

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS
FROM: Joe Truce
DATE: August 3, 2004
RE: ACOEM PROTOCOLS/GUIDELINES

Labor Code §4610 which went into immediate effect January 1, 2004, authorized Utilization Review with respect to medical treatment and mandated that nationally accepted, peer reviewed and evidence based medical protocols would be presumed to be correct on the issue of the extent and scope of medical treatment in the workers' compensation system.

Labor Code §4610 furthermore provided that until the Administrative Director issued Utilization Review Guidelines (due December 1, 2004) that the guidelines of the American College of Occupational Environmental Medicine (ACOEM) could be used in it's place as well as any other nationally accepted, peer reviewed and evidence based protocols.

The Board has now issued it's first decision in which the treatment program recommended by the applicant's primary treating physician came in conflict with the ACOEM protocols.

In the enclosed case of Leon Smith v. Churn Creek Construction Company; SCIF (RDG 00111743) filed June 1, 2004, the Board sided with defendant's usage of the4 ACOEM protocols with regard to epidural injections.

In a decision in which Chairman, Merle Rabine, participated, the Board stated in part as follows:

"under the circumstances of the case at hand, where the ACOEM Guidelines where in effect, but were not presumed to be correct" at the time of the Utilization Review physician's opinion, the burden shifted to the treating physician to justify his required treatment. . . "

In the Leon Smith case, the applicant's primary treating physician, Dr. Crawford, requested authorization to perform epidural lumbar blocks and the defendant's Utilization Review physician, Dr. Alan C. Krohn, denied authorization for spinal injections on the basis that the American College of Occupational Environmental Medical Guidelines (ACOEM) state that such a modality is not appropriate for a non-surgical candidate (see pages 300 and 309 of ACOEM Guidelines). . . "

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The Board went on to note that the Trial in this case occurred on February 3, 2002 or before the ACOEM Guidelines Second Edition was published on March 22, 2004 and therefore the Board did not apply the presumption of correctness pursuant to Labor Code §5703 as amended.

However, in reversing the decision of the Workers' Compensation Judge (WCJ) the Board noted that the ACOEM Guidelines prevailed in this case as the applicant's primary treating physician failed to offer any rebuttal to the ACOEM protocols.

I think it is clear from this decision that the Board intends to enforce the ACOEM protocols as to the extent and scope of medical treatment and certainly for all medical treatment subsequent to March 22, 2004 the ACOEM Guidelines will be presumed to be correct pursuant to Labor Code §5703 thereby raising an almost insurmountable barrier for the treating physician to treat in excess of these guidelines.

I am also enclosing a trial court decision by Workers' Compensation Judge, Susan Hamilton, in a case designated Margarita Bacsiera v. Laguna Honda Hospital and City and County of San Francisco, case number SF 457076.

In the Bacsiera case, the applicant had left elbow surgery on December 18, 2003 and as the applicant contended that she could not "wash, cook or clean and had to rest her left arm", the applicant's primary treating physician, Dr. Grotz, recommended "in home support services" for the applicant presumably to help her perform the aforementioned activities of daily living.

The defendant denied the medical treatment (in home services) as recommended by the applicant's primary treating physician and obtained a letter from their medical director, Dr. Alan Strizak in which Dr. Strizak denied "in home support services based on ACOEM Guidelines."

In her Opinion on Decision, Judge Hamilton observed as follows:

"effective January 1, 2004, Labor Code §4610 provides that the guidelines adopted by the American College of Occupational Environmental Medicine, which are referred to as the ACOEM Guidelines, are presumptively reasonable on the issue of utilization of further medical treatment issues. I have reviewed the ACOEM Guidelines and specifically chapter 10, beginning at page 240 and through page 247, which refers to treatment of the left elbow with specific reference to page 247, I note the ACOEM Guidelines during the recovery from a surgery such as was provided in this case makes no reference to in home

supportive services, rather, the guidelines suggest daily exercise to maximize work activity tolerance. . . "

In ruling for defendants in this case, Judge Hamilton found that the report of the medical director was more persuasive than the opinion of the applicant's primary treating physician.

The above cases, one an Appeals Board panel decision and the other a decision by a Trial judge, are both instructive and give us some insight as to how the Appeals Board intends to rule on Utilization Review issues. These cases raise the following questions:

1. Can these decisions be utilized as precedent in litigating Utilization Review issues that we confront in everyday practice: Labor Code §5703(g) entitled **Additional Evidence Allowed** indicates that prior decisions of the Appeals Board on similar issues may be introduced as evidence on a like issue. It is open to question as to whether or not a decision by a trial judge can be viewed as a decision of the Appeals Board. However, it would certainly appear that on utilization review issues, we can certainly introduce into evidence pursuant to Labor Code §5703(g), the Board's decision in **Leon Smith**.
2. In the **Bacsierra** case it would not appear that the defendant actually **introduced** the ACOEM Guidelines into evidence. However, both the Board and Judge Hamilton quoted liberally from the ACOEM Guidelines so we cannot be sure as to how the ACOEM Guidelines were brought to the attention of the Board and also Judge Hamilton other than by recitation of the pertinent portions of the guidelines in the reports of the medical directors. However, since Labor Code §5703 as amended allows us to introduce the ACOEM Guidelines as evidence I would certainly recommend that the pertinent portions of these guidelines be introduced as part of our exhibit package.
3. In **Bacsierra**, Judge Hamilton commented in her Opinion on Decision that the report of defendant's medical director was more persuasive than that of the primary treating physician. However the reports of medical directors obtained pursuant to Utilization Review would not appear to be admissible as they are not reports of treating physicians or reports of physicians who have actually examined the applicant. My reading of Labor Code §4610 would seem to indicate the sole function of the medical director is to point out to the primary treating physician the appropriate sections of the ACOEM Guidelines to apply to the treatment in dispute. **Therefore, it would appear that the sole function contemplated by Labor Code §4610 as to the function of the medical director is simply to show that the medical director timely denied and/or delayed treatment pursuant to peer reviewed, evidence based nationally accepted guidelines.**

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4. Once it is established that treatment has been timely denied by the medical director pursuant to the ACOEM Guidelines, it would certainly seem that the ACOEM Guidelines speak for themselves as evidence pursuant to Labor Code §5703.

WJT:wf

Enclosures- **Opinion and Order re Leon Smith v. Churn Creek Construction;**
Minutes of Hearing and Opinion on Decision
re Margarita Bacsierra v. Laguna Honda Hospital

1 WORKERS' COMPENSATION APPEALS BOARD

2 STATE OF CALIFORNIA

3
4 LEON SMITH,

Case No. RDG 0111743

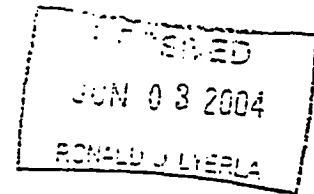
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6 Applicant,

7 vs.

8 CHURN CREEK CONSTRUCTION
9 COMPANY; STATE COMPENSATION
10 INSURANCE FUND,

11 Defendant(s).

OPINION AND ORDER
GRANTING RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION



12
13 Defendant, State Compensation Insurance Fund (SCIF), seeks
14 reconsideration of the Findings and Award of March 17, 2004, wherein it was
15 found, inter alia, that applicant, Leon Smith, sustained an admitted injury on
16 May 22, 2003 to his low back and shoulder, and that he is in need of further
17 medical treatment, specifically including but not limited to epidural injections.
18 In her Opinion on Decision, the workers' compensation administrative law
19 judge (WCJ) states:

20 "Applicant requests treatment in accordance with the
21 recommendation of the primary treating physician. Defendant is
22 denying provision of it on the basis it does not fit into the
utilization review guidelines as established by the ACOEM.

23 "Based upon the testimony of Allen Krohn, M.D. it is found that
24 Dr. Krohn had not examined Applicant and whose testimony and
25 opinion are limited to determination as to whether the
recommended treatment conforms to the ACOEM guidelines, and
26 without consideration of the particular patient, course of treatment
27 to date, or the fact that other modalities, specifically physical
therapy (which is also is not recommended by the ACOEM, despite
affording Applicant some temporary relief) have been tried with
only limited success, and was not award that Applicant had been

1 advised of the risks and still wished to proceed.

2 "Based upon a review of the entire medical record, particularly the
3 medical reports of Applicant's treating physician Gary Crawford,
4 M.D., who it is found to have actually examined the Applicant and
5 followed his progress, who appears to have tried several treatment
6 modalities, and whose opinion is confirmed by the report of Dr.
7 David Leppla, M.D., who also examined the Applicant, and despite
8 finding no distinct neurological reason for Applicant's condition,
9 concurred in the recommendation for epidural injections, it is
10 found that the reports recommendation of Dr. Crawford are
11 generally the more reasonable, sensible, better reasoned and more
12 persuasive."

13 Defendant contends that (1) applicant's treater, Dr. Crawford, requested
14 epidural lumbar blocks after two neurosurgeons, Dr. Leppla and Dr. Guity
15 opined they did not see any lesion that would suggest applicant would benefit
16 from an operation (see, letters, dated February 2, 2004 and February 10, 2004,
17 defendant's exhibit "C"); (2) defendant's Utilization Review physician, Dr. Allen
18 C. Krohn, denied authorization for spinal injections on the basis that the
19 American College of Occupational and Environmental Medical Guidelines
20 (ACOEM) state that such a modality is not appropriate for a non-surgical
21 candidate (see pages 300 and 309 of ACOEM guidelines); (3) the primary
22 treating physician no longer has a presumption of correctness on the extent
23 and scope of medical treatment; (4) no evidence was submitted by applicant to
24 rebut the ACOEM guidelines or Dr. Krohn's testimony; and (5) Labor Code
25 section 4610 (f) (2) states that the ACOEM guidelines shall be the standard and
26 therefore, epidural lumbar blocks must be denied for a non-surgical candidate.

27 Based on our review of the record and for the reasons stated herein, we
will grant defendant's petition for reconsideration and as our decision after
reconsideration, amend the decision to delete the award of epidural injections.

At the outset, we note that although the ACOEM guidelines were in effect
on the date of trial on February 3, 2004, because they were published in

1 December 2003, they did not become presumptively correct until March 22,
2 2004 on the issue of the extent and scope of medical treatment, pursuant to
3 Labor Code section 4604.5 (a).¹ On the matter of epidural injections, the
4 ACOEM guidelines state, at page 300:

5 "Invasive techniques (e.g., local injections and facet-joint
6 injections of cortisone and lidocaine) are of questionable merit.
7 Although epidural steroid injections may afford short term
8 improvement in leg pain and sensory deficits in patients with
9 nerve root compression due to a herniated nucleus pulposus, this
treatment offers no significant long-term functional benefit, nor
does it reduce the need for surgery."

10 Turning to the medical evidence, we note that on January 13, 2004, Dr.
11 Crawford, applicant's treating physician, specifically recommended "three
12 lumbar epidural blocks." However, he did not state any reasons why the
13 epidural blocks would be of benefit to this applicant.

14 Thereafter, in a letter, dated January 16, 2004 to Dr. Crawford, Dr.
15 Krohn, the physician for defendant's Utilization Review program under Labor
16 Code section 4610 (a), denied authorization for epidural injections, based on
17 the above ACOEM guidelines. We note that on January 16, 2004, Dr. Krohn,
18 was within his authority to perform his utilization review. (See Labor Code
19 section 4610 (c).) Specifically, Dr. Krohn states:

20 "I am performing Utilization Review for State Compensation
21 Insurance Fund. In this capacity, I have been referred the case of
your patient:

22 ... as it pertains to: A request for a series of epidural lumbar
23 blocks.

24 "We feel we must deny liability for this portion of the claim on the
25 following basis:

26 ¹ Under Labor Code section 4604.5 (a), the presumption is rebuttable and may be controverted
27 by a preponderance of the evidence establishing that a variance is reasonably required to cure
or relieve the employee from the effects of his injury.

1 ACOEM Guidelines do not recommend ESBs unless the
2 patient is a surgical candidate (willing to have surgery,
3 positive MRI findings suggesting an amenable lesion, and a
4 clinical presentation consistent with these findings leading to
5 a surgical decision). None of these items appear to be
6 present here.

7 "As you know, Medical Utilization decisions must now be made on
8 the basis of evidence-based medical studies and/or guidelines.
9 There are no evidence based decision guidelines to cover this
10 particular request. Specifically, you may refer to our website at:
11 [http://10.2.18.41/cr/vti/script/MedicalUR SearchMedUR.htm0.i](http://10.2.18.41/cr/vti/script/MedicalURSearchMedUR.htm0.i)
12 [dg](http://10.2.18.41/cr/vti/script/MedicalUR SearchMedUR.htm0.i) or the ACOEM Guidelines, Edition 2, Published January 2004.

13 "If you wish to respond or if you disagree, please do so in writing to
14 the adjuster on this case. Further review will be performed at your
15 request and will address any objections you offer."

16 On January 16, 2004, Dr. Crawford stated, in a letter to the adjuster at
17 SCIF, as follows:

18 "In regards to the denial for the series of epidural lumbar blocks.
19 Mr. Smith remains in pain, which is increasing in intensity. Quite
20 frankly, I do not know what to do with this patient. He wants to
21 get better so he can return to work. I would like to refer him to Dr.
22 Leppla, Neurosurgeon for a consultation. Mr. Smith has stated if
23 surgery is necessary in order to get better, he is ready to proceed. I
24 currently see only three alternatives available to Mr. Smith:
25 Approve the referral to Dr. Leppla. Approve the epidural blocks.
26 Keep Mr. Smith on Workers Compensation permanently."
27 (Emphasis added.) (Applicant's Exhibit 4.)

28 On January 22, 2004, Dr. Krohn, responded to applicant's attorney, as
29 follows:

30 "As noted in the written correspondence of January 15, 2004, the
31 request for epidural steroid injections was denied on the basis of
32 the ACOEM Evidence-Based guideline that is found in Chapter 12
33 of the recently published version of the Guides. I refer you to page
34 300 and 309 for specific recommendations regarding the
35 ineffectiveness of this treatment.

36 "As an editorial comment, and as a treater, I feel that many
37 patients get some temporary relief from these injections, but we all

1 know that the long term benefit is questionable, at best. When
2 applying the term 'cure and relieve,' I support the statements in
3 the Guides and no longer refer patients for these procedures
unless they meet the (rather stringent) recommendations herein."

4 Apparently, pursuant to Dr. Crawford's letter of January 16, 2004, the
5 referral to Dr. Leppla was approved. Dr. Leppla issued his neurosurgical
6 consultation report on February 2, 2004, stating:

7 "...I do not see any lesion that would suggest that he would benefit
8 from an operation. That is to say, I do not see anything on the
9 studies that would warrant surgery. He has been told the same
10 thing by Dr. Guity. I think it is reasonable for him [applicant] to
11 proceed with epidural steroid injections or perhaps facet blocks
and given that he has been told now twice by two neurosurgeons
12 that surgery is probably not going to help him, I think that one
should exhaust all other modalities to treat his pain. I endorse the
13 notion of proceeding with epidural steroid injections and other
invasive modalities to treat his pain. He did not request any refills
on pain medications." (Emphasis added.) (Applicant's Exhibit 6.)

14 Next, on February 10, 2004, Dr. Crawford stated in a letter to SCIF, as
15 follows:

16 "Please review the attached consultation letter from Dr. Leppla.
17 As indicated in his letter, Dr. Leppla recommends that Leon Smith
18 proceed with epidural steroid injections. He has now been told by
two neurosurgeons that surgery is probably not going to help him,
19 and that one should exhaust all other modalities to treat his
pain."

20 Thus, the recommendation by Dr. Crawford on January 13, 2004, and
21 January 16, 2004 to approve epidural blocks, was made on the basis that Dr.
22 Crawford did "not know what to do with this patient." Further, we note that
23 Dr. Leppla, the neurosurgical consultant, also recommended epidurals, again
24 without stating why they may be effective in this injured worker.

25 Under the circumstances of the case at hand, where the ACOEM
26 guidelines were in effect (but were not presumed correct) at the time of the
27 utilization review physician's opinion, the burden still shifted to the treating

1 physician to justify his requested treatment. (Cf., Lab. Code, § 4604.5 (c).)
2 Again, although the treating physician, Dr. Crawford, opined and
3 recommended that epidural blocks should be approved, he never provided any
4 reasons or basis for his opinion that epidural injections would benefit this
5 particular applicant and he did not respond to the opinion of Dr. Krohn,
6 defendant's utilization review physician. (Lab. Code, § 4610 [Second Enacted
7 Section].)

8 Therefore in this case, because the employer correctly applied utilization
9 review in declining to authorize recommended treatment, Dr. Crawford was
10 required to explain why his original recommendation for epidural blocks was
11 reasonably required to cure and relieve from the effects of the injury in this
12 employee. (Lab. Code, § 4604.5.) Further, Dr. Leppla's recommendation to
13 exhaust all modalities, without more, is not sufficient to justify the award of
14 epidural blocks as medical treatment in this non-surgical candidate.

15 Therefore, Dr. Crawford's opinion essentially to try something else is not
16 sufficient, standing alone, to overcome the evidence of the ACOEM guidelines
17 stating that the recommended treatment is not effective. On this basis, we will
18 delete the award for epidural blocks as a form of future medical treatment.

19 For the foregoing reasons,

20 IT IS ORDERED that defendant's Petition for Reconsideration filed
21 March 30, 2004, be, and the same hereby is, GRANTED.

22 IT IS FURTHER ORDERED that as the Decision After Reconsideration of
23 the Workers' Compensation Appeals Board that the Findings and Award of
24 March 17, 2004, be, and the same hereby is, AMENDED to read as follows:

25 FINDINGS OF FACT

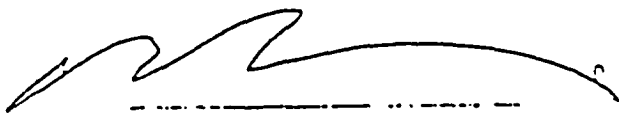
26 Applicant is in need of further medical treatment, but not
27 including epidural injections.

1 AWARD

2 AWARD IS MADE in favor Leon Smith against Churn Creek
3 Construction Company and State Compensation Insurance Fund,
4 as follows:

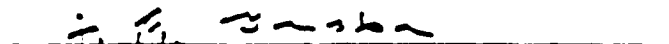
5 Further medical treatment.

6 WORKERS' COMPENSATION APPEALS BOARD

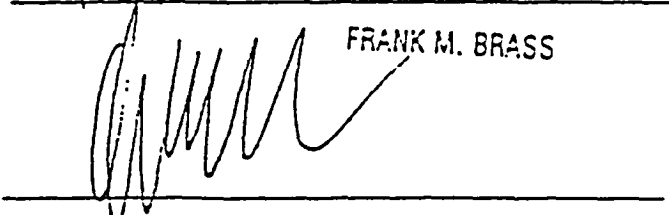
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8 _____
9 MERLE C. RABINE

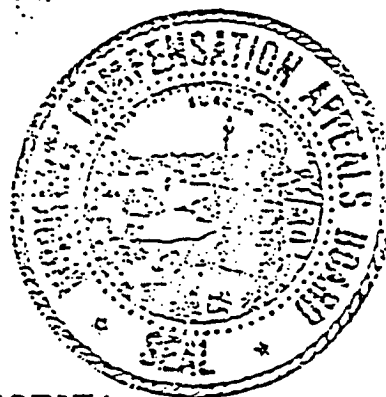
9 I CONCUR,

10 _____
11 

12 FRANK M. BRASS

13 _____
14 

15 WILLIAM R. OVERDEN



16 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

17 JUN 01 2004

18 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL
19 ADDRESS RECORD, EXCEPT LIEN CLAIMANTS.

20 rmm

21 

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARGARITA BACSIERRA,)
)
 Applicant,)
)
 vs.)
)
 LAGUNA HONDA HOSPITAL, and)
 CITY AND COUNTY OF SAN FRANCISCO,)
)
 Defendants.)

CASE NO. SF 457076
MINUTES OF HEARING
and
SUMMARY OF EVIDENCE
and
OPINION, FINDINGS & ORDER

RECEIVED
APR 08 2004

FILED
4-5-04
by: PW

CITY ATTORNEYS OFFICE
SAN FRANCISCO, CA

PLACE and TIME: San Francisco - April 2, 2004 - 8:30 a.m.

JUDGE: SUSAN V. HAMILTON
REPORTER: Ronald Wicker

APPEARANCES: Applicant present, represented by John Sarmiento, Esq.

Defendant represented by Office of the City Attorney; Nancy Tavernit, Deputy City Attorney appearing.

EXPEDITED HEARING

JUDGE: In off-record discussions, there was agreement that Ms. Bacsierra would offer testimony this morning without the need for an interpreter.

This matter comes on for an expedited hearing based on the Declaration of Readiness to Proceed filed by Mr. Sarmiento raising the issue of Defendant's failure to authorize in-home support services as recommended by Dr. Grotz, primary treating physician. Attached to the Declaration of Readiness to Proceed was the January 19, 2004 report of Dr. Grotz.

(NOTE: Minutes continue on following pages.)

DISPOSITION: The matter stands SUBMITTED on the filing and service of Minutes.

25pp-Rrg

SERVED BY MAIL ON PERSONS SHOWN
ON THE OFFICIAL ADDRESS RECORD



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BACSIERRA

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In off-record discussions, Mr. Sarmiento raised additional issues of treatment to the bilateral shoulders. Ms. Tavernit explained that her client objected to Dr. Grotz' opinions with regard to the bilateral shoulder treatment and has scheduled a medical evaluation with a QME to address those issues. Mr. Sarmiento did provide me with a copy of his March 24 letter to Judge Estrin requesting leave to amend this expedited hearing request to include issues of treatment to the bilateral shoulders. I have declined to entertain those issues, inasmuch as Defendant filed a timely objection to the treatment plan of Dr. Grotz and has scheduled a medical evaluation to address those issues.

Decision was then made to proceed this morning on the issue of Applicant's request for in-home supportive services, based upon the January 5, 2004 prescription from treating physician Dr. Grotz.

Although the issue raised is one of medical treatment as recommended by the primary treating physician, I have advised counsel that effective January 1, 2004, with the amendment to the Labor Code, there is no longer a rebuttable presumption of correctness in favor of a primary treating physician's recommendations with regard to medical treatment. So we will proceed on the issue of Applicant's request for in-home supportive services.

Applicant has offered a packet with the following documents: Mr. Sarmiento's January 8, 2004 letter to Defendant which encloses Dr. Grotz' January 5, 2004 narrative report and prescription requesting in-home support services; Mr. Sarmiento's January 28, 2004 letter to Defendant requesting in-home support services; Dr. Grotz' January 19, 2004 report regarding in-home support services; Applicant's attorney's February 27, 2004 letter to Defendant requesting in-home support services; Dr. Grotz' March 8, 2004 report regarding diagnostic testing for the shoulders, which includes a one-paragraph discussion regarding in-home support services; Defendant's March 8, 2004 letter denying treatment to the shoulders and Dr. Grotz' March 23, 2004 letter to the City Attorney regarding his prescription and correspondence as between Mr. Sarmiento and Defendant.

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In off-record discussions, Ms. Tavernit objected to receipt of Mr. Sarmiento's letters on the basis of relevancy and objected to receipt of Dr. Grotz' March 8, 2004 report, inasmuch as it involves primarily diagnostic testing to the shoulders and, therefore, its lack of relevance to the issue in dispute. In addition, I believe an objection was registered to Dr. Grotz' March 23, 2004 letter to Mr. Herrera, the City Attorney, on the basis of relevancy.

EXHIBITS: (RECEIVED IN EVIDENCE)

Applicant's 1: Dr. Grotz' January 5, 2004 report and prescription; Dr. Grotz' January 19, 2004 report; Dr. Grotz' March 8, 2004 report and Dr. Grotz' March 23, 2004 report.

I have OVERRULED Defendant's objection to Dr. Grotz' March 8, 2004 report, along with the March 23, 2004 report. There are portions of those reports that are relevant to the issue of in-home supportive services.

Defendant's A: February 17, 2004 letter from Diversified, Dr. Alan Strizak; January 23, 2004 letter from Cambridge to Dr. Grotz concerning utilization review for the prescription for in-home supportive services and Defendant's February 20, 2004 letter to Dr. Grotz denying in-home support services based on ACOEM guidelines.

(MARKED FOR IDENTIFICATION ONLY)

I will mark the following items that were offered and not accepted as Applicant's 2. I note the objection for the record, and it is OVERRULED.

Applicant's 2: Applicant's attorney's letters to Defendant dated January 28, 2004 and February 27, 2004. I find that they are not relevant and material to the issue and/or are duplicative of the January 8, 2004 report.

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The letter from Defendant denying diagnostic testing for both shoulders.

We are not here today with regard to shoulder injuries. Defendant registered a timely objection to the request for authorization for treatment to the shoulders, and that matter is pending a medical evaluation scheduled by Defendant some time ago.

The March 22, 2004 letter to The Honorable Richard Alarcon from Barry Eisenberg, the executive director of the College of Occupational and Environmental Medicine.

The statute, in effect, makes the ACOEM guidelines presumptively reasonable in medical treatment and utilization issues. The letter really has no relevance. The ACOEM guidelines speak for themselves.

SUMMARY OF TESTIMONY

APPLICANT TESTIFIED substantially as follows:

On DIRECT EXAMINATION:

Dr. Grotz is her primary treating physician. She had surgery to the left elbow on December 18, 2003. After the surgery, Dr. Grotz told her that she had to be careful and had to rest. He asked her if she had someone to help. Dr. Grotz did not actually ask her if she needed help, but she asked Dr. Grotz if the City could send her someone to help, and he said that he would try. The City did not send anybody to help her.

She could not wash, cook or clean and had to rest her left arm. Her daughter, Myra Murillo, helped her. Her daughter is a social worker at San Francisco General and worked Saturdays and Sundays. She would spend the night and would spend approximately two hours on Sundays and four hours on Saturday helping with such activities as washing clothes, cooking, showering and helping her with the diabetic blood tests.

Her son, Benjamin, helped as well. He lives in Richmond. He would help her three times a week for about two hours each of those days. He would help buy groceries, vacuum, sweep and do yard work and wash dishes. He helped her in December after the surgery and in January until about the end of January. Sometimes he helps her vacuum now.

Her nephew and his wife, Ofelia, live across the street. After the surgery in December, Ofelia would come five days a week and would help with meals. Actually, she would cook and bring lunch and dinner about five times a week. She also might do the dishes. Ofelia was not able to help her in January, because she has two babies.

Her daughter still comes to help on Saturdays and Sundays and vacuums, cooks and takes care of her clothes, but she does not spend as many hours helping. After about March 15, her daughter reduced the hours that she helped.

On one occasion, she hired a lady named Lupe to help her clean the bathroom and make her bed. She waited for the City and County to send someone to help her.

On CROSS-EXAMINATION:

She testified that she is right-hand dominant. She hired Lupe on one occasion in January, but she cannot recall the date.

Her daughter has worked as a social worker at the hospital for two years on Saturdays and Sundays. Her pattern has been to come and spend the night while she is working. She worked eight hours a day and can no longer help with a lot of tasks, because she is pregnant and due with the baby in July. Before the injury, her daughter did not help on those weekend occasions when she was staying with her mom.

Before the surgery, her son would come one time per week, usually Saturdays, and sometimes he would help her. Benjamin actually did not help her at all in January, because he was very busy.

Before the surgery, her nephew's wife, Ofelia, would sometimes bring her lunch or dinner or invite her.

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Dr. Grotz recommended physical therapy, and she started physical therapy in January and completed it about the end of March. She has physical therapy two times a week for one hour each time. The physical therapist gave her exercises to do, and she demonstrated two of the different exercises. Then at home, she would do the exercises herself about three times a day, and she would also soak her left arm in hot and cold water. The physical therapist also used an ultrasound machine on her. All together, she did about ten different exercises at physical therapy. ...

DISPOSITION: The matter stands SUBMITTED on the filing and service of Minutes.

FINDINGS OF FACT

- 1) In-home supportive services as prescribed by Dr. Grotz are not reasonable or necessary to cure or relieve the effects of Applicant's industrial injury.
- 2) The American College of Occupational and Environmental Medicine Guidelines, second edition, Chapter 10, specifically pages 241 through 247, do not support Dr. Grotz' recommendation for in-home support services as reasonable medical treatment to cure or relieve the effects following the elbow surgery.

ORDER

It is hereby ORDERED that Applicant take nothing by reason of her request for in-home support services to cure or relieve the effects of her industrial injury.

OPINION ON DECISION

Effective January 1, 2004, Labor Code Section 4610 provides that the guidelines adopted by the American College of Occupational and Environmental Medicine, which are referred to as the ACOEM guidelines, are presumptively reasonable on the issue of utilization and further medical treatment issues. I have reviewed the ACOEM guidelines and specifically Chapter 10, beginning at page 240 and through page 247, which refers to treatment of the left elbow. With specific reference to page 247, I note that the ACOEM guidelines during the recovery from a surgery such as was performed in this case make no reference to in-home supportive services. Rather, the guidelines suggest daily exercises to maximize work activity tolerance. The medical report of Dr. Strizak dated February 17, 2004 states that Dr. Grotz' recommendation for in-home support therapy for a period of six weeks is inconsistent with the ACOEM guidelines and specifically inconsistent with Dr. Grotz' prescription for physical therapy and in-home exercise. Dr. Strizak's opinion is found to be the most persuasive in this matter. I note that Dr. Grotz does not address the ACOEM guidelines in his narrative report, but simply prescribed the need for in-home support services. Dr. Grotz' opinions do appear to be inconsistent with the ACOEM guidelines and the prescription for physical therapy.


SUSAN V. HAMILTON
WORKERS' COMPENSATION JUDGE

SVH/rw

TOTAL P.08