Why Do Claims Get Stuck & What to do about it?

Steven D. Feinberg, MD, MS, MPH

Feinberg Medical Group Functional Restoration Programs

Adjunct Clinical Professor, Stanford University School of Medicine

DISCLAIMER

The views and opinions expressed in the written materials and in any of the presentations at this conference are those of the presenter and do not necessarily reflect the official policy or position of the Department of Business and Industry, Division of Industrial Relations. The Division does not warranty the materials' completeness or accuracy.

Steven D. Feinberg, MD, MS, MPH

Feinberg Medical Group
Palo Alto, CA
stevenf@stanford.edu

- Physiatrist and Pain Medicine specialist
- Treating physician and medical-legal specialist
- Adjunct Clinical Professor, Stanford
- Panel Chair, ACOEM Chronic Pain Guideline

No conflict of interest

What is a “Stuck” Case?

- “I know it when I see it…”

What is a "Stuck" Case?

- Worker upset and has persistent symptoms
- "Recovery" unusually prolonged (or not at all!)
- Nothing works!
- Poor outcome
- Unfortunate things occurred as case unfolded
- Provider upset and increasingly demanding

What is a "Stuck" Case?

- Claim managers upset and under pressure
- Lawyers often involved
- Reserves have grown larger
- Uncertainty/Desperation drive excessive medical TX
- Injured worker and case goes downhill over time
- Case has no foreseeable end in sight
- Case repeatedly reopened

The Big Picture

WHERE DO STUCK CASES FIT IN THE BIG PICTURE?

Where Are We?

- Stuck cases are uncommon but seem ever-present
- Most not truly catastrophic but are simple musculoskeletal injuries (which should resolve quickly)
  - *Most are <u>not</u> classic catastrophes such as: Multiple trauma, Head injury, Spinal cord injury, Complex regional pain syndrome*
  - *Most are creeping catastrophes related to missing delayed recovery cues or are iatrogenic (secondary to poor medical care)*
  - *Subjective distress > objective pathology*
- Percentage of cases that get stuck
  - *Approximately 10–20% of cases account for 80–90% of cost*

Hints

- It is more important to know about the patient who has the disease than about the disease the patient has

  Sir William Osler (1849-1919)
- Treat the patient not the disease
- Pathology important but doesn't trump behavior
- Early recognition of delayed recovery factors saves lives and is cost-effective for the claim

Case # 1

- Joanne Smith is a 45-year-old female Package Driver
- 4 failed back surgeries
  - "Lives" in hospital bed
  - On multiple meds including opioids
  - Home health aide 4 hours/day
  - Requesting home modifications and modified van
  - Failed SCS, recommended for morphine implanted opioid pump
- Case not settled but assumed 100% disabled

Case # 2

- John Morris is a 35-year-old male Police Officer
- Low back work injury with MRI revealing disc bulge at L5-S1
- Highly symptomatic, distressed over losing job with symptom magnification and developing chronic pain syndrome
- Medications include Vicodin (opioid), Ambien (for insomnia), Flexeril (muscle relaxant) & Celexa (antidepressant)
- Spine surgery recommended by PTP but UR denied
- Functional restoration program recommended by IME

Causes of Stuck Cases

RISK FACTORS AND CAUSES

What Makes Claims Get Stuck?

- Workers' Compensation system features
- Knowledge, beliefs, decisions, & actions related to:
  - *Injured worker-related Issues*
  - *Medical treatment-related issues*
  - *WC System-related Issues*
  - *Insurance-related issues*
  - *Legal Case-related Issues*

If You Could Choose…

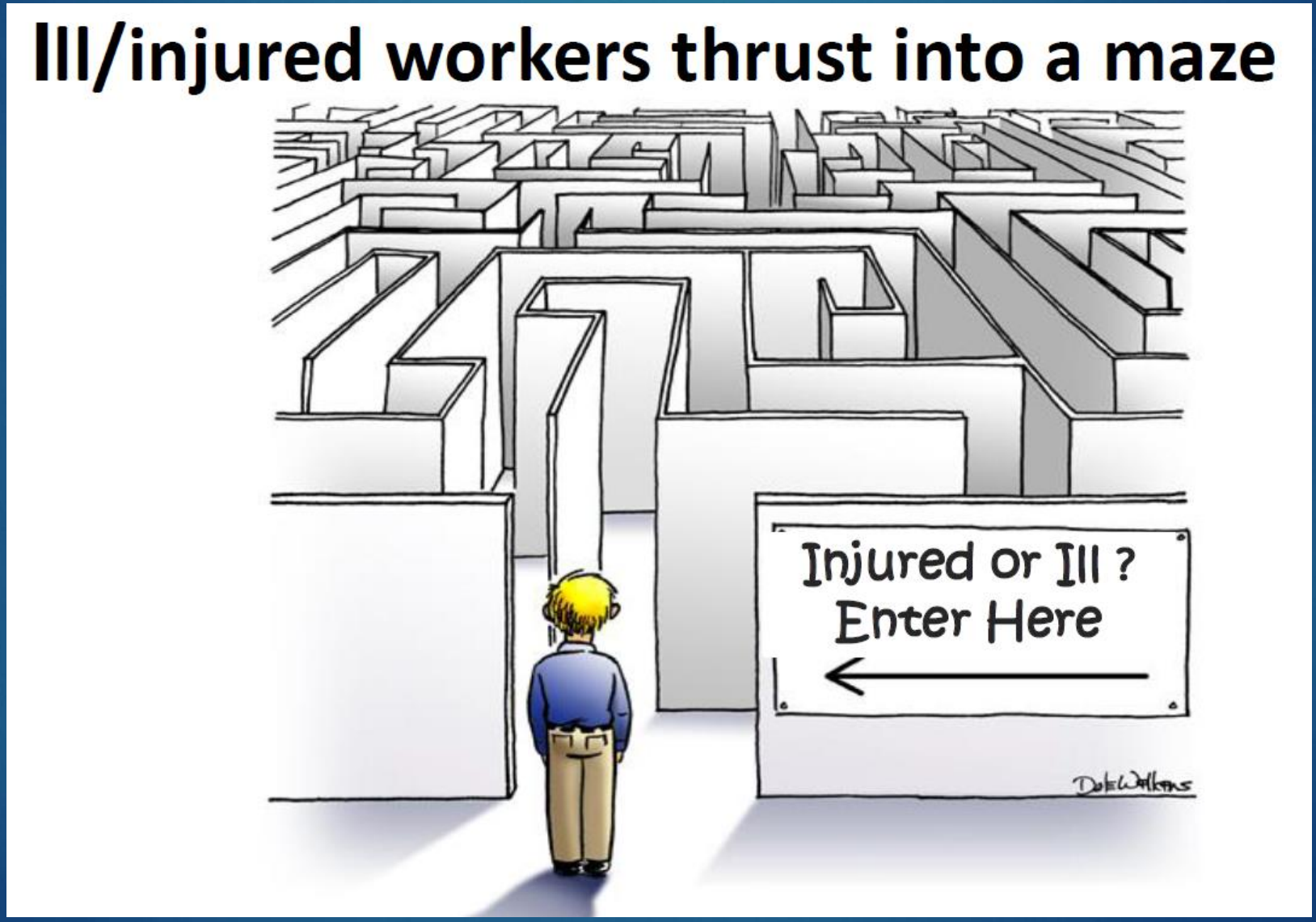
- If you could choose between filing a work injury and treating privately, what would you do?

What happens if you're injured or ill at home?

- See PTP
- Get treated
- Get better

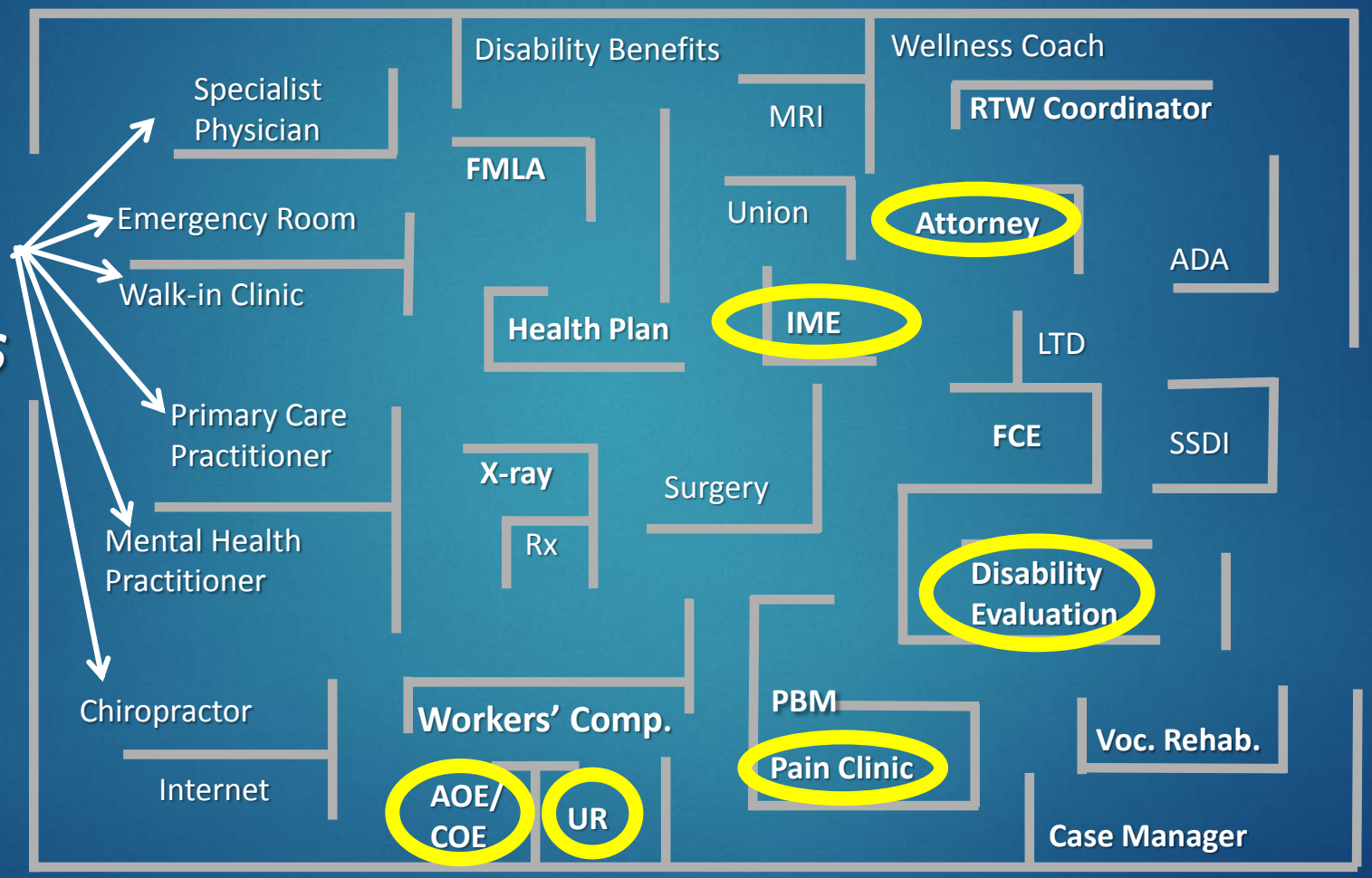
What Happens if you get injured at work?

Problems Related to the Injured Worker



Cases Slowly Get Stuck in the Complexity

Health status changes



Normal rhythm of Case

= Higher potential for case getting stuck

Road to Recovery for the Injured Worker

Perceptions & Psychosocial Issues Can *Overwhelm* IW

- Problems related to "The Worker"

Why is WC such a hassle?

Separated

Losing house

Damn, this hurts!

Fired

On Percocet

Money problems

Blues better w/ Percocet

Mortgage due

Injury

Abused as child

Reinjury fear

They're going to fire me.

Rude boss

What if this doesn't get better?

Depressed

Injured uncle never worked again

How will kids get to school?

They think I'm faking!

First Week

First 3 Months

Psychosocial Factors are the

"Elephant in the Room"

Psychosocial & Delayed Recovery Factors

- Associated with long term disability when ignored or unaddressed
- Effective prevention/management tools exist to minimize disability and chronicity

Injured Worker related Issues

- Ignorance (WC system information deficit) and false beliefs
- Unrealistic expectations of medical care
- Fear of return to work after injury, future, etc.
- Fear Avoidance behavior – activity = hurt & pain is bad
- Inability to cope & catastrophic thinking
- Low motivation for recovery - Off-work benefits
- Residual effects of childhood abuse (ACE)
- Financial: distressed due to loss of cash income

Often Leads to:

- ***Mistrust, anger & perceived injustice***
- ***Resistance to RTW / Delayed case resolution***

TIP: Injured Worker-related

- Consider, acknowledge & deal with perceived or real IW issues
  - *Realize IW may be confused and feel disrespected and marginalized*
  - *IW needs to perceive claims examiner as patient advocate*
  - *Early resolution of denied claims and body parts issues*
  - *Consider the "big picture" – promote authorizations based on:*
    - Low cost; Respect for TX MD; Early RTW
- Early recognition and action on problems
  - *Manage IWs perceived or real problems*
  - *Ombudsperson/Claims adjustor needs to TALK to the IW and LISTEN with UNDERSTANDING*
  - *Early identification of delayed recovery factors*

Problems Related to the Doctor

- High volume of patients leave less time for complex problems
  - *Medicine as a business with* increased productivity demands
  - *Medical co-morbidities delay case – not treated by WC doctor*
- Extra burdens: perceived and real
  - (Perception of) Medical care interference

    Paperwork, forms, delays awaiting authorization, etc.
    - Evidence based medicine (EBM) – ACOEM Guidelines: not followed

<u>Often Leads to</u>:

- ***Body part creep***
- ***Worker never gets MMI'd (Maximal Medical Improvement)***

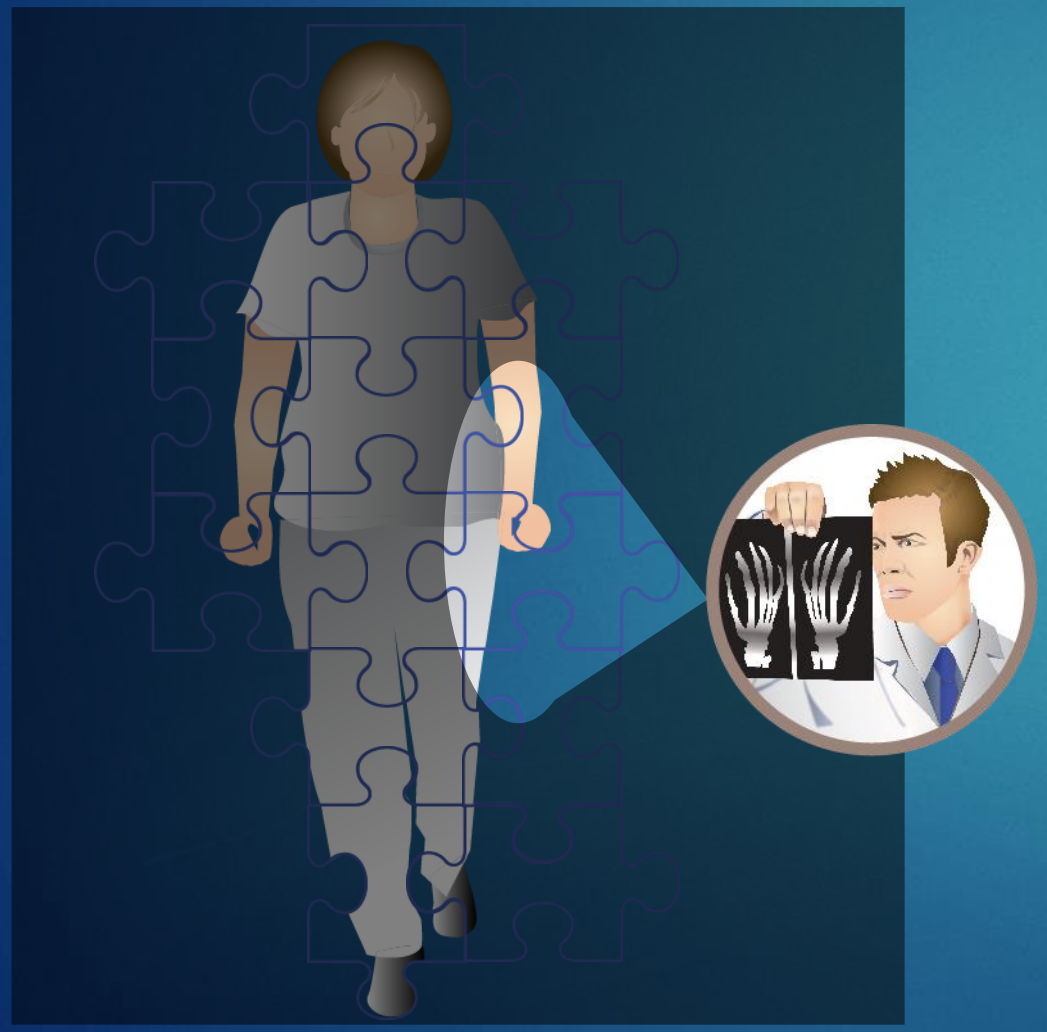
Problems Related to the Doctor

- Too focused on symptoms, imaging studies
- Biomedical Model

<u>Often Leads to</u>:

- ***Too little focus on function***
- ***Too little focus on the IW***
- ***Often leads to more procedures and medications***

Bio*medical* Model tries to Narrow Down & Identify the Source of Pain



DEFINITION:

Pain is the result of injury or disease that has caused anatomical alteration or pathophysiological harm to body tissues

The *Biopsychosocial* Model

- The problem is the WHOLE person needs to be treated
- Pain is the result of an interaction among:
  - *Emotional / psychological state*
  - *Bodily anatomy / pathophysiology*
  - *Thoughts, beliefs, information*
  - *Residual effects of past history*
    - *Adverse childhood experiences (ACE)*
  - *Interactions with the external environment*
    - *workplace, home, disability system, and health care providers*

Problems Related to the Doctor

- Poor communication skills (no training)
- Time pressure / discomfort with underlying issues
- Low respect/understanding for value of other roles / processes
- Chasing the money
- Ignore EBM treatment guidelines
- Refusal to provide documentation, engage with NCM / peers

Problems Related to Medical Care

- Too few doctors are rehabilitation, whole-person oriented
- Too few psychologists will to treat injured workers
- Too few quality functional restoration program
- Payers hesitant to authorize psychological care or FRP despite strong support by ACOEM chronic Pain Guideline
  - **Worry re: expanding or prolonging claim**

TIP: Medical-related

- WC requires unique skill sets, sometimes lacking in PTP
- Consider services of nurse case manager
  - *NCM Role: work hand in hand with physician*
  - *Focus on return to health and function*
  - Coordinates and collaborates with PTP & all other parties
- Insist on a time-limited, goal-oriented treatment plan
  - *If expected plan progress is not made, search for obstacles that can be addressed*
  - *Seek PTP's assistance in addressing obstacles*
- If the carrot doesn't work, consider stick (oust PTP from PPL)

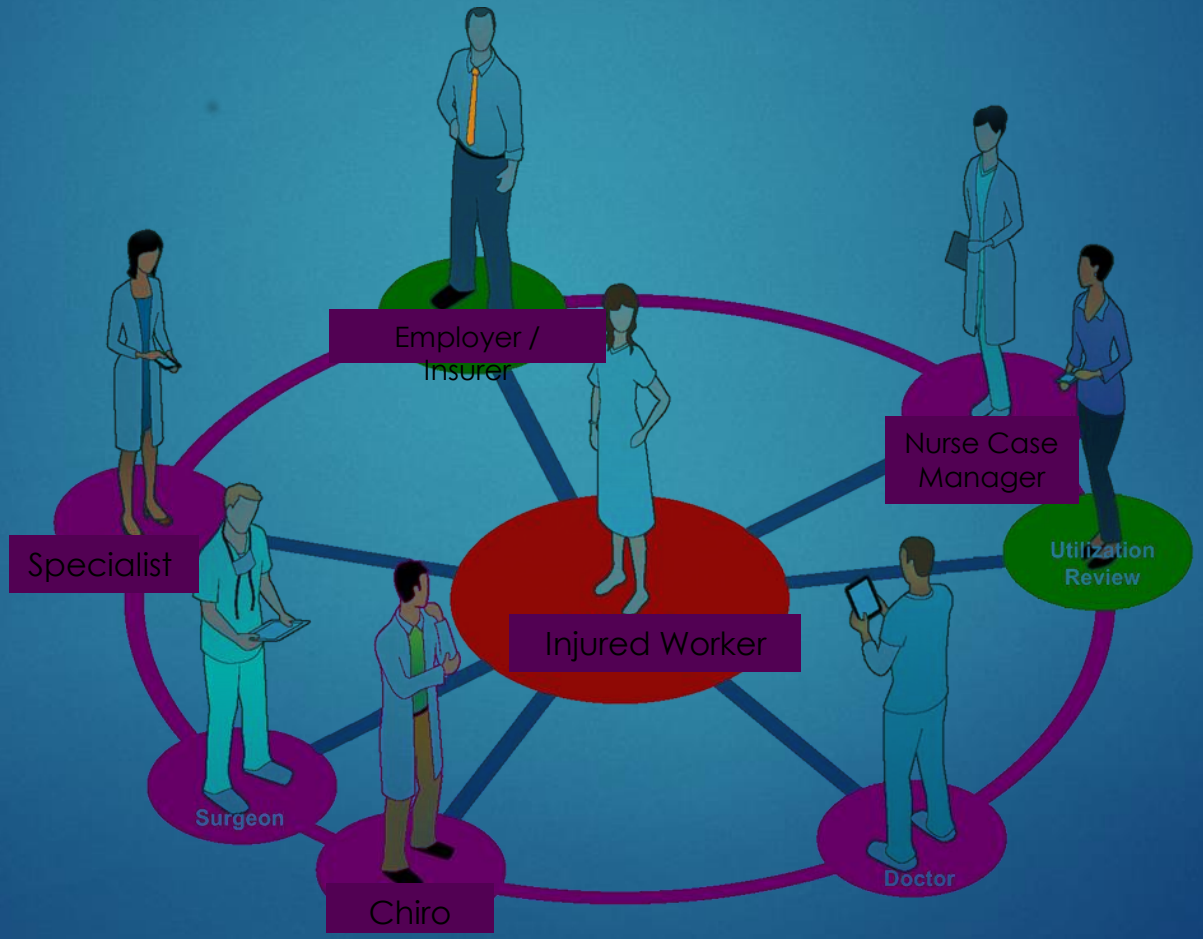
Problems Related to the WC System

It Is Difficult to Legislate

Goodwill/Good Behavior

Too Many Players in the System

- Problems related to "The System"



Problems Related to the WC System

- Laws/legal issues complex and burdensome
  - *Procedural burden significant - Prescribed steps may create process / service delays*
  - *Denial of care and Utilization review (UR) may generate disputes / stall cases*
  - *System may convert medical issues to legal disputes*
  - Medical Legal Evaluator (IME) quality variable
- Injured worker often ignored
  - *Focus on the claim and process (procedural) frequently takes precedence over communicating with the worker and identifying real issues driving the claim*
  - *IW may be upset by communication with insurer (written or verbal)*

Often Leads to:

- ***Stuck claim***

TIP: Issues Related to WC System

- Earn / deserve workers' trust – Be an advocate for the IW
- Early resolution of denied claims and body parts
  - *May legally be able to wait "X" days, but…*
    - **Every day you wait leads to potential movement towards a stuck claim**
- Identify cases getting stuck early and react appropriately
  - *TTD as a risk factor*
- Communication with concerned parties
- Fine tune Preferred Provider List (PPL) to include best doctors

Problems Related to Employers

- Ignorance (information & skill deficit) and false beliefs
- Adoption of hostile (defensive) posture
  - *Refusal to support modified return-to-work*
  - *Employer may balk at aspects of claim management*
- Desire to solve HR problems with WorkComp
- Refusal to make needed ergonomic modifications

<u>Often Leads to</u>:

- ***Stuck claim***

TIP: Understand Employer Needs

- Employers often face a tough bottom line, with thin margins
- Help employer understand how
  - *Keeping a worker working reduces costs and long-term disability*
  - *How such reduction can positively affect the bottom line*
  - *Let Employer know expected course & resolution time for IW's condition*
- Good Employer-Employee Interactions
- Remind employer re: the Golden Rule

Problems Related to the Legal System

- Most claimant attorneys are simply trying to attain what they believe is best for their clients. But…
- Consequences of resorting to legal action
  - *Attorney incentives ($$$) problematic*
  - *Attorney directing medical care problematic*
  - *Focus shifts to rights & money, not recovery*

<u>Often Leads to</u>:

- ***Return to health often slowed/halted (e.g., med issues resolved legally)***
- ***Stuck case***

TIP: Work Collaboratively with Attorneys

- If possible, work collaboratively with Claimant Attorney
- Choose the Defense Attorney carefully!
- Know when to hold 'em . . . Know when to fold 'em.
  - *If you are going to fight, fight wisely*

Solutions – General Concepts

SOME THEORIES AND OBSERVATIONS

Implications for Action

THE PROBLEM:

Stuck cases may *look* medical

BUT. . .

Getting these cases unstuck requires identifying & addressing ***Obstacles*** to recovery or resolution that can be:

MEDICAL *(industrial and nonindustrial)*

AND

NON-MEDICAL *(psychosocial, educational, cultural, etc.)*

Delayed Recovery Factors

Emotions	Depression / Anxiety / Catastrophizing
Attitudes and Beliefs	Beliefs that pain is a sign of damage and that pain/discomfort is harmful Expectations of curative passive treatments Belief that all pain must be abolished before return to work or normal activity
Behavior	Avoidance of activity and social interaction due to fear of pain / reinjury
	Use of extended rest Increased use of alcohol and other drugs
Social Support	Unsupported or overprotective partner / family
Work	Poor work history Job dissatisfaction and low motivation to return to work Unsupported work environment Prolonged time off work
Historical	History of family or personal substance abuse / misuse History of adverse childhood experiences (ACE) Psychological disease: ADD, OCD, bipolar, schizophrenia, BPD Lack of life and coping skills; lack of resiliency Health illiteracy

Injured Worker Negative Thoughts / Beliefs

- It's not really safe for me to be physically active
- Worrying thoughts have been going through my mind a lot of the time
- I feel that my pain is terrible and never going to get any better
- My pain is over 10/10 and is the worst pain imaginable
- I doubt that I will ever be able to work again

Early Recognition of Delayed Recovery Factors

- Note: Delayed recovery = big risk factor for stuck cases
- Identify risk factors for delayed recovery
  - Simple Screening Questionnaires
    - *STarT Back Screening Tool (SBST)*
    - *Örebro Musculoskeletal Pain Questionnaire*
    - *The Pain Disability Questionnaire (PDQ)*

TIP: What should the adjuster look for ?

- Are there risk factors for, or evidence of, delayed recovery?
- Does the IW report or exhibit increasing symptoms or continual complaints of pain despite treatment
  - *E.g., poor sleep, inactivity, deconditioning, increased # of prescriptions, added meds?*
- Ongoing medical treatment / cost without benefit
  - *No clear treatment plan or path forward*
  - *Concerns re: medical provider(s)*
  - *Non EBM (ACOEM) compliant treatments recommended*
- Failure of prior RTW effort (no documentation of RTW plan)
- Is diagnosis vague and/or no objective findings
- Prolonged work absence

TIP: What should the adjuster do?

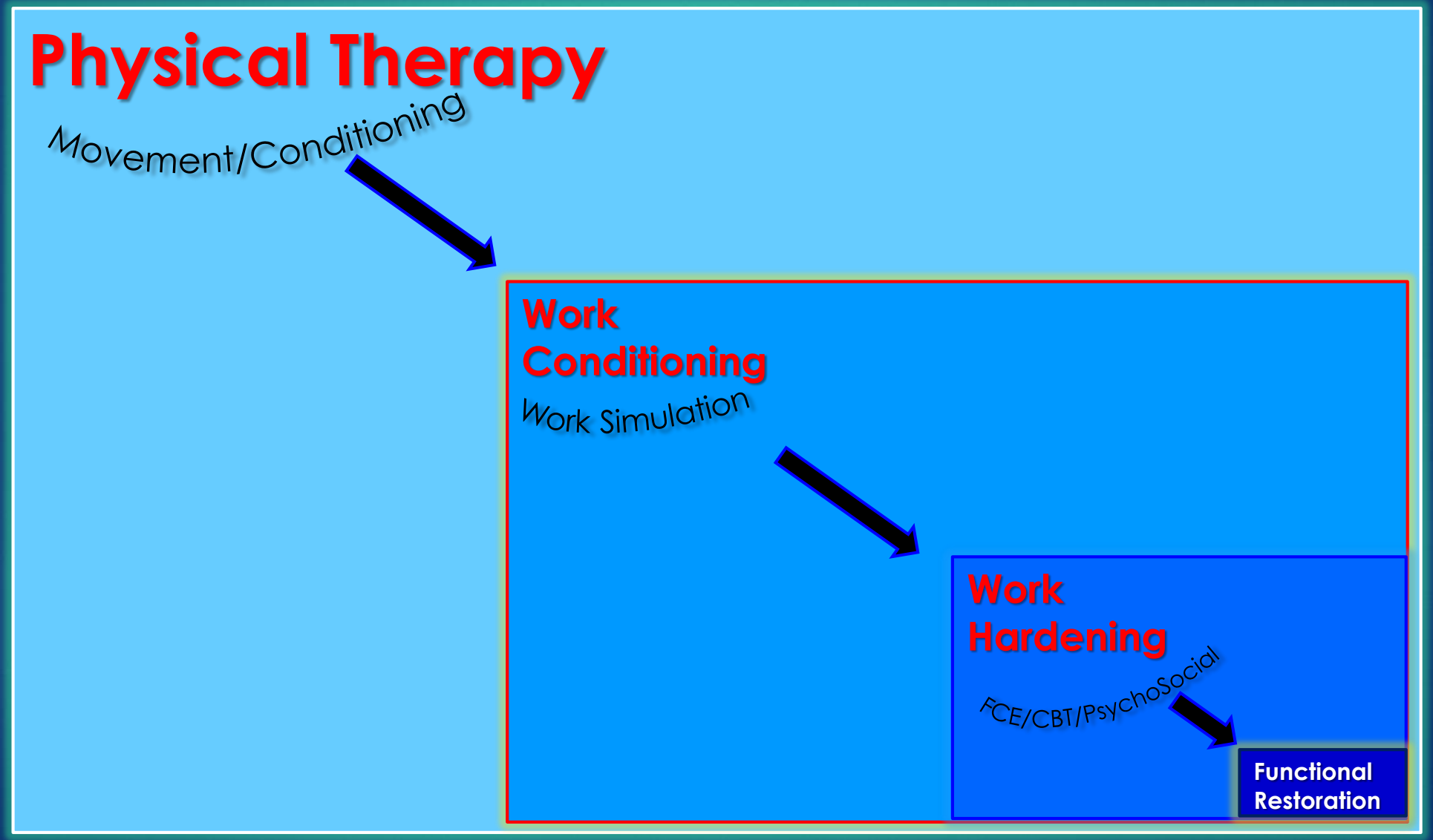
- Understand limits of Nevada WC system
  - "Know when to hold then and know when to fold them"
- Nevada WC is a small world – know the players
- Obtain a second medical opinion
- Recommend/Approve a multidisciplinary evaluation
- Keep a positive attitude toward the injured worker

Medical Treatment & Rehabilitation

Biopsychosocial functional restoration approach

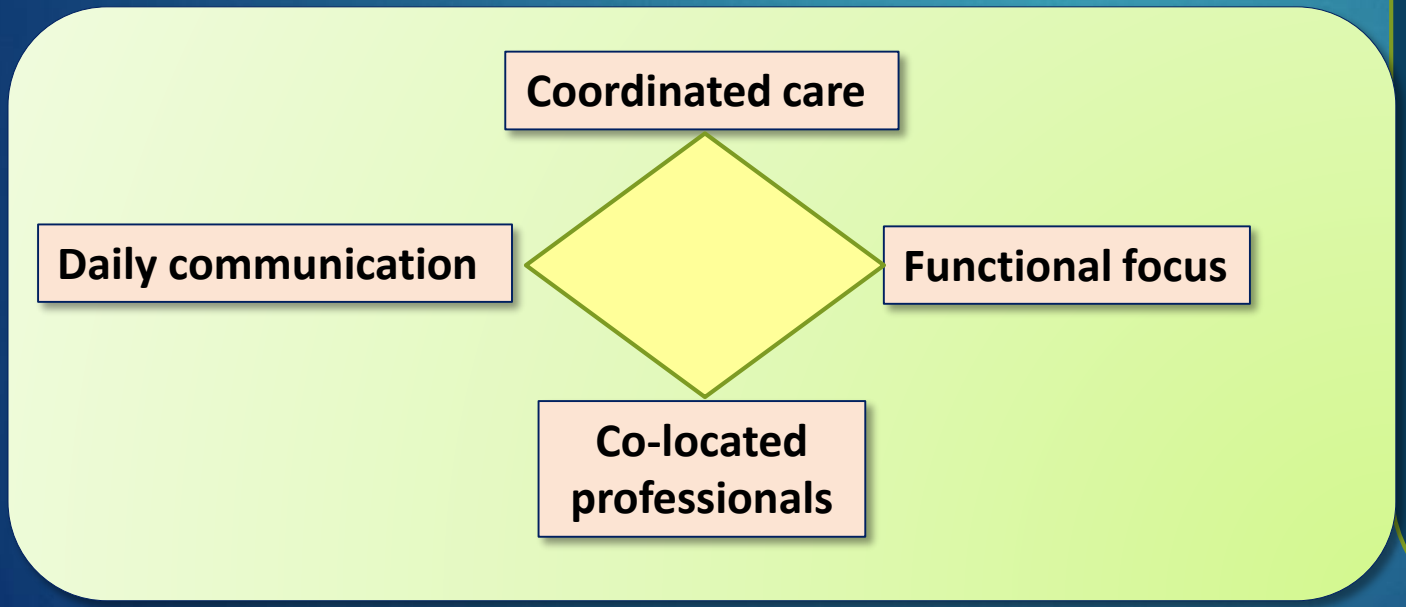
Concept: Recovery Takes Time

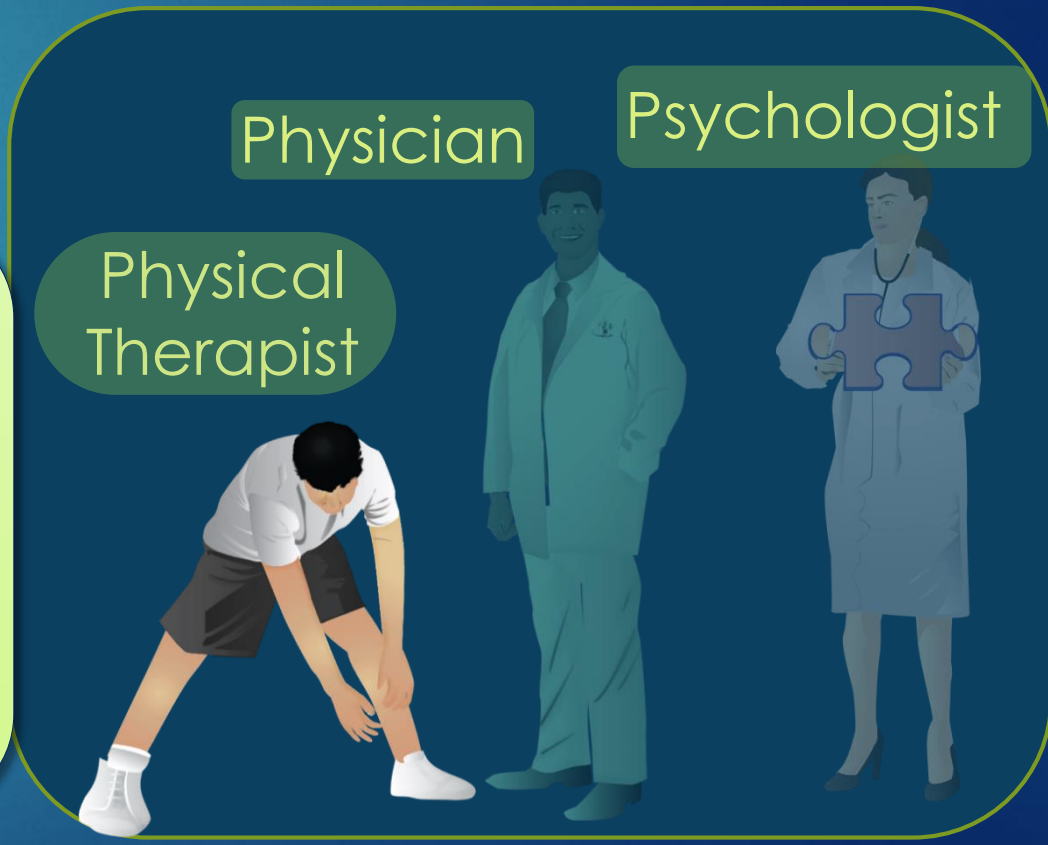
- Do the Simple Things First



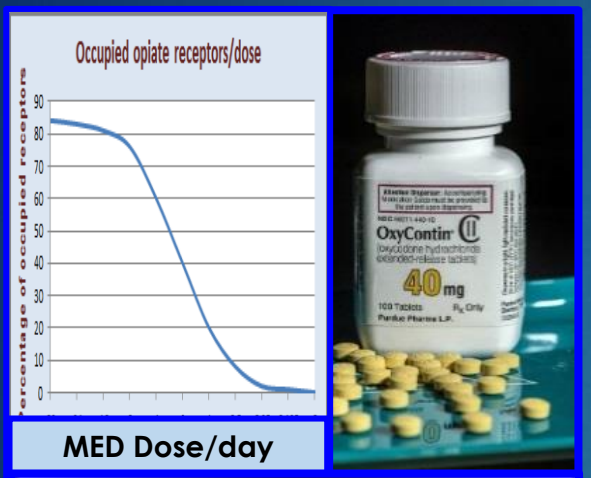
Functional Restoration is an Approach

- Not always an expensive full-time pain program
- A good treatment plan has multiple patient-specific approaches
- *Functional restoration is an approach with:*





Functional Restoration Components



MED Dose/day

Medication/opioid Optimization

Cognitive Behavioral Therapy (CBT)

Physical Restorative Therapies

Education and Psychosocial Focus

Role of Pain Physical Therapist

Importance of Active Therapies (vs. Passive)

- **Increase Active Exercise**
  - Stretching, strengthening, condition, balance, etc.
- **Reduce Passive Therapies**
  - Ultrasound, massage, manual mobilization, etc.
- **Key Role of Physical Therapy**
  - Safe exercise regimen
  - Teach flare-up management
  - Self-directed (home) exercise program
  - Deal with pain avoidance & fear of reinjury
  - Teach self-confidence

Role of Pain Psychologist

- Help patient take responsibility, be self-sufficient and become educated about how to manage pain.
- Teach importance of non-physical aspects of pain and how to deal with them.
- Address fear avoidance, anger, hostility, etc.
- Identify psychological barriers to physical progress.
- Positive interactions with others.
- Re-establishing balanced life.

FRPs focus on Patient Engagement

- **Why do we care about patient engagement?**
  - **Empowerment; self-management; internal Locus of control**
    - We can't help someone who is passive and not actively engaged in *his or her own* recovery and well being
  - **Intermittent medical and therapy visits inadequate**
    - A patient MUST take charge of their own restoration 24/7
    - Need regular/immediate communication between patient, physician, PT, psychologist

SOLUTION: Functional Restoration Approach

- Purpose is to restore function and everyday life activities
- Focus shifts away from treatment of symptoms
- Patient is educated and driving own recovery
- *"From patient to person"* – *(American Chronic Pain Association)*

Functional Restoration Approach

- ***WHO is appropriate**? (Criteria)*
  - *Establish correct diagnosis*
  - *Selective screening a key competency of FRPs*
  - *Tailor Program to fit IW's needs (not just end-stage cases)*
  - *Frequent communication with all parties*
- ***Self management important***
  - *Patients take responsibility for managing their symptoms & treatment*
- ***Functionally oriented** (NOT pain oriented!)*
  - ***FOCUS**: to reengage IW in home and work activities*
  - ***GOAL**: Provide quality cost-effective care within EBM Guidelines*
- ***FRP After Care and Follow-up***
  - *Focus on positive outcomes (3-12 months)*
  - *Outcome tracking essential!*

Outcome Case # 1

- Joanne Smith is a 45-year-old female with 4 failed back surgeries
  - After week 2: Gave up wheelchair and home health aide
  - After week 4: Off opioids and moved back into bedroom with husband
  - After week 5: Seems cheery and when asked why, she said "speak to my husband!"
  - After week 6: Thanked the FRP team for giving her back her life
  - 6 months post-discharge: Still off meds, active in family life, and doing some volunteer work for her church

Outcome Case # 2

- John Morris is a 35 year old male Police Officer with LBP
  - NCM supports and CE authorizes FRP
  - 4-week FRP engagement
  - Weaned from all medications
  - Discharge on a Friday to return to full duty work on Monday

Summary

GET CASES STARTED ON THE RIGHT PATH FROM THE GET-GO!

Summary: Preventing & Unsticking Stuck Cases

- Communication
- Early resolution of disputes
- Treat the injured worker with respect
- Identify risk factors for delayed recovery early and react quickly
- If recovery delayed, identify and address obstacles

Summary: Preventing & Unsticking Stuck Cases

- Identify quality physicians and incentivize them
- Support & encourage functional restoration approaches
- If you do not have one, hire or contract with a medical director
- Utilize services of a nurse case manager

Questions

Don’t Forget . . .

Please fill out the Evaluation Online: http://dir.nv.gov/WCS/Training/

- General Session- Why Do Claims Get Stuck & What To Do About It?

For complimentary Wi-Fi select the Tuscany Conventions