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April 18, 2024

Office of Appeals, NYS Workers Compensation
328 State Street
Schenectady, NY 12305-3201

Re: WCB: 2770-9381. CC: 011250770993WAGNER. DOI: 3-10-77
Employer: BOBLEY Publishing Company.
Carrier: Federal Insurance. CHUBB Group of Insurance Companies
Virtual Hearing ID: 24256136240 . 7-18-23. Judge Arif Khan

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

REASON FOR APPEAL:

1. **I RESPECTFULLY REQUEST A FULL BOARD REVIEW** to consider **the medical issues** that are the focus of my Hearing Request of 12-21-22 and my Appeal of 7-5-23 and 8-1-23. If I must take my case to the NYS Supreme Court, I must prove that I tried to **resolve the medical issues with CHUBB** through the Workers Compensation Board. I contacted many entities, and was told that Workers Compensation must rule on these issues, because, **"**it is NYS Workers Compensation legislation and **Workers Compensation monitors itself**.**"** The Labor Department told me, **"it is NYS Legislation that the Workers Compensation Board is supposed to INTERPRET."** The Decision of 3-19-24 states that the claimant raised three issues: >"Continuation of treatment by a non-Workers compensation neurologist." >"treatment for **autonomic** fuction (**DYSFUNCTION**) beyond the Medical Treatment Guidelines (MTGs)". >"Medication Formulary Portal not validating the claimants **special needs** from her **catastrophic injuries**."
I need validation of and IMMEDIATE, URGENT medical care when necessary, for the symptoms, special needs and severe autonomic exacerbations of a catastrophic causally-related injury that affects every system in my body in

critical and often life threatening ways, because CHUBB is **blocking** timely medications, medical care and equipment replacement. **The critical nature of this injury is well documented.** The Autonomic Dysfunction was first pinpointed in 1978, and reaffirmed in 1981 after two weeks of extensive testing and a Myelogram in Columbia Presbyterian Neurological Institute. **I was adjudicated medical care for life for my causally related injuries.** According to the Decision of 3-19-24, **after 47 years, CHUBB has decided to challenge Autonomic Dysfunction and Catastrophic Injury**, using the MTG as their excuse.

2. To **correct** specific **inaccuracies** in the Decision of 3-19-24.

-The name of my employer is **BOBLEY** Publishing Company.

-The claim is established for injuries to the **HEAD**, Neck and Back.

-The name of the insurance company is Federal Insurance Company AND **CHUBB** Group of Insurance Companies.

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The 3-19-24 Appeal Decision states that the three Law Judges are aware of three issues presented in my Hearing Request, but clearly states that they only considered one issue, as did Judge Khan: “The **narrow issue** before the Board panel is whether the **carrier** is **obligated** to pay for medical treatment rendered by a **provider** who is **not coded** by the Board.” The entire Decision focuses almost exclusively on this issue.

The Appeal Judges **Affirmed** Judge Khan’s determination that **they have no authority to compel CHUBB** to continue their Medical Agreement of 37 years with me if CHUBB will not voluntarily honor their commitment. While it is legal for CHUBB to continue, **CHUBB refuses to honor their word, saying I cannot prove the Agreement was written down.** Judge Khan refused to **subpoena** my entire CHUBB file to locate the document.

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I request a Full Board Review because **the MEDICAL ISSUES** in my 12-21-22 Hearing request and in both of my Appeals **were not addressed** by the Appeal Judges. There is an **inherent bias** in the MTG and the Medication Formulary against my case **based on the severity of my injury, the nature of my diagnoses, and the degree that it disables me,** that CHUBB is using as an excuse to block my care. Mr. Gourley, CHUBB’s attorney, told me, **“I am not interested in the medical issues.” This Hearing was specifically requested for medical issues** because **I was told the issues could and must be resolved by a WCB Law judge,** by the Governor, the Labor Department and the Medical Director’s office.

To **answer** Judge Khan’s question if **CHUBB** would **reconsider** terminating their decades-long Medical Agreement to allow me to go to a non-Workers Compensation doctor for my Workers Compensation injury, Mr. Gourley introduced into the record **a**

year-old letter written by Susan Clark (7-15-22) defending CHUBB. **There was no reconsideration by CHUBB!** While I am being held to the letter of the law in this preceding, CHUBB, acting in bad faith, is not. **Mr. Gourley told me he did not reconfer with CHUBB.**

Chubb is repeatedly acting in **bad faith**, with a consistent pattern of **misinformation** and **unwarranted denials**. Chubb blocked my medical care since March 2021, by misrepresenting the facts. Under new ownership (ACE Insurance) and new management (John Jaronski), Tara Segro told me, "**management** " is, "**coming down on your file** and finding many discrepancies," and terminating the decades-long medical agreement without cause. Two supervisors, Laurie Saldutti and Susan Clark told me that **I must get a hearing and if the hearing judge says CHUBB must keep the Agreement, "CHUBB will comply."** I waited for the Hearing and Appeal outcomes. WCB Judges tell me CHUBB, telling me the Judge must decide on the Agreements, is **untrue**: **and CHUBB knew it was untrue.** "It is voluntary. We have no power to force them." Christine Dilts' letter quoting Michele Lopa on CHUBB's **Affirmative Policy Decision** on the Agreement, after the Executive Office assigned Ms. Lopa to Review it and remain on my case, and Nora Strobert's email on **causal reasoning** for CHUBB initiating the Agreement, were ignored by the Board (although they create **reasonable doubt** that formal arrangements did in fact exist concerning my medical care).

By making the Medical Agreement in 1987 on a non-Workers Compensation doctor and in 2010 on the MTG, **CHUBB voluntarily guaranteed me a certain standard of care based on the medical information provided to them about the severity of my injury**. By terminating those Agreements after decades, with full medical knowledge of the consequences and without cause, and blocking my pain medications each month, CHUBB demonstrates a wanton disregard for serious, life threatening warnings, depraved indifference, and specific intent. Mr. Gourley declares that the MTG does not cover **Catastrophic Injuries** or **Autonomic Dysfunction**: " the carrier is denying requests for various medications, as the medication formulary portal **does not consider the special needs of severe autonomic dysfunction."** Both Mr. Gourley and Judge Khan admitted in the June Hearing that this is a "significant injury."

Mr. Gourley says if I go to a non-Workers Comp doctor, **"all bills for medical treatment will be denied by the carrier."** But he goes further, stating that my physician can request a variance, "But, "the carrier would obtain an **Independent Medical Examination** to determine whether the variance is medically necessary." If the truth be told, **we all know how THAT one goes! You wonder why people on Workers Compensation commit suicide!!**

Requests by Dr. Feder and Dr. Mazurek to CHUBB to replace my Traction Bed lost in Hurricane Sandy (including charges for a technician to attach the Balcan frame to the new bed), are being ignored. I was provided with traction equipment and services ever since my injury in 1977. **Pelvic traction provides optimal relief from intense spinal pressure.** Susan Clark's letter says they will replace it when they receive Medical Necessity. She received Medical Necessity months ago from Dr. Feder. Judge Khan told CHUBB to provide the wheelchair battery when they receive a written request, which they received. No battery.

Delaying resolution of the issues has caused **gross deterioration of my condition and escalating severe pain exacerbations,** because **CHUBB is deliberately blocking my three pain medications (Dilaudid, Baclofen and Lidoderm Patches) on a regular basis**. By the WCB Board **refusing** to address the medical aberrations of this case, **they are enabling CHUBB to continue recklessly denying critical medications, timely medical care and vital equipment replacement**, despite my WCB physicians complying with the law and documenting medical urgency. **I am in agony!!!**

After much back and forth with my physicians, the **Medical Director's Office** sent notification that they **authorized** the three pain medications that have been prescribed for my pain for decades **in Brand**: **Lidoderm Patches, Baclofen, and Dilaudid.** I received Lidoderm Patches and Baclofen on March 22. Dilaudid is on Backorder right now. The problem is that each time my doctors order pain medication, **CHUBB** consistently, maliciously, without cause, **denies it on Level 1 and 2**, **even though these are the exact medications that CHUBB has authorized and paid for for 40 years.** The **only way** the medications are getting through the portal, is because they reach **Level 3** and the **Medical Director approves it based on "medical necessity."** I have been without one or all pain medications for months on end. I received none of my three pain medications from November 15 to March 22. Thus, **I have had very severe pain attacks that left me with BRUTAL PERMANENT CONSEQUENCES!**

It takes16 days for the medication to get to Level 3 and be approved by the Medical Director. **That is 16 days every month that I don't have medication, specifically because of CHUBB's actions and inaction.** CHUBB insisted I go to a Pain Management doctor: CHUBB blocks his prescriptions. The Medical Director's Office advised that the doctors should request multiple refills. In March, CHUBB required the Lidoderm Patches to be put through the portal twice. The second time CHUBB approved them, but only one, so that the multiple refill request would not escalate to Level 3. CHUBB is continually lying, saying my doctors are not complying. The Medical Director's office has repeatedly told me **it is CHUBB denying my**

medications at Level 1 and 2. Mr. Gourley, CHUBB's attorney, specifically said at Hearing that **CHUBB is denying** my medication. So, while the Medical Director's office and the Portal are now validating my **Brand Pain Medications**, CHUBB is, every month, blocking them at Level 1 and 2. CHUBB is acting in bad faith, misrepresenting everyone elses actions, and causing me grievous harm, injury and duress.

The Appeal Judges Affirmed Judge Khan's entire Decision of July 2023. However, they state: "By Notice of Decision filed July 21 2023, the WCLJ authorized treatment and care, as necessary, to the established sites within the MTGs." That is **NOT specifically** what Judge Arif Khan's Decision said. He stated: "**Medical treatment and care, as necessary, for established sites of injury AND/OR CONDITIONS, is authorized. Treatment rendered to one of the body parts COVERED by the Medical Treatment Guidelines must be consistent with those Guidelines."** These distinctions (specifying not just body parts, but **conditions** and specifying not just body parts but "**covered**" body parts) indicate that Judge Khan **validated that specific, unique aspects of my medical condition might not be covered by the Medical Treatment Guidelines. Autonomic Dysfunction is not a body part, it is a CONDITION, that impacts every system in my body.** The three-judge panel overlooked the distinction. By not addressing any of the medical specifics included in my Hearing Request and two Appeals, the judges left me at the mercy of a **barbarous CHUBB** Group of Insurance Companies every month denying my pain medications, **without cause**.

I was determined to be **permanently disabled,** and **awarded medical care for life** and **physical therapy for life** (2 times a week for 2 hours each session), by the NYS Workers Compensation Board **for my causally-related injuries: spinal cord injury** (at C2-3, T7-8, L5, S1), **severe autonomic dysfunction [**injury to the central, autonomic (sympathetic and parasympathetic), and peripheral nervous systems**]**, 5th cranial nerve, brainstem and corneas, comprising 12 diagnoses, from the slip and fall injury at Bobley Publishing Company on March 10, 1977, with a blow to the back of my head on a steel file cabinet. **A CATASTROPHIC INJURY.**

My spinal cord was BLEEDING for 4 1/2 years because CHUBB continually **denied** me medical care for that long. **"THE EXTENT OF DYSFUNCTION IS DEPENDENT ON THE DEGREE OF AUTONOMIC DAMAGE or which pathways are involved..."** "The autonomic nervous system has cranio-sacral parasympathetic and thoraco-lumbar sympathetic pathways and **supplies every organ in the body** "(Janig and McLachlan, Autonomic Neurology, 2002) Autonomic Dysfunction worsens over time if untreated. If it affects your breathing or heartbeat, it is life threatening. The Autonomic Dysfunction affects my heartbeat, breathing, blood pressure, circulation, thermoregulation, immune

and lymph function, gastrointestinal and digestive function, level of consciousness, vision, hearing and mobility: **the function and response/reaction of every bodily system.** I also go into Autonomic Dysreflexia, which is life threatening. **It is horrific!** Dr. Mazurek noted, **"Exposure to practitioners unfamiliar with her condition and the medical consequences, or to medications incompatible with her sensitivities, is life threatening."** 12-19-17.

The text of the 3-19-24 Decision mentions that the **carrier** is **objecting to paying** specifically for the **Autonomic Dysfunction**, **because it is not covered by the MTG**, and that they are **opposing** certain medications because the **Medication Formulary Portal does not accommodate special needs**. Mr. Gourley claims in Rebuttal that the MTG does not cover **Catastrophic** Injuries. **These issues must be addressed by the Full Workers Compensation Board. CHUBB** cannot, after 47 years of medical coverage, **PICK and CHOOSE what they WANT to cover:** focus on the **primary** and **most critical** aspect of my causally related diagnosis and assert, ”I don’t want to pay for that anymore.” (Workers Compensation should not accept CHUBB’s outrageous behavior like they did when 3 Appeal Law Judges awarded me a 24-hour **nurse** (3-2-06), and Chubb management **refused**, even though WCB called them 3 times to comply.) And the Legislature should not pass a Workers Compensation Law that closes out **atypical cases** and **special needs** without providing **alternative options.** The bottom line is that someone with such a Catastrophic medical condition does not belong on NYS Workers Compensation, when a new system regulated by efficiency, expeditious improvement, quick return to work and cost-cutting, takes over and makes you the odd man out. It is not safe!

Severe Autonomic Dysfunction is not covered by the Medical Treatment Guidelines Law **because it cannot be anticipated.** It **affects every system, reaction, vital, in my body in abnormal, erratic, atypical, unpredictable, and dangerous ways, and cannot be codified**. (I have been told that my case is one in a million.) It requires continuous monitoring and treatment, and ***urgent treatment on an episodic basis for severe exacerbations of multiple diagnoses*** **It causes atypical reactions** to medications and anesthesia: like entirely the **opposite response/reactions.** Dr. Mazurek repeatedly reported that **timely medical care is critical and that my condition is life threatening.**

*Autonomic hyperactivity is a syndrome characterized by excessive activation of the sympathetic system, either in isolation or in association with the parasympathetic system. This syndrome can be a prominent and life-threatening manifestation of a wide range of disorders affecting the central or peripheral nervous systems,” “Excessive parasympathetic activation may elicit bradyarrhythmia and syncope,” “Patients with

autonomic hyperactivity should be managed in the intensive care unit, as they require continuous monitoring of cardiac rhythm, blood pressure, respiration and fluid balance. General principles of management include adequate hydration to maintain an euvolemic state, **effective treatment of pain,** exclusion of infection, and early recognition and elimination of the triggering stimuli." (Autonomic Neurology, Eduardo E. Benarroch, 2014)

I AM BEING HELD TO A STANDARD by the Medical Treatment Guidelines Law and the Medication Formulary Portal **THAT IS INAPPROPRIATE FOR MY MEDICAL CONDITION** because of the **degree and extent of my catastrophic injury, the severity and multisystem nature of the Autonomic Dysfunction**, the extremely **atypical nature of my condition,** the **need for immediate urgent care,** and the fact that my **Autonomic Dysfunction cannot be codified.** The Medical Treatment Guidelines Law was designed for people who are **normal**, to implement procedures that expedite **fast recovery** and **return to work.** It **mandates improvement.** None of those conditions apply to my injury or my case.

I AM ASKING THAT THE NEUROLOGICAL DOCUMENTATION ON MY INJURY GUIDE THE WCB MEDICAL RESPONSES IN THIS CASE.

As discussed earlier, there is an inherent bias in the MTG law and the Medication Formulary Portal. But there is also an inherent bias in my medical condition, that Chubb is using against me, by terminating the medical agreement they voluntarily initiated to rectify my inability to get a Workers Compensation doctor to treat me because of the **severity** and **nature** of my condition. The **complexity of my case triggers practitioner aversion**, **equaling denial of medical care**. This is what motivated Chubb to voluntarily permit me to go to a non-Workers Compensation neurologist for my Workers Compensation injury, **for cause,** for 37 years. No neurologist would treat my complex, **atypical** medical condition on Workers Compensation: because my medical condition is so severe, counter to medical protocols, because I pass out, a doctor can NEVER anticipate or predict how my body will react/respond to treatment/intervention /examination, doctors do not understand my condition, my case is complex and so requires more time and expertise, because doctors tell me that their ability to treat patients under Workers Comp is based on treating a high volume of patients who require limited time.

Every doctor I go to for my work related condition reacts the same way: **they refuse to treat me**. I am viewed initially through the lens of Workers Compensation, and then for my Catastrophic medical condition. Doctors tell me that I am a giant red flag. WCB is

responding: “There is no problem here lady: **Be normal**!” CHUBB says, “You are a throwaway: Die already!”
Shame on all of the officials who close their eyes to suffering, and refuse to believe that IN THE BLINK OF AN EYE, THIS COULD BE YOU!!!

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-The 3-19-24 Decision says that I **can** go to a neurologist and **pay** him/her. I have consistently been **told** by CHUBB and others that it is **illegal** for me to go to a physician for my Workers Compensation injury and pay him: **and it was illegal for him to take me.** NOTE, **the Workers Compensation website stipulates: “No**. **Patients cannot pay for medical treatment for workers compensation injuries or illnesses.**” Also, supervisors at **CHUBB** have told me that **I cannot submit** the **reports** and that **CHUBB will not honor** the **neurologist’s prescriptions, medical requests for treatment, medical equipment or tests.** How is that having a doctor?
CHUBB asserts, “YOU ARE A THROWAWAY!!!”

- Judge Khan, Chubb’s attorney, and the Appeal Judges all advise me to, “**Get counsel.”** However, Judge Khan and Chubb’s attorney both very **clearly** told me repeatedly at both Hearings that, **“**In Workers Compensation the lawyer only gets paid if the claimant gets money. **No lawyer will take your case because it is so old. There is no money in this case, it is all about medical.”**

-Accommodations are **validated** and covered by statements **on** the
Workers Compensation Board’s own **website** referencing
Emergency care and Conditions Not Yet Included in the MTG’s.
(CHUBB says in Susan Clark’s letter and Mr. Gourley says:
the Agreement with me was **“an Accommodation, not a convenience.”)**.
I included these at the end of my 8-1-2024 Appeal under,
“Quotes from the WCB Website FAQ Page>which reference **special circumstances**.”
PLEASE READ.

Respectfully yours**,**

Wendy Wagner

Note: PLEASE READ DR. MAZUREK’s MEDICAL REPORTS.
(The WCB site says I am not allowed to resubmit documents.)