

WCLA NEWS

President's Message

The past two years have been challenging and transformative for our practice. There were ups; there were a lot of downs. Many of our social events were canceled or modified. While we kept ourselves apart physically, we stayed connected with Zoom and other forms of communication. Our educational programs thrived on Zoom. We adjusted and adapted to the changes, finding ways to make do and still engage.

As we move into 2022, we look ahead to a year which hopefully can bring us together again in more ways than one. Monthly CLEs will continue on Zoom. Membership embraced this change, finding it a convenient way to meet CLE requirements. At the same time, one of the wonderful aspects of practicing before the Commission is the personal connections we make. We are a small community. Our practice is lucky to be more congenial than most other practice areas. We could go head-to-head over a case one day, but then socialize with each informally at the Commission or at a WCLA event without animosity toward each other. We can compete for the same clients, but we work together to preserve and build our practice area. While technology provided us with the means to get through the last two years, it does not replace the person-to-person relationships we form when we meet in person.

For 2022, we will have opportunities to reconnect with each other. I want to see the WCLA committed to meeting not only the professional and educational needs of our members, but also insuring we keep the relationship we formed over the years. We can provide membership with opportunities to

connect with each other, network with sponsors and build relationships through in-person social and some educational events. We need to ensure our younger members have the opportunities to form the same relationships us "older" members benefited from over the years.

Under Vitas' leadership in 2021, the Board agreed to file an amicus brief in two cases pending before the Illinois Supreme Court. The Armstead and McDonald cases provided a unique opportunity for the Board to advocate for the workers' compensation practice. The WCLA is a bipartisan organization. Our advocacy in the two cases before the Supreme Court demonstrated the bipartisan nature of the organization when petitioner and respondent members both agreed the organization needed to be involved and not sit on the sidelines. The Court avoided reaching a decision on the key question in Armstead on a jurisdictional basis, but I like to think our amicus brief in the McDonald brief influenced the Court just a bit. If you have a chance, I encourage you to listen to the oral arguments in both cases. Our brief was specifically mentioned by the attorney for McDonald during his argument.

I thank Vitas for leading us through 2021. 2022 is going to be a great year for the WCLA and our practice area. We look forward to seeing everyone and working together to make this the best area of law to practice. If you have suggestions for how we do this, I encourage you to reach out to the Board. We are here to serve your needs.

- Michelle L. LaFayette
President WCLA



Winter 2022

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Interested in submitting an article? Contact John Castaneda at jcastaneda.cac@gmail.com

WHAT'S HAPPENING TO INJURED INDIVIDUALS ONCE THEY SETTLE?

By AMETROS

When settling cases with a [Medicare Set Aside \(MSA\)](#), often the ongoing compliance responsibility for the injured worker, including annual reporting to the Centers for Medicare and Medicaid Services (CMS), can be an afterthought. There is a common misunderstanding that CMS is not finding out about settlements and is not tracking how an individual spends those funds. However, many individuals that do not spend their funds properly find out the truth when they receive a [denial letter](#) in the mail – CMS is watching.

What's Actually Happening After Settlement?

John was an injured individual who suffered a lumbar spine injury at his construction job. The insurance company offered him a \$150,000 Medicare Set Aside (MSA) for his future medical treatment to settle out his case. John had been frustrated with utilization reviews and treatment denials, so with the advice of his attorney, he accepted the settlement to get out of the workers' compensation system.

John was advised he was supposed to spend the money a certain way, and do some reporting, but was not aware of the specifics, and used some of his MSA money to purchase a new car. A few years later, his MSA account reached \$0. The next time he went to his doctor, he showed his Medicare card. A few weeks after that, he got a letter from Medicare denying payment for his \$150 physical therapy visit for his back. The letter said he should have settlement funds to pay for his treatment. Joe was not sure what to do, as he did not have funds left in his MSA. He called his attorney and asked him what to do.

While this example is simplified, it is a real situation that the injured worker and his attorney had to deal with; these issues are popping up after the settlement of workers' compensation cases.

CMS is Denying Treatments

It's been well over a decade since CMS implemented the capability "[...to prevent Medicare from paying primarily for future medical expenses that should be covered by workers' compensation Medicare set-aside arrangements \(WCMSA\).](#)"

CMS explains in the [WCMSA Reference Guide](#), v3.3, Sec. 18.0, "Medicare makes no payments related to the WC injury until the WCMSA has been used up. This is accomplished by placing an electronic marker in CMS' systems used to pay or deny claims. That marker is removed once the beneficiary can demonstrate the appropriate exhaustion of an amount equal to the WCMSA plus any accrued interest from the account."

In the instance where Medicare believes funds are available, they will issue a denial and a beneficiary will be alerted by way of a [Medicare Summary Notice \(MSN\)](#). An MSN is a statement Medicare issues to beneficiaries every three months indicating what they covered in the previous quarter. In the MSN, a specific code will be issued for denials and indicate, "[y]our claim is being denied by Medicare because you may have funds set aside from your settlement to pay for your future medical expenses and prescription drug treatment related to your injury (ies)." See [sample redacted MSN with denial](#).

Continued on page Page2

Moreover, “[i]f payments from the WCMSA account are used to pay for services other than Medicare-allowable medical expenses related to medically necessary services and prescription drug expenses for the [workers’ compensation] settled injury or illness, **Medicare will deny all WC-injury-related claims until the WCMSA administrator can demonstrate appropriate use equal to the full amount of the WCMSA.**” See WCMSA Reference Guide, v3.2, Sec. 17.3 (emphasis added).

Protecting Injured Individuals – Professional Administration as a Solution

With denials being issued, it has become more pertinent than ever to ensure injured individuals are being protected after settlement. Many individuals settle and self-administer their MSA, meaning they manage all reporting, accounting, and fee negotiations on their own.

“I haven’t settled a case with a self-administered MSA in probably ten years simply because I find such a situation to be so concerning. I have tried to read CMS’s guide to a self-administered MSA several times. I am a lawyer and find the guide to be incredibly overwhelming and confusing,” says Mack Babcock, Managing Attorney at The Babcock Law Firm, LLC. “I have no idea how an individual would figure out all the complexities including, but not limited to, how to pay appropriate rates for their treatment, maintain appropriate records and comply with required reporting. I want my clients to be taken care of properly and I certainly don’t want to get a call when things go bad.”

If an individual does not appropriately spend their funds in accordance with CMS guidelines, they jeopardize their future Medicare benefits, and risk denials.

“As former claimant counsel and now mediator, my primary concern about self-administration is whether the individual will maintain integrity of the interest bearing MSA account and not utilize funds for non-compensable or unrelated injury purposes,” comments Mediator and teacher, Chuck Davoli. “As a mediator, I’ve seen many claimant counsels often advise individuals to use the MSA funds as they may see fit and underplay short or long term implications of MSA mis-management and potential effects on their future Medicare eligibility.”

Professional administrators manage all this complexity on behalf of the individual. Administrators ensure individuals are not overpaying on treatments and prescriptions by negotiating to state fee schedules and are ensuring proper depletion and reporting of the MSA account each year to CMS. Many attorneys are relying on professional administration to ensure injured individuals they are working with are protected from situations like these once they settle.

“I always explain professional administration and the benefits to my clients when they have future medical care as part of their settlement,” says Catherine Surbeck, Attorney at Freedman & Lorry, P.C. “I want to be sure they understand the implications of mis-spending their funds, and that they know there is a resource out there to ensure they don’t have to manage it all on their own.”

Professional administration offers protection that the injured person’s future Medicare benefits will not be jeopardized due to improper spending of funds, and as such, should be a consideration in every settlement with future medical.



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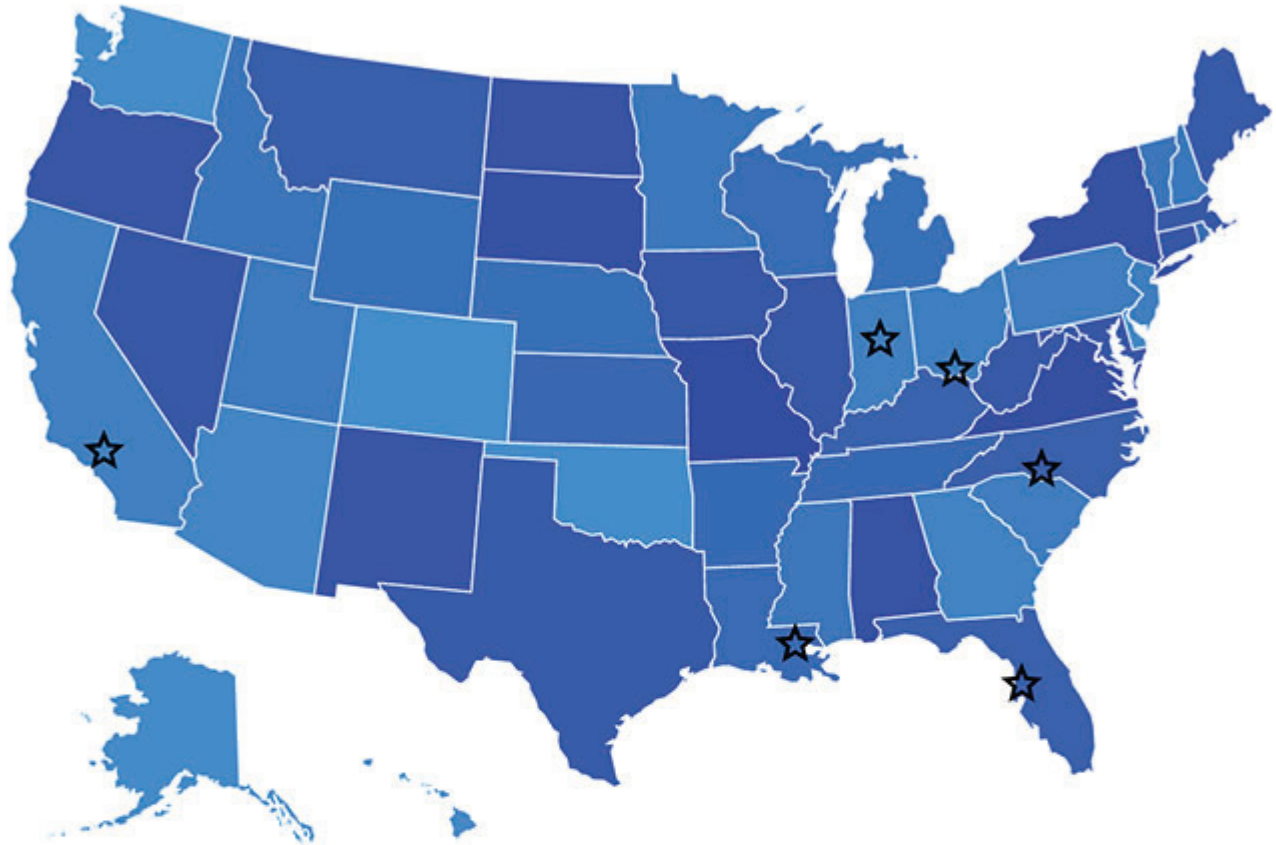


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H-WAVE: AN EFFECTIVE DRUG-FREE TREATMENT OPTION FOR INJURED WORKERS

The Centers for Disease Control and Prevention estimate 20.4% of adults in the United States experience chronic pain daily, with 19.6 million adults experiencing high-impact chronic pain that interferes with daily life and/or work activities. The cost of pain to our nation is estimated between \$560 to \$635 billion annually.

Access to pain management treatments has been limited in the last two years due to the pandemic, leaving physicians with far fewer tools in their toolkit for their chronic pain patients. Therefore, use of pain medications increased during this time frame, leading to increased opioid overdoses and death. Injured workers experienced the same restrictions to treatments for pain relief and functional restoration, further delaying their recovery.

As recent research indicates, “Pain treatments have historically centered on drugs, but an “opioid crisis” has necessitated new standards of care, with a paradigm shift towards multi-modal pain management emphasizing early movement, non-narcotics, and various adjunctive therapies.”

But what happens when 1) conservative treatments like physical, behavioral, and occupational therapies are unavailable; 2) treatment with TENS devices proves unsuccessful, and 3) a patient doesn’t want the harmful side effects that come with pain medications? Fortunately for injured workers and chronic pain patients alike, there is

another option.

An effective alternative treatment for chronic pain exists and has benefitted hundreds of thousands of patients over the past 40 years. H-Wave is currently utilized by physicians and treatment facilities all over the United States, including more than 70 professional sports teams, which use this FDA cleared device to help control player’s pain while enabling a quick recovery.

H-Wave is conditionally recommended by the Official Disability Guidelines (ODG) as a treatment for chronic pain. ODG is the most widely used guideline in the workers’ compensation industry today. This tool helps employers and carriers determine if requested treatment is reasonable and necessary to address symptoms of a chronic condition or injury. Most other types of electrical stimulation such as TENS, NMES, or Interferential stimulators are not recommended by ODG for chronic pain.

Peer-reviewed published studies have shown that 79% of H-Wave users reported functional improvement making it possible to return to activities such as walking, lifting, and sleeping. Additionally, 78% of users reported significant pain reduction, and 65% reduced or eliminated pain medication usage.

So how does this device work to produce such optimal outcomes? By inducing

Continued on page Page7

non-fatiguing muscle contractions, the device flushes out the waste and congestion that are often the root cause of pain. Additionally, nourishment is delivered by creating increased blood flow and the promotion of new blood vessels in the impacted region. The H-Wave's secondary setting for treating pain is so effective that the FDA cleared this technology for use as electronic dental anesthesia.

Recent research supports H-Wave's effectiveness, stating it "has enough reasonable evidence to be considered as an adjunctive component of non-opioid multi-modal pain management, given its excellent safety profile and relative low cost."

Unlike opioid utilization or invasive treatments, this technology can be obtained for a fraction of the long-term costs, thus providing a much greater return on investment. The unit helps injured workers recover, and —employers and carriers' close claims thereby recovering reserve salvage, all for a static and predictable fee.

During a time when access to medical care and/or treatments may be limited, H-Wave can effectively manage chronic pain without harmful side-effects; therefore establishing a safe and drug-free alternative to opioids, available 24/7 to patients at home. Its rehabilitative capabilities cannot be found in other types of electrical stimulation making it the most effective option to help injured workers return to function faster.

Farewell, My Friend

The Workers' Compensation Lawyers Association lost a very dear and valued friend, Mr. Ellis M. Sostrin. Personally, I lost my "second wife." For over 40 years that's what he called himself and what he would say to the receptionist when he called my office. Of course, we would have to let any new employees know not to be alarmed, this was just Ellis, goofing around.

I looked forward to my daily call from Ellis. His legendary "kvetching," which is Yiddish for complaining, was a staple of our conversations. Our daily calls consisted of discussing cases, serving as a critical sounding board for each other on how to handle those cases. He called me "Boli," as in "Stromboli," and would say, "Boli: who is this lawyer?" "Do you know this new arbitrator?" "Do you know this adjuster?" He was such a character...he truly belonged on *Curb Your Enthusiasm* in Larry David's inner circle.

Mixed in between my serious conversations with Ellis were the jokes, most of which I cannot repeat. The jokes were originals, just like him. He would make me laugh so hard that I could not hold it in. I miss his jokes, and our conversations, terribly. His gifts to us were his comedy, candy that he personally hand-crafted (which was absolutely amazing), and his willingness to listen and help people. Helping people was Ellis' favorite thing to do, well, other than handing out his chocolate candy at the Commission.

Ellis, my dear friend, we miss you, all of us. Our sincerest condolences go out to Ellis' loyal, loving, and caring wife, Rebecca, and, of course, his darling daughter, Rachel, and his grandsons, Matthew and Jack. May his memory be a blessing.

- Neal B. Strom

In Memorium Clifford J. Gannon

It is with deep regret we announce the passing of Clifford I. Ganan on February 6, 2022. He was a beloved colleague, mentor and friend.

Cliff was a graduate of the University of Illinois where he first met and enchanted his wife of many years, Barbara (Bunny). They have been blessed with two children, Jordan and Dori, daughters in law Jill and Leslie, and grandchildren Mikayla and Seth. Cliff graduated from DePaul Law School and in 1970 launched Ganan & Shapiro, P.C. with fellow DePaul graduate Jay M. Shapiro. The firm owes its every success to Cliff, his hard work and dedication to the practice of workers' compensation defense.

It was never really about the work, however, but the people he met along the way. Cliff treated everyone he ever met as a friend, and every friend he ever made as family.

Cliff loved good food; he had a favorite restaurant (or three) in every city he ever visited, no matter how exotic the locale. He loved to travel, if only to meet new people and make new friends.

He will be missed by us all.

(Editor's note – for more information on Mr. Ganan - <https://gananlaw.com/cliff-ganan-celebrates-50-years-attorney/>)



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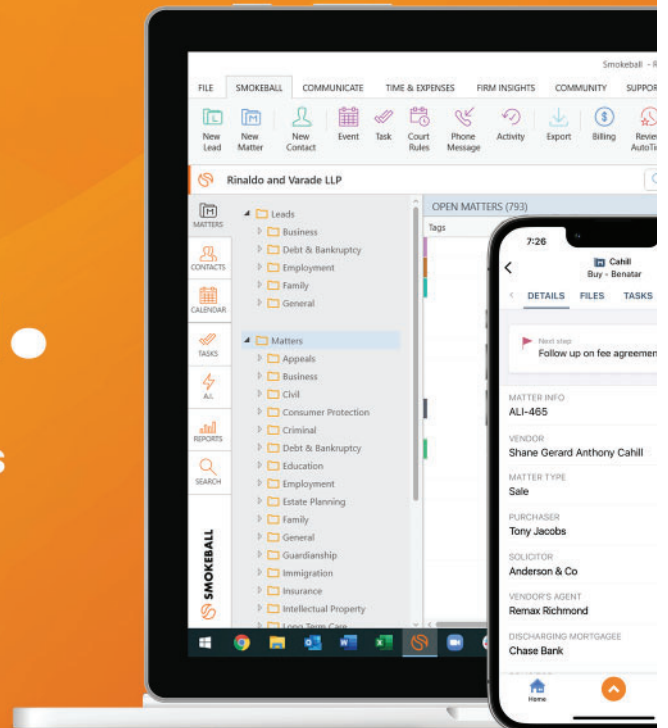
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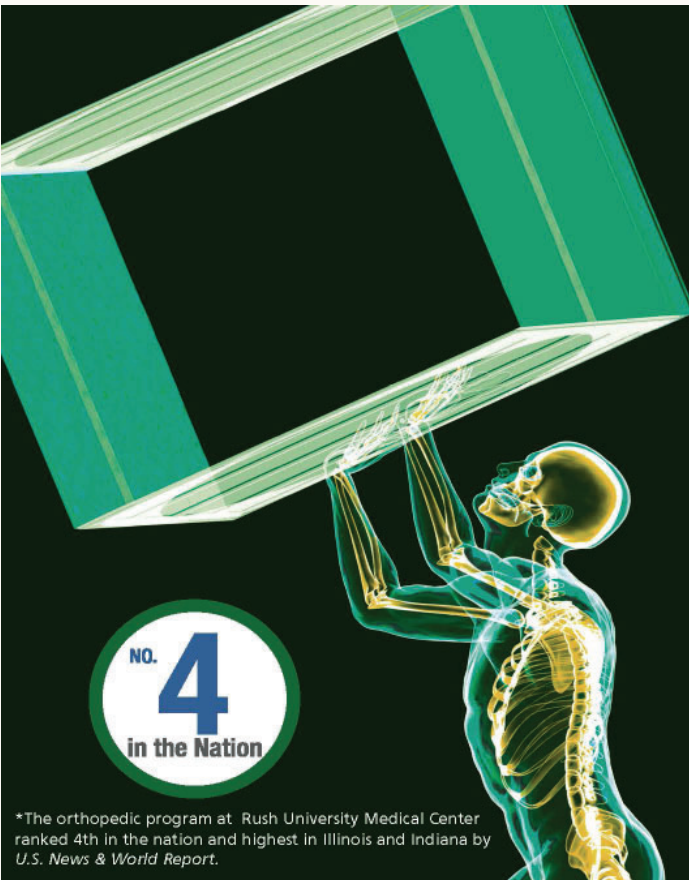
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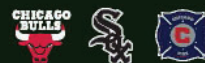
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*Advances in Therapy 2006
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For details and registration, [visit our website](#)

CLE Credit for WCLA members

Below Noon Seminars are Virtual and On-Demand

Feb 24 - Noon | Hr. CLE Seminar

Mar 31 - Noon | Hr. CLE Seminar

Apr 28 - Noon | Hr. CLE Seminar

May 26 - Noon | Hr. CLE Seminar

Jun 30 - Noon | Hr. CLE Seminar

Jul 28 - Noon | Hr. CLE Seminar

Aug 5 - Annual Golf Outing - Oak Brook Hills Resort

Aug 25 - Noon | Hr. CLE Seminar

Sep 29 - Noon | Hr. CLE Seminar

Oct 27 - Noon | Hr. CLE Seminar

Nov 17 - Noon | Hr. CLE Seminar

Dec 2 - Holiday Party - Cafe Brauer

Dec 15 - Noon | Hr. CLE Seminar

Jan 14 - Installation Dinner 2023 - Offshore