

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

3
4 **RICHARD SHAWL,**

5 *Applicant,*

6 **vs.**

7 **STEVE'S AUTOMOTIVE; ARROWOOD**
8 **INDEMNITY,**

9 *Defendants.*

Case No. ADJ1242171 (AHM 0094407)

**OPINION AND DECISION
AFTER RECONSIDERATION**

10 We previously granted applicant's petition for reconsideration of the September 29, 2014
11 Findings Of Fact of the workers' compensation administrative law judge (WCJ), who found that
12 defendant "properly transferred Applicant's future medical care" into its Medical Provider Network
13 (MPN).

14 It was earlier found on August 21, 2007, that applicant sustained industrial injury to several body
15 parts while working for defendant as a tow truck driver on March 7, 2001, causing a need for future
16 medical treatment and 65% permanent disability without apportionment.

17 Applicant contends that defendant stipulated to Jacob Rabinovich, M.D., as applicant's non-MPN
18 primary treating physician and did not properly seek to transfer medical treatment into the MPN
19 following that stipulation.¹

20 An answer was received from defendant. Applicant submitted a reply to defendant's answer, but
21 that pleading is not accepted for filing. (Cal. Code Regs., tit. 8, § 10848.)²

22
23 ¹ Applicant's attorney, Thomas Martin, Esq., is admonished that his failure to include his state bar number with his name on
24 the heading of the petition is contrary to the Rules of the Administrative Director (AD), Rule 10205.12(a)(4) and Appeals
Board's Rules of Practice and Procedure, Rule 10845(a). (Cal. Code Regs., tit. 8, §§ 10205.12(a)(4) and 10845(a).) Future
violations may lead to the imposition of sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10561.)

25 ² Appeals Board Rule 10848 provides as follows: "When a petition for reconsideration, removal or disqualification has been
26 timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically
requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except
27 as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned
to the filing party."

1 The WCJ provided a Report And Recommendation On Petition For Reconsideration (Report)
2 recommending that reconsideration be denied.

3 The WCJ's September 29, 2014 decision is reversed as our Decision After Reconsideration.
4 Defendant stipulated to Dr. Rabinovich as applicant's primary treating physician after implementing its
5 MPN, and made no showing of good cause to set aside that stipulation and require applicant to obtain a
6 different primary treating physician in the MPN.

7 BACKGROUND

8 As earlier found in this case on August 21, 2007, applicant incurred industrial injury to multiple
9 body parts on March 7, 2001. (Applicant's Exhibit 4.) As set forth in the August 21, 2007 findings,
10 Dr. Rabinovich was applicant's primary treating physician at that time. (*Ibid*; cf. Applicant's Exhibit 2.)
11 He continued to serve as applicant's primary treating physician in the following years and was
12 compensated by defendant for providing reasonable medical treatment.

13 According to defendant's answer, its MPN was approved by the Administrative Director (AD) on
14 December 20, 2011, and as shown by Defendant's Exhibit A, the MPN was implemented by defendant
15 effective March 1, 2012. However, defendant did not promptly seek to transfer applicant's care into its
16 MPN. Instead, as documented in the August 27, 2012 pretrial conference statement (Applicant's Exhibit
17 4) and admitted in defendant's answer (3:12-13), defendant stipulated in writing to Dr. Rabinovich as
18 applicant's primary treating physician at the pretrial conference. Moreover, the only issues identified on
19 the August 27, 2012 pretrial conference statement are "need for further medical treatment" and attorney's
20 fees, with *no* indication of any issue regarding the transfer of applicant's care into the MPN.³ (*Ibid.*)
21 Applicant continued to treat with Dr. Rabinovich pursuant to defendant's stipulation following the
22 August 27, 2012 pretrial conference. (Applicant's Exhibit 2.)

23 The following year, on June 27, 2013, defendant sent applicant letters concerning his transfer into
24 the MPN. No change in applicant's condition or circumstances was identified by defendant as the reason
25 for seeking to remove Dr. Rabinovich as applicant's primary treating physician.

26
27 ³ Quotation converted from upper case to lower case.

1 Applicant continued to treat with Dr. Rabinovich and a dispute arose over defendant's refusal to
2 authorize medical treatment requested by the physician. On May 15, 2014, applicant filed a Declaration
3 of Readiness to Proceed to Expedited Hearing concerning his continuing treatment with Dr. Rabinovich,
4 and a hearing was conducted on June 11, 2014. According to the June 11, 2014 Minutes of Hearing the
5 sole issue before the WCJ at that time was the "dispute over medical control of applicant's future medical
6 care." All other issues were deferred.

7 On September 29, 2014, the WCJ issued the challenged finding of fact as set forth above. She
8 explains the reasons for her decision in her Report as follows:

9 "Applicant's attorney argued [at trial] that Defendants stipulated to Dr.
10 Rabinovich as Applicant's treating physician at a time when they knew that
11 Dr. Rabinovich was not within the Defendant's Medical Provider Network.
12 Applicant contends that Defendant cannot now withdraw from that
13 stipulation... Applicant contends that the Court accepted this Stipulation
14 contained in the Pre-Trial Conference Statement, however, on the date of
15 the scheduled trial 10/25/12 the parties did not actually take the matter to
16 trial. The Court neither accepted nor rejected the Stipulation because the
17 case simply did not proceed to trial. At that time the parties indicated that
18 they were still engaged in further discovery and requested that the matter
19 be taken off calendar.

20 "Defense Exhibits contain a letter dated 06/27/13 notifying Applicant that
21 Defendant had a Medical Provider Network and requesting that Applicant
22 transfer his care into that network...

23 "It appears that Applicant was properly notified of Defendant's Medical
24 Provider Network and the request that Applicant transfer his care to a
25 physician within the Defendant's Medical Provider Network...

26 "The conditions that would prevent a transfer or require the continued
27 treatment by a non MPN physician consist of an acute condition, a serious
chronic condition, a terminal illness, performance of a surgery or other
procedure that is authorized by the insurer or the employer as part of a
documented course of treatment and has been recommended and
documented by the provider to occur within 180 days from the MPN
coverage effective date. In this case there is no evidence that Dr.
Rabinovich responded to the notification indicating that Applicant was
suffering from an acute condition, a serious chronic condition, a terminal
illness, or was to have surgery or other authorized procedure within 180
days from the MPN coverage effective date per Title 8 California Code of
Regulations section 9767.9.

"The fact that Applicant had a treating physician prior to Defendant's
implementation of the Medical Provider Network in this matter does not
negate Defendant's ability to transfer Applicant's care into their Medical
Provider Network. Therefore, it was found that Defendant properly
transferred Applicant's future medical care into Defendant's Medical

1 Provider Network and that Applicant was to receive further medical care
2 from a physician chosen within Defendant's Medical Provider Network."

3 **DISCUSSION**

4 In her Report the WCJ urges that defendant's August 27, 2012 stipulation to Dr. Rabinovich as
5 applicant's treating physician is of no consequence because she "neither accepted nor rejected" that
6 stipulation at the time it was made. That is an incorrect statement regarding the effect of the parties'
7 stipulation. Stipulations made at a mandatory settlement conference *are* binding upon the assenting
8 parties, and a party may not withdraw from such a stipulation except upon a showing of good cause.
9 (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114 [65
10 Cal.Comp.Cases 1]; *Huston v Workers' Comp. Appeals Bd.* (1978) 95 Cal.App.3d 856 [44
11 Cal.Comp.Cases 798; *State Comp. Ins. Fund v Industrial Acc. Com. (Dean)* (1946) 73 Cal.App.2d 248,
12 257 [11 Cal.Comp.Cases 30]; see also, *General Ins. Co. v Workers' Comp. Appeals Bd. (Sale)* (1980)
13 104 Cal.App.3d 278, 285 [45 Cal.Comp.Cases 403].)

14 Moreover, AD Rule 9797.9(a) expressly recognizes that an employer or insurer may "authorize"
15 treatment by a provider outside of its MPN regardless of whether the injured worker meets one of the
16 four conditions described by the WCJ in her Report that would otherwise require continued treatment by
17 the non-MPN physician. (Cal. Code Regs., tit. 8, § 9797.9(a).)⁴

18 In this case, defendant's August 27, 2012 stipulation to Dr. Rabinovich as applicant's treating
19 physician served as its authorization for applicant to treat outside the MPN as described in AD Rule
20 9797.9(a) because defendant's MPN was already implemented at that time. Defendant has made no
21 showing of a change in case law or judicial interpretation of a statute that would provide "good cause" to
22 relieve it from its stipulation. (*State Comp. Ins. Fund v Industrial Acc. Com. (Dean)* (1946) 73
23 Cal.App.2d 248, 257 [11 Cal.Comp.Cases 30] (*Dean*); see also, *General Ins. Co. v Workers' Comp.*
24 *Appeals Bd. (Sale)* (1980) 104 Cal.App.3d 278, 285 [45 Cal.Comp.Cases 403].) Nor did defendant
25

26 ⁴ AD Rule 9797.9(a) provides in full as follows: "If the injured covered employee's injury or illness does not meet the
27 conditions set forth in (e)(1) through (e)(4), the injured covered employee may be transferred into the MPN for medical
treatment, *unless otherwise authorized by the employer or insurer.*" (Emphasis added.)

1 present evidence of a change in applicant's condition or circumstances that supports the removal of
2 Dr. Rabinovich as applicant's treating physician as earlier stipulated. (See, *Patterson v. the Oaks Farm*
3 (2014) 79 Cal.Comp.Cases 910 (significant panel decision).)

4 An efficacious physician-patient relationship is an ingredient aiding in the success of medical
5 treatment because it inspires confidence in the patient, and a lawfully established physician-patient
6 relationship should be preserved unless there is a change in the employee's condition or the treatment
7 being provided is defective or incomplete. (*Voss v. Workmen's Comp. Appeals Bd.* (1974) 10 Cal.3d 583
8 [39 Cal.Comp.Cases 56]; *Zeeb v. Workmen's Comp. Appeals Bd.* (1967) 67 Cal.2d 496, 502 [32
9 Cal.Comp.Cases 441]; *McCoy v. Industrial Acc. Com.* (1966) 64 Cal.2d 82 [31 Cal.Comp.Cases 93].)

10 In the absence of a showing of good cause that allows defendant to withdraw from its August 27,
11 2012 stipulation to applicant's treatment with Dr. Rabinovich outside the MPN, the refusal to authorize
12 reasonable treatment requested by that physician is fairly construed as neglect or refusal to provide
13 medical treatment that makes defendant liable for its reasonable cost if it is self-procured. (Lab. Code,
14 §§ 4600 and 4616(a); cf. *Knight v. Liberty Mut. Ins. Co.* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board
15 en banc); Cal. Code Regs., tit. 8, § 9767.9.) The lack of evidence of good cause for relief from the
16 August 27, 2012 stipulation supports our decision to rescind the WCJ's September 29, 2014 findings and
17 to enter new findings that applicant is entitled to continue treating with Dr. Rabinovich as earlier
18 stipulated by defendant.

19 For the foregoing reasons,

20 IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals
21 Board that the September 29, 2014 Findings Of Fact of the workers' compensation administrative law
22 judge are **RESCINDED** and the following is **SUBSTITUTED** in its place:

23 **FINDINGS OF FACT**

24 1. It was earlier found on August 21, 2007, that applicant, Richard Shawl, sustained industrial
25 injury to numerous body parts in the course of his employment by defendant as a tow truck driver on
26 March 7, 2001, causing a need for future medical treatment, and that his primary treating physician at
27 that time was Jacob Rabinovich, M.D.

1 2. At the pretrial conference on August 27, 2012, defendant stipulated in writing to
2 Dr. Rabinovich as applicant's primary treating physician notwithstanding that he was not within
3 defendant's earlier implemented Medical Provider Network.

4 3. Defendant is obligated to comply with its August 27, 2012 stipulation to Dr. Rabinovich as
5 applicant's primary treating physician outside of its Medical Provider Network in the absence of a
6 showing of good cause, which defendant has not been made.

7 4. Defendant is liable for reasonable medical treatment provided by Dr. Rabinovich to applicant
8 outside of defendant's Medical Provider Network.

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1 IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers'
2 Compensation Appeals Board that the case is returned to the trial level.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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6 Frank M. Brass

7 **FRANK M. BRASS**

8 I CONCUR,

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10 R. G. Caplane

11
12 **RONNIE G. CAPLANE**

13 I DISSENT (SEE SEPARATE DISSENTING OPINION),

14 Deidra E. Lowe

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16 **DEIDRA E. LOWE**



17
18 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

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2015

21 SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR
22 ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

23 **RICHARD SHAWL**
24 **THOMAS MARTIN**
25 **DIETZ, GILMOR & CHAZEN**

26 **JFS/abs**

1 **SEPARATE DISSENTING OPINION OF COMMISSIONER LOWE**

2 I dissent. I would affirm the WCJ for the reasons set forth in her Report, which is incorporated by
3 this reference, and for the reasons below.

4 "[A] defendant may satisfy its obligation under Labor Code section 4600 to provide reasonable
5 medical treatment by transferring an injured worker into an MPN in conformity with applicable statutes
6 and regulations *regardless of the date of injury or the date of an award of future medical treatment.*"
7 (*Babbitt v. Ow Jing* (2007) 72 Cal.Comp.Cases 70, 71 (Appeals Board en banc) (*Babbitt*), emphasis
8 added; Cal. Code Regs., tit. 8, § 9767.9.) En banc decisions of the Appeals Board are binding precedent
9 on all Appeals Board panels and WCJs. (Cal. Code Regs., tit.8, § 10341; *City of Long Beach v. Workers'*
10 *Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 313, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v.*
11 *Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418 [67 Cal.Comp.Cases 236]; see also Govt.
12 Code, § 11425.60(b).)

13 I see no valid basis for distinguishing the August 27, 2012 stipulation made by the defendant in
14 this case, from the prior stipulation and award of medical treatment addressed by the Appeals Board in
15 *Babbitt*.

16 In *Babbitt*, the applicant contended that her medical treatment could not be transferred into the
17 defendant's MPN because she had been a long term patient of a non-MPN physician pursuant to a
18 stipulation with defendant and an earlier award of medical treatment. As in this case, no claim was made
19 that the applicant did not receive required notice of rights under the MPN. In concluding that defendant
20 could transfer applicant into its MPN in conformity with applicable statutes and regulations, the Appeals
21 Board noted that the MPN statutes made only a procedural change in the law by allowing the provision
22 of reasonable medical treatment through an MPN, and did not affect any substantive rights of the
23 employees. For that reason, the Appeals Board held in *Babbitt* that the statutory amendments allowing
24 the provision of medical treatment through an MPN could be applied retroactively, citing *Pebworth v.*
25 *Workers' Comp. Appeals Bd.* (2004) 116 Cal.App.4th 913 [69 Cal.Comp.Cases 199] and *State Comp.*
26 *Ins. Fund v. Workers' Comp. Appeals Bd. (Silva)* (1977) 71 Cal.App.3d 133 [42 Cal.Comp.Cases 493].
27

1 In the MPN statutes the Legislature recognized four circumstances that would allow an employee
2 to continue to treat outside of an MPN. As the WCJ discusses in her Report, none of those four
3 exceptions were shown to apply in this case. Moreover, applicant made no showing that defendant failed
4 to act in conformity with applicable statutes and regulations in transferring her into the MPN. In the
5 absence of any such showing, defendant did everything the law requires to transfer applicant into its
6 MPN.

7 The argument that a defendant was obligated to show good cause or a change in the applicant's
8 circumstances or condition in order to transfer medical treatment into an MPN was specifically rejected
9 by the Appeals Board majority in *Babbitt*, as follows:

10 "Because of the unique aspects of the MPN statutes, *we do not find that an*
11 *employer or insurer must demonstrate that there has been a change of*
12 *condition or defective or incomplete medical treatment before transferring*
13 *an injured worker into an MPN...[T]he MPN statutes do not give the*
14 *employer complete control over the identity of a treating physician. To the*
15 *contrary, injured workers under the MPN statutes have the right to select an*
16 *MPN physician with recognized expertise or specialty in treating the*
17 *particular injury or condition in question. They also have the right to*
18 *change treating MPN physicians if they desire. In addition, the MPN*
19 *statutes, unlike the employer controlled process under the earlier statutes,*
20 *allows injured workers to obtain second and third opinions from other*
21 *MPN physicians regarding diagnoses or treatment plans....These MPN*
22 *provisions assure that injured workers continue to receive appropriate*
23 *medical treatment even if a pre-existing physician-patient relationship is*
24 *disturbed.*

18 "Moreover, the MPN statutes and regulations identify four specific
19 situations where continued treatment is allowed for a period of time with
20 the physician selected by the employee. These exceptions would be
21 rendered null and void by an additional requirement that the employers or
22 insurers prove there has been defective or incomplete medical treatment, or
23 a change in condition, before transferring employees into an authorized
24 MPN. It would be contrary to the intent of the MPN statutes to render
25 meaningless the four exceptions described in those statutes. *It also is not*
26 *within our purview to impose limitations on the transfer of medical*
27 *treatment to an MPN beyond those specified by the Legislature." (Babbitt,*
supra, 72 Cal.Comp.Cases at p. 80, citations deleted, emphasis added.)

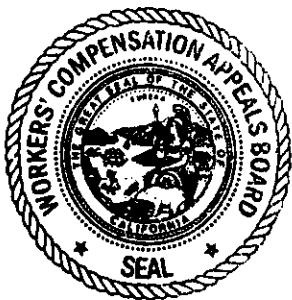
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1 Defendant properly acted to transfer applicant into its MPN in conformity with applicable statutes
2 and regulations. There is no need for a defendant to show good cause or a change in condition or
3 circumstances to justify the transfer of an injured worker's medical treatment into an MPN. The decision
4 of the WCJ should be affirmed.



Deidra E. Lowe
DEIDRA E. LOWE, COMMISSIONER

10 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

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12 JUN 17 1995

13 SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR
14 ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

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16 RICHARD SHAWL
17 THOMAS MARTIN
18 DIETZ, GILMOR & CHAZEN

19 JFS/abs

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

3
4 **RICHARD SHAWL,**

5 *Applicant,*

6 **vs.**

7 **STEVE'S AUTOMOTIVE; ARROWOOD**
8 **INDEMNITY COMPANY,**

9 *Defendants.*

Case No. ADJ1242171
(Anaheim District Office)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION

10 Reconsideration has been sought by applicant with regard to a decision filed on September 29,
11 2014.

12 Taking into account the statutory time constraints for acting on the petition, and based upon our
13 initial review of the record, we believe reconsideration must be granted in order to allow sufficient
14 opportunity to further study the factual and legal issues in this case. We believe that this action is
15 necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned
16 decision. Reconsideration will be granted for this purpose and for such further proceedings as we may
17 hereinafter determine to be appropriate.

18 For the foregoing reasons, .

19 **IT IS ORDERED** that the Petition for Reconsideration is **GRANTED**.

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1 IT IS FURTHER ORDERED that pending the issuance of a Decision After Reconsideration in
2 the above matter, all further correspondence, objections, motions, requests and communications shall be
3 filed in writing only with the Office of the Commissioners of the Workers' Compensation Appeals Board
4 at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102) or its Post
5 Office Box address (PO Box 429459, San Francisco, CA 94142-9459), and shall not be submitted to the
6 Anaheim District Office or any district office of the WCAB and shall not be e-filed in the Electronic
7 Adjudication Management System.

8 **WORKERS' COMPENSATION APPEALS BOARD**

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12 **FRANK M. BRASS**

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15 I CONCUR,

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18 **RONNIE G. CAPLANE**



19 
20 **DEIDRA E. LOWE**

21 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

22 **DEC 16 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 **DIETZ GILMOR**
26 **RICHARD SHAWL**
27 **THOMAS MARTIN**

28
29 ebc

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

CASE NUMBER: ADJ1242171

RICHARD SHAWL

-vs.-

STEVES AUTOMOTIVE &
SPEEDWAY, STEVE'S
AUTOMOTIVE;
ARROWOOD INDEMNITY
COMPANY CHARLOTTE,
TRISTAR BREA;

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Christine Nelson

DATE OF INJURY: 03/07/2001

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
JUDGE ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant filed a timely Petition for Reconsideration of the Findings of Fact issued in this matter finding that Applicant had been properly transferred into the Defendant's Medical Provider Network for further treatment.

II
DISCUSSION

The matter was set for trial on the issue of medical control of Applicant's future medical care. Applicant's attorney argued that Defendants stipulated to Dr. Rabinovich as Applicant's treating physician at a time when they knew that Dr. Rabinovich was not within the Defendant's Medical Provider Network. Applicant contends that the Defendant cannot now

withdraw from that stipulation. The stipulation was contained in the Pre-Trial Conference Statement prepared at the hearing 08/27/2012. At that time the matter was continued to trial to 10/25/2012. Applicant contends that the Court accepted this Stipulation contained in the Pre-Trial Conference Statement, however, on the date of the scheduled trial 10/25/12 the parties did not actually take the matter to trial. The Court neither accepted nor rejected the Stipulation because the case simply did not proceed to trial. At that time the parties indicated that they were still engaged in further discovery and requested that the matter be taken off calendar.

Defense Exhibits contain a letter dated 06/27/13 notifying Applicant that Defendant had a Medical Provider Network and requesting that Applicant transfer his care into that network. Defendant's "Exhibit B" contains a copy of that letter in both English and Spanish. Defendant's "Exhibit D" contains a letter addressed to the Applicant notifying him of the Defendant's Medical Provider Network and requesting that he select a physician within the Defendant's Medical Provider Network to render future medical care. The letter of 06/27/2013 provided Applicant with a listing of MPN physicians within his area and the letter of 08/05/2013 provided Applicant with instructions on how to obtain a list of MPN physicians.

It appears that Applicant was properly notified of Defendant's Medical Provider Network and the request that Applicant transfer his care to a physician within the Defendant's Medical Provider Network. Defendant's "Exhibit C" consists of a Proof of Service indicating that the MPN Introduction (English/Spanish); MPN Employee Notification (English/Spanish); Transfer of Care Notification (English/Spanish); and a Regional Directory were served on the Applicant, Applicant's attorney and Dr. Rabinovich on 07/01/2013. Title 8 California Code of Regulations section 9767.9 regarding transfer of ongoing care into the MPN indicates under section (a),

“If the injured cover employee’s injury or illness does not meet the conditions set forth in (e)(1) through (e)(4), the injured cover employee may be transferred into the MPN for medical treatment.”

Section (e) of the same regulation indicates that,

“The employer or insurer shall authorize the completion of treatment for injured covered employees who are being treated outside of the MPN for an occupational injury or illness that occurred prior to the coverage of the MPN and whose treating physician is not a provider within the MPN, including injured covered employees who pre-designated a physician and do not fall within the Labor Code section 4600(d), for the following conditions ...”

The conditions that would prevent a transfer or require the continued treatment by a non MPN physician consist of an acute condition, a serious chronic condition, a terminal illness, performance of a surgery or other procedure that is authorized by the insurer or the employer as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days from the MPN coverage effective date. In this case there is no evidence that Dr. Rabinovich responded to the notification indicating that Applicant was suffering from an acute condition, a serious chronic condition, a terminal illness, or was to have surgery or other authorized procedure within 180 days from the MPN coverage effective date per Title 8 California Code of Regulations section 9767.9.

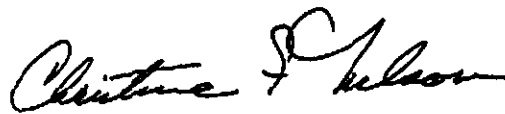
The fact that Applicant had a treating physician prior to Defendant’s implementation of the Medical Provider Network in this matter does not negate Defendant’s ability to transfer Applicant’s care into their Medical Provider Network. Therefore, it was found that Defendant

properly transferred Applicant's future medical care into Defendant's Medical Provider Network and that Applicant was to receive further medical care from a physician chosen within Defendant's Medical Provider Network.

III
RECOMMENDATION

The Petition for Reconsideration should be denied because Defendant provided proper notice to the Applicant and the transfer of care was consistent with Title 8 California Code of Regulations section 9767.9.

DATE: 10/30/2014



Christine Nelson
WORKERS' COMPENSATION JUDGE