



President's Message

Dear WCLA Member,

Many have approached me this year laughingly providing their condolences for the challenge that the role of president of WCLA brings with it during a year fraught with chaos. While this role has been demanding, I am honored, and I welcome the opportunity to help carry this group through this year and through these trying times. I am prouder than I have ever been to be a part of this organization and to work with our Commission, the Chairman, our officers and board and all of you, in getting through these times.

Year 2020 will be going down in history for many reasons, some good and some bad. Thus far, it would not be out of line to characterize this as a year of crisis. We are facing societal unrest on a large scale that will hopefully bring with it, change. We are facing a global pandemic the likes of which have not been witnessed for over 100 years. To be sure, the impact of Covid-19 has touched just about everyone in this country, if not the world, and our industry is no exception.

We have all largely had to adapt to working remotely. We have had to adapt to remote video depositions. We have had to learn what "Zoom" and "WebEx" are and then figure out how to use them. We have had to adapt to the Commission closing for all non-emergency matters in March, April and May and the impact that has had on our businesses and clients. And we are now adapting to pre-trials by WebEx. This has been a year of significant changes in a short period time that have impacted how we practice law, how we advance our cases and how we function as an industry.

John F. Kennedy said, "[D]o not pray for easy lives. Pray to be stronger men." As I sit back and reflect on all that we have gone through as a nation, and particularly as a practice in these last three months, it is clear that we have become stronger. We have not taken a back seat to the crisis. We did not let everything grind to a halt during the stay at home order. We have risen to the challenge and implemented procedures to allow our cases to continue moving forward during this time. That cannot be said of every legal industry during this time. We have adapted to these changes that have been thrust upon us out of necessity.

We are privileged to have the support of a Commission with an open-door policy that includes not only listening to our needs and implementing measures to assist them, but that will take our calls and our emails to help us navigate all of these new procedures. These have been trying times on all of us, and yet through them, we have come together. With that said, a crisis does not always bring out the best in everyone. Please remind your attorneys and your staff members to act in a manner that reflects well on them, their employers and this industry. Professionalism is even more important during times like these. Despite all of the changes, there are positive developments that the WCLA has

Spring 2020

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

been a part of this year. We have our new learning management system (Elevate) up and running now, and not a moment too soon. Implementation of the LMS to our website has allowed our CLE courses to continue without pause via Zoom. We are proud to say that our CLE seminars will be posted on our learning management site for 12 months, during which time members can receive CLE credit after the live event. We have a CLE tracker that will track and log all of your WCLA CLE hours; we are working on a better way to tally those hours. That should be rolled out soon. There is also a feature to upload hours from other providers. The WCLA is extremely excited to provide these benefits to our membership.

The WCLA continues its charitable partnership with the Ronald McDonald House through 2020. This is an incredible organization that provides support to families with children undergoing medical treatment at Lurie's Children's Hospital. We have been able to provide support, housing and meals to hundreds of families since 2015. We are also humbled to announce that the Ronald McDonald House has dedicated a transplant room (#806) to WCLA, in honor of our continued partnership. Please follow this link to see testimonials from one of the families that had the benefit of staying on that transplant floor. This video best shows the impact of our ongoing donations. <https://www.youtube.com/watch?v=ppjsa-IE9VMY>. You will also find photos of the room and our plaque in the pages that follow.

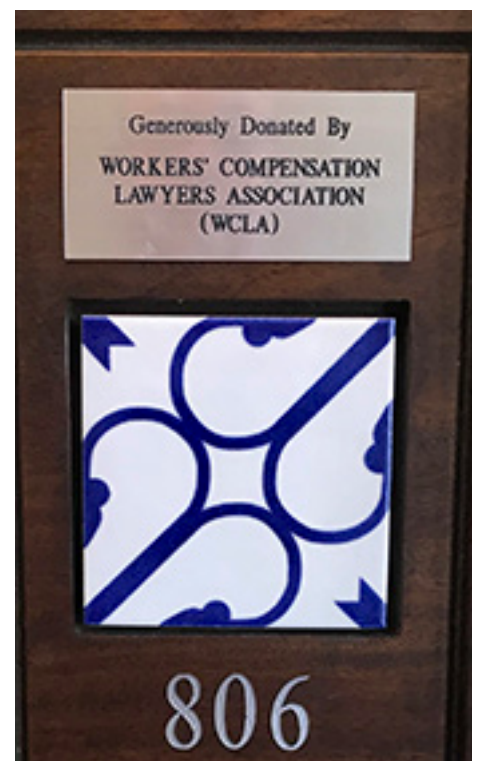
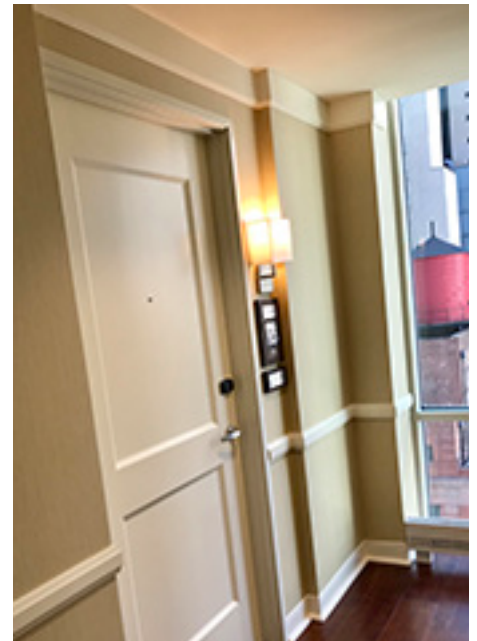
As of now, the golf outing re-

mains on the books for August 7th. We have contingency plans in place for our vendors, to ensure their ability to participate in marketing their businesses, on the golf course itself if necessary. We will have the raffle. We have some ideas about how to proceed with that while keeping crowds to a minimum. Similarly, we are considering cocktails with heavy appetizers following the golf outing to occur outside, with tables spread apart, if an inside meal cannot yet take place. As conditions are developing weekly, we will update you with any changes to the event that must occur as the date draws near.

We are excited to announce that this year's Holiday Party will take place on December 4th at the Shedd Aquarium. We will again have trolleys (this time two) available to transport members from the loop to the event. This is a gorgeous venue and we expect a fantastic event. If restrictions loosen as the year moves forward, we will work to schedule happy hours to encourage networking, if appropriate.

We are delighted to have you all as members. Even despite the multiple crises plaguing us right now, our membership continues to increase. Please continue to support WCLA by referring friends and colleagues to our organization. While 2020 has been rough thus far, we will get through this together and be better for it.

- Laura D. Hrubec
WCLA President



LETTER FROM IWCC CHAIRMAN BRENNAN

Dear President Hrubec,

Thank you for another opportunity to speak to WCLA members.

Since the outbreak of the Covid-19 Virus, we have had to pivot and attempt to move forward as a government, an agency and a practice. Our many procedural changes have been dictated by the unknown.



The Commission has remained open and continued its work, albeit in a different way. This continuation of business is necessary, as without our involvement, the process could grind to a halt.

We have posted procedures for past months and now for June Commissioner and Arbitration Calls and hearings. These procedures have been dictated by the continuing Covid-19 pandemic.

They are temporary and hopefully will be short lived. They are fluid; as when a process is not working, it will be amended or discarded.

We are very thankful for the assistance that the WCLA has provided. By comment and explanation WCLA has enhanced the material that we have posted on our website. WCLA's assistance augments our communication with the bar and the public.

Please know that we will continue to collaborate with WCLA so that our resources are being used to conduct our business in the safest possible way. We want your input so that we can continue to improve. Do not hesitate to let us know when a process is not working or how it can be improved upon.

Again, thank you and your members for all of your good will and assistance

Best Wishes

A handwritten signature in black ink, appearing to read "Michael J. Brennan". The signature is written in a cursive style with a large initial "M".

Michael J. Brennan,

Illinois Workers' Compensation Commission Chairman

IWCC LACKS STATUTORY AUTHORITY TO AWARD ATTORNEY FEES AND PENALTIES BASED ON RESPONDENT'S DECISION TO REVOKE AUTHORIZATION FOR SURGERY

*By: Cameron B. Clark
Law Offices of Cameron B. Clark,
P.C.*

In the case of *O'Neil v. IWCC*, 2020 IL App (2d) 190427WC, Claimant appealed from an order of the Circuit Court of Lake County that confirmed a decision of the Commission that reversed an award of attorney fees and penalties assessed by the arbitrator against Respondent. The Commission, relying in part on the opinion in *Hollywood Casino-Aurora, Inc. v. IWCC*, 2012 IL App (2d) 110426WC, concluded that it was without statutory authority to award attorney fees and penalties pursuant to Sections 16 and 19(l) of the Act based on Respondent's decision to revoke authorization for surgery to claimant's right knee. The Appellate Court affirmed.

On October 13, 2016, Claimant filed an Application for Adjustment of Claim alleging that he sustained a work-related injury to his right knee on February 11, 2016. The matter proceeded to an arbitration hearing pursuant to Section 19(b) of the Act on May 15, 2017.

Claimant was employed by Respondent as a marine technician. On February 11, 2016, Claimant was installing a swim platform on the back of a boat. While positioning the platform onto support brackets, claimant lowered his right knee onto the concrete floor below. As Claimant knelt onto his right knee, he "felt a pop and then a sharp pain" and immediately twisted his knee in response. The parties stipulated to accident, but disputed causal connection.

On February 13, 2016, Claimant, a veteran of the United States Navy, sought medical care for his

right knee at a VA facility. Claimant ultimately came under the care of Dr. Chams and surgery was recommended for his right knee. On October 10, 2016, Respondent's insurance carrier approved the surgery recommended by Dr. Chams. Claimant testified that he delayed the surgery because he was the only marine technician and Respondent was "very busy." The surgery was then scheduled for December 17, 2016. On December 8, 2016, Dr. Chams received notification that Respondent's insurance carrier had revoked the surgery authorization for Claimant, citing the need for "additional investigation."

Claimant testified that he was told that Respondent revoked the authorization for surgery because of a note in the VA records referencing a prior procedure to his right knee in 2001. Claimant denied ever undergoing any procedure or sustaining any injury to his right knee prior to the February 11, 2016 work accident. He admitted that he had a prior surgery to his right leg, but that was to the shin area, about three inches below the knee. Claimant testified that the procedure left a visible scar. The Arbitrator, upon being shown the mark, described it as "a faint scar 3, 3 and half inches below the knee."

Following the arbitration hearing, the Arbitrator found in favor of the Claimant on the issue of causal connection and awarded the prospective surgery recommended by Dr. Chams. The Arbitrator also considered whether penalties and attorney fees should be imposed upon Respondent. The Arbitrator concluded that Respondent "offered no good-faith arguments at trial indicating that there was a genu-

ine controversy pertaining to the payment of benefits under the Act, i.e., authorizing the surgery." In this regard, the Arbitrator rejected Respondent's reliance on the statement from the VA record of February 13, 2016, as proof for the proposition that claimant received treatment to his right knee prior to the workplace accident, explaining that the removal of lipomas located below the kneecap more than 14 years prior to the claim at issue did not constitute evidence of claimant undergoing treatment to his knee prior to the work accident.

The Arbitrator also emphasized that Respondent offered no medical opinion that Claimant's right knee condition was not causally related to the workplace accident, such as a Section 12 report or utilization review. As such, the Arbitrator found Respondent liable for Penalties in the amount of \$6,900 pursuant to Section 19(l) of the Act "for without good and just cause failing, neglecting, refusing, and unreasonably delaying payments under Section 8(a) of the Act, i.e., authorizing the surgery." In addition, the Arbitrator found Respondent liable for attorney fees in the amount of \$1,380 pursuant to Section 16 of the Act "for engaging in frivolous claims that do not present a real controversy and creating an unreasonable and vexatious delay by continuing proceedings in that vein." The Arbitrator expressly declined to award any penalties pursuant to Section 19(k) of the Act on the ground that "case law is clear that Section 19(k) penalties for future medical are not appropriate."

Respondent filed a Petition for

Continued on Page4

Review. A majority of the Commission modified the decision of the Arbitrator. The Commission concluded that the surgery recommended by Dr. Chams was reasonable, necessary, and causally related to claimant's work-related accident. Nevertheless, relying upon the holding in Hollywood Casino, the Commission concluded that it lacked statutory authority to award penalties based on Respondent's decision to revoke authorization for claimant's knee surgery. The Commission acknowledged that Hollywood Casino involved the assessment of penalties under Section 19(k) of the Act, but found that the same holding applies "by extension" to the assessment of attorney fees and penalties under Sections 16 and 19(l) of the Act. The Commission also observed that Section 16 attorney fees are predicated on an award pursuant to Section 19(k) of the Act, and since Hollywood Casino does not allow it to award penalties for failure to authorize medical treatment, it follows that Section 16 attorney fees are likewise not available under such circumstances. Accordingly, the Commission reversed the Arbitrator's award of attorney fees and penalties. Thereafter, the Claimant sought judicial review. The Circuit Court of Lake County confirmed the decision.

On appeal before the appellate court, Claimant argued that the Commission erred in finding that it lacked statutory authority to impose penalties pursuant to Section 19(l) of the Act based on Respondent's unreasonable delay in authorizing surgery to his right knee. First, Claimant argued that the Commission incorrectly relied on Hollywood Casino since that case dealt only with the imposition of penalties pursuant to 19(k) of the Act. Second, Claimant contended that the precedent of Hollywood Casino

did not apply to medical treatment prescribed on or after September 1, 2011, due to amendments to the Act promulgated by the legislature.

The Appellate Court determined that the argument raised by Claimant involve issues of statutory construction and, thus, its review was de novo. The Court, in reviewing its decision in Hollywood Casino, noted that it had determined that even if Section 8(a) is sufficiently broad enough to include a requirement that an employer authorize medical treatment for an injured employee in advance of the services being rendered, "the fact still remains that there is not a provision in the Act authorizing the Commission to assess penalties against an employer that delays in giving that authorization." The court then turned to the statutory language at issue, and found that similar to Hollywood Casino, while Section 19(l) addresses a failure, neglect, refusal, or unreasonable delay in the payment of benefits, the plain language of the statute contains no language authorizing an arbitrator or Commission to assess penalties for an employer's failure, neglect, refusal, or unreasonable delay in authorizing medical treatment. The court went on to state that neither Section 8(a) nor any other provision of the Act allows the Commission to assess penalties against an employer based on a failure or delay in authorizing medical treatment. Thus, the Commission did not err in vacating the Section 19(l) penalty assessed by the arbitrator for Respondent's decision to revoke the authorization for surgery to Claimant's right knee. And while this result may seem harsh to Claimant, it is the function of the legislature, not the judiciary, to provide a penalty for those employers that unreasonably or vexatiously refuse or delay authorization for medical care.

The Court next turned to Claimant's

argument that the Act now contemplates the imposition of penalties based on an employer's failure or refusal to authorize reasonable and necessary medical treatment prescribed after September 1, 2011. Specifically, Claimant points to Section 8.7(j) of the Act. The Court rejected Claimant's argument. First, the Court found that the amendments to the Act made by the 97th General Assembly as part of Public Act 97-18, which applied only to health care services provided or proposed to be provided on or after September 1, 2011, did not alter the language of Section 8.7(j) of the Act. Second, the Court found nothing in Section 8.7(j) that authorizes the Commission to assess penalties against an employer based on a failure or delay in authorizing medical treatment. Like Sections 19(k) and 19(l) of the Act, Section 8.7(j) speaks to an employer's denial or refusal to authorize payment, not medical treatment. Third, Section 8.7(j) applies only in assessing penalties under Section 19(k) of the Act. The penalties at issue here were assessed under Section 19(l).

Finally, Claimant argued that the Commission's reversal of attorney's fees pursuant to Section 16 of the Act be overturned and the Arbitrator's award be reinstated. The Court noted that not only did Claimant neglect to advance this argument in his opening brief, he also failed to develop any argument or direct the Court to any pertinent authority in support of such a claim. Accordingly, the Court found this argument forfeited. As a result, the Court affirmed the decision of the Commission.

Of note, Justice Holdridge dissented. Justice Holdridge's dissent was based on the reasons articulated in his dissenting opinion in Hollywood Casino.

COMPFILE BRINGS THE SPEED AND EASE OF THE DIGITAL AGE TO THE IWCC

By: David Larson, Deputy General Counsel, CompFile Project Director Illinois Workers' Compensation Commission

CompFile, the IWCC's new electronic filing and case management system, has launched. The first release is fully operational and off to a successful start with over 2,000 registered CompFile users.

Readers may remember that WC-LA's Summer 2019 Newsletter began with a letter from Chairman Michael Brennan describing plans for a paperless litigation and record system. Those plans have come to fruition, and the introduction of CompFile is making future e-filing a reality for workers' compensation attorneys and their support staff.

CompFile was devised to roll out incrementally in three releases. The first release, which officially launched on February 10, involves registration of law firms and account setup. The second release, which will take place in July 2020, will include settlement contracts and contract approvals. The third and final release, planned for the late fall of 2020, will incorporate applications, motions, hearings, and reviews.

One of the most beneficial elements to the incremental rollout strategy is the opportunity it provides for user involvement in the ongoing design of the CompFile system. So far, webinar trainings have allowed participants to offer valuable input through chat messaging. Since the first webinars, many have taken advantage of the CompFile email address, wcc.compfile@illinois.gov, to contribute their concerns and ideas as they set up their law firms in the CompFile system. The user's perspective is proving to be vital to the continued rollout of CompFile. The CompFile Team has sought involvement from attorneys, legal assistants, and IWCC arbitrators and commissioners throughout the development of the new electronic filing system.

If your firm has not registered in CompFile yet, the process is straightforward and easy. Each firm should designate one or more law firm administrators to handle the firm's CompFile account, including the initial registration. Step-by-step instructions on how to register are available on the CompFile Implementation webpage, www.iwcc.il.gov/compfile, where a CompFile user manual and how-to videos can be found. The webpage also contains useful resources like FAQs, a recorded training webinar, and the CompFile 101 presentation. If your firm is ready to register, please vis-

it the CompFile web portal: <https://iwcc.dynamics365portals.us/>.

The CompFile Implementation webpage is also the place to find valuable information about the second release of CompFile as soon as it becomes available, including instructional materials, the electronic settlements start date, and training opportunities.

Filing cabinets, storage containers, and boxes of paper documents cramp our workspaces and narrow our hallways, but the burden of paper does not just constrict our work environment. It also constrains productivity and hinders facilitation. Electronic filing will make processes faster, easier, and more efficient.

In light of recent events surrounding the COVID-19 pandemic, the crucial importance of leveraging technology to support remote work and ensure business continuity is more evident than ever before. Electronic filing is an exciting arrival for all of us involved in Illinois workers' compensation. As CompFile continues to unfold as a part of our everyday work processes, we can finally enjoy digital-age conveniences – a familiar norm in our outside lives – in our workplace as well.



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OBITUARIES

A Gentleman Extraordinaire

By John Castaneda

Mr. Aaron Paul Brill, Esquire, departed this life in December of 2019. Aaron received his law degree from DePaul University and after admission to the bar, he formed his own firm. For over 50 years he represented injured workers. His experience included extensive trials and also arguments before the Illinois Appellate and Supreme courts. He served as an active member of the ISBA, CBA, WCLA and North Suburban Bar Associations.

I met Aaron as a young petitioner's attorney trying to make my way through the labyrinth then known as the Illinois Industrial Commission in Chicago. I was a suburban attorney and similar to attorneys practicing in rural courtrooms where everyone knows each other except you, I sensed the experienced respondent's attorneys had a young pup in their sights. Fortunately, I encountered several highly experienced attorneys in Chicago that noted someone out of his league in experience and knowledge of

the Commission in Chicago. Aaron was one attorney that I am forever grateful I encountered and met during my early years.

Aaron, without my solicitation or prostration, provided me with instruction, guidance, and suggestions – despite my status as a competitor! Why? Because he had an innate sense of scholarship and instruction which he passed on to others including his children and especially his daughter Ms. Francine R. Fishel, Esq. Francine continues the legacy of her father representing those who are injured.

Some have described Aaron as tenacious, dedicated and generous. I found him kind and compassionate – an extraordinary gentleman, indeed.

He was an Indispensable Man

By: Michael Doerries

It is a veritable truth that “if you want to test the mettle of a man, make him captain.” **Frank Wiedner's** mettle was tested throughout his life and he invariably served with honor and distinction.

One of four raised on the

northwest side of Chicago by devout parents of Austrian origin, Frank recalled dust ups with neighbor toughs in his youth as German was his first language. He soon mastered English which he taught to his parents and settled into friendships that lasted him a lifetime.

Frank completed high school and college at DePaul affiliates, and volunteered for military service with World War II ablaze. To midshipmen school at John Carroll University and Officer Communications training at Harvard, and then a stint in the Navy on General MacArthur's staff no less. With the end of the war, Frank took a bride, an east coast lass named Alyce Joyce. The two would wed in Japan in 1946, and return to Chicago where they would begin a family, and Frank law school. Studying torts and caring for infants soon became the norm. Selflessly, six children they would raise in the suburbs of Chicago in the years to come – truly members of that aptly named “greatest generation.”

With undaunted courage(though perhaps with a little trep-

Obituaries, continued from Page 8

idation given his large family to support), Frank took on another challenge, a new venture, as he set out to form his own firm in 1973. John McAuliffe soon partnered with Frank, creating a duo of affable gentlemen who epitomized professionalism.

Over the next forty years, Frank counseled and mentored countless lawyers, and not simply in the practice of law, but more importantly, in their journey through life. He never asked an attorney to do a task he would not do himself, never chastised or condemned, but rather encouraged all to be their best. Frank would regularly say, “listen to opposing counsel espouse their theory as they have a client to represent as well. You may not agree, but listening may allow for a dialogue and a consensus on some issues and refine the dispute on others.”

A story bears repeating as it speaks volumes to Frank’s character. Upon Frank’s passing, a lawyer shared with Frank’s family an encounter he had with Frank early in his career. The lawyer’s wife had given birth to their child, and in those days, mother and child were not discharged until the hospital bill was

paid. The lawyer and Frank had a case together, and within days, the case was not only settled but payment issued so the delivery charges could be paid and mom and child discharged for home.

Raising a family and developing a law firm were not Frank’s only pursuits. His level of civic duty and volunteerism is unrivaled by most and matched by few. Time on a Village planning commission and zoning board of appeals, term as village president, and a member of the county water commission that brought Lake Michigan water to communities throughout the western suburbs, are just a few of his civic engagements. A member of

the Knights of Columbus, a long-time volunteer at his local parish, an accomplished tennis player and snow skier into his eighties, one can only remark that Frank had a full life.

All who knew Frank J Wiedner and befriended him cherished their encounter. And with profound sadness, we say goodbye to this indispensable man.

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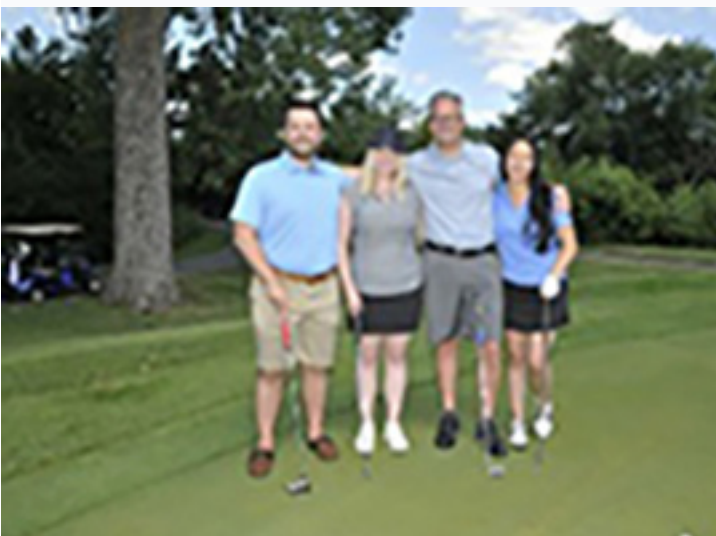


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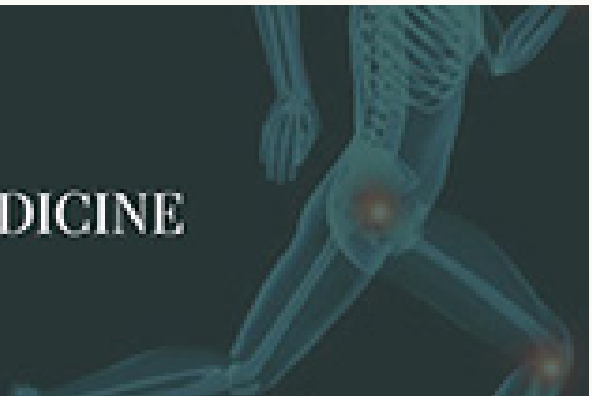
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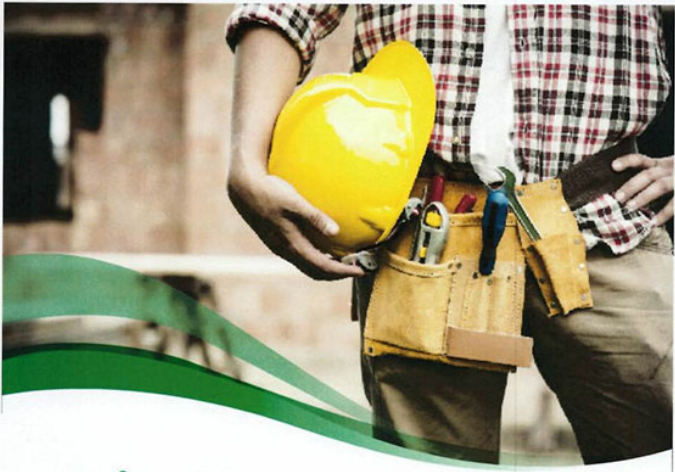
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MIDWEST ORTHOPAEDICS *at* RUSH



TEAM REHABILITATION PHYSICAL THERAPY

Transportation provided when Medically Necessary

For questions please contact:

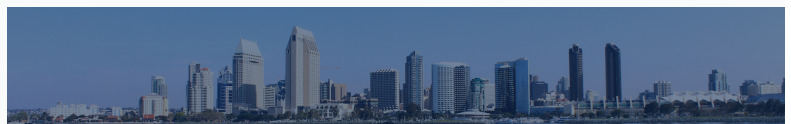
Azin Jalali Hein

Phone #: 630-631-2047

Email: azin.hein@team-rehab.com

THE TR WAY

THE RIGHT THERAPISTS
UTILIZING
THE RIGHT TREATMENTS
FOR
THE RIGHT REASONS



Protecting government benefit eligibility & threats of misappropriation for individuals who are severely disabled and unable to work.



- No delay in settlement, trust set-up before or after settlement*
- Low cost non-profit trustee
- Free phone consults, help with spend-downs, state agency trust notifications, & other resources
- No minimum funding, structures & MSA's welcome
- No annual administration fees for MSA's
- Trust can be set-up almost instantly, via phone or onsite visit

*Trust must be set up in advance when funds are being structured

Providing education and resources to the professional community serving the most vulnerable individuals in our society

Special Needs Trusts | Settlement Management Trusts | Minors Trusts

(855) 278-7681

www.cptinstitute.org

Upcoming Events

For details and registration, [visit our website](#)

Note: Educational seminars are recorded for On-Demand
CLE Credit for WCLA members

- June 25 - Brown Bag Lunch - Virtual Seminar
- July 30 - Brown Bag Lunch - Virtual Seminar
- August 7 - Annual Golf Outing - Oak Brook Hills
- August 27 - Brown Bag Lunch - Virtual Seminar
- Sept 24 - Brown Bag Lunch - Virtual Seminar
- Oct 29 - Brown Bag Lunch - Virtual Seminar
- Nov 12 - Nomination Meeting - Petterinos
- Nov 19 - Brown Bag Lunch - Virtual Seminar
- Dec 4 - Holiday Party, Shedd Aquarium
- Dec 8 - Election of Officers - Petterinos
- Dec 17 - Brown Bag Lunch - Virtual Seminar