



Pennsylvania Orthopaedic Society

**Testimony of M. James Moses, MD
before the Pennsylvania House Labor Relations Committee**

Tuesday, September 13, 2005, 2:30 PM

Good Afternoon. My name is James Moses and I am an orthopaedic surgeon practicing in Johnstown, Pennsylvania. I appreciate this opportunity to testify before the House Labor Relations Committee on behalf of the Pennsylvania Orthopaedic Society (POS). Recognizing that the General Assembly has made great strides to improve Pennsylvania's workers' compensation system in the past with the passage of Acts 44 and 57, I am here today to offer some constructive suggestions which might further enhance the system.

Treatment Protocols for Providers

Multiple studies in the US and abroad indicate that treatment protocols designed by the appropriate specialists in musculoskeletal care lead to better outcomes at lower cost and with minimized disability. Specifically, guidelines would raise the overall quality of care which ultimately reduces costs for all parties involved; reduce time loss, therefore indemnity cost; reduce utilization of ancillary services; reduce the practice of defensive medicine; and, provide more consistent billing to insurers for procedures. To insure the best possible recovery and outcome for injured workers, POS recommends the General Assembly and Department of Labor and Industry establish treatment guidelines or protocols for use by providers treating the most prevalent work-related conditions.

The American Academy of Orthopaedic Surgeons has a vast reservoir of carefully designed treatment protocols created through an exhaustive process of evidence-based medical review and a consensus of national and international experts in each subspecialty field. POS and our members would welcome a simple and concise implementation of these guidelines for treatment of the most common disorders. While no specific protocols have been developed in the workers' compensation context, guidelines currently exist for neck, back, shoulder, knee, and wrist injuries. As one can see, these guidelines would capture the majority of patients who present with work-related disorders of the musculoskeletal system.

The General Assembly and the Department of Labor and Industry would need to use great care in selecting the various specialty medicine protocols and in doing so should form a select advisory committee of board-certified specialty physicians to make recommendations.

Over-utilization

The excessive utilization of advanced imaging modalities (such as MRI and CT), physical therapy, chiropractic treatment, occupational therapy, and pain management leads to increased costs in Pennsylvania's workers' compensation system with little or no benefit. The Legislative Budget and Finance Committee's report on the Workers' Compensation system states that Pennsylvania's payments for physical therapy, chiropractors, and other such providers are 15 to 26% higher than the twelve state median in their survey. Lessons learned from other segments of the health care industry and other jurisdictions could be implemented here in Pennsylvania with attendant cost savings and maintenance of outcomes. In California for example, physical therapy and chiropractic are limited to twenty-four sessions unless there is certification of medical necessity.

The Pennsylvania Orthopaedic Society would welcome consideration of regulations to limit the amount of physical therapy and chiropractic that workers' compensation patients can access without oversight, as well as a pre-certification program for multiple or repeat advanced imaging modalities of an injured body part.

Clinical Training for Workers' Compensation Judges

Workers' Compensation judges hear numerous cases annually and must render judgments on a variety of injuries. While we believe that WC judges are dedicated to their work and qualified to determine legal issues, we believe that judges and everyone else involved in the system would greatly benefit if judges received a minimum level of medical education. To that end, POS recommends that future workers' compensation reform include a mandated number of hours of education for workers' compensation judges in treatment and outcomes of common work-related disorders. Similar to continuing legal education, such training will enhance the judges' decision making ability related to these matters. POS stands ready to assist the General Assembly or the Department of Labor and Industry in establishing such a quality training program.

Panel Period

POS believes that an extension of panel physician care to greater than the current 90 days will prove detrimental to the care of injured workers. Multiple studies have shown that timely and appropriate referral to specialty care leads to minimized disability. A protracted course of care serves neither the interest of the injured worker or other parties involved, if subspecialty care is needed.

Further, the annual access study conducted by the Bureau of Workers' Compensation consistently comments that patient satisfaction is highest when the injured worker has a broad enough choice of providers for their work related injury. Lessening this choice has been strongly associated with dissatisfaction and increased disability times. POS recommends that the law not be changed in regard to the 90 day rule.

Prohibition of fee schedule discounts

Orthopaedic Surgeons consistently report that payments made by representatives of insurers or self-insured employers are often lower than the fee schedule established by Act 44. These representatives are commonly referred to as third party administrators (TPAs). Acting on behalf of insurers or self-insured employers, TPAs will pay discounted rates to providers without their knowledge, even though the Bureau of Workers' Compensation has made the fee schedule conveniently available to these parties. When a discounted payment is submitted to the Bureau for review, the Bureau most often finds in favor of the physician and orders that that payment be made consistent with the fee schedule. Adherence to the published fee schedule in the first place would help retain health care providers who are currently in the workers' compensation system, encourage more providers to participate in the system, and reduce the number of fee reviews submitted for payment dispute.

Specifically, the POS recommends prohibition of fee schedule discounting; prohibition of any assessments to providers for "costs" such as processing fees, billing fees, and so forth; and, prohibition of all-products clauses in insurance contracts.

Third Party Administrators (TPAs): Training and Contract Terminology

As stated above, TPAs often do not adhere to the established fee schedule for physicians and hospitals. They are sometimes unaware and uninformed in matters of Pennsylvania law, regulation, and resources which would improve service to Pennsylvania's injured workers.

POS recommends that TPAs be required to operate within existing law and regulations and that the Bureau of Workers' Compensation be given oversight authority over their operations. In this way, the Bureau could require TPAs to receive a mandated number of hours of training about Pennsylvania law and regulations to ensure they comply with our law.

Further, Pennsylvania's injured workers and their treating physicians would greatly benefit from the establishment of standard provider contract terminology. If insurers, self-insured employers, and their respective agents offered within their provider agreements, a block of terminology consistent with Pennsylvania law and regulation, the relationship with these parties and the providers would be much improved.

Notice of Compensation Payable (NCP)

POS members report that one of the greatest impediments to smooth administration of workers' compensation patients is the lack of appropriate information regarding the nature of the accepted liability. In many cases, our member physicians provide a course of treatment only to later discover that the workers' compensation insurer has denied the injured worker's claim in part or in whole. Valuable treatment time, not to mention money, is then lost as the injured worker, the treating physician, and the various responsible insurers attempt to determine which insurer is liable for the cost of treatment that has already been provided. But all this needless hassle, waste and delay can simply be avoided if the treating physician were to receive a copy of the Notice of Compensation Payable.

The Notice of Compensation Payable (NCP) issued by the workers' compensation insurer contains the description of injury for which the insurer has accepted liability. Although it is common sense that the

treating physician should receive a copy of the NCP, there is no requirement in the law or regulations to that effect. As the General Assembly considers workers' compensation system reforms, POS recommends that you require insurers, and not the injured workers, to provide treating physicians with a copy to the NCP form. An alternative would be to establish a secure electronic means of providing this information to the health care provider.

Further enforcement of the thirty-day payment rule

POS repeatedly hears from its members that certain carriers' payments are made *after* the thirty-day period required by the regulations. While the Bureau's fee review process provides a means to enforce this rule, it is burdensome to all parties involved (provider, insurer, and the Bureau) to allow such repetition to persist. A requirement in law to enforce the timely payment by insurers would reduce the number of fee reviews; reduce interest payments by insurers for untimely payment; and, save time for all involved.

Fee Schedule

According to the Journal of Bone and Joint Surgery and a 1999 practice study conducted by the POS, workers' compensation practice expense is 125% to 130% that of regular health and accident care. Practice expense is all costs associated with the provision of care except physician compensation and medical liability insurance expense. In addition, the Legislative Budget and Finance Committee found that Pennsylvania ranked ninth in terms of medical payment per claim in its survey of twelve states. The report states that this favorable medical cost ranking is "primarily attributable" to the statutorily mandated fee schedule. The POS recommends that the workers' compensation fee schedule not be altered as you consider future reforms. Workers' compensation patients consume greater amounts of clerical time, billing time, and physician time (especially in non-compensated postoperative visits). Any reduction in the fee schedule will limit access as providers will migrate their practices to less complicated patient payer classes.