



STATE BOARD OF WORKERS' COMPENSATION

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A hearing was conducted on July 15, 2011 in Forsyth County, Georgia to determine (1) a designation of this Employee's authorized treating physician; (2) whether or not certain referrals made by various physicians should be honored by this Employer; and (3) whether or not penalties and attorney's fees should be assessed in this case.

The record closed at the hearing conducted on July 15, 2011. The parties were given 15 days after the transcript of hearing was received by the State Board on August 4, 2011 in which to file briefs. All briefs filed prior to the issuance of this Award were read and considered.

The evidence discloses that Dr. David Gower is the most appropriate physician to continue treatment of this Employee and Dr. Gower is named as the Employee's authorized treating physician. A proper referral was made by an authorized treating physician for a neuropsychological evaluation at the hand of Dr. Damond Logsdon, PhD., and the Employer/Insurer will be ordered to provide such evaluation. Otherwise, this Employee's request that this Employer/Insurer be made to honor various other referrals and/or the assessment of penalties and attorney's fees will be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a careful consideration of all the admissible evidence, any stipulations of the parties, and after having observed the witnesses at the hearing, I find in fact and conclude as a matter of law as follows:

1. This Employee sustained a serious life-threatening injury on June 17, 2010 in Forsyth County, Georgia, when he fell approximately 10-11 feet off a scaffold. He suffered a brief loss of consciousness and was taken by ambulance to the emergency room at Northside Forsyth Hospital. (Claimant's Exhibit 9). While there, he was initially treated by Dr. Douglas A. Olson, who diagnosed (1) closed head injury; (2) concussion; (3) scapula fracture; (4) multiple rib fractures to ribs 7 and 10 on the left; and (5) multiple abrasions. The Employee was hospitalized at Northside Forsyth Hospital for approximately five days and was treated for his extensive injuries. Such treatment included treatment of Dr. Rami Kumaran for a small pneumothorax. Dr. Usha Nayak, also a pulmonologist, treated this Employee to rule out a tracheal fracture. Dr. Robert Yarbrough treated the Employee's fracture to his left shoulder. Dr. Kevin Hsiah, a neurologist, treated the Employee for his head injuries. The Employee was also treated by Dr. Jesse Seidman and by Dr. Amit Dua, his family physician from Cumming Family Practice. Multiple tests were ordered by these physicians to include a CT scan of the head, CT scan of left scapula, MRI of the lumbar and thoracic spine, multiple x-rays, CT scan of the abdomen and pelvis, MRI of the lumbar and thoracic spine, CT scan of the head, and x-rays of the shoulder, lumbar and thoracic spine. It is undisputed that these injuries treated at the Northside Forsyth Hospital were causally related to the Employee's fall and the treatment by these physicians during the Employee's stay at Northside is not in dispute.

2. After leaving Northside Hospital on or about June 21, 2010, the Employee returned to the Employer's plant and was presented with a panel of physicians. (Transcript, pp. 44-46, Defendant's Exhibit 1). It was

explained to the Employee that he could choose any doctor from the panel. (Transcript, p. 46). The Employee confirms that he was aware that the Employer has a posted panel of physicians and he understood that these are doctors where you are treated if you are hurt on the job. (Transcript, p. 29).

3. The major issues in this claim surround this Employee's treatment after he left Northside Forsyth Hospital. The Employee has been treated after Northside by Dr. Douglas Lundy, of The Surgeons Hospital for his shoulder injury; Dr. Kevin Hsiah, a neurosurgeon for his head injury; Dr. Eli Finkelstein, an orthopaedic for his cervical/neck problems; Dr. Steven James, an orthopaedic with Resurgens for his neck/shoulder injury; Dr. Michael Skaliy of the Atlanta Spine Specialists for treatment to his neck. The most frequent treating physician after Northside Forsyth Hospital is Dr. Douglas Lundy with Resurgens Orthopaedics who has treated this Employee over a dozen times to include surgery on June 25, 2010 to his injured shoulder. (Defendant's Exhibit 8; Claimant's Exhibit 4). Dr. Lundy has made referrals for treatment, some have been honored by the Employer and some have not. The Employee argues that all the referrals of Dr. Lundy must be honored by this Employer. Dr. Hsiah, a neurosurgeon, has also made referral for a neuropsychological consultation and pain management which this Employee seeks to have honored. And, the Employee seeks to have Dr. Steven James designated as his authorized treating physician based upon referrals from Dr. Lundy and Dr. Finkelstein.

4. O.C.G.A. § 34-9-201(d) states "Notwithstanding the other provisions contained in this Code Section, if an inability to make a selection of a physician as prescribed in this Code Section is the result of an emergency or similarly justifiable reason, the selection requirements of this Code Section shall not apply as long as such inability persists." It is undisputed that the physicians who treated this Employee at Northside Forsyth Hospital qualify as emergency treatment under this Code Section. O.C.G.A. § 34-9-201(b) provides that an employer shall maintain a panel of physicians as specified in that Code Section. An employer is not liable for unauthorized expenses and the employer is liable only for medical expenses ordered by a physician to whom the claimant had been referred, or who is on such panel. *See Holcombe v. Brown Transport Corp.*, 253 Ga. 719 (1985). This Employer maintained a properly posted panel of physicians as required by this Code Section. *See* Defendant's Exhibit 2. This Employer added Northside Forsyth Hospital in Cumming, Georgia to this panel to allow this Employee's treatment at such facility. (Defendant's Exhibit 1).

5. O.C.G.A. § 34-9-201(b)(1) states that physicians selected from a panel may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require and that any medical practitioner providing services as arranged by a primary authorized treating physician under this Code Section shall not be permitted to arrange for any additional referrals. *See also* Board Rule 201.

6. This Employer is clearly responsible for the treatment at the Northside Forsyth Hospital during this Employee's stay under the emergency provisions of O.C.G.A. § 34-9-201(d). I also find that the extremely complex nature of this Employee's injury and the multiple body parts injured constitutes a "justifiable reason" as contemplated by O.C.G.A. § 34-9-201(d) for those physicians to continue follow-up care with this Employee as they did for short periods of time. These services are not in dispute and the costs have been paid by this Employer.

7. Also, this Employer added Northside Forsyth Hospital in Cumming, Georgia to their panel of physicians. In so doing, I find that this Employer recognized Northside Forsyth Hospital as a "professional association" of physicians as contemplated by O.C.G.A. § 34-9-201(b)(1) and therefore any of the physicians which treated this Employee at Northside Forsyth Hospital during his stay became a primary authorized treating physician under O.C.G.A. § 34-9-201(b)(1). Therefore, each and every physician shown in this Award who treated this Employee at Northside during his hospitalization could make arrangements for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury should require. However, any referral physician under this Code Section is not permitted to arrange for any additional referrals.

8. With the above principle in mind, I find that Dr. Doug Lundy became a referral physician on referral from Dr. Robert Yarborough for evaluation for possible surgery to repair this Employee's left shoulder. *See* Defendant's Exhibit 7, p. 2). However, Dr. Lundy as a referral physician could not arrange for any additional referrals. (O.C.G.A. § 34-9-201(b)) Dr. Hsiah treated the Employee when he was at Northside Forsyth Hospital and became a primary authorized treating physician who was authorized to make referrals as he did when on July 21, 2010 he ordered a neurologic consultation and pain management.

9. The Employee's current primary problems center in his cervical spine/neck/shoulder. The Employee's principal treating physician for his right shoulder has been Dr. Douglas Lundy who treated this Employee from June 25, 2010 to March 15, 2011. Dr. Lundy's treatment included open reduction internal fixation of commuted left shoulder fracture on June 25, 2010. Dr. Lundy also referred this Employee to Dr. Finkelstein who saw this Employee in September, October, November, and December 2010 for his cervical condition. In October, Dr. Lundy referred the Employee to "pain management." (Claimant's Exhibit 4, p. 11). In November 2010, he specifically referred the Employee to Dr. Darrell Danyo, a pain management specialist. (Defendant's Exhibit 8, p. 16; Claimant's Exhibit 4, p. 14). After request by the adjuster in this case, Dr. Lundy referred the Employee to Dr. Michael Skaliy of Atlanta Spine Specialists, who saw and treated this Employee in March, April and May of 2011 and provided cervical facet blocks. (Defendant's Exhibit 17; Claimant's Exhibit 8). In December 2010, Dr. Lundy referred the Employee to Dr. Steven James for an IME and cervical evaluation. (Claimant's Exhibit 4, p. 19). In February 2011, Dr. Lundy ordered a nerve conduction study/EMG (which was performed April 20, 2011). He also recommended that Dr. James become the Employee's authorized treating physician. (Defendant's Exhibit 8, p. 22). On March 15, 2011, Dr. Lundy stated that he had done all that he could do and that this Employee needed to see a spine surgeon to become his authorized treating physician. (Defendant's Exhibit 8, pp. 22-24). In February 2011, Dr. Lundy referred the Employee for a neuropsychological evaluation by Dr. Logsdon. (Claimant's Exhibit 4, p. 20). Most of Dr. Lundy's referrals have been honored by this Employer/Insurer but not all.

10. This Employee argues that Dr. Lundy became the Employee's authorized treating physician and that this Employer/Insurer acquiesced to Dr. Lundy becoming the authorized treating physician and cites Transamerica IMS v. Brown, 200 Ga. App. 272 (1991). Dr. Lundy, at some point, considered himself to be the authorized treating physician and recommended that such status be transferred to Dr. James. (*See* Dr. Lundy's notes of February 8, 2011). This Employee did see Dr. Steven B. James, D.O., at Resurgens on February 7, 2011 for treatment of the Employee's cervical spine injury. (Claimant's Exhibit 1). Also, the adjuster for this Insurer, in February 2010, recognized Dr. Lundy as authorized treating physician and requested that Dr. Lundy authorize treatment under Dr. Skaliy rather than Dr. Danyo. Dr. Lundy submitted to such request. However, it is also clear that during this time, the attorney for this Employer/Insurer requested that the Employee select a physician from the panel of physicians. *See* Attorney for Employer/Insurer's letter of August 24, 2010 to Claimant's attorney. (Defendant's Exhibit 2). Also, a teleconference call was conducted between attorney for the Employee and attorney for this Employer/Insurer with Administrative Law Judge Vicki Snow in regard to who should continue to treat this Employee and it was ordered that this Employee be allowed to see Dr. Lundy but without prejudice. Also, this Employer/Insurer filed a WC-14 on November 23, 2010 seeking a hearing on several issues, one of which was "designation that Claimant is to treat with a panel physician." An amended WC-14 was also filed on July 14, 2011 again requesting a hearing on the designation that Claimant is to treat with a panel physician; designation of authorized treating physician. Therefore, while this Employer/Insurer did honor certain referrals from Dr. Lundy, I find that it cannot be said that this Employer/Insurer acquiesced to Dr. Lundy as the Employee's primary authorized treating physician such that Dr. Lundy became this Employee's primary authorized treating physician under O.C.G.A. § 34-9-201 so as to allow him to make referrals.

11. While Dr. Lundy is only a referral physician, I find that under the facts of this case, Dr. Kevin Hsiah treated this Employee at Northside Forsyth Hospital during his five days of hospitalization and that Dr. Hsiah became a primary authorized treating physician so as to allow referrals under O.C.G.A. § 34-9-201(b)(1). Dr.

Hsiah, on July 21, 2010, ordered a neuropsychological consultation/evaluation and pain management. (Claimant's Exhibit 3, pp. 6-7; Defendant's Exhibit 12, p. 9). Dr. Hsiah also made a referral for neuropsychological evaluation to be conducted by Dr. Damond Logsdon, PhD. (Claimant's Exhibit 3, p. 14). The Employee did see Dr. Skaliy of the Atlanta Spine Specialists in March, April and May 2011 on referral from Dr. Lundy. Dr. Skaliy performed facet blocks at C2-3, 3-4, and 4-5, and Dr. Skaliy returned this Employee back to Dr. Lundy. Dr. Hsiah as a primary authorized treating physician had the authority to make these referrals under O.C.G.A. § 34-9-201(b).

12. The next question in determining whether the Employer/Insurer should be made to honor the referral is whether or not a neuropsychological evaluation is reasonably required to effect a cure or give relief of the Employee's on-the-job injury under O.C.G.A. § 34-9-200. A CT scan of the Employee's head showed acute intracranial abnormalities in the nature of a small hematoma. (Defendant's Exhibit 12, p. 1). In consideration of the results of the CT scan and the Employee's testimony, I find that a neuropsychological evaluation is reasonably required to effect a cure or give relief of the Employee's on-the-job injury and this Employer/Insurer is to provide such evaluation performed by Dr. Damon Logsdon, PhD. (Claimant's Exhibit 3, p. 14).

13. Both parties seek the designation of an authorized treating physician. The Employee seeks the designation of Dr. Steven James as the authorized treating physician contending that he has been designated by Dr. Lundy. The Employer contends they have a properly posted panel of physicians and seeks to have the Employee return to the panel of physicians and select a physician, or have presented the names of Dr. Xavier A. Duralde, Dr. David J. Gower, or Dr. Hal Silcox, stating this Employee could select any one of these as his authorized treating physician. Dr. Lundy's latest reports show that Dr. Lundy no longer has anything medically to offer this Employee and has stated this Employee needs a spine surgeon. (See Dr. Lundy's office notes of March 15, 2011 - Defendant's Exhibit 8, p. 24). Dr. Finkelstein has also recommended a consultation with a spine surgeon. (See Dr. Finkelstein's office notes of December 23, 2010 - Claimant's Exhibit 6, p. 8).

14. After careful consideration of all the evidence, I find that Dr. David J. Gower, Board certified neurosurgeon from the Peachtree Neurosurgery, P.C. in Atlanta, Georgia, is the most appropriate physician to treat this Employee at the present time. The Employee's present problems center around his cervical spine and Dr. Lundy and Dr. Finkelstein have recommended a spine surgeon. Dr. Gower is imminently qualified and I find that good cause has been shown for his designation as authorized treating physician. If Dr. Gower believes any of the referrals made by Dr. Lundy, but not previously honored by the Employer, are medically necessary, he has statutory authority under O.C.G.A. § 34-9-201 to make such referrals.

15. This Employer, I find, added Northside Forsyth Hospital in Cumming, Georgia to their panel of physicians in order to accommodate this Employee's treatment for his complex and severe on-the-job injury. While not all Dr. Lundy's referrals have been authorized, most have been and I find this Employer/Insurer has continually paid Dr. Lundy while at the same time attempting to get this Employee to return to the panel of physicians or one of their approved physicians. They did not controvert Dr. Lundy's care as being unauthorized, but allowed the Employee to continue to treat with Dr. Lundy. Contrary to this Employee's argument, I find that this Employer/Insurer has attempted to accommodate this Employee's treatment while at the same time urging this Employee to return to their properly posted panel of physicians once the emergency treatment at Northside Forsyth Hospital had subsided. They could have legally taken a much harsher approach by simply controverting all treatment beyond the Employee's emergency hospitalization and outside of their panel. They did not do so. In summary, I find that this Employer/Insurer has done nothing to forfeit or lose their control of the medical treatment as provided to them under the Workers' Compensation Act and I find that Dr. Gower is the most appropriate physician to treat this Employee from those authorized by them.

AWARD

WHEREFORE, based upon the above Findings of Fact and Conclusions of Law, this Employer/Insurer is hereby directed and ordered to provide a neuropsychological evaluation under the hand of Dr. Damond Logsdon, PhD., as directed by Dr. Kevin E. Hsiah, a primary authorized treating physician.

Further, Dr. David Gower, Board certified neurosurgeon, is hereby named as this Employee's authorized treating physician effective July 15, 2011 (the date of the hearing), and Dr. Gower is to have all the rights, responsibilities, and duties as set forth in the Workers' Compensation Act under O.C.G.A. § 34-9-200 and 201.

Further, all other requests of this Employee for additional treatment are DENIED.

IT IS SO ORDERED, this the 25th day of August, 2011.

STATE BOARD OF WORKERS' COMPENSATION

This order is electronically signed and approved.

Steve Fain

ADMINISTRATIVE LAW JUDGE