

INTER-OFFICE MEMORANDUM

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: February 20, 2007

RE: George and the Heart Attack AOE/COE Issue

FROM THE LOBBY BAR AT THE HYATT:

When I arrived at the Hyatt Bar George the Bartender was taking to his attorney, Ron Summers, about the stroke suffered at work last week by Rafael, one of the Hyatt's bus boys. As I sipped my first martini Ron explained to George that he had just "signed up" Rafael in the hospital and was preparing to file both the application and DWC1 claim form that Rafael had signed that morning. Ron told me that from the very moment of the stroke Dr. Ratbar had examined and provided treatment as well as diagnostic testing to Rafael and was, in fact, coming to the bar tonight to report his findings.

No sooner had he spoken than Dr. Ratbar along with his office manager, Lenny Lien, sat down at the bar. As a defense attorney I knew Lenny well as aside from being Dr. Ratbar's brother in law and office manager he was also the CEO for three of Dr. Ratbar's companies: "Epidurals are Us"; "Shake and Bake Incorporated" and "Scans Unlimited." Dr. Ratbar was beaming and told George to set us up with another round of cocktails as he was buying.

Ron wanted to know why Dr. Ratbar was in such good humor and he explained that through his companies he had already run up more than \$10,000 in medical bills and since the insurance company had not denied Rafael's case yet, L.C. 5402 as amended by SB 899 mandated that the carrier pay up to \$10,000 in medical expense.

I didn't like to deflate Dr. Ratbar's glee, especially after he had just bought me a cocktail, but I couldn't resist. As usual I had brought my Labor Code to the bar and I opened up the good book and pointed out to Dr. Ratbar that L.C. 5402 says no such thing. L.C. 5402 only provides that **one day AFTER the claim form is filed the employer/carrier shall authorize medical treatment consistent with the ACOEM guidelines and the liability for said treatment shall not exceed \$10,000.** When I asked Dr. Ratbar whether he had called the carrier for authorization and if his treatment complied with ACOEM his frozen look said it all.

Dr. Ratbar finally regained his composure and looked to Rafael's attorney for guidance. Ron tried to console the now depressed doctor and looked at me and commented that the treatment would be

considered emergency medical treatment and would be deemed authorized even if a specific request had not been made.

Dr. Ratbar brightened considerably at Ron's legal interpretation but his spirits went back in the dumps when I told both Ron and the good doctor that the carrier's liability for medical treatment **only commenced one day after the filing of the DWC1 Claim form and Ron had just told me he had not yet served the claim form.**

Ron then told me this was all moot anyway and that Dr. Ratbar would be paid since he was going to prove that Rafael's stroke was compensable as it happened at work and that Dr. Ratbar would concur in his medical report. At this point Dr. Ratbar started clearing his throat and told Ron that the diagnostic testing of "Scans Unlimited" which had come back yesterday showed that Rafael actually had sustained a heart attack rather than a stroke. At this news Ron did a High Five with Dr. Ratbar whooping that he would have a much easier time in proving that a heart attack is compensable.

Unfortunately, Ron has a point. Heart attacks or myocardial infarctions seem to have a lower threshold of proof although this may have changed with the Court of Appeal decision in Paradise Valley Hospital versus WCAB 70CCC1685. Although this case does involve a stroke the Court's discussion of the applicant's burden in proving industrial causation applies to heart attacks as well. This is an incredible decision for the defense and may well change the face of our industry with regards to our liability for cardiovascular problems.

In Paradise Hospital the applicant suffered a stroke and although the applicant did suffer stress on the job the Court ruled that there was no evidence as to the precise mechanism as to just how the applicant perceived stress caused her stroke.

In other words the Court of Appeal raised the standard and quantum of proof and insisted that applicant's evidence demonstrate the actual physiological mechanism for the applicant's stroke. The applicant's doctor in Paradise Valley Hospital, as most medical/legal experts in our industry, "concluded that daily job stress played a contributory role in elevating" the applicant's cholesterol level thereby contributing to the applicant's stroke and relied on medical studies to support his opinion. In reversing the Board the Court found that the studies relied upon by applicant's doctor were of "questionable relevancy" and commented that there is no evidence that the applicant's cholesterol level did, in fact, become elevated during her employment and that applicant failed to demonstrate a link between her high cholesterol and her stroke.

Accordingly, in order to prove that Rafael's heart attack arose out of his employment Ron will have to establish the exact mechanism as to how stress caused Rafael's heart attack. Even though we have been paying benefits for so called industrial heart attacks for years incredibly enough there is no proven medical or scientific theory as to how perceived stress causes heart attacks.

A very famous physician years ago stated that "the absence of stress is death" and clearly we must all have stress in our lives to survive. The key question is, how do we react to the stress? Does our face get red? Do we sweat profusely? Do we get lightheaded or get blinding headaches? Therefore we need to know if our applicant reacted to the "stress" at the time or

whether the so called stress is simply an after the fact rationalization. In order to fully understand the mechanism of a heart attack we must define our terms.

The heart muscle which I refer to as the "pump" is energized and supplied with oxygenated blood through the three descending coronary arteries which I refer to as the "pipes" therefore in any heart attack case you are dealing with the "pipes" and "pump."

When the arteries close or become blocked or occluded the blood flow is cut off and there is a scarring on the heart muscle which we call an infarction which gives us the name myocardial infarction or heart attack. This scarring of the heart muscle only occurs when the blood supply is cutoff from the "pipes" and can occur in two ways: First, an individual may suffer "acute stress" such as a woman seeing her young child killed in front of her. This acute stress can cause the coronary arteries or "pipes" to go into spasm and fold over like a garden hose thereby cutting off the blood supply to the pumps resulting in an heart attack.

However, the most common mechanism by which heart attacks occur in our industry is the slow and progressive build up of plaque on the walls of the coronary arteries eventually resulting in an occlusion or blockage of the arteries resulting in the scarring of the heart muscle or a heart attack. Rafael's coronary angiogram test performed at "Scans Unlimited" showed that he had 90% blockage in all three coronary arteries and this blockage decreased the flow of blood to Rafael's heart resulting in his heart attack This build up of plaque and narrowing of the arteries is referred to as atherosclerosis and is caused by multiple non industrial risk factors including genetics.

Therefore, the key question for Ron to answer under the doctrine laid down by the Court of Appeal in Paradise Valley Hospital is how Rafael's stress on the job caused and/or contributed to the closing of his arteries. It's a medical fact that stress does not cause heart attacks but that the direct cause is a lack of blood flow to the heart muscle. Most physicians in our industry rely on various medical articles documenting that work stress can be contributory to cardiovascular problems and/or heart attacks. However, all these studies are designed to determine whether and to what extent job stress may contribute to the overall incident of cardiovascular problems. These studies require complicated classification of contributing risk factors including but not limited to a degree of hostility, time urgency, ambition as well as a strict definition of job stress. Even then, those with the highest risk profile do NOT always have heart attacks and some of those who do not have a high risk profile do develop heart problems. These studies can variably include individuals who experience cardiovascular problems and others who do not. In this case and under the Court of Appeal decisions in Paradise Valley Hospital it would be speculation to determine which group Rafael belongs to.

Assuming that industrial causation cannot be proved by medical literature or studies, as has always been the case in our industry, is there any theory out there that describes these mechanisms by which "stress" causes or contributes to the closure or blockage of the "pipes". It has been proposed by some medical practitioner (but never proven) that an individual's severe reaction to stress can allegedly cause enzymes known as catecholamines to somehow secrete or drip from the medulla or brain stem and enter the blood stream causing a buildup of plaque in the coronary arteries or in the alternative thicken the blood making it more difficult for the blood to get thru the coronary arteries thereby contributing to the decease in

the blood flow to the heart muscle resulting in a heart attack. Since no one can prove what type of stress causes the catacholamines to magically come out from the brain stem or if this occurs at all it would seem that this theory would be very difficult to prove.

Therefore, in our letter to a panel QME or AME we want to pose the following question:

"Based on reasonable medical probability can you state that the applicant's reaction to perceived stress with his employer caused catacholamines to secrete from the applicant's brain stem and enter the applicant's blood stream shutting of the supply of blood to the heart muscle thereby contributing to the applicant's heart attack? Can you propose an alternate scientific theory based on reasonable medical probability as to how the applicant's perceived stress caused a decreased blood flow to the applicant's heart muscle?"

DISCLAIMER:

The above theories and legal interpretations are mine and mine alone, but these are my theories and I'm sticking to them. Incidentally, even if Ron is successful in proving industrial causation it would not appear that Dr. Ratbar would be able to collect his medical bills as he has violated LC 139.3 which prohibits referrals to medical and/or diagnostics facilities which he owns. Unfortunately, as with all good defense decisions, the Court of Appeal opinion in Paradise Valley Hospital is unpublished meaning it's the law of that case but not of the land. However, the Court does refer to other published decisions in their opinion which can serve as authority. Anyone wishing a copy of the Paradise Valley Hospital case should make the request via e-mail.

Make mine a double George.--Joe Truce