

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. POM 171-900

MARGARITA MUNOZ,
Applicant

vs.

MAG INSTRUMENTS, INC.;
FIREMAN'S FUND INSURANCE
Defendants.

ORDER DISALLOWING
LIEN CLAIM CLAIM

For reasons advanced in defendant's Trial Brief of March 13, 1995 the lien claim of Crown Imaging Associates Medical Group is hereby disallowed.


ROBERT C. WREISNER
Workers' Compensation Judge

Executed on MAY 03 1995

MAY 03 1995 NOTICE TO
KEGEL, TOBIN & TRUCE
P O BOX 3329
RANCHO CUCAMONGA, CA 91729

Pursuant to Rule 10500 you are designated
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5 Attorneys for Defendant,
MAG INSTRUMENT, INC.
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9 BEFORE THE WORKERS' COMPENSATION APPEALS BOARD
10 OF THE STATE OF CALIFORNIA

11 MARGARITA MUNOZ,
12 Applicant,
13 vs.
14 MAG INSTRUMENT, INC.,
15 Defendants.
16

WCAB NO.: POM 01 000
TRIAL BRIEF

RECEIVED
PHOENIX
95 MAR 13 PM 4:25
DEPT INDUSTRIAL RELATIONS
DWC/WCAB

17 COMES NOW Defendant, Mag Instrument, Inc., and hereby files a
18 Trial Brief, seeking an Order Disallowing the lien of Crown
19 Imaging:

20 STATEMENT OF FACTS

21 Margarita Munoz, a 56-year-old former assembler for Mag
22 Instrument, has filed the following claims:

- | | | | |
|----|---------------------------|----------------------|---------------------------------|
| 23 | 1. <u>Date of Injury:</u> | <u>Part of Body:</u> | <u>Date Employer Knowledge:</u> |
| 24 | 1987 - 1989 | | 4/12/91 |
| 25 | EXHIBIT "A" | | |
| 26 | 2. 3/89 | Back | 4/12/91 |

27 In June of 1989, applicant left for Mexico without proper
28 notice to the employer and therefore she was terminated.

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1 At issue is the lien of Crown Imaging. This facility has a
2 lien for \$1,090.00 and identical bills dated April 6, 1991 and
3 April 20, 1991 listing the same services and billing \$1,090.00
4 each.

5 ISSUES PRESENTED

- 6 1. ARE MEDICAL/LEGAL SERVICES PROVIDED PRIOR TO THE
7 EXISTENCE OF A CONTESTED CLAIM COMPENSABLE?
- 8 2. ARE SERVICES BY WAY OF A LUMBAR SPINE SCAN PROVIDED
9 APPROXIMATELY TWO YEARS AFTER THE DATE OF INJURY NECESSARY MEDICAL
10 SERVICE TO CURE OR RELIEVE FROM ALLEGED INDUSTRIAL INJURY ALLEGEDLY
11 SUSTAINED IN MARCH 1989?
- 12 3. CONSIDERING THE LIEN OF CROWN IMAGING AS A TREATMENT
13 LIEN, IS INJURY AOE/COE A DEFENSE TO TREATMENT LIEN?

14 RESPONSES

- 15 1. Services provided by lien claimant, Crown Imaging, prior
16 to filing of a Claim Form or Application are non-compensable.
- 17 2. Services by way of a lumbar spine scan provided two years
18 after the date of injury, are unnecessary.
- 19 3. Applicant did not sustain an industrial injury and
20 therefore the treatment lien is not payable.

21 ARGUMENTS

22 I

23 CONSIDERING THE LIEN OF CROWN IMAGING TO BE MEDICAL/LEGAL, PER
24 LABOR CODE SECTION 4620 AND SENATE BILL 31, SERVICES PROVIDED PRIOR
25 TO THE EXISTENCE OF A CONTESTED CLAIM ARE NON-COMPENSABLE.

26 Defendant contends that the Claim Form and the Application
27 were not received until April 12, 1991 and therefore services
28 provided prior to April 12, 1991, are non-compensable.

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1 Lien claimant Crown Imaging originally provided services on
2 April 6, 1991 which was prior to the filing of the Application.
3 The bill dated April 6, 1991, was possibly republished with another
4 date on April 20, 1991. Both of the bills, dated April 6, 1991 and
5 April 20, 1991, are in the sum of \$1,090.00 each, totalling
6 \$2,180.00. Lien claimant has the burden of justifying prima facie
7 irregularity as to the dates on which services were provided and as
8 to why two bills were sent for the same procedures to the same body
9 part and in the same amount.

10 Lien claimant has provided services either prior to the filing
11 of any Notice of Claim upon the employer or within a time period in
12 which the employer is legally obligated to investigate the
13 compensability of the injury. Therefore, the liens of Crown
14 Imaging Associates in the sum of \$2,180.00 for the dates of service
15 April 20, 1991 and April 6, 1991 are non-compensable.

16 II

17 LUMBAR SPINE SCAN PERFORMED TWO YEARS AFTER THE DATE OF INJURY
18 IS NOT A NECESSARY DIAGNOSTIC FINDING UNDER LABOR CODE SECTION
19 4600.

20 Section 70 of Practice Parameter: low back problems as
21 promulgated by the Department of Industrial Relations under
22 Title 8, Division 1, Chapter 1, Article 7, indicates on Page 7 that
23 routine use of lumbar x-rays, routine use of CT scan, MRI, etc.,
24 are in appropriate initial assessment matters. Additionally, the
25 Practice Parameter on Page 6, reflects that a lumbar x-ray should
26 not be done routinely in the initial evaluation unless an
27 underlying illness or condition, such as cancer, infection,
28 fracture, dislocation, or instability is suspected on the basis of

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1 the patient's history, age or examination.

2 Defendant argues that the Practice Parameter, as promulgated
3 by the Department of Industrial Relations, is a guideline which can
4 be presently followed to determine medical and logical reason to
5 perform diagnostic findings as performed by Crown Imaging
6 Associates. Defendant contends that the diagnostic finding by way
7 of a scan of the lumbar spine performed on April 6, 1991 or
8 April 20, 1991, was unnecessary and therefore non-compensable.

9 It is pertinent to note that in the initial report of April 5,
10 1991, physician, Dr. Sexton, indicates that the applicant continued
11 to work until May of 1989, thereafter, she took a vacation and went
12 to Mexico. Obviously, this information would speak of applicant's
13 state of health to be in fine shape.

14 III

15 CONSIDERING THE DIAGNOSTIC SERVICES PROVIDED BY CROWN IMAGING
16 TO BE TREATMENT SERVICES, DEFENDANT CONTENDS THAT THE APPLICANT DID
17 NOT SUSTAIN AN INDUSTRIAL INJURY IN MARCH OF 1989.

18 Defendant relies on the report of Dr. Boeck dated December 1,
19 1992, in which he has concluded that this applicant did not sustain
20 a specific and/or cumulative trauma injury arising out of her
21 employment, as such, this symptomatology was attributed to her
22 heavy body stature and her weight.

23 CONCLUSION

24 If the lien of Crown Imaging is considered a medical/legal
25 lien, they provided services prior to the filing of a Claim Form or
26 within the time frame when there was the lack of existence of a
27 contested claim situation. Therefore, the services will become
28 non-compensable.

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1 If the lien of Crown Imaging is considered a treatment lien,
 2 applicant did not sustain an industrial injury, in fact, the
 3 symptomatology is attributed to her heavy set body. Alternatively,
 4 there was no need for a diagnostic finding by way of a lumbar spine
 5 scan immediately after the first medical assessment and officially
 6 after approximately 25 months of the original date of injury in
 7 March of 1989.

8 Defendant requests an Order Disallowing the lien of Crown
 9 Imaging.

10 Dated: March 13, 1995

Respectfully submitted,

11 KEGEL, TOBIN & TRUCE

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BY: _____
 JOY DHOLAKIA

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