



**Bryce
Downey
& Lenkov^{LLC}**

Workers' Compensation Newsletter

May 2019

Dear **Rich**



What are some strategies to keep injured workers from running amok with medical treatment?

— Misty, Springfield, MO

By [Rich Lenkov](#)

Workers' Compensation Practice Chair

That's a good question, Misty. Illinois is perceived as a state that cedes full control of medical care to the claimant. That's simply not true. There are many things you can do to keep this expensive part of a claim under control:

1. Obtain prior medical history so you only authorize related treatment
2. Make sure recommended treatment is supported with a causation opinion from a board certified specialist. If not, deny it
3. If the claimant is not complying with treatment—e.g. not showing up for medical appointments—cut benefits
4. Aggressively use utilization review
5. Obtain an independent medical examination
6. Object to the treating physician's opinions, force his/her attorney to take the doctor's evidence deposition and subject it to cross-examination by defense counsel

Legislative Update

By [Michael Milstein](#)

Income Member



What started as a quiet month has ended with a lot of action. Gov. Pritzker signed SB1596 into law on May 17. As we discussed last month, SB1596 amends the exclusive remedy provision of both Workers' Compensation and Occupational Disease Acts and provides a private civil cause of action against an employer for claims which are barred by a statute of repose.

In other major news, Gov. Pritzker has continued to assert his power by shaking up the IWCC. We recently learned that the following arbitrators were relieved of their positions: Melinda Rowe-Sullivan, Christine Marie Ory, Douglas Steffenson, Stephen Friedman, Jeffrey Huebsch and Jessica Hegarty. This now makes a total of 10 vacancies in the arbitrator ranks. Adding to the problem, 12 more arbitrator terms will expire on July 1. These vacancies will slow down moving cases forward and getting decisions back on previously tried cases.

Also, the IWCC released a new Case Docket website located at <https://webapps.illinois.gov/IWCC/CaseDocket/Home>. It is very similar to the prior docketing system, with a cleaner look and a few more options.

We will continue to keep you posted on any further developments.

Please submit your most pressing workers' compensation questions to mkt@bdlfirm.com and Rich will respond in the next newsletter.

Failure to Authorize Treatment ≠ Failure to Pay

By [Timothy Alberts](#)

Associate



In *O'Neil v. GS Marine LLC d/b/a Mastercraft Boats*, 27 ILWCLB 22 (Ill. W.C. Comm. 2018), the arbitrator awarded penalties and attorney fees pursuant to Sections 16, 19(k) and 19(l) stemming from Respondent's surgical authorization cancelation. The cancelation occurred one week prior to the scheduled right knee surgery. Surgical records pre-dating the alleged accident were also discovered. The arbitrator based the penalty award on the fact that the prior surgery (removal of lipomas) was not relevant from a causation standpoint, given that the pending arthroscopy was to repair prepatellar bursitis. Respondent also had no independent medical examination opinion or utilization review report to rely on.

On appeal, the Commission affirmed the right knee surgery award, but vacated the penalties and attorney fees award, citing *Hollywood Casino – Aurora, Inc. v. IWCC*, 2012 IL App (2d) 110426WC. The Commission reminded them that the Workers' Compensation Act does not confer authority to assess penalties or attorney fees based on a failure or delay in authorizing treatment; it is appropriate only if an unreasonable and vexatious delay exists in paying for medical treatment pursuant to Section 8(a) or temporary total disability benefits.

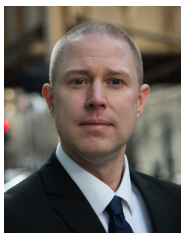
Practice Tip:

Petitions for penalties and attorney fees alleging a delay or failure to authorize treatment are baseless and should be fought per *Hollywood*.

You'd Better Work...

By [Jesse Lanshe](#)

Associate



In *Stegan v. Reladyne LLC*, 19 IWCC 174 (Ill. W.C. Comm. 2019), the IWCC held that Petitioner's refusal to accept temporary transitional employment (TTE) provided a basis to terminate temporary total disability (TTD).

Because Respondent could not accommodate Petitioner's restrictions, Respondent offered a light duty position with a non-profit organization (NPO). Petitioner refused the offer on the basis that the NPO was not his employer. Relying on prior case law, the arbitrator found that the Workers' Compensation Act did not provide for TTE and Respondent could not terminate TTD for Petitioner's refusal.

The Commission unanimously reversed because, among other reasons, Petitioner:

1. Would receive his full wage
2. Would remain Respondent's employee
3. Would remain subject to Respondent's human resources and attendance policies

An unsympathetic Commission stated that Petitioner had "no credible justification for refusing TTE." They held that Petitioner would rather "trade earning his usual wage for the opportunity not to work and receive two-thirds of his usual wage."

Practice Tip:

If you cannot accommodate light duty, offer TTE-compliant NPO work.

View more information about our Workers' Compensation practice.

Our other practices include:

- [Appellate Law](#)
- [Business Law](#)
- [Condominium Law](#)
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- [Intellectual Property](#)
- [Labor & Employment](#)
- [Products Liability](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation Law](#)

Upcoming Events

- **5/22/19** – [Rich Lenkov](#) will present "PTSD Claims from First Responders" at the 2019 CLM & Business Insurance Workers' Compensation Conference. For more information or to register, [click here](#).
- **5/22/19** – [Kirsten Kaiser Kus](#) will present "Aggressive Claims Handling" at the 2019 CLM & Business Insurance Workers' Compensation Conference. For more information or to register, [click here](#).

Firm News

2019 CLM Workers' Compensation Conference

Chicago capital member [Rich Lenkov](#) and Indiana income member [Kirsten Kaiser Kus](#) will be present at the 2019 CLM Workers' Compensation Conference on May 22.

Rich Lenkov will co-present "PTSD Claims from First Responders." The panel will discuss increasing drug overdoses, assaults, shootings and other traumatic events claims. The interactive session will address when these claims are compensable and the practical issues surrounding them. Bradley Gronke of Gallagher Bassett Services and Alexander Obolsky of Health and Law Resource will join.

Kirsten Kaiser Kus will co-present "Aggressive Claims Handling." Kirsten's panel will discuss ways to aggressively move and close claims throughout all phases of litigation. The panel will address key strategies in the first 48 hours of claim notification, investigation techniques and ways to move injured employees to a medical release in an efficient manner. Steve Carman of Celadon Trucking, Judith Cole of K2 Industrial Services, Claire Muselman of Continental Western Group and Leslie Rodgers of Cincinnati Insurance Company will join.

[See the full agenda.](#)



Rich Lenkov



Kirsten Kaiser Kus



BDL is Growing!



Bridgett Repay joins Bryce Downey & Lenkov as an income member in our Indiana office. Bridgett focuses in general liability and workers' compensation, representing a variety of employers and corporations across Indiana. Bridgett has extensive experience litigating personal injury, premises liability, insurance defense and workers' compensation cases.

In her spare time, Bridgett enjoys spending time with her husband and cheering on her sons at their games.



[Renée Day](#) is an associate in our Indiana office. She is dedicated to creating a team approach with clients in general liability and workers' compensation cases. Renée has extensive experience in a wide range of commercial and insurance litigation matters, as well as appellate practice and procedure.

She has also worked with municipal boards, commissions, police departments and governmental entities on a variety of municipal matters. Renée was selected to the 2019 Indiana Super Lawyers Rising Stars list, a distinction reserved for only 2.5 percent of attorneys in the state.

Bryce Downey & Lenkov Participates in 3rd Annual Celebrity Chef Gala

Income member [Brian Rosenblatt](#) and associate [Chase Gruszka](#) attended Legal Prep Charter Academy's 3rd Annual EAT. DRINK. GIVE. Celebrity Chef Gala on April 25.

Over 260 people attended the event, which featured tastings from Chicago's top chefs matched with exquisite wines and spirits. The gala celebrates Legal Prep and its mission to prepare Chicago's west side youth for college and inspire students to make a difference in their community. It is Chicago's first and only legal-themed high school.

Proceeds from ticket sales raised over \$135,000. Capital member [Rich Lenkov](#) serves on the Advisory Board.

[Learn more about EAT. DRINK. GIVE. Celebrity Chef Gala.](#)



BDL Supports NIU Public Interest Law Society Auction

Bryce Downey & Lenkov was proud to support Northern Illinois University College of Law's 24th Annual Public Interest Law Society (PILS) Auction on April 5.

The PILS auction is a student-run event that raises money for outreach assistantships awarded to innovative and dedicated NIU College of Law students who work in unpaid public interest legal positions. Students work with underrepresented populations in the Chicago community, including domestic violence victims, immigrants and refugees, those falsely accused of crimes and more.

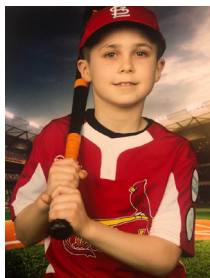
[Learn more about PILS.](#)



Oz Park Baseball Association

Bryce Downey & Lenkov is proud to sponsor Oz Park Baseball Association (OPBA). OPBA is a non-profit that provides baseball coaching and competition for over 1,200 boys and girls, ages 4-14. Sponsorships assist with participant costs, scholarships for underprivileged children, coach training and community events.

[Learn more about OPBA here.](#)



Geoff Bryce Presents at ISBA Construction Webcast

Capital Member [Geoff Bryce](#) presented at the Illinois State Bar Association's Law Ed Program "Is That Covered? Construction Projects Risks and Requirements Under AIA Documents" on April 23.

The live webcast discussed new AIA requirements, builders risk and construction defect coverage, as well as commonly-used contract documents used to obtain coverage.

Samuel Levine and Margery Newman Present at ISBA's Real Estate Practice Seminar

Income member [Margery Newman](#) and of counsel [Samuel Levine](#) presented "Protecting Your Client from Future Litigation" on April 24, at Illinois State Bar Association's Competence, Excellence and Diversity in the Illinois Real Estate Practice seminar.

Their presentation covered how to protect your client when a transaction results in a construction, title or other real estate-related dispute. The full-day seminar addressed a number of key real estate issues, recent case law updates and legislative changes.

[Learn more about the Real Estate Practice seminar.](#)



Legal Face-Off is a fast paced, high energy legal program dealing with the hottest issues of the day. Rich Lenkov and Christina Martini provide a legal point/counterpoint perspective on issues ranging from Hollywood celebrities, athletes, politicians and everything in between.

Sound Bite: Cornell Law School Professor [Josh Chafetz](#) joins Rich and Tina to discuss the ongoing legal battle between Trump and Congress.

Rich Lenkov: President Trump has filed two lawsuits asking the courts to invalidate the House democrats' subpoenas, which call for a variety of financial documents. This seems to be the first time that a sitting president has responded to a congressional inquiry by suing a member of Congress. How likely is Trump to win this lawsuit?

Josh Chafetz: I think it's unlikely that Trump will win this lawsuit. Congress has incredible oversight and expansive powers to compel documents from those in other parts of government and those of private citizens. It's worth noting that Trump is suing in his capacity as a private citizen – so this really doesn't even implicate executive power concerns. It's simply a question as to whether Congress has the right to compel documents in its oversight capacity, and the answer is clearly that it does. I'm also not sure Trump's goal is to actually win these claims, but by going to court he makes sure that it takes quite a bit of time. His goal may be to draw this out, run out the clock and try to make the public bored with all of this.



[Listen to Full Episode Here](#)

Recent Topics

- Congress v. Trump
- DCFS reform
- Legislating corporate board diversity
- Mueller report breakdown
- Kim Foxx saga

Recent Guests

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Directors Julie Cohen and Betsy West of RBG

[Mueller report breakdown, Kim Foxx saga, author of new John Roberts bio and more](#)

[Sandy Hook lawsuit update, 16-year-old SMU law school student, Inside Out, April Fools lawsuits & more](#)

[R Kelly's lawyer Steve Greenberg, former Ken Starr prosecutor Bruce Udolf on Mueller and much more](#)

[Michael Avenatti on R. Kelly, Brian Cuban, Jodi Balsam on Colin Kaepernick's Settlement and more](#)



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BDL Webinars & Seminars

Upcoming Free Webinars

New Case Law You Need To Know

May 30, 2019

[Rich Lenkov](#) and [Timothy Furman](#)



REGISTER NOW!

Cutting Edge Continuing Legal Education

If you would like us to come to you for a free seminar, [Click here](#) or email [Rich Lenkov](mailto:Rich.Lenkov@bdlfirm.com).

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to companies of all sizes and national organizations. Among the national conferences at which we've presented:

- Chicagoland Safety, Health and Environmental Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- RIMS Annual Conference
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- Workers' Compensation Educational Conference Claims and Litigation Management Alliance Annual Conference



Watch a clip from our latest webinar.



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Recent Webinars

- Indiana Forms: Taking A Claim From Start To Finish
- How Does The IWCC Work?
- Top Reasons Why Plaintiffs Retain Counsel
- Top 10 Red Flags
- 2018 Review
- WC Issues Raised by Millennials
- WC Horror Stories
- Defending Shoulder and Knee Injuries, feat. Chicago Bulls & White Sox Doctor Brian Cole
- Key Differences in IL & IN Workers' Compensation
- Injuries Away from Work

If you would like a copy of our other prior webinars, please email us at mkt@bdlfirm.com.