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Via Electronic Mail

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

Re: Proposed Amendments to 11.4.4.15(A) and 11.4.7.12(C)(2)(c)

Dear Sir or Madam:

I am writing to offer comment on the proposed amendments to Rules 11.4.4.15(A) and 11.4.7.12(C)(2)(c). I have been representing injured workers since 2015. I currently represent injured workers before the WCA.

Rule 11.4.4.15(A):

The current rule works, no change is necessary. There is already a well-understood framework for determining reasonable attorney fees. There is established case law that gives judges discretion to consider factors relevant to each individual case. This allows fee disputes to be resolved efficiently without unnecessary complication.

The proposed amendments would add requirements that are difficult, and in many cases impossible, for the parties to meaningfully address. Requiring attorneys to present evidence about the broader economic impact of a fee—such as its effect on insurance premiums or consumer costs—moves the inquiry away from the facts of the individual case and into areas that are not realistically provable in a workers' compensation proceeding. That kind of information is not easily available to the parties, and trying to obtain it would likely lead to additional discovery disputes and increased litigation.

Instead of streamlining the process, the proposed changes would make fee litigation more complex and time-consuming. This runs counter to the purpose of the Workers' Compensation Act: to promote the quick and efficient delivery of benefits at a reasonable cost to employers and their insurers.

Further, if fee determinations become more burdensome or unpredictable, it may discourage attorneys from taking on more complex or disputed cases. That ultimately affects access to representation.

Rule 11.4.7.12(C)(2)(c):

Workers should have the opportunity to be know about communications that affect their medical care. Allowing those communications to occur without the worker's knowledge or the opportunity for counsel to be present risks undermining confidence in the process.

From the worker's perspective, a nurse case manager is part of a system that is making decisions about their care. If communications with healthcare providers occur outside the worker's presence, it can create mistrust and the sense that important decisions are being made without their input. That is not a helpful development for a system that benefits on cooperation and good faith from all parties.

There are also practical concerns. In many cases, workers are dealing with significant injuries, and sometimes cognitive or emotional challenges as a result. Having the opportunity for counsel to be present, or at least for the worker to be aware of communications, helps ensure that information is accurate and not taken out of context. It also helps avoid disputes about what was said or how it was interpreted.

The existing framework already allows for communication and case management while preserving appropriate safeguards. Removing those safeguards is likely to create more disputes, not fewer.

In my view, the current rules strike a reasonable balance between efficiency and fairness. The proposed amendments would shift that balance in a way that increases complexity, encourages additional litigation, and risks undermining confidence in the system. For those reasons, I respectfully recommend that the proposed changes not be adopted.

Respectfully,

STIVER LAW, LLC

A handwritten signature in black ink, appearing to read "Nick Stiver", with a stylized flourish at the end.

Nicholas C. Stiver