

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

Case No. ADJ [REDACTED]
POMONA DISTRICT OFFICE

[REDACTED],
Applicant,

vs.

[REDACTED], [REDACTED];
[REDACTED] INSURANCE
COMPANY,

Defendants.

**FINDINGS AND ORDER
(Lien Trial)**

The above entitled matter having been heard and regularly submitted, the Honorable Monika Reyes, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. [REDACTED], born September 18, 2014, as a janitor, occupational group number 340, at Orange, California, by Century Clean, Incorporated, sustained injury arising out of and in the course of employment to the neck, back and shoulders.

2. The treatment in the form of compound topical analgesic medications provided by MESA PHARMACY was not reasonably necessary to cure or relieve from the effects of the industrial injury.

ORDER

IT IS ORDERED THAT the lien claimant take nothing herein.

DATE: February 24, 2017



Monika Reyes
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

**CASE NUMBER: ADJ9674309
POMONA DISTRICT OFFICE**

-vs.-

INSURANCE COMPANY

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE:**

Monika Reyes

OPINION ON DECISION

LIEN OF MESA PHARMACY- Compound Medications

The court has reviewed the information provided by both parties supporting their respective positions with regard to whether the compound medications¹ provided by the lien claimant were reasonably necessary to cure or relieve from the effects of the industrial injury.

In reviewing the evidence, the court is mindful that Labor Code Section 4604.5 and C.C.R. 9792.21 provide that the Medical Treatment Utilization Schedule (MTUS) is presumptively correct. The court reviewed the Chronic Pain MTUS guidelines with respect to topical analgesics and found that page 111 addressed the lien claimant's treatment.

The relevant MTUS section states the following, "Any compounded product that contains at least one drug (or drug class) that is not recommended is not recommended." Further the same section provides that Baclofen and Gabapentin, two of the ingredients used in the two separate creams prescribed by the lien claimant to the applicant are not recommended. Therefore, it would appear that the use of one of the non-recommended ingredients, the Baclofen and Gabapentin would cause the entire compounded product (cream) to be not recommended. Furthermore, pg. 112 of the MTUS states that with regard to the spine and

¹ Panthenol, Bupivacaine, Gabapentin, Amitriptyline, Mediderm Cream Base, capsaicin powder, Dexamethasone, menthol crystals, camphor synthetic blocks, Baclofen, and Flurbiprofen

shoulders (which are the body parts at issue here) there is no evidence to support the usage for neuropathic pain, the type of pain at issue here.

The court did consider the evidence provided by the lien claimant. The compound medication form under indications does state that, “Gabapentin is recommended to provide significant pain relief for people with chronic neuropathic pain.” However, it is unclear from where this statement has been extracted. While it appears that Dr. Rubenko intended to rebut the MTUS guidelines based on the statement contained at the bottom of the compound medication form, indicating that “an enclosed explanation of analgesic serves as preponderance of evidence outside ACOEM establishing that a variance from the guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury,” it did not appear that Dr. Rubenko complied with C.C.R. 9792.1 specifically stating that he was challenging the presumption of correction of the MTUS guidelines. Moreover, the two pages submitted by the lien claimant did not specifically mention the compound medications ingredients used by the lien claimant but only contained a generic statement as to the usage of topical analgesics and topical NSAIDS in general. There was no mention of Gabapentin or Baclofen in either of those documents. Therefore, it is not clear how the two pages supported the use of Gabapentin and Baclofen or any of the other listed ingredients. Therefore, it is found that the treatment provided by the lien claimant was not reasonably necessary to cure and relieve from the effects of the industrial injury. Accordingly, the lien is disallowed.

DATE: February 24, 2017



Monika Reyes

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Case Number: ADJ [REDACTED]
[REDACTED]

PROOF OF SERVICE

I am over age 18, not a party to this proceeding, and am employed by the State of California, DWC, Pomona District Office of the WCAB, located at 732 Corporate Center Drive, Pomona, CA 91768.

On February 28, 2017 I deposited in the United States mail at 732 Corporate Center Drive, Pomona, CA 91768, a sealed envelope containing a copy of FINDINGS AND ORDER & OPINION ON DECISION, with postage fully paid addressed to the party or parties listed below by US Mail and/or Email service. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By:

Jeanette Banjar

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