

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: May 6, 2007

RE: George and the Durable Goods Hoax

FROM THE LOBBY BAR AT THE HYATT:

The first thing that caught my attention when I took my regular seat at the bar was a number of brightly painted posters hanging on the walls advertising a garage sale at the home of George the Bartender. After taking a sip from my first martini I told George that I might be interested in attending his garage sale and wanted to know what items he would be selling. A beaming George told me that the idea came to him as a result of his Workers Comp case for his carpal tunnel syndrome. George explained that when his attorney, Ron Summers, referred him to Dr. Nickelsberg for treatment an amazing event began to unfold. Without warning or explanation George began receiving what appeared to him to be medical supplies--delivered to his home by UPS. He showed me a list of items which included a water circulation cold unit, a cold therapy wrap; a flexible back brace, TR Wave Electrodes and a Tri-Wave Unit. George told me that these medical supplies or durable goods came to him without instruction so he had no idea how to use them.

As he was puzzled by these deliveries George called his primary treating doctor and spoke to Dr. Nickelsberg's physician's assistant, Al Pain, who told George that Dr. Nickelsberg's son owns a durable goods company by the name of Q-Care and all of Dr. Nickelsberg's WC patients receive a steady supply of durable goods from Q Care until their case settles.

In looking over George's list of durable goods I mentioned to George that all of the supplies that he received were for treatment of back and neck injuries and that his claim was limited to carpal tunnel. George said he had mentioned that to Mr. Pain and that he couldn't afford these supplies not to mention the delivery charges. Mr. Pain told George not to worry about it as the insurance company would be paying for everything. After his case settled George told me he called his attorney who supplied him with the total bill of Q Care for \$12,500. George told me that since he never took any of the supplies out of their boxes he would sell them as new and mark them down by 40%. As I ordered my second martini I told George he was sounding more and more like a lien claimant representative. Unfortunately the explosion of companies purportedly supplying so called durable goods to injured workers has reached epidemic levels--at least in Southern California. However an aggressive

approach to defending these claims quite often leads to a favorable F&A denying the lien outright or better yet, early dismissal of the lien by the lien claimant representative. We have found the following approaches to be quite successful: First, the Official Medical Fee schedule mandates that the supplier of durable goods must receive pre authorization from the defendant. Durable Goods providers such as N-Care, Frontier and RS Medical never ask for pre authorization in my experience; Second and more effective in obtaining a voluntary dismissal is the **proper utilization of a subpoena requiring the Person Most Knowledgeable (PMK) for the durable goods company to appear for a deposition and produce and bring with him the price list for the items dispensed, receipts indication that the durable goods were actually delivered to the injured worker, documents showing that the applicant was properly instructed in their use, copies of the prescriptions issued by the applicant's Primary Treating Physician for said durable goods and all records and information regarding the ownership of the durable goods company.**

We have probably all seen the so called prescriptions given to us by durable goods companies and all the ones I have seen are obviously pre issued by the physician as the physician's signature is a signature stamp and the identifying information for the applicant is always in a different handwriting and the color of ink does not match. My suspicion is that these signature stamped prescriptions are given to the durable goods company in blank and as soon as the case is filed the durable goods people fill in the names of the applicants and other identifying information and as they say at the start of the Indy 500: "Let the Build Up Begin."

There is a simple way of finding out whether the prescriptions for durable goods are pre issued or issued in blank—simply subpoena the records of the doctor who signed the prescription. If the prescription is not pre issued it will be in the doctor's records.

Steve Cooper, a partner with our Los Angeles office, recently had a case involving a durable goods company that supplied the applicant with something called a "Tri-Wave Unit." claiming that item was a combination TENS Unit, Neuromuscular Stimulator and an inferential unit. Our client was billed \$5,680.00 for this device. Steve's favorite web site for checking these prices is www.triadhealth-care.com and this web site revealed that the actual prices for a Tri-Wave Unit was only \$495.00 or a 90% reduction—boy, those handling fees are a real killer To make a long story short Steve served a PMK deposition notice on the durable goods company and surprise, surprise the lien claimant sent a letter to the Board withdrawing their lien as it "had been satisfied in full" even though our client had made no payment. PMK subpoenas are a wonderful thing!

An obvious question is how do you serve a PMK subpoena on a lien claimant who only gives you a Post Office Box address. Answer: We are members of Lexis Nexis and we simply pull up the public records of the lien claimant who wants to be anonymous which includes their fictitious business name permit and street address. Lexis Nexis also gives us all sorts of wonderful information such as law suits in which the lien claimant is being sued and this type of information can be invaluable.

As a general rule we always want to raise the following issues against lien claimants that allegedly performed services at the request of the treating physician: A demand that the lien claimant submit evidence that they are properly accredited or licensed pursuant to the Court

of Appeal decision in the case of Zenith Insurance v WCAB 71CCC374; A demand that said lien claimants disclose any and all ownership information. In my above fictional example, Dr. Nickelberg's son was the owner of Q-Care and it is a violation of L.C. 139.3 for the treating physician to refer the applicant to a provider that either he or a member of his immediate family owns.

A violation of 139.3 is a misdemeanor and absolves us from payment to both the physician and the provider.

Lastly, in the case of a physician, we always want to request compliance with L.C. 5703 (a)(1) which mandates that the treatment bills (not just the report) "..are admissible only if made under penalty of perjury that they are true and correct to the best knowledge of the physician." The Board to date has been lax in the enforcement of this section and there are no reported cases one way or the other. However, this may change in the current reform environment.---Make mine a double George

DISCLAIMER: The above story is purely a work of fiction and is a product of my over worked imagination and also due to the fact that I have no life. Only the names have been changed to protect the wealthy.--joe truce