

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

JOHNNY CHINCHILLA, *Applicant*

vs.

**KEYS AUTOMOTIVE GROUP, INC.; SECURITY NATIONAL INSURANCE
COMPANY, administered by AMTRUST NORTH AMERICA, INC., *Defendants***

**Adjudication Number: ADJ9600339
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on December 6, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found that applicant, while employed by defendant, sustained injury arising out of and occurring in the course of employment (AOE/COE)¹ to various body parts; and that defendant did not deny medical treatment to applicant.

Applicant contends that Administrative Director (AD) Rule 9767.6(e) (Cal. Code Regs., tit. 8, § 9767.6(e)) authorizes an employee to elect a Medical Provider Network (MPN)-approved medical facility, even if the directory omits specific physician names. Applicant argues that, because defendant's MPN lists Casa Colina Hospital and Centers for Healthcare (Casa Colina) as an approved facility, the physicians employed there, including Medical Director David Patterson, M.D., qualify as authorized providers under AD Rule 9767.5.1(a) (Cal. Code Regs., tit. 8, § 9767.5.1(a)) and *Rivas v. North American Trailer* [2016 Cal. Wrk. Comp. P.D. LEXIS 572] (*Rivas*) and *Montiel v. Socal Framing, Inc.* [2020 Cal. Wrk. Comp. P.D. LEXIS 379] (*Montiel*). Applicant asserts that allowing defendant to list a facility while intentionally omitting its physicians creates an illogical subterfuge that obstructs access to treatment.

¹ A date of injury is not identified.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending we deny reconsideration.

We have considered the allegations in the Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record and the reasons discussed below, as our Decision After Reconsideration, we rescind the WCJ's December 6, 2022 F&O and substitute a new F&O that finds that applicant sustained injury on August 5, 2014 and that defendant unreasonably denied care to applicant by refusing to authorize treatment with Dr. Patterson; and orders that applicant is entitled to designate Dr. Patterson at Casa Colina as primary treating physician.

BACKGROUND

The parties stipulated to the following facts at the Expedited Hearing on November 7, 2022:

Johnny Chinchilla, [] while employed on August 5, 2014, as a head porter, at Los Angeles, California, by Keys Automotive Group, sustained injury arising out of and in the course of employment to neck, shoulders, left wrist/hand, fingers, back, left knee, and left leg.

(Minutes of Hearing (MOH), 11/07/2022, 2:3-6.)

The parties framed the sole issue as denial of medical treatment. (MOH, 11/07/2022, 2:12.)

On October 6, 2022, applicant, in accordance with Labor Code section 4600², notified defendant by way of e-mail and a letter that he selected Casa Colina as primary treating physician. (App. Ex. 1.)

On October 6, 2022, applicant e-mailed its written designation to defendant's Medical Access Assistant (MAA) requesting assistance in obtaining the authorization or scheduling an appointment as soon as possible. On October 7, 2022, MAA Mari Aboytes responded that "we will not be able to assist with this request, as it is out of the MAA scope to schedule appointments with a medical group." MAA Ms. Aboytes also stated, "[w]e searched within the MPN in attempts to locate medical provider's affiliated with the requested medical group and we were not able to locate any." (App. Ex. 2.)

On October 6, 2022, applicant e-mailed defendant's claims administrator Jennifer Nicholson, selecting Dr. Patterson from Casa Colina as primary treating physician. On October

² Unless otherwise stated, all further statutory references are to the Labor Code.

25, 2022, Ms. Nicholson responded, “Dr. Patterson is not in the AmTrust California MPN (MPN ID# 3154). As such, he will not be authorized as a treating physician.” (App. Ex. 3.)

A November 7, 2022 search confirmed that Casa Colina is a facility within defendant’s MPN. (Def. Ex. A.)

On December 6, 2022, the WCJ issued the F&O, finding defendant did not deny medical treatment. In the Opinion on Decision, the WCJ concluded that when defendant refused applicant’s request to designate Dr. Patterson as primary treating physician, defendant did not deny medical treatment. The WCJ noted that although Casa Colina is included in defendant’s MPN, it did not individually list Dr. Patterson as an approved treating physician.

It is from this F&O that applicant seeks reconsideration.

DISCUSSION

Section 4600(a) provides:

Medical, surgical, ... and hospital treatment, ... that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. ***In the case of the employer’s neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.*** (Lab. Code, § 4600, bold and italics added for emphasis.)

If an employer has established an MPN, the employer is only liable for treatment by a physician from within its MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) However, if the employer neglects or refuses to provide reasonably necessary medical treatment, whether through an MPN or otherwise, then an employee may self-procure medical treatment at the employer’s expense. (Lab. Code, § 4600(a).)

Where an employee seeks entitlement to treatment outside a defendant’s MPN, they hold the burden of proof to show a neglect or refusal to provide treatment by an employer. (Lab. Code, §§ 3202.5; 5705; *Amezcuca v. Westside Produce* [2013 Cal. Wrk. Comp. P.D. LEXIS 93, *8]; *Cornejo v. Solar Turbines, Inc.* [2013 Cal. Wrk. Comp. P.D. LEXIS 479, *4]; *San Diego Unified School Dist. v. Workers’ Comp. Appeals Bd. (Robledo)* (2013) 79 Cal.Comp.Cases 95, 96 (writ denied).)³ If an employer neglects or refuses to provide reasonably necessary medical

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v.*

treatment, whether through an MPN or otherwise, then an employee may self-procure medical treatment at the employer's expense. (*Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423, 1434 (Appeals Board en banc); *McCoy v. Industrial Acc. Com.* (1966) 64 Cal.2d 82, 87-88 [31 Cal.Comp.Cases 93]; *Wei v. Grand Oak Tree, LLC* [2024 Cal. Wrk. Comp. P.D. LEXIS 467, *8-9].)

Notwithstanding applicant's burden of proof, upon receiving notice or knowledge of a claimed industrial injury, the employer must promptly investigate the facts to determine liability and must act with expedition to comply with its statutory obligations by taking the initiative in providing benefits. This duty includes timely offering the necessary medical, surgical, and hospital care reasonably required to cure or relieve the effects of the industrial injury. (*Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227, 234 [35 Cal.Comp.Cases 383].) The employer's obligation is not passive and requires affirmative acts such as offering treatment in advance and conducting whatever investigation is necessary to determine the extent of its liability and the employee's needs. (*United States Casualty Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, 435 [19 Cal.Comp.Cases 8].)

Where an entity is part of an MPN, unless specifically excluded, all physician "employees" of the entity are part of the MPN and need not acknowledge their membership in the MPN individually. (Lab. Code, § 4616(a)(3); Cal. Code Regs., tit. 8, § 9767.5.1(a) & (b)(1)-(2); see *Tolentino v. Luke's Roofing* [2018 Cal. Wrk. Comp. P.D. LEXIS 565, *3] ("The applicable regulations clearly contemplate that an entity may be part of an MPN, and that unless specifically excluded, all physician 'employees' of the entity are part of the MPN").) A "primary treating physician" refers to an actual physician and not an entity. (Cal. Code Regs., tit. 8, § 9785(a)(1).) Thus, medical groups may be members of the MPN and may employ the services of physicians who do not register individually with the MPN. (*Rivas, supra*, 2016 Cal. Wrk. Comp. P.D. LEXIS at p. 10.)

AD Rule 9767.6(e) clearly provides employees with the right to designate who will treat them within an MPN:

At any point in time after the initial medical evaluation with an MPN physician, the covered employee may select a physician of his or her choice from the MPN. Selection by the covered employee of a treating physician

Workers' Comp. Appeals Bd. (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

and any subsequent physicians shall be based on the physician's specialty or recognized expertise in treating the particular injury or condition in question.

(Cal. Code Regs, tit. 8, § 9767.6(e).)

In *Rivas*, the injured employee sustained an industrial injury to the head and brain and subsequently designated Kenneth K. Wogensen, M.D., employed by Casa Colina, as primary treating physician. Defendant denied authorization because Dr. Wogensen did not appear as an individual physician within the network directory. The Appeals Board rejected defendant's argument, reasoning that, under section 4616(a)(3) and AD Rule 9767.5.1 (Cal. Code Regs., tit. 8, § 9767.5.1), medical groups may be members of MPN and may employ services of physicians who do not register individually with MPN. (*Rivas, supra*, 2016 Cal. Wrk. Comp. LEXIS at p. 13.) The Board emphasized that the evidence demonstrated Dr. Wogensen provided treatment through the medical group, and the facility's listing inherently authorized the physicians practicing therein. (*Id.* at pp. 15-16.)

Similarly, in *Montiel*, the injured employee designated Dr. Patterson at Casa Colina as primary treating physician. Defendant objected because Casa Colina provided only ancillary services and Dr. Patterson lacked an individual MPN listing. The Appeals Board adopted the WCJ's reasoning, which relied directly on *Rivas*. The Board emphasized that the written acknowledgment rule "does not apply to a physician who is a shareholder, partner or employee of a medical group". (*Montiel, supra*, 2020 Cal. Wrk. Comp. P.D. LEXIS at p. 4.) Because defendant listed Casa Colina as an MPN provider, the Board concluded applicant possessed the right to select any physician acting on behalf of Casa Colina pursuant to AD Rule 9767.6(e) (Cal. Code Regs., tit. 8, § 9767.6(e)). (*Ibid.*)

In the present case, defendant acknowledges that Casa Colina operates as an approved facility within its MPN. It refused authorization solely because its directory omits Dr. Patterson's name. This position directly contradicts the established regulatory framework. By listing Casa Colina as a participating medical group, defendant incorporated its staff physicians into the network by operation of law. Dr. Patterson, acting as a physician for Casa Colina, falls squarely within the regulatory exception of AD Rule 9767.5.1(a) (Cal. Code Regs., tit. 8, § 9767.5.1(a)).

In addition, as discussed previously, the Appeals Board had already addressed this issue thoroughly in *Rivas* and *Montiel*. In both cases, when an MPN provides an eligible facility, the physicians rendering treatment at that location are authorized providers. To permit defendant to

list a facility while systematically omitting its physicians and allow applicant to elect a medical group but then bar him from receiving treatment from those practitioners who constitute that group is contradictory and does not comply with the regulations

Because defendant improperly refused to authorize a valid choice of primary treating physician within the MPN, it has failed to provide necessary medical treatment as required by section 4600. This refusal constitutes a constructive denial of care. Consequently, applicant is entitled to seek treatment with Dr. Patterson on a self-procured basis, with defendant remaining liable for the reasonable costs of such treatment so long as he renders treatment through Casa Colina and not in his capacity as an individual physician.

Accordingly, we rescind the WCJ's December 6, 2022 F&O and substitute a new F&O that finds that applicant sustained injury on August 5, 2014 and that defendant unreasonably denied care to applicant by refusing to authorize treatment with Dr. Patterson; and orders that applicant may designate Dr. Patterson at Casa Colina as primary treating physician.

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued December 6, 2022, by the WCJ is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. JOHNNY CHINCHILLA, while employed on December 5, 2014 as a head porter at Los Angeles, California, by KEYS AUTOMOTIVE GROUP INC, KEYS AUTOMOTIVE GROUP INC, whose workers' compensation insurance carrier was SECURITY NATIONAL ADMINISTERED BY AMTRUST, sustained injury arising out of and occurring in the course of employment to his neck, shoulders, left wrist/hand, fingers, back, left knee, and left leg.

2. The applicant has met his burden of proof that defendant has neglected or refused to provide treatment pursuant to Labor Code section 4600.

ORDER

IT IS ORDERED that applicant is entitled to designate David Patterson, M.D., from Casa Colina Hospital and Centers for Healthcare as primary treating physician.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 22, 2026

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

**JOHNNY CHINCHILLA
SOLOV AND TEITELL, A.P.C.
MCNAMARA & DRASS, LLP**

DLP/md

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