

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

3
4 **Case No. ADJ2068970 (STK 0167616)**
5 **(Sacramento District Office)**

6 **NORMAN MCATEE,**

7 *Applicant,*

8 vs.

9 **BRIGGS & PEARSON CONSTRUCTION;**
10 **STATE COMPENSATION INSURANCE**
11 **FUND,**

12 *Defendants.*

13 **OPINION AND ORDER GRANTING**
14 **APPLICANT'S PETITION FOR**
15 **RECONSIDERATION AND DECISION**
16 **AFTER RECONSIDERATION**

17 Applicant seeks reconsideration of the June 3, 2015 Findings And Order On Appeal Of
18 Administrative Director's IMR Determination of the workers' compensation administrative law judge
19 (WCJ), who denied applicant's Labor Code section 4610.6(h) appeal¹ of a December 2, 2014
20 Independent Medical Review (IMR) determination based upon his Finding Of Fact 2 as follows:

21 There is not clear and convincing evidence of a mistake of fact or that the
22 Administrative Director acted without or in excess of her powers in
23 Independent Medical Review Final Determination case number CM14-
24 0173003 December 2, 2014, as to modification of one prescription of
25 Duragesic 75 MCG 8 and 1 prescription of Duragesic 100 MCG 8.

26 The parties previously agreed to entry of an award of 100% permanent disability and future
27 medical treatment on March 30, 2011, based upon their stipulation that applicant sustained industrial
injury to his neck, back, psyche and other body parts while working for defendant Briggs & Pearson
Construction as a carpenter on January 21, 2001.

28
29
30
31
32
33
34
35
36
37
¹ Further statutory references are to the Labor Code. Section 4610.6(h) provides in pertinent part as follows:
"A determination of the administrative director pursuant to this section may be reviewed only by a verified appeal from the
medical review determination of the administrative director...The determination of the administrative director shall be
presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the
following grounds for appeal: (1) The administrative director acted without or in excess of the administrative director's
powers.... (5) The determination was the result of a plainly erroneous express or implied finding of fact, provided that the
mistake of fact is a matter of ordinary knowledge based on the information submitted for review pursuant to Section 4610.5
and not a matter that is subject to expert opinion."

1 Applicant contends that his IMR appeal should have been upheld because it was shown at trial
2 that the December 2, 2014 IMR determination resulted from plainly erroneous or implied findings of fact
3 as described in section 4610.6(h)(5), and the determination was without or in excess of the powers of the
4 Administrative Director (AD) as set forth in section 4610.6(h)(1).

5 An answer was received from defendant.

6 The WCJ provided a Report and Recommendation on Petition for Reconsideration (Report)
7 recommending that reconsideration be granted, and that we reverse his decision and uphold applicant's
8 IMR appeal.

9 The WCJ's June 3, 2015 decision is rescinded as our Decision After Reconsideration and a new
10 order is entered upholding applicant's IMR appeal as recommended in the Report. There is clear and
11 convincing evidence that the IMR determination was the result of plainly erroneous findings of fact as a
12 matter of ordinary knowledge and not a matter that is subject to expert opinion as described in section
13 4610.6(h)(5), and for that reason the determination was without or in excess of the powers of the
14 Administrative Director (AD) as described in section 4610.6(h)(1). The treatment dispute is remanded to
15 the AD for the conduct of a new IMR as provided in section 4610.6(i).²

16 BACKGROUND

17 As shown by the April 7, 2015 Minutes Of Hearing And Summary Of Evidence (MOH),
18 applicant admittedly sustained an industrial injury to his back and other body parts on January 21, 2001.
19 (MOH, 2:3-6.) The parties agree that is a need for ongoing medical treatment and that applicant is 100%
20 permanently disabled as a result of the injury. (MOH, 2:3-6.) Applicant had back surgery, but it was not
21 successful and he has chronic pain as a result of the injury. (MOH, 4:4-23; Applicant's Exhibit 1; Joint
22 Exhibit 1.) A nerve stimulator was implanted for pain relief, but was not effective. (*Id.*) Applicant has
23 used narcotic analgesics for pain relief for several years and has tried various formulations, including
24

25
26 ²Section 4610.6(i) provides in pertinent part as follows: "If the determination of the administrative director is reversed, the
27 dispute shall be remanded to the administrative director to submit the dispute to independent medical review by a different
independent review organization... [or]... by a different reviewer in the organization"

1 Duragesic patches.³ (*Id.*) The Duragesic patches are helpful and improve his functioning. (MOH, 3:24-
2 4:4, Applicant's Exhibit 1.)

3 The circumstances surrounding applicant's IMR appeal are set forth by the WCJ in his Report by
4 quoting from his Opinion on Decision (Opinion), as follows:

5 Applicant appeals an Independent Medical Review Final Determination
6 (IMR) December 2, 2014, that modified two requests of Dr. Nava,
7 applicant's Primary Treating Physician (PTP), for Duragesic. (Joint
8 Exhibit 3) Citing pages 44, 47, 75-79, and 120 of [Medical Treatment
9 Utilization Schedule] MTUS Chronic Pain Medical Treatment Guidelines
10 (MTUS), the IMR states in the rationale of the decision, 'Guidelines go on
11 to recommend discontinuing opioids if there is no documentation of
improved function and pain.' (Joint Exhibit 3, p.3 and p.4) The rationale
further states, 'within the documentation available for review, there is no
indication that the medication is improving the patient's function or pain
(in terms of specific examples of functional improvement and percent
reduction in pain or reduce NRS), no documentation regarding side effects,
and no discussion regarding aberrant use.' (*Id.*)

12 Of the various records reviewed the only one in evidence is a report of
13 [Christopher Chen, M.D.], applicant's former PTP, June 16, 2014.
14 (Applicant's Exhibit 1) Dr. Chen states: 'he continues to have back pain
with radiation down bilateral LE down to heels. He has been managing his
pain with Fentanyl and Methadone. He cannot tolerate his pain without
medications.' (*Id.*) Duragesic is a trade name for Fentanyl. (MTUS, p.44)

15 Dr. Chen continues: 'he is able to function and perform [Activities of Daily
16 Living] ADLs such as driving and keeping up with housework. He is
walking 15 min daily for exercise to stay active.' (*Id.*) Under the heading
17 Care Plans, Dr. Chen states: 'Mr. McAtee has chronic [intractable] pain.
As current regimen is helping decrease pain and allowing Mr. McAtee to
function and perform ADLs, recommend continuing meds.' (*Id.*, p.3)

18 Applicant changed to Dr. Nava because he is closer to his home. (*Id.*, p.1)
19 A report of Dr. Nava subsequent to the IMR is in evidence. (Applicant's
20 Exhibit 2) As of March 16, 2015, applicant had been without Duragesic
patches for 2 ½ months. Since then, Dr. Nava recorded:

21 He explains that he has difficulty with his ability to sleep.
22 He explains that the patches helped to decrease the intensity
23 of the pain, and affected the deep back pain enough so that
24 he wouldn't think about it. Without the patches, he is
25 constantly reminded that the pain is there, and at night he
cannot stop thinking about it. IT (sic) doesn't matter how
tired or sleepy he is, his back pain is so intense at the end of
the day, that he can't get into a position of comfort, and he
can't stop thinking about his pain, and how he'll be able to
get some sleep.

26 ...

27 ³ Duragesic is the registered tradename of a transdermal skin patch containing fentanyl, a synthetic opioid analgesic. (See
websites <<http://www.duragesic.com/>> and <<http://www.drugs.com/duragesic.html>> as of August 12, 2015.)

1 Prior to loosing (sic) the coverage of his patches, he would
2 be able to sleep for 6 hours and on a good night a full 7
3 hours of sleep. He has not had this benefit in over 2
4 months. As a result, he is fatigued during the day which
5 makes his pain feels a bit worse during the day. He is
6 limited on his activities as it is, but finds him-self having
7 more and more difficulty with the energy to do his normal
8 daily activities. He is unable to work due to his low back
9 pain and radiating pain, but fills his days with
10 homeschooling son, light housekeeping, grocery shopping,
11 laundry and garbage. Lately he is having more and more
12 difficulty in just doing small tasks such as vacuuming. He
13 reminds us that he used to be able to vacuum his whole
14 house, but now must take a break half way through and rest,
15 and thus taking him twice as long to accomplish his task.

16 ...

17 He also states that the pain shoots down the legs into the
18 feet, and makes the legs feels like they are wrapped up
19 really tight, and they throb daily like tooth aches. The
20 Methadone decreases the intensity of the throbbing, but the
21 pain is still underlying. When he had his Duragesic patches,
22 the throbbing and tight wrapped sensation, was much
23 decreased and bearable. (Applicant's Exhibit 2, p.1)

24 Dr. Nava indicated his Current Plans to include, 'we will try to appeal the
25 decision of no pain medication, and will write for... 5 Duragesic patches.'
26 (*Id.*, p.2)

27 Applicant testified how the patches were helpful. He was able to live a
functional life. He could play with his grandchildren. He could take out
the garbage and drive to the store. He could put dishes into the dishwasher
and could do functional things around the house. (Minutes of Hearing
(MOH) April 7, 2015, 3:24 to 4:3 ½)

Applicant is asked about the statement in the IMR that 'there is no
indication that the medication is improving the patient's function or pain.'
He testified that 'that doesn't line up with what he said and to what the
doctor said. He does not agree with that statement.' (*Id.*, 4:9-12)
Applicant has 'Failed Back Surgery Syndrome-Neck.' (Applicant's
Exhibit 1, p.2) It is apparent that he has tried various medications as well
as a spinal column stimulator to try to obtain reduction in his pain. (MOH,
4:13-17 ½)

According to the Utilization Review (UR) that is the subject of the IMR,
applicant 'has been utilizing Duragesic patches since at least 6/2012.'
(Joint Exhibit 2 second unnumbered page) The UR notes that 'there
continues to be a lack of objective evidence to indicate objective gains' and
recommends, per previous UR, that weaning be continued. (*Id.*)

The pages of MTUS cited in the IMR include discussion of Criteria for Use
of Opioids with various phases of Therapeutic Trial of Opioids. (MTUS
pp.76-79) The portion of that section that applied to applicant are On-
Going management and When to Discontinue Opioids. (*Id.*) As to
discontinuing, it states, 'Weaning should occur under direct on-going
medical supervision as a slow taper except' certain situations that do not
appear relevant herein. (*Id.*, p. 79) It further says, 'The patient should not

1 be abandoned.’ (*Id.*) (Bracketed material substituted or added, parentheses
2 in original.)

3 The WCJ further wrote in his Opinion that following his initial review of the record he was
4 unable to make a finding that the IMR determination was based upon a plainly erroneous or implied
5 finding of fact as described in section 4610.6(h)(5). However, in his Report the WCJ writes that he
6 “reconsidered the evidence” and found that Dr. Chen’s June 16, 2014 report does document
7 improvements in applicant’s condition “as called for in MTUS.”⁴ The WCJ also observes in his Report
8 that the increased problems applicant experience when he was without the Duragesic patches for two and
9 one-half months, as documented by Dr. Nava in his March 16, 2015 report, evidences that “the patches
10 have provided improvement when they were available for use.”⁵

11 We agree with the WCJ’s recommendation in his Report, and enter a new finding that the IMR
12 determination issued without or in excess of the AD’s powers as described in section 4610.6(h)(1)
13 because it contains plainly erroneous findings of fact not subject to expert opinion as described in section
14 4610.6(h)(5).

15 DISCUSSION

16 The December 2, 2014 IMR determination provides the rationale for denying applicant’s treating
17 physician’s Request For Authorization of the Duragesic patches, in full as follows:

18 Regarding the request for Duragesic, California Pain Medical Treatment
19 Guidelines note that it is an opiate pain medication. Due to high abuse
20 potential, close follow-up is recommended with documentation of
21 analgesic effect, objective functional improvement, side effects, and
22 discussion regarding any aberrant use. Guidelines go on to recommend
23 discontinuing opioids if there is no documentation of improved function
24 and pain. Within the documentation available for review, *there is no
indication that the medication is improving the patient’s function or pain
(in terms of specific examples of functional improvement and percent
reduction in pain or reduced NRS), no documentation regarding side
effects, and no discussion regarding aberrant use.* As such, there is no
clear indication for ongoing use of the medication. Opioids should not be

25 ⁴ The information in Dr. Chen’s June 16, 2014 report was available to defendant in connection with the submission of the
26 Request For Authorization of the Duragesic patches to utilization review pursuant to section 4610.5, and there was no
objection to receipt of the report into evidence at trial. (MOH, 3:5-6; Joint Exhibits 1 and 2.)

27 ⁵ Dr. Nava’s March 16, 2015 report was written after the December 2, 2014 IMR determination. It should be considered as
part of the new IMR along with applicant’s testimony at the April 7, 2015 hearing.

1 abruptly discontinued, but unfortunately, there is no provision to modify
2 the current request to allow tapering. In light of the above issues, the
3 currently requested Duragesic is not medically necessary. (Emphasis
4 added.)

5 The IMR determination that the Duragesic patches are not "medically necessary" is based upon
6 the findings that there is "no indication" of improved function and reduced pain with their use, and "no
7 documentation" concerning side effects and potential aberrant use of the medication. These IMR
8 findings are mistakes of fact as a matter of ordinary knowledge and not a matter that is subject to expert
9 opinion in light of the information available to defendant in connection with the submission of the
10 Request For Authorization of the Duragesic patches to utilization review pursuant to section 4610.5.

11 As the WCJ observes in his Report, applicant's former treating physician, Dr. Chen, specifically
12 documents applicant's improved function and reduced pain with his use of the Duragesic patches on
13 pages one and two of his June 16, 2014 report. (Applicant's Exhibit 1.) Moreover, Dr. Chen further
14 writes on page three of that report about tapering applicant's use of the narcotic medication "as
15 tolerated," and he explains how his office employs "random urine toxicology screens" to "monitor
16 narcotics use, avoid diversion and to identify substance abuse." These indications of improved function,
17 reduced pain with use of the medication, along with documentation concerning potential side effects and
18 aberrant use, show that the contrary IMR findings were mistakes of fact as a matter of ordinary
19 knowledge.

20 Turning to the remedy for a successful IMR appeal pursuant to section 4610.6(h), section
21 4610.6(i) provides in pertinent part as follows:

22 If the determination of the administrative director is reversed, the dispute
23 shall be remanded to the administrative director to submit the dispute to
24 independent medical review by a different independent review
25 organization. In the event that a different independent medical review
26 organization is not available after remand, the administrative director shall
27 submit the dispute to the original medical review organization for review
by a different reviewer in the organization. (cf. Cal. Code Regs., tit. 8, §
10957.1(m).)

26 ///

27 ///

1 Accordingly, the WCJ's June 3, 2015 decision is rescinded and applicant's IMR appeal is granted
2 pursuant to sections 4610.6(h)(1) and 4610.6(h)(5). The dispute is remanded to the AD for review by a
3 different IMR reviewer in accordance with section 4610.6(i).

4 For the foregoing reasons,

5 **IT IS ORDERED** that applicant's petition for reconsideration of the June 3, 2015 Findings And
6 Order On Appeal Of Administrative Director's IMR Determination of the workers' compensation
7 administrative law judge is **GRANTED**.

8 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'
9 Compensation Appeals Board, that the June 3, 2015 Findings And Order On Appeal Of Administrative
10 Director's IMR Determination of the workers' compensation administrative law judge is **RESCINDED**
11 and the following is **SUBSTITUTED** in its place:

12 **FINDINGS OF FACT**

13 1. Applicant, Norman McAtee, born December 31, 1963, while employed on January 21, 2001, as
14 a Carpenter Foreman by Briggs & Pearson Construction, insured by State Compensation Insurance Fund,
15 sustained injury arising out of and in the course of employment to his neck, psyche, and blood
16 pressure/hypertension.

17 2. The Administrative Director's December 2, 2014 Independent Medical Review Final
18 Determination Letter, which upholds the October 9, 2014 Utilization Review Determination, contains
19 findings that are plainly erroneous as a matter of ordinary knowledge and not as a matter subject to
20 expert opinion as described in Labor Code section 4610.6(h)(5) and for that reason the determination is
21 without or in excess of the powers of the Administrative Director as described in Labor Code section
22 4610.6(h)(1).

23 3. Applicant's appeal of the December 2, 2014 Independent Medical Review Final Determination
24 is granted pursuant to Labor Code section 4610.6(h)(1) and Labor Code section 4610.6(h)(5).

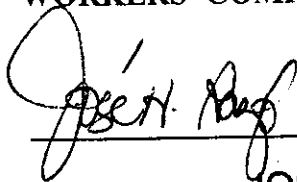
25 ///

26 ///

27 ///

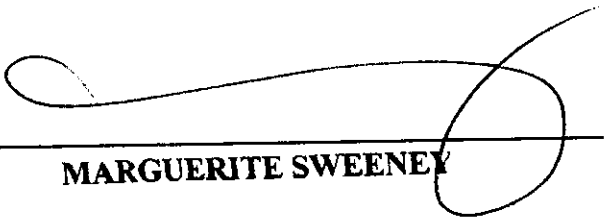
1 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'
2 Compensation Appeals Board that applicant's dispute with defendant's October 9, 2014 Utilization
3 Review Determination denying the continued provision of Duragesic patches is hereby remanded to the
4 Administrative Director pursuant to Labor Code section 4610.6(i) for Independent Medical Review by a
5 different reviewer.

6 **WORKERS' COMPENSATION APPEALS BOARD**

7 

8 _____
9 **JOSÉ H. RAZO**

10 **I CONCUR,**

11 

12 _____
13 **MARGUERITE SWEENEY**

14 **CONCURRING, BUT NOT SIGNING**

15 _____
16 **RONNIE G. CAPLANE**



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

18 **AUG 20 2015**

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

21 **NORMAN McATEE**
22 **SHANNON DOLAN**
23 **STATE COMPENSATION INSURANCE FUND**
24 **ADMINISTRATIVE DIRECTOR**

25 

26 **JFS/abs**

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER ADJ2068970
IMR CM14-0173003

Applicant:
NORMAN McATEE,

Defendant:
BRIGGS & PEARSON CONSTRUCTION
adjusted by STATE COMPENSATION
INSURANCE FUND;

Workers' Compensation Administrative
Law Judge:
JOSEPH SAMUEL

Date of Injury: 1/21/2001

REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant has filed a timely, verified Petition for Reconsideration from Findings and Order of the Workers' Compensation Administrative Law Judge (WCJ) in which he denied applicant's appeal from Independent Medical Review Final Determination.

JURISDICTIONAL FACTS

Applicant, Norman McAtee, born I while employed on January 21, 2001, as a Carpenter Foreman by Briggs & Pearson Construction, insured by State Compensation Insurance Fund, sustained injury arising out of and in the course of employment to his neck, psyche and blood pressure/hypertension.

SUMMARY OF THE CASE

Salient facts and procedure are set forth in the Opinion on Decision, which is restated herein:

Applicant appeals an Independent Medical Review Final Determination (IMR) December 2, 2014, that modified two requests of Dr. Nava, applicant's Primary Treating Physician

(PTP), for Duragesic. (Joint Exhibit 3) Citing pages 44, 47, 75-79, and 120 of MTUS Chronic Pain Medical Treatment Guidelines (MTUS), the IMR states in the rationale of the decision, "Guidelines go on to recommend discontinuing opioids if there is no documentation of improved function and pain." (Joint Exhibit 3, p.3 and p.4) The rationale further states, "within the documentation available for review, there is no indication that the medication is improving the patient's function or pain (in terms of specific examples of functional improvement and percent reduction in pain or reduce NRS), no documentation regarding side effects, and no discussion regarding aberrant use." (*Id.*)

Of the various records reviewed the only one in evidence is a report of Dr. Chen, applicant's former PTP, June 16, 2014. (Applicant's Exhibit 1) Dr. Chen states: "he continues to have back pain with radiation down bilateral LE down to heels. He has been managing his pain with Fentanyl and Methadone. He cannot tolerate his pain without medications." (*Id.*) Duragesic is a trade name for Fentanyl. (MTUS, p.44)

Dr. Chen continues: "he is able to function and perform ADLs such as driving and keeping up with housework. He is walking 15 min daily for exercise to stay active." (*Id.*) Under the heading Care Plans, Dr. Chen states: "Mr. McAtee has chronic and tractable pain. As current regimen is helping decrease pain and allowing Mr. McAtee to function and perform ADLs, recommend continuing meds." (*Id.*, p.3)

Applicant changed to Dr. Nava because he is closer to his home. (*Id.*, p.1) A report of Dr. Nava subsequent to the IMR is in evidence. (Applicant's Exhibit 2) As of March 16, 2015, applicant had been without Duragesic patches for 2 ½ months. Since then, Dr. Nava recorded:

He explains that he has difficulty with his ability to sleep. He explains that the patches helped to decrease the intensity of the pain, and affected the deep back pain enough so that he wouldn't think about it. Without the patches, he is constantly reminded that the pain is there, and at night he cannot stop thinking about it. IT (sic) doesn't matter how tired or sleepy he is, his back pain is so intense at the end of the day, that he can't get into a position of comfort, and he can't stop thinking about his pain, and how he'll be able to get some sleep.

...

Prior to loosing (sic) the coverage of his patches, he would be able to sleep for 6 hours and on a good night a full 7 hours of sleep. He has not had this benefit in over 2 months. As a result, he is fatigued during the day which makes his pain feels a bit worse during the day. He is limited on his activities as it is, but finds him-self having more and more

difficulty with the energy to do his normal daily activities. He is unable to work due to his low back pain and radiating pain, but fills his days with homeschooling son, light housekeeping, grocery shopping, laundry and garbage. Lately he is having more and more difficulty in just doing small tasks such as vacuuming. He reminds us that he used to be able to vacuum his whole house, but now must take a break half way through and rest, and thus taking him twice as long to accomplish his task.

...

He also states that the pain shoots down the legs into the feet, and makes the legs feel like they are wrapped up really tight, and they throb daily like tooth aches. The Methadone decreases the intensity of the throbbing, but the pain is still underlying. When he had his Duragesic patches, the throbbing and tight wrapped sensation, was much decreased and bearable. (Applicant's Exhibit 2, p.1)

Dr. Nava indicated his Current Plans to include, "we will try to appeal the decision of no pain medication, and will write for... 5 Duragesic patches." (*Id.*, p.2)

Applicant testified how the patches were helpful. He was able to live a functional life. He could play with his grandchildren. He could take out the garbage and drive to the store. He could put dishes into the dishwasher and could do functional things around the house. (Minutes of Hearing (MOH) April 7, 2015, 3:24 to 4:3 ½)

Applicant is asked about the statement in the IMR that "there is no indication that the medication is improving the patient's function or pain." He testified that "that doesn't line up with what he said and to what the doctor said. He does not agree with that statement." (*Id.*, 4:9-12) Applicant has "Failed Back Surgery Syndrome-Neck." (Applicant's Exhibit 1, p.2) It is apparent that he has tried various medications as well as a spinal column stimulator to try to obtain reduction in his pain. (MOH, 4:13-17 ½)

According to the Utilization Review (UR) that is the subject of the IMR, applicant "has been utilizing Duragesic patches since at least 6/2012." (Joint Exhibit 2 second unnumbered page) The UR notes that "there continues to be a lack of objective evidence to indicate objective gains" and recommends, per previous UR, that weaning be continued. (*Id.*)

The pages of MTUS cited in the IMR include discussion of Criteria for Use of Opioids with various phases of Therapeutic Trial of Opioids. (MTUS pp.76-79) The portion of that section that applied to applicant are On-Going management and When to Discontinue Opioids. (*Id.*) As to discontinuing, it states,

“Weaning should occur under direct on-going medical supervision as a slow taper except” certain situations that do not appear relevant herein. (*Id.*, p. 79) It further says, “The patient should not be abandoned.” (*Id.*)

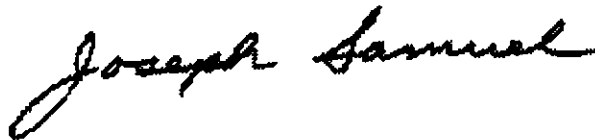
I find that IMR process troubling in view of the preceding statement. The person providing the “direct” medical supervision is bound by a determination of a total stranger, unknown by name or professional skills to the injured worker or his physician. Nevertheless, I am unable to make the determination that there is clear and convincing evidence that the IMR “was the result of a plainly erroneous express or implied finding of fact... (which) is a matter of ordinary knowledge based on the information submitted for review pursuant to Section 4610.5 and not a matter that is subjected to expert opinion.” [Lab. Cd. §4610.6, subd., (h)(5)]

Applicant contends the Administrative Director (AD) acted without or in excess of her powers in issuing the IMR. In his allegations he is contesting the legislation, not any actions by the AD. (Opinion on Decision June 3, 2015)

The WCJ has reconsidered the evidence discussed in his Opinion on Decision. He finds that Dr. Chen’s report documents improvement as called for in MTUS. He also finds that Dr. Nava’s report, which shows increased problems after being without Duragesic patches for two and one-half months, to be supportive that the patches have provided improvement when they were available for use. The WCJ ultimately believes that there is clear and convincing evidence that the IMR “was the result of a plainly erroneously expressed or implied finding of fact... (which) is a matter of ordinarily knowledge based on the information submitted for review pursuant Section 4610.5 and not a matter that is subject to expert opinion.” [Lab. Cd. §4610.6, subd. (h)(5)]

RECOMMENDATION

It is recommended that applicant’s Petition for Reconsideration be granted.



JOSEPH SAMUEL
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

DATE: 7/2/15