

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

By Jay H. Bernstein, Esq. (Coalition for Health Care Reform)

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, medical care and psychiatric 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 lawfirms 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. Health care should not be at the sufferance of insurance companies, Judges and Lawyers, and a statutory scheme from 19<sup>th</sup> century Germany. (\*\*200 words)

Treatment of a real injury should be immediate and timely. Let the trial to determine liability, causal relationship and payment issues proceed later. Care for the injured worker first! The worker compensation system places the burden of payment on the employer, and thus ultimately on the consumer, through price increases. So be it. Simply provide treatment first, ask questions later. Do not litigate while the worker bleeds.

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 (\*\*100 words) 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!

The original “no fault” workers compensation system, (\*\*100 words) instituted in 1909, has cracked. 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). Prisoners of war, and convicted felons and murderers receive much better, more consistent and immediate treatment than most New Jersey workers! Why does an Iraqi prisoner of war or an inmate in any NJ Jail receive quicker, better care than most (\*\*100 words) of my clients? \*\*\*\*\*total 500wds

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. 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 (\*\*100 words) our workers. There must be a better way. Possibly national health care. Our present day workers’ compensation system, copied from a 19<sup>th</sup> century German model, is medieval and wrong. The workers’ compensation system, originally intended to end litigation, and provide fast treatment and payment with a “no fault” approach, has failed. Codified originally as a civil code enactment – the workers’ compensation system has become stymied and entangled in a growing body of precedent and case law and is grinding to a halt.

Speed has been ended by litigation. The problem originally intended to be fixed, has returned, seemingly endless litigation (\*\*100 words: total 700\*\*) before payment or proper treatment. We have turned the system on its head. Insurance company profits, and law firms, on both sides, gain. The worker loses.

The individual attorney’s and judges are competent, ethical professionals on the most part, trapped in a failed system. Our 19<sup>th</sup> century brevren created a whole new system from scratch, the workers compensation civil system. It worked well for nearly 100 years. It is time for a replacement.

If we cut out the insurance litigation, the insurance company profit motive; the insurance company lawyers, the administrative workers compensation courts, the lost

days and years of worker production...and provided (\*\*100) blanket medical coverage for ALL...it is probable society would achieve a net savings of millions of dollars. Comparative legal models, from Denmark, and the Netherlands, to Japan and Canada, 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 and most realistic course. A possible course would be to copy the Federal Longshoremen's Compensation model, providing strict, efficient medical coverage from a (\*\*100 wds) 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 (\*\*100 wds) hidden agenda of an insurance company. (Assembly, bill No. 554, 210<sup>th</sup> Legislature, an act amending R.S. 34-15-15 and R.S. 34: 15-23, allowing employee selection of physician and medical services under workers' compensation.) (\*\*27 wds)

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For the wealthy and middle class, private health insurance (and private disability plans and state of NJ temporary disability pay), sometimes acts as a temporary safety net, ensuring medical care and wage replacement to an injured worker. Yet many workers fall through the safety net, with no eligibility for income protection. For example, city worker's fall outside of New Jersey's temporary disability program, impoverishing the city worker denied workers compensation temporary payments.

For the majority of working poor (30% of the US working population, earning under \$18,000 per year)(1), at "McJobs" with no private health insurance, sick days or personal days; anything short of emergency room treatment is DENIED, including delays in major surgical procedures and proper treatment, no access to prescription medication, thus aggravating acute injuries, leading to malpractice claims and causing lifetime, chronic disabilities, with untold costs to workers, their families, and the state economy.

#### NEW JERSEY COMP SYSTEM BELOW NATIONAL AVERAGE

The AFL-CIO reports that 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. We can do better! Nebraska's ranking is 87%, Connecticut's at 84%, and Iowa at 82%. Even Pennsylvania scores 72%. The US Average is 67%. New Jersey compliance with basic Federal standards is below even the national average for state worker compensation programs! Only eight states, including New Jersey, deprive the injured worker of any choice regarding a doctor and medical care! We can do better! (State analysis; percent compliance with nine essential factors, US Department of Labor, Office of Workers Compensation (2000), See table covering all 50 states at AFL-CIO Web site: (<http://www.aflcio.org/yourjobeconomy/safety/wc/upload/comptable.pdf>).

Equal access to quality health care is key to our families and workers, and the "United States is the only industrial democratic country that does not provide all of its citizens with equal access to health care." (American Public Health Association, "The Nations Health" May 2002 at (<http://www.apha.org/journal/nation/accesstocareexlus502.htm>).

The World Health Organization rates the United States “55<sup>th</sup> in terms of financial fairness” vis-à-vis basic health care access. (Prof. Thomas Dennison, Maxwell School of Syracuse University, in “Haphazard Health Care”, Syracuse University Magazine, Fall 2003, p. 24).

### TREATMENT OF OUR CHILDREN AS A MODEL

Our children, if injured are cared for immediately, no questions asked. We do not subject our kids to extensive cross examination and recrimination for months at a time before deciding if treatment is necessary or related. We do not ask our children: “Did you report your injury within 24 hours? What is the date of your injury? Are you faking your injury? Isn’t true you injured the same body part three years ago? Did you once use drugs? Who did you notify of your accident? Did you notify someone in authority within 48 hours, or two weeks, or 90 days? Where you engaged in a fight, not related to your (school) work? What is the exact date and time of your accident? Did you know your injury was related to your activity, and if you did know, and 90 days have passed, AND you didn’t notify anyone, it is too late to receive free treatment or compensation. Don’t you have other causes for your injury, depression, etc...”?

The wrong answer to any one question, for a New Jersey worker means NO MEDICAL CARE! We, as a society, would never expose our children to such a medieval system! The same level of comprehensive care for children (i.e. NJ Family Care), should be extended to all members of our family, all adults, and all workers! Emergency room treatment, by law, is provided to all Americans, regardless of cause or ability to pay. So why not all basic care!

Our nation treats felons, prisoners; victims of gun shot wounds and falls immediately, in the Emergency room, no questions asked. Our Army troops treat enemy soldiers, immediately, no questions asked.

But 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 costs!

Plus a bar and bench, tied to a statute from 1909, the outmoded workers compensation system. The original “no fault” workers compensation system, instituted in 1909, has cracked. 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. Prisoners of war, and convicted felons and murderers receive much better, more consistent and immediate treatment than most New Jersey workers! Why does an Iraqi prisoner of war or an inmate in any NJ Jail receive quicker, better care than most of my clients?!! Why does a workers’ family suffer with no electricity, no heat, no income, while awaiting a Judges decision regarding temporary pay and emergency surgery, sometimes delayed 18 months in long drawn out court battles? I have litigated battles between insurance company doctors with questionable backgrounds, (one Doctor with a documented 12 failed medical board tests, yet chief of treatment for our largest city’s police force). I have been forced to bring to court world renowned experts from the best New York Surgical programs, in order to face recalcitrant Judges adverse to specialized medical care and surgical procedures that could ultimately return a worker to the labor force.

If we cut out the insurance litigation, the insurance company profit motive; the insurance company lawyers, the administrative workers compensation courts, the lost days and years of worker production...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, and the Netherlands, to Japan and Canada, 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 and most realistic course. America covers the poorest under Medicaid, and the middle and upper middle class, under private health insurance. But the working poor (35 million workers) and lower middle class exist in a vacuum, with no proper health coverage.

Recently the AFL-CIO has proposed a single payor system that would combine both workers’ compensation and major medical coverage into a single policy system, “cutting transaction costs 25%.” The AFL-CIO argues that a single payor system would allow “injured workers” to “have greater access to medical services WITHOUT THE

DISPUTE AND DELAY imposed under the workers' compensation system.” (See Jon Gelman Esq., web site, [www.gelmans.com](http://www.gelmans.com); Workers Compensation News- aug 7, 2003, Vol.1, Issue 21).

Our 19<sup>th</sup> century breveren created a whole new system from scratch, the workers compensation civil system. It worked well for nearly 100 years. It is time for a replacement.

Why has this egregious violation of the most basic human right, the right to health care, come to pass? Is it the fault of Judges, striving to lower worker compensation insurance rates for NJ Businesses? Or is the problem intrinsic to our statutes and laws, known as the NJ Workers Compensation Rules?

I have witnessed a trial, (one of many) with a fair and caring Judge, and an honorable respondent and petitioner's counsel; grill a poor elderly lady for an hour, over a simple question of the exact date of her present and prior injuries. She could not remember if it was 1.17.98 or 1.19.97 or 1/21/98 or 2/17/99... The injury was real. The need for immediate treatment, and possible curative surgery was agreed. She had no private medical insurance and no job or income.

If she failed the litmus test of a faded, hazy memory; her treatment, by statute and rule, would be DENIED! I witnessed a Salem witch trial, dressed in modern form, in New Jersey. Trial by fire, trial by water; trial by Memory.

No one in the court room realized the travesty of this cross exam, -- a Salem witch trial by memory! If she failed, she was OUT; out of luck, no chance for treatment, anywhere!

I ask, where is the humanity and fairness in this hollow system?

--Would we *deny treatment* to a child, for an erroneous memory, or even if the child was at fault, or the child was on drugs, thus causing a serious injury? No! Drug abusers, felons, robbers, prisoners receive full medical care; to do otherwise constitutes “unusual/harsh punishment,” deemed “unconstitutional.”

So why do we question, interrogate, litigate, and test the adult worker, the elderly, the undocumented alien, the immigrant, the working poor with a litmus of issues and questions –Before commencing the proper medical treatment! Is it simply to prevent fraud?

The threat of worker chicanery and fraud is usually successfully weeded out by the court, aided by insurance company “spies”, secretly filming American Citizens and vast computer background insurance checks (CIB insurance supercomputer listing of all past accidents and litigation for all Americans). I witnessed the same in the former Soviet Union.

The Judge’s effectively spot fraud and stop it in its tracks. As the straight talking, strict (conservative) Honorable Judge Bolstein stated: “80% of the real fraud is perpetrated by insurance companies and employers, -- only 10-20% stems from the workers. (ATLA Convention Seminar, Atlantic City, April 2001, Workers Compensation Seminar, Hon. Judge Bolstein, former respondent insurance company attorney). The audience was shocked at this statement, as going against the grain of politically correct accepted wisdom, and issued by the NYU Law trained dean of the judicial corps.

Treatment of a real injury should be immediate and timely. Let the trial to determine liability, causal relationship and payment issues proceed later. Care for the injured worker first! The worker compensation system places the burden of payment on the employer, and thus ultimately on the consumer, through price increases. So be it. Simply provide treatment first, ask questions later.

The obverse, withholding of necessary medical treatment and surgery, (and temporary workers’ compensation payment to feed and clothe the family), while a lengthy motion and trial proceed, is obscene, and medieval in its stark unfairness. Determine responsibility, causal relationship and liability at the end of the process. Do not litigate while the worker bleeds.

We should not hold medical treatment for injured, battered workers hostage to litigation. The motion for medical and temporary benefits usually demands a three to six month trial at best. The process is grueling and demeaning to the frail and injured workers and takes an unnecessary toll, physically and emotionally.

There must be a more civilized, economically efficient way to deliver health care to our workers. There must be a better way. Possibly national health care. Our present day workers’ compensation system, copied from a 19<sup>th</sup> century German model, is medieval and wrong. The workers’ compensation system, originally intended to end litigation, and provide fast treatment and payment with a “no fault” approach, has failed. Codified



originally as a civil code enactment – the workers' compensation system has become stymied and entangled in a growing body of precedent and case law and is grinding to a halt.

Speed has been ended by litigation. The problem originally intended to be fixed, has returned, seemingly endless litigation before payment or proper treatment. We have turned the system on its head. Insurance company profits, and parasitic law firms, on both sides, gain. The worker loses.

The individual attorney's and judges are competent, ethical professionals on the most part, trapped in a failed system. It is time to scrap the system and rebuild from scratch.

Chapter II: The New Jersey Worker Compensation System supports systemic medical malpractice.

The New Jersey Workers Compensation System supports systemic medical malpractice in all but name: medical decisions are made by unqualified, non- licensed, laymen:

- a. High school and community college educated insurance adjusters decide on all questions of medical care, from the necessity of surgery to which medication will be paid for.
- b. “Biased” doctors, on insurance company payrolls- some who have been documented (by deposition) to have failed the New Jersey Medical Boards 12 times, decide on all aspects of treatment, delivering the lowest level of healthcare possible. Real, family doctors and hospital surgeons have deemed such treatment “unconscionable”.
- c. Laymen “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. Your chance for a course of treatment depends on the luck of the draw, i.e.—which judge you are assigned.
- d. Petitioner attorneys—many who view workers’ compensation as a business, and injured workers akin to Goguls, “Dead Souls”, mere accounts to be settled; with the largest and most prestigious petitioner’s firms refusing to file, as policy, motions for surgery or treatment, as such are deemed “uneconomical”, time consuming, and “wasteful”.
- e. Insurance lawyers with open disdain for working class people, go to great lengths to find any legal loophole to deny treatment to the worker, all in the name of service to the insurance company (client).

### Chapter III. The Answer. New Alternatives for Health care delivery.

If we cut out the insurance litigation, the insurance company profit motive; the insurance company corporate lawyers, the administrative workers compensation courts, the lost days and years of worker production...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, and the Netherlands, to Canada and Japan, suggest this alternative, adapted to local conditions is realistic, equitable and cost conscious. Comparative law paradigms teach us valuable lessons. We will examine the following health care and workers' compensation models listed below:

- Japan two tier model- private insurance and government insurance in concert.
- Federal Longshoreman's Compensation model- strict enforcement of treatment rights.
- AFL-CIO proposal- Universal health care, eliminate wk comp litigation.
- New York system – Choice of treating doctor by injured worker.
- Pennsylvania system- Respondent may only terminate treatment via motion.
- Gephardt Plan- Universal health care system.
- Schwarzenegger Plan -adopting effective independent medical review, eliminate Judges.
- OSHA increased enforcement- prevention of occupational disease and accidents.

A. Japanese Model; Comprehensive Health Care thru private and public insurance.

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 and most realistic course. America covers the poorest under Medicaid, and the middle and upper middle class, under private health insurance. But the working poor (35 million workers) and lower middle class exist in a vacuum, with no proper health coverage. The Japanese system ensures health coverage for all with a mix of government and private programs.

“The first, the Employee’s Health Insurance System, has about 33 million subscribers and is financed by payroll contributions of 8 percent of wages. These contributions are paid by both employers and employees and cover the dependents of both of these groups. The second primary system is the National Health Insurance System, which has about 46 million subscribers. The system covers the self employed, pensioners, their dependents and members of the same occupation. Under the National Health Insurance System, people begin to pay into the National Pension program at age 20 and are eligible to receive a fixed, old-age pension benefit, beginning at age of 65. Others eligible for pension benefits include fatherless families and people with disabilities. In this system, local governments calculate premiums based on income, as well as the number of individuals that reside in each household and the amount of assets that are held. Such premiums account for 57 percent of health expenditures in Japan, with federal government contributions totaling 24 percent and local governments contributing 7 percent. There are also medial insurance systems that have been established for seamen, national public service employees, local public service employees, teachers and staff employees of private schools.”

“In Japan, about 80 percent of hospitals and 94 percent of private clinics are currently owned and operated privately, and very few public not-for –profit hospitals exist. Unlike the United States, where patients are often restricted in choice of health care providers, patients are able to choose their ambulatory care physicians. Theses physicians are then reimbursed based on a uniform fee-for-service schedule with hospital physicians receiving fixed salaries...” (American Public Health Associates, “The Nations Health Web Exclusive May 2002: Universal access to health care. An international approach.” May 2002, available from <http://www.apha.org/journal/nation/accesstocareexlcus502.htm>) p.8-9; Internet.) (See also: Ministry of Health, Labour and Welfare. “Providing Health Care for All People Without Worries.” Japan: accessed 8<sup>th</sup> May, 2002: available from <http://www.mhlw.go.jp/english/org/policy/p34-35.html>; Internet.)

## B. Federal Longshoreman's Workers Compensation Model

The strict Federal Longshoreman's model, where a list of certified medical providers is guaranteed to the injured worker and treatment is provided immediately by a Doctor of the worker's choice. The Federal government protects our nation's dock and shipyard workers under this model, providing excellent healthcare, under strict scrutiny by the federal government, and immediate temporary payments.

Regarding final or permanent payments, the Federal Long shore act pays only for a limited list or "schedule" of specified injuries, compared to the wide range of accidental and occupational pathologies covered under the near limitless New Jersey State Workers Compensation scheme. The New Jersey State Law is superior in its breath of coverage, but illogical in the rational used to set monetary awards. But the Federal Long Shore act provides a logical and sensible marker for compensating an injured worker: if the injury causes the worker to take a deduction in salary, the Federal Act makes up the difference. This is an eminently more sensible approach compared to New Jersey's "chart" of disability payments, where a simple bronchitis may garner a \$2500 settlement, with no connection to actual diminution of salary, or work performance. To the sensible layman, New Jersey's system has no rhyme or reason.

## C. The AFL- CIO Integrated Health Care, Single Payer System.

"The AFL-CIO has proposed a single payer system that would combine both Workers' Compensation and Major Medical coverage into a single policy system. They suggest that 25% savings will occur as transactional costs will decrease and that injured workers will have greater access to medical services without the dispute and delay imposed under the workers' compensation system." (See Jon Gelman Esq., web site, [www.gelmans.com](http://www.gelmans.com); Workers Compensation News- aug 7, 2003, Vol.1, Issue 21) (See also; The American Federation of Labor – Congress of Industrial Organizations Web Page, available from: <http://www.aflcio.org/yourjobeconomy/safety/wc/compben.cfm>; Internet)

#### D. New York Model

New Jersey's working class would be greatly served by passage of pending Trenton legislation allowing a worker to choose a private doctor of the workers choice. (Assembly, bill No. 554, 210<sup>th</sup> Legislature, an act amending R.S. 34-15-15 and R.S. 34:15-23, allowing employee selection of physician and medical services under workers' compensation. In an explanatory note to the bill, the sponsor, Assemblyman Anthony Impreveduto (Bergen and Hudson), writes:

“The bill would bring the provisions of New Jersey's workers' compensation law regarding who selects medical service **providers into compliance with the provisions of the laws of the majority of states.** Under current New Jersey law, an employee is required to visit the physician of his employer's choice, unless the employer refuses to provide treatment, in which case the employee may select the physician. **New Jersey is among the 17 states that currently have laws permitting the employer to select the attending physician in workers' compensation cases.** Of those state laws, four permit an employee to change physicians after a waiting period and five permit a State agency to change the selection. Of 32 states which permit the employee to choose the physician: three require the employee to select the physician from a list provided by a state agency; three require that the employee select a physician from a list provided by the employer; and the other 26 states, like this bill, give a free choice of physicians to the employee.” See Assembly Bill No. 554, p.3, Statement, Available at: [http://www.njleg.state.nj.us/2002/Bills/A1000/554\\_I1.HTM](http://www.njleg.state.nj.us/2002/Bills/A1000/554_I1.HTM): Internet.

The New York State Workers' Compensation Board provides for personal choice, as stated by the Board:

“The injured or ill worker who is eligible for workers' compensation will receive necessary medical care directly related to the original injury or illness and the recovery from his/her disability. The worker is **free to choose any physician**, chiropractor, podiatrist, psychologist (upon referral from an authorized physician), outpatient clinic of a hospital or health maintenance organization authorized to give medical care by the Chairman of the Workers' Compensation Board.

Preferred Provider Organizations (PPO's) are allowed to provide workers' compensation coverage if they offer five providers in every medical specialty and three hospitals (exceptions granted by the Workers' Compensation Board). **If the injured worker is dissatisfied with his/her medical provider after initial treatment, he/she may select another authorized provider outside the PPO after 30 days of initial treatment.**”

“The cost of necessary medical services is paid by the employer or the employer's insurance carrier. The doctor may not collect a fee from the patient. When appropriate, claimants will be awarded reimbursement for automobile mileage to and from a health care provider's office.

...compensation claim is disputed by the employer or insurance carrier, the doctor may require the claimant to sign form A-9. This will guarantee that the worker will pay the medical bills if the Workers' Compensation Board disallows the claim or the worker does not pursue it.” (See New York State Workers' Compensation Board; Available at <http://www.wcb.state.ny.us/content/main/onthejob/wc03006.htm>: Internet)

#### E. Pennsylvania Model

While the Pennsylvania system is generally viewed as stacked against the ordinary worker, it does have some redeeming elements that stand in stark contrast to the New Jersey Compensation rules. In New Jersey, medical care and temporary workers compensation pay checks can be CUT OFF unilaterally by the Insurance Company, with no warning and dubious rational (i.e. Cost Savings). In Pennsylvania, the Insurance Company must first FILE A MOTION to Terminate or even Reduce treatment, or payments! The onus is on the insured to prove to the Court a legal and medical rational for ending treatment; a much fairer and more ethical approach to the working man or women, as compared to New Jersey's all powerful insurance agent, randomly stopping medical treatment in mid course! (I have had treatment cut off for workers, as they were wheeled into surgery; I have had seizure medication cut off mid treatment for New Jersey petitioner's; I deal weekly with Insurance company “independent examiners” whose raison d'etre is to countermand the treating surgeon's instructions and unilaterally cut off all medical treatment. I have seen physical therapy cancelled after major surgery, contrary to the surgeons orders...and the only recourse in New Jersey is a motion to restore benefits, taking 35 days to be listed and up to four months to be tried! New Jersey is home to a backwards, failed system of workers medical care, of undeniable cruelty to the ordinary worker).

**The Pennsylvania rules only allow termination of treatment AFTER three steps are taken, basic due process procedural steps to protect the worker:**

- (1) Exam,
- (2) Respondent motion to terminate or modify treatment or benefits and,
- (3) Court hearing.

“While an injured worker is receiving workers' compensation benefits, the insurance company can try to stop the benefits. They do this by sending the worker to a physician for an [Independent Medical Exam](#) or IME. If that doctor finds the injured worker fit to return to the pre-injury job, or modified duty job, the insurance company will probably file a *Petition to Terminate, Suspend or Modify Benefits*.

- **Petition to Terminate Compensation Benefits**

When an employer files a Petition to Terminate Compensation Benefits, the employer is asking the Bureau of Workers' Compensation to stop compensation payments for a particular reason. The reason may be stated in the petition. Many times, employers file this petition on the basis of a physician's affidavit that states the worker is no longer injured and can return to work. The injured worker has a right to defend the petition. If the worker does not attend a hearing, then payments may be stopped. If the worker doesn't report back to work, the job could be lost.

- **Petition to Modify Compensation Benefits**

When an employer files a Petition to Modify Compensation Benefits, the employer is asking the Bureau of Workers' Compensation to reduce the amount of money an injured worker is receiving. The reason may be stated in the petition. The reason is usually because the company doctor concludes that the injury is not as disabling as it previously was, and has released the worker to a modified or "light duty" job. The employer has a modified job available for the worker; however, the worker is rejecting it because the requirements to perform the job exceed the physical restrictions placed on the worker by the physician. The worker has a right to defend the petition. If the worker doesn't attend a hearing, then payments may be reduced.

- **Petition to Suspend Compensation Benefits**

When an employer files a Petition to Suspend Benefits, the employer is asking the Bureau of Workers' Compensation to suspend payments for a particular reason. The reason may be stated in the petition, and may include the injured worker's failure to comply with certain requirements of the Workers' Compensation Act. Usually, the employer has a different job available for the worker that the worker is rejecting even though it pays the same amount as the pre-injury job paid. The worker has the right to defend the petition. If the worker does not attend a hearing, then payments may be suspended.



...A Workers' Compensation Judge is going to have to decide if compensation benefits can continue. This is a lengthy process that could involve as many as three or four [hearings](#).” (Pennsylvania Workers’ Compensation Legal Center, “Petitions to terminate, modify, or suspend Workers’ Compensation Benefits,” available at: <http://www.workcomplegalcenter.com/types/petitions.html>: Internet).

As a stop gap measure to bring a semblance of equity for New Jersey Workers’, the above Pennsylvania Motion Practice should be adopted, to protect our workers from the ex parte “cut off” of medical treatment, experienced in the majority of New Jersey claims.

F. Gephardt Plan (one of the many democratic comprehensive health insurance plans)

“Gephardt calls for universal health care system. Gephardt’s plan will not only ensure that all working families have access to quality health care, but will offer both business and state and local governments relief from health insurance costs while offering significant economic stimulus. The proposal will pump more that \$280 billion into the economy over the first three years.” (See Dick Gephardt 2004, at [http://www.dickgephardt2004.com/plugin/template/gephardt/33/\\*](http://www.dickgephardt2004.com/plugin/template/gephardt/33/*): Internet,

2003, Vol. 1, Issue 21, Jon Gelman, Attorney)

G. Terminator Model

Arnold Schwarzenegger, the new California Governor has suggested a radical fix to California’s failed system. Arnold stated three key points:

**“As Governor, I will:**

- Work with the legislature to:
  - a. Implement objective and enforceable utilization guidelines and establish well defined networks of providers.
  - b. Eliminate excessive permanent disability payouts by adopting American Medical Association guidelines for impairment ratings.
  - c. Reduce unnecessary litigation and judicial involvement by adopting an **effective Independent Medical Review process**.

- Initiate a comprehensive review of the State Compensation Insurance Fund to assess its current financial condition and take action as necessary.

Appoint a new team to the Division of Workers' Compensation and make cost containment job one.

- **(Fix the Runaway Workers' Compensation System.** California's Workers' Compensation system is producing skyrocketing costs for employers and job losses for employees. This year alone Californians are expected to incur \$29 billion in cost for workers' compensation, up from just \$9.5 billion in 1995. In many cases insurance premiums are 200-250% higher than they were in 1999, and 2-3 times greater than the current national average. And the legislature has done little to address this need. Their solution addresses less than half of the state's \$11 billion Workers' Compensation crisis. A comprehensive Workers' Compensation reform package will rein in costly premiums and unnecessary costs, so that more dollars..." See arnold.com.

We should do the same in New Jersey, but with a goal of making fair, cost effective, health care delivery as "job one", possibly with a new type of effective independent medical review process, akin to the Canadian model of a medical decision board composed of medical doctors, not lawyers or judges!

- G. OSHA Enforcement; Prevention and Safety – stepped up enforcement to ensure a safe work place.

Enforcement of a safe work environment and safe work conditions could prevent innumerable injuries and disease (from brain encephalopathy from toxic paint exposure to cancer from asbestos exposures). Massive pulmonary (asthma) problems (35% of Adult onset asthma is traceable to the workplace) and extensive chemical exposures and safety lapses, lead to debilitating injuries and chronic disease. The worker with a lifetime debilitating pulmonary condition usually receives a small award of money from the workers compensation court, if lucky (i.e. pulmonary Section 20 dismissal with a small payment). While workers with no real objective problems clog the dockets with de minimus disability claims.

Why not put the onus on "PREVENTION" – STRICT compliance with Federal Clean Air safety statutes, and work place exposure guidelines for toxic chemical exposures. (While the government has set limits on individual toxic exposure limits of myriads of chemical substances, no extensive research has been conducted for real world "mixtures" of toxic chemicals and their concomitant effects and toxicity to humans!)

We should as a society protect the health of our workers, by beefing up OSHA and PEOSH state and federal inspections, ensuring a safe working environment for all. Air quality, chemical exposure limits, safe machinery, must all be monitored by the government.

Currently, only a few individuals in a limited number of OSHA offices serve to monitor all workplaces in New Jersey! (OSHA- Federal Occupational Safety and Health Administration).

Money and manpower for prevention would save twice the cost of payments made later for debilitating injuries and chronic occupational and pulmonary disease (cancer, asthma, etc...)

### CONCLUSION

A national health care plan or enforced participatory scheme imposed from above (Federal Government) maybe the only hope for our states and our nation's workers. Comprehensive and affordable health insurance and guaranteed temporary wage replacement are primary building blocks to future improvement in the life of our nation's 35 million working poor. We must change our Workers' Compensation Health Care delivery system and join the ranks of the modern industrial nations.

For thirty five million Americans, America is not the richest nation on earth, or even in the top 20. We must do more than ask why; we must analyze, organize and change the law. We must Act! As a first step, we must replace the present New Jersey Workers' Compensation health care delivery system, with the goal of making fair, cost effective, health care delivery as "job one."

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, 210<sup>th</sup> Legislature, an act amending R.S. 34-15-15 and R.S. 34: 15-23, allowing employee selection of physician and medical services under workers' compensation.)

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COALITION FOR HEALTH CARE REFORM.

FOOTNOTE:

1. Working poor defined: “30% of the US working population, earns under \$8.70 per hour (\$18,000 per year); the poverty level for a family of four. Three fourths of the working poor are white, high school educated, some college educated, and a good percentage are women with families to support. None have access to health coverage or even sick or personal days. They are doing jobs essential to our economy but stuck in their jobs with no upward mobility, no health insurance, yet the mainstream of society and white.” (Leonard Lopate Show, WNYC, National Public Radio, Sept. 22, 2003, on air interview with Beth Shulman, Esq., author of “The Betrayal of Work: How Low-Wage Jobs Fail 35 Million Americans,” and Annette Bernhardt, Director Brennan Center for Justice, NYU Law School.)(Audio and transcript available at: (<http://www.wnyc.org/shows/lopate/episodes/09222003>).

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REPORT FOR NJ LEGISLATURE  
ON WORKERS COMPENSATION REFORM

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November 30, 2003

Coalition for Health Care Reform  
Jay H. Bernstein

