

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

SILVIA ROMO, *Applicant*

vs.

**DAMCO DISTRIBUTION SERVICES, INC.; ACE AMERICAN INSURANCE
COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
*Defendants***

**Adjudication Numbers: ADJ12308686 (MF); ADJ14631476
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on July 18, 2023, by the workers' compensation administrative law judge (WCJ). The WCJ found that applicant was not entitled to designate Casa Colina Hospital and Centers for Healthcare (Casa Colina) as her primary treating physician; that applicant did not meet the burden of proof to treat outside the Medical Provider Network (MPN); and that defendant did not deny medical care.

Applicant contends that defendant's MPN failed to comply with statutory and regulatory mandates, including Labor Code section 4616¹ and Administrative Director (AD) Rules 9767.5(c) and 9767.6 (Cal. Code Regs., tit. 8, §§ 9767.5(c), 9767.6), to provide an adequate number and type of physicians to treat her specific post-concussive condition. Applicant argues that, because the Medical Access Assistant (MAA) and defense counsel could not locate specialized brain injury rehabilitation facilities within the MPN and failed to provide written access policies for obtaining such services outside the MPN, defendant breached its active duty to provide reasonable medical treatment. Applicant asserts that the MPN's inability to provide this necessary multidisciplinary program constitutes a denial of care, entitling her to self-procure treatment outside the MPN at the employer's expense.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending we deny reconsideration.

We have considered the allegations in the Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record and the reasons discussed below, as our Decision After Reconsideration, we will affirm the F&O.

BACKGROUND

The parties stipulated to the following facts at the Expedited Hearing on June 21, 2023:

[In ADJ12308686] Silvia Romo, [] while employed on March 20th 2018, as cleaning services at Jurupa Valley, California, by Damco Distribution Services, sustained injury arising out of and in the course of employment to the right shoulder and head.

* * *

[In ADJ14631476] Silvia Romo, [] while employed on March 5th 2021, as cleaning services, at Jurupa Valley, California, by Damco Distribution Services, sustained injury arising out of and in the course of employment to the low back, coccyx, and left wrist.

(Minutes of Hearing (Expedited) (Reporter) and Order of Consolidation of Cases (MOH), 06/21/2023, 2:9-11, 18-21.)

The parties framed the two issues requiring adjudication as whether applicant can treat at Casa Colina and whether there was a denial of medical care. (MOH, 06/21/2023, 2:15-17, 2:24-25 to 3:1.)

In his report dated December 7, 2021, Panel Qualified Medical Evaluator (PQME) Pedram Navab, D.O., after evaluating applicant, took a history that, on March 20, 2018, she struck her head forcefully against a metal bar while she attempted to lift a large piece of cardboard and her view became obstructed as she stood up suddenly in the warehouse. (App. Ex. 4, p. 3.) On March 5, 2021, she fell backwards after her right foot caught on a pallet while she pulled plastic at work and dizziness from the prior head injury caused injury to her low back and left wrist. (*Id.* at p. 9.) PQME Dr. Navab recommended that applicant receive additional treatment for her post-concussion syndrome and post-traumatic vertigo including a neuropsychological evaluation for cognitive impairment, cognitive behavioral therapy for insomnia, re-referral to an otolaryngologist, and vision rehabilitation therapy. (*Id.* at pp. 17-18, 20-21.)

On January 19, 2023, applicant, in accordance with section 4600, notified defendant by way of a letter and by email that she selected Casa Colina as her primary treating physician. (App. Ex's. 1-2.)

On January 20, 2023, MAA Ellie Pineda replied by way of email that the facility did not offer primary treating physician care. Applicant replied by way of email that, after contacting the facility, it did offer primary treating physician care. (App. Ex. 3.)

On June 20, 2023, defendant notified applicant by way of email that Casa Colina does not have a brain specialty designation and that all of the physicians are neurologists. Defendant provided the names of three neurologists in its MPN. (Def. Ex. C.)

On July 18, 2023, the WCJ issued her F&O, finding applicant is not entitled to designate Casa Colina as her primary treating physician, that defendant did not deny medical care, and that applicant is not entitled to treat outside of defendant's MPN and must select a physician within it. The WCJ noted in the Opinion on Decision that although defendant listed Casa Colina as a hospital, it could not authorize the facility as the primary treating physician, and applicant failed to meet her burden of proof to treat outside the MPN when neurology specialists were available within it.

It is from this F&O that applicant seeks reconsideration.

DISCUSSION

Section 4600(a) provides:

Medical, surgical, ... and hospital treatment, ... that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(Lab. Code, § 4600(a).)

If an employer has established an MPN, an employee is generally limited to selecting a primary treating physician from within the employer's MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) A "primary treating physician" refers to an actual physician and not an entity. (Cal. Code Regs., tit. 8, § 9785(a)(1).) AD Rule 9767.6(e) clearly provides employees with the right to designate who will treat them within an MPN:

At any point in time after the initial medical evaluation with an MPN physician, the covered employee may select a physician of his or her choice from the MPN. Selection by the covered employee of a treating physician and any subsequent physicians shall be based on the physician's specialty or recognized expertise in treating the particular injury or condition in question.

(Cal. Code Regs, tit. 8, § 9767.6(e).)

The MPN is required to have “an adequate number and type of physicians . . . to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed.” (Lab. Code, § 4616(a)(1).) Section 4616.3(d)(1) provides that “[s]election by the injured employee of a treating physician and any subsequent physicians shall be based on the physician’s specialty or recognized expertise in treating the particular injury or condition in question.” (Lab. Code, § 4616(d)(1).) The AD Rules implement this mandate by requiring at least three physicians of each specialty within defined geographic boundaries: primary care and emergency services must lie within 15 miles or 30 minutes of the employee’s residence or workplace while specialists and occupational-health providers must lie within 30 miles or 60 minutes. (Cal. Code Regs., tit. 8, § 9767.5.) The Legislature therefore requires every MPN to make available physicians of appropriate specialties who can serve as primary treating physicians so that employees receive an adequate selection of physicians with the expertise necessary to manage their medical care.

In addition, the MPN system must furnish a method for employees to identify and access physicians who can provide either primary or specialist treatment. Before the Administrative Director approves an MPN, the employer must submit a list of all physicians who participate in the network. The list must designate a provider code for each physician that identifies the physician’s specialty and indicates whether the physician is available for selection as a primary treating physician. (Cal. Code Regs., tit. 8, § 9767.3(c)(2).) While there is no statutory definition of specialist, physicians designated as such within the MPN normally possess the requisite training and experience to treat the employee’s specific injury or condition and, where applicable, be board-certified or board-eligible in a specialty recognized by the American Board of Medical Specialties, or hold comparable credentials from an appropriate nationally recognized certifying body. (*Luna v. Home Depot* [2016 Cal. Wrk. Comp. P.D. LEXIS 405, *17].)²

² Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

Finally, while an employer bears the initial burden to produce evidence that it complied with the regulations of the MPN about listing appropriate treating physicians, an employee seeking treatment outside a defendant's MPN thereafter holds the burden of proof to show a neglect or refusal to provide care by an employer. (Lab. Code, §§ 3202.5; 5705; *Aguilar v. Barrett Bus Servs.* [2010 Cal. Wrk. Comp. P.D. LEXIS 615, *12], *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423, 1435 (Appeals Board en banc); *Amezcuca v. Westside Produce* [2013 Cal. Wrk. Comp. P.D. LEXIS 93, *8]; *Cornejo v. Solar Turbines, Inc.* [2013 Cal. Wrk. Comp. P.D. LEXIS 479, *4]; *San Diego Unified School Dist. v. Workers' Comp. Appeals Bd. (Robledo)* (2013) 79 Cal.Comp.Cases 95, 96 (writ denied).)

In the present case, applicant designated Casa Colina rather than any individual physician as her primary treating physician. This designation violates AD Rule 9785(a)(1), which defines the primary treating physician as an actual physician and not a facility or other entity.

In addition, applicant seeks to narrow the regulatory definition of a specialist to a nonexistent sub-specialty or niche category that the MPN regulations do not recognize as a primary board-certified specialty. Applicant cannot trigger a failure of MPN access standards by insisting upon such a hyper-specific designation for an initial primary treating physician.

The MPN access standards measure adequacy for brain-injury conditions according to the availability of recognized medical specialists. There is no board-certified specialty titled "brain injury specialist" in the manner that neurology exists as an established specialty. A board-certified neurologist possesses the medical qualifications necessary to diagnose, treat, and manage brain injuries including post-concussion syndrome and post-traumatic vertigo. Defendant therefore satisfied its obligation under section 4600 when it provided applicant with the names of three qualified neurologists located within the required geographic boundaries.

To hold otherwise and to allow applicant to demand hyper-specific sub-specialists, such as a neurologist who treats only traumatic brain injuries, to act as the primary treating physician would render initial compliance with MPN access standards practically impossible.

However, this holding does not mean that employees lack access to subspecialists or hyper-specialized fields of medicine when the case merits it. Rather, the system anticipates that the primary treating physician will evaluate the employee and make necessary referrals based on the medical evidence. In doing so, this maintains a critical distinction between the types of referrals made. While medical-legal referrals for discovery purposes are exempt from the Utilization Review

(UR) and Independent Medical Review (IMR) frameworks, any referrals for medical treatment must be supported by reporting consistent with the Medical Treatment Utilization Schedule or other evidence-based medicine and remain subject to the appropriate UR and IMR processes. This balanced approach preserves the employer's statutory right to medical oversight while protecting employees' access to necessary specialized care and legal discovery.

Accordingly, we affirm the F&O.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on July 18, 2023 by the WCJ is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 11, 2026

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

**SILVIA ROMO
SOLOV AND TEITELL, APC
GALE, SUTOW AND ASSOCIATES, APC**

DLP/md

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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