

ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

For past installments of the *George the Bartender* series, please visit our web site at <http://www.kttlaw.us/memos.html>

RE: GEORGE THE BARTENDER AND THE DISCIPLINE OF DR. RATBAR

FROM THE LOBBY BAR AT THE HYATT:

As I eased into my usual seat at the Hyatt Bar after a hard day denying benefits I heard Dr. Ratbar wail, “It’s not fair, it’s just not fair!”

I looked up to see Dr. Ratbar in an animated conference with George the Bartender’s attorney, Ron Summers, at the end of the bar.

After serving my cocktail of choice, a Beefeater’s martini, straight up, with two olives,¹ George the Bartender explained to me the source of Dr. Ratbar’s irritation.

George told me that Dr. Ratbar’s workers’ compensation business had been hurt dramatically by the SB 899 reform law, specifically the creation of the Medical Provider Networks, and the Labor Code §4062.2 State Panel Qualified Medical Examiner system.

Prior to the implementation of the reform law, George’s workers’ compensation attorney, Ron Summers, had referred all of his cases to Dr. Nicklesburg, an orthopedist. Dr. Nicklesburg, as the applicant’s primary treating physician, would then refer the applicant to Dr. Ratbar for a report documenting that the injured worker, in addition to his claims of orthopedic injury, had a compensable consequence internal injury, such as gastrointestinal distress, etc.

Dr. Ratbar made a very good living under this scenario, as he was able to not only charge for treatment sessions, but also could charge for at least two medical-legal evaluations, his initial consultation and then again when he found the applicant to be permanent and stationary.

This “business as usual” financial bonanza came to a screeching halt with the creation of the Medical Provider Networks courtesy of SB 899 and the State Panel QME system pursuant to Labor Code §4062.2.

Given his reputation Dr. Nicklesburg was selected for very few Medical Provider Networks, which resulted in minimal referrals to Dr. Ratbar.

George told me that Dr. Ratbar became desperate. After analyzing the Panel Qualified Medical Examiner system created by Labor Code §4062.2 he applied for and was granted entrance to the State Panel Qualified Medical Examiner system for internal specialist.

However, the announced position of the DWC Medical Unit of only one Panel Qualified Medical Examiner per applicant became a problem for Dr. Ratbar. State Panel Qualified Medical Examiners in the field of internal medicine were only requested by attorneys when the injured worker actually had a legitimate internal injury.

¹A gin martini straight up is best served at 38 degrees Fahrenheit.

Therefore, Dr. Ratbar was unable do what he was best at: “creating” compensable consequence internal injuries stemming from admitted orthopedic injuries. As Dr. Ratbar’s referrals from State Qualified Medical Examiner panels were between slim and none, the good doctor hit on what he considered a foolproof scheme.

Dr. Ratbar created 115 different addresses for his clinic throughout California, ensuring that he would be one of the three physicians on almost every State panel in which a specialist was requested in the field of internal medicine.

This plan worked, as Dr. Ratbar’s name started appearing on every statewide panel in which a specialist in internal medicine was requested. Dr. Ratbar’s referrals went through the roof.

Unfortunately for Dr. Ratbar, the Division of Workers’ Compensation (DWC) Medical Unit became suspicious and the DWC attorneys filed an accusation against Dr. Ratbar, seeking his termination as a Qualified Medical Examiner.

The accusation, similar to an indictment, charged that Dr. Ratbar had committed what amounts to fraud by representing that he practiced at multiple offices.

Dr. Ratbar retained Ron Summers as his attorney and negotiated a “**plea.**”

At this point Dr. Ratbar and Ron joined our conversation as they wanted their cocktails refilled.

When I asked Dr. Ratbar why he accepted a “**plea**” instead of fighting the charges against him, Dr. Ratbar explained that if he lost his Qualified Medical Examiner license he would be terminated. As the Panel Qualified Medical Examiner system is the only game in town he would be “out of the game,” if he were terminated.

Ron told me that the “**plea**” had been negotiated and signed that day by Dr. Ratbar, Ron, the DWC attorney and the DWC medical director and then approved by the Administrative Director.

The “**negotiated settlement**” mandated the following conditions of probation:

1. That Dr. Ratbar be placed on suspension for 90 days but that the suspension as a Qualified Medical Examiner would be stayed pending the successful completion of probation as follows:
 - a) That Dr. Ratbar provide the Medical Unit of the Division of Workers’ Compensation with proof that he has served a true copy of his Disciplinary Order on the Medical Board of California; every party for whom Dr. Ratbar has a pending Qualified Medical Evaluation or Agreed Medical Evaluation; the Administrative Director; the President of the California Applicant’s Attorney’s Association; and finally the President of the Defense Attorney’s Association.
 - b) That Dr. Ratbar agree to “obey all Federal and State and local laws and regulations, all rules governing practice as a Qualified Medical Evaluator and all California statutes and regulations governing his professional area of practice.”
 - c) That Dr. Ratbar must submit “quarterly declarations under penalty of perjury to the Medical Unit. . . stating whether there has been compliance with all conditions of probation. . .”
 - d) That if Dr. Ratbar violates his probation his license as a Qualified Medical Examiner may be revoked.

- e) That the DWC Medical Unit “shall make a notation on each letter which lists respondent’s name on a panel of Qualified Medical Examiners sent to an injured worker, indicating that respondent is currently on administrative probation as a Qualified Medical Examiner.”
- f) That Dr. Ratbar’s locations at which he practices are severely reduced to 11.
- g) That Dr. Ratbar “shall complete 25 hours of community service,” consisting of teaching classes to other Qualified Medical Examiners on how to write a medical-legal report.
- h) That Dr. Ratbar give up his passport and agree not to leave the country or California unless notifying the DWC Medical Unit.

After Ron finished telling me the terms of Dr. Ratbar’s probation I looked at the good doctor’s ashen face as he exclaimed: “How can I teach QMEs how to write medical reports when all of my medical reports were written by my administrative assistant?”

In ordering my second martini from George I told Dr. Ratbar that this would be a good experience for him.

DISCLAIMER:

Although the above characters are imaginary and the story is fictional, it bears a striking resemblance to an actual case which is captioned, “In the Matter of the Accusation Against Andrew K. Burt, M.D. v. Medical Board of California.”²

Dr. Burt received an Order of Probation similar to the fictitious Dr. Ratbar. Although there is a provision in the discipline meted out to Dr. Burt against leaving California without notifying the DWC Medical Unit, Dr. Burt did not have to surrender his passport as did the imaginary Dr. Ratbar.

If wielded fairly and uniformly the power of the DWC Medical Unit, as illustrated by the Burt case, certainly will make the world a better place for defendants.

As evidenced by the “plea” of Dr. Burt, Qualified Medical Evaluators (QMEs) greatly respect the power and responsibility of the DWC Medical Unit. I believe this will result in objective, honest, comprehensive and timely reporting.

This is reason 164 why not to go to an Agreed Medical Examiner and to utilize the State Panel QME System.

The recent much needed administrative reform of our system is due to the efforts of the Administrative Director of the Division of the Worker’s Compensation (DWC), Carrie Nevans.

In a relatively short time Ms. Nevans has promulgated rules and regulations necessary to implement the reforms of SB 899 in a fair, unbiased and objective manner. I have been in this business for some 35 years and have seen Administrative Directors come and go for both Republican and Democratic administrations.

Carrie Nevans has been the most effective by far, but unfortunately the all important office of Administrative Director has become a political football in Sacramento, thereby delaying the confirmation of Ms. Nevans.

²The Order for Probation and Stayed Suspension in the case against Dr. Burt is attached.

Carrie deserves our admiration, support and certainly early Senate confirmation.

Make mine a double, George. Here's to you Carrie.

-- Joe Truce