Compliance with Hawaii's Workers' Compensation Law

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The late United States Supreme Court Justice Brandeis once stated: "Don't assume that the interests of employer and employee are necessarily hostile — that what is good for one is necessarily bad for the other. The opposite is more apt to be the case. While they have different interests, they are likely to suffer or prosper together"[1].

Working toward resolving the employee's physical and/or emotional problems will confer a benefit on both employer and employee. It has become apparent to me that the issues of concurrent care, consultations and treatment plans are of great concern to physicians in Hawaii. I have therefore chosen to discuss these areas in light of recent Labor and Industrial Relations Appeals Board decisions.

Concurrent care

As you know, during the course of medical treatment, the need for concurrent care by another physician often arises. In the event a consulting physician believes concurrent care for a patient is necessary, that physician must so notify the treating physician and the employer. I suggest that, at a minimum, a consulting physician write a thank-you letter to the referring physician indicating the need for concurrent care, though this in itself may not suffice.

The Workers' Compensation (WC) Medical Fee Schedule, Hawaii Administrative rules of the Department of Labor and Industrial Relations (DLIR), requires that "the attending physician obtain permission from the employer prior to initiating such a referral"[2]. In *Gomberg vs State*[3], the DLIR Appeals Board found that: "Employer's failure to respond in a timely fashion constituted approval of said request."

In this case, the employer had not complied with the requirements of the Medical Fee Schedule[4]. The employer's response "...was not submitted within 5 working days after the mailing of..." the doctor's request. It appears that an employer's timely response to a physician's request is required. Deferment of the decision by the employer will not necessarily relieve the employer from payment for the services requested and provided.

In *Gomberg*, there had been "...a reasonable effort to inform the employer of the need for claimant's readmission to the hospital..." and the exigency of the need for a consulting surgeon. The Board affirmed the Director's decision, stating: "...we find a reasonable effort on the part of the Doctor to keep the employer informed ... In the case before us, we do not believe denial of services, because of the health care provider's failure to strictly adhere to the rules, to be an equitable resolution in view of what reasonably can be considered critical circumstances and the fact that treatment was a medical necessity and undeniably related to the industrial injury."

Therefore, it appears that in cases of medical emergency a physician's good faith effort to inform the employer will be a strong determining factor for payment for the rendition of medical services not previously approved.

Consultations

It should be noted that the medical fee schedule does not permit a consulting physician to make successive referrals to other consultants. The referring physician should always state the reasons for requesting a consultation and should remind the consultant of the above rule. The consultant must ask the attending to do the further referral and to notify the employer as to why.

Payment for the consultation will generally be allowed if the employer does not object to that consultation within 5 working days. The consultation request should include the name, address, and specialty of the consulting physician.

In the case of *Malson vs State*[5], the Board acknowledged that consultatory referrals must comply with §12-13-34 and §12-13-35 of the Medical Fee Schedule, which require notification of the employer in non-emergency situations. The Board determined, however, that the emergency exception did apply in that case and the medical provider would have to be paid, although the referring physician in this case had not given notice to the employer.

The Appeals Board indicated that: "While there is some uncertainty as to the emergency aspect of the cardiac transplantation that was contemplated and the diagnostic tests that were consequently performed, we give claimant the benefit of the doubt, and consider the performance of such diagnostic testing in the instant case as an emergency, and the contemplated cardiac transplantation to be possibly emergency surgery. There is no evidence that there was no emergency."

Thus, the burden of proof appears to have been placed on

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the employer to show a lack of urgency in the course of treatment, in order that payment be withheld.

However, in *Anjo vs Hilo*[6], the employer was not obligated to pay for the employee's consultations at an out-of-state medical facility, although the claimant had suffered a compensable injury. The claimant had obtained neither the employer's nor the Director's approval prior to the consultation.

Treatment plans

A treatment plan must address symptoms which are specific to a claimant's condition and should be documented in the medical record[7]. Doctors need to complete WC-2 reports in a timely fashion[8]. These reports must be filed within 7 days of the medical provider's rendering of initial treatment, and thereafter at intervals of no longer than 21 days in the event treatment is of a continuing nature. [Surely, this rule can be mitigated to "a reasonable" interval when the case drags on for months and years!/Ed]

A final report should be completed by the medical provider within 7 days of termination of treatment unless the injured patient fails to return. In the event these deadlines are not met, claims against the employer or the claimant most likely will not be honored unless the medical provider can satisfy the Disability Compensation Division (DCD) or the Appeals Board that strong mitigating circumstances existed. It is within the Director's discretion to fine a non-complying physician $250 if the treating physician cannot show justification for the delay.

Although an employer must pay for medical items prescribed to the injured party by the claimant's physician, an employer need not pay for any appearances by the treating physician at a legal proceeding because such are not considered to be therapy[10] [the physician's valuable time counts for naught?/Ed].

The Appeals Board's decisions demonstrate that in the event emergency treatment is indicated, the medical provider will be paid, although the provider had been unable to make a written request prior to rendering the necessary treatment. The decisions indicate that strict adherence to the rules and regulations are required. It should be noted, however, that it is possible for the rules to become relaxed in an emergency setting or if strong mitigating circumstances are shown.

REFERENCES

1. Goldman S. The Words of Justice Brandeis, Schuman, (1952).
2. §12-13-33(b), Hawaii Administrative Rules (Dept. of Labor and Industrial Relations).
3. *Gomberg vs State*, AB 89-3(H)(1990).
4. §12-13-33(d), Hawaii Administrative Rules (Dept. of Labor and Industrial Relations).
5. *Malson vs State*, AB 87-328(H)(1990).
6. *Anjo vs Hilo*, AB 88-611(H)(1990).
7. §386-96, Hawaii Revised Statutes.
8. *Nazara vs Keahou*, AB 87-334(WH)(1990).
9. §386-24, Hawaii Revised Statutes.
10. *Vehemente vs State*, AB 88-341. (1990).

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