

A FAILED SYSTEM OF HEALTH CARE DELIVERY: The Workers
Compensation System in New Jersey.

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The New Jersey Workers' Compensation system fails to deliver timely health care to injured and disabled workers, causing untold suffering to workers and their families, and millions of dollars in costs to the economy. A Federal ranking of state workers' compensation programs by the US Department of Labor, Office of Workers Compensation (2000), ranks New Jersey as only "55%" compliant with essential workers' compensation protections.

Justice delayed is justice denied. In twelve years of practice I have observed human beings fighting for surgery, and medical care; fighting for temporary wage replacement funds just to keep off the welfare rolls, just to pay the heat and electricity bills. The injured workers face hostile court battles, six to eighteen months in duration, while their health deteriorates significantly and their families are denied any income. It is a monstrous, backward system, gone astray, padding the pockets of insurance companies, and law firms on both sides of the bench, and supporting an expanding state administrative bureaucracy.

Acute emergent medical care should be vigorously instituted first, and the battle over payment and responsibility should be secondary. Medical care should not be placed on "hold" while litigation slowly unfolds with one witness every three weeks, over a sixth month period. Do not litigate while the worker bleeds. Health care should not be at the sufferance of insurance companies, judges and lawyers, and a statutory scheme from 19th century Germany.

A poor worker in New Jersey, looking for treatment or surgery beyond the E.R., is faced with hostile insurance adjusters, adversarial lawyers, insurance company doctors paid to automatically "cut off" treatment as a quid pro quo for continued insurance company business and clinics that are pressured to "get them back to work", violating the doctor's medical oath and duty towards the patient. Every week I am presented with a new client, where the original authorized surgeon or treating doctor, is replaced by an insurance company "second opinion" doctor, merely for the purposes of cutting off treatment or canceling an authorized, scheduled operation! All in the name of the "bottom line." We are one of only eight states in America that deprives the injured worker of any choice regarding a doctor and medical care!

Petitioner's (injured workers) must pass a myriad of hurdles to prove themselves "worthy" of treatment. The system is broken beyond repair. Our co-workers are treated as malingerers, liars, fakers, cheats. Yet "80% of the real

fraud is perpetrated by insurance companies and employers.” (Hon. Retired Judge Philip Bolstein, April 2001, ATLA Seminar, Atlantic City). Why does an Iraqi prisoner of war or an inmate in any NJ Jail receive quicker, better care than most of my clients?

The New Jersey Workers Compensation System supports systemic medical malpractice in all but name: medical decisions are made by unqualified, non-licensed, laymen: insurance adjusters, lawyers, and judges. “Judges of Compensation”, many with no litigation, workers compensation, or medical background, decide whether a worker will have surgery or not. They try their best to be fair, but their decisions, by necessity, are arbitrary and unscientific; no replacement for the sound judgment of a medical doctor. Your chance for a course of treatment depends on the luck of the draw, i.e.—which judge you are assigned.

There must be a more civilized, economically efficient way to deliver health care to our workers. Our present day workers’ compensation system, copied from a 19th century German model, is medieval. The workers’ compensation system, (enacted in 1909) originally intended to end litigation, and provide fast treatment and payment with a “no fault” approach, has failed. Originally a civil code enactment – the workers’ compensation system has become entangled in a growing body of case law and is grinding to a halt.

The individual attorney’s and judges are competent professionals, trapped in a failed system. It is time for a replacement.

If we cut out the litigation and motions for treatment, and provided blanket medical coverage for ALL...it is probable society would achieve a net savings of millions of dollars. Comparative legal models from Denmark to Japan, suggest this alternative, adapted to local conditions is realistic, equitable and cost conscious. A Japanese model, mixing private health insurance and government insurance (akin to our system of private insurance and Medicare / Medicaid), but guaranteeing coverage of all citizens, is the best course. Another option is the Federal Longshoremen’s model, providing strict, efficient medical coverage from a list of approved medical providers, guaranteeing a workers’ free choice of competent doctors. Even the AFL-CIO plan, combining workers’ compensation and major medical coverage into a single payer plan, is estimated to save 25% of the transactional costs of workers’ compensation litigation.

Until a comprehensive reform of New Jersey’s Worker Compensation system is instituted, small steps, limited reforms should be undertaken. The new democratic majority must pass legislation enabling the injured worker to choose a doctor of his or her own choice; a doctor the patient can have full confidence in, a doctor not beholden to the hidden agenda of an insurance company (Assembly

Bill No. 554). Proper care for our injured workers is a basic human right, long neglected in New Jersey.