

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**
3

4 **CINDY VARGAS,**

5 *Applicant,*

6 **vs.**

7 **SEARS HOLDINGS CORPORATION;**
8 **SEDGWICK CMS,**

9 *Defendants.*
10

Case No. ADJ8727749
 (Los Angeles District Office)

OPINION AND ORDER
 DENYING PETITION FOR
 REMOVAL

11 Defendant has filed a timely, Verified Petition for Removal, requesting that the Appeals Board
12 rescind the Order dated April 17, 2013, wherein the workers' compensation administrative law judge
13 (WCJ) ordered: "Defendant to provide 'complete' medical provider network list [within California] 'in
14 writing' in specialties of orthopedics, internal medicine, and psychiatry pursuant to Title 8 Cal. Reg. §
15 9767.12(f)(3) within 30 days." Defendant contends that it is only required to provide a list of providers
16 within 30 miles of applicant's residence, that it has provided that list running to 100 pages, and that
17 providing the entire list would be overbroad, burdensome and harassing. Applicant has filed an Answer.

18 Applicant, while employed as a "clerical inventory" from November 21, 2010, through November
19 21, 2012, claims to have sustained an industrial injury to multiple body parts. Apparently, the claim has
20 been accepted by the employer. The employer has established a medical provider network (MPN)
21 pursuant to Labor Code sections 4616 et seq.¹ Applicant resides in Canoga Park. Her employer is
22 located in Sylmar.

23 Administrative Director Rule 9767.12(f)(3) (Cal. Code Regs., tit. 8, § 9767.12(f)(3)) provides in
24 relevant part: "An employer or insurer shall ensure covered employees have access to, *at minimum*, a
25 regional area listing of MPN providers in addition to maintaining and *making available its complete*
26

27 ¹ Unless otherwise specified, all statutory references are to the Labor Code.

1 *provider listing in writing.* If an employee requests an electronic listing, it shall be provided
2 electronically on a CD or on a website. If the provider directory is also accessible on a website, the URL
3 address shall be listed with any additional information need to access the directory online" (emphasis
4 added). In this case, the employer has made available the regional area listing but has not made available
5 its complete provider listing.²

6 After our review of the record herein, we do not find the WCJ's Order to be burdensome or
7 harassing. The employer has an electronic listing of all of the providers in its MPN. Rule 9767.12(f)(3)
8 authorizes the employer to provide that listing to the employee electronically by CD or by website. The
9 employer could also provide this information by link to the comprehensive electronic listing, after
10 limiting the list to the specialties specified by the WCJ. Even if the applicant does not have Internet
11 access, her attorneys do have such access, and the list can be served on her attorneys. This is not
12 difficult, and it is not burdensome. For this reason, we do not believe that defendant has demonstrated
13 that the Order will cause substantial prejudice and/or irreparable harm, as required by WCAB Rule
14 10843, and we deny removal.

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26 ² The website to which defendant refers at page 4 of its petition cannot be searched for a distance of more
27 than 99 miles.

1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's Petition for Removal is **DENIED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **MARGUERITE SWEENEY**

8 **I CONCUR,**

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11 *F. M. Brass*
12 **FRANK M. BRASS**

13 **CONCURRING, BUT NOT SIGNING**
14 **ALFONSO J. MORESI**



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17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **SEP 26 2013**

19
20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **CINDY VARGAS**
23 **JILL RODERICK**
24 **PERONA, LANGER, BECK, SERBIN & MENDOZA**

25
26 **MR/ara**

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VARGAS, Cindy

CASE NUMBER(s): ADJ8727749

Lao District Office

CINDY VARGAS

vs.

**SEARS HOLDINGS CORP.;
Segdwick CMS,**

DATE(S) OF INJURY:

11/21/10 to 11/21/12

WORKERS' COMPENSATION JUDGE:

KACEY J. KEATING

**REPORT AND RECOMMENDATION
ON PETITION FOR REMOVAL**

I

INTRODUCTION

A court order dated 4/17/13 ordered the defendant to provide a written list to the applicant of the physicians in its Medical Provider Network in California in the specialties of orthopedics, internal medicine, and psychiatry.

On April 24, 2013 the defendant filed a timely Petition for Removal. The petition contends that it is sufficient that the defendant has already provided the applicant a written list of all providers within a 30 mile radius in the specialties requested by applicant's counsel. Page 4 of the petition provides the website address at which the applicant and her counsel may review all doctors on line.

II

DISCUSSION

The defendants think it is sufficient that the applicant has been provided with a written list of all providers within a 30 mile radius, but the applicant would like a more expansive list of providers, including a list of providers beyond a 30 mile radius.

Rather than limit the list to a 30 mile radius, the defendants should provide the applicant with a written list of all providers within the State of California in the specialties of orthopedics, internal medicine, and psychiatry.

III

RECOMMENDATION

It is respectfully recommended that the Petition for Removal, filed on April 24, 2013 (and dated April 23, 2013) be denied.

Respectfully submitted,

Kacey Joseph Keating
KACEY JOSEPH KEATING
WORKERS' COMPENSATION JUDGE

Served by mail on: 5/9/13

By: Verna Brown
Verna Brown