



**Mount  
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Written Testimony of Dr. Winston Kwa, M.D.  
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New York, NY 10029  
Before the  
New York State Senate Standing Committee on Labor Chair Jessica Ramos  
In a public hearing on NYS Workers Compensation  
May 15th, 2024

My name is Dr. Winston Kwa. I am a board certified physician specializing in occupational medicine. I serve as the Medical Director of the Mid-Hudson Valley Mount Sinai Selikoff Centers for Occupational Health in the Department of Environmental and Public Health at the Icahn School of Medicine at Mount Sinai. I am also a member of the Medical Advisory Council for the NYS Workers' Compensation Board.

I am here today to provide you with more information about the challenges we face with the NYS Workers' Compensation System as an occupational health clinic providing crucial healthcare to sick and injured workers in New York State.

Let me begin with brief overview of who we are. Mount Sinai Selikoff Centers for Occupational Health, with two locations in New York City Region- Manhattan and Staten Island as well as two locations in Mid- Hudson Valley Region- Yonkers in Westchester County; and Suffern in Rockland County, are part of the NYS Occupational Health Clinic Network (OHCN). The NYS Occupational Health Clinic Network was created in 1988 to respond to a serious and unmet needs for clinical resources to address occupational diseases in New York State. The OHCN is the nation's only state-based occupational health clinic network, with 9 clinical centers across the State, specializing in prevention, diagnosis and treatment of work related injuries and illnesses. For more than 30 years the OHCN has provided preventive, educational, diagnostic and treatment services to unions, community organizations, and businesses throughout NYS. The OHCN assists New Yorkers by helping them to return to work quickly and safely and by preventing occupational disease and injuries. The Occupational Health Clinics are available to all workers, retirees and residents in New York State. We care for all workers who sustain work related injury or illness; no worker is ever turned away regardless of their immigration status, insurance coverage or employment status. The OHCN clinics are all uniquely positioned to provide appropriate, expert response and treatment for a variety of public health challenges NY faces today. In response to the World Trade Center terrorist attacks, for example, Network clinics helped design and implement a comprehensive program to evaluate and treat the physical and chemical risks posed by the Sept. 11th terrorist attacks in NYC. Today, they help coordinate and participate in a federally-funded health response for tens of thousands of 9/11 responders - workers and volunteers from across our state and nation - that find themselves suffering from 9/11 exposures.

As part of the OHCN mission, Mount Sinai Selikoff Centers provide 360- degree approach to injured and sick workers. We provide the entire range of workplace health and safety-related services—

beginning with education and consultation aimed at injury and illness prevention. We diagnose and treat ill and injured workers and our goal is to safely return them to work. Our doctors are experts in workers' compensation who can establish the link between work and illness and can connect patients with other treating specialists who accept workers' compensation insurance. All of this is provided with guidance and support from staff with expertise in ergonomics, industrial hygiene, social work, mental health and vocational counseling.

With all the excellent and longstanding expertise, we still continue to experience challenges with the NYS Workers Compensation (WC) system that prevent us from providing necessary care to sick and injured workers in NYS and here are some examples:

1. Workers' Compensation portal "OnBoard"

As a physician actively treating injured workers under the NYS Workers Compensation system, I, initially, had very high hopes when the NYS Workers Compensation Board (WCB) announced they were implementing an electronic Worker's Compensation Portal called "OnBoard" in March 2022. I was an active participant in the Worker's Compensation Business Council whose role was to advise on the build out of portal with a goal to improve and expedite access to care and benefits for the injured and sick workers. After its implementation, I have noticed that numerous worker's compensation carriers have used this OnBoard portal as a way to deny or delay care to workers. Some examples I would highlight is the medication formulary. During its implementation, certain medications were supposed to be covered if it is for treatment of an established work-related condition. Its purpose was to eliminate the need for a medical provider to request prior authorization for medications. I have experienced repeatedly that despite following the prescribing guidelines, carriers continue to deny coverage and will only approve the medication when a prior authorization is submitted or the WCB medical director's office approves the medication. This requires numerous administrative steps. The goal of this "OnBoard" portal was to reduce administrative burden to the medical provider but instead has increased this unnecessary administrative workload to the providers. Another example of administrative barrier for medical providers is when established WC cases require a permanency rating. Carriers or WC Board judge may request this to continue care and benefits or to initiate care for the injured worker. The current system and guidelines only has permanency ratings for a few medical conditions. If a condition is not listed and permanency rating cannot be properly completed due to this challenge, care and financial benefits may cease for the injured worker. There is no flexibility to this system and cases have been left without any resolution and the injured worker not getting the care and benefits they should receive.

The above are just some examples of unnecessary administrative burdens placed on by the WCB Board. Due to these burdens, there have been a decrease in medical providers who will participate or treat Workers Compensation patients in NYS. Many patients will resort to using their private insurance since they are unable to find medical providers especially specialists under NYS WC to treat their injuries or work-related medical conditions.

2. Worker's Compensation Telehealth Restrictions

The COVID-19 pandemic was an unprecedented disruptor of "normal" processes and although the spread of the virus has slowed once again, we can never return to "business as usual". Telehealth services are now "mainstream" medicine and arbitrary limitations of telehealth services is detrimental to our patients' ongoing care. The pandemic had created circumstances where it would simply be impossible for our patients to have consistent access to much needed care. Patients are required to be screened and cannot be seen in person if they exhibit any COVID-19 like symptoms, which are similar to a simple cold or allergies. Most healthcare practices, as a precaution to protect staff, clinicians and other patients, would only offer such symptomatic patients telehealth appointments. Yet, WCB's newly-

formulated “Treatment via telehealth” Section 325-1.26.(b).(1).(ii), goes on to state that during the chronic phase of the patient’s treatment, after more than 3 months from the date of illness or injury, the patient ***must be seen in person every 3 months***. This means that every single visit for a patient who is 3 months or more post-accident may need to be in-person. This is unrealistic and potentially harmful to our patients many of whom are simply too ill and/or limited by other circumstances to be able to come into the clinics every three months. They have relied heavily on telehealth to receive care from their physicians, who know their condition and circumstances well, and need to continue with this visit modality. The choice of visit modality should be left to the discretion of our specialists who will advise patients when they must be seen in person, or when telehealth visits will be adequate.

This guidance greatly hinders effective patient care under WC, and drive even more practitioners away from participation in the NYS WC system. There is simply no reason to deny WC patients the convenient, timely and excellent medical care made possible by telehealth. In addition, as the direct result of the pandemic, many patients have moved out of state. For this patient population, telemedicine is the only way they preserve their access to a NYS Workers’ Compensation authorized provider and continues to have care through this system. Providing patients with telehealth services also proved to be more cost effective by allowing physicians to triage and treat patients’ symptom flare ups and avoiding unnecessary ER visits. For mental health services specifically, in-person every 3rd visit is burdensome as patients have weekly psychotherapy appointments. If controlled substances are prescribed, there are DEA guidelines that may require more frequent visits. Even CMS guidelines allow for a case-by-case exceptions.

### 3) Lack of specialists

The COVID-19 pandemic, unfortunately, has challenged and, in many cases, exceeded our capacity to provide adequate care and address the needs of the NYS workforce impacted by COVID-19. As the pandemic unfolded, the impact on physical and mental health of workers across the NYS became evident. Many individuals report debilitating, long-lasting effects of having been infected with COVID19, often called “long COVID.” These symptoms can happen to anyone who has had COVID-19 including individuals across ages, races, genders, and ethnicities; individuals with or without disabilities; individuals with or without underlying health conditions. Every OHCN clinic, including Selikoff Centers, had to face the burden of COVID-19 and had to take responsibility for its prevention and treatment. As the pandemic nears its third year, the health and well-being of workers remain a growing concern for multiple healthcare providers, labor unions and community based organizations. As the occupational health clinic, we have seen and continue to see many workers, ranging from healthcare workers through transit, correction officers, warehouse workers, office workers to name a few, who continue to experience Long COVID symptoms. Long COVID is having a profound impact on workers throughout the state.<sup>1</sup> It is a debilitating condition that can cause a wide variety of neurological, vascular and pulmonary symptoms in addition to mental health consequences. But what is perhaps most striking is the occurrence of these symptoms among individuals who were in excellent physical condition before their COVID diagnosis. These symptoms can persist long after the acute COVID-19 infection has resolved affecting individuals’ ability to work, conduct daily activities, engage in educational activities, and participate in their communities. This has had a severe impact not only on injured workers who require quality diagnosis and medical treatment, but also on employers who lose productive employees for extended periods of time when their workers do not have adequate resources to recover and return to work.

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<sup>1</sup> Mayo Clinic Staff. “Covid-19: Long-Term Effects.” *Mayo Clinic*, Mayo Foundation for Medical Education and Research, 28 June 2022, <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-long-term-effects/art-20490351>.

The New York State Insurance Fund (NYSIF) recently conducted a study which found that nearly a third of the workers who had contracted COVID went on to suffer from long COVID.<sup>2</sup> NYSIF reported that 71% of those workers required continuing medical treatment or were unable to work longer than six months. Similarly, a Scottish study of 31,486 patients found that 48% of patients with symptomatic COVID infections remained symptomatic for up to 18 months.<sup>3</sup> It is clear that long COVID is having a major impact on the New York State workforce and will likely continue to do so. Long COVID claims account for 85% of the indemnity payments in all COVID cases – and that does not include medical expenses, mental health impacts, or the loss of career opportunities.

The COVID-19 pandemic has also exposed significant issues with the workers' compensation system.<sup>4</sup> Nearly 3% of full-time workers reported falling ill due to workplace conditions in 2020, which is four times the number from the previous year. Although over 30,000 workers have applied for workers' compensation due to COVID that is less than 10% of the number who are estimated to have contracted COVID while working. The lack of medical specialists who accept workers' compensation provides a strong disincentive for workers with COVID to file for workers' compensation. Those who require cardiologists, pulmonologists, neurologists, and other specialties are needed to treat long COVID are frequently presented with a choice between filing for workers' compensation or being able to see a doctor. This situation has resulted in a loss of benefits for workers and a corresponding transfer of costs to private insurers, union benefit funds and taxpayer-funded public benefits – and not least to the sick workers and their families. The problem is far from over. A study of workers' compensation claims found that long COVID often prevents workers from returning to work and requires ongoing medical treatment even when they do.<sup>5</sup> In the first two years of the pandemic, 71% of long COVID patients required medical treatment or couldn't work for more than 6 months. More than a year after contracting COVID, 18% of long COVID patients remain disabled from work. These statistics reinforce the urgency of expanding the pull of much needed specialties. These specialists are needed to address the consequences of work-related COVID both now and in the coming years.

Thank you for the opportunity to provide the perspective of a clinician treating patients who have experienced illness or injury due to their work environment. I am happy to answer any questions or provide additional information as requested by the committee.

Thank you,

Winston Kwa, MD MPH

*Winston Kwa*

Medical Director

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<sup>2</sup> New York Times. “Coronavirus World Map: Tracking the Global Outbreak.” *The New York Times*, The New York Times, 28 Jan. 2020, <https://www.nytimes.com/interactive/2021/world/covid-cases.html>.

<sup>3</sup> Hastie CE, Lowe DJ, McAuley A, et al. Outcomes among confirmed cases and a matched comparison group in the Long-COVID in Scotland study [published correction appears in *Nat Commun.* 2022 Nov 1;13(1):6540]. *Nat Commun.* 2022;13(1):5663. Published 2022 Oct 12. doi:10.1038/s41467-022-33415-5

<sup>4</sup> Grey, R. E. (2021). (rep.). *Grey & Grey, LLP*. Retrieved February 8, 2023, from <https://greyandgrey.com/wp-content/uploads/2021/04/System-Failure-Release.pdf>.

<sup>5</sup> New York Times. “Coronavirus World Map: Tracking the Global Outbreak.” *The New York Times*, The New York Times, 28 Jan. 2020, <https://www.nytimes.com/interactive/2021/world/covid-cases.html>.

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