WCLA NEWS

PRESIDENT'S MESSAGE

Winter 2017

Dear WCLA Members,

Happy New Year! I am pleased to announce the launch of our new WCLA website. We have multiple new and updated sections including a real time directory with updated bios, personal accounts for each member to facilitate paying dues as well as the latest information regarding continuing legal education, CLE archives and upcoming events.

There are many events planned for 2017 beginning with the Installation Dinner on January 21 at the Langham Hotel. All the details for this event are available on this website along with the capacity to book your ticket. We will continue to have our monthly brown bag CLE, two medical seminars, an ethics seminar and the always popular WCLA golf outing. We finish off the year with our annual Christmas party. Interspersed among these events will be YLS happy hours and group outings to sporting events. Stay tuned to the website for the latest information.

We are also proud to continue our sponsorship relationship with the Ronald McDonald House Charities, located at 211 East Grand Avenue. Last year 100%, of our golf outing raffle went to the RMCD house. We have now donated over $30,000.00 to the RMCD house.

We are delighted to have you as a member. Membership in the WCLA has achieved record highs in the last few years. We encourage you to refer your friends and colleagues to our great organization. There is strength in numbers, as the old saying goes.

Finally, I would like to take the opportunity to thank outgoing president Francis O'Byrne for his outstanding service as well as departing board members Kevin Botha and Brian Koch. They will be missed.

Sincerely,

Jack Cannon
2017 President of the WCLA

Inside this issue:

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

FARRAR V. IWCC

(United Airlines) 2016 IL App (1st) 143129WC

Petitioner alleged an April 9, 2003 accident in an Application for Adjustment of Claim in April of 2008. In April of 2011, petitioner's claim was dismissed for want of prosecution. She never filed a petition to reinstate the claim within the 60 day period, as is required by Commission Rule 7020.90. In April of 2012, petitioner filed a new application wherein she alleged the exact same accident as had been previously dismissed for want of prosecution, i.e., April 9, 2003. Respondent moved for dismissal on the grounds that the new filing was untimely under the statute of limitations, and that the dismissal for want of prosecution became final once the 60 day period to reinstate the previous application expired. Petitioner agreed that the new 2012 application was not timely under the statute of limitations of 6(d) of the Act (3 years from the date of accident or 2 years from last payment of benefits). However, petitioner argued that under the Code of Civil Procedure she was entitled to "re-file" the case within one year of the dismissal for want of prosecution. The Arbitrator, the Commission and the Circuit Court declined to adopt this argument.

The Appellate Court noted that the Code of Civil Procedure generally does not apply to workers' compensation cases. The Code only applies when the Act or Commission Rules fail to cover or regulate a particular topic. As the Commission Rules already govern the timeline to reinstate a claim, i.e., 60 days, the Court noted that the Code of Civil Procedure does not apply to permit "re-filing" of claims. The court noted that the 60 day rule would be rendered meaningless if a claimant could simply opt to have one year to re-file under the Code of Civil Procedure. Therefore, petitioner's argument was rejected.

The Court noted that when the 60 day period for reinstatement expires, the issue becomes *res judicata*. That is, the dismissal order becomes a final judgement. The Court stated "…a claimant's failure to timely file a petition for reinstatement following a dismissal for want of prosecution results in a final judgment with respect to the claimant's rights to recover workers' compensation benefits arising from the claim." The Court not only upheld the denial of compensation based on the statute of limitations, but also specifically upheld the finding that the claim was barred by *res judicata*.

It appears that a petitioner may not refile a case that was dismissed for want of prosecution even if refiled within the statute of limitations period.

IN MEMORIAM

ARTHUR O. KANE

(1918-2016)

I first encountered Mr. Kane as a young petitioner's attorney while I was working for the law firm of Presbrey & Amoni. Mr. Kane was principal owner of the law firm, Kane, Doy & Harrington – a well-respected and well-known defense firm whose legacy lives on as many of the firm's former lawyers are still practicing in other law firms today. I handled an asbestos case where the injured worker had succumbed to his exposure to asbestos, and the widow, our client, sought death benefits from various employers over the course of her husband's work life. Mr. Kane represented one of the employers (there were at least 5).

At the time of this case, I was still early in my career - but even though Mr. Kane had much greater experience in the law, the workings of the Industrial Commission (now known as the IWCC) and the strategies of my claim, he never told me what to do, or what not to do – leaving me to figure out what I needed to attempt to prove the claim. He wasn't condescending, obnoxious or overbearing. However, He made it clear to me his client was not going to be liable (ultimately, he was right) - but he respected that I wanted to pursue the claim against all odds. The case ultimately settled with one of the other employers on a disputed basis.

Years later, Mr. Kane always accepted my greeting and I considered it an accomplishment when he knew me. As noted in the Illinois Lawyer Now publication of the ISBA, "Mr. Kane was a recognized authority in the field of worker's compensation law and occupational diseases, and was often re-

ferred to as the 'Dean of Worker's Compensation Attorneys.'" He was an icon of the Illinois Workers' Compensation Commission.

- John J. Castaneda

BERNARD GOLDSTEIN

Bernard Goldstein passed away at age 88 on June 2, 2016. Mr. Goldstein was the founding partner of Goldstein Bender & Romanoff, and was in practice for over 50 years, specializing in workers compensation. His influence in promoting legislation to significantly improve the rights of injured workers was enormous.

He was one of the first to represent the Hispanic community in Chicago and the collar counties in significant numbers. He earned a deserved reputation for his work ethic, professionalism in all his interaction with the insurance community, defense bar, and the Arbitrators and Commissioners of what was then known as the Industrial Commission.

He was very loyal and magnanimous with all the support staff and attorneys who worked for him over the years, as well as the thousands of clients he represented and whose lives he greatly impacted. I know this from deep personal experience for it was my honor to be his associate from 1989 until his retirement in 2005. He was my mentor and friend. I shall miss him, but more importantly, all that we do in our area of practice we owe to the work he did.

- Richard Victor

WORKER'S COMPENSATION CASE LAW SUMMARIES

September through October 2016

SUMMARIES OF WRITTEN DECISIONS (TAKEN FROM IWCLB)

A. ARISING OUT OF AND IN THE COURSE OF

(Rule 23 Decision of the Illinois Appellate Court, 4th D)

Williams v. County of Coles

Petitioner, a county court administrator, parked her car in an employee lot on the north side of the courthouse. She intended to enter the south entrance but a judge and security officer entering the north entrance told her to enter with them and not walk around. Petitioner walked in a hurried fashion toward the north door and while ascending the stairs tripped or "went down" landing on her left side. The north doors are normally locked for entry and accessible only as an exit by the public or employees. The south entrance is the main entrance for the public and employees.

The Arbitrator awarded benefits. The Commission reversed. The Circuit Court Confirmed. The Appellate Court affirmed finding that the evidence established that the risk posed to the petitioner was the act of walking up steps, a neutral risk. The petitioner failed to prove an increased risk either quantitatively or qualitatively and no evidence was presented her fall was caused by a defect or what caused the fall.

Charles-Hoover v. Pace Bus - IWCC Decision

Petitioner, a bus operator for 21 years, while on break was approached by a woman about the route. The woman left and came back to argue and doused petitioner with liquid from a bottle in her hand. After the woman left, the petitioner who had reentered the bus exited the bus and looked for a security guard, encountered the woman and was injured in a second alteration with her. The employer's policy required the bus operator to stay in the bus and call dispatch for assistance.

The Arbitrator denied benefits finding that the petitioner's actions of leaving the bus could be interpreted as instigating a second aggression. The Commission affirmed.

Reboletti v. Sterigenics - IWCC Decision

Petitioner arrived at work, took a few steps toward her building and fell and slid down a steep incline in the parking lot. There was snow and ice on the ground. The respondent was one of many tenants in the building. Petitioner claimed she parked in the back lot because the majority of spots in the front lot were reserved for visitors. She testified that HR advised her she could park anywhere except for visitor and underground parking. She usually parked in the back lot or on the side of the garage, which was

partially covered. The EE handbook did not require employees to park in any specific area.

The Arbitrator awarded benefits. The Commission reversed. The Commission found that although respondent placed some restrictions on where to park – the restrictions were minor and all EEs were able to park where they pleased. The respondent did not maintain the requisite amount of control over where petitioner parked and since the public could park in the same area – no increased risk.

(Rule 23 Decision of the Illinois Appellate Court – 4th D.)

Jimerson v. St. John's Hospital

Petitioner, a part-time cook for respondent, testified she was instructed by management to park in a lot across the street. On the date of injury, the petitioner completed her shift, left the building through the EE exit and proceeded to cross the street to enter the EE parking lot. As she crossed the street, a car driven by a coworker exited the EE lot and struck her.

The Arbitrator awarded benefits. The Commission reversed. The Circuit Court confirmed the Commission. The Appellate Court affirmed

The Appellate Court rejected petitioner's argument that her case was similar to Bommarito v. Industrial Commission (Illinois Supreme Court awarded benefits to petitioner who stepped in a hole in an alley within 8 ft. of the employer's entrance finding that the petitioner was directed to only use the rear entrance and the alley presented special risks and hazards). Here, the Appellate Court found petitioner was away from the entrance to the building, did not encounter a defect and had multiple options as to where she could cross the street. The Appellate Court found the case more similar to Osborn v. Industrial Commission – the respondent did not direct her to cross the street in the location she chose and she was not exposed to a risk to a greater extent than the general public.

B. Accident

Repetitive Trauma

Brooks v. Illinois-American Water - IWCC Decision

Petitioner worked as a customer service representative. Her workday involved typing, talking on the phone and operating a mouse. She wore a headset. She sought treatment in 2012 and her doctor diagnosed left CTS. Her doctor opined that the work activities either caused her CTS or exacerbated a preexisting condition. The Section 12 examiner opined no causal but that she may have mild CTS or cubital tunnel syndrome.
The Arbitrator awarded benefits finding the opinion of the treater more persuasive. He noted the treater saw her more than once and had a "thorough understanding" of her work activities.

The Commission reversed finding the treating opinion was not more persuasive. The Commission noted that the treater only saw the petitioner twice, the treater opined that CTS is never idiopathic and that petitioner's work activities were not shown to involve any forceful gripping, grasping or significant vibratory impact.

Lawrence v. Pinckneyville Correctional Center - IWCC Decision

Petitioner, a corrections officer since 1998 worked the 7:00 a.m. to 3:00 p.m. shift using keys to manipulate 200 to 300 doors per day. This involved forceful pinching and wrist turning opening and closing cell doors, cuffing and uncuffing inmates and lifting food trays. In 2009 he began to develop symptoms in his upper extremities and was diagnosed as having bilateral CTS and bilateral cubital tunnel syndrome.

The treating physician testified that the work activities were at least an aggravating factor. The Section 12 examiner disagreed although admitted to the diagnoses and the surgical treatment recommended.
The Arbitrator awarded benefits noting that the petitioner used his hands extensively. The Commission affirmed and adopted.

C. Causation

(Rule 23 Decision of the Illinois Appellate Court – 5th D.)

Taylor v. Mt. Vernon Police Department

Petitioner, a police sergeant, stated he injured his right knee while arresting a subject resisting arrest. Petitioner stated his knees struck the concrete parking lot many times during the altercation. A few days later, he was working on his toilet at home when his knees started swelling. He did not initially document his knee injury in the incident report as he thought the pain would go away. One month after the incident, he completed an accident report stating he tore a tendon in his right knee while arresting a subject.

The Arbitrator awarded benefits. The Commission reversed. The Circuit Court reversed the Commission. The Commission found that the detailed incident report authored the day of the incident and the medical report to the nurse did not support his claim. The incident report did not reference the petitioner's knee. A few days

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later the petitioner only mentioned to the nurse about wrestling with a coworker and being on his knees while fixing a toilet. It was not until after he had an MRI that he reported it as an injury at work. Since the treating md's causal opinion was based on the petitioner immediately experiencing pain after the incident – which was not the case – the Commission relied on the Section 12 examiner's opinion of no causal.

The Appellate Court reinstated the Commission decision finding no causal.

D. Medical Expenses

Howard v. St. Clair Highway Dept.
- IWCC Decision

Petitioner worked as a truck driver. On the date of injury, he was pulling big tree limbs up an incline to a chipper when he stepped into a hole, twisted and fell. He injured his left knee. He had previous injuries and surgeries to the left knee but his last treatment was three to four years before the accident. His treating md recommended a total knee replacement. Medical records indicated the petitioner went to the ER one year prior to his accident.

The Arbitrator denied benefits. The Arbitrator found the petitioner lack credibility because he testified he had no treatment for three or four years when he had seen a md one year prior and that there was no evidence the accident caused any structural change in the petitioner's knee.

The Commission reversed, 2-1. The Commission found the causation opinion of the treating md persuasive as both the treater and examiner found that the accident increased the pain. The Commission also noted that the petitioner worked a relatively heavy labor job for several years before his accident. Commissioner White dissented, finding that the petitioner had severe arthritis and would likely need replacement surgery absent any trauma.

(Rule 23 Decision of the Illinois Appellate Court – 5th D.)
Franklin v. East St. Louis Police Dept.

Petitioner, a police offer, filed two claims – one claiming an injury from an arrest on 3/23/13 and a slip and fall on 2/15/14.

The Arbitrator awarded benefits. The Arbitrator awarded medical expenses of $52,948.14 and prospective medical care.

The Commission on review found that the petitioner had exceeded his choice of medical providers and denied benefits for medical expenses outside the two choices. The Commission also found no compensation owed for the slip and fall accident.

The Circuit Court confirmed the decision. The Appellate Court affirmed. The Court noted that the Commission properly found the petitioner exceeded his choice of physicians. None of the doctors' records indicated a referral was made.

(Rule 23 Decision of the Illinois Appellate Court – 4th D.)
City Water Light & Power v. Egan

Petitioner injured his low back lifting a 55-gallon barrel of garbage on the back of a truck. After conservative treatment did not alleviate petitioner's symptoms he underwent an MRI that revealed multilevel degenerative changes along with a disc protrusion and disc bulge. The Section 12 examiner for respondent opined that the diagnosis and symptoms did not originate from the work injury but related to an underlying degenerative condition.

The Arbitrator awarded benefits. The Arbitrator adopted the treating doctors' opinion and also found a transforaminal lumbar interbody fusion was reasonable.

The Commission affirmed and adopted.

The Appellate Court affirmed.

E. Permanency Benefits

Wage Loss

Bell v. City of Chicago - IWCC Decision

Petitioner worked as a motor truck driver for 23 years. On January 13, 2012 she injured her left shoulder. She underwent surgery, physical therapy and work hardening. She returned to her normal work duties in September of 2012 but her shoulder was still sore. On September 21, 2012, she slipped and fell at work landing on her left side injuring her left knee, ankle, low back and reinjured the left shoulder. She ended up with permanent restrictions that prevented her from doing her normal job duties. She found a job on her own as a part-time personal assistant for the State of Illinois.

The Arbitrator awarded wage differential benefits. The Arbitrator found the part-time position was appropriate. The job was part-time but there was no evidence that the petitioner was self-limiting. The Arbitrator was not persuaded by the vocational counselor's opinion that the petitioner should focus on dispatcher, customer service representative and front desk position.

Since the petitioner conceded that she was capable of

full-time employment the Arbitrator calculated the award based upon her motor truck driver earnings of $1,401.20 per week minus $498 (40 hours x $12.45) x 2/3rds or $602.13 per week.
The Commission affirmed and adopted.

Young v. Metropolitan Pier & Exposition Authority - IWCC Decision

Petitioner, a union painter at Navy Pier, was injured while driving a boom lift. He injured his right shoulder and neck. After undergoing cervical surgery the petitioner was assigned permanent work restrictions. The business agent told petitioner no light duty jobs were available for painters. Petitioner found a job at a temp agency earning $10/hour as a shipping and receiving order picker for automobile parts.

Wage records of the temp agency revealed that petitioner worked 1,999.5 regular hours and 465.10 hours of overtime during a 51-week period prior to the hearing. The petitioner testified that any overtime hours were mandatory and he worked overtime 47 of 51 weeks.

The Arbitrator calculated the wage loss based upon the 40-hour workweek of petitioner.
The Commission modified the award finding that the petitioner's current earnings including overtime hours at straight time pay reduced the wage differential award from $820 per week to $764.50 per week.

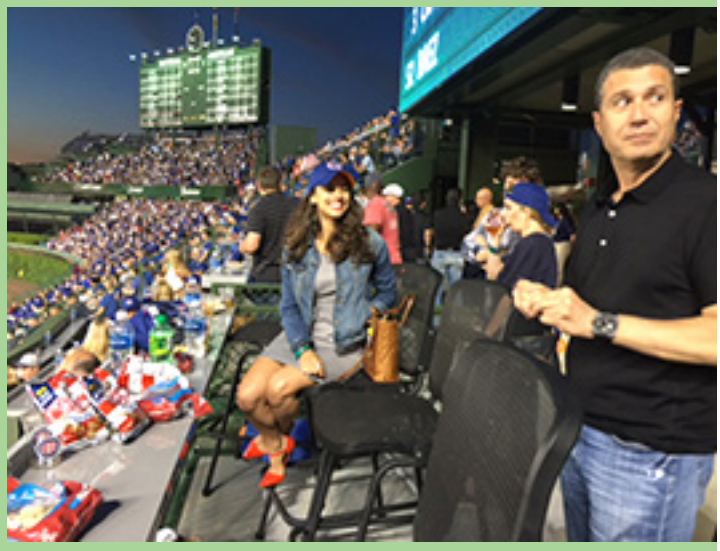
F. Evidence

Love v. RGIS Inventory - IWCC Decision

The petitioner suffered a back injury on 12/23/14. She sought treatment from a chiropractor. The chiro subsequently referred her to an orthopedic spine surgeon.
During an evidentiary hearing at the close of proofs the respondent objected to admission of several treatment notes on the basis they were not provided 48 hours before the start of the initial hearing pursuant to Ghere v. Industrial Commission and Mulligan v. IWCC.
The Arbitrator found that the case law pertained to the testimony of physicians and admitted the treatment notes over the respondent's objections

The Commission reversed holding that the medical records of the treating chiro and surgeon should be stricken from the record. The objected to records were not proffered upon commencement of the hearing but only offered at the close of proofs.

2016 Scrap Book



2017 EVENTS

INSTALLATION DINNER

January 21 - Langham Hotel.

BROWN BAG LUNCHES PROGRAMS

Held in the JRTC Assembly Hall which is the auditorium on the Concourse (basement) level of the James R. Thompson Center (State of Illinois Building) at 100 W. Randolph in Chicago. All programs begin at 12:00 noon and end at 1:00 pm. Upcoming dates are as follows:

- Tuesday, January 24
- Monday, February 13 - Professionalism
- Wednesday, February 22
- Wednesday, March 22
- Tuesday, April 11
- Wednesday, May 3
- Thursday, June 1
- Wednesday, August 9
- Thursday, September 14
- Tuesday, October 10
- Wednesday, November 8
- Thursday, December 14

MEDICAL SEMINAR

Friday, April 19 - JRTC Assembly Hall

Visit our website for up-to-date event information and membership renewal. www.wcla.info

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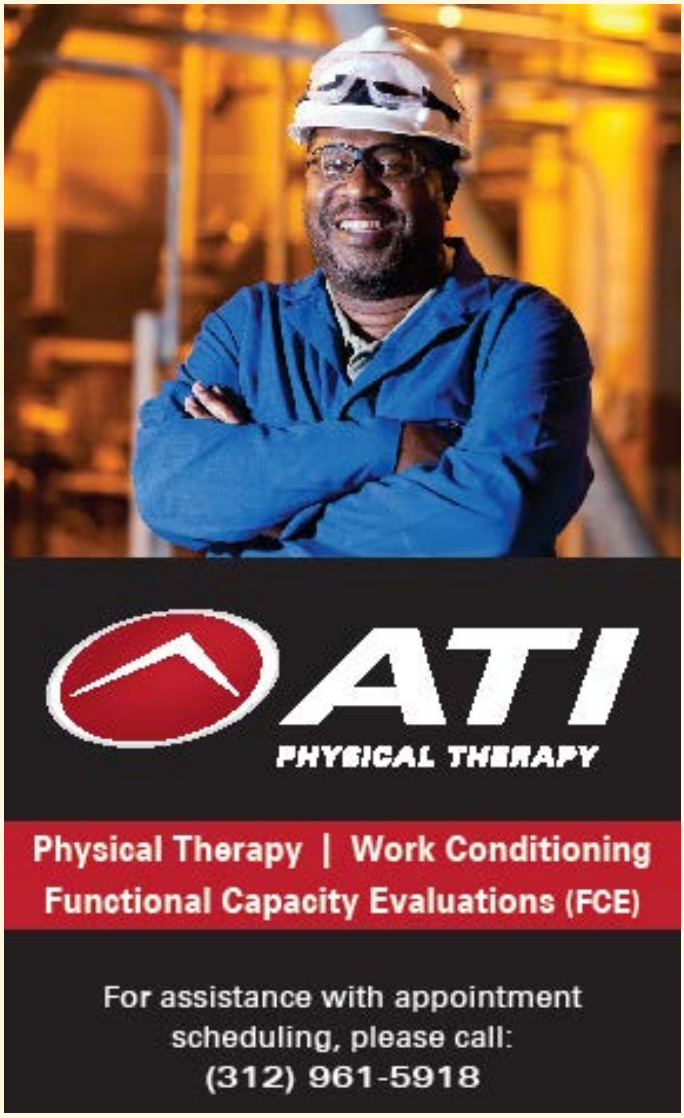

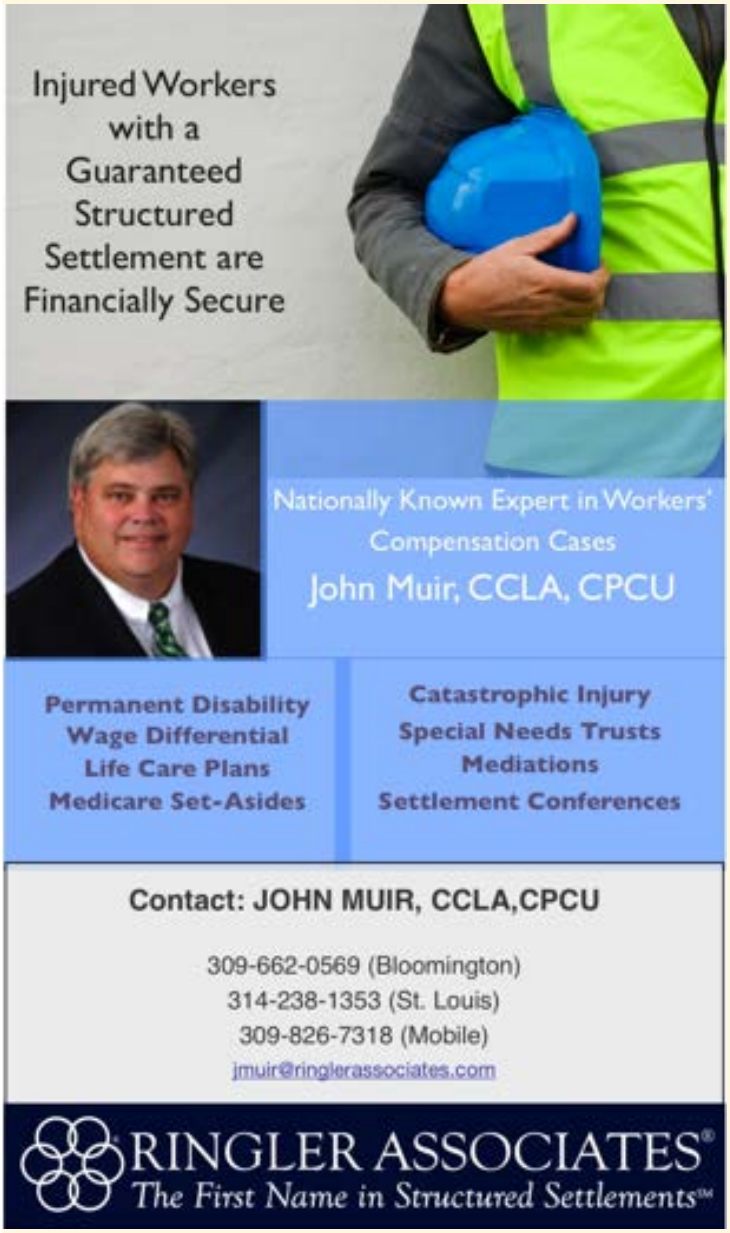

CHECK OUT THE 2017 OFFICERS, BOARD AND PAST PRESIDENTS

WEISS MEMORIAL HOSPITAL

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About Our Hospital

Weiss Memorial Hospital has been serving Chicago's North Side and surrounding communities providing excellent health care services for over 60 years. We've grown to better serve our community to include more than 450 doctors representing over 40 medical specialties and more than 800 employees, all committed to providing you with personalized care. Our dedication to the health of our community includes outreach programs and support groups coordinated by Weiss.