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COPY



May 22, 2014

Dr. Rupali Das
Executive Medical Director
Division of Workers' Compensation
Department of Industrial Relations
1515 Clay Street, # 18
Oakland, CA 94612

RE: Leonardo Ramirez v. Pinner Construction Co. Inc.

WCAB Case No.: ADJ7693790
Claim No.: 2080246723
Date of Injury: CT: 1/1/02-3/5/10
Our File No.: 5139

Dear Ms. Das :

I know that you have often publicly stated that you are eminently interested in keeping a pulse on what occurs at the grassroots level of the system currently in place for obtaining Panel Qualified Medical Evaluations for injured workers. This letter represents one example of how, unfortunately, the system is failing. Here is a synopsis of the course of events in the above-referenced matter, as it relates to the request to obtain a Panel Qualified Medical Evaluator evaluation.

On August 23, 2012, a PQME appointment was set with Dr. Jyh Chang, subsequent to the proper striking procedure by the parties. Unfortunately, the applicant got lost while attempting to find Dr. Chang's office. When he arrived, the doctor indicated that he was "too late" and refused to see him. The parties attempted to reschedule the appointment. Unfortunately, Dr. Chang elected to no longer be a PQME after the workers' compensation reforms passed, so he refused to continue in the role for the applicant.

Applicant attorney immediately requested a replacement panel. On March 27, 2013, the replacement panel issued. The doctor who was "the last person standing" after the striking procedure was unable to set an appointment prior to 90 days (even with the 30 day extension). His office indicated that he was "too busy". On April 8, 2013, a new replacement panel was, once again, requested.

On May 15, 2013, a new panel issued. On May 29, 2013, unfortunately, the applicant attorney had to request a new panel because, again, the doctor who was chosen was unable to set within 90 days (even with the 30 day extension). Again, apparently this doctor was also "too busy".

On July 16, 2013 a new panel issued. Then, on July 29, 2013, the defendant objected to the new panel because two of the doctors were ostensibly within the same medical practice. Under the circumstances, the defendant refused to continue in the process, indicating that it would, once again, request a replacement panel. As of May 22, 2014, such a replacement panel has not yet been requested by defendant.

Therefore, from the first request for a panel QME in February 17, 2012, up until the present time, May 22, 2014, this injured worker has still not had a qualified medical evaluation for his work injuries. The case has not moved one inch, and all benefits have been effected, such as temporary disability, medical treatment and return to work.

Indeed, it is an unfortunate situation when the Medical Unit is handcuffed to the point where the law actually prevents the expeditious resolution of claims for injured workers, and, for insurance companies and employers.

Again, let me emphasize the fact that this is not one isolated incident. These situations happen more frequently than one would surmise. What is particularly disturbing is the fact that all of these situations can be rectified. It is not difficult to imagine a system where all PQMEs have a written agreement with the DWC stating that they will set an appointment within 60 days if they are selected as the PQME, or they will not continue to have the opportunity to be a PQME. That is not a difficult regulation to implement. Why has there been more concern about the doctors' schedules than the injured workers' ability to obtain an evaluation?

Moreover, is it totally out of the realm of reasonableness to ensure that the selection process of PQMEs not include doctors who have the same address and/or phone numbers? One would think that a computer program could be set up, or if a computer program could not be set up, then a human system can be set up, to ensure that PQMEs who are on a panel do not have the same addresses or phone numbers, or work in the same medical group.

Indeed, there are other simple "fixes" that could be implemented very easily to ensure the system runs more effectively. What most people don't understand is that the PQME system is actually at the core of the whole workers' compensation system, since the ability to get evaluations for both the applicant and the defendant impacts the entire process of administering work injury benefits. It impacts temporary disability that is paid, since if a defendant refuses to pay temporary disability based on the treating physician, or, otherwise, there is no other way short of going to an Agreed Medical Examiner that provides for the provision of temporary disability benefits. Moreover, if the applicant is receiving temporary total disability benefits, all of these delays "run the clock" on the arbitrary two year ceiling for payment of temporary disability benefits, potentially leaving the applicant without compensation while he or she waits on the protracted process.

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Furthermore, an applicant's ability to return to work is impacted directly because of the failure of the PQME system. Without an evaluation, the claim sits in "limbo" and there is no ability to move forward, as intransigent adversarial parties often don't have the best interests of the injured worker and/or the employer in mind. In other words, while the attorneys are too busy jostling for positioning on the PQME examination, both the injured worker and the employer are detrimentally affected.

We would urge the Medical Unit and the Department of Industrial Relations to take immediate action so Mr. Ramirez and thousands of injured workers just like him are not left at the mercy of a broken system, which ultimately causes broken bodies to break down even further.

Very truly yours,

LAW FIRM OF ROWEN, GURVEY & WIN
A Professional Corporation

By: 

Alan Z. Gurvey

AZG:ca

cc: See attached Proof of Service

1 PROOF OF SERVICE BY MAIL

2 **RE: Leonardo Ramirez v. Pinner Construction Co. Inc.**
3 WCAB Case No.: ADJ7693790

4 STATE OF CALIFORNIA

5 COUNTY OF LOS ANGELES

6 I am employed in the County of Los Angeles, State of California.

7 I am over the age of 18 years and not a party to the within action; my business address is 5900
8 Sepulveda Boulevard, Suite 500, Van Nuys, California 91411.

9 On May 22, 2014, I served the document described as: *Letter to Executive Medical Director,*
10 *Rupali Das dated May 22, 2014* on interested parties in this action by placing a true copy thereof
11 enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Van
12 Nuys, California 91411, addressed as follows:

13 Dr. Rupali Das, Executive Medical Director
14 Division of Workers' Compensation
15 Department of Industrial Relations
16 1515 Clay Street, 18th Floor
17 Oakland, CA 94612

18 Christine Baker, Director of DIR
19 Division of Workers' Compensation
20 Department of Industrial Relations
21 1515 Clay Street, 17th Floor
22 Oakland, CA 94612

23 Destie Overpeck, DWC Acting Administrative Director
24 Division of Workers' Compensation
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26 1515 Clay Street, 18th Floor
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28 George Parisotto, DWC Acting Chief Counsel
Division of Workers' Compensation
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1515 Clay Street, 17th Floor
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Kathy Zalewski, Commissioner
Workers' Compensation Appeals Board
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Tobin Lucks
P.O. Box 4502
Woodland Hills, CA 91365-4502

1 Mr. Leonardo Ramirez
2 13039 Hubbard St., Unit 6
3 Sylmar, CA 91342-3361

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on May 22, 2014, at Van Nuys, California.

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Claudia Avalos