

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. RDG 0091839**

5 **KENNETH GROM,**

6 *Applicant,*

7 *vs.*

8 **SHASTA WOOD PRODUCTS; and STATE**
9 **COMPENSATION INSURANCE FUND,**

10 *Defendants.*

11
12 **OPINION AND DECISION**
13 **AFTER RECONSIDERATION**

14 On November 12, 2004, we granted reconsideration in this matter to provide an
15 opportunity to further study the legal and factual issues raised by the petition for reconsideration.
16 Having completed our review, we now issue our Decision After Reconsideration.

17 Defendant, Shasta Wood Products, by and through its insurer, State Compensation
18 Insurance Fund (SCIF), seeks reconsideration of the Findings, Award and Order, issued August
19 26, 2004, in which a workers' compensation administrative law judge (WCJ), awarded applicant
20 "such further medical treatment as is needed to cure and/or relieve from the effects of the
21 industrial injury" (emphasis added), specifically allowing applicant a testosterone cream treatment
22 recommended by his treating physician.

23 Defendant contends that the WCJ erred in awarding applicant further medical treatment in
24 the form of testosterone cream treatment for his July 27, 1999 admitted injury to his back.
25 Defendant argues (1) that, in order to be entitled to this treatment, applicant must establish that the
26 treatment is necessary to cure and relieve him from the effects of his industrial injury, (2) that the
27 treatment is not permitted under the guidelines of the American College of Occupational and
Environmental Medicine (ACOEM), which guidelines are presumed correct on the issue of the
extent and scope of medical treatment, (3) that applicant has not met his burden to rebut the

1 presumption and establish that a variance from the guidelines is reasonably required to cure and
2 relieve him from the effects of his industrial injury, and (4) that the recommended treatment is not
3 supported by any evidence-based medical treatment guidelines which establishes its efficacy, but
4 rather is based upon speculation that it may be effective.

5 Applicant filed an answer to defendant's petition for reconsideration, and the WCJ filed a
6 Report and Recommendation on Petition for Reconsideration (Report), recommending that the
7 petition be denied.

8 Following our review of the record, we hold that applicant is entitled to such medical
9 treatment as is reasonably required to "relieve" from the effects of his industrial injury, even if
10 such treatment will not "cure" that injury, and that the WCJ properly awarded the treatment at
11 issue. Accordingly, we will affirm the WCJ's determination.

12 STATEMENT OF FACTS

13 Applicant, Kenneth Grom, sustained an injury to his back on July 27, 1999 arising out of
14 and in the course of his employment by Shasta Wood Products. His primary medical care has been
15 provided by Michael Hanley, D.C., in conjunction with Leonard Soloniuk, M.D., a specialist in
16 pain management. In a March 31, 2004 progress report, Dr. Hanley stated that applicant remained
17 "in quite severe pain. He states his pain overall is getting worse." On examination, Dr. Hanley
18 noted that applicant's cervical range of motion was "severely limited, and causes quite severe pain
19 into the right parascapular region with pain that radiates down to the elbow," and into his fingers.
20 Applicant's medications include Hydrocodone, Lidoderm, Marinol, Valium and Vicodin.
21 Dr. Hanley further noted that applicant had a low testosterone level and was paying for his
22 testosterone treatment himself, but that he could no longer afford it.

23 A dispute arose over Dr. Soloniuk's recommendation that applicant receive testosterone
24 cream therapy to counteract the decrease in his testosterone levels due to his opiate medications.

25 SCIF referred the request for this treatment for utilization review by Allen Krohn, M.D. On
26 January 5, 2004, Dr. Krohn denied the request, stating:

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1 “As before, we have presented this state-wide and there is NOT
2 general agreement with the contention that HRT [hormone
3 replacement therapy] in males in these circumstances is appropriate.
4 It has not been FDA approved for this purpose and the only medical
5 literature that anyone can find is Dr. Daniell’s oft-quoted ‘study.’
6 We require evidence-based studies that are of sufficient quality
7 before we can accept hypogonadism as an industrial injury.
8 Anecdotal and personal reports do not constitute proof of causation.”

9 Dr. Soloniuk responded to the denial on January 6, 2004, noting that applicant’s treatment
10 for his industrial injury includes chronic opioid therapy, which Dr. Soloniuk stated “has been
11 associated with lowered sex hormone levels.” He quoted a published article by Harry
12 Daniell, M.D., which concluded that “chronic opioid administration without testosterone
13 supplementation may contribute to perpetuation of chronic pain and to continued administration of
14 unnecessarily high dose of narcotics.” Dr. Soloniuk concluded that “testosterone therapy is
15 reasonable and necessary to cure and relieve the results of this patient’s industrial injury.”

16 Applicant made an offer of proof at trial that the testosterone cream therapy had been
17 previously authorized and used by applicant; that as a result of the use of the cream, he has had
18 much more energy, better ability to function in his daily activities, including increased sexual
19 function with his wife; and that as a consequence of his chronic pain from his admitted injury, he
20 has been on long term opioid use and medications.

21 In support of the recommended therapy, applicant offered a series of reports of scientific
22 studies and abstracts of scientific studies which correlated the decrease in testosterone levels, i.e.,
23 hypogonadism, with the daily use of opioids for treatment of chronic pain. (See App. Exhibit 1-K.)

24 On this evidence, the WCJ found the treatment was reasonable and necessary to cure
25 and/or relieve applicant from his industrial injury. The WCJ concluded that applicant’s medical
26 and scientific evidence constituted “evidence-based support” for Dr. Soloniuk’s recommendation,
27 and rebutted Dr. Krohn’s conclusion that the guidelines fail to support the treatment and there are
no other evidence based medical guidelines to support it.

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DISCUSSION

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2 Defendant argues initially that the WCJ applied an incorrect standard to the determination
3 of whether the testosterone treatment was reasonably required to treat applicant’s injury.
4 Defendant contends that any recommended treatment must both cure and relieve applicant from
5 the effects of his industrial injury. Defendant cites Labor Code section 4604.5(c), which provides
6 that the ACOEM treatment guidelines are presumptively correct on the issue of medical treatment,
7 but may be rebutted by a preponderance of the evidence “establishing that a variance from the
8 guidelines is reasonably required to cure and relieve the employee from the effects of his or her
9 injury.”

10 Defendant argues that applicant has not established that the “testosterone cream will in any
11 way cure him from the effects of the alleged industrial injury, his chronic pain and/or opioid use.”
12 (Emphasis in original.) Defendant asserts that Dr. Hanley’s rationale for the treatment, that the
13 absence of the treatment may contribute to perpetuation of chronic pain, fails to meet the standard
14 to rebut the presumption in section 4604.5(c), since it is speculative and does not show that it will
15 cure and relieve the effects of the injury.

16 We are not persuaded that the “cure and relieve” language in section 4604.5(c) is
17 substantially different from other provisions in the Labor Code, such as section 4600, which
18 requires the provision of medical treatment that is reasonably required to “cure or relieve” from the
19 effects of an industrial injury (emphasis added). The phrases “cure or relieve” and “cure and
20 relieve” have been used interchangeably for decades. The California Constitution instructs the
21 Legislature to create a workers’ compensation system which includes “full provision of such
22 medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the
23 effects of such injury.” (Cal. Const. Art. XIV, §4, emphasis added.) The California Supreme
24 Court interpreted “cure and relieve” to require the furnishing of medical treatment which is
25 intended solely to relieve an injured worker from the effects of an industrial injury. (*U.S. Fidelity*
26 *& Guaranty Co. v. Dept. of Indus. Relations (Hardy)* (1929) 207 Cal. 144, 150 [16 IAC 69].) The
27 Court stated, “the words ‘cure and relieve’ were intended to mean the same as ‘cure or relieve.’ In

1 our opinion this is the only reasonable conclusion that can be reached when we consider the act as
2 a whole and its objects and purposes.” (*Hardy, supra*, 207 Cal. at p. 151; see also, *Braewood*
3 *Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 169 [48
4 Cal.Comp.Cases 566].)

5 Section 4064.5, as amended April 19, 2004, now uses both phrases. Subsection (a),
6 pertaining to the use of medical treatment utilization guidelines as promulgated by the
7 Administrative Director of the Division of Workers’ Compensation, provides that the presumption
8 favoring the guidelines can be rebutted by evidence “establishing that a variance from the
9 guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her
10 injury” (emphasis added). However, subsection (c) provides that the presumption favoring the
11 ACOEM guidelines can be rebutted by evidence “establishing that a variance from the guidelines
12 is reasonably required to cure and relieve the employee from the effects of his or her injury, in
13 accordance with Section 4600” (emphasis added). As noted above, section 4600 requires the
14 provision of medical treatment to “cure or relieve” from the effects of the industrial injury
15 (emphasis added).

16 Recognizing the dual language, the WCJ’s award specified that applicant was entitled to
17 such medical treatment as necessary to “cure and/or relieve” him from the effects of his industrial
18 injury. This construction is consistent with prior interpretations, that an award of medical
19 treatment extends to treatment reasonably required to cure or relieve an injured worker from the
20 effects of an industrial injury. In *Smyers v. Workers' Comp. Appeals Board* (1984) 157
21 Cal.App.3d 36 [49 Cal.Comp.Cases 454, 458 n.3], the court defined the scope of compensable
22 medical treatment in a case where the court allowed as medical treatment under section 4600 a
23 prescription for housekeeping services unrelated to nursing services, stating as follows:

24 “This rule is also harmonious with the general description of the
25 section 4600 right offered by the major treatise authors. According
26 to Hanna, compensable medical treatment includes ‘*all measures*
27 *directed toward the cure or relief of the effects of the industrial*
injury’ (2 Hanna, *Cal. Law of Employee Injuries & Work.*
Comp. (2d ed. 1983) § 16.01 [1], p. 16-3, emphasis added; see also

1 id., § 16.05 [1][c], p. 16-40.1.) Herlick agrees. Employers are bound
2 to furnish adequate medical care, and '[t]reatment is not adequate if .
3 . . . it does not include . . . *all measures indicated to cure or relieve.*'
4 (1 Herlick, Cal. Workers' Compensation Law Practice (3d ed. 1984)
5 § 4.8, p. 83, emphasis added.) Here the housekeeping services were
6 indicated by the physicians as a measure directed toward relief of the
7 industrial condition. Both authors also state that palliative measures
8 are compensable. (2 Hanna, Cal. Law of Employee Injuries &
9 Workmen's Compensation, supra, § 16.01 [1], p. 16-3; 1 Herlick,
10 supra, § 4.14, p. 86.) To palliate is '[to] mitigate; to reduce the
11 severity of; to relieve slightly.' (Stedman's Medical Dict. (4th unabr.
12 law. ed. 1976) p. 1018.) The physicians' reports in this case (see fn.
13 2, ante) clearly reveal that the housekeeping services were
14 prescribed as a *palliative* measure." (Emphasis in original.)

15 Medical treatment which is intended only to relieve, but not cure, the effects of an
16 industrial injury is appropriate under section 4600. (See *Dept. of Corrections v. Workers' Comp.*
17 *Appeals Bd. (Rowan)* (1997) 62 Cal.Comp.Cases 353 [writ denied]; *Kellogg Co. v. Workers'*
18 *Comp. Appeals Bd. (Battle)* (1996) 61 Cal.Comp.Cases 519 [writ denied].) This is true in cases of
19 chronic conditions where a cure is not possible, but where relief of symptoms is essential for
20 continued functioning, as well as in cases involving the loss of limbs or other body parts where
21 there is a need for relief of symptoms.

22 Thus, the phrase "cure or relieve" is identical to the phrase "cure and relieve," such that
23 their use is interchangeable. We discern no intent to alter that interpretation by the different
24 formulations used in the different sections of the Labor Code.

25 As to all remaining arguments, based upon our review of the record, and for the reasons
26 stated in the WCJ's Report, which we adopt and incorporate, we will affirm the WCJ's
27 determination that the applicant has rebutted the presumption in section 4604.5(c), and is entitled
28 to the testosterone cream treatment recommended by Dr. Hanley and Dr. Soloniuk.

29 Accordingly, we shall affirm the Findings, Award and Order.

30 For the foregoing reasons,

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1 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation
2 Appeals Board, that the Findings, Award and Order, issued August 26, 2004, is **AFFIRMED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 ***I CONCUR,***
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15 ***DATED AND FILED IN SAN FRANCISCO, CALIFORNIA***

16 ***12/8/04***

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19 ***SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD,***
20 ***EXCEPT LIEN CLAIMANTS.***

21 ***dd***
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