

INTER-OFFICE MEMORANDUM

KEGEL, TOBIN & TRUCE

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: W. JOSEPH TRUCE

DATE: October 18, 2001

RE: WCAB HOLD THAT EMPLOYER REGAINS CONTROL OF
MEDICAL AFTER A SUCCESSFUL PETITION FOR
CHANGE OF PHYSICIANS

In the case of Lucrecia Cardenas v. WCAB (Leslie Lock Inc./Leslie Building Products, Inc.) 66 Cal. Comp. Cases 892 (Writ denied) the Board held in relevant part as follows:

"WCAB held applicant's unilateral choice of new treating physician violated Labor Code §4603 procedures, when Administrative Director grants defendants request that applicant's treating physician be changed under Labor Code §4603 thus returning medical control to defendants, and applicant appealed Administrative Director's Decision to WCJ and, while appeal was pending, selected new treating physician. . . "

In the Cardenas case the Board granted the defendants Petition for Reconsideration and overruled workers' compensation judge, Cynthia Quiel, who found that the applicant had an unlimited right to select treating physicians and this right is not limited by reason of a successful Petition for Change of Physicians filed by the defendant.

However, the Board in its decision inferred that even though medical control passed from the employee to the defendant by virtue of the Petition for Change of Physicians that the employer medical control is not unlimited. The Board stated as follows:

"In reviewing the record, we find no basis for reversing the Administrative Director's decision. Applicant has not shown that Dr. Simpson complied with the reporting requirements, nor does she so contend on reconsideration. Applicant has not argued that she wishes to continue under Dr. Simpson's care. She relies instead on her circumvention of Section 4603 to allow her to select a different physician of her choice. As discussed above, we do not find that she is entitled to do so at this time. We note, however, and defendant concedes in its petition, that, after a reasonable time, applicant may again select a different physician, if she wishes. . . "

As this is a Writ denied case it can be cited as an indication of contemporaneous interpretation and application of workers' compensation law pursuant to the holding of the Court of Appeal in Wings West Airlines v. WCAB (1986)187 Cal. App. 3d 1047 (footnote on 1053); 51 CCC 609.

WJT:wf

Enclosure- **Lucrecia Cardenas v. WCAB**