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Note:	

First let me state for the record that the Workers Compensation Board of Manitoba and I have a long and adversarial history. It has come to the point that I refuse to speak to any employee of the WCB, except when compelled to (i.e. being called in for a medical examination) and prefer to deal with my case manager through letters and faxes.

**Systemic problems with the Workers Compensation Board of Manitoba**

Non-medical personnel ignoring medical opinions on file or they have requested in favour of their own. (1)

Medical Advisors whose main source of income is the WCB are in a conflict of interest and have in the past been coerced by adjudicators. (2)

Boards of inquiry being convened and conducted without a permanent record being kept. (3)

Mistakes made in the reporting of these Boards of inquiry proceedings cannot be corrected nor any mistakes made in any medical report. (4)

The idea behind a Medical Review Panel is to give a fresh, unbiased look at the claimant's case. (5)

There is only one Chairperson to the Medical Review Panel he has no specialty, yet his opinion carries as much weight as the specialists on the Panel. (6)

Employees of the WCB are not answerable to a higher authority. (7)

The policies and procedures that are supposed to govern the running of the WCB are routinely ignored to the detriment of the claimant.(8)

The practice of Medical Advisors summarizing the medical information to file to date should be banned.(9)

It is a fact that any claimant has the right to request that a Medical Review Panel be convened if there is a conflict in medical opinion within the claimant's file. The Medical Review Panel office will not accept a claimant's request directly they say it must be submitted through a case manager.(10)

Adjudicators should never be allowed to alter or suspend reality when judging an appeal.(11)

Because WCB functions in a quasi-judicial manner, it is suppose to be bound by the Rules of Natural Justice. Any WCB employee who willfully breaches the Rules of Natural Justice should be terminated. Ignorance of the law is never an acceptable excuse.

Because employers have the "ear" of the WCB they are able to promote their agenda of cost reduction. This cost reduction is always at the expense of the injured worker. To level the playing field there

should be equal representation of the injured workers concerns. **Even though Manitoba presently has the second or third lowest assessment rate in Canada WCB Manitoba is still looking for more ways to reduce costs.** This is directly related to employer's calls to improve the business climate by further reducing the benefits injured workers receive. This may be the reason a review of the WCB has been started.

No injured worker should ever be placed in a retraining program without first having a full Functional Capacity Evaluation(12)

Injured workers should not be forced to sign away their right to doctor/patient confidentiality in order to receive benefits.(13)

#### Abnormalities within my file

1994 CT Scan results are normal. 10 years later that same CT Scan shows atrophy of left trapezius muscle as per Orthopaedic MRP.

2000 CT Scan results are normal. 4 years later that same CT Scan shows atrophy of left trapezius muscle as per Orthopaedic MRP. (14)

Reference made to a doctor's letter concerning use of a TENS machine. This letter is missing from file.

Everything I have stated here can be proved from the documents contained within my WCB file. I can also speculate as to the motivations of some WCB employees when making their seemingly irrational decisions. I will only do this however if requested to.

Most recent history:

A General Practitioner attached to the Boards Pain Management Unit after interviewing me and supposedly reviewing my file called me in for a Functional Capacity Evaluation. If he had reviewed my file he would have read in the orthopaedic Medical Review Panel report that the Orthopaedic Specialists stated specifically that an FCE would be of no value due to my suffering from chronic pain. So why did this GP force me to undergo this testing? Was it to further increase my pain or simply to show me that if I continued to fight the Board I would be tortured? I lasted 45 minutes of testing and then in tears, due to increased pain, left the building. Since that day Friday Feb.27 2004 I have been bedridden, rising only when I am due to take my pain medication or when needing to use the bathroom. It is now 4:47 a.m. Sunday Feb.29 2004 I have just finished my first meal since undergoing that FCE. I have been upright for about an hour and find I must again return to bed due to the pain inflicted on me by the WCB.

Some facts about the Act.

The Act provides for an enquiry process, not an adversary system. There is, therefore, no burden of proof on anyone except the Board...

With regard to any other information that may be required, **the obligation rests on the Board to make the necessary enquiries. The absence of evidence on any point leaves the adjudicator in a neutral position that calls for further enquiry. It is not of itself a ground for any particular conclusion"** Workers' Compensation in Canada (2<sup>nd</sup>.ed.) Terence Ison

Terence Ison says, with respect to "Standard of Proof" – Rebutting the presumptions":

The board must reach the conclusion indicated by the presumption if there is not evidence on the point, or if the only available evidence is consistent with the presumption, or if the evidence does no more than raise a doubt. **To rebut the presumption, the evidence must indicate a contrary conclusion**, and where there is such evidence, the Board must weigh it in the balance against the strength of the presumption and any evidence in support of the presumption. **The presumption holds unless the evidence to the contrary is persuasive to a point going beyond the balance of probabilities.** A negative medical opinion that is based only on the lack of any proof of the affirmative is not evidence to the contrary, and if that opinion is the only evidence, the conclusion must follow the presumption.”

I realize now that the ending of WCB is not what the employers wish. It is to turn it into just another insurance plan. One that will cover a injured worker for two years and then cut him/her off with no recourse to further benefits.

**They want the protection from lawsuits that the WCB gives them. But they do not want the cost covering permanently disabled worker entails.**

WCB was created to take the place of lawsuits. What WCB has apparently forgotten is that if an injured worker were allowed to sue and if they won, they would receive (based on current settlements for negligence lawsuits) enough money to provide medically and financially for themselves and their families for the rest of their lives.

Since WCB is taking the place of that option (lawsuits) they must then provide for disabled workers medically and financially for the rest of their lives, if they are permanently disabled from working due to a workplace accident or disease.

“The Board is a statutory body whose primary purpose is to protect employers by bringing uniformity, efficiency, expeditiousness and cost-savings measures to selected accidents which occur in the employer worker relationship. It accomplishes this purpose by restricting rights of workers to have their right to compensation and the extent of their compensation determined by the Board. It cannot be said that the Board is independent insofar as the worker is concerned. In relation to the worker, the Board has an overwhelming wealth of knowledge and experience. It has financial ability to fund sophisticated investigations involving highly qualified experts and have the material presented to them, guided, orchestrated and propounded by its in-house counsel responsible to the Board and paid for by the Board. The application of any standards under the rules of natural justice would identify such circumstances as being unequal in negotiating ability and unfair. This is not a level playing field, it is not fair, and it offends the basic principles of natural justice.”

Justice Maclean – Court of Queen’s Bench of Alberta

Wilson vs. Medicine Hat (City) {1999} A.J. No. 269 (February 3, 1999)

Respectfully Submitted,  
Neil Garvin

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1. Mr.X, who at the time was supervisor \*\*\* for the WCB, requested medical opinions from Dr.Y and Dr. Z both initial responses confirmed that my ongoing problems were a recurrence and that my depression was compensable respectively. Mr.X then asked Dr.Y the same basic questions again. Dr.Y again confirmed his opinion, that my current problems were a recurrence of my original injury. Mr.X did not rebut this opinion. He did not seek other medical opinions **he simply ignored the medical opinion he requested** and denied my appeal.
2. Mr.X requested that the aforementioned doctors read a memo he had placed on file. In this memo he stated he was opposed to the idea of granting this appeal and then gave his reasons for this opposition. Dr.Z changed her opinion from this man's depression is compensable to not compensable and **the only thing that had changed was her awareness of the supervisor's ... opinion.**
3. The Chairperson upon the start of these Medical Review Panels pulls out a black notepad and begins to make entries into it. As I watched, he was not consistently writing what was being said, **only when he thought a point was significant did he enter it into his notepad.** Therefore, only what the Chairperson (a non-specialist) thought was important made it into the final report.
4. Since there is no official record of these proceedings, how can a claimant prove misinformation was included in the report? Yet **I can prove factual statement he attributed to me, are wrong.** This then makes me appear a liar. He also makes assumption not in evidence. He wrote that I was "functional within the home to some extent, but stated that he hired someone for snow and grass". What he asked me was how was I handling all the snow we were getting. I replied that I hired someone to do snow and grass. He never asked me if I was keeping up my home. Also the words used "to some extent" are open to interpretation and therefore not factual. I can prove that others judged me non functional within my home and as a result of their assessment Homecare was provided. Medical Advisors, Case Managers and Doctors are human beings and are just as likely to make mistakes as anyone else. Yet there is no mechanism in place, which allows for the correction of those mistakes.
5. If a claimant should happen to have more than one Medical Review Panel, **the Chairperson would be the same for both.** Since the Chairperson will have undoubtedly formed some opinions during the first Panel, it defeats the ideal to have him/her chair the second.
6. In fact as noted above, since he/she writes all the reports and records the investigation, **his/her opinion may carry even more weight than the specialists.** It would be better if the Chairperson to any Medical Review Panel were a specialist in the field under question. Since it is unlikely that a claimant would have Medical Appeal Panels fall under the same specialty, the possibility of having the same Chairperson ever again would be greatly reduced.
7. If they abuse their power there is not outside authority to censure them. During my oral hearing at the Appeals Commission my Workers Advisor, began outlining the abuses of power committed by Mr.X. The Chairperson stopped her **even the Appeals Commission will not comment on the behaviour of a WCB employee.**
8. The first Medical Advisor that ever examined me (Dr.A), in my opinion at the time, did an excellent job. His final opinion of my injury was:

"Firstly, he appears to have had a musculoligamentous strain to the neck and shoulders a result of his work injury dated 1983 and his subsequent work related injuries. The 1988 and 1989 injuries appear to be an aggravation of the original work injury. His most recent claim dated December 1, 1993 appears to have been a result of a further gradual aggravation of his original neck and shoulder pain. The most prominent musculoskeletal condition present and which appears to be causing most of the present pain is a chronic regional myofascial pain syndrome present primarily in the left neck and shoulder area. There is some other muscles involved in the forearm and on the other side, however these seem to be less symptomatic. It appears that this regional myofascial pain syndrome is

chronic and likely had origin with the original injury in 1983 and has had aggravations as a result of subsequent injuries. Most recently, likely aggravated due to the job demands. The tender hardened area of the trapezius is likely an area of scarring as a result of a musculoligamentous tear to this mid portion of the trapezius. There appears to be some surrounding myofascial activity. As well, he has chronic pain.”

Yet to this day I have never been treated for my chronic pain syndrome, WCB refuses to follow their policies and procedures and do the required investigation. By refusing to do this investigation they are able to deny the existence of my chronic pain syndrome. This frees them from the heavy financial responsibility acknowledging this condition would place on them. That **their failure to follow their own policies and procedures has destroyed my life** is but a minor point too them.

9. What invariable happens is that the next Medical Advisor reads only the last summary and bases his/her opinion solely on that. **If errors were made in the previous summary those errors are now fact.** By eliminating all summaries Medical Advisors would have to read the actual opinions of the doctors and not someone else’s interpretation of those opinions. Also **critical information could be excluded** because someone did not feel it was important enough to include in his/her summary. Dr.Q a Medical Advisor to the Board stated in her report that she had reviewed the complete file. Yet in her report are numerous factual mistakes. These mistakes are of such a gross nature that anyone reading her report could not help but come to the wrong conclusions.

\*\*\*\* Please note that I have written letters to my case manager rebutting the various mistakes contained in all of the latest medical reports Orthopaedic MRP, Psychiatric MRP, and Dr.Q’s report. The problem here is that **my letters of rebuttal are being placed in the correspondence section** of the file, while these reports are of course in the medical section. The next Medical Advisor who reads my file will in all likelihood never see my responses, as they are not in the medical section. Because of this those incorrect statement will appear to go unchallenged and will be treated as fact.

10. The case manager can then stall or even ignore that request. The case manager has the power to abrogate the claimant’s rights. I have formally requested a Medical Review Panel be convened; yet to date that request has not been forwarded to the Medical Review Panel offices.
11. When an adjudicator is allowed to use terms like **“if view in isolation and totally separate from other incidents and files.** The adjudicator is distorting reality by fabricating “what ifs” into reality and then denies benefits based on this altered reality. In my case this particular approach was used to justify Mr. X’s opinion that an incident (catching a box of falling screws) that happened after the accident date of December 1, 1993 (some weeks later) caused the injury. This approach at the same time defies the reality of a doctor’s report dated December 6, 1993 ( two weeks before the aforementioned incident) detailing the injury.
12. A full FCE involves 2 straight weeks of testing at eight hours per day, to simulate duties a claimant would perform at a job. The claimant would not be asked to do anything that was outside WCB imposed restrictions if any. How can an injured worker or WCB make an informed decision on what a claimant can and cannot do in the workplace, on a daily basis, without this evaluation? Without this evaluation it is quite possible, as in my case, that **an injured worker could be retrained for a job he/she is not capable of doing.** Currently, WCB is using a dynamometer to perform these evaluations, while this does measure current strength and amount of fatigue over a short period of time. Testing this way denies the reality of the effects of pain. Most injured workers will tell you that if they perform a certain activity their pain levels will increase. It is a fact that with certain injuries these increases in pain happen slowly and are cumulative in nature. By performing their FCEs in the manner they do now WCB is denying the very real cumulative effects of pain.

13. WCB does have the right to certain information as it pertains to management of the claim and the injured workers progress. Requests for information should ask specific questions aimed at getting the needed information. Blanket forms that direct the doctor to turn over the patient complete medical history from birth are nothing more than fishing expeditions, looking for any extenuating circumstances on which benefits could be denied. One of the worst examples of this is the use by WCB of information concerning a “poor childhood”. Whenever a claim is submitted for compensation due to depression caused by a workplace accident, **WCB immediately looks for evidence of a poor childhood**. This could be anything from abuse within the home to the death of a loved one. If there had been any trauma during the claimant’s childhood, WCB will deny benefits. Their blanket assertion that because the claimant had a poor childhood they are “predisposed to depression” is absurd. I was 24-years of age when my accident happened (1983). I worked for 10 more years after the accident, while in constant pain. **To that date (1994) I had no history of depression.** I was sent by WCB to see a psychiatrist under the guise of seeing if I was suitable material for retraining. I was open and honest, when asked I truthfully told the psychiatrist of the abuse I suffered in the home. All of this information was turned over to WCB and later used against me. I was judged to have a “predisposition to depression”, that because I suffered abuse in the home I was somehow more susceptible to depression. Based on this WCB denied benefits for depression. **Yet their policies and procedures state that if a workplace accident should cause depression regardless of whether there was a “predisposition”, the depression is compensable.**
14. The CT scan results were altered so that what my injury was could be withheld from my doctor, my file and myself. This was done so that I could be removed from benefits after being found “neurologically fit to return to work”. After altering the first CT Scan results WCB could not then admit that the atrophy did show up on any CT Scan result, so the second one was altered as well. The only other possibilities are that (a) the same technician read both CT Scans and missed the obvious atrophy of muscle both times or (b) two different technicians missed the same obvious atrophy when reading their CT Scans.