

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**OLIVIA MARTINEZ, *Applicant***

**vs.**

**JAGUAR FARM LABOR CONTRACTING, INC. and STAR INSURANCE COMPANY,  
administered by MEADOWBROOK INSURANCE GROUP; REPUBLIC  
UNDERWRITERS INSURANCE COMPANY, administered by SEDGWICK CLAIMS  
MANAGEMENT SERVICES, Defendants**

**Adjudication Number: ADJ10077484  
Bakersfield District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant, Star Insurance Company (Star Insurance) seeks reconsideration of the Findings of Fact, Award, and Orders Admitting Evidence (F&A), issued by the workers' compensation administrative law judge (WCJ) on March 5, 2019, wherein the WCJ found in pertinent part that: Olivia Martinez (applicant) sustained an injury arising out of and occurring in the course of employment (AOE/COE) during the period from August 6, 2013, through June 2, 2015, that defendants Jaguar Farm Labor Contracting (Jaguar Contracting), Star Insurance, and Republic Underwriters Insurance Company (Republic Underwriters) did not have control over applicant's medical treatment, and the medical treatment that lien claimant Spine and Orthopedic Center provided applicant was reasonable and necessary to cure or relieve from the effects of her industrial injury.

Star Insurance contends that the medical record must be further developed as to the issue of whether defendants had control of applicant's medical treatment, and that Spine and Orthopedic Center did not meet its burden of proof that the medical treatment it provided applicant was reasonable or necessary.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report from page 3 to page 15, line 3, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will affirm the F&A except that we will amend the F&A to defer the issues of whether the treatment that Spine and Orthopedic Center provided applicant was necessary and appropriate medical treatment to cure or relieve her from the effects of her cumulative injury. (Finding of Fact 7). Based thereon, we will amend the Award and return the matter to the WCJ for further proceedings consistent with this opinion.

### **BACKGROUND**

Applicant claimed injury to her neck, left shoulder, lumbar spine, hips, knee, feet, and ankles while employed as a farm laborer by Jaguar Contracting during the period from August 6, 2013, through June 2, 2015.<sup>1</sup> Defendant denied applicant's injury claim by its October 13, 2015 Answer.<sup>2</sup> Spine and Orthopedic Center provided medical treatment for applicant from October 5, 2015, to March 7, 2016. (LC. Exh. 2, Patient Ledger.) The cumulative injury claim, in addition to the specific injury claim in case number ADJ10057158, was settled by Compromise and Release; the WCJ issued the Order Approving Compromise and Release on April 25, 2017.

Spine and Orthopedic Center and Star Insurance proceeded to trial on December 5, 2018. The issues regarding Spine & Orthopedic Center's lien included:

2. Liability for self-procured medical treatment (MPN control). ...

4. Lien claim of Spine and Ortho Center in the amount of \$4,444.24. ...

(b) Necessity and appropriateness of treatment, including the potentially applicable provisions of the Medical Treatment Utilization Schedule. ...

(Minutes of Hearing and Summary of Evidence (MOH/SOE), December 5, 2018, pp. 2 - 3.)

---

<sup>1</sup> The Application for Adjudication of Claim states the cumulative injury period was August 6, 2014, through June 3, 2015; the Minutes of Hearing and Summary of Evidence and the Compromise and Release indicate the cumulative injury period was August 6, 2013, through June 2, 2015.

<sup>2</sup> The July 14, 2015 Notice of Denial of Claim (L.C. Exh. 6), wherein defendant accepted the right knee injury claim and denied all other body parts claimed, pertains to the August 6, 2014 specific injury claim (ADJ10057158) that is not at issue herein.

## DISCUSSION

We first note that regarding the issue of “medical control” we agree with the WCJ that:

In this case, the proffered evidence at Trial for MPN control was insufficient. The exhibits regarding MPN control were limited to Defendant’s Exhibits C and F as well as Lien Claimant’s Exhibit 06. Defendant’s Exhibit C and Lien Claimant’s Exhibit 06 concern treatment within the MPN of co-Defendant Republic Underwriters expressly limited to the effects of the second specific injury (August 6, 2014) on Applicant’s right knee. Defendant’s Exhibit F is 21 pages of Explanations of Review wherein Petitioner declines to pay the bills of The Spine & Orthopedic Center for lack of affiliation with an unnamed and unspecified MPN. These exhibits do not come close to establishing that industrial medical treatment for Applicant’s cumulative injury was made readily available by Petitioner via an authorized, compliant and disclosed MPN. (Report, p. 12.)

As to the issue of whether the record should be further developed, we also agree with the WCJ that if a party fails to meet its burden of proof by obtaining and introducing competent evidence, it is not the job of the Appeals Board to rescue that party by ordering the record to be developed. (Lab. Code, § 5502; *San Bernardino Community Hospital v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Telles Transport Inc. v. Workers’ Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290]; *Guzman v. Workers’ Comp. Appeals Bd.* (2013 W/D) 78 Cal.Comp.Cases 893.)

Finally, the WCJ is correct that:

[T]he Medical Treatment Utilization Schedule (including the incorporated elements of the Guidelines of the American College of Occupational and Environmental Medicine-ACOEM) is the presumptively correct measure of the necessity and appropriateness of industrial medical treatment.

However, the “GUIDELINES” portion of the Doctor’s First Report of injury includes a discussion of various portions of the Medical Treatment Utilization Schedule (MTUS) and ACOEM but we are unable to determine whether it addresses the appropriateness of applicant’s subsequent medical treatment. (L.C. Exh. 10, Alan P. Moelleken, M.D., November 2, 2015, pp. 4 – 10 [EAMS pp. 7 – 14].) Also, although the Requests for Authorization (L.C. Exh. 19) clearly identify the treatment for which authorization was being requested, they do not appear to address the MTUS/ACOEM treatment recommendations. It is not the responsibility of the WCJ or the Appeals Board, to determine whether treatment provided for an injured worker is consistent with the provisions of

the MTUS and Labor Code section 4604.5. Nor do we have the medical expertise to make such a determination. Under these circumstances it is appropriate that we defer the issue of whether the treatment that Spine and Orthopedic Center provided applicant was reasonable and necessary to relieve applicant from the effects of the injury. (Lab. Code, § 4600(a) and (b).) We recommend that upon return of this matter, that the WCJ request the parties submit points and authorities (or other pleadings as appropriate), to properly address the issue of whether the treatment provided to applicant was consistent with the provisions of Labor Code section 4604.5 and the MTUS.

Accordingly, we affirm the F&A except that we amend the F&A to defer the issue of whether the treatment that Spine and Orthopedic Center provided applicant was necessary and appropriate medical treatment to cure or relieve her from the effects of the cumulative injury. (Finding of Fact 7.) Based thereon, we will amend the Award and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 5, 2019 Findings of Fact, Award, and Orders Admitting Evidence, is **AFFIRMED**, except that it is **AMENDED** as follows:

#### **FINDINGS OF FACT**

\* \* \*

7. The issue of whether Lien Claimant Spine and Orthopedic Center provided applicant Olivia Martinez with necessary and appropriate medical treatment to cure or relieve her from the effects of her cumulative injury during the period from August 6, 2013, through June 2, 2015, is deferred.

#### **AWARD**

The Award of payment to the Spine and Orthopedic Center for medical treatment it provided applicant is deferred.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 27, 2022**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**BRADFORD & BARTHEL  
SPINE AND ORTHO CENTER  
BILLING DYNANICS  
GINA G. BARSOTTI  
LAW OFFICES OF PETER M. HSIAO**

**TLH/pc**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

**Report and Recommendation**  
**on Petition for Reconsideration (pp. 3-15:3)**

**I. Introduction:** Defendant-Carrier Star Insurance seeks reconsideration to rescind award of the lien claim of The Spine & Orthopedic Center in the amount of \$4,210.00.

Applicant Olivia B. Martinez, born September 20, 1970<sup>1</sup> sustained a cumulative injury to her neck, left shoulder and lumbar spine while employed in the State of California as a Laborer<sup>2</sup> during the period from August 6, 2013 to June 2, 2015 by Defendant-Employer Jaguar Farm Labor Contracting. During the period from August 6, 2013 to June 2, 2015, Defendant-Employer Jaguar Farm Labor Contracting was insured for workers' compensation liability by Defendant-Carriers Republic Underwriting, presently administered by Sedgwick and Petitioner Star Insurance, presently administered by Meadowbrook Insurance Group.<sup>3</sup>

Primary proceedings were resolved via a Compromise & Release approved on April 25, 2017. *Defendant's Exhibit A: Order Approving Compromise & Release 4/25/2017*. The approved settlement included Applicant's claim that she also sustained a specific industrial injury on August 6, 2014.<sup>4</sup> *Defendant's Exhibit A: Compromise & Release 4/25/2017 p. 7 ¶9*; Petitioner accepted primary responsibility to negotiate or litigate lien claims, subject to contribution from Defendant-Carrier Republic Underwriters. *Defendant's Exhibit A: Compromise & Release 4/25/2017 p. 6 ¶8*.

Supplemental lien proceedings were undertaken. The lien claim of California State Disability Insurance-Employment Development Department was settled as part of the approved Compromise & Release. *Defendant's Exhibit A: Compromise & Release 4/25/2017 p. 6 ¶8*. The lien claim of South Coast Interpreting was settled on the morning of Lien Trial. *Findings of Fact & Award 3/05/2019 p. 4 (Finding of Fact #5)*. Following Lien Trial on December 5, 2018, Findings of Fact & Award issued on March 5, 2019. Lien Claimant The Spine & Orthopedic Center was found to have provided Applicant with necessary and appropriate industrial medical treatment with a reasonable unpaid value per the Official Medical Fee Schedule (OMFS) of \$4,210.18. *Findings of Fact &*

---

<sup>1</sup> Applicant was 42 years of age at the end of her period of cumulative injury.

<sup>2</sup> Occupational Group was not stipulated or litigated. Agricultural Laborers are generally within Group 491.

<sup>3</sup> The proportions of liability as between the two Defendant-Carriers are disputed. *Compromise & Release 4/25/2017 p. 7 ¶9*.

<sup>4</sup> The specific injury claim was heard as case ADJ 10057158. The parties relied on the expert opinion of the Qualified Medical Evaluator that the specific injury had not resulted in impairment or a need for further medical treatment. The lien claim of The Spine & Orthopedic Center was not filed in case ADJ 10057158 nor is that case included in the pending petition.

*Award 3/05/2019 p. 4 (Finding of Fact #7).* The lien claim was allowed at the OMFS value and ordered paid by Petitioner subject to contribution from Defendant-Carrier Republic Underwriters. *Findings of Fact & Award 3/05/2019 p. 4 (Award).*

By timely, verified and properly served petition, Star Insurance Company seeks reconsideration. Authorized grounds for reconsideration are alleged consistent with Lab.C. §5903 {c} & {e} as well as Lab.C. §5952{d}. *Petition for Reconsideration 4/02/2019 p. 1 lines 20-23.* Petitioner argues that 1) The WCJ erred in not developing the record on the underlying issue of control of industrial medical treatment in order to accomplish substantial justice (*Petition for Reconsideration 4/02/2019 p. 4 line 4 to p. 8 line 6*), 2) Lien Claimant failed to satisfy its burden of proof in establishing the medical treatment was reasonable or necessary (*Petition for Reconsideration 4/02/2019 p. 8 line 7 to p. 13 line 2*).

Answers to the pending petition have been not received as of the composition of this Report & Recommendation.

It is recommended that the pending petition be denied. The undersigned PW CJ appropriately held Petitioner to its burden of proof on alleged medical control via its MPN and relied on substantial medical evidence in finding Lien Claimant's medical treatment was necessary and appropriate.

**II. Facts:** The work injury history of Applicant Olivia Martinez involves four work injury claims; a specific injury of June 8, 2000, a specific injury of August 6, 2013, a specific injury of June 3, 2015 and a cumulative injury during the period from August 6, 2013 to June 2, 2015. The pending petition has been filed only in case ADJ 10077484, the cumulative injury claim.

Applicant claimed to have sustained an initial industrial injury on June 8, 2000 while employed by Andreas Contreras: Labor Contractor insured by Farmers Insurance Company. This first work injury case was heard as case BAK 131465, now designated case ADJ 3344941. It was resolved by Compromise & Release approved on September 24, 2001. Applicant later reported this first specific injury as a "lower extremity problem that resolved 100% with no significant orthopedic problems" including no prior significant neck or back complaints. *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness of The Spine & Orthopedic Center (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 p. 1.*

Applicant was thereafter able to work in the fields and picking grapes from approximately 2002 until approximately 2012 without further injury or accidents. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: QME Report of Yuri Falkinstein, M.D. 11/21/2015 p. 6.* She began working for Defendant-Employer Jaguar Labor Contracting in approximately 2012. Defendant's

Exhibit B/Lien Claimant's Exhibit 07: *QME Report of Yuri Falkinstein, M.D. 11/21/2015 p. 2.*

On August 6, 2014, Applicant sustained a second specific industrial injury. She reported working on uneven ground made up of loose dirt. She twisted her left ankle and felt the onset of pain in her left ankle and left knee. *Lien Claimant's Exhibit 9: Doctor's First [sic] Report of Alan Moelleken, M.D. (Form 5021) 10/05/2015; Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 p. 2.* About 15 days later, she had pain in her right shoulder and right knee, which she attributed to her fall. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 4.* Her second specific injury claim is being heard as case ADJ 10057158.

Applicant was provided with medical treatment via Central Valley Occupational Medical Group.<sup>5</sup> She was assigned to sedentary work for about two months. She received 12 sessions of physical therapy for her left foot and ankle. This was primarily composed of massages that were not helpful and actually aggravated Applicant's pain. In approximately October 2014, Applicant was released to full duty. She worked until June 2015 "with increasing pain in the neck, shoulders, back, left hip, both knees and left ankle and foot." She self-medicated with Tylenol and Advil. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 4.*

Liability for the second specific injury (the injury of August 6, 2014- ADJ 10057158) was eventually accepted by Sedgwick on behalf of Defendant-Carrier Republic Underwriters. Injury to Applicant's right knee was accepted with injury to Applicant's back, hip, neck and left shoulder denied. Applicant was notified of her entitlement to a panel QME and invited to submit any prior medical bills for "determinative phase" treatment pursuant to Lab.C. §5402{c}. *Lien Claimant's Exhibit 06: Correspondence of Sedgwick (Nicholas Bloemen-Notice of Denial of Claim for Workers' Compensation Benefits) 7/14/2015.*

On June 3, 2015, Applicant appears to have sustained a third specific injury. She once again twisted her left ankle at work after stepping on a clod of loose dirt. She felt immediate pain in her left ankle and foot. The third specific injury was reported and Applicant was returned to Central Valley Occupational Group for further treatment.

The twisting incident of June 3, 2015 has not been pled as a specific injury and has not been assigned a separate ADJ case number within the Electronic Adjudication Management System (EAMS). It is being handled as part of Applicant's fourth work injury claim (ADJ 10077484); the present case

---

<sup>5</sup> Central Valley Occupational Medical Group may have been affiliated with Petitioner's Medical Provider Network, with an MPN associated with Republic Underwriters, or both.



involving cumulative trauma during the period from August 6, 2013 to June 2, 2015.<sup>6</sup>

Upon her return to Central Valley Occupational Group, Applicant was provided with x-rays (ruling out a fracture), a brace and medications. Work restrictions were re-imposed including sitting and not working in the field. Applicant continued on restricted work but was only able to work 4-5 per day because of pain. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 4.*

On June 24, 2015, Applicant filed her claim form for the present cumulative injury, alleging injury to her knee, neck, hips, back and shoulder. *DWC-1 Claim Form 8/06/2015.*<sup>7</sup> An Application for Adjudication was filed on the same day. *Application for Adjudication of Claim 8/06/2015 p. 2 ¶1.*

Applicant last worked for Defendant-Employer on September 30, 2015. *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 pp. 1-2.*

Also on September 30, 2015, Applicant designated Alan Moelleken, M.D. of The Spine & Orthopedic Center as her Primary Treating Physician (PTP) for the industrial medical treatment of her August 6, 2014 specific injury and the present CT injury. *Lien Claimant's Exhibit 05: Correspondence of Law Offices of Peter M. Hsiao (Peter M. Hsiao, Esq.-4600 Election of Primary Treating Physician) 9/30/2015.*

On October 5, 2015, The Spine & Orthopedic Center issued a Form 5021 Doctor's First Report as well as a supporting narrative report. *Lien Claimant's Exhibit 9: Doctor's First Report of Alan Moelleken, M.D. (Form 5021) 10/05/2015; Lien Claimant's Exhibit 10 Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015.*

Dr. Moelleken and Mr. Groh noted that "The only accepted body part is the right knee." Symptoms in the right knee from twisting of the left ankle were attributed to "compensating for the left leg." Applicant complained of right knee pain with intermittent tingling and fatigue from the right knee to the right ankle. *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 p. 2.*

---

<sup>6</sup> This is noted to be the opposite of the recommendation of the Qualified Medical Evaluator. Dr. Falkinstein characterized the second specific injury (August 6, 2014) as "largely inconsequential" and "the basis of the industrial CT narrative" while the third specific injury (June 3, 2015) was recognized by him as a distinct event. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 21.* Nevertheless, the failure to separately plead distinct injuries is waived in the absence of objection. *Norton v. WCAB, (1980) 111 Cal.App. 3d 618, 169 Cal.Rptr. 33, 45 CCC 1098, 1105 fn. 7.*

<sup>7</sup> The claim form originally described the cumulative injury as "CT 8/6/15-6/3/15" which would have required Applicant to have sustained injury during a retrograde motion in Time.

Regarding the disputed body parts, Applicant complained of aching intermittent severe pain on the left side of her neck and left shoulder with radiation of pain, tingling and cramping of the left arm down to all of the fingers of her left hand. She also complained of aching pain and cramping in her back from the left shoulder down the left side of her back, into the left buttock and down the left leg with cramping and weakness. Navigating stairs and walking on sidewalks increased her pain. *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 p. 2.*

Causation of Applicant's symptoms was considered industrial. An orthopedic consultation with Dr. Redjal, EMG/NCS testing, a therapeutic trial of chiropractic therapy and medications were prescribed. *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 pp. 3-4.* Applicant was considered temporarily partially disabled with restrictions barring lifting, pushing or pulling more than ten pounds, sitting or walking greater than fifteen minutes without a fifteen minute break as well as bending, stopping or squatting. *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 p. 4.*

The remainder of the narrative Doctor's First Report includes a defense of the necessity and appropriateness of the proposed treatment as measured by the Medical Treatment Utilization Schedule (MTUS). *Lien Claimant's Exhibit 10: Doctor's First Report of Occupational Injury or Illness (Alan Moelleken, M.D. and Kevin Groh, PA-C) 10/05/2015 pp. 4-11.*

The requested EMG/NCS studies were performed with the lower extremities tested first. The lower extremity testing was a "normal study" with "no electrodiagnostic evidence of focal nerve entrapment, lumbar radiculopathy or generalized peripheral neuropathy affecting the lower limbs." However, Dr. Dirkx warned that EMG/NCS are subject to false negatives such that a normal study does not necessarily rule out radiculopathy and that Applicant had been unable to bear the "needled portion of the examination" such that "this study is technically limited in the conclusions that can be drawn." *Lien Claimant's Exhibit 11: Report of The Spine & Orthopedic Center (Benjamin Dirkx, M.D.-Electrodiagnostic Consultation) 10/14/2015 p. 1.*

A PR-2 Primary Treating Physician's Progress Report was provided on November 11, 2015. Applicant's symptoms were reported to have worsened. X-rays and EMG testing were reviewed. A therapeutic trial of chiropractic care from an MPN list to be provided to Applicant was recommended. Orthopedic consultation, MRI scanning and medications were also prescribed. Applicant's work restrictions were continued with an instruction that Applicant was to be kept off work until modified work was available. *Lien Claimant's Exhibit 12:*

*Report of The Spine & Orthopedic Center (Alan Moelleken, M.D.) 11/11/2015 pp. 3-4.*

EMG/NCS testing of Applicant's upper extremities was reported November 17, 2015. It was noted that the acute phase of treatment had ended and the chronic phase had begun. Test results of Applicant's upper extremities were considered abnormal with electrodiagnostic evidence of a moderate left carpal tunnel syndrome of the sensory and motor nerves as well as a mild right carpal tunnel syndrome of the sensory nerves. It was noted again that Applicant was unable to tolerate the use of needles that, in turn, "limits the amount of information that can be obtained from this test." *Lien Claimant's Exhibit 13 Report of The Spine & Orthopedic Center (Benjamin Dirckx, M.D.-Electrodiagnostic Consultation) 11/17/2015 p. 1.*

Yuri Falkinstein, M.D. is serving as the Qualified Medical Evaluator in the field of orthopedic surgery. He evaluated Applicant and provided a report dated November 21, 2015. Unfortunately, page three of Dr. Falkinstein's initial report regarding Applicant Olivia Martinez appears to have been replaced by page three of a report regarding an injured worker named Frank Guadiana (whom appears to have been examined by Dr. Falkinstein on the same day). *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 3.*

The medical records provided to Dr. Falkinstein for review began with June 3, 2015 ankle twisting injury. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 pp. 19-20.* Dr. Falkinstein opined that the alleged August 6, 2014 injury was "largely inconsequential" and best understood as "the basis of the industrial CT narrative" while a specific left ankle twisting injury occurred on June 3, 2015. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 21.*

Dr. Falkinstein noted Applicant's treatment with Dr. Moelleken as well as the results of MRI scanning. There was non-specific straightening of the cervical spine with posterior disc protrusions at C3-4 and C7-T1. Osteoarthritis and various tears were noted in Applicant's left shoulder. Disc protrusion was also noted at L4-5 and L5-S1 with exiting nerve root compromise. Degeneration was also noted in the left knee. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 pp. 4-5 (review of MRI scan reports of Sean Johnson, M.D.).*

Dr. Falkinstein opined that Applicant was permanent and stationary and had been since no more than six months from her last day of work.<sup>8</sup> He indicated

---

<sup>8</sup> The text of the report seems to have gotten both Applicant's gender and the year of permanent and stationary status wrong, to wit, "**maximum medical improvement** no more than 6 months from *his* last day of work in 10/2015 or **in 04/2015.**" *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 27, bold text in original, italics added.*

Whole Person Impairment of 6% for Applicant's cervical spine, 1% of the left shoulder, 11% of the lumbar spine and no impairment of the left knee or left ankle. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 p. 31.* Dr. Falkinstein opined that all of the cervical spinal impairment, 90% of the left shoulder impairment and 90% of the lumbar spinal impairment were the result of the present cumulative injury rather than specific injuries. Degenerative changes and obesity were identified as the contributing non-industrial factors. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 pp. 31-33.* Dr. Falkinstein recommended further medical treatment including physical therapy and injections. *Defendant's Exhibit B/Lien Claimant's Exhibit 07: Report of Yuri Falkinstein 11/21/2015 pp. 33-36.*

Hamid Redjal, M.D. of The Spine & Orthopedic Center provided an orthopedic consultation report on November 24, 2015. This report was limited to the accepted knee injury. Dr. Redjal tentatively opined that Applicant had sustained an industrial left knee injury and requested MRI scanning and review of the available medical records. *Lien Claimant's Exhibit 14: Report of The Spine & Orthopedic Center (Hamid Redjal, M.D.-Orthopedic Consultation) 11/24/2015.*

On December 7, 2015, Sedgwick notified Applicant on behalf of Defendant-Carrier Republic Underwriting of the end of medical coverage via its Medical Provider Network. Liability had been previously accepted limited to treatment of Applicant's right knee from the second specific injury (August 5, 2014-ADJ 10057158). *Defendant's Exhibit C: Correspondence of Sedgwick (Nicholas Bloemen) 12/07/2015.*

Treatment at The Spine & Orthopedic Center continued. Dr. Moelleken and Nathan Allen, PA-C provided a PR-2 Primary Treating Physician's Progress Report on December 22, 2015. Applicant reported no change in her condition. Treatment recommendations for chiropractic care, a spinal orthopedic consultation with Dr. Redjal and braces for her lumbar spine and left ankle were pending. *Lien Claimant's Exhibit 15: PR-2 Report of The Spine & Orthopedic Center (Alan Moelleken, M.D. and Nathan Allen, PA-C) 12/22/2015 p. 1.* Functional improvement was noted from Applicant's treatment including increased ability to walk, decreased spasms, reduction of pain and improved sleep. *Lien Claimant's Exhibit 15: PR-2 Report of The Spine & Orthopedic Center (Alan Moelleken, M.D. and Nathan Allen, PA-C) 12/22/2015 pp. 1-2.*

Further progress was reported on January 22, 2016. Applicant complained of unchanged pain, increased with walking. It was noted that both knees and Applicant's left ankle were accepted as industrially injured body parts. *Lien Claimant's Exhibit 16: PR-2 Primary Treating Physicians Progress Report of The Spine & Orthopedic Center (Hamid Redjal, M.D. and Victoria Lindsey, PA-C) 1/22/2016.* The same status was reported the next month. *Lien Claimant's*

*Exhibit 17: PR-2 Primary Treating Physicians Progress Report of The Spine & Orthopedic Center (Hamid Redjal, M.D.) 2/25/2016.”*

Defendant provided Explanations of Review of the charges of The Spine & Orthopedic Center. Billing was rejected because services were provided outside of Defendant’s MPN network. *Defendant’s Exhibit F: Explanations of Review for the period 12/07/2015 to 3/01/2015.*

A final treatment report was provided after Defendant’s Explanations of Review. Applicant reported that there had been no significant changes in her condition. She complained that physical therapy of her left ankle only marginally reduced her pain at the time of her sessions but pain increased thereafter. *Lien Claimant’s Exhibit 18: PR-2 Primary Treating Physician’s Progress Report of The Spine & Orthopedic Center (Alan Moelleken, M.D. and Kevin Groh, PA-C) 3/07/2016.* Total “usual and customary” charges of \$9,598.84 had accrued. OMFS values, less a charge for treatment of Applicant’s right knee in connection with the specific injury were \$4,210.18. See, *Lien Claimant’s Exhibit 03: Billing Review of Billing Dynamics 1/29/2017.*

Primary proceedings were resolved via a Compromise & Release approved on April 25, 2017. *Minutes of Hearing 12/05/2018 p. 2 lines 27-28 (Admitted Fact #3); Defendant’s Exhibit A: Compromise & Release with Order Approving Compromise & Release 4/25/2017.*

Supplemental lien proceedings were held. The lien claim of California State Disability Insurance-Employment Development Department was resolved as part of the approved Compromise & Release. *Defendant’s Exhibit A: Compromise & Release 4/25/2017 p. 6 ¶8.* The lien claim of South Coast Interpreting was settled on the morning of the Lien Trial of December 5, 2018. *Stipulation & Order to Pay Lien Claimant (South Coast) 12/05/2018; Minutes of Hearing 12/05/2018 p. 2 lines 39-40 (Issue #3).*

The lien claim of The Spine & Orthopedic Center was the final lien claim of record. It was tried on December 5, 2018. Submission for decision was delayed to December 28, 2018 to allow time for closing arguments. *Minutes of Hearing 12/05/2018 p. 1 lines 42-46 (Disposition Order).*

Lien Claimant The Spine & Orthopedic Center availed itself of the opportunity to present closing arguments. It argued that Defendants were not entitled to medical control via an MPN because treatment was not provided to disputed bodily systems, that its lien claim was filed within the applicable Statute of Limitations, that while it was obligated to submit a supplemental lien declaration, it was not obligated to offer the evidence in support of that declaration, and that its treatment of Applicant was not subject to timely objections or shown to be unnecessary or inappropriate. *Points & Authorities (Spine & Ortho Center) 12/21/2018.*

Defendant-Carrier Republic Underwriting availed itself of the opportunity to present closing arguments. It argues that the lien claim of The Spine & Orthopedic Center should be dismissed because evidence had not been offered in support of its supplemental lien declaration and that it had not established the necessity and appropriateness of its treatment or its reasonable value. *Defendant's Memorandum of Points & Authorities 12/28/2018.*

Petitioner Star Insurance did not avail itself of the opportunity to present closing arguments.

Following submission for decision, Findings of Fact & Award issued on March 3, 2019. The lien claim of The Spine & Orthopedic Center was allowed at the OMFS value of \$4,210.00 to be paid by Petitioner Star Insurance subject to contribution from Republic Underwriting. *Findings of Fact & Award 3/08/2019 p. 4 (Award).*

Whereupon, Petitioner seeks reconsideration.

**III. Discussion:** Petitioner initially presented three questions; 1) Did the WCJ err in finding that defendants were not shown to be entitled to control of the industrial medical treatment of applicant via a MPN, 2) Did the WCJ err in failing to develop the record on the underlying issue of control of industrial medical treatment, and 3) Did the lien claimant meet its burden of proof? *Petition for Reconsideration 4/02/2019 p. 3 line 28 to p. 4 line 3.*

In the body of the argument of the pending petition, the first question disappears and the balance of the arguments of the pending petition considers only the second two questions; 2) The WCJ erred in not developing the record on the underlying issue of control of industrial medical treatment in order to accomplish substantial justice (*Petition for Reconsideration 4/02/2019 p. 4 line 4 to p. 8 line 6*), and 3) Lien Claimant failed to satisfy its burden of proof in establishing the medical treatment was reasonable or necessary (*Petition for Reconsideration 4/02/2019 p. 8 line 7 to p. 13 line 2.*

The omission of the first presented question in the body of the argument of the pending petition implies the answer to that question. Only if the undersigned PWJC did not err by finding that defendants were not entitled to control of the industrial medical treatment of Applicant via its MPN is there any reason to consider whether a further development of the medical-legal record was needed. There is no reason for further development of an already-sufficient record.

Furthermore, the evidence provided at Trial was well short of the required showing:

Injured workers are entitled to all necessary and appropriate medical treatment to cure or relieve them from the effects of their industrial

injuries. Lab.C. §4600{a}. Generally, the employer may control medical treatment within the first thirty days following reporting of the injury. Thereafter, the employer or carrier is entitled to medical control if, but only if, necessary and appropriate treatment is made available via an authorized, compliant, and disclosed Health Care Organization (HCO) or Medical Provider Network (MPN). An MPN is authorized if initial certification and any required recertifications were obtained from the Administrative Director. An MPN is compliant if it contains the required numbers and types of physicians, if the required initial appointment was set, and if industrial medical treatment is otherwise made readily available to the employee if sought within the MPN. An MPN is disclosed if the employee had been provided with required notices regarding obtaining treatment and his procedural rights within the MPN.

Each of these elements; authorization, compliance, and disclosure, are necessary conditions for MPN control. In the absence of any one of these elements, the injured worker has medical control and may self-procure necessary and appropriate treatment from a provider of his or her choice within a reasonable geographic area at the employer or carrier's expense. Lab.C. §4600[c]; *Knight v. UPS*, (2006) 71 CCC 1423 (WCAB *en banc*); *Santa Ana Unified School District v. WCAB (Johnson)*, (2009) 74 CCC 68 (4th DCA WDn) (failure to provide required notices). Medical providers may recover the costs of providing such treatment via a lien claim. Lab.C. §4903[b]. *Juan Carrillo Matancias (Juan Carrillo Manatancillas) v. Milk Maid Dairy/Tony Dragt et al.* (2012 Cal. Wk Comp. P.D. Lexis 88-adopted and incorporated Report & Recommendation on Reconsideration).

In this case, the proffered evidence at Trial for MPN control was insufficient. The exhibits regarding MPN control were limited to Defendant's Exhibits C and F as well as Lien Claimant's Exhibit 06. Defendant's Exhibit C and Lien Claimant's Exhibit 06 concern treatment within the MPN of co-Defendant Republic Underwriters expressly limited to the effects of the second specific injury (August 6, 2014) on Applicant's right knee. Defendant's Exhibit F is 21 pages of Explanations of Review wherein Petitioner declines to pay the bills of The Spine & Orthopedic Center for lack of affiliation with an unnamed and unspecified MPN. These exhibits do not come close to establishing that industrial medical treatment for Applicant's cumulative injury was made readily available by Petitioner via an authorized, compliant and disclosed MPN.

Petitioner quotes Commissioner Moresi's dissent in *Mantancias*, *supra*, for the proposition that compensation defendants should not be expected to re-prove authorization in every case and, instead, the Appeals Board should assume that the law has been obeyed unless and until the defendant is notified that

authorization or another required element is in dispute. *Petition for Reconsideration 4/02/2019 p. 7 lines 2-22.*

The first problem with this argument is, of course, the dissent is not the holding. Whatever the merits or demerits of the dissenter's argument, it is not the holding of the case and, therefore, not a correct statement of the applicable rule of law.

The second problem with this argument is that providing documentation of MPN authorization and other requirements is not onerous. A true copy of the Administrative Director's "hand-shake" letter announcing approval of the MPN is usually sufficient. Judicial notice of a provided excerpt from the DWC's list of approved MPNs is usually sufficient. The testimony of a knowledgeable witness is usually sufficient. Likewise, compliance with access standards and the scheduling of the initial examination can usually be demonstrated with copies of appointment and notice-giving correspondence with added advantage that the same letters typically also prove disclosure.

The third problem with this argument is that liability for self-procured medical treatment and MPN control were stated as issues for decision, thereby giving Petitioner notification and the opportunity to be heard regarding its claim of medical control. *Pre-Trial Conference Summary Statement 9/14/2018 p. 3 (issues); Minutes of Hearing 12/05/2018 p. 2 lines 36-37 (Issue #2).*

Thus, the undersigned PWCJ correctly decided that Petitioner was not shown to be entitled to medical control via its MPN. Petitioner's decision to skip over that question and move on to development of the record was astute.

Petitioner's argument for development of the record begins with the correct analysis that the WCAB generally has the power to develop the medical record. *Petition for Reconsideration 4/02/2019 p. 4 line 4 to p. 5 line 9.* However, apparently in all seriousness, the petition then argues that Trial-level WCJs and the Appeals Board must use this power to ensure that Lien Claimants never prevail on the issue of MPN control:

In the current action, the threshold issue is that of control of medical treatment. If the WCJ found that defendants were not shown to be entitled to control of industrial medical treatment of the applicant via an MPN (F&A 3/5/19 p. 4) it was the WCJ's affirmative duty to develop the record pursuant to sections 5701 and 5906. *Petition for Reconsideration 4/02/2019 p. 5 lines 10-13.*

The petition then argues that the second specific injury (August 6, 2014-ADJ10057158) was originally a claim of injury only to the left ankle, that satisfactory industrial medical treatment of the left ankle for that injury was provided by Central Valley Occupational Medical Group, that Applicant suffered the third specific injury (June 3, 2015) and again received appropriate



care from Central Valley Occupational Medical Group and that Applicant and her attorney never asserted otherwise. *Petition for Reconsideration p. 5 line 14 to p. 7 line 4.*

The first problem with this argument of the pending petition is that it misanalyzes the right and responsibility of the Appeals Board to develop the record. This power and duty does not exist to ensure that only favored parties prevail in compensation litigation. Instead, medical-legal records are to be developed sparingly and only to the extent necessary to ensure that WCAB decisions have a basis in substantial evidence even in the distressingly common situation in which compensation litigants do not offer sufficient evidence on their own. As a result, there is a necessary tension between judicial development of the record and the equitable treatment of the litigants. The undersigned PWCJ appropriately resolved that tension in this case by holding Petitioner accountable for its own unforced failure to prove an entitlement to MPN control rather than taking over the role of the compensation defense attorney and “developing” evidence until the unspeakable horror of allowing a non-MPN medical provider to be paid for its work can be prevented.

The second problem with this part of the argument of the pending petition is the important distinction between Petitioner’s potential entitlement to medical control of the treatment of specific ankle twisting injuries of August 6, 2014 and June 3, 2015 and medical control over the intervening cumulative industrial injury involving bodily systems including but not limited to the left ankle. Specific and cumulative injuries are different. Lab.C. §3208.1. Merger of the two is prohibited. Lab.C. §3208.2, §5303. In other words, Petitioner was not entitled to medical control over treatment for the cumulative injury because they might have been entitled to medical control over the specific injuries. Likewise, Petitioner is not entitled to medical control just because co-Defendant was previously entitled to it.

The third problem with this part of this argument of the pending petition is that the requested additional evidence may not exist. Notably, the pending petition does not seek reconsideration based on Lab.C. §5903{d} involving new evidence that has already been found nor did Petitioner comply with 8 CCR §10856 to disclose the alleged new evidence and the reasons why it was not previously discovered and submitted. In fairness, Petitioner may be able to produce evidence that its MPN was authorized by the Administrative Director. On the other hand, it seems very unlikely that Petitioner, who claims to have been confused by the MPN treatment of the specific left ankle injuries, complied with its obligation under Lab.C. §4616.3/8 CCR §9767.6{a} to set an initial MPN examination or its obligations for “continuity of care.”