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A L A W C O R P O R A T I O N

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Reversal of Medical Director Approvals of Medical Treatment Requests

In early November 2018, we received a judgment out of District 07, which overturned a medical director decision approving an over \$40,000.00 knee surgery. There were problems with notices of the 1009 appeal to the medical director after utilization review had determined that the surgical request was not within the medical guidelines. More importantly, however, the trial judge specifically determined that the knee surgery was not in accordance with the medical treatment schedule and thereby overturned the medical director approval. We believe this to be one of the first, if not the first, decisions whereby a workers' compensation judge has found that there was clear and convincing evidence that the medical director had erred in his approval of requested medical treatment. Since his appointment, this particular medical director has approved the vast majority of medical requests, many times when that request had either deficiencies, was clearly not within the medical guidelines or was inappropriate for a variation from the guidelines.

We are alerting you to this decision in the event that you have instances in which you believe the medical director has approved medical treatment which should not have been approved. While the burden of proof necessary to overturn a medical director decision is high, the right case with the right evidence before the right judge can perhaps offset this very disturbing trend of medical director treatment approvals for nearly every request. We believe some of the clearly erroneous approvals should be challenged in the courts to overturn erroneous decisions by the medical director and perhaps urge him to more accurately apply the guidelines and existing law. Accordingly, reviews should be made, perhaps with counsel, of those decisions which merely rubber stamp treatment requests. The requesting doctors' submitted medical records should be closely scrutinized along with your utilization review, reviewing physician medical reports and the guidelines themselves to determine if an individual treatment approval warrants an appeal to a workers compensation judge.

The law does allow an appeal remedy for improper medical director approvals and should be utilized in certain instances. It is time for the medical director's current practice of approving nearly every treatment request to be challenged, just as we need to continue fighting, under the Burgess v. Sewerage and Water Board decision, terribly inflated outpatient surgical bills.

With best regards, I remain

Very truly yours,

Wayne J. Fontana

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