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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRISTOPHER COCKRELL,

Applicant,

vs.

**FARMERS INSURANCE; LIBERTY
MUTUAL INSURANCE COMPANY,**

Defendants.

Case Nos. **ADJ504565 (SBR 0266567)**
ADJ2584271 (SBR 0297503)

**OPINION AND DECISION AFTER
RECONSIDERATION**

In order to further study the factual and legal issues in this matter, on September 11, 2014, we granted defendant's Petition for Reconsideration of a workers' compensation administrative law judge's (WCJ) Findings & Award of June 24, 2014, wherein it was found that, "Reimbursement for self-procured medically recommended marijuana as opposed to providing or paying a supplier of this drug is awarded in a sum not to exceed the lower of the fee schedule for medications being replaced by the medical cannabis or the actual expense of the self-procured item. Reasonableness and necessity under L.C. Sect. 4600.35 is the opinion of the Agreed Medical Examiner herein. The Workers' Compensation Insurance Act is an entity included in the provisions of Health & Safety Code Sections 11362.785 and Labor Code Section 4600.35 does not apply to the insurance carrier in this context."

DOCUMENT #1
BEGINS HERE

Defendant contends that the WCJ erred in finding that applicant was entitled to reimbursement for self-procured medical marijuana. We have received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

Previously in this matter, in a Findings & Award of June 20, 2012, the WCJ found the applicant entitled to reimbursement for medical marijuana. Defendant sought reconsideration of that decision and, on September 14, 2012, we granted reconsideration of the Findings & Award of June 20, 2012, rescinded the decision, and returned the matter to the trial level so that the parties could consider the application of Health and Safety Code section 11362.785(d), which the parties and the WCJ had not discussed in the

1 trial level proceedings. Health and Safety Code section 11362.785(d) states that, "Nothing in this article
2 [Medical Marijuana Program] shall require a governmental, private, or any other health insurance
3 provider or health care service plan to be liable for any claim for reimbursement for the medical use of
4 marijuana."

5 However, while the parties and the WCJ analyzed the issue of whether a workers' compensation
6 insurer constitutes a "health care service plan," it appears that the parties and the WCJ did not analyze the
7 issue of whether a workers' compensation insurer constitutes a "health insurance provider" for the
8 purposes of Health and Safety Code section 11362.785(d). Since the parties should be heard on this issue
9 (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805];
10 *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584])
11 before a decision is rendered, we will return this matter to the trial level for further proceedings and
12 decision on this issue.

13 Without purporting to decide the issue, we note that the "fundamental rule of statutory
14 construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of
15 the law." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286].)
16 The Medical Marijuana Program does not appear to specifically define the term "health insurance
17 provider." "Health insurance" is not one of the classes of insurance in the Insurance Code. (Ins. Code,
18 § 100.) It appears that non-occupational health insurance is a type of disability insurance. (See, e.g., Ins.
19 Code, § 10785). Although for purposes of the Insurance Code the term "health insurance" does not
20 include "insurance arising out of a workers' compensation or similar law" (Ins. Code, § 106), we note
21 that Labor Code section 4600 refers to "health care coverage for nonoccupational injuries or illnesses"
22 (Lab. Code, § 4600, subd. (d)(1)). The fact that the Legislature felt the need to qualify "health care
23 coverage" with "for nonoccupational injuries or illnesses" may signify that coverage for occupational
24 injuries or illnesses also constitutes "health care coverage." Similarly, the fact that the term "health
25 insurance" specifically excludes workers' compensation in the Insurance Code may signify that "health
26 insurance" includes workers' compensation insurance when there is no express statutory exclusion. We
27 take no position on this issue.

1 In considering whether the Legislature sought to include workers' compensation policies
2 providing coverage for occupational injuries and illnesses in the definition of "health insurance provider"
3 for the purposes of Health and Safety Code section 11362.785(d), the parties and the WCJ should
4 analyze whether there is any rational basis for treating occupational and nonoccupational insurers
5 differently with regard to reimbursement for medical marijuana. We take no position on this issue. The
6 parties should brief the above issues, and the WCJ should decide these issues in the first instance. The
7 foregoing is not intended to limit the areas of inquiry regarding the application of Health and Safety Code
8 section 11362.785(d) to this case. After issuance of a final decision by the WCJ, any aggrieved party
9 may file a petition for reconsideration.

10 In reaching this decision, we make no determination regarding the propriety of the WCJ's
11 determination that a workers' compensation insurer does not constitute a "health care service plan"
12 within the meaning of Health and Safety Code section 11362.785(d).

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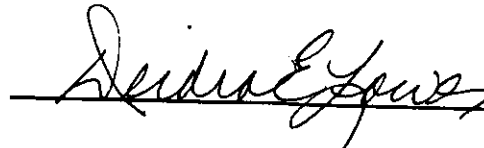
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1 For the foregoing reasons,

2 **IT IS ORDERED** as the Decision after Reconsideration of the Workers' Compensation Appeals
3 Board that the Findings & Award of June 24, 2014 is hereby **RESCINDED** and that this matter is
4 **RETURNED** for further proceedings and decision consistent with the opinion herein.
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6 **WORKERS' COMPENSATION APPEALS BOARD**

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DEIDRA E. LOWE

10 I CONCUR,

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KATHERINE ZALEWSKI

14 CONCURRING, BUT NOT SIGNING
15

16 **MARGUERITE SWEENEY**
17

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

19 **MAR 13 2015**

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

22 **CHRISTOPHER COCKRELL**
23 **MORSE, GIESLER, CALLISTER & KARLIN (2)**
24 **DIETZ, GILMOR & CHAZEN**
25 **BOEHM & ASSOCIATES**

26 **DW:bgr**
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