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STEVE M. FLETCHER

APPLICATION FOR WORKER'S COMPENSATION JUDGE

A. PERSONAL INFORMATION

1. Steven Mark Fletcher
2. DOB: [redacted]
3. Current Home Address: [redacted]
4. Email: [redacted]
5. Preferred Phone: Cell No. [redacted]

6-7 Montana and US Resident since July 11, 1963

B. EDUCATIONAL BACKGROUND

8-10 Names of Schools

Capital High School	1978-1982	High School Diploma
University of Montana	1982-1987	BA in Philosophy ; Minor in Economics
University of Montana School of Law	1987-1991	Juris Doctorate
Rocky Mountain School of Photography	2010	Certificate of Photography

C. Legal and Professional Background

11. Positions Held

Bulman Law Associates	1987-1991	Legal Intern
Bulman Law Associates	1991-2008	Attorney Specializing in Worker's

Compensation and Personal Injury

Fletch Law	2008-present	Attorney Specializing in Worker's Compensation, Personal Injury, Social Security, Products Liability, and Criminal Law

12. Bar Admissions

Montana Supreme Court October 6, 1992

Montana Federal District Court October 6, 1992

The Ninth Circuit of the United States April 27, 2007

13. The bulk of my practice has been Worker's Compensation (45%), Personal Injury (30%), Social Security Disability (20%), and Criminal Defense (5%).

14. Early in my career I was an Arbitrator for the Better Business Bureau which focused exclusively on consumer issues, usually motor vehicles.

15. My practice has involved regular appearances before the Worker's Compensation Court, Social Security hearings before Administrative Law Judges, appearances in State District Court, Federal District Court, and the Ninth Circuit Court of Appeals. I have been involved in over 10 jury trials in Municipal, Justice, as well as State and Federal District Courts. I have also made several appearances before the Montana Supreme Court, including participating in oral arguments on a couple of occasions.

16. I have made several appearances before the Montana Supreme Court. While those have not been in the last 10 years I believe they are worth mentioning because they do reflect some important decisions in the Worker's Compensation Law. I wrote the brief for *Ingraham v. Champion International* 243 MT 42, 793 P.2d 769 (Mont. 1990) which held that the worker's compensation insurer could not have have final say over a lump sum conversion as that represented an unconstitutional delegation of legislative authority. I also represented Jerry Henry in his underlying worker's compensation case and then briefed and argued his case before the Montana Supreme Court. *Henry v. Montana State Fund* 1999 MT 126 held that it was an unconstitutional denial of equal protection to provide vocational rehabilitation to injured workers but not to those who suffered an occupational disease. This laid the ground work for several other equal protection challenges within the worker's compensation law.

Another significant case which involved automobile insurance was *Mitchell v. State Farm* 2003 MT 102 which held that Montana law applied to a California policy where the accident occurred in Montana and that anti-stacking provisions in the policy violated public policy because separate premiums were paid for each policy.

17. One of the most challenging cases I was involved with was a class action case against Med-Cor, a medical copying service. Med-Cor was an out of copy service that was charging Motana citizens $1 a page to get copies of their own medical records. Patients were billed that ranged from $500 to $1000 just to get a copy of their medical records. This case took nearly 10 years and 2 mediations to resolve but ultimately we were able to successfully negotiate a class settlement as well as put a cap on what Med-Cor was allowed to charge for copies of records.

Another challenging case was *Speaks v. Mazda Motor Corp* No. CV-14-25-M-DWM (2018); 118 Fed Supp.3d (2015) which I began working on in 2011. The case was first tried with co-counsel in Federal District Court in Missoula in 2015. The case involved a seatbelt injury to my client Incarnacion Speaks, She was involved in a low impact accident within the city limits of Missoula yet suffered life threatening injuries that necessitated a life flight to Seattle and many weeks in the hospital. We were up against a multinational corporation which had a lot of power. In fact, the expert they hired for accident reconstruction was the same expert that was hired to investigate the Dale Earnhardt Jr. crash. In any event, we lost at trial in front of Judge Christensen but then appealed and won the appeal at the Ninth Circuit. On remand we were a few days away from another trial in front of Judge Molloy when the case settled.

Independent of the above, I have had a few criminal cases where I played a role in getting a client into treatment and they ended up completely turning their lives around. In these cases, treatment is always a goal- sometimes it works and sometimes it doesn't. But when it does, those are some of the most rewarding cases I have worked on.

18. I have authored several articles in *Trial Trends,* the quarterly publication of the Montana Trial Lawyers Association. The Most Recent Article was published in June 2022 entitled "Addressing the Attack on the Medical Treatment of a Workers' Compensation Claimant".

19. I have not taught legal issues at post secondary educational institutions or continuing legal education seminars during the last ten years.

20. I have reported over 40 hours of pro bono services over the past five years. My pro bono services have consisted of representing criminal defendant to help getting them into treatment as well as SSI claimants that are frequently homeless. They also consist of serving on advisory role for non profit organizations.

21. I am on the Board and a contact person for Missoula/Bitterroot region for the Lawyers Assistance Program. I also contribute art to the State Bar Art Auction every year which helps raise funds for the Montana Justice Foundation.

22. I did not serve in the military.

23. The only quasi judicial experience I have had is serving as a Arbitrator for the Better Business Bureau and as a Chair Person for the Medical Legal Panel.

24. I worked a lot of blue collar jobs especially in the construction and food service industries I also think that my experience in Social Security law will also be of assistance since these areas often overlap and there are very few attorneys in Montana that have a lot of experience in Social Security Law.

D. COMMUNITY AND PUBLIC SERVICE

25. Charitable Organizations St. Francis Xavier Catholic Church

Garden City Tennis Association (Board Member)

Open Way Sangha (Board Member)

Holy Spirit Episcopal Church

26. I have not held nor sought any public office.

E. PROFESSIONAL CONDUCT AND ETHICS

27. I was briefly suspended in 2010 following an incident with my former girlfriend. She was someone who I had known for a very long time but who had suffered a traumatic brain injury while living in California. I loved her very much and was doing the best I could with a sometimes very volatile situation. I was briefly suspended pending a hearing and was reinstated after presenting evidence at the hearing although I did receive a censure from the Montana Supreme Court.

28. No I have not ever been sanctioned by a court.

29. I was convicted of drinking related misdemeanors in my past in addition to the case involving my former girlfriend which was dismissed 10 years ago.

30. No, I have not been found liable in any civil proceedings.

31. No.

F. BUSINESS AND FINANCIAL INFORMATION

32. No, I have not been found liable in a civil proceeding.

33. Yes, I have always filed timely tax returns.

34. No, I have never filed for bankruptcy.

G. JUDICIAL PHILOSOPHY

35. I am seeking the office as the Worker's Compensation Judge because I have over 30 years of experience practicing worker's compensation law and have had cases before 4 different worker's compensation judges- Hon. Tim Reardon, Hon. Mike McCarter, Hon Jim Shea, and the Hon David Sandler. I have a good grasp on worker's compensation law and issues. I feel that worker's compensation plays a very important role in our system and that I can help keep it strong and viable. I do think that the current structure for trial and discovery that was developed by Judge McCarter and adopted by Judge Shea and Judge Sandler is inefficient and needs to be streamlined. The time that it takes for a decision to be made in these cases has gotten too long. In the Worker's Compensation system, justice delayed is justice denied.

36. The three qualities I believe that are most important in a good worker's compensation judge are neutrality and fairness, knowledge of the law and issues, and efficiency.

37. I don't have a pre-ordained philosophy . I think that each case should be decided on its own merits. As said above, I do think that justice delayed is justice denied in the Worker's Compensation system.

H. MISCELLANEOUS

38. Writing Sample Attached

39. Thomas Bulman Bulman Law Associates,
P.O. Box 8202
Missoula MT 59807
406-721-7744

Steve Gannon
Choteau County Attorney
P.O. Box 459
Fort Benton MT. 59442
(406)-622-3246

Tim Strauch
Strauch Law Firm
257 W Front Suite A
Missoula Montana
(406)-532-2600

CERTIFICATE OF APPLICANT

I hereby state that to the best of my knowledge the answers to all questions contained in my application are true. By submitting this application I am consenting to investigation and verification of any information listed in my application and I authorize a state bar association or any of its committees, any professional disciplinary office or committee, educational institutions I have attended, any references furnished by me, employers, business and professional associates, law enforcement agencies, all governmental agencies and instrumentalities and all other public or private agencies or persons maintaining records pertaining to my citizenship, residency, age, credit, taxes, education, employment, civil litigation, criminal litigation, law enforcement investigation, admission to the practice of law, service in the U. S. Armed Forces, or disciplinary history to release to the Office of the Governor of Montana or its agent(s) any information, files, records, or reports requested in connection with any consideration of me as a possible nominee for appointment to judicial office.

I further understand that the submission of this application expresses my willingness to accept appointment as Workers' Compensation Judge if tendered by the Governor, and my willingness to abide by the Montana Code of Judicial Conduct and other applicable Montana laws (including the financial disclosure requirements of MCA § 2-2-106).

07/03/23
(Date)

(Signature of Applicant)

A signed original **and** an electronic copy of your application and writing sample must be submitted by ***5:00 p.m. on Wednesday, July 5, 2023***

Mail the signed original to:

Hannah Slusser
Governor's Office
P.O. Box 200801
Helena, MT 59620-0801

Send the electronic copy to: hannah.slusser@mt.gov

WORKERS' COMP. SECTION

BY *STEVE FLETCHER, MISSOULA*

Addressing the Attack on the Medical Treatment of a Workers' Compensation Claimant

This article addresses the concerning developments in the workers' compensation system as it relates to the medical care of workers' compensation claimants and their ability to choose their own physician as well as have private communication and consultation with that physician. In particular, the current state of affairs allows both insurers and the vocational consultants that they hire to have direct, unilateral contact with the claimant's treating physician. What started out as a means for the insurer to simply obtain medical information from a physician has morphed into a means for the insurer to alter the physician's treatment of the patient. In other words, the new laws are being used by the insurer to direct treatment rather than merely obtain records of the treatment. This infringes on the doctor/patient relationship and also places control of the claimant's health care into the hands of the insurer. This puts the claimant, their health care, their vocational rehabilitation, and their worker's compensation claim in peril.

Of particular concern is MCA 39-71-604 (3) which states:

> (3) A signed claim for worker's compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (2) by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (2) without prior notice to the injured employee, to the employee's representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the death or injury.

In addition, MCA 39-71-1101 (2) and (10) essentially takes away a claimant's right to choose their own treating physician. The number of physicians that will even take over a workers compensation case anymore is extremely limited even if the claimant gets an attorney and is able choose a physician different from the one assigned by the insurer.

These developments have produced some disturbing results in the workers' compensation arena such as:

1. Letters asking important questions in the worker's compensation claim are faxed to and answered by the physician before the patient and/or her attorney are even consulted;*
2. Vocational counselors providing a release to obtain information and then faxing job releases to the physician before that release of information is even signed;*
3. Job releases being signed even though the claimant has not been examined for over a year.
4. Medical benefits remaining "open" but the claimant being disallowed treatment.
5. Nurse case managers showing up in the waiting room of the patient's physician and many times going into the examining room with the patient.
6. Claims Adjusters with no medical training making many of the determinations regarding authorization for treatment using the Utilization Treatment Guidelines.

* (Regarding 1 and 2 – the insurer will often fax the letter to the physician and mail the same letter to the claimant's attorney who receives it days later).

Insurance companies are becoming more like "the patient" and the claimant is merely a bystander in his or her own treatment. In the not-so-distant past, the claimant had their own physician that they were able to consult regarding their injuries and treatment. The insurance company was then allowed to get that information (not direct it) and then get an "independent medical exam" if they disagreed with the treating physician. Ironically, the insurer still has the right to an "independent medical exam" even though they are choosing the treating physicians and directing most of the treatment.

Unfortunately, the workers' compensation insurance industry has alienated most physicians to the point that only a small number of physicians will even agree to see a workers' compensation patient and most of those have a direct line of communication with the insurance company that often does not include the claimant until after the fact. The strategy seems simple enough – if the insurer takes control over the medical treatment then they take control of the claim.

However, this is not permitted under Montana law. In particular, the doctor/patient privilege defined in MCA 26-1-805 indicates, "Except as provided in Rule 35 of the Montana Rules of Civil Procedure, a licensed physician, surgeon, or dentist may not, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient that was necessary to enable the physician, surgeon, or dentist to prescribe or act for the patient."

The current workers' compensation laws attempt to force the claimant to "consent" to an insurer's intrusion into their treatment by virtue of filing a claim. I do not believe that forcing claimants to give up their privilege with their physician just because they have filed a workers' compensation claim will ultimately be upheld by the courts.

These laws also violate a claimant's right to privacy under Article II, Section 10 of the Montana Constitution which states '(t)he right to privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest." It is doubtful that the laws infringing on the doctor/patient even have a permissible rational relationship to a legitimate governmental interest so there is certainly no compelling state interest to do so.

As presently applied, the workers' compensation laws are also giving workers' compensation insurers far too much authority over decisions regarding the claimant's treatment. As a result, insurers are essentially becoming health care providers.

MCA 39-71-116 (14) defines a health care provider as a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of the profession. Further, MCA 50-5-101(26)(a) defines a health care facility in part as "an agency (public or private) that is used, operated, or designed to provide health services."

Given that the Montana workers' compensation laws are "authorizing" insurers to pick the treating physician and control and authorize much of the claimant's treatment, insurers now should be considered health care providers. As such, under the current law, workers' compensation insurers should have to conform to the standards of health care providers and should also be liable for adverse medical outcomes under the medical malpractice and tort laws.

The Utilization and Treatment Guidelines are also being used by adjusters to deny treatment requests by a claimant's providers. While the guidelines ostensibly provide a framework for the adjuster to make these decisions, the adjusters are not medically trained and do not consult a physician prior to issuing these denials. Generally, there are exceptions to the guidelines that hinge on the medical basis for the ongoing care. Non-medically trained adjusters are choosing to apply or not apply the exceptions to deny treatment.

For example, an adjuster in a case I am working on just issued a denial of a health care provider's request that states "(r)equested treatment far exceeds UTG recommendations and recent notes indicate no sufficient functional gains to allow exception to UTG recommendations." Certainly, a claims adjuster is not a medical provider and therefore is not trained to make these medical judgments regarding functional gains and appropriate medical treatment. At the very least, this represents an unconstitutional delegation of authority to adjusters. *See Ingraham v. Champion International* 793 P.2d 769 (Mont. 1990). However, the infringement is actually much broader – the UTG represents an attempt to codify and dictate the treatment of the individual claimants rather than leave it to the professional training and judgment of the physician.

In conclusion, the doctor/patient privilege ensures that the patient can fully disclose information regarding their illness and injuries which is an important part of recovering from the injury and/or illness. If a claimant is injured on the job and files a claim, they should not be stripped of their basic right to have private, confidential communications with their own treating physician. Further, the physician should be able to render appropriate treatment without that treatment being dictated by the insurer. Insurers do not have the capability nor the neutrality to serve as health care providers. The new laws that are enabling them to do so must be challenged and ultimately discarded. ◆