

STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

Case No. VNO 0283914

MARIANNE GRAY

*Applicant*

vs.

MARCH OF DIMES  
PERINATAL ADVISORY COUNCIL  
FIREMAN'S FUND INSURANCE COMPANY

*Defendants.*

FINDINGS AND ORDER

Barry Sazman, attorney for lien claimant, The Friedman Psychiatric Medical Group  
Kegel, Tobin & Truce, by Theodore C. Hanf, attorneys for defendant

This matter having been submitted on the issues of restitution and to strike the report of Independent Medical Examiner, all parties in agreement, the Honorable SHARYN LYNNE SALA, workers' compensation designee, finds and orders as follows:

FINDINGS OF FACT

1. Defendant petitions for restitution of \$2,300.00 previously paid pursuant to said lien of David Friedman, M.D., Independent Medical Examiner, on the contention that certain portions of the report were computer generated, without input from the reporting doctors.
2. Based upon lien claimant's stipulation at time of hearing, it is found that neither criterion (iii) or (vi) were applicable to the within report as pertaining to billing.
3. It is found that criterion (iv) does not apply to the report as the issue of causation was expressly excluded from the referral, the report does not directly address the issue of medical causation and fails it to render any opinion thereon.
4. It is found that the within report is entitled to a fee of \$750.00 plus a twenty-five percent (25%) modifier, totalling \$887.50 plus reasonable expense for necessary diagnostic testing.
5. It is found that Dr. Friedman billed defendant for clerical costs in the amount of \$143.50 and

that this expense is included in the ordinary physician overhead, and that Dr. Friedman is not entitled to an additional reimbursement for that cost. That cost is disallowed.

6. It is found that Dr. Friedman is allowed the sum of \$300.00 for deposition fee taken on November 10, 1996.

7. It is found that certain portions of the medical report of the Independent medical Examiner, David Friedman, M.D., dated April 7, 1995, were computer generated without cognitive input of either Dr. Friedman or Dr. Gleisinger. (See Opinion on Decision Pages 3 & 4)

8. It is found therefore that the medical report of Independent Medical Examiner, David Friedman, M.D., dated April 7, 1995, violates the requirements of Labor Code for a medical legal evaluation, is lacking in substantial value, and is therefore not admissible and the preparer is not entitled to be compensated therefore.

9. It is found that based upon facts elicited through deposition testimony and unavailable thereto, defendants made timely objection to the bill and lien of David Friedman, M.D., Independent Medical Examiner and pursuant to labor Code Section 4625(b) are entitled to restitution of all overpayments.

10. It is found, based upon the above uncontroverted statement that defendant has paid \$2,300.00 to date, and considering the compensable fee for deposition, it is found that the amount of said restitution shall be in the amount of \$2,000.00.

### ORDER

IT IS ORDERED that the Independent Medical Examiner's Report of April 7, 1995 of Dr. David Friedman is not admissible and the preparer is not entitled to be compensated and therefore restitution is ordered paid to defendant in the sum of \$2,000.00.

Dated at Van Nuys, California July 1996

Filed and Served by mail on:  
On all interested parties  
effected on above date.  
By: C. Giannini

  
SHARYN LYNNE SALA  
WORKERS' COMPENSATION APPEALS BOARD

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APPLICANT: MARIANNE GRAY

CASE NUMBER: VNO283914

DEFENDANT: MARCH OF DIMES, PERINATAL ADVISORY COUNCIL

DATE OF INJURY:

JUDGE SHARYN LYNNE SALA

OPINION ON DECISION

The case in chief on the within matter was previously resolved after trial by way of compromise and release, and the case was submitted after hearing this date on Defendant's Petition to Strike the report of IME David Friedman, M.D., dated 7 April, 1996, on the contention that certain crucial portions of the report were computer generated, without input from the reporting doctors, and as such were violative of Labor Code §§4628(a) and 4628(c). Defendant further petitions for restitution of \$2300.00 previously paid pursuant to said lien.

On her own motion, the WCJ also addressed the issue of the billing rate.

ML-104 BILLING:

Lien claimant, Dr. Friedman, billed Defendant \$2437.50 for medical examination and report. This amount was billed on the basis

that the report qualified as a ML-104 report, pursuant to Rules and Regulations §9795.

Based upon lien claimant's stipulation at time of hearing, it is found that neither criterion (iii) or (vi) were applicable to the within report.

Based upon a review of the entire Board file, including the billing document submitted by lien claimant, and dated 19 May, 1995, and listing Rules and Regulations §9795(c) as the sole basis for the claim of extraordinary circumstances, the Medical Examination Referral, dated 9 February, 1995, which expressly excluded causation as an issue to be addressed by Dr. Friedman, as well as a review of the report itself, which, while discussing the industrial stressors reported by Applicant, does not directly address the issue of medical causation and fails to render any opinion thereon, it is found that criterion (iv) does not apply to the report.

Consequently, it is found that the within report is entitled to, at best, a ML-103 status, which would entitle Dr. Friedman to a fee of \$750.00 plus a 25% modifier, totalling \$887.50 plus reasonable expenses for necessary diagnostic testing.

Dr. Friedman also billed Defendant for "clerical costs" in the amount of \$143.50.

Based upon stipulation of lien claimant at the time of trial, the sole basis for the clerical charge was that Dr. Friedman utilized the services of an external clerical service to prepare this report. Based thereon, and on the further finding that said billing did not document the actual cost of said services, it is found that this

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expense is included in the ordinary physician overhead, and that Dr. Friedman is not entitled to an additional reimbursement for that cost. Consequently, it is found that said amount is disallowed.

#### DEPOSITION FEE:

Dr. Friedman also sought a fee in the sum of \$300.00 for deposition taken on 10 November, 1996.

Based upon a review of the entire Board file, it is found that said deposition was held at the express request of Defendant, that Dr. Friedman expended time therefore, that he is consequently entitled to a reasonable fee for that time, and that \$300.00 is a reasonable fee therefore. Consequently, it is found that said fee is therefore allowed..

#### ADMISSABILITY:

Based upon stipulation of the parties, it is found that certain portions of the medical report of IME David Friedman, dated 7 April, 1995, were computer generated without cognitive input of either Dr. Friedman or Dr. Gleisinger. These portions include:

commencing page 20: heading: MMPI Test Results through and including heading: VALIDITY, and page 21: heading: ACTUARIAL PROFILE INTERPRETATION, except for the last partial paragraph.

Based upon stipulation of the parties at the time of hearing, it is further found that:

regarding page 18: heading: RESULTS AND INTERPRETATION OF LIMITED PSYCHOLOGICAL TESTING:

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¶1 is routinely included in the reports of Dr. Friedman.

¶2 is always included in the reports of Dr. Friedman.

Based upon a review of the medical report of IME David Friedman, M.D., dated 7 April, 1995, it is found that:

in forming his opinion of permanent disability, Dr. Friedman substantially relied on the psychological testing;

a major portion of the psychological testing relied upon was the MMPI;

the analysis of the rough scores of the MMPI were entirely computer generated, without input by either Dr. Friedman or Dr. Gleisinger;

nowhere in the report is there any indication that such results were in fact computer analyzed, or any underlying credibility for said computer analysis, to wit the credentials of the person or persons who designed and/or generated the program and/or the criteria upon which said program is based;

there is no showing that either Dr. Friedman or Dr. Gleisinger is familiar with the criterion upon which said computer analysis is based, its validity factor, and whether or not it conforms to current medical standards and accepted theory and practice;

there is no showing in the report that the computer analyzed MMPI was independently verified for validity as to this Applicant;

Dr. Friedman and Dr. Gleisinger adopted and relied upon said computer generated analysis in forming their opinions;

the use and adoption without inquiry of such uncorroborated

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analysis throws into question the validity of the entire evaluation.

Based thereon, it is further found that although, given a proper foundation, such computer analysis might provide a valid basis of evaluating said test scores, no such foundation is provided herein.

It is therefore found that the medical report of IME David Friedman, M.D., dated 7 April, 1995, violates the requirements of Labor Code for a medical legal evaluation, is lacking in substantial value, and is therefore not admissible, and the preparer is not entitled to be compensated therefore.

### RESTITUTION:

Defendant requests restitution, pursuant to Labor Code §4625(b) of \$2300.00 previously paid.

Based upon a review of the Board file, it is found that: the within medical report, dated 7 April, 1995, signed 19 May, 1995, and (re)signed at the request of the IMC on 28 June, 1995, was received by the Board on approximately 19 July, 1995, at which time, per WCJ order dated 19 July, 1995, parties were permitted 30 days in which to notice cross-examination of the IME; said cross-examination was requested by Defendant, and ordered by the Board by minute order on 19 September, 1995; depositions of both Dr. Friedman and Dr. Gleisinger were taken on 10 November, 1995; based upon facts elicited through deposition testimony and unavailable prior thereto, Defendants filed a Motion to Strike and Motion for Restitution on 7 December, 1995.

Based thereon, it is found that Defendants made timely

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objection to the bill and item of IME David Friedman, M.D., and pursuant to Labor Code §4625(b) are entitled to restitution of all overpayments.

Based upon the above uncontroverted statement that Defendant has paid \$2300.00 to date, and considering the compensable fee for deposition, it is found that the amount of said restitution shall be in the amount of \$2000.00.

  
SHARYN LYNNE SALA, WCJ

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