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Workers' Comp Watch: Don't Lose Control Over Your Medical Care

by James DeMarco, Esq.

An injured worker is not only required to utilize physicians named by his employers for the first ninety days of treatment, he must also submit to periodical independent medical examinations. Although the insurance company labels the examination "independent," the physician is chosen and paid by the employer, and is more accurately a "defense" medical witness. The fee paid is considerably more than that paid by Medicare, HMO's, or the regular patients of the physician. If the physician is required to testify in workers' compensation litigation, he is usually paid \$3,000 or more for a deposition, which rarely takes longer than one hour. The total time spent by the physician is rarely more than two hours.

It is not surprising that insurance companies frequently choose physicians whose opinions are most likely to be favorable to the employer and provide evidence for terminating a workers' ongoing wage loss benefits. One insurance company physician admitted that ninety percent of his "independent" medical evaluations resulted in an opinion of full recovery from the injury.

In many cases, the worker is told to return to work initially by the physicians chosen to treat him during the first 90 days following the accident irrespective of his medical condition. The worker is unable to perform the normal duties of his job, but none of the employer's physicians will support his position. He reluctantly returns to work and is eventually fired for inability to perform his duties, or laid off and told that he is terminated for a different reason.

That is why it is so important to consult with an attorney shortly after sustaining a work-related injury and before any medical examination specifically scheduled by the insurance company. Proper preparation and awareness of the insurance company's methods can protect a worker from unscrupulous physicians whose allegiances are with the employer and against the patient.

It is especially important to do this before the transfer of control of medical treatment from the physician chosen by the injured worker to the insurance company representatives and the physicians chosen by them. Some injured workers begin treatment with their own physicians because they received emergency treatment at the nearest hospital and were quickly referred to a specialist with offices at the hospitals.

Most insurance companies will not interfere with the worker's treating physician if there has been no apparent prior personal relationship with the worker. A problem may arise however when the worker transfers to his personal physician (after the 90 days that he is required to utilize insurance company physicians) and the physician requests expensive diagnostic tests.

From the time when insurance companies were first permitted to request review of medical treatment, many of the worker's medical bills went unpaid, most in violation of the Worker's Compensation Act. As a result, many medical providers of diagnostic studies, physical therapy, surgery, or other expensive procedures required pre-approval for the treatment. To reduce the costs for each claim, insurance companies refuse to provide such pre-authorization, and it is not necessary for them to do so. Insurance company's tactics of aggressively challenging legitimate medical bills have caused physicians to become demoralized and avoid treatment of patients with work related injuries to avoid constant bickering for payment of their legitimate bills. The Pennsylvania Worker's Compensation Act lacks an efficient procedure for enforcement, so insurance companies often ignore administrative regulations regarding payment of medical bills.

Insurance companies are more hesitant to violate regulations and wrongfully deny reasonable treatment when the worker is represented by an attorney who is familiar with the provisions of the Worker's Compensation Act. The threat of a Penalty Petition and being dragged before an Administrative Law Judge is a sufficient deterrent to ensure that the worker will receive the treatment to which he/she is entitled.

(Editor's Note: Jim DeMarco wrote this series before he died)