

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

AK

RICHARD DONOSO

Applicant

vs.

CONSOLIDATED FABRICATORS
self insured, COMCO MGMT., adjusting
agent (COMCO)

Defendants.

CASE NO: LAO 638 344

**FINDINGS AND ORDER
REGARDING LIEN CLAIM**

The litigants have made a separate list of evidence as exhibits and statement of issues and contentions, there being no testimony by witnesses, and the court reviewing the record of proceedings and taking judicial notice of the contents of the WCAB file(s) numbered above;

After submission for decision by the litigants present at trial the Honorable William J. Ordas, Workers Compensation Judge, now finds and orders as follows:

The lien claims in issue are: DOWNTOWN INDUSTRIAL MEDICAL CLINIC (Downtown), PSYCHE CONSULTANTS and MARK B. KOFLER, M.D. (Consultants), and LOS ANGELES MULTISPECIALTY MEDICAL GROUP (LAM)

FINDINGS OF FACT

Applicant sustained admitted injury to his left knee on 4/19/91 with this employer. Applicant did not sustain any injury to his back or psyche as the result of this injury to his knee.

Applicant did not incur reasonable and necessary medical treatment expense or medical legal expense with Downtown Industrial Medical Clinic. Applicant did not incur any reasonable and necessary medical treatment expense with Psyche Consultants. Applicant did incur reasonable and necessary medical legal expense with Psyche Consultants and Los Angeles Multispecialty Medical Group as set forth in the Opinion below, including penalty and interest as set forth below.

OPINION ON DECISION

Applicant was a 22 year old machine operator for employer Consolidated Fabricators, self-insured, whose claims were adjusted by Comco Management, who sustained admitted injury to his left knee when he was struck by a piece of metal, sustaining a gash to the knee, on 4/19/91. Applicant stated that when the incident occurred he felt some pain in the low back from when he was trying to hold up the laminate he was working upon (Depo at 14).

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On 4/19/91 when applicant was injured the employer immediately sent applicant for treatment to the clinic named Advantage Care (hereafter Advantage). The physician's first report shows applicant had a cut that exposed the muscle, he received stitches, was placed in a knee immobilizer, provided crutches, and antibiotics. He was placed on temporarily disability (TD) until 4/22/91. It was estimated that he would not return to work until 5/6/91.

He returned to Advantage on 4/22 and was to be on TD until 4/26 when he was to return to the clinic for another examination.

On 4/24 applicant sought counsel for his injury claim. A DWC-1 claim form was filled out alleging specific injury on 4/19/91 to the left lower extremity, back, and nervous system.

Also on 4/24/91 the new attorney sent defendant a letter stating that applicant elected his free choice physician to be Dr. Michael Rosen. Dr. Rosen is a physician with Downtown (Downtown Ex. A.)

On that same date, 4/24/91, applicant went to Downtown and was seen by Dr. Rosen. The back examination was negative and there was no diagnosis of injury to the back. The diagnosis was that there was an anxiety reaction to the left knee injury. Dr. Rosen prescribed treatment including ultrasound to the hip and physical therapy of three times per week.

Applicant testified in the deposition at page 13 that when Dr. Rosen examined him the doctor did not remove the bandages on the knee because he did not want to interfere with the stitches. The other doctor (at Advantage) was to take out the stitches. Applicant also stated that he was sent for therapy which lasted 10 to 15 minutes (Depo at 15). There was no testimony that the ultrasound treatment was actually received. The hot pack therapy did make him feel a little better (Depo at 20).

Applicant did return to Advantage on 4/26 and was seen by the physician. He was continued on TD until 5/2 and he was to return to the clinic then. Applicant never returned to Advantage for further care despite the 30 days of employer control of medical care not yet having expired. The employer's control of medical care would have continued until 5/19/91. There is no evidence that applicant made any request to change physicians under L.C. 4601. There is no evidence that defendant did not reasonably or seasonably provide medical treatment to applicant.

On 5/9 applicant saw Dr. Rosen again who found that applicant was having an anxiety reaction to pain, the physical therapy helps relieve the pain, the therapy was limited to the left knee, leg, and hip. Physical therapy was to be continued with Motrin medication.

On 6/14/91 Applicant was examined by orthopedist Dr. Dini at Downtown. This was billed as an initial orthopedic examination as medical legal expense by the lien in 1991 and the billing of \$1,000.00. There is no indication of any referral for examination by Dr. Dini from Dr. Rosen, the treating physician, nor from applicant's attorney. There is no review of the previous reports by Dr. Rosen, the clinic records, or the therapy records. There is no indication of the results of one month of physical therapy. He diagnosed a laceration of the knee, rule out a torn meniscus, and ordered an MRI scan of the knee. He ordered the start of physical therapy on the left knee. There was no statement that applicant had any back pain nor was there an examination of the back. The report was not served upon defendant until 6/25/91.

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On 6/20 Dr. Rosen reexamines and there are continuing complaints of pain in the knee, aggravated with standing, walking, and climbing stairs. There is no hip pain. Therapy and Motrin were continued for two more weeks. There were no changes from the 5/9 exam and no discussion of the results of therapy, why the hip pain was gone, and the report merely says that therapy was to continue for two weeks and to re-evaluate. TD was provided to 7/20. Dr. Rosen then suggested that applicant see a neurologist and an orthopedist, but no reasons were provided, and there is no acknowledgement of the exam by Dr. Dini only six days before.

On 6/25 applicant's attorney objected to the defendant arranging a medical examination for 6/28/91 by Dr. Franklin and informed defendant that applicant was instructed to not attend the examination because the examination violated L.C. 4061 and 4062 where applicant was being treated by Dr. Rosen as his free choice physician and there has been no objection or compliance with the AME/QME process. The letter does not address whether the back and psyche injuries were admitted or denied.

On 6/26/91 applicant's attorney sent applicant, and Consultants, a letter that an examination was set for 6/27, with a copy to Comco for defendant.

Applicant was examined by Kofler at Consultants on 6/27. It was opined that applicant had decreased appetite, sleep, pleasure, had sad mood, and felt worthless because he was not able to provide for his family. The diagnosis was an adjustment disorder and applicant was TD. He was in need of psychiatric therapy to lessen the effects of the industrial injury.

On 6/28/91 Consultants sent Comco a letter that applicant had been seen for a medical legal exam under L.C. 4620, with a copy to applicant's attorney.

On 6/28 Comco objected to the 5/2 lien and report by Downtown asserting that the self-procured medical treatment was improper where the employer had control for the first 30 days.

★ On 7/1 Comco sent a delay of decision on benefits for the claimed back and psyche injury from the specific knee injury. The delay letter admits notice of the back and psyche claims on 4/29/91. This delay letter was sent 62 days after notice of the additional claims of injury and is not timely under L.C. 4650.

On 7/1 Comco objected to the findings of, and treatment by, Dr. Rosen as unreasonable and unnecessary (Downtown Ex. S) which was notice under L.C. 4061 and 4062 to lead to the AME/QME process on the admitted injury, and provided the name of a suggested AME.

On 7/10 defendant objected to the Downtown lien that Dr. Dini is redundant of Dr. Rosen, it was not medical legal expense, that Downtown had no standing because it used independent contractors as doctors.

On 7/10 defendant objected to Consultants lien of 6/27 for medical legal exam claiming that Consultants used independent contractors and could not be paid.

On 7/16 applicant's attorney again objected to a scheduled examination by Dr. Franklin on 7/16/91. The letter is exactly the same as the 6/25 letter and is obviously a form letter. This objection letter does not acknowledge the defendant's delay letter of 7/1, nor does it acknowledge the objection letter to the findings of the treating physician of 7/1 following the AME/QME process of L.C. 4061 and 4062.

On 7/19 Consultant's physician Dr. Elnkave issued a supplemental report that psychotherapy had started and there was a positive response.

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On 7/19 Dr. Rosen saw applicant and reported the same symptoms as before, continued physical therapy, the Motrin was stopped, he was TD to 8/19 . He recommended that applicant be seen by an orthopedist for a final opinion but does not say why.

On 7/26 Dr. Dini wanted to review employer records, but there were no records, and he he failed to review his own clinic records. He only performed a brief exam, reviewed the MRI which was normal, continue physical therapy , and found TD to 8/26, which is the four weeks that applicant was scheduled for a return appointment.

On 7/26 Comco sent a letter denying injury and benefits for the back and psyche claims as applicant had failed to attend medical exams with Dr. Franklin and Dr. Jordan.

On 8/2 applicant was examined by Dr. Rosen who found the same complaints as before but applicant was limping, Motrin was prescribed for pain, and he was TD until 9/2. He recommended that applicant see a neurologist but did not explain why. Information is in the 8/19/91 report.

On 8/11 the employer, Consolidated Fabricators, sent a letter requesting Downtown to provide a report as to applicant's medical restrictions relating to work and asked for specific information regarding lifting and carrying weight, etc., and expecting a reply.

On 8/12/91 Rehabilitation Counselor Tess Steele, assigned by Comco, sent a letter requesting Dr. Rosen to review a description of the employee's job duties for the employer and requesting he fill out the RU-90 Treating Physician's Report of Employee Status to be sent to Comco. (Dr. Rosen did not fill out this Report until 12/24/91, a delay of over four months.)

On 8/12 Dr. Gross performed an alleged Initial Neurological Medical Legal Report in neurology for Downtown for contusion and laceration of the left knee. The credibility of this report is in doubt. On physical exam there are no findings regarding the back, as the examination was normal with no pain or tenderness. However, both lower extremities have pain and spasm when only the left knee was injured. No physician or medical report before Dr. Gross made any findings or documented any complaints in the right leg or knee. Nor does the history of complaints taken by Dr. Gross reflect any symptoms or complaints made by applicant in the right leg at all. Despite both extremities allegedly having pain and spasm, the examination shows no specific findings to support the brief, and unusual, statements as to both extremities, and there are no real findings to justify any further neurological exams, or EMG testing, or Evoked Potentials. The conclusion goes on to state, without reasons except the inconsistent findings noted above, that applicant was to have physical therapy and a re-evaluation in four weeks, and was TD for another month.

The physical therapy was ordered despite the fact that Dr. Gross did not review the reports of Dr. Rosen or the clinic's own records of the four months of physical therapy already provided.

On 8/12 the exam showed no tenderness or spasm in the back at all, then the EMG was positive for low back spasm. Dr. Gross makes a brief comment upon the EMG in his final 9/12/91 report, and despite the contrary findings compared to his examination, he makes no further comment. The test was not necessary or reasonable. The Evoked Potentials test of the leg nerves was normal. Again, Dr. Gross never reviewed or commented upon his own testing. The testing was not reasonable and necessary.

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On 8/13 Consultants, by Dr. Kofler, after treatment re-examined and stated that applicant had a positive response to two therapy sessions and his tension and autonomic activity were gone, his appetite, sleep, and libido were normal now. He only had some upset about whether would have a full recovery from his injury. The Adjustment Disorder was in remission and he had minimal disability.

On 8/19 Dr. Rosen examined with applicant having the same complaints as before but pain was going to the hips again, yet the pain was alleviated by therapy. This report reads exactly the same as 7/19 examination and report except for the change in the month dates and attributing some language to the physical therapist. There is a serious issue as to the credibility of the report.

On 8/23 Dr. Dini in orthopedics performed his examination for a final permanent and stationary report. The findings and complaints read just like Dr. Rosen's reports, yet Dr. Dini did not review Dr. Rosen's reports, or his own clinic records. He states the factors of disability, describes applicant as P&S, future medical care is provided for, and that applicant is entitled to rehabilitation despite not reviewing what applicants duties were for the employer.

Applicant stated in his deposition that he was off work until 9/91 (Depo at 11). Applicant did return to work for the same employer.

On 8/30/91 defendant attorney sent a letter to applicant's attorney that the time to agree to an AME had passed and that applicant's deposition would be taken and further, that applicant was being sent to Dr. Franklin for examination.

On 9/3 applicant is allegedly examined by Dr. Rosen again. There is a one sentence statement that examination showed symptoms had improved. The complaints and diagnosis read exactly as prior reports. Applicant is specifically discharged from care because applicant has been seen by the neurologist and the orthopedist and was considered permanent and stationary. He deferred to those reports (which had not reviewed his reports or the clinic records of treatment). Dr. Rosen even has the wrong date of neurologic exam in his report. Dr. Gross did not exam until 9/12/91, not 9/3/91, after Dr. Rosen had already deferred to the neurologist.

On 9/12 Dr. Gross again sees applicant and the complaints are exactly the same as in other reports, yet the doctor again does not review the reports and records of the clinic, including the other reporting doctors in this case. He makes the same diagnosis of contusion and laceration but there was no neurological deficit, just as before.

On 10/18/91 applicant is examined by Dr. Franklin who diagnoses only a laceration that should have been sutured, allowed to heal, and applicant should have returned to work in two weeks. Because of quadriceps atrophy, from failure to properly treat and instruct on exercises, applicant was instructed on leg exercise and was to be re-evaluated in about six weeks to determine if there were permanent residuals.

On 10/31/91 defendant attorney made further objections to Downtown's bills that no medical legal expense was incurred and that the physical therapy was provided by unidentified physical therapists, possibly unlicensed therapists, or that the therapists were not properly supervised. The objections were part of a six page, check the box, list of possible objections.

On 12/12/91 applicant's attorney sent an AME/QME letter under L.C. 4061 and 4061 to defendant attorney in response to an AME/QME telephone call. The letter suggested two possible AME's, either Dr. Gromis or Dr. Golkin.

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On the same day, 12/12/91, applicant's attorney also arranged a QME exam with Los Angeles Multispecialty Medical Group (LAM) with Dr. Golkin to take place on 1/15/92. A copy of the letter was sent to defendant's attorney. Also on the same day, two more individual letters were sent out, copied to defendant attorney, also with LAM, also to take place on 1/15/92, for QME examinations with Dr. Judith A. Willis and Dr. Karen Britten.

Dr. Golkin did not examine applicant on 1/15/92 because he was ill (LAM Ex. K).

Applicant was examined by Betty Borden, Ph.D., in psychology on 1/15/92 resulting in the report dated 1/22/92. Applicant was examined by Judith A. Willis, M.D., in neurology, on 1/15/92 resulting in a report dated 2/5/92, but the report and bill was not served upon defendant until 5/22/92.

On 2/10/92 applicant was examined by Peter Dyck, M.D., for defendant as another QME in neurology. He agreed with Dr. Franklin and found no neurological deficits.

On 2/14/92 applicant was examined by Jack Kroeger, M.D., in orthopedics and a report issued dated 2/24/92.

ANALYSIS

Applicant was a twenty-two year old man who worked for this self-insured employer when on 4/19/91 he had an admitted injury to his left knee when a piece of laminate, weighing approximately 100 pounds, slipped out of the co-workers hands and fell onto his left knee, lacerating the knee into the muscle, which required stitches to close.

The employer immediately sent applicant for treatment with Advantage Care (Advantage) which cleansed the wound and stitched the laceration closed, provided antibiotics, placed the left knee in an immobilizer, provided crutches, placed applicant on TD to 4/22/91, and arranged for the next exam on 4/22/91. Applicant was receiving appropriate treatment from the physicians at Advantage Care at employer's expense. The reports of Dr. Franklin and Dr. Dyck are substantial evidence that the treatment provided by Downtown was not appropriate and probably not helpful.

On 4/24/91 applicant retained counsel Hinden and Grueskin, or at least that is when the documents were completed including a DWC-1 claim form. The claim form states that applicant injured his left leg, "back and nervous system." Also on 4/24/91 the attorney sent the employer a letter which specifically designates Dr. Michael Rosen as the treating physician under L.C. 4601. Dr. Rosen is a general practitioner with the Downtown Industrial Medical Group (Downtown).

On the same day, 4/24/91, applicant was examined by Dr. Rosen at Downtown. Dr. Rosen diagnosed the laceration, contusion, and strain of the left knee, and added strain and sprain of the left hip and thigh, and an anxiety reaction due to pain. There was no diagnosis of any injury to the back. Applicant noted in his deposition that Dr. Rosen did not remove the bandages from applicant's knee because the doctor did not want to interfere with the stitches and was going to wait for the other doctor to take the stitches out. This is truly acceptance of treatment anyway. The same history was given to Dr. Franklin. It makes no sense to incur medical examinations if the physician is not really going to treat the patient.

Applicant returned to Advantage as scheduled on 4/26. The doctor again found applicant to be TD and a new appointment was made to return to the clinic on 5/2/91. Applicant never returned to Advantage after 4/26/91.

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Under L.C. 4600 the employer has thirty days of control over medical treatment from the date of injury. There is no evidence that applicant had selected a personal physician before his injury that the employer would be obligated to allow to provide treatment.

Under L.C. 4601 the employee is allowed to request one change of physician which the employer must provide the name of an alternate physician within five days of the request. In this case there is no request to have the employer tender a change of physician.

What occurred here is that applicant informed the employer by the 4/24/95 letter that Dr. Rosen was the 'free choice' treating physician under L.C. 4601. However, applicant failed to account for the employer's thirty days of control. The statutes read together harmoniously show that the employer has the right to request an alternative physician within the 30 day employer control period and to then make a free-choice physician after the thirty days has expired. To conclude otherwise would make the process completely unintelligible. See St. Clair, Workers' Compensation Law and Practice, 4th Ed., Section 9.4, et. seq.

There is no rationale for having applicant be treated by Dr. Rosen as of 4/24/91. Applicant already had a return appointment with Advantage, needed to have the stitches out, which Dr. Rosen did not want to perform, and Dr. Rosen was only treating the knee/leg condition. Therefore, as treatment was being provided by the employer which was reasonable, the treatment by Downtown until after 30 days from the injury is denied in its entirety. This denial includes treatment to 5/19/91 and includes the initial report.

The court has reviewed the various medical reports in this case and finds that the report of Dr. Franklin is persuasive.

Since Downtown was the treating physician only, it did not have the power to incur medical legal expense on its own behalf and all the asserted medical legal expense is denied. The examinations by Dr. Dini and Dr. Gross are at best physician consultations as part of the treatment by Downtown. There is no evidence at all that applicant's attorney requested any medical legal expense or reporting be incurred by Downtown.

The physical therapy and medication that began on 5/9/91 are denied until 5/19/91. Both applicant's deposition and Dr. Franklin's report indicate that the 'physical therapy' received was only for a total of 10 to 15 minutes. The billings are clearly erroneous where they claim full 30 minutes under the RVS Fee Schedule Code, and then tack on an additional 15 minutes of therapy with additional charges, based upon the evidence. Downtown has also never provided any itemized disclosure of the therapists or the qualifications of the actual therapists as demanded by defendant's 10/31/91 objection. The objection was timely considering the times the last treatment services were allegedly provided by Downtown. The court has also noted that during the time that therapy was received none of the physicians at Downtown actually reviewed the therapy treatment notes, or commented upon the therapy treatment, in reaching their diagnosis or making treatment recommendations. Only after the treatment stopped did Dr. Rosen perform a supplemental report, without examination, to inform defendant, after the fact, of the therapist findings. Apparently only the physical therapy evaluations were done by a registered physical therapist, and the actual providers of therapy are still unknown and there was no actual documentation of time provided. However, applicant told Dr. Franklin that a 'timer' was used for his sessions. Based upon these factors the court finds that none of the alleged physical therapy is defendant's liability as it was neither reasonable under this case nor necessary in this case.

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There was no report or medical opinion that applicant needed to be seen by orthopedist Dr. Dini as of 6/14/91 for any reason. The exam and report were not medical legal in nature as the injury was admitted, there was no compliance with L.C. 4061 and 4062, and applicant's attorney did not request the services for the purpose of obtaining evidence for a contested claim. The exam and report were not necessary for treatment purposes as applicant was being treated by Dr. Rosen and already receiving therapy. Dr. Rosen did not request Dr. Dini's services by any of his reports before 6/14. Dr. Dini's services were not reasonable, even if he were considered as a medical consultant because the history is the same as Dr. Rosen's (apparently by word processor) yet there is no interim history of any value, Dr. Dini does not even review the clinic or therapy records, and he orders physical therapy to start even though therapy had been ongoing for over a month before his exam. His services have no value and are worthless. There was no reason for the ordering of the MRI scan by Dr. Dini.

Dr. Rosen does order consultations by an orthopedist and a neurologist six days later, on 6/20/91, without any reference to Dr. Dini's exam which was already performed. There was no medical reason given for the referrals to any orthopedist or neurologist and they were just pro-forma.

As of 6/25/91 applicant's attorney prevented defendant from obtaining any medical examination by Dr. Franklin, for any purpose, by refusing to allow applicant to attend the medical examination with Dr. Franklin. This refusal was made despite defendant's right to have an examination under L.C. 4050 which was not altered by the reform statutes. Further, defendant had a right to have an orthopedic examination concerning the back injury claim made by the claim form, and Dr. Franklin's exam was still within a reasonable time for defendant to obtain evidence. Indeed, applicant would be examined for medical legal purposes in psychiatry only two days later by applicant's designated physicians at Consultants. The refusal to let applicant be examined was prejudicial to defendant's rights in this case and prevented defendant from being able to promptly object on the merits to the ongoing treatment by Downtown. For this additional reason the court finds that none of the treatment provided by Downtown was reasonable and necessary.

A separate reason is that the report of Dr. Franklin is substantial evidence that the treatment provided was not reasonable and necessary after the period of employer control ending 5/19/91.

The court has also noted that the various reports of Dr. Rosen are almost identical each time, and on several dates, were identical. The reports appear to be generated off of a word processor program and are not indicative of a new history for each exam with any real changes of condition or any real reasons for the treatment provided for five months with no change of condition. These are additional reasons that the reports of Dr. Rosen, Dr. Dini, and Dr. Gross are not credible, believable, worthwhile evidence that support the need for treatment after 5/19/91.

All treatment expense and medical legal expense comprising the entire Downtown lien claim is denied.

Applicant did file a claim form with the employer which was filled out at the attorney office on 4/24/91 indicating injury to the knee, back, and psyche. The back and psyche claims were not admitted and certainly Advantage Care was not treating any condition of the back and psyche.

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The employer received the claim form alleging the back and psyche on 4/29/91 as admitted by its own letters. However, defendant failed to admit, deny, or delay a decision concerning injury to the back and psyche within fourteen days after 4/29/91. Instead, defendant is silent. Defendant did not send a delay letter until 7/1/91 which is 62 days after receipt of the claim form. The delay was not timely under any standard. Applicant was therefore entitled to presume that there was a denial of the back and psyche claims and to obtain medical legal examinations to prove or disprove the contested claims. Applicant did act regarding the psyche claim to arrange evaluation with Consultants by Dr. Kofler on 6/26/91 with a copy of the letter to defendant. Dr. Kofler sent a confirming letter on 6/28 (the day after the exam on 6/27) to defendant that the exam was for medical legal expense.

The court finds that the Consultants initial examination is medical legal expense. It was billed for \$1,279.00 which was the presumed reasonable amount in 1991. Defendant's objections are ludicrous and have no merit. Defendant claims that Consultants used independent contractors for the medical legal service so defendant has no liability, yet defendant has no evidence, and Consultants wrote defendant a letter stating that Dr. Kofler was an employee of the clinic. Defendant did not make any partial payment of the charges, which would be allowable even if independent contractor physicians were used, to satisfy the code requirements under L.C. 4622. Therefore the initial report expense is payable in full plus penalty and interest.

Consultants charged \$455.12 for psychological testing as part of its initial report. There was no objection to the amount charged for the testing. The testing will be allowed in full, plus penalty, plus interest from 7/8/91. The sum payable is \$1,734.12, plus 10% penalty of \$173.41, plus interest at 7% per annum from 7/8/91 when defendant acknowledges receipt of the billings.

The report of Dr. A. Lefstin dated 4/1/92 is substantial evidence that there was no psyche injury in this case. The reports of Dr. Kofler and Dr. Britten are not substantial evidence of injury for the reasons set forth by Dr. Lefstin.

Consultants then became the treating physician and actually provided treatment. There is no evidence that after Consultants became the treating physician that applicant's attorney ever requested further medical legal services. The final report of Consultants was required once applicant became permanent and stationary under Rule 9785. The evidence does show that applicant's attorney selected Dr. Britten as LAM, as well as others, for QME evaluations, which by the requests and the purpose of QME's, is medical legal in nature. Therefore, as there is no injury found to the psyche, the treatment provided and reported is not the liability of defendant and is denied.

As of 12/12/91 when applicant's attorney wrote the additional AME/QME letter to defendant, defendant had already denied injury to the back and psyche. There had already been a medical legal psyche exam for applicant by Consultants, but Consultants then began treatment. Downtown was the treating physician as well and not a medical legal provider in this case. Defendant had already objected to the findings of Downtown as the treating physician on 7/1/91. Defendant had already obtained a psyche QME exam with Dr. Franklin which complies with L.C. 4061 and 4062. Applicant, therefore, was entitled to obtain QME examinations to prove or disprove the contested claims regarding the knee, back, and psyche. As the record showed there were opinions from general physicians, orthopedists, neurologists, and in psyche, applicant could possibly obtain QME examinations in each specialty.

Applicant elected to have QME examinations performed in orthopedics, neurology, and psychology by the letters dated 12/12/91 which arranged exams for 1/15/92. The orthopedic exam arranged did not take place on 1/15/92 because the doctor was sick. The exam took place in February instead with Dr. Kroeger. There is nothing inherently wrong with the process.

Donoso, Page 10:

The exams in neurology and psyche did take place on 1/15/92.

While the reports are not persuasive evidence, the reports are not worthless as evidence. Therefore they are at least payable in part.

Defendant objected to Dr. Borden's report on 2/19/92 which was timely. Duplication was a legitimate reason to not pay until there was a determination by the court as there were previous reports claiming to be medical legal in nature. Only since the court has disallowed the final report of Consultants has the LAM report by Borden become payable. The objection as to reasonableness of the charges has merit as the amount charged exceeds the presumptively reasonable amounts in 1992. The amount of \$1,279.00 will be allowed for the exam and reports. The testing is separately billed and there was no specific objection as to the testing which is payable. The remainder of the objections have no basis and are pro-forma. The charges for Dr. Borden's services are payable, but without penalty or interest.

Defendant objected to Dr. Willis by a long form pleading with check-the-box entries on 5/6/92. The court cannot determine when the Dr. Willis report was received by defendant. The charge of \$1,025.00 does exceed the presumed reasonable amount of \$881.00 which will be the amount allowed. The assertion that applicant was not an employe is preposterous. There is no evidence that the history was false. The QME evaluation was justified in neurology as there were prior reports in the record, there were complaints of radiating pain, and defendant obtained a neurological QME as well. There is no evidence to support the independent contractor allegation in this case. There is no evidence that there was no compliance with L.C. 4628. The objections based upon Bert v. City of Gridley do not apply. There was compliance with L.C. 4061 and 4062. Defendant's objections, except for the reasonableness and duplication, are totally unsubstantiated and are not in keeping with the intent of the law to provide reasonable objections that actually advise a medical legal provider of factual reasons based upon the instant case as to why there is no full payment, or no partial payment.

Defendant timely objected to Dr. Kroeger's initial report in orthopedics on 4/1/92. The reasonableness of the charges and the duplication objections again have merit. The allowed charge is \$984.00 and the balance is denied. The remainder of the objections have no merit.

Applicant did go see Dr. Kroeger again for a re-evaluation on 8/6/92. Defendant has an objection dated 10/21/92, which the court cannot determine if it even applies to the second report of 8/6/92 because the objections made seem still related to the initial exam and report.

While defendant did not object to the second report the court finds that the charges for the second reevaluation are unconscionable in amount. To charge \$885.00 for a brief history and examination to see if there are any real changes from six months before, resulting in a three page report, is outrageous. Further, the court cannot determine the basis for applicant being seen. Was it for treatment or medical legal expense? There is no documentation of medical legal expense. However, the court will give lien claimant the benefit of the doubt as applicant was working and continued to have symptoms. A further examination would be reasonable to determine applicant's disability status, or need for treatment, in light of the ongoing work and symptom situation.

Considering the time and effort into this reexamination and report the court believes that a charge of \$350.00 to be reasonable for all services provided on 8/6/92 and said amount will be ordered.

DONOSO, PAGE 11:

O R D E R

THEREFORE, IT IS ORDERED THAT: The lien claims of Downtown Industrial Medical Clinic are denied.

The lien claim of Psyche Consultants is allowed in the amount of \$1,734.12, plus penalty of 10% of \$173.41, plus interest at the 7% per annum from 7/8/91, and the balance of charges are denied.

The lien claims of Los Angeles Multispecialty Medical Group are allowed as above, without penalty and interest, in the sum \$4,569.00 in full satisfaction of the lien claim.

Any petition for reconsideration must be filed at the Santa Ana WCAB Lien Unit at 28 Civic Center Drive, Room 554, Santa Ana, CA 92701.



WILLIAM J. ORDAS
WORKERS' COMPENSATION JUDGE

Date: 1/31/96

Service by mail upon the defendant and above lien claimants only
as set forth on the Official Address Record and as listed below:

Kegel, Tobin, & Truce, 3580 Wilshire Bl. 10th Floor, L.A., CA 90076
Psyche Consultants, PO Box 2440, L.A., CA 90051
Downtown Industrial Medical Clinic, PO Box 398, Burbank, CA 91503
Hinden and Grueskin (for LAM) 4661 West Pico Bl., L.A., CA 90019