am adjudicated to have "Medical Care for Life."**

Dr. Mazurek's letter to Chubb on April 27, 2015 (enclosed) **delineates the specific medications** that have **proven** to keep my condition **stable** and keep me independent and functional to the best of my ability. He states, "Her medications must be monitored and prescribed with extreme caution, and must always be Brand, Dispensed as written, not generic. ... this is an extremely complicated case. The case history includes an extensive list of medication reactions, sensitivities, hypersensitivities, triggered by treatment for her causally related Spinal Cord Injury and by Severe Autonomic Dysfunction. This includes several incidents of anaphylactic shock." Dr. Mazurek's detailed Neurological reports document that this is a **complex and uncommon medical history**. My most frequent medication reactions are: breathing difficulty, my throat closes, loss of consciousness.

I must take **oral medications, and Brand (DAW)**. **I can't take injections or Pain Management procedures**, because of severe autonomic dysfunction. **Responses and reactions can never be prepared for, anticipated or predicted, which makes every procedure a hazard, for me and for the physician, every time**. This has been documented repeatedly by Pain Management specialists and Anesthesiologists.

Most Pain Management physicians are Interventional. They specialize in injections and procedures. So far it has been impossible for myself and my physicians to find a Pain Management Physician who prescribes oral medication. Because of the new Workers Compensation medication rules, I am told that doctors who do not specialize in Pain Management are being **prevented** from giving pain medications for more than 7 days, and are instructed to send their patients to Pain Management.

There are **special circumstances** in this case that are being ignored, denied and overruled, for the sake of preset legislative rules that have nothing to do, in this case, with appropriate medical

care, the best interests of the patient, or medications prescribed by a treating physician who is intricately familiar with the patient's atypical condition. My physicians know my condition and prescribe medications that are **effective for my conditions**, medications that I **can tolerate: medications that stabilized my neurological condition, and have kept it stable and optimized my ability to function for 37 years.**

Recent denials by the Workers Compensation Medication Portal contrary to medical documentation, unnecessary delays and lack of access to the Medication Portal, have limited and denied me medical care, severely intensified my pain and suffering, significantly deteriorated my medical condition, triggered severe exacerbations of my symptoms as well as injury, and caused me tremendous unnecessary hardship.

No person should **ever** have to live in the intensity of pain and with the medical consequences that I do! But when there is treatment that makes your life tolerable and allows you to be functional and independent, and that treatment is arbitrarily withdrawn, and everybody knows it has put you into severe medical crisis but the System ignores your pleas and maligns you **because you are different**, that is inhuman.

When Legislators who know nothing of pain and have no knowledge of your special medical circumstances dictate your medical care to physicians who know your condition, and **prevent** them from treating their patient, that is immoral.

When Chubb sends you to a company doctor who tells you that Chubb would be very happy if you jumped out of a second-story window, you believe him.

When a State System refuses to give you critical prescribed medications, including pain medication, for months because you cannot, because of your work-related condition, take substitutions or generics, that is reckless, dangerous and negligent.

When doctor after doctor tells you to get dressed and leave his office because your Catastrophic injury is a New York State Workers Compensation case, **that is my reality.**

Nobody can give me back the life that I lost to a devastating on-the-job injury. **Please give me back my medical care.**

Respectfully,

Wendy Wagner
2105 Manor Lane
Massapequa, NY 11758
908-456-2783
iwillnotwhisper@hotmail.com

Enclosures