

KEGEL, TOBIN & TRUCE

INTEROFFICE MEMORANDUM

TO: ALL ATTORNEYS AND CLIENTS

FROM: W. JOSEPH TRUCE

DATE: DECEMBER 6, 2004

RE: WCAB HOLDS THAT UTILIZATION REVIEW TIME LIMITS AS SET FORTH IN LABOR CODE §4610 ARE MANDATORY

To no one's great surprise, the Appeals Board has issued an *en banc* decision finding that the time limits for Utilization Review as contained in Labor Code §4610 are **mandatory**.

In the case of Brice Sandhagen v. Cox & Cox Construction, Inc. and State Compensation Insurance Fund, the Board has now issued an *en banc* decision which can be highlighted as follows:

1. The Board **affirmed** the decision of the Workers' Compensation Judge (WCJ) excluding defendant, State Compensation Insurance Fund's Utilization Review report from evidence, as the **Utilization Review** report did not comply with Labor Code §4610(g)(1) which states in relevant part as follows:

"Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make that determination, but in event more than 14 days from the date of the medial treatment recommendation by the physician..."

2. The Board also found that since defendant, State Compensation Insurance Fund did not comply with the time limits as mandated by Labor Code §4610(g)(1), then State Compensation Insurance Fund's only other option was to object to the treatment recommendations of the applicant's Primary Treating Physician within the time limits as specified in Labor Code §4062. **The Board noted that the State Compensation Insurance Fund had neither complied with the time limits for Utilization Review nor had they objected within the time limits as specified in Labor Code §4062.** Therefore, the Board held that the State Compensation Insurance Fund was without a remedy to challenge the treating physician's recommendations.
3. Finally, the Board held that even if defendant State Compensation Insurance Fund had objected timely to the treating physician's report pursuant to Labor Code §4062, they would have been precluded from forwarding the report of the State Compensation Insurance Fund **Utilization Review** doctor as the **Utilization Review** report was not obtained timely pursuant to Labor Code §4610.

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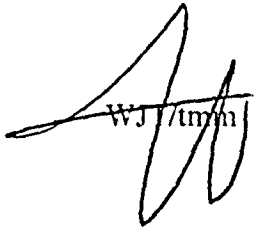
Memorandum to All Attorneys and Clients

RE: UTILIZATION REVIEW

December 6, 2004

Page 2

This decision certainly is not surprising in light of the mandatory language used in Labor Code §4610. In reviewing the Board's *en banc* decision, it would appear that the best practice would be to concurrently obtain a timely **Utilization Review** report as well as issuing a Labor Code §4062 objection to the recommendations of the applicant's treating physician. The Board has made it clear that the recommendations of the treating physician can still be challenged by going through the **AME/QME** procedures of Labor Code §4062 even in the absence of a **Utilization Review** determination.


WJ/tmm