Below the Red Line

HEYL ROYSTER

Workers' Compensation Update

"We've Got the State Covered!"

A Newsletter for Employers and Claims Professionals — *January 2015*

A Word From The Practice Group Chair

Happy 2015!

We hope your holidays were enjoyable and that you had an opportunity to refresh and recharge over the break. At least we can be thankful the weather has been reasonable for an Illinois January.

With the recent installation of the new Governor, 2015 looks to be an interesting year for workers' compensation law. Republican Governor Bruce Rauner has promised reforms for workers' compensation law that will help lower overall costs and make the state more competitive for employers. In recent remarks at the University of Chicago, Rauner said, "[t]his is about competitiveness. Workers' compensation is a big issue, especially in manufacturing, construction, and transportation. We are in the bottom 10 states," Rauner said, referring to the states' rank in a study issued last fall by the Oregon Department of Consumer and Business Services. "Why can't we be at least average?" *The State Journal-Register*, January 25, 2015, p. 1.

Governor Rauner has stated that he intends to take a close look at legislative action to improve the workers' compensation environment in Illinois. While not offering specifics, Rauner has hinted at legislation to modify the burden of proof for claimants and modifications to the AMA rating report provision (section 8.1b) to give the reports more impact. The burden of proof was codified in section 1(d) as part of the 2011 amendments to require a showing "by a preponderance of the evidence, that [the claimant] has sustained accidental injuries arising out of and in the course of the employment," but the codification did not alter the body of case law holding that the employment need only be "a" cause of an injury for it to be compensable under the Act. 820 ILCS 305/1(d)

He has also mentioned other areas, such as the traveling employee doctrine, medical fee schedules, and utilization review reports, but again, no details have yet been released.

Governor Rauner is reportedly reviewing the 10 arbitrator and commissioner positions that are currently up for reappointment in 2015. These individuals will continue in their current posts until a final decision is made.

We will continue to monitor and report on these developments as they break.

In this issue we discuss the recent appellate court decision in *Bob Red Remodeling, Inc.*, which, in part, addressed the chain of physician referrals. Brett Seigel of our Springfield office authored this report.

In our February issue, we will revisit the significant appellate court decisions of 2014 and offer our assessment of the current appellate court.

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In this issue . . .

Bob Red Remodeling, Inc. v. Illinois Workers' Compensation Comm'n, 2014 IL App (1st) 130974WC

On December 31, 2014, the Appellate Court, Workers' Compensation Commission Division, handed down its decision in *Bob Red Remodeling, Inc. v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 130974WC, which upheld the Commission's finding that: (1) claimant was permanently and totally disabled; (2) the course of treatment chosen by claimant was not unreasonable so as to constitute refusal to submit to medical treatment; and (3) a physician provided emergency services and did not constitute a physician chosen by the claimant.

Here, we will focus specifically on the appellate court's holding that the emergency room physician was providing emergency services and did not count as a physician chosen by the claimant. On July 27, 2007, the claimant fell from a rooftop while performing his job duties for Bob Red Remodeling. He was transported by ambulance to Advocate Illinois Masonic Hospital and at CT scan revealed small temporal lobe contusions and a seven millimeter acute hemorrhage. On August 3, 2007, claimant underwent a left craniotomy at Advocate Illinois Masonic Hospital, performed by Dr. Leonard Kranzler. He was discharged from the hospital on August 15, 2007. He was diagnosed with a frozen left shoulder, right knee pain, post-concussion syndrome, and traumatic brain injury.

Later, the claimant had two follow-up appointments with Dr. Kranzler, the physician who performed the surgery. The claimant also sought care from Dr. Gourineni, an orthopedic specialist, who recommended physical therapy for the claimant's shoulder. While he also recommended arthroscopic surgery, the claimant declined to proceed with that surgery. In January 2008, Dr. Gourineni released claimant from medical care. At the request of his attorney, the claimant was examined by Dr. Forys, a board certified physician in internal medicine. Dr. Forys continued treating the claimant through the date of arbitration.

Chain of Referral

The employer argued that Dr. Forys was not within the allowable chain of referral, as the claimant had arguably elected to treat with Dr. Kranzler and Dr. Gourineni. The employer argued that Dr. Forys was the claimant's third chosen doctor and that it should not be liable to pay for the medical services provided by Dr. Forys because he was not within the allowable chain of referral.

Section 8(a) of the Act limits an employer's liability to pay for medical services to: (1) first aid and emergency services and (2) two additional doctors chosen by an employee and any additional providers and services recommended by those two doctors. 820 ILCS 305/8(a) (2010); *Bob Red Remodeling*, 2014 IL App (1st) 130974WC, ¶ 47; *see Absolute Cleaning/ SVMBL v. Illinois Worker's Compensation Comm'n*, 409 Ill App. 3d 463, 468-69 (4th Dist. 2011). Here, the appellate court reasoned that if both Dr. Kranzler or Dr. Gourineni constituted a "choice" within the meaning of Section 8(a), Forys would be the claimant's third choice of physician, not second, and the employer would not be liable for his services.

The Commission's Ruling – Kranzler provided emergency services only

The Commission found that Dr. Kranzler provided emergency services and that the two follow-up services he provided were directly related to the emergency services. Therefore, the Commission held that Dr. Kranzler did not constitute a choice of a medical provider for purposes of section 8(a) of the Act. As a result, Dr. Forys was, at most, the claimant's second choice of doctors and the employer was liable for his services.

The Appellate Court's Ruling – Kranzler not a choice of physician

The appellate court affirmed the Commission's finding that Dr. Kranzler did not constitute a choice of a medical provider. The court focused on the fact that claimant was transported by ambulance to Advocate Illinois Masonic Hospital on July 27, 2007. He was admitted to the hospital and remained in the intensive care unit from that day through August 3, 2007, when Dr. Kranzler performed surgery on the claimant. The appellate court noted that Dr. Kranzler's operative report stated that the claimant was monitored for several days and experienced a progressively severe headache. Dr. Kranzler's report noted that the pattern persisted. As such, the court opined that the "Commission could readily conclude that Kranzler's treatment of claimant was in response to an ongoing emergency, which flowed continually from claimant's accident." *Bob Red Remodeling*, 2014 IL App (1st) 130974WC, ¶ 49.

Further, the appellate court held the claimant's follow-up visits with Dr. Kranzler were simply the type that ordinarily follow after a surgical procedure. In noting that it found no Illinois case law on this point, the appellate court adopted the District of Columbia Circuit Court's holding that "[a] claimant

constructively selects a medical provider who has provided emergency treatment if follow-up care is 'extended beyond reasonable limits.'" *Id.* at ¶51. *Ceco Steel, Inc. v. District of Columbia Department of Employment Services*, 566 A.2d 1062, 1064 (D.C. Cir. 1989). Here, the appellate court found that "nothing in the record indicates that the services provided by Kranzler were anything other than ordinary follow up to the surgery performed following claimant's accident." *Bob Red Remodeling*, 2014 IL App (1st) 130974WC, ¶ 52. As such, the appellate court found that Dr. Kranzler did not constitute a choice of medical provider for the purpose of section 8(a) of the Act. 820 ILCS 305/8(a). Therefore, Dr. Forys was, at most, the claimant's second choice of physician and the employer was liable for the medical services he provided.

Implications of Appellate Court's Holding

The appellate court's holding that Dr. Kranzler's surgery and follow-up appointments were emergency services is important to the analysis of whether an employer will be responsible for a subsequent physician's services. The appellate court admitted that it could find no Illinois case law on the issue of a emergency physician's follow-up appointments and whether that physician becomes a "choice of physician" if there are follow-up visits. The appellate court now establishes that it is necessary to assess whether an emergency physician's services and subsequent follow-up treatment are related to the initial emergency services or if that treatment is extended beyond reasonable limits. If Dr. Kranzler's follow-up visits had gone beyond ordinary follow-up care for the left craniotomy he performed, an argument could have been asserted that his services went beyond emergency services and that he was a choice of physician for the claimant. Had that been the case, the employer would not have had to pay for Dr. Forys services, because he would have been the claimant's third choice of physician, after Dr. Kranzler and Dr. Gourineni.

Brett Siegel - Springfield Office

Brett represents clients in tort litigation and defends employers in workers' compensation cases. Brett regularly handles depositions of expert witnesses and treating physicians in both civil and workers' compensation matters. Brett has taken several cases to trial and has argued multiple cases on appeal before the Workers' Compensation Commission.

SAVE THE DATE!

Thursday, May 28, 2015

Heyl, Royster, Voelker & Allen
30th Annual Claims Handling Seminar

Concurrent Seminars:
Casualty & Property or Workers' Compensation
1:00 – 4:30 p.m.
Doubletree Hotel, Bloomington, Illinois

Agendas will be available soon

Workers' Compensation Group

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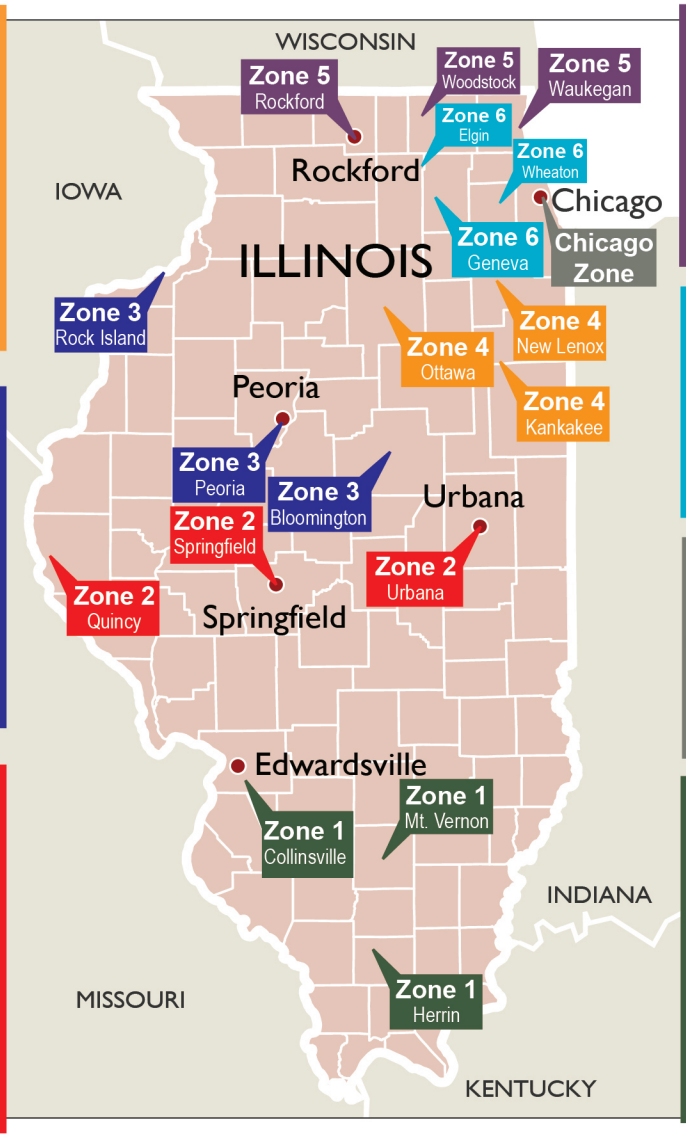

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