

## DELAWARE WORKERS' COMPENSATION

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**On a petition appealing a utilization review determination that found claimant's chronic pain management treatment not guideline compliant, the Board rules that claimant has not met the burden of proving the treatment is necessary and reasonable and orders claimant to be weaned from his opioid medications.**

*Jeffrey B. Sprouse v. John L. Briggs & Co., Inc.*, (IAB Hearing No. 1272196 – Decided Apr. 26, 2017)

This case deals with the difficult issues raised by claimants who are receiving chronic pain management treatment. The claimant suffered a work injury to his low back on August 1, 2005. The medical treatment was conservative with no surgery having taken place. The claimant later commuted all benefits with the exception of medicals. As to the latter item, the claimant continued to receive pain management care with Dr. Balu. The employer challenged that treatment through the Utilization Review process and, specifically, the continued use of opioid pain medication. The UR Determination found that the continued use of opioids was not in compliance with the Guidelines. In response, the claimant then filed a petition appealing the UR Determination.

The evidence before the Board included the testimony of Dr. Balu, who was providing continuing pain management care to the claimant. His opinion was that the claimant's current Oxycodone dosage was reasonable treatment, which kept the claimant functioning and capable of working. His testimony showed that the claimant's current medication regimen consisted of 15 mg, with the claimant taking two pills at a time and doing so three times per day, therefore, receiving 90 mg per day. Dr. Balu was prescribing the claimant 180 pills of Oxycodone per month, and the claimant had been on this regimen for many years.

Dr. Balu testified that the claimant was responsible for taking the medication. As such, no weaning had been attempted, even though the physician admitted the dosage was more than is allowed under the Federal Guidelines for opiate use.

The claimant, who is 46 years old, testified that he was a carpenter working out of a local union and did heavy work, such as remodeling grocery stores. The claimant's testimony indicated that he had discussed surgery with his doctor, but it was determined that if he underwent surgery, he would not be able to do the work he was now doing. The claimant indicated that as long as he could cope with the pain, as he was doing, he would be able to keep performing carpentry work.

Dr. Brokaw, a pain management physician, testified for the employer. In his opinion, the claimant should be detoxified from his opiate medications and his use of non-opiate, non-abuseable medications and physical therapy should be increased. The opinion of Dr. Brokaw was that the claimant's continued use of Oxycodone and other narcotic pain medications was no longer necessary and reasonable. Dr. Brokaw also commented that drug screening done in April 2016 was negative for medications the claimant was supposed to be taking on a daily basis, and the claimant had also admitted to him that at times he overused the medications by taking more pills per day than were being prescribed.

The Board noted that, whereas the issue in the UR Determination was whether the treatment was Guideline compliant, the issue before them was whether the treatment was necessary and reasonable. Since the UR Determination found in favor of the employer, the burden of proof was on the claimant to show that his current medication regimen was necessary and reasonable. The Board concluded that the claimant did not do so. In reaching that determination, the Board stated that there is no denying the claimant is on a heavy load of opioid medications, with a prescription of 90 mg per day, and sometimes, according to the testimony of Dr. Brokaw, the claimant was taking as many as 120 mg on a bad day. The Board also took Dr. Balu to task for his record keeping, which they described as being haphazard. Of even greater concern

to the Board was Dr. Balu's failure to do what he himself had stated should be done. Dr. Balu had testified that his "current treatment plan" was to manage the claimant's pain with the least amount of medication, but having stated that, he went on to admit that he had never even tried to wean the claimant from the heavy opioid load simply because he had not seen evidence that the claimant was abusing the medication.

The Board agreed with Dr. Brokaw that efforts should be made to wean the claimant from his current high level of opioid usage. They reasoned that this was in accordance with the current treatment plan that even Dr. Balu had professed to follow, as well as being reasonable in light of the admitted danger of the claimant remaining on such a high

dosage of opioid medication. A weaning process was required to safely detoxify the claimant, and even Dr. Brokaw warned against an abrupt withdrawal of opioids. Dr. Brokaw had stated, and the Board agreed that Dr. Balu could do the weaning if he was willing. However, the Board cautioned that if Dr. Balu was willing to try the weaning process, he would need to do a better job with his record keeping so that an independent reviewer could determine the reasonableness of those efforts.

This writer notes that a key factor in the Board's decision appears to be the fact that Dr. Brokaw did not merely propose the weaning process but suggested alternative treatment to include non-opiate medications and physical therapy. ||

## NEWS FROM MARSHALL DENNEHEY

**Andrea Cicero Rock** (Philadelphia, PA) successfully defended a claim petition filed by the claimant in which he alleged that he sustained a work-related heart attack while lifting plywood. Andrea offered evidence to support the fact that the claimant's heart attack did not occur as a result of his work activities as a delivery driver but, rather, were symptoms he was having for some time. The Workers' Compensation Judge was particularly persuaded by the testimony of the employer's medical expert, that the claimant continued to work for three days after the alleged heart attack in his full-duty capacity before going to the Emergency Room. Based on the medical evidence, the judge found the claimant failed to meet his burden of proof, and benefits were denied.

**Lori Strauss** (Philadelphia, PA) successfully defended a claim and penalty petition filed by the claimant, alleging that he sustained

Charcot foot and specific loss of three toes as a result of an injury that occurred at work. Lori offered testimony from three of the employer's fact witnesses. Additionally, there was testimony from medical experts regarding the serious nature of the injury and causality. During cross examination, Lori was able to obtain an admission from the treating doctor that an incident that occurred while the claimant was on vacation was a substantial, contributing factor to the need for surgical procedures. Ultimately, the Workers' Compensation Judge found the employer's fact witnesses and medical expert to be more credible than the claimant and his doctor. There was a significant lien, which the employer would have also been responsible for had the claim been found to be related. However, both petitions were dismissed, and no appeal was filed by the claimant. ||