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LOUISIANA WORKFORCE COMMISSION  
DEPARTMENT OF LABOR  
STATE OF LOUISIANA

TOWN HALL MEETING, held at Willis-Knighton  
North Eye Clinic, on September 15, 2016. Director  
Sheral 'C. Kellar, Office of Workers' Compensation  
Administration, presiding.

**ORIGINAL**

Reported By:  
Donna B. Crenshaw  
Certified Court Reporter

1                   DIRECTOR KELLAR: Okay. I'm Sheral  
2 Kellar. I'm the Director of the Office of Workers'  
3 Compensation.

4                   If you have not signed in yet, I would ask  
5 you to please do so. We want to keep a record of all  
6 of our attendees. So that, if we have any follow-up  
7 correspondence, we'll know how to reach you.

8                   I am the former Chief Judge for 17 years  
9 before being appointed as Director of the Office of  
10 Workers' Compensation in the Edwards administration.  
11 So, as a former Chief Judge, I am uniquely aware of  
12 the difficulties you're having and the difficulties we  
13 have, as a matter of fact, with the medical treatment  
14 guidelines and its process.

15                   Some of you have problems with the forms that  
16 we use; the 1010, 1010A, 1009, and then the 1008. And  
17 then some of you have problems with the process by  
18 which we implement the medical treatment guidelines.

19                   So, in an effort to allow you to be a part of  
20 the solution to some of the problems we've seen, we  
21 wanted to hear from you. We're taking this show on  
22 the road, as you might have noticed.

23                   We started in New Orleans on Tuesday, we're  
24 in Shreveport today, Monroe tomorrow. Then we're  
25 going to take break for a week, and then the following

1 week we'll be in Lafayette, Lake Charles, Alexandria,  
2 and Baton Rouge.

3 You are welcome to come to multiple Town Hall  
4 meetings. As a matter of fact, there's some folks  
5 here today who were at the Town Hall meeting on -- in  
6 New Orleans.

7 They have found that the questions and  
8 answers between the Office of Workers' between the  
9 Office of Workers' Compensation staff and you guys has  
10 been informative, to say the least. So they're coming  
11 to hear questions from and answers from everybody.

12 Today I have with me some of my staff from  
13 OWE. I don't think this is working. My voice is very  
14 soft, but I can speak loudly.

15 Okay. I have my staff here, some of the  
16 staff, from the Office of Workers' Compensation that  
17 I'd like to introduce to you.

18 First, we have Pauline Williams, who is the  
19 Deputy Director. We have Dr. Jason Picard, who is the  
20 medical director. Cathy Chesson is a nurse in the  
21 medical services section. We have Diane Lundeen, the  
22 Chief Judge. We have Rosa Whitlock from District 1W  
23 in Shreveport, the mediator. We have the Judge in  
24 district 1W, Linda Smith. And we have Kimberly Buck,  
25 who is a public relations person for the agency. And

1 the gentleman who just left is Mike Pippins, who is  
2 the IT guy for the Office of Workers' Compensation.

3 We have a few rules for you this afternoon.  
4 We have a court reporter who will be recording this  
5 session. We will have court reporters in all of the  
6 cities to record the sessions, and that's for us to go  
7 back and see what comments you've made and to see if  
8 we can use those comments to address some of the  
9 issues I know you have.

10 So, first of all, I'm going to ask you to put  
11 your telephones on silent or vibrate. Then the next  
12 thing I'm going to ask you to do is to speak loudly,  
13 clearly, and slowly so that the court reporter can  
14 record what your comments or questions or answers are.  
15 You should identify yourself and the company that you  
16 represent.

17 And, Mikal, is the microphone working?

18 MR. PIPPINS: They've got somebody coming  
19 to work on it.

20 DIRECTOR KELLAR: Okay. So, until we can  
21 get a microphone, you're going to have to speak extra  
22 loudly. When we get a microphone, Mikal is going to  
23 bring it around to you to assist the court reporter in  
24 hearing you.

25 So, if you can't hear someone, will you just

1 ask them to speak up, please.

2 COURT REPORTER: Sure.

3 DIRECTOR KELLAR: Very good. Okay. So we  
4 will get started.

5 This is for you, and it's for us. So, if you  
6 have any comments or questions regarding the medical  
7 treatment guidelines or the process, we would like to  
8 hear from you.

9 One other thing, I would ask you to keep your  
10 comments to three minutes in deference to other  
11 members of the audience that may want to speak. You  
12 may speak multiple times, but each time you do so  
13 please limit your comments or your questions to three  
14 minutes.

15 So who wants to go first? It's always an ice  
16 breaker. Nobody wants to be the first person to  
17 speak.

18 Okay. Why don't we do this. Mike, while  
19 we're waiting for someone to come for the microphone,  
20 why don't you show them an example of some of the  
21 problems we see in the office that they may be able to  
22 fix for us.

23 MR. PIPPINS: We have in the medical  
24 services department currently five employees. That's  
25 it.

1                   COURT REPORTER: I'm sorry, I can't hear  
2 you very well.

3                   MR. PIPPINS: Medical services currently  
4 has five employees. That's it. Two of them are here.

5                   We get our -- we get our 1009s mainly in  
6 through a fax line. That fax line -- that fax line  
7 goes to a -- great. I guess I won't show my slide  
8 show. The fax line goes to an e-mail box and puts  
9 the puts an e-mail message in the e-mail box with  
10 the same subject line for each one. It says fax  
11 forward from a fax number.

12                   So we get multiple instances of filing, and  
13 with five people doing data entry it's a bit chaotic.  
14 This was not a problem prior to the flood because we'd  
15 stay pretty well caught it. Since the flood, we're  
16 not so caught up. We have a lot of people working,  
17 but not able to --

18                   DIRECTOR KELLAR: Mikal, can you speak up,  
19 please.

20                   MR. PIPPINS: Yeah. We have probably more  
21 people working on data entry right now than is good  
22 for us given the cumbersomeness of our system. We're  
23 working on that, too.

24                   What I was going to show you was an example  
25 of a 1009 that came in. The healthcare provider who

1 submitted it did not give us the name of the employee,  
2 did not give us the name of the insurance company, did  
3 give us his name, and he had a file for the data entry  
4 person to try to comb through to enter the -- enter  
5 the record in the computer. And there's just not  
6 time.

7 DIRECTOR KELLAR: You can't get it up on  
8 the screen?

9 MR. PIPPINS: It I don't know what the  
10 problem is. I can see it on my screen, but it's  
11 not --

12 DIRECTOR KELLAR: Okay. It may be the  
13 whole system seems to be down, because we had it up  
14 earlier.

15 JUDGE LUNDEEN: That just makes it more  
16 interesting.

17 DIRECTOR KELLAR: Well, why don't we take  
18 a break, because the acoustics in the room are not  
19 very good. So, if we have some people who are  
20 speaking way in the corner, the court reporter is not  
21 going to be able to hear them. So let's just take  
22 like a five-minute break and try to get the microphone  
23 or the system working.

24 Okay? We're in recess.

25 (Whereupon, there was a break taken)

1                   DIRECTOR KELLAR: We have someone coming  
2 to work with the projector; but, meanwhile, we have  
3 microphones working. So, if you will identify  
4 yourselves, you can begin to make your comments on the  
5 record.

6                   Okay. Go ahead. Mikal, there's a lady in  
7 the corner back there.

8                   MS. CANNATELLA: My question is as far as  
9 the medical guidelines, they were set up in 2012, I  
10 believe.

11                  MS. KELLAR: Okay. Did you identify  
12 yourself?

13                  MS. CANNATELLA: Oh, sorry. Joanne  
14 Cannatella with York Risk Services. The medical  
15 guidelines and the process were set up 2011, 2012.

16                  Things are revolving in that -- and, I mean,  
17 this is an example, drug screens for pain management.  
18 The drug screens allow medical guidelines. There's no  
19 listing of which ones.

20                  We've gone from regular small, normal drug  
21 screens to extensive drug screens with multiple CPT  
22 codes that are thousands and thousands of dollars.

23                  And is there a plan to upgrade either the  
24 guidelines at an interval; so that, as things like  
25 that come up, they can be addressed?



1                   DIRECTOR KELLAR: The statute provides  
2 that the medical treatment guidelines be updated at  
3 periodic intervals.

4                   MS. CANNATELLA: Is it just periodic, that  
5 word, or is it a specific?

6                   DIRECTOR KELLAR: No, it's two years. We  
7 have a medical advisory council.

8                   If you will go to our website at Laworks.net,  
9 you can see who the members of the medical advisory  
10 council are for the four guidelines that we currently  
11 have.

12                   MS. CANNATELLA: Okay.

13                   DIRECTOR KELLAR: Also, one other thing I  
14 need to ask you guys is, if you are asking a question,  
15 please don't be specific about the litigants or the  
16 parties. Give us hypothets or generalities.

17                   Did that answer your question?

18                   MS. CANNATELLA: Yes. Thank you.

19                   MS. SALLEY: I'm Mary Lou Salley. ■  
20 actually have a comment about that, because that's a  
21 good question Joanna asked.

22                   The current DHH, Department of Health and  
23 Hospitals, statutory Louisiana law has guidelines for  
24 pain clinics on drug testing. And that is -- that's  
25 what's -- I think, she is talking about.

1           The problem is the pain clinics are filing  
2 1010s for the urine drug screen that is required under  
3 already existing Louisiana law.

4           I think they're -- aren't they quarterly,  
5 Joanne?

6           MS. CANNATELLA: Yes.

7           MS. SALLEY: Yes, they're quarterly  
8 testing. And our guidelines don't address that, and  
9 our guidelines are kind of vague as to how often. It  
10 just says if the doctor thinks it's necessary.

11           And, unfortunately, already existing  
12 Louisiana law requires a pain clinic to drug test them  
13 quarterly whether they suspect anything is going on or  
14 not.

15           And so what you're having is the pain clinic  
16 is saying well, I can't treat the patient; because, if  
17 I don't comply with already existing DHH rules,  
18 they're out.

19           So I think we -- actually, what's going on is  
20 it's not that we don't have any guidelines. We have a  
21 conflicting statutory Louisiana duty on behalf of the  
22 pain clinics versus our guidelines, and I think Joanne  
23 is asking the question which one are we going to use.

24           DIRECTOR KELLAR: Do you want to respond?

25           DR. PICARD: I would agree with you. ■

1 can just talk. I'm Dr. Picard. I would agree with  
2 you that that does need to be dealt with, does need to  
3 be addressed.

4 At the current time, I'm not denying any drug  
5 screens that are being ordered because the guidelines  
6 do not specify the type of drug screen or how often  
7 that they are allowed. So what the physician deems as  
8 necessary is what we're approving.

9 So, if you get rejections and you send them,  
10 since the guidelines don't specify that, it says what  
11 the physician wants, then that's what we're allowing  
12 right now.

13 You might just have to go through the 1009  
14 process more than you would want to until that  
15 guideline is updated.

16 Does that answer your question?

17 MS. SALLEY: Yes. Thank you.

18 MS. PANTHER: I'm Terianne Panther of the  
19 Spine Institute.

20 Our main question that we have is, in  
21 ordering radiology, MRIs, CTs, they get approved, but  
22 then the insurance company wants to say you can't do  
23 it at the facility that you indicated on the 1010. It  
24 has to be done at a different facility, and the reason  
25 behind it is because it's being scheduled through a

1 separate scheduling company at a lower than the fee  
2 schedule rate.

3 How is that okay?

4 JUDGE LUNDEEN: All right. I'm just going  
5 to stand so that you guys can hear me. Can you hear  
6 me in the back? Okay. So my name is Diane Lundeen.  
7 I'm the Chief Judge.

8 And what you've asked is really a legal  
9 question. So in Louisiana the employee has the right  
10 to choose his or her own medical provider.

11 Right now in North Louisiana whether they get  
12 to choose where they go to their FCE is up in the air  
13 based on a new case. But, arguably, the 1009 process  
14 isn't designed to determine which medical facility  
15 someone can go treat at. It's to determine whether or  
16 not that CT scan is appropriate or whether or not that  
17 MRI is appropriate. It is then the plaintiff's or the  
18 injured worker's choice to select where they want to  
19 have that procedure done.

20 There's a series of old cases that used to  
21 talk about surgery where people would get frustrated  
22 on the employer's side because the injured worker  
23 would need surgery to reach maximum medical  
24 improvement and function.

25 What the Court said is we can't force people

1 to accept medical care; but, if they choose to, then  
2 they get to pick. If they choose not to, that is  
3 their right and we call them as functionally improved  
4 as they're going to be without the surgery.

5 So this is sort of the same type of thing  
6 where the claimant, the injured worker, has the right  
7 to choose what facility. That's not the function of  
8 the 1010 or the 1009 process. It's directed to  
9 figuring out whether the medical care is appropriate  
10 pursuant to the guidelines.

11 MS. HARRIS: Good evening, everyone. My  
12 name is Latasha. In response to --

13 DIRECTOR KELLAR: What's your last name,  
14 Latasha?

15 MS. HARRIS: Harris. Latasha Harris.

16 DIRECTOR KELLAR: Thank you.

17 MS. HARRIS: Orthopedic Clinic. In  
18 response to her question, if I'm understanding you  
19 correctly, it's a great question.

20 She's indicating when we, the provider,  
21 submit a 1010 for a particular diagnostic test, okay,  
22 MRI lumbar spine, we submit it to the carrier. It  
23 returns approved.

24 On the 1010, there is no indication hey, this  
25 test needs to be scheduled with One Call, Aden, or

1 whatever the carrier is.

2 So what is happening, we as the provider, we  
3 are-- what she's saying, we're receiving the 1010,  
4 approved 1010, of the diagnostic. We're going ahead  
5 and scheduling it, and then moments later we're  
6 receiving a telephone call from One Call Medical, Aden  
7 Healthcare, or whomever asking, you know, hey, let's  
8 schedule it. We have to schedule through that  
9 particular third party.

10 And it really holds a delay; because, once we  
11 receive the 1010 back, we're ready to schedule. You  
12 know, I think that's her question.

13 So how do we handle the third party  
14 diagnostic carriers which the work comp carrier is  
15 contracting?

16 I mean, that's a really huge problem. You  
17 know, can the provider not just go ahead and schedule  
18 with whatever diagnostic team we are selecting. If  
19 the patient needs open air, for example, Northwest  
20 Imaging, Advanced Diagnostics. But we're being told  
21 we need to schedule through this third party carrier,  
22 and it causes a delay.

23 JUDGE LUNDEEN: I don't know if you're  
24 going to disagree with me on this having been the  
25 Chief Judge for a long time, but my opinion is this.

1 Once it's approved, you're outside of that 1009  
2 process because there is nothing to fight about. What  
3 you're fighting about is where the procedure is done,  
4 and that is when you get to come to court. And you  
5 can file a 1008 claim form.

6 If you go onto Laworks.net and you go under  
7 the workers' compensation section under forms, you'll  
8 see something called a Form 1008, and that is the  
9 gatekeeping form to get into the court system.

10 If you have a 1010 that's been denied, then  
11 your procedure is to go the route of the 1009 process.  
12 And then, if you don't like the result of that, then  
13 you come to the court with the 1008.

14 But, in this particular factual pattern, I  
15 would say that you can come to the court with a 1008.  
16 At that point, unfortunately, because you're probably  
17 an incorporated entity or an LLC or if you're an  
18 insurer, you then have to have a lawyer help you to  
19 file that and proceed forward and you have all kinds  
20 of remedies under the Workers' Compensation Act.

21 Do you have anything different to add,  
22 Director?

23 DIRECTOR KELLAR: No, ma'am.

24 JUDGE LUNDEEN: All right.

25 MS. HARRIS: I mean, and I just want to

1 add I agree with you, because they are -- the 1010s  
2 are being approved. So, therefore, we would not have  
3 to file a 1009.

4 JUDGE LUNDEEN: Right.

5 MS. HARRIS: No 1009 is needed.

6 JUDGE LUNDEEN: You wouldn't be able to.

7 MS. HARRIS: Right. But I guess the  
8 question would be: What do we do as a provider to  
9 avoid the third party? There's nothing?

10 JUDGE LUNDEEN: You can't you can't  
11 control the conduct of somebody else, but what you can  
12 do is use the tools in the tool box that you have to  
13 get them to do the right thing. And sometimes you  
14 need a judge to tell someone what the right thing is.

15 MS. HARRIS: Okay.

16 JUDGE LUNDEEN: And, hopefully, it changes  
17 the culture with that particular provider or carrier,  
18 so that you can accomplish what you need.

19 Ultimately, the goal of the medical treatment  
20 guidelines was to expedite medical care and to make  
21 sure that we were getting legitimately injured workers  
22 back to work and to provide the appropriate medical  
23 care, so that they could get back to some occupation  
24 and have a real life. So things like that obstruct  
25 the goal of the system.



1 MS. HARRIS: Okay.

2 JUDGE LUNDEEN: And you all have to  
3 realize that you have to bring these things to us.  
4 Otherwise, they will continue to go on.

5 Now, we're not encouraging litigation, but  
6 what we are encouraging is people working together to  
7 get these people appropriate medical care as fast as  
8 possible. Because the faster you treat people, the  
9 better the outcome.

10 DIRECTOR KELLAR: Let me see, Mike. Hold  
11 on a minute. The question you're posing is, as Judge  
12 Lundeen said, it's outside of the 1009 process. But  
13 the question really is who gets to choose the  
14 diagnostic facilities.

15 And we are aware that this is an issue,  
16 because what frequently happens is we'll get a 1010  
17 for a diagnostic procedure and it has a particular  
18 facility on it; and, when it comes to us for an  
19 appeal, that facility has been scratched through and  
20 another facility has been placed on it.

21 We're not certain that that is an appropriate  
22 thing for carriers and healthcare providers to do, but  
23 we do recognize that it is an issue. And I'm glad  
24 that you guys have mentioned it, because we know that  
25 it is one that needs to be addressed.

1 I think --

2 MS. SALLEY: It is a problem.

3 DIRECTOR KELLAR: ultimately, the forms  
4 is a problem. But more to your point, choice of  
5 diagnostic facility, because the inquiry is between  
6 the healthcare provider and the carrier.

7 So I don't know that that issue has been  
8 addressed by the Courts; and, as Judge Lundeen said,  
9 we don't want to address it until it comes before us.  
10 But we do recognize that it is a problem.

11 MS. ELIE: My name is Keashia Elie. I'm  
12 one of the managers for pain management at River  
13 Cities Interventional Pain. At this time we are not  
14 seeing any workers' comp, but we're reconsidering.

15 After the last guidelines concerning the 1010  
16 is required for narcotics to issue with the patient  
17 with the prescription, is that one of the guidelines  
18 that's still in effect?

19 MS. SALLEY: I think she's asking if y'all  
20 are taking the position that she's got to file a 1010  
21 for prescription drugs?

22 DIRECTOR KELLAR: Okay.

23 MS. SALLEY: I think that's what she's  
24 asking.

25 MS. ELIE: Yes.

1                   DIRECTOR KELLAR:    This question came up in  
2 New Orleans.    And we pointed out that the First and  
3 the -- is it Third, Diane?

4                   JUDGE LUNDEEN:    I don't recall.

5                   DIRECTOR KELLAR:    There's two circuits.  
6 Two circuits have determined that medication should  
7 not be submitted to the medical treatment guidelines  
8 process.

9                   In one case in Baton Rouge before Judge Ourso  
10 the claimant brought the issue regarding medication to  
11 him for the necessity of the prescriptions, and he  
12 ruled that the claim was premature because it had not  
13 been filed with the medical director first.

14                   And the First Circuit ruled that medication  
15 was not subject to the medical treatment guidelines.  
16 There are two circuits that have ruled that. I think  
17 it's the First and the Third. But the Second and the  
18 Fourth and the Fifth have not made any pronouncement  
19 on that issue. We're watching it to see if it will go  
20 to the Supreme Court.

21                   So the answer to your question is, if you're  
22 in the circuits where the courts have determined that  
23 prescription medication is not subject to the medical  
24 treatment guidelines, you do not have to submit a  
25 1010.

1 MS. ELIE: Okay. How can you determine  
2 whether or not you're in that circuit?

3 DIRECTOR KELLAR: You'll need to know the  
4 jurisdiction. You'll need to know the jurisdiction of  
5 those various circuits.

6 JUDGE LUNDEEN: You're in the Second  
7 Circuit.

8 DIRECTOR KELLAR: If you'll go on our  
9 website at Laworks.net, we have a map of all the  
10 parishes in the state and they're broken down not only  
11 by the district courts, and there are 10 of them, but  
12 they're also broken down according to appellate  
13 jurisdictions, as well. And that will tell you which  
14 parishes are subject to which appellate jurisdiction.

15 MS. ROBERTS: Hi, I'm Connie, and I work  
16 for Center for Hand Surgery.

17 And getting back to the diagnostic tests,  
18 I've had to fight with One Call Medical because  
19 there's a certain ultrasound that my doctor requires  
20 for certain people to check compressed nerves in their  
21 arms and their hands, and there's only one doctor that  
22 does this test.

23 And I have had to fight and fight and fight  
24 and fight, but I finally got One Call to put this  
25 doctor in their system and now they will schedule with

1 this doctor. But it took me months of calling every  
2 day to try to get these people to put this doctor in  
3 their system. But they were willing to work with me.  
4 It was just a big ordeal to try to get them in.

5 JUDGE LUNDEEN: If you're having problems  
6 with an injured worker having the ability to choose,  
7 not what with the procedure itself, but the ability to  
8 choose where to have it, you can speed up that process  
9 tremendously by having that injured worker make a  
10 demand, which you've done for him, and then file the  
11 1008, if necessary, to get his choice of physician.

12 The hearing, and this is separate from the  
13 medical treatment guidelines, but it goes back to the  
14 original question that you had, the hearing to get an  
15 injured worker's choice of physician by law is an  
16 expedited hearing that has to be heard I believe  
17 within 30 days of filing.

18 So what might have been three months to get a  
19 diagnostic test so that you could determine what was  
20 next could have been taken care of in 40 days with a  
21 judgment rendered.

22 So it's just, again, use the tools in your  
23 tool box. That's why we're having these meetings so  
24 you guys can ask us these questions, so we can help  
25 you to do what you need so that you can do your jobs.

1 MS. GLADNEY: Hi, my name is Cheryl  
2 Gladney, and I'm a patient. I don't know any of the  
3 legal jargon that y'all are talking about.

4 Only thing I know is I'm in continuous pain  
5 day and night. And the waiting and the waiting and  
6 the waiting and the waiting while everybody in this  
7 room talks to this person; that's not legal; that's  
8 right; that's wrong; I can't do this; and I couldn't  
9 do that.

10 What about us? I don't know if it's another  
11 patient in here. I'm a patient, and my accident at  
12 work was on 9/29/15. 9/29/16 is coming up. And I  
13 heard you say as soon as possible. I don't know what  
14 your as soon as possible is, but it's not my as soon  
15 as possible.

16 This is ridiculous. I need injections for my  
17 back. The orthopedic clinic has put that in twice.  
18 It's still not approved. I don't understand that. ■  
19 don't understand the waiting and the right or wrong.

20 Every patient is not lying on workman's comp.  
21 I can barely sit in this chair. I can't leave town.  
22 I can't drive my car because right side back, I have  
23 to sit on a pillow. He has to drive me everywhere I  
24 go. I'm an independent person that has become  
25 dependent everywhere.

Now, if anybody thinks that's cute and  
2 somebody wants to get two dollars in the mail from  
3 workman's camp to sit at the house, and have no reason  
4 to get up in the morning time, because a job is a  
5 reason. It gives you communication with the public.  
6 It gives you money to pay bills. It gives you an out.  
7 It gives you a life.

8 I want my life back, and I would rather have  
9 my life back while I'm waiting on everybody to do what  
10 they need to do for the patients than to sit at home.  
11 And then you sitting there, and then you can't get the  
12 medical treatment that you need.

13 I don't understand that. I don't understand  
14 what the holdup. If you're trying to save money, I  
15 think you should go ahead, give the doctors what they  
16 need, so the doctors can give the patient what they  
17 need. Then the patient gets back to work.

18 But the waiting and the waiting and the  
19 waiting, and that's all I heard, the waiting, this  
20 form, that form. Somebody is hurt. You need one  
21 form. That's from the patient who do not know the  
22 legal part.

23 DIRECTOR KELLAR: Mikal. What's your name  
24 again, ma'am?

25 MS. GLADNEY: Cheryl Gladney.

1                   DIRECTOR KELLAR: I'm really sorry that  
2 you're having so much difficulty getting the medical  
3 treatment that you need.

4                   I want to tell you that, when the 1009  
5 process for medical treatment guidelines was  
6 implemented, it was intended to be a fast process.  
7 And we're here this afternoon because we realize that  
8 there are some challenges with the process by which we  
9 try to get injured workers the medical treatment that  
10 they need.

11                   Do you have an attorney?

12                   MS. SALLEY: I am her lawyer. I'm her  
13 lawyer. And if you want me to talk in the microphone  
14 and tell you what's going on, I will.

15                   DIRECTOR KELLAR: Okay. But let me say  
16 this. You know, I'm really sorry for the problems  
17 that you're having. You have an excellent attorney  
18 who has been working in the system for a very long  
19 time.

20                   MS. GLADNEY: But I need medical  
21 treatment.

22                   DIRECTOR KELLAR: I understand that. ■  
23 understand that. There's a process by which you get  
24 medical treatment, and it can be delayed. And as I  
25 said, that's one of the reasons why we're here to try



1 to ferret out what those reasons are, so that we can  
2 take care of them.

3 When you get a denial from a carrier, they're  
4 supposed to give you a response within five days.

5 MS. GLADNEY: Huh-uh.

6 DIRECTOR KELLAR: They're supposed to give  
7 you a response within five days. If you don't get the  
8 response in five days, you have 15 days to go to the  
9 medical director for an approval or denial.

10 If the medical director denies the request  
11 for the recommended treatment, then you go to the  
12 Courts and the Courts have a limited amount of time  
13 within which they make a decision on the treatment  
14 that you have requested.

15 But, you know, we're not here because  
16 everything is perfect and, you know, well with the  
17 world. We're here because we understand that there  
18 are problems.

19 And I'm glad you're here because we want to  
20 hear, as I said in the notice for this Town Hall  
21 meeting, we want to hear from employees, employers,  
22 health care providers, third party administrators,  
23 utilization review people, about what your challenges  
24 are so that we can try to make the system better for  
25 you.

1           Because if not for you, we would not be here.  
2 We are public servants, and you're our job security.  
3 If we didn't have injured workers, then Dr. Picard  
4 wouldn't be here, Cathy wouldn't be here. Neither of  
5 us would be here if it were not for you guys.

6           So we want to make this work for you, and  
7 that is why I have initiated these Town Hall meetings  
8 all over the state for the next two weeks to hear from  
9 you about what your problems and concerns are.

10           Mary Lou, if you would like to elaborate, you  
11 can.

12           MS. SALLEY: Well, I don't want to talk  
13 about anybody's case specifically.

14           DIRECTOR KELLAR: Please don't.

15           MS. SALLEY: I'm not. But one of the  
16 things that I see that's going on is a doctor submits  
17 a 1010 and checks the box and says these records are  
18 attached, and then you get an out-of-state utilization  
19 review physician who says such and such and such and  
20 such wasn't documented.

21           And the healthcare provider says bull, yes,  
22 it was. We sent this. No, you didn't. No, you  
23 didn't. There's no way for the healthcare provider to  
24 document what specifically was sent to Dr. Chin,  
25 family practice, San Francisco. Because what you're

1 seeing come back on those URs is not this is not  
2 contained within the guidelines. It is you didn't  
3 document X.

4 And the physician says yes, we did document  
5 X. And there's no penalty for Dr. Chin, family  
6 practice, San Francisco, if he lies and says we didn't  
7 get it.

8 Because, if my client lied in writing and  
9 said I didn't receive that or I wasn't working, that's  
10 fraud. And I'm not a conspiracy theorist, but my  
11 opinion is those UR physicians have got to be held to  
12 some kind of standard or it's going to continue to go  
13 on.

14 And I know Latasha sees it. You know what,  
15 we know how to handle when someone says it's not  
16 contained within the guidelines, y'all. It's not  
17 provided for. We know what to do.

18 But this back and forth yay-yaying you didn't  
19 document this, you didn't document that, they're not  
20 court reporters. Healthcare --they're not court  
21 reporters. And I think that something has got to be  
22 done when the healthcare provider sends the 1010.

23 The burden is on the UR and the insurance  
24 company to say they didn't. The burden can't be on  
25 the healthcare providers. They're not lawyers.

1 They're not court reporters. And I hear a thousand  
2 times a day, Ms. Salley, we sent that to them. They  
3 have it.

4 And one more thing. We've got to have a  
5 database on where to send 1010s. These healthcare  
6 providers keep saying I'm sending it; I'm getting no  
7 answer. Well, they moved to Cheyenne, Wyoming, last  
8 week.

9 We've got to have a statewide database that,  
10 if you're going to provide insurance in the State of  
11 Louisiana, this is the address and the fax number that  
12 the 1010 goes.

13 MS. HARRIS: Yes, it should be universal.

14 DIRECTOR KELLAR: Can I have the mic,  
15 Mike?

16 MR. PIPPINS: Sure enough.

17 DIRECTOR KELLAR: One of the issues that  
18 we've heard continuously and we are aware of is that  
19 healthcare providers send their information, well, in  
20 this case to the medical director without sending it  
21 to the attorney or the claimant. So nobody knows what  
22 was sent.

23 And, also, we are aware that the fax numbers  
24 that you use to send your 1010s to the utilization  
25 review companies or the third party administrators are

1 not being kept up.

2 In fact, one of the documents that Mikal  
3 wanted to show you this afternoon was a 1010 that was  
4 faxed twice to a utilization review company, and it  
5 failed twice because the fax numbers -- fax number was  
6 incorrect.

7 In court, we require injured workers to keep  
8 us apprised of any address changes; because, if we  
9 send them a notice of a conference, a trial or a  
10 hearing, and it is returned to us because their  
11 address is incorrect, we dismiss their claim.

12 So I think, likewise, we need to put the  
13 burden on the utilization review companies to keep us  
14 apprised of their fax numbers and/or their addresses  
15 for the same reason. And if they do not keep us  
16 apprised of that information, then they need to be  
17 penalized. I don't disagree with Mary Lou on that  
18 issue.

19 MS. HARRIS: I agree also, but I think it  
20 should be on the carrier to notify the provider of  
21 their utilization company; because what's happening  
22 currently, which I'm aware of currently, there's three  
23 pairs.

24 LWCC, they have their own dedicated 1010 fax  
25 number. Summit has their own dedicated fax number for

1 1010s. And I want to say LUBA, but I know LWCC and  
2 Summit. I think from a provider's point of view, if  
3 the carrier could notify us of their utilization  
4 review company from the initial intake process would  
5 be great. I know in our office we try to obtain from  
6 the beginning the UR info, attorney info because it  
7 helps.

8 Now, in response to Mary Lou's response, we  
9 do have a lot of issues with utilization companies  
10 response.

11 Number one, we submit the 1010. The carrier  
12 submits it to UR. The UR determination returns  
13 without the 1010. But the UR -- the utilization  
14 company makes their response. And, you know, we  
15 disagree with it.

16 But what I'm really trying to say, I think  
17 the company should tell us who is the UR company so we  
18 will know who to send it to, to send a claim to.

19 So I don't know, but you guys are doing a  
20 good job, but it's just a lot of work for the  
21 providers. I'm sorry. When they implemented this  
22 rule and it changes from 2012, it has just been extra  
23 work. I just think it's extra, unnecessary work.

24 MS. KEEN: Hi, I'm (i\_naudible). I work at  
25 the Spine & Pain Specialists.

1 COURT REPORTER: I'm sorry, I didn't get  
2 your name.

3 MS. KEEN: Liz.

4 COURT REPORTER: Liz, what's your last  
5 name?

6 MS. KEEN: Keen. One of the issues that  
7 we have is we'll do a 1010, but then we get a peer-to-  
8 peer review call and they give a phone number, usually  
9 a cell phone number, for the reviewer and the doctor  
10 has like two days to respond, but they call on like a  
11 Friday and our doctor is in surgery.

12 Then it just kind of auto denies, because  
13 they were never able to do the peer-to-peer review  
14 because they kind of felt unrealistic expectations of  
15 being able to call them back with the UR people,  
16 companies. Just a comment to add to the UR review  
17 issues.

18 MS. HARRIS: And that's true. We are told  
19 at one point that the utilization process we did not  
20 have to do.

21 So some of these peer reviewers, physician  
22 reviewers, are calling. They're giving us a time  
23 limit. They're placing a time limit on the provider  
24 to respond to a particular request.

25 And the reason the peer review is set up is

1 because either lack of information was not included on  
2 the 1010. As a matter of fact, we had one yesterday.

3 DIRECTOR KELLAR: Generalities.  
4 Hypothets.

5 MS. HARRIS: Well, just it was a  
6 diagnostic physician reviewer called. They needed us  
7 to call back. We couldn't ever reach them. Well, we  
8 called 15 times. No answer. The good news is it was  
9 approved without a peer review.

10 DIRECTOR KELLAR: But, generally, if you  
11 don't -- if your doctor doesn't talk to the peer  
i2 reviewer, it's an auto denial?

13 MS. HARRIS: It will be a denial most of  
14 the times. Majority is denial. Automatically -- it  
15 will be an automatic denial.

16 MS. KEEN: I have something to add to  
17 that. I find at our office that, when they're calling  
18 for the peer reviews, they're calling and asking the  
19 physicians questions about stuff that they already  
20 have in their hands in the records. They're asking  
21 specific questions that all they had to do was look at  
22 the notes and read them.

23 They're not wanting to read all the notes. ■  
24 don't know why they're not wanting to read all the  
25 notes, but they're not. They're just not seeking out



1 the time to follow through with all of the information  
2 that they're given.

3 DIRECTOR KELLAR: Thank you.

4 MS. ELIE: And, also, to add to that,  
5 that's one reason our facility had an issue with the  
6 peer-to-peer because I would even circle the main  
7 point. I would note that as the guideline. I would  
8 circle it on the office note and they would still deny  
9 it, still want a peer-to-peer.

10 I would even give them the time that our  
11 provider was available, and they still call on the  
12 outside timeframe of that and then we would still get  
13 a denial.

14 So it's things like that that-- you know,  
15 that cause a hardship concerning our workers' comp  
16 patients, and our provider just felt like, you know,  
17 he was doing more harm for the patients than we were  
18 helping the patients. And if we can't actually  
19 provide a service for the patient, then, I mean, what  
20 are we here for.

21 So, I mean, those are some of the things.  
22 You know, that's the reason why we just had to just  
23 you know, we had to just cut our load. We just  
24 couldn't do it. And especially when they were saying  
25 that we had to do a 1010 for certain narcotics and

1 that's what we do.

2 I mean, that's I mean, we do --we're a  
3 specialist, and we provide procedures. And, of  
4 course, unfortunately, some patients may have to have  
5 narcotics.

6 So that's in our every day, that's every  
7 patient that we come in contact with. So it was just  
8 very -- it was just very overwhelming and so we hated  
9 to make that decision, but that was just, you know,  
10 what we had to do.

11 She's sitting beside Mary Lou.

12 DIRECTOR KELLAR: Thank you, ma'am. It's  
13 the First and the Fifth that have ruled that  
14 prescription medication is not subject to the approval  
15 process of the medical treatment guidelines.

16 MS. PATE: I'm sorry, could you repeat  
17 those two districts?

18 MS. LUNDEEN: First and Fifth, which is  
19 not you all.

20 DIRECTOR KELLAR: The First and Fifth said  
21 prescription medication is not subject to the approval  
22 and the appeal process authorized by 23:1203.1.

23 COURT REPORTER: Can I get her name?

24 DIRECTOR KELLAR: Can I get your name, the  
25 lady who just asked the question?

1 MS. PATE: Oh, Shelley Pate.

2 DIRECTOR KELLAR: Thank you. Thank you,  
3 ma'am.

4 MS. SALLEY: I can elaborate a little bit  
5 on that for you, Sheral.

6 The Second Circuit, you know, we do things  
7 our own way in North Louisiana. But the Second  
8 Circuit takes the position that prescription drugs  
9 under the comp act are a claim of reimbursement. ■  
10 don't know where they got that, but that's what they  
11 think.

12 So the Second Circuit takes the position that  
13 it's the injured worker's job to go buy the  
14 prescription and send it in for reimbursement. So I  
15 would say that the Second Circuit says there are no  
16 guidelines that apply, because they believe the  
17 injured worker should just go buy the prescription and  
18 send in the reimbursement claim.

19 So that's the --do you agree with me, Kris?

20 I mean, probably not. That's just --that's  
21 the only case we have from the Second Circuit is that  
22 prescriptions are a claim of reimbursement.

23 It was a case about choice of pharmacy,  
24 wasn't it?

25 MR. JACKSON: Was that an IWP case?

1 MS. SALLEY: Yeah. Yeah. There's some--  
2 that IWP case and they said prescriptions are a claim  
3 of reimbursement and it shouldn't matter which  
4 pharmacy you use.

5 So they take the position the injured worker,  
6 there doesn't have to be a pre approval because the  
7 injured worker should just go pay cash for the  
8 prescription and send it in. That is what we have.

9 And I'm just telling, y'all, I would take the  
10 position that the Second Circuit would probably say,  
11 if they've already held what they want the injured  
12 worker to do is send in their reimbursement from  
13 Kroger or whatever pharmacy, that there's no 1010  
14 involved in prescription drugs until the legislature  
15 says these are our guidelines and file a 1010.

16 MR. JACKSON: Kris Jackson. I normally  
17 represent insurance carriers and employers in workers'  
18 comp cases.

19 I think Mary Lou is mostly right on that.  
20 That case, I think that case is a little  
21 distinguishable, though, because they found that IWP  
22 as an out-of-state provider is not reasonable and  
23 necessary within the State of Louisiana.

24 I have another question, though. One, has  
25 there been a plan to implement any type of electronic

1 filing?

2 DIRECTOR KELLAR: For?

3 MR. JACKSON: For, well, we'll start with  
4 1010 -- 1009s. I'd like to see it for the whole  
5 system, but for 1009s, essentially, I think the fax  
6 machines seem to be an antiquated system. That might  
7 eliminate some of the multiple filing issues.

8 DIRECTOR KELLAR: Electronic filing for  
9 everything is on the table, and we're moving toward  
10 that.

11 I think the first step, however, will be the  
12 Troy, which is the 1002, Pauline, and then we'll move  
13 forward with that. And, of course, the 1008 will be  
14 in line for electronic filing, as well.

15 MS. WILLIAMS: Uh-huh.

16 MR. JACKSON: Also a question I have along  
17 with treatment guidelines and everything that it  
18 provides about what is reasonable and necessary, it  
19 also provides guidelines for doctors in preparing  
20 reports and how they treat claimants.

21 And it states that they're supposed to every  
22 time a doctor sees a claimant, prepares a report, make  
23 a statement regarding return to work ability and a  
24 plan of action towards getting a claimant to return to  
25 work, because that is one of the stated goals of the

1 system.

2 It's primarily an issue I see with pain  
3 management doctors. After everything orthopedic has  
4 been done, the pain management doctor is just  
5 prescribing medications or giving injections and  
6 there's no comment at all in the report about what  
7 they're trying to do to get the claimant back to work.

8 From a defense attorney perspective and an  
9 insurance carrier perspective, is there anything that  
10 can be done to compel the doctors to comment on return  
11 to work ability and restrictions because I think  
12 that's important to know where a claimant is in trying  
13 to get them back to work.

14 DIRECTOR KELLAR: I think that issue can  
15 be addressed in the hearing rules. We do address the  
16 components of a narrative report when it comes to the  
17 IME physician to prevent him from being subjected to a  
18 deposition.

19 So I certainly think that that might be one  
20 thing that we can address in the hearing rules that  
21 Judge Lundeen is dealing with.

22 MR. JACKSON: You can address that with  
23 regard to the treating physician?

24 JUDGE LUNDEEN: So what we're trying to  
25 do, Director Kellar has spearheaded our analysis of

1 all these rules and it's something that's important to  
2 me as well as a leader in the system.

3 There are a lot of hearing rules that make no  
4 sense in light of the medical treatment guidelines.  
5 There's a lot of hearing rules that just make no  
6 sense.

7 So we are forming statewide committees to  
8 review both Title 23 as well as the hearing rules, and  
9 you're welcome to join if you'd like to give me your  
10 name and card afterwards. We want, you know, both  
11 sides of the bar to participate. We want folks that  
12 are dealing with the hearing rules and with Title 23.

13 And for that matter, any enabling statutes  
14 that we might find in the Code of Civil Procedure or  
15 Civil Code. And, hopefully, we will have something  
16 put together that we can present to correct certain  
17 problems.

18 So we would love to have your participation.  
19 It sounds like you're interested.

20 MR. JACKSON: I am.

21 JUDGE LUNDEEN: So welcome aboard.

22 MR. JACKSON: Can I expound on that real  
23 quick, too. The FCE choice issue I actually argued  
24 before the Supreme Court last week out of a Third  
25 Circuit case with Mike Miller.

1 JUDGE LUNDEEN: Okay.

2 MR. JACKSON: So that's before them now.  
3 So we're going to get some guidance from that maybe.  
4 They didn't seem to grasp it very well, but they gave  
5 me a lot of commentary about how they're disgruntled  
6 with our act and the hearing officer rules and the  
7 ambiguous nature of it and that they don't feel like  
8 they're getting guidance on what the law is because  
9 the law is quiet to certain issues.

10 And that was a big issue that they had with  
11 the FCE issue was that an FCE is never mentioned one  
12 time anywhere in the Workers' Camp Act or the Hearing  
13 Officer Rules.

14 I know it's now in the treatment guidelines  
15 to a certain extent. But that was an issue that the  
16 Supreme Court has. So I think what you're working on  
17 will be great to give some guidance.

18 DIRECTOR KELLAR: And, of course,  
19 Mr. Miller thinks he has choice of FCE.

20 Right?

21 MR. JACKSON: Oh, Mr. Miller was totally  
22 right about everything. You can imagine.

23 DIRECTOR KELLAR: Okay. Any other  
24 comments, questions?

25 Yes, sir.



1                   MR. MANNO:    Thank you.  My name is Mark  
2 Manno from Fischer & Manno.  I represent injured  
3 workers.

4                   And in response to the issues raised by  
5 choice of diagnostic, I know we have Terianne raised  
6 that and Connie and Latasha.

7                   What Judge Lundeen's response was is to file  
8 a 1008, which is a lawsuit.  But the problem is, the  
9 reality is Dr. Mody is not going to go and file a 1008  
10 on that issue.

11                  So, when you run into that kind of road  
12 block, it has to be the injured person's lawyer that  
13 takes it up and files a lawsuit.  And if the patient,  
14 you know, doesn't have a lawyer, then we have to think  
15 about getting one to resolve that issue.

16                  Like Judge Lundeen explained, the 1009, 1010  
17 process resolves, do they get that care, yes or no.  
18 And so, once that is decided, the choice or the issue  
19 needs to be fought out by that injured worker's lawyer  
20 in the Court system.

21                  So that's what I think you need-- I think  
22 that's the answer to that.  I think that ties into  
23 what Judge Lundeen was saying.

24                  The problem with, you know, the 1009, 1010  
25 process, it's an extra step for doctors and their

1 staff to complete. And so what the nightmare is we  
2 have Keashia, when I see you here, I know that River  
3 City has stopped seeing workers' comp patients.

4 And that's what we don't want to have happen.  
5 I don't want, you know, Pierce Nunley and Euby Kerr to  
6 wake up one day and say, you know what, we just don't  
7 want to do this paperwork, we're not going to see any  
8 people that were injured on the job anymore.

9 So what we don't want to do is have the  
10 process run doctors away from treating people that  
11 were hurt on the job. So the issue is why do we have  
12 this extra step.

13 So I look at it is what did we have before.  
14 And before on choice of medical care, before this  
15 process came in in 2011 and '12, a doctor would  
16 recommend a procedure.

17 Well, then the insurance company gets a  
18 second medical opinion, which we call an SMO for  
19 short, and that doctor is almost always going to side  
20 with the insurance company and say they don't need  
21 this. That's at least my perception. I could be  
22 wrong, but that's what's happening with my clients.

23 So then, in response to that, either side can  
24 ask for an IME, which is an independent medical exam.  
25 So you have a third doctor. Well, that process takes

1 months and thousands of dollars to work itself out.  
2 So I'm assuming that this 1009, 1010 process was  
3 supposed to get medical care approved or denied  
4 quicker.

5 And I probably have a rosier outlook on this  
6 than Mary Lou does. I think that a 1009, 1010  
7 process, I think generally it works. And I wasn't  
8 happy with it when I first came on board, but I think  
9 now we're all kind of used to it and we kind of know  
10 what it is and we know what to do with it.

11 The problem that I had with the SMO and IME  
12 system before, you know, I felt like especially with  
13 spine surgeries that some of the doctors that were  
14 doing the SMOs and IMEs, even though they were  
15 orthopedic physicians, they weren't doctors that were  
16 practicing day-to-day in that specialty.

17 And I felt like their reports were not always  
18 fair to the injured worker, and I could be wrong.  
19 That's my perception. So, therefore, I wasn't in love  
20 with the SMO and IME process.

21 But I think that this 1009, 1010 process I  
22 think it's better overall. Having seen this evolution  
23 over the last few years, I think it's a little bit  
24 better than what we had before.

25 But I hope that the 1010 step that the

1 doctor's office has to take, I just hope it doesn't  
2 run out more doctors like River Cities and I hope that  
3 River Cities would reconsider and come back and see  
4 injured workers.

5 DIRECTOR KELLAR: Mic. Thank you, Mark.  
6 That's the best thing anybody has said about the  
7 medical treatment guidelines since we've been having  
8 the Town Hall meetings.

9 And I think that a vast majority of the  
10 recommendations for medical treatment are approved.  
11 It's those that are not approved where we have the  
12 difficulty.

13 From January, 2016, to date, we've received  
14 approximately 1,600 requests for-- the doctor has  
15 received appeals for 1,600 medical treatment  
16 guidelines requests, and generally he makes a decision  
17 within 30 days.

18 What happened in the past was the request for  
19 medical treatment was based upon reasonable necessity,  
20 and it had to be decided by a judge. It was a full  
21 blown trial on the merits, and it could take sometimes  
22 up to a year before the judge made a decision because  
23 it had to go through a pipeline.

24 You had to get your depositions of your IME  
25 doctor, your treating physician, your second medical

1 opinion physician, and as Mr. Manno said, it did cost  
2 thousands of dollars. This way it's supposed to be  
3 quick and fast, and the vast majority of times it is.

4 Unfortunately, in your case, it has not  
5 been your experience. And, again, I say that's why  
6 we're here.

7 Generally, the carriers will make a decision.  
8 If it's approved, that's good. If it's not, the  
9 denial comes to the doctor within 15 days. He makes a  
10 decision within 30 days. So you'll know whether or  
11 not you get the treatment that has been recommended  
12 within 60 days as opposed to 365 days, which is what  
13 it took sometimes before.

14 The good thing for the system as a whole is  
15 that medical treatment guidelines are based upon  
16 evidence based medicine. And so what that means is,  
17 if you have a knee injury in South Louisiana and a  
18 knee injury in North Louisiana, they get the same  
19 treatment because it's based on the medical treatment  
20 guidelines as opposed to what a doctor thinks .that  
21 treatment ought to be. Of course, you take into  
22 consideration the patients.

23 But the other good thing about the medical  
24 treatment guidelines for the system is that because  
25 we've taken medical treatment issues out of the trial

1 pipeline, we've been able to reduce the number of days  
2 it takes to resolve other issues by almost seven  
3 months, which is a reduction by half of what it was,  
4 say, five or six years ago. We don't have as many  
5 disputed claims, because the medical treatment issues  
6 are not in the trial pipeline. And all of these  
7 things are good things.

8           So, while we work through these issues with  
9 the medical treatment guidelines, we would ask that  
10 you be patient with us. We're here because we're not  
11 unaware that there are problems. And we want you to  
12 help us to first identify what those problems are;  
13 and, if you have some solutions for how we might fix  
14 it, that's what we want to hear. That's why we're  
15 making a recording.

16           I saw some hands.

17           MS. PANTHER: The other issue that I've  
18 noticed major is the 1010 needing for any office  
19 visits from the very start.

20           And I understand these are guidelines, but  
21 there are certain companies, I'll say 95 percent of  
22 the companies, don't abide by that particular  
23 guideline.

24           There's one in particular that is hard nosed  
25 about that particular guideline. And if you don't

1 have an office visit approved and the patient slips in  
2 on you, you didn't know they came in, they're not  
3 going to pay for that visit and they're not going to  
4 give you a retro authorization for it, either.

5 And that means the doctor's office, in turn,  
6 is seeing the patient for free, and we're having to  
7 write off treatment that's being done when they're  
8 coming in to see the physician.

9 MS. SALLEY: Yeah, they want  
10 documentation. They'll deny treatment and say you  
11 need to document this. She gets them back in to  
12 document that, and they go oh, you didn't file a 1010  
13 for the office visit.

14 MS. PANTHER: Right, that, or we'll see  
15 them and they'll say we're not going to pay for that  
16 office visit.

17 But the doctor ordered something. They'll  
18 approve something off of that doctor visit, but they  
19 won't pay for the office visit because a 1010 wasn't  
20 done.

21 You know, when you work in larger offices,  
22 you've got people who answer the phones. The patients  
23 call in, make an appointment. Us in the work comp  
24 department, we may or may not know that that patient  
25 is coming in and it gets slipped -- I mean, things

1 happen. They get slipped through.

2 So I just don't understand the purpose for  
3 that particular rule. Why is that rule even in the  
4 guidelines?

5 DIRECTOR KELLAR: And that's the rule that  
6 you have to submit a 1010 for an office visit?

7 MS. PANTHER: For office visits, yes,  
8 ma'am.

9 MS. HARRIS: It was -- I'm trying to find  
10 it. It was implemented just a few years ago.

11 The reason, from my understanding, there were  
12 some providers -- there were some providers providing  
13 diagnostic care in their facility along with the  
14 office visit, and the diagnostic care was not being  
15 approved.

16 So, therefore, work-- Louisiana Workers'  
17 Comp has implemented a \$750 clause. It's like any  
18 office visits leading up to \$750 has to be approved.

19 JUDGE LUNDEEN: Right. That's the law.

20 MS. HARRIS: So, in response to what she's  
21 saying is LWCC and LUBA, those are the two, if your  
22 office visit is not approved, the provider will not be  
23 paid. We have to obtain prior authorization or return  
24 visits for an office visit.

25 DIRECTOR I\;ELLAR: Do you see requests for



1 office visits, Dr. Picard?

2 DR. PICARD: Very uncommon.

3 MS. HARRIS: Well, we've been submitting  
4 ours for the last two years.

5 (Several speaking at once)

6 DIRECTOR KELLAR: Okay. Court reporter is  
7 going crazy because too many people are speaking at  
8 one time.

9 Dr. Picard said -- he can say it himself.

10 DR. PICARD: The only thing I have to  
11 comment is that I rarely see those. So it doesn't get  
12 to my level. Every once in a while I do, and there's  
13 not a lot in the guidelines that I see regarding  
14 approval of office visits and how often a patient can  
15 be seen.

16 There are a few specific instances of that;  
17 but, at the 1009 process, I'm just not seeing it. So  
18 you're seeing something that's not getting to my  
19 level.

20 MS. HARRIS: We wouldn't apply for 1009s.  
21 That's true. It's just a 1010 issue.

22 DR. PICARD: Right.

23 MS. HARRIS: 1010 initial submit issue.

24 DR. PICARD: Are you sending 1009s for  
25 those sometimes when they're denied?

1 MS. HARRIS: You know, no. But I've  
2 fought them by calling the carrier. Because, see,  
3 with the 1009 process, you have to first submit the  
4 initial 1010, have all of that covered, then your  
5 1009, so.

6 DR. PICARD: Okay.

7 DIRECTOR KELLAR: Anybody else?

8 MS. SALLEY: I have just a small response  
9 to her. I know what the guidelines say, but I think  
10 it intertwines with the actual act. I think a denial  
11 of an office visit is actually a denial of choice of  
12 physician.

13 So, again, that might be one of those  
14 instances where the patient and their lawyer needs to  
15 be informed; because, if you don't have an office  
16 visit, you don't have a doctor, so.

17 MS. HARRIS: Well, that's -- you know,  
18 you're right. And I'm really trying really hard to  
19 submit those denials to the attorneys, because the  
20 attorneys really help. They're actually denying our  
21 office visits, and that's placing a limbo on the  
22 patient.

23 MS. SALLEY: To me, that's a denial of  
24 choice of physician to not even have an office visit.

25 So that's one of those -- I'm not giving

1 anybody any legal advice. I'm just -- I interpret the  
2 act that, if you can't even have an office visit, you  
3 don't have your choice.

4 MS. HARRIS: I had to turn a patient away.

5 DIRECTOR KELLAR: Any further comments,  
6 questions?

7 Okay. Why don't we let Dr. Picard tell you  
8 some of the things that he sees that are problematic  
9 for him and that if were done differently could help  
10 in the process.

11 DR. PICARD: The most common thing that I  
12 see, or common things that I see, basically, you're  
13 looking at two sides. You're looking at the provider  
14 and the patient, and the insurance company.

15 And in the 1009 process, I'm looking at  
16 whether or not I'm going to approve a particular  
17 treatment or service that the provider is requesting  
18 and the insurance company has denied.

19 So I look through the documentation to see if  
20 the medical treatment guidelines are being met and the  
21 criteria are there for that procedure; and, if they  
22 are, I approve it.

23 If the criteria are not there, then I have no  
24 choice but deny it because it's not based on my  
25 opinion, it's based on what the treatment guidelines

1 say.

2 So, if the provider has not documented  
3 specific things that they need to document, specific  
4 criteria that are required for a certain procedure,  
5 for example, then that procedure by the guidelines  
6 cannot be approved.

7 And then I would make a statement in the  
8 denial about what is missing from that documentation  
9 to allow the provider to then either submit that  
10 documentation or do the therapy that needs to be done  
11 or whatever criteria needs to be taken care of, so  
12 that the process can occur or the procedure can occur  
13 and they can submit another 1009 in that instance to  
14 allow their procedure to occur.

15 The biggest thing I see on the carrier side  
16 is, number one, lack of a response. We see very many  
17 tacit denials whereby the carrier has not responded to  
18 the provider or the patient's attorney, in which case  
19 I'm looking at only documentation from the provider.

20 And if the documentation is such that the  
21 procedure should be approved based on the guidelines,  
22 then it is approved and the carrier has not sent me  
23 anything.

24 So anybody that represents insurance  
25 carriers, that would be the most common problem that I

1 see, most frequent thing, that could be improved from  
2 their standpoint.

3 The other standpoint, this was commented on  
4 earlier by somebody, is that sometimes the insurance  
5 carrier is not getting all of the information from the  
6 provider. So, in their response and the insurance  
7 carrier's denial, they might state that certain  
8 criteria have not been documented when I'm looking at  
9 the provider's documentation and it's clearly there.  
10 And I approve it based on that and state that in the  
11 approval, these things were documented.

12 So I don't know if the carriers are not  
13 getting that documentation that I'm seeing, or if  
14 they're ignoring it. I have no idea how that is  
15 happening. But the carriers have to be aware of what  
16 has been done and use that information appropriately  
17 to see if the guidelines criteria are there. So  
18 that's from a carrier standpoint.

19 From the provider standpoint, the biggest  
20 things I see why I deny something would be lack of  
21 documentation. If they don't document that they did  
22 certain things that are required for a certain  
23 procedure.

24 Some procedures have certain things that you  
25 have to show that you have done prior to approval of

1 that procedure. If you want a spine surgery, you have  
2 to say that you've done physical therapy, you've had a  
3 psychosocial evaluation. There's certain criteria you  
4 have to have in your documentation.

5 As long as those are there, then I'm going to  
6 approve the procedure to be done. If those are not  
7 there, then the criteria for the guidelines are not in  
8 the documentation and it's going to be denied.

9 We do approve the vast majority of what comes  
10 to me. It's less than a third are being denied, and  
11 it's usually due to that fact. It's usually due to  
12 some criteria are not being documented that should or  
13 are required to be documented to allow that procedure  
14 to take place.

15 So are there any questions specific that I  
16 might be able to answer, insurance carriers,  
17 providers, anybody who have something with regard to  
18 the guidelines decision?

19 MR. JACKSON: Kris Jackson. Do you see it  
20 as a problem or do you have a problem with the peer  
21 review doctors who are doing -- are reviewing for the  
22 UR, that they're misapplying the guidelines?

23 DR. PICARD: Yes, every day.

24 MR. JACKSON: Okay. Can you -- I really  
25 don't know how --

1 DR. PICARD: I can see -- the most  
2 frequent thing I see is that they're saying that  
3 patient does not have a particular symptom or has not  
4 had a particular procedure or therapy, and I'm looking  
5 at the documentation and I clearly see that it's  
6 there. So I do see that very frequently.

7 DIRECTOR KELLAR: Yes, ma'am.

8 MS. KEEN: When you submit the 1010 and  
9 like you give them the information and they still want  
10 to do the peer review and they ask the same questions  
11 that's in the information, I just don't see the point  
12 of the peer-to-peer review when the documentation is  
13 there.

14 DIRECTOR KELLAR: That's before it comes  
15 to us, but I understand it's a problem for you. To  
16 the extent that we can address it, we'll, you know,  
17 look at it.

18 This is the first time we've heard some  
19 critique of the peer-to-peer review during the  
20 utilization review process. So, now that we're aware  
21 of it, we'll just keep that on our antenna radar.

22 Yes, ma'am.

23 MS. BREWER: Amanda Brewer. I'm a  
24 physical therapist.

25 Who is completing the peer review for

1 physical therapy?

2 DIRECTOR KELLAR: We don't do peer  
3 reviews.

4 DR. PICARD: We don't do that.

5 DIRECTOR KELLAR: You send your 1010 to  
6 your carrier or their utilization review company or  
7 the third party administrator.

8 If it comes back denied, then you send it to  
9 the medical services section and Dr. Picard reviews  
10 it. We don't do peer-to-peer review.

11 MS. BREWER: Okay. Previously, I've  
12 spoken to a physician on other end of the line about  
13 notes that we send in requesting additional visits, or  
14 something like that.

15 And so I guess you have, no physical  
16 therapists that are actually reviewing physical  
17 therapy notes or no occupational therapists who are  
18 reviewing occupation therapy notes, but you have just  
19 a physician determining if they need to continue  
20 treatment or receive treatment.

21 DR. PICARD: That is correct.

22 MS. BREWER: That is correct?

23 DR. PICARD: That's me. I review every  
24 document that comes into our office on the 1009 if you  
25 get a denial of service, and it's very unusual for me



1 to deny continuation of physical therapy as long as  
2 the documentation is there.

3 MS. BREWER: Right. No, this was not you  
4 that I spoke to.

5 DR. PICARD: Okay.

6 MS. BREWER: It was a different physician,  
7 so.

8 DIRECTOR KELLAR: We only have one at LWC.

9 MS. BREWER: This was in years past. This  
10 was in years past.

11 So I just was -- I just was wondering because  
12 it just seems like, you know, I've had physicians tell  
13 me prior that they're a physician or they're a  
14 surgeon, they are not a physical therapist. And, you  
15 know, they can't make that determination.

16 DR. PICARD: It's not that complicated.  
17 To continue physical therapy, you need two things and  
18 that's usually what you're asking for.

19 MS. BREWER: Right.

20 DR. PICARD: You're asking to continue  
21 physical therapy.

22 MS. BREWER: Right.

23 DR. PICARD: You need to demonstrate that  
24 it has been improvement in condition and that the  
25 guideline criteria for the amount of therapy has not

1 been exceeded. If those two things are there, I'm  
2 going to approve it.

3 MS. BREWER: All right. Okay.

4 MS. HARRIS: Can you repeat those last  
5 two?

6 I need those. Improvement and the condition.

7 DR. PICARD: You need to show that the  
8 patient is improving from therapy and that the  
9 guidelines criteria have not been exceeded.

10 There are certain amounts of therapy visits  
11 that are allowed for each particular condition, and  
12 those are in the guidelines.

13 And you can go beyond those, but there's a  
14 criteria for that, too. You have to demonstrate that  
15 there's a specific need and a reason why you're going  
16 beyond the normal limitations set forth in the  
17 guidelines for how much therapy is allowable.

18 MS. GLADNEY: Okay. You said you would --  
19 you go -- you approve by what they send you and what  
20 you read?

21 DR. PICARD: Right.

22 MS. GLADNEY: Okay. Well, I can't  
23 understand why my injections haven't been approved.

24 I have family out of town. I have kids out  
25 of town. I have sisters out of town. The church that

1 I go to, home church, that has been in our family for  
2 164 years is out of town. I haven't been able to  
3 attend that church. Haven't been able to go out of  
4 town. This is the farthest I have ridden in a car  
5 since September the 29th of '15.

6 The reason why I'm standing, I'm not trying  
7 to be rude, I wouldn't want to be rude anywhere. I  
8 cannot sit down for a long period of time at all. It  
9 has -- and then I'm having pain that's coming from the  
10 back shooting down this leg. I have numbness.

11 So, if they writing up all of that that I'm  
12 experiencing, why wouldn't anybody approve what the  
13 patient needs?

14 I hear all -- I've been listening. I hear  
15 all of this legal stuff. I don't know what y'all are  
16 talking about. I'm trying. I'm really trying. I'm  
17 trying to keep from crying because I want to  
18 understand it. I really, really want to understand  
19 what's going on.

20 DIRECTOR KELLAR: Let me say something.

21 MS. GLADNEY: My question is: Why  
22 wouldn't they approve that?

23 DIRECTOR KELLAR: Listen.

24 DR. PICARD: I can answer it.

25 DIRECTOR KELLAR: No, I don't want you to

1 answer that because we have the judge of this  
2 jurisdiction in the room, and she is really hearing ex  
3 parte communication about your case that she may hear  
4 later and it would prejudice her.

5 So, when ■ started, ■ said let's not talk  
6 about particular cases. ■ understand your situation,  
7 but the judge who will hear cases in Shreveport is  
8 sitting here and this is information that she really  
9 should not be hearing.

10 MS. GLADNEY: Okay.

11 DIRECTOR KELLAR: These are things that  
12 you should discuss with your attorney.

13 MS. GLADNEY: No, but my question was to  
14 him. He said he takes what he reads and --

15 DIRECTOR KELLAR: The problem, ma'am, is  
16 that you don't even know if he has it.

17 MS. GLADNEY: No. ■ was just asking him  
18 if they -- if a particular person wrote down -- the  
19 doctor wrote down all of that, what would stop that  
20 person-- it's more than me in chronic pain.

21 What would stop that person -- what would  
22 stop that person from saying, hey, we need to try to  
23 help. I mean help, that's a small word. And that's  
24 all I was asking, ma'am.

25 JUDGE LUNDEEN: So the medical treatment

1 guidelines, when director gets a claim on a 1010 form  
2 or actually on a 1009 form, so it's been denied by the  
3 insurance carrier that you're dealing with or whomever  
4 is dealing with.

5 Then he looks at a statute, at a series of  
6 rules that tell him that are based on medical  
7 guidelines from other states, as well as ours, of what  
8 is the accepted treatment.

9 And your doctor will have put down how he or  
10 she thinks you fit into that guideline, and that is  
11 what the doctor bases all of his judgments on in  
12 determining whether or not the denial was appropriate.

13 DIRECTOR KELLAR: Anybody else?

14 Yes, ma'am.

15 MS. BREWER: Who are the medical  
16 professions on the advisory council?

17 DIRECTOR KELLAR: If you go to  
18 Laworks.net, you will see the members of the MAC, the  
19 Medical Advisory Council. Go up under workers'  
20 compensation, and it has the members of the MAC.

21 JUDGE LUNDEEN: Also, if you look at  
22 Title 23 Section 1294, it will tell you who the  
23 legislature has stated should be on the advisory  
24 council. It tells you, you know.

25 DIRECTOR KELLAR: It tells you --

1 MS. BREWER: That's what I need, the  
2 workers' camp advisory council.

3 DIRECTOR KELLAR: It tells you the various  
4 disciplines that should be on the medical advisory  
5 council.

6 If you will go to Laworks.net under workers'  
7 compensation, you will find the names of the  
8 physicians who are representative on the medical  
9 advisory council.

10 MS. BREWER: Okay. I think I'm talking  
11 about just the workers' compensation advisory council.

12 You said it's Louisiana statute what?

13 DIRECTOR KELLAR: Do you want the MAC, or  
14 do you want the workers' camp advisory council?

15 MS. BREWER: Not the --

16 DIRECTOR KELLAR: Because there are two.

17 MS. BREWER: Not the medical advisory  
18 council.

19 DIRECTOR KELLAR: The workers' camp  
20 advisory council is by statute. Those members are  
21 appointed by the governor. It's Title 23:1294, and  
22 the representatives of the workers' camp advisory  
23 council are listed in that statute.

24 The particular members of the workers' camp  
25 advisory council, their names are listed in

1 legis.state.la.gov. If you'll look under boards and  
2 commissions, you'll see the names of the eight members  
3 that were recently appointed and then the other  
4 members who are still on the workers' comp advisory  
5 council.

6 MS. BREWER: Okay. So is it -- on the  
7 workers' comp advisory council, is it attorneys, is it  
8 medical providers, is it --

9 DIRECTOR KELLAR: The workers' comp  
10 advisory council is made up of stakeholders in the  
11 workers' compensation communities.

12 There are attorneys who represent employees,  
13 attorneys who represent employers. There's a laborer  
14 representative. There's a business representative.  
15 There's an orthopedist representative, a  
16 representative from Louisiana State Medical Society.

17 The director is the Chair. And there are  
18 five at large members, one from each of the public  
19 service commissioned districts.

20 MS. BREWER: Okay. Thank you.

21 DIRECTOR KELLAR: You're welcome.

22 MS. HARRIS: So the panel here today, you  
23 all represent the 1009 department?

24 DIRECTOR KELLAR: I'm sorry, say it again.

25 MS. HARRIS: The panel present today, each

1 one of you represent the 1009 department?

2 DIRECTOR KELLAR: The people that we have  
3 here are the management and staff of the Office of  
4 Workers' Compensation. Dr. Picard and Cathy Chesson  
5 work in the medical services.

6 MS. HARRIS: Oh, okay. Nice to meet you.

7 DIRECTOR KELLAR: They deal directly with  
8 the 1009s.

9 Judge Lundeen is the Chief Judge for the  
10 hearing section of Office of Workers' Compensation.  
11 So she will deal with 1009s, 1008s, 1002s, 1003s,  
12 1007s, and all of those things.

13 You have Judge Linda Smith is the judge in  
14 District 1W Shreveport. Rosa Whitlock is the mediator  
15 in District 1W Shreveport.

16 Pauline Williams is the deputy director right  
17 here, deputy director of the Office of Workers'  
18 Compensation. So these two deal directly with the  
19 1009s and the rest of us indirectly.

20 MS. HARRIS: Okay. I understand now.

21 MS. WILKINSON: Christy Wilkinson at  
22 Musculoskeletal Institute.

23 Okay. I received a 1010 -- actually, I  
24 received a UR denial, and then the adjuster gives me a  
25 1010 approval.



1 Which one takes

2 MS. HARRIS: The adjuster.

3 MS. WILKINSON: Then she e-mails me back  
4 and says oh, no. No. No. UR --

5 (Several speaking at once)

6 DIRECTOR KELLAR: Okay. Hold on. Hold  
7 on.

8 Let me make sure we have the facts straight.  
9 So you sent in a 1010, and it was returned  
10 because it

11 MS. WILKINSON: It wasn't returned. ■  
12 submitted a 1010. I received a letter from the UR  
13 with a denial. Maybe a day later the approval 1010  
14 came in from the adjuster.

15 So I responded with an e-mail to confirm  
16 clarification was she overriding the UR and she was  
17 giving approval. She said no, they have to do  
18 whatever. It's denied and

19 MS. SALLEY: That's a judicial confession.

20 DIRECTOR KELLAR: The UR denied, and the  
21 adjuster approved?

22 It never got to us. It never got to us.

23 (Several speaking at once)

24 MS. WILKINSON: So we -- even though

25 DIRECTOR KELLAR: I can't -- I don't know

1 the answer to your question.

2 MS. SALLEY: I do. I know the answer.

3 DIRECTOR KELLAR: It never got to us.

4 MS. WILKINSON: Well, I do have a 1009  
5 issue. Received the 1009 approval, submitted it to  
6 the carrier, and we get nothing back.

7 DIRECTOR KELLAR: Okay. So you submitted  
8 a 1009 to the doctor. The doctor approved it.

9 You submitted it to the carrier, and nothing  
10 happened?

11 MS. WILKINSON: Correct.

12 DIRECTOR KELLAR: We had this issue  
13 before.

14 Diane, do you want to address it?

15 JUDGE LUNDEEN: Sure. So the 1010 is  
16 going to trump, because by statute that's the method  
17 that the legislature has prescribed for how this  
18 system will work.

19 When you get nothing back from -- and we call  
20 that a -- it's not even a tacit denial. When they  
21 don't send -- when they don't -- you've got it  
22 approved, but then they don't cooperate with you,  
23 again, unfortunately, that's where you end up getting  
24 into litigation because it's an approved 1010. So you  
25 can't file a 1009, because you have nothing to

1 dispute.

2 So then that's when, as Mr. Manno suggested,  
3 you talk to the claimant. You determine who, if  
4 anyone, should pursue the treatment through the use of  
5 the 1008 form.

6 DIRECTOR KELLAR: Why don't we have this  
7 gentleman over here.

8 MR. MILEY: I don't know if I need that.  
9 I think I can talk loud enough. My name is John  
10 Miley -- excuse me, John Miley from Level Solutions.

11 As I sit here and listen -- well, let me  
12 explain where I sit. I'm not a provider, and I'm not  
13 a payer. I just actually walked in here for a free  
14 lunch, but they're not serving. No, I'm joking.

15 I kind of sit between the facilities and the  
16 payers most of the day trying to make sense of bills  
17 and negotiating the best outcomes on medical bills.

18 Unfortunately, a lot of times I'm stuck with  
19 a situation that we've touched on today, but I don't  
20 hear a clear resolution other than it's probably a  
21 1008 issue.

22 I'll try to make this a simple question.  
23 When a provider -- and I'm going to use a back surgery  
24 as an example. When a provider gets an approved 1010  
25 for a back surgery, who and what is included under

1 that approval?

2 I think, again, that gets to an issue of, you  
3 know, you have a 1010 from a doctor saying here's your  
4 surgery. That to me from I have an old UR  
5 background that that's --we've approved that as  
6 medically necessary. And then to me there's a  
7 separate approval that says, okay, I'm approving you  
8 to do the surgery.

9 MS. SALLEY: That's not the way it works.

10 MR. MILEY: This issue I have -- and that  
11 may be right or wrong. I'm just saying the issue I  
12 see now is -- and don't throw stuff at me when I say  
13 this, but it seems to be a blanket or a blank canvas  
14 and maybe even an open checkbook with some, once they  
15 get an approval of a 1010 procedure where then  
16 everything is done from the facility to implants to  
17 every third party that's involved, they throw that  
18 1010 at you and say it was approved.

19 MS. SALLEY: That doesn't even make any  
20 sense. You have to get each procedure approved on the  
21 1010. That doesn't even make any sense.

22 MR. MILEY: Do you want -- let me explain.  
23 A doctor gets a 1010 for a back surgery.

24 Okay. Does the facility fall under that 1010  
25 meaning

1 (Several speaking at once)

2 DIRECTOR KELLAR: Okay. Hold on.

3 (Several speaking at once)

4 JUDGE LUNDEEN: One person at a time.

5 DIRECTOR KELLAR: The court reporter can't  
6 hear everybody at once.

7 MR. MILEY: Okay. I'm sorry.

8 DIRECTOR KELLAR: You have to speak first,  
9 and then let the next person speak.

10 Okay. Go ahead.

11 MR. MILEY: Okay. So, when I'm reviewing  
12 a bill and there's --and I'll try to come from this  
13 angle. When I'm reviewing a bill and there's a first  
14 and foremost a third party provider of implants, okay,  
15 there was nowhere listed, and actually implants, it  
16 may have said implants, you know, with surgical  
17 implants on the 1010, but when you have questions  
18 about the implants that were, you know, used or if you  
19 have -- there's issues when you're trying to question  
20 that, you know, first of all, you're having to go to a  
21 third party who is not named on the 1010 as providing  
22 the implants.

23 Is this starting to make sense?

24 DIRECTOR KELLAR: Yes, it does make sense.

25 MR. MILEY: Okay.

1                   DIRECTOR KELLAR:    Because what you're  
2 saying is you submit a 1010 for a back surgery; and  
3 then, when you get the bill, you have an invoice for  
4 an anesthesiologist, the facility, the physician, the  
5 da, da, da, da, da.

6                   Right?

7                   MR. MILEY:    And then, again, another  
8 unnamed entity getting a bill

9                   DIRECTOR KELLAR:    Okay.  First of all, the  
10 1010 is not a guarantee of payment.

11                  MR. MILEY:    Right.  I agree.

12                  DIRECTOR KELLAR:    Okay.  So, when the 1010  
13 is approved by the carrier for the treatment that was  
14 recommended, all those other things are ancillary and  
15 should be communicated or worked out between the  
16 healthcare provider and the carrier somewhere.

17                  MR. MILEY:    Well, I guess that's my  
18 question.

19                  Where?

20                  DIRECTOR KELLAR:    I have no idea.

21                  MR. MILEY:    I don't know if that makes  
22 sense to you guys.

23                  MS. HARRIS:    It makes sense.

24                  MR. MILEY:    Because the question I've  
25 always heard was, you know, and I've been in

1 conversations with facilities, and I've said, listen,  
2 what we're arguing about wasn't even approved.

3 And they say oh, yeah, it was approved, the  
4 doctor approved it. I said, he made no mention that  
5 you were going to do this. And so they're looking at  
6 me like wait, what are you talking about.

7 So I always say the last thing I want to do  
8 is ding a facility because the doctor didn't  
9 approve -- get the right thing on the 1010.

10 And so to me it's almost like, okay, at what  
11 point does it get to a point where now facilities will  
12 have to get a 1010?

13 But that's not really what the 1010 is about.  
14 It's more or less an approval to use this facility or  
15 an approval to use this third party that's going to  
16 supply these implants that necessarily isn't a third  
17 party. It's just by name it's a third party, and  
18 they're billing it separately and all that good stuff.

19 So my question, you know, and I heard that  
20 earlier when someone said, well, the choice of  
21 diagnostics is a choice of physician or choice of -- I  
22 don't remember exactly. But that to me that muddies  
23 the water even more, because that's not necessarily --

24 JUDGE LUNDEEN: So would a solution -- I  
25 understand what you're saying. So the question, then,

1 is what's the solution so that in a surgery where you  
2 know certain things have to happen, you know you have  
3 to have a facility to do it in, you know you have to  
4 have an anesthesiologist who is going to put this  
5 person under a general anesthesia, you know that  
6 there's certain things that are always going to happen  
7 in that type of surgery.

8 So would you propose as a solution, then,  
9 that the medical treatment guidelines be modified to  
10 say standard surgery under general anesthesia covers  
11 the following modalities?

12 MR. MILEY: Well, I'll say it this way.  
13 I've even seen before where the UR company, because  
14 the customer, their customer, asked them, hey, get the  
15 facility name.

16 And so they'll approve the 1010 and say, hey,  
17 let us know where, you know, where you're going to  
18 schedule it. Well, they never hear back. And so it's  
19 an empty blank, the facility.

20 And so, again, it wouldn't be that big of  
21 deal, but what's creeping in right now is -- and you  
22 saw that with the recent decision in the LUBA case or  
23 not LUBA yeah, it was LUBA. The choice of

24 MS. SALLEY: The physician?

25 MR. MILEY: -- prescription, the



1 prescription stuff. Where you get to you can go to  
2 this facility and get a surgery for \$15,000, but this  
3 facility is \$115,000 --

4 MS. SALLEY: You can't --

5 MR. MILEY: And it's the same

6 JUDGE LUNDEEN: So your question -- that  
7 goes back to what we talked about earlier. It's  
8 choice of that is the choice of the injured worker  
9 where they -- with whom they seek treatment and where  
10 that treatment is performed, with the exception of the  
11 split -- the circuits that, hopefully, the Supreme  
12 Court will rule on now related to certain things such  
13 as FCEs.

14 MR. MILEY: I thought that was choice of  
15 physician.

16 Isn't that what we're talking about?

17 JUDGE LUNDEEN: You're entitled to be  
18 treated by whom and where, with the exception of FCE  
19 under certain circumstances --

20 MR. MILEY: Right. Right.

21 JUDGE LUNDEEN: you want. Because,  
22 when you undergo an invasive procedure, the theory is  
23 that you are supposed to be comfortable with the  
24 people and the places that are providing that.

25 Now, the underlying question that you're

1 asking is what is a reasonable and customary charge.

2 MR. MILEY: Actually, it's a second -- a  
3 whole separate thing.

4 JUDGE LUNDEEN: That's a whole separate  
5 issue.

6 MR. MILEY: And that's a whole 'nother  
7 Town Hall.

8 JUDGE LUNDEEN: Right. And that is  
9 regulated by the fee schedule as to what is  
10 appropriate. So that's a whole separate issue that's  
11 handled by a different part of the Workers'  
12 Compensation Act.

13 But I do think that you've raised an  
14 interesting point as to what is the scope --

15 MR. MILEY: Right. What's covered?

16 JUDGE LUNDEEN: of this 1010 related  
17 specifically to surgery that requires general  
18 anesthesia.

19 And that's why I'm asking you would it help  
20 you in UR to approve or deny these things if there  
21 were some type of guideline that related to what the  
22 scope of a typical general surgery is, so that  
23 anything that's not covered in that guideline would  
24 then have to be requested separately?

25 MR. MILEY: Right.

1 JUDGE LUNDEEN: Would that assist you?

2 MR. MILEY: Well, it would assist me; but,  
3 again, I'm not trying to suggest that I'm making  
4 these-- again, I'm not the party that's making these  
5 determinations. So I want to make sure and make that  
6 clear.

7 I'm seeing it on the back end. So I'm trying  
8 to make sense of, okay, there's this implant system  
9 that they chose is not approved for the surgery that  
10 they do and so you start going well, goodness, this is  
11 odd. But you go back to the 1010 and nowhere is it  
12 mentioned.

13 So you're kind of at a position of, okay,  
14 well, it's a really, really expensive implant device  
15 that was chosen to be used, and it was never -- it was  
16 never discussed on a 1010 or approved by anyone; and  
17 so, therefore, you know, it just kind of leaves a big  
18 question mark as far as I'm concerned.

19 I appreciate it. I didn't mean to muddy the  
20 waters even more.

21 DIRECTOR KELLAR: Thank you.

22 MS. BREWER: Okay. Now I have more  
23 information for my question.

24 So I'm looking at the members of the workers'  
25 compensation advisory council, and I guess that my

1 concern as a patient advocate is that our goal is to  
2 return these workers to work. A large portion of that  
3 can be provided by physical therapy, a benefit of  
4 physical therapy or even nccupational therapy.

5 So I see on here that the members of the  
6 workers' comp advisory council are a chiropractic  
7 association member, a psychological association, a  
8 psychology association member, attorneys, a claimants'  
9 attorney, an employer attorney, Louisiana State  
10 Medical Society, five members of the general public, a  
11 representative from the LOA among others, but there is  
12 no physical therapy association or physical therapist  
13 on that council.

14 Is that going to be considered in the future?

15 DIRECTOR KELLAR: Joe Shine, a physical  
16 therapist, was on the workers' comp advisory council  
17 for a very long time.

18 The makeup of the council is legislative.  
19 So, if you think that a physical therapist should be  
20 on the committee, then that's probably something you  
21 need to address with your legislator.

22 We can appoint well, we can't, but the  
23 Governor has the option to appoint a physical  
24 therapist as one of the at large members and I think  
25 Joe Shine was one of the at large members from one of

1 the public service commissioned districts.

2 So the Governor has not appointed 17 people  
3 yet. I think he's only recently appointed eight. So,  
4 I mean, he could appoint a physical therapist. But,  
5 if you are interested in having a physical therapist  
6 represented all the time, that's probably something  
7 you should take up with your legislator.

8 MS. BREWER: Okay. So the LPTA would have  
9 to file a bill to request that physical therapy be  
10 added to the workers' comp advisory council?

11 MS. SALLEY: Yes, ma'am.

12 MS. BREWER: That's the only way? Okay.  
13 Or to be appointed by the Governor as a member at  
14 large?

15 DIRECTOR KELLAR: You can appeal to the  
16 Governor, who makes the appointments.

17 MS. BREWER: Okay. Just wanted to check.  
18 Thanks.

19 DIRECTOR KELLAR: Any further questions or  
20 comments?

21 MS. HARRIS: I did want to comment on the  
22 nice young lady which addressed the question about  
23 submitting a 1010.

24 If I'm understanding correctly, utilization  
25 review deemed that as medically necessary and then

1 approved it -- no.

2 Did they deny it, ma'am?

3 MS. WILKINSON: UR denied it, and then --

4 MS. HARRIS: UR denied it, and then the  
5 adjuster approved it.

6 So I've had that to happen before several  
7 times, and I was told by Office of Workers' Comp that  
8 it depends on the carrier because some adjusters have  
9 the capability to override.

10 However, Louisiana is a state where  
11 everything is conducted by a utilization review due to  
12 any services over \$750, anything, it has to be  
13 processed through UR.

14 So that's a great question. What do we do  
15 when utilization review denies and the adjuster  
16 overrides? Which party is correct? Do we go with the  
17 adjuster for final say or utilization review?

18 Also, on the 1009s, once we submit the 1009s,  
19 as you all know, there's a notice on the 1009 that  
20 final approval must come from the adjuster. So we  
21 have to take -- for example, if the 1009 department  
22 medical reviewer deems the service medical approved,  
23 we take that decision, file the 1009 back to the  
24 carrier.

25 I have some carriers, as she stated, they

1 will not respond and I've probably had at least one  
2 carrier to deny or go against what the medical  
3 director advised, which is rare, and that ended up in  
4 court.

5 So my question is if you all can clarify this  
6 for me, because I've had some adjusters and maybe a  
7 few attorneys tell me oh, you do not have to send that  
8 10 --your 1010 back to your adjuster; and it's right  
9 there on the 1009, determination, final determination  
10 must be received from your adjuster.

11 So that's two questions in one. I'm sorry.

12 DIRECTOR KELLAR: Mary Lou wanted to  
13 respond.

14 MS. SALLEY: Well, okay. You're  
15 specifically talking about the situation where the  
16 adjuster approves it on the 1010 form --

17 MS. HARRIS: Yes.

18 MS. SALLEY: -- but the UR had denied it?

19 MS. HARRIS: Yes.

20 MS. SALLEY: Okay. Y'all, I think that is  
21 a judicial confession. I'm sorry, that is an  
22 approval. Because under the administrative code,  
23 technically, the insurance company is an aggrieved  
24 party, and they would have to take the 1009 to undue  
25 their own approval.

1 I mean, that's, to me I'm not giving  
2 anybody legal advice, but that is the promise to pay  
3 the debt of a third party in writing. I'm sorry.  
4 That's judicial confession. You approve it on the  
5 1010 form, honey, you're done.

6 Otherwise, to say otherwise renders the whole  
7 process null and void. I think, if you approve it,  
8 you have to appeal your own approval, which Dr. Picard  
9 I would assume you would lose.

10 But I don't -- I do not see how the 1010  
11 form, the approval on it, is not a promise to pay. If  
12 you -- to say otherwise, why do we even have the  
13 procedure. If an insurance company is not held to  
14 what they approved in writing, I don't know why we  
15 even have this.

16 And, Director, you may want to comment on  
17 that, but I don't see how if you approve something on  
18 the form you get to go oh, I shouldn't have done that.  
19 When they deny it, that triggers my requirement to  
20 appeal it. If they approve it and then change their  
21 mind, they need to file the 1009 appeal. I don't see  
22 how they're not bound by that.

23 And somebody else may have a difference of  
24 opinion. But that's-- you're done. You've approved  
25 it on the state sponsored form where you are legally



1 required to either approve or deny it.

2 DIRECTOR KELLAR: Judge Smith, did you  
3 have a comment?

4 JUDGE SMITH: No.

5 MR. MILEY: This is John Miley again. My  
6 response to that would be, again, if -- and I have  
7 seen this.

8 I know you guys may not believe this, but  
9 I've seen when a procedure was disallowed-- not  
10 disallowed, but not approved in UR and the insurance  
11 company, for whatever reason, extenuating  
12 circumstances, approved it.

13 So, if that to me, that makes the  
14 distinction, because they don't have to go through  
15 with it because UR said yes or no or you know what I  
16 mean.

17 So, to me, it really, again, has to be  
18 evaluated for medical necessity. That's what the  
19 medical treatment guidelines are for. It defines what  
20 is appropriate per medical guidelines and evidence.  
21 And then there's an approval. So I don't

22 MS. SALLEY: The 1010 form -- the statute  
23 doesn't even provide for UR. The statute doesn't even  
24 provide for UR. It's not required. None of these  
25 people have to participate in this peer-to-peer junk.

1 It's not even required.

2 What is required is that the provider file  
3 the form. What's required is a yes or no or I don't  
4 know. What's required is an appeal of a denial or I  
5 don't know. That's all that's required. I don't --  
6 there's nothing in the statute or the administrative  
7 code that an additional approval from the adjuster has  
8 to be obtained.

9 And I think what Latasha is asking is why on  
10 the 1009 when the medical director says yes, I believe  
11 this is contained within the guidelines, why is this  
12 statement on there that the healthcare provider has to  
13 get an additional approval? Is that your question,  
14 Latasha?

15 MS. HARRIS: Yes.

16 MS. SALLEY: I think that's her question.  
17 Because I think some of these adjusters are confused,  
18 and you've got two different situations going on.

19 MS. HARRIS: Yes, but that's definitely  
20 one of my questions.

21 MS. SALLEY: You've got the situation  
22 where an adjuster approves it on the 1010 form, but  
23 now says she's not going to pay for it. That's number  
24 one.

25 And then the question of, if you win the

1 appeal, why is this statement on a 1009 that you have  
2 to get an additional approval. I think those are two  
3 separate questions.

4 DIRECTOR KELLAR: I'm looking for the  
5 1009.

6 MS. SALLEY: I think what Latasha is  
7 asking is okay, so you win the 1009. The director  
8 says yes, it's contained within the guidelines, but  
9 you have to get additional approval.

10 I think what she's asking is now do I have to  
11 go back and file a new 1010 and get the yes or no on  
12 the 1010 form.

13 MS. HARRIS: Because there's --

14 MS. SALLEY: What document -- what  
15 document do you get from whomever as the promise to  
16 pay?

17 MR. JACKSON: Mary Lou, I think you have  
18 to get a new 1010, because the employer and the  
19 carrier have the right to appeal.

20 MS. SALLEY: Right. But what do you do if  
21 that time delay-- let's say you don't. The 15 days  
22 expires.

23 Where are you legally? Are they bound by  
24 at that point is it res judicata? Is your client  
25 bound by what the director finds, or does Latasha

1 there are two separate questions, but they're  
2 intertwined. What document are we going to say binds  
3 the insurance company to pay?

4 It's a good question. It's a great question.

5 MR. JACKSON: Between the medical  
6 director's ruling and the 1010 form?

7 MS. SALLEY: Well, she's talking-- we've  
8 got two different factual situations here.

9 MR. JACKSON: Right. Well, I'm going off  
10 your second factual situation.

11 MS. SALLEY: Yeah. Okay. So let's say  
12 Dr. Picard says no, it's contained within the  
13 guidelines. This is my ruling. We know what's going  
14 to happen if you appeal it to the OWE.

15 MR. JACKSON: Within 15 days?

16 MS. SALLEY: Right. We know what happens.  
17 I think what she is saying is let's say your client  
18 doesn't appeal it.

19 At that point is Liberty Mutual bound to pay  
20 for the surgery? Does she have to get additional  
21 authorization or something in writing?

22 MS. HARRIS: Because it's indicated to  
23 obtain --

24 MS. SALLEY: Right, because his 1010 --  
25 this 1009 says yes, I think it's contained within the

1 guideline, but you have to obtain additional approval  
2 from Liberty Mutual.

3 MR. JACKSON: I understand that. And I'm  
4 not going to answer that question on the record.

5 MS. SALLEY: I know. I understand. It's  
6 a great question. It's that's

7 JUDGE LUNDEEN: Mary Lou, If you're using  
8 legal words, because we have a lot of doctors in the  
9 room, would you please explain what they mean.

10 MS. SALLEY: Res judicata?

11 JUDGE LUNDEEN: Yeah, res judicata.

12 MS. SALLEY: It means the parties are  
13 bounds by the decision. It means you don't get  
14 another appeal. You don't --

15 So the question on the floor, even though  
16 it's two different situations, is what document are we  
17 all going to say binds someone to pay?

18 You know, my personal opinion is you approve  
19 that on that 1010 form, that's a judicial confession.  
20 That means you say I did it, you know. That's what  
21 that means. You have now bound yourself by your own  
22 admissions.

23 The 1009 is a little bit different, because  
24 that's like a ruling from a Court. That is the  
25 director saying we believe it is contained within the

1 guidelines. That's different. So I think that's a  
2 really good question.

3 DIRECTOR KELLAR: You know, we'll look at  
4 it. I was looking for a decision letter, but I don't  
5 have one. I do have the 1009 with me, but not a  
6 decision. I think it is a good question.

7 MS. SALLEY: It is.

8 DIRECTOR KELLAR: It's something that  
9 we'll take a look at.

10 MS. SALLEY: But I do think, when an  
11 adjuster approves something on that form, they're  
12 bound by it because the administrative rules say any  
13 aggrieved party. So that would be an insurance  
14 company, an adjuster.

15 She would at that point have to file the 1009  
16 appeal, or she's bound by it just like I'm bound by if  
17 it's a no.

18 DIRECTOR KELLAR: Okay. Thank you.

19 Anybody else? Cathy, do you want to make any  
20 comments?

21 MS. CHESSON: Let me make a few.

22 DIRECTOR KELLAR: Sure.

23 MS. CHESSON: I'm Cathy Chesson, one of  
24 the nurses in medical services, and the 1009s come to  
25 our department.

1 I want to kind of revisit what Mikal said at  
2 the beginning. Since the flood, we were inundated  
3 with 1009s. When we came back, we had a huge amount.  
4 So, in order to expedite the process, there are now  
5 five of us trying to data entry those 1009s.

6 So some of the problems we're seeing is that  
7 a 1009 is submitted on the facts but not in its  
8 entirety, and I'll give you an example. I pulled up  
9 one, and right up front it did not have a 1010 on it.

10 So you are all probably familiar with the  
11 front desk rejections. So it's not going to go any  
12 further than that. It's not going to come back to the  
13 nurses and wait for a rejection for a week later. So  
14 the clerical staff up front will send out a front end  
15 rejection.

16 Prior to the flood, there were only two  
17 people doing those data entries. So the two of them  
18 were going back and forth; and, if they did Mary Smith  
19 and then five down on that, here comes Mary Smith  
20 again, well, then, they see oh, they did it in two  
21 submission so there's the 1010 down there. They would  
22 catch it on the front end.

23 What's happening now is we have five of us  
24 putting in. So I grab one, go to look at it, no 1010.  
25 I'll send out my front end rejection. Well, then the

1 next four people do the next four. Then I'll pull up  
2 this next one and guess what, there's a second  
3 submission with just a 1010.

4 Now I got it, so I was able to reverse that  
5 front end rejection and go ahead and work the 1009.  
6 If Mikal would have gotten it, you would have gotten  
7 two rejections; one from me, then one from your other  
8 submission.

9 So it's really important and helpful and it  
10 expedites the process if you can send the 1009 in its  
11 entirety to us. These multiple and bits and pieces  
12 with as many as we're getting, you could submit it 15,  
13 20 minutes later, an hour later, submit the rest of  
14 it, and guess what, there might be 15 more ahead of  
15 you. And we're not going to see it until sometimes  
16 the next day.

17 So please try and submit the filing in its  
18 entirety would be very helpful and expedite the  
19 process, because I know y'all get frustrated with the  
20 front end rejections and the back end rejections. So  
21 we don't want to reject, either. So, if you send in  
22 everything you need, we'll try and move those files  
23 along.

24 DIRECTOR KELLAR: Is there anything else  
25 from anyone else? Okay.



1 MS. HARRIS: Can you please -- I'm sorry.

2 DIRECTOR KELLAR: Go ahead.

3 MS. HARRIS: Can you all please address  
4 that compensability is not a -- not addressed in 1009  
5 department.

6 DIRECTOR KELLAR: Causation.

7 MS. HARRIS: Yes.

8 DIRECTOR KELLAR: It's not addressed.

9 MS. HARRIS: It's not addressed.

10 DIRECTOR KELLAR: At the 1009 process.

11 MS. HARRIS: I just -- thank you.

12 DIRECTOR KELLAR: All right. Listen,  
13 thank you all very much for coming, and thank you for  
14 your comments.

15 As I said, we're going throughout the state  
16 having these Town Hall meetings to give providers and  
17 employees and employers, TPAs, URs an opportunity to  
18 tell us about their experiences with the medical  
19 treatment guidelines and the process.

20 We hear you. We're not unaware that there  
21 are problems. But you guys are in the trenches, and  
22 so we have experiences that we are not aware of. As a  
23 matter of fact, we've heard many of them here today  
24 and we thank you for your candor.

25 We have a court reporter who has recorded

1 everything that you've said; and, when we finish with  
2 these Town Hall meetings, we intend to go back and  
3 review the comments that you've made and to make some  
4 corrections to the 2715 process, which is the rule  
5 that implements the medical treatment guidelines.

6 If you think of anything or have any  
7 questions after today, we have other Town Hall  
8 meetings in your area, the one in Monroe is tomorrow.  
9 There's a list of the Town Hall meetings on the table.  
10 You're welcome to come to multiple Town Hall meetings.

11 There's a gentleman in here who was in New  
12 Orleans yesterday who promised me he would ask his  
13 questions today because he didn't ask them on Tuesday,  
14 but he didn't ask them today, either. So maybe he'll  
15 come to Monroe and ask them there.

16 But, if you are unable to come to any of the  
17 other Town Hall meetings, and you do have questions or  
18 comments, please feel free to contact us.

19 Again, if you go to Laworks.net, you can find  
20 a number or an e-mail address for each of us and  
21 please feel free to contact us and give us more  
22 insight into your challenges and regards with the  
23 medical treatment guidelines and its process.

24 Thank you. Thank you all very much for  
25 attending.

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(Whereupon, this proceeding was concluded for  
the day)

\* \* \*

C E R T I F I C A T E

STATE OF LOUISIANA:

PARISH OF CADDO:

I, Donna B. Crenshaw, Certified Court  
Reporter in and for the State of Louisiana, as the  
Officer before whom this proceeding was taken, do  
hereby certify that the proceedings were reported by  
me in the stenotype method, was prepared and  
transcribed by me or under my personal direction and  
supervision, and is a true and correct transcript to  
the best of my ability and understanding; that I am  
not related to the parties herein, nor am I otherwise  
interested in the outcome of this matter.

SUBSCRIBED AND SWORN TO on this the 26th  
day of September, 2016.

**Cl JJ JNJ**

Donna B. Crenshaw  
Certified Court Reporter

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