

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

DURRAN HYLAND,)	
)	
Employee,)	
)	
v.)	Hearing No. 1357775
)	
SOUTHERN WINE & SPIRITS,)	
)	
Employer.)	

ORDER

This matter came before the Board on December 2, 2010, on an order from the Industrial Accident Board ("Board") to give Dr. Irwin Lifrak an opportunity to appear to show cause why he should not be fined in accordance with title 19, section 2322F of the Delaware Code. The facts are as follows:

On November 4, 2010, a hearing was held on a motion by Southern Wine & Spirits ("Employer") seeking to compel production of medical records in the possession of Dr. Lifrak. At that motions hearing, Employer alleged that it sent a subpoena to Dr. Lifrak seeking the medical records of Durran Hyland ("Claimant"). It was informed by Dr. Lifrak's office that the medical records came to a total of eighteen pages. The doctor's office informed Employer's counsel that copies would be made for a charge of \$75.00. Counsel informed the doctor's office that that charge was in excess of the fee allowed under the Delaware Workers' Compensation Health Care Payment System ("HCPS"). Dr. Lifrak indicated that, at no charge, Employer's counsel could come to the office and make her own copies, provided that counsel brought her own copying equipment and electricity. Employer offered to send a courier service to make the copies and was again informed the courier would have to bring a copier and electricity. The Board ordered that the doctor provide a copy of the records charging the proper fee authorized by

the HCPS. Dr. Lifrak was also directed to present himself at this December 2 hearing to show cause why he should not be fined for violating his responsibilities as a certified Workers' Compensation Health Care Provider under title 19, section 2322D of the Delaware Code.¹

Following the Board's order, Dr. Lifrak did provide the requested records. In fact, the earlier representation of eighteen pages had been in error and the file was more like seventy pages. Employer has paid for these copies in accordance with the HCPS.

At this December 2 hearing, Dr. Lifrak explained to the Board that the subpoena for documents only stated that he had to produce the records and he offered to "produce" them (*i.e.*, make them available to counsel). The subpoena did not require him to use his staff's time and energy to copy the records. Thus, he maintains that he was in compliance with the subpoena. He agrees that his office was mistaken in its representation that there were only eighteen pages to the file.

Dr. Lifrak's argument in this respect misses the main point. He offered to make copies of the requested documents but only upon demanding a fee in excess of that permitted under the HCPS. Dr. Lifrak is a certified Workers' Compensation Health Care Provider pursuant to title 19, section 2322D. As such, Dr. Lifrak has agreed to comply with Delaware workers' compensation laws and rules. *See* DEL. CODE ANN. tit. 19, § 2322D(a)(2)a. Pursuant to the HCPS, fees are set for various services, including "nonclinical services, such as retrieving, copying and transmitting medical reports and records, testimony by affidavit, deposition or live

¹ Dr. Lifrak had not been present at the November 4 hearing. He represented that he did not receive notice of the hearing until after the date had already passed. The Board finds no prejudice to the doctor in this. The Board's order from that hearing only stated that the doctor should provide copies of the records in accordance with the fee schedule set forth in the HCPS. It made no finding of fault against the doctor, but rather scheduled this hearing to give the doctor a fair opportunity to explain. Dr. Lifrak did receive timely notice of this December 2 hearing and was present.

testimony at any hearing or proceeding, or completion and transmission of any required report, form or documentation.” DEL. CODE ANN. tit. 19, § 2322B(13).

In short, the HCPS recognizes that a doctor’s office is permitted to charge for the time and expense of making copies for counsel, but a certified provider is limited as to what can be charged for making those copies. The HCPS sets the applicable fee for retrieving, copying and transmitting existing medical records and reports.² The appropriate fee under the HCPS is a charge of \$25.00 for search and retrieval of documents, plus a charge of \$1.25 per page for the first 20 pages, \$0.90 for pages 21 through 60 and \$0.30 for pages 61 and up. *See* 19 Del. Admin. Code 1341-Section 4.16.

In this case, there is no dispute that Dr. Lifrak insisted on a fee of \$75.00 to copy what was believed, at the time, to be eighteen pages. Applying the fee schedule set forth in the HCPS, the proper charge should have been \$25.00 (search & retrieval) plus \$22.50 (18 pages @ \$1.25 each), for a total charge of \$47.50. There is also no dispute that the doctor continued to insist on the \$75.00 charge for copying even after Employer’s counsel had notified him of the proper charge under the HCPS. Thus, the charge for copying that Dr. Lifrak was insisting upon was in excess of the HCPS and, by demanding that excess payment as a condition for providing copies of the medical records to counsel, Dr. Lifrak was in violation of his obligation as a certified Workers’ Compensation Health Care Provider to comply with Delaware workers’ compensation laws and rules.³

The Board therefore finds, after hearing, that Dr. Lifrak was in violation of his obligations under title 19, section 2322D of the Delaware Code. Pursuant to section 2322F,

² The regulations covering the HCPS are readily available on the internet at <http://dowc.ingenix.com>.

³ That the number of pages of the medical records actually turned out to be in excess of eighteen pages does not alter the fact that the doctor was attempting to charge \$75.00 for eighteen pages.

when the Board finds that a health care provider has failed in his responsibilities under section 2322D, the Board "shall assess a fine of not less than \$1,000 nor more than \$5,000 . . . Such fines shall be payable to the Workers' Compensation Fund." DEL. CODE ANN. tit. 19, § 2322F(g). This provision is mandatory. In this case, this is a first offense. As such, the Board will impose the lowest fine permissible under the section.

THEREFORE, IT IS HEREBY ORDERED that:

Dr. Lifrak is assessed a fine of \$1,000. Such fine is to be paid within thirty days of this order. The fine shall be payable to the Workers' Compensation Fund.

IT IS SO ORDERED this 7th day of December, 2010.

INDUSTRIAL ACCIDENT BOARD


LOWELL L. GROUNDLAND


WILLIAM F. HARE

Mailed Date:

12/9/10



OWC Staff

Michael P. Freebery, Esquire, for Claimant (Not Present)
Jessica L. Julian, Esquire, for Employer
Irwin L. Lifrak, M.D.
1010 N. Union Street, Suite 5
Wilmington, DE 19805