

July 5, 2022

Scott Stern, Chair
SD Workers' Compensation Advisory Council
8304 S Regent Park Drive
Sioux Falls, SD 57108

Amber L. Mulder
Director of Labor and Management
South Dakota Dept. of Labor & Regulation
123 W. Missouri Ave.
Pierre, SD 57501-0405

And via email scottstern926@gmail.com

And via email amber.mulder@state.sd.us

Re: July 14, 2022 WCAC meeting
Legal reform - case management communications

Dear Chairman Stern and Ms. Mulder:

I write to confirm my understanding that on July 14, 2022, WCAC will address the proposal to reform SDCL to prevent nurse case managers from communicating secretly with injured workers' medical providers. I see that a Nurse Case Management (NCM) bill is not specifically listed on the agenda, but I understand Chairman Stern has assured my client, Jason Pieper, that the topic will be addressed and voted on during the Public Comment portion of the meeting. *If that is not the case*, I formally request that the agenda be amended to add this item.

The problem of case management personnel communicating secretly with injured workers' medical providers came to Mr. Pieper's attention during the four-year ordeal his wife endured to collect benefits she was entitled to after sustaining a leg injury while working as a kindergarten teacher. More than a dozen physicians had treated Ms. Pieper during her initial hospitalization, but her employer's insurer contacted one specific doctor with a limited role and hired him to testify against his patient on the issue of causation. Trying to portray the doctor's opinions as neutral observations by a treating physician, the insurer and case management team hid from Ms. Pieper, her counsel, and the Administrative Law Judge their communications with the doctor, along with the fact that the amount he was paid as a hired expert for the insurer was *many times* what he had earned as a treating physician. That bias happened to be revealed only thanks to a subpoena and unusual persistence by Ms. Pieper's counsel. Ms. Pieper's is not the only case in which our office has learned of nurse case managers going beyond case management to actively try to shape, frame, or screen medical providers' opinions by having secret, one-sided communications with providers.

Resolution of disputed workers compensation claims in South Dakota is supposed to utilize the fair and open adversarial processes emblematic of civil justice: two sides engaging openly to discover and lay facts before a neutral decision-maker. When insurers and their subcontractors instead use the ruse of case management to try to secretly influence medical witnesses, they distort the legal process unfairly to injured workers. They also violate the sanctity of the physician-patient relationship. SDCL should be reformed to eliminate the possibility of such secret communications, by simply providing:

A case management services provider operating pursuant to SDCL 58-20-24 or 62-5-21 shall include the employee in all communications, both written and oral, with any medical provider regarding questions of compensability, causation, or entitlement to workers' compensation benefits.

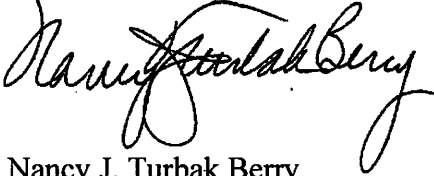
We expect a bill so providing will be offered in the 2023 Legislative Session. Accordingly, we request that WCAC consider and express its support for such a reform, so the bill can proceed through the legislative process as planned.

Mr. Pieper and I will appear remotely at the meeting next week and will be happy to address any specific questions and concerns. In the meantime, I respectfully request that Ms. Mulder circulate this letter to the entire WCAC membership.

Thank you.

Yours truly,

TURBAK LAW OFFICE, PC



Nancy J. Turbak Berry