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**WORKERS' COMPENSATION APPEALS BOARD**  
**STATE OF CALIFORNIA**

Case No. ADJ3135829 (AHM 0099139)

**CAROLYN BERTRAND,**

*Applicant,*

vs.

**COUNTY OF ORANGE, permissibly self-insured; YORK,**

*Defendants.*

**OPINION AND ORDERS  
DISMISSING PETITION FOR  
RECONSIDERATION;  
GRANTING REMOVAL AND  
DECISION AFTER  
REMOVAL**

Defendant, County of Orange, permissibly self-insured, seeks reconsideration of the Findings and Order, issued May 19, 2014, in which a workers' compensation administrative law judge (WCJ) put into effect the parties' stipulation in their July 20, 2004 Stipulations with Request for Award, that all future disputes regarding medical treatment would be referred to Dr. Lynn Wilson, the Agreed Medical Examiner (AME).

Defendant contends the WCJ's order to return to the AME misconstrued the parties' stipulation, and that the intent of the stipulation was to return to the AME in the event of a dispute after the Utilization Review (UR) process, and not to circumvent UR. Defendant asserts, however, that the new Independent Medical Review (IMR) process supersedes the parties' stipulation to have the AME resolve treatment disputes.

The WCJ has prepared a Report and Recommendation on Petition for Reconsideration recommending the petition be denied. Applicant has filed an answer contending that the WCJ properly concluded that the parties are bound by their contractual agreement to resolve medical disputes outside the statutory framework.

We shall dismiss defendant's petition for reconsideration, as the WCJ's order to have treatment requests referred to the AME for determination is not a final order from which reconsideration may be sought. However, we shall treat defendant's petition as seeking removal of this matter to the Appeals

1 Board, and will grant removal to amend the Findings and Order to reflect that the parties' stipulation may  
2 be enforced to require their medical treatment disputes be determined by the AME, only after a request  
3 for medical treatment has been submitted to Utilization Review.

4 I.

5 Applicant, Carolyn Bertrand, while employed during the period of 1989 to March 4, 2002, as a  
6 counselor by the County of Orange, permissibly self-insured, sustained an industrial cumulative trauma  
7 injury to her low back and neck. The case was resolved by way of Stipulated Findings and Award and  
8 Order, dated July 20, 2004, finding applicant sustained 38% permanent disability and need for further  
9 medical treatment based upon the opinion of the AME, Dr. Wilson. In "other stipulations," the parties  
10 provided that: "Settlement based upon the report of AME Lynn Wilson. Future medical care to be  
11 provided pursuant to his opinion. When practical, Applicant will notify Defendant of need for treatment  
12 prior to obtaining same. For any future disputes regarding treatment or permanent disability, the parties  
13 will return to the A.M.E."

14 Applicant filed a Declaration of Readiness to Proceed to Expedited Hearing on April 22, 2014,  
15 citing the issue of her entitlement to medical treatment based upon an untimely UR denial and  
16 defendant's failure to forward all relevant medical evidence. In a pre-trial statement prepared May 14,  
17 2014, the parties delineated the issue as whether the 2013 Labor Code section changes creating the IMR  
18 process, or the parties' stipulations, control the resolution of medical treatment disputes.

19 In the Minutes of Hearing from the May 14, 2014 expedited hearing, the WCJ listed the issues as:

20 1. Medical treatment with the specific issue of does Labor Code Section  
21 4610, effective 4/1/04, which established a utilization review procedure  
22 regarding requests for medical treatment apply in this case. Is Labor Code  
23 Section 4610.6, effective 7/1/13, applicable to date of injury and preclude  
any outside medical review of utilization review decisions or do the parties  
stipulations control?

24 In this case the parties entered into a Stipulation and Award, dated 7/20/04  
25 stating, "For any future disputes regarding treatment or for permanent  
26 disability, the parties will return to the A.M.E." This contract provision is  
27 in paragraph 8.3 of the Stipulated Findings and Award.

Do the subsequent changes in the Labor Code control or do the contract  
provisions control the medical disputes in this case.

1 The matter was submitted on the stipulated award without testimony.

2 The WCJ concluded that the language in the parties' stipulation means that the UR process in  
3 Labor Code section 4610 is not applicable to disputes involving medical treatment, as the UR process  
4 was in place at the time the parties entered into their stipulations and they knowingly waived that existing  
5 legal right by contractually agreeing to a different process to resolve medical treatment disputes. Further,  
6 the WCJ found that the subsequent statutory change creating the IMR process to review a contest of a  
7 UR decision, does not nullify the parties' contractual waiver. The WCJ noted that though under *State*  
8 *Compensation Insurance Fund v. Workers' Compensation Appeals Board (Sandhagen)* (2008) 44 Cal.4th  
9 230 [73 Cal.Comp.Cases 981], every employer is mandated to establish a UR process, not every medical  
10 treatment request must go through UR, if the employer authorizes the requested medical treatment.  
11 Therefore, the parties may contract away this known right.

12 II.

13 A Petition for Reconsideration may be made only from a final order, decision, or award. (Lab.  
14 Code, §§ 5900, 5903.) Procedural orders, which are issued before a decision is made on a substantive  
15 question, are not subject to attack by a Petition for Reconsideration. (California Workers' Compensation  
16 Practice [Cont.Ed.Bar 2000] § 21.9, p. 1274.) The WCJ's Order in the present case is an interim or  
17 procedural order, and is not subject to reconsideration. (See e.g., *Beck v. Workers' Comp. Appeals Bd.*  
18 (1979) 44 Cal.Comp.Cases 190 (writ denied).) Insofar as no final order has issued in the present matter,  
19 we will dismiss the Petition for Reconsideration.

20 III.

21 While we concur with the WCJ that the parties may contractually waive their right to pursue the  
22 statutory review processes in favor of submitting disputes over medical treatment to a specified AME, a  
23 request for medical treatment must be submitted to UR before a dispute has arisen. Therefore, we will  
24 remove the matter to the Appeals Board pursuant to our authority under Labor Code section 5310, and as  
25 our decision after removal, we will find the defendant must submit a request for medical treatment to UR  
26 before a dispute may be referred to the AME for resolution.

27 ///

1           The WCJ correctly held that the new IMR process for reviewing a UR denial of medical  
2 treatment may be waived by the parties' stipulation to bypass statutory review in favor of submitting  
3 their disputes to the AME. The recent change to IMR as the method of review of medical treatment  
4 disputes, as provided in Labor Code section 4610.6, does not supersede the parties' stipulation as  
5 defendant argues. A change in law does not relieve a party from a lawfully entered stipulation. (See  
6 *Fireman's Fund Insurance Company v. Workers' Comp. Appeals Bd. (Allen)* (2010) 181 Cal.App.4th  
7 752 [75 Cal.Comp.Cases 1] [CIGA not entitled to void stipulation to pay 50% of medical treatment  
8 award after subsequent appellate decisions clarified law that CIGA had no liability].)

9           However, the WCJ's view that the parties' stipulation necessarily avoids the UR process is not  
10 persuasive. While the parties' stipulation provides that they will refer medical treatment disputes to the  
11 AME, it does not specify what process they intended to circumvent by that referral.

12           In both his Opinion on Decision and his Report and Recommendation on Petition for  
13 Reconsideration, the WCJ states that the stipulation obviates the requirement that the parties first go  
14 through the UR process to resolve a dispute. The WCJ asserts that while Labor Code section 4610  
15 mandates the establishment of a UR department, it does not require treatment issues be submitted to UR.  
16 The Court in *Sandhagen* expressly disagreed with this interpretation of Section 4610, noting that an  
17 employer that reviews a request for treatment and determines it to be reasonably required "has engaged  
18 in utilization review." (*Sandhagen*, 73 Cal.Comp.Cases at 991. Emphasis in original.) By approving a  
19 treatment request, the employer has both engaged in UR, and has avoided creating a medical treatment  
20 dispute. Thus, engaging in the UR process does not necessitate the existence of a dispute over medical  
21 treatment. If the UR process results in a determination to which applicant objects, the parties' stipulation  
22 provides the means to obtain a medical review that avoids the delays that would arise from utilizing the  
23 panel QME process in Labor Code section 4062. Similarly, the stipulation now waives recourse to the  
24 IMR process.

25           In order to implement the parties' stipulation to have medical treatment disputes referred to the  
26 AME, there must be a dispute between the parties over a specific treatment request. For a dispute to exist  
27 there must first be a UR denial, otherwise there would be no dispute to refer to the AME. Had the UR

1 determination been in favor of the requested medical treatment, applicant would not have sought an  
2 expedited hearing to require that the parties follow their stipulations to refer medical treatment disputes  
3 to the AME. Similarly, there would be no dispute to resolve had defendant authorized the requested  
4 medical treatment.

5 It appears that the parties already submitted a medical treatment request to UR, as applicant's  
6 DOR complained of an untimely UR denial. This is evidence that the parties intended for the stipulated  
7 review by the AME to occur upon the occasion of a UR denial. There are no records available for review  
8 that would indicate whether there have been prior medical treatment disputes since 2004, and whether  
9 they were subject to UR. Such evidence would be indicative of the parties' intent as to whether they  
10 intended to utilize UR to resolve their disputes. In the absence of such evidence, we assume that they did  
11 intend to utilize UR to initially determine requests for medical treatment.

12 At the time of the parties' stipulation in 2004, they intended to substitute AME Dr. Lynn Wilson  
13 in lieu of a panel Qualified Medical Evaluator under Labor Code section 4062. However, if Dr. Wilson is  
14 not available to act as an AME, then the parties' stipulation will not be able to be effectuated.

15 Accordingly, we shall dismiss the petition for reconsideration, and will grant removal on our own  
16 motion and as our decision after removal we will amend the Findings and Order to reflect that the  
17 parties' stipulation to refer medical treatment disputes to AME Wilson requires that the medical  
18 treatment request first be submitted to Utilization Review, and that in the event of a dispute over the  
19 result of the Utilization Review, the dispute will be referred to the AME.

20 For the foregoing reasons,

21 **IT IS ORDERED** that the May 27, 2014 Petition for Reconsideration is **DISMISSED**.

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1 **ORDER**

2 **IT IS ORDERED** that pursuant to the parties' stipulation, which was approved on July 20, 2004,  
3 all medical treatment requests are to be submitted to Utilization Review, and any dispute over the result  
4 of the Utilization Review will be referred to Dr. Lynn Wilson, AME for determination, including the  
5 treatment which was the subject matter of this Expedited Hearing.  
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8 **WORKERS' COMPENSATION APPEALS BOARD**

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11 \_\_\_\_\_  
12 **KATHERINE ZALEWSKI**

13 **I CONCUR,**

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15   
16 \_\_\_\_\_  
17 **FRANK M. BRASS**



18   
19 \_\_\_\_\_  
20 **RONNIE G. CAPLANE**

21 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

22 **JUL 28 2014**

23 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
24 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

25 **CAROL BERTRAND**  
26 **LAW OFFICES OF LAWRENCE R. WHITING**  
27 **WALL McCORMICK BAROLDI GREEN & DUGAN**

*SV/jp*

**BERTRAND, Carolyn**

STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

CASE NUMBER: ADJ3135829  
Anaheim District Office

CAROL BERTRAND

-vs.-

COUNTY OF ORANGE,  
PSI;  
YORK;

WORKERS' COMPENSATION JUDGE: Alan L. Skelly

DATE: 6/9/14

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**  
**INTRODUCTION**

Defendant, County of Orange, by and through its attorney of record, The Law Offices of Wall McCormick Baroldi Green & Dugan (hereinafter, defendant) filed a timely, verified Petition for Reconsideration to this Court's Findings and Order served 5/20/14 on 5/27/14. At the time of preparing this Report the applicant has filed an answer thereto.

**II**  
**FACTS**

This case began with the filing of an application for adjudication of claim filed by the applicant on 9/25/02. The parties entered into a Stipulated Findings and Award which was approved by this court on 7/20/04. Subsequent thereto a dispute arose regarding medical treatment and a Declaration of Readiness to Proceed to Expedited Hearing was filed on 4/22/14 and trial was scheduled for 5/14/14. The parties submitted the issue for decision on that date and the court served its decision on 5/20/14. It is from this court's decision finding the parties waived by contract the utilization review process under Labor Code §4610 that defendant filed its petition for reconsideration contending the court erred in its decision.



### III DISCUSSION

Labor Code §4610 and the utilization review process became effective 1/1/04. When first enacted to dispute the UR the applicant had to select a QME to resolve the dispute. Effective 4/19/04 with the passage of SB899 the methodology to dispute the findings of the UR was changed to the applicant having to select a panel QME. With the passage of SB863 effective 7/1/13, for this date of injury, the law changed again on how to dispute the UR denial of treatment. Now the parties have to submit the issue IMR for decision. That being said the underlying issue of UR has not changed since its implementation on 1/1/04, only the methodology to resolve the dispute has changed. Labor Code §4610 requires all employers to establish a utilization review department. Nothing in the statute requires the treatment issue be submitted to UR. The employer/carrier can approve the treatment if they so wish. This is further confirmed in the holding in the Supreme Court case of State Compensation Insurance Fund v. WCAB(Sandhagen) 44 Cal.4<sup>th</sup> 230 and the appellate decision after remand State Compensation Insurance Fund v. WCAB(Sandhagen) 74 Cal. Comp. Cas. 835 in its unpublished opinion, which held that everyone has to have a UR department but that not all medical treatment reviews must be submitted to UR.

Here the parties entered into a settlement on 7/20/04 and as part of the settlement they added the following handwritten provision in paragraph 8, in addition to the typed language, the following; “For any further disputes regarding treatment or permanent disability, the parties will return to the A.M.E.” This language was specifically added to the Award issued by this court wherein the parties added prior to submitting it for approval, “(E) Stipulations in paragraph #8.” As the UR process was already in place and had been for seven months and the way to challenge the UR had already changed once, this agreement goes to the waiver of the UR process. Here the parties made a waiver of a known and existing law, Labor Code §4610. The methodology on how to challenge that review has changed but not the existence of UR. It is this court’s interpretation that the signed contract and agreement was a waiver of the UR process and a specific request and finding was made that all future medical disputes will go back to the A.M.E. The specific language contained in the Stipulated Findings With Request for Award approved by this court on July 20, 2004 supersedes the Labor Code Section 4610 as

it was a knowing waiver of an existing legal right. It is the request of this court that the Board deny the Petition for Reconsideration in its entirety as defendants have failed to prove up the relief requested.

**IV**  
**RECOMMENDATION**

Therefore, this Court requests the Board deny the defendant's Petition for Reconsideration as it failed to show the requisite facts to support the relief requested.

DATE: 06/9/2014



**Alan L. Skelly**  
WORKERS' COMPENSATION JUDGE

**SERVICE:**

CAROL BERTRAND, US Mail  
LAWRENCE WHITING SANTA ANA, US Mail  
WALL MCCORMICK SANTA ANA, US Mail

ON: 6-10-2014  
BY: kathy c. KC