

INTER - OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: Joe Truce

DATE: August 2, 2001

RE: ADMINISTRATIVE DIRECTOR REFERS TO
DR. NAGELBERG'S "BOILER PLATE STATEMENTS"

In granting a Petition for Change of Physicians in the case of Morales v. CC & R Incorporated, 29 CWCR 133 (enclosed), the Administrative Director granted defendant's Petition for Change of Physician on the basis that Dr. Steven Nagelberg did not respond promptly to a reasonable request from the claims administrator as to whether or not the injured worker could perform any type of modified and/or alternate work.

In his initial report, Dr. Nagelberg found that the applicant was temporarily totally disabled. He repeated this statement almost verbatim in a subsequent report a month later.

In granting the defendant's Petition for Change of Physicians for failing to respond adequately to the claims administrator's request for additional information, Administrative Director Richard Gannon stated as follows:

"Dr. Nagelberg's apparent boiler plate statement concerning the injured workers' disability status was not responsive to the employer's reasonable request for additional information. It is well settled that injured workers are not eligible for continued temporary total disability indemnity payments where, prior to reaching permanent and stationary status, their employer makes available modified work which is determined by the primary treating physician to be within the injured worker's physical limitations or restrictions. The question concerning the reason for the worker's stated inability to perform any modified or alternate work was clearly relevant to the issue of the employer's liability to provide further temporary disability benefits..."

In recent decisions, the Administrative Director has confirmed that two or more reporting violations pursuant to Administrative Rule 9785, constituted good cause on which to grant a Petition for Change of Treating Physician. However, the Administrative Director has also repeatedly held that unless the claims administrator forwards a current copy of Administrative Rule 9785 to the treating physician, a Petition for Change of Physicians will not be granted. **Therefore, I am once again enclosing with this memo, the current version of Administrative Rule 9785 - we should advise our clients that a Petition for Change of Physicians will not be granted unless the enclosed version of Administrative Rule 9785 is first sent to the primary treating physician.**

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EDITORIAL COMMENT

The applicant's so called "free choice treating doctor" pursuant to Labor Code Section 4600 is a euphemism for the applicant's attorney selected treating doctor in litigated cases.

Once the applicant's attorney has made a referral to a so called treating physician such as Dr. Nagelberg, Capen, Nelson, etc, the doctors first report is invariably a report indicating that the applicant is (1) temporarily totally disabled and (2) in need of treatment.

However, the statement that an applicant is temporarily totally disabled means the applicant cannot perform any job in the open labor market - no matter how light. Therefore, we should impress on our clientele that once we receive this type of report, we should **immediately** send a letter to the treating doctor inquiring as to whether or not the applicant has work restrictions that will allow the applicant to perform modified and/or alternate work. Failure to adequately respond to such inquiry will constitute a violation of Administrative Rule 9785 according to the Administrative Director's decision in the Morales case.

WJT

Enclosure: Morales case; Administrative Rule 9785