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WCA General Counsel Office
2410 Centre Ave. SE
Albuquerque, NM 87106

Via email: gc.clerk@state.nm.us

Re: Proposed Amendments to WCA Rules

Dear Sirs:

I am an attorney who has been practicing before the WCA since it opened in 1986. I would request that the Director consider my comments regarding the following proposed rule changes:

11.4.4.15(A): I oppose the proposed change to this section. Use of the word “shall” makes presenting evidence on all of the elements listed mandatory. It is unnecessary to codify existing case law regarding the elements of proof necessary to determine a reasonable attorney’s fee. Each case is unique and individual, so that not all factors listed in the proposed rule would be relevant in every case. The appellate courts have determined that the WCJ has the discretion to weigh the facts presented by the parties. The WCJ need make findings only on those factors on which the parties have presented evidence. *Woodson v. Phillips Petroleum Co.*, 1985-NMSC-018, 102 N.M. 333, 695 P.2d 483, 489. Some factors may not be relevant to the particular case, or have only a minor impact. It is beyond the ability of the parties to obtain evidence of how a requested fee might impact the premiums paid by employers or the cost of goods and services to the public. Adoption of this rule would unduly complicate the process of filing an application for fees and the hearings to award those fees. The current rule is working well. This rule proposal seems to be a solution in search of a problem.

11.4.7.12(C)(2)(c): I oppose the proposed change to this section. Once again, it seems to be a heavy-handed solution for a small to non-existent problem. WCA case management is relatively rare. For in-person meetings, the Worker should be present. If a phone call is contemplated, it should not be too difficult to arrange to include the patient. This proposal suggests a fundamental ignorance of the dignity of the worker-patient and their right to be involved in decisions regarding their own healthcare. This proposal undermines the public policy recognized by New Mexico case law in *Church’s* and similar opinions. I agree with the comments made by Mike Doyle regarding the rationale of those cases, so I will not repeat his argument here. I would just emphasize that the technical argument that the WCA-appointed case manager is not an agent of the insurer is lost on

the average worker. To them, this person is asking questions and making suggestions that impact the medical care that they will receive. To do that behind their backs will only serve to undermine workers' trust in the WCA as an impartial arbiter and workers' compensation system as a whole.

Two actual problems that the WCA might address by rule making would be:

11.4.4.13(P): Add a provision authorizing the WCJ to award costs after a trial in accordance with the Rules of Civil Procedure (Rule 1-054).

11.4.4.15: Clarify that fees paid to attorneys for Employer/Insurer are also subject to review by the WCJ and may not be paid until an order has been entered allowing them. This procedure would avoid the problem of defense attorneys being paid prior to conclusion of the case, or receiving fees in excess of the cap. It would also ensure that fees paid for pre-filing work, such as an opinion letter, is included under the cap. Finally, having the defense attorney's fee request before the court would eliminate many disputes over whether the hours claimed by the worker's attorney are reasonable.

Thank you for considering these suggested modifications of the proposed changes to the WCA Rules. If anyone from the WCA would like to discuss these proposals or my experiences upon which they are based, I would welcome the opportunity to do so.

Very truly yours,

/s/ George W. Weeth
George Wright Weeth