

Employer Right to Control Workers Comp Medical Care Challenged By Court of Appeals

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Under current workers' compensation laws, employers in California have the right to choose the medical facility where an injured employee is treated by properly implementing a designated Medical Provider Network (MPN). This network ensures that an injured employee will receive necessary medical care pursuant to their workers' compensation claim at a screened facility that is chosen and screened by the employer, or their insurance carrier. California law does provide for an employee to treat outside the employers MPN, but only where the employee has provided a valid predesignation of a personal physician before the injury or illness occurs. As such, the MPN, which is offered by many insurance companies, can be an important tool to assist employers in controlling workers comp costs and expenses.

Recently, the Workers Compensation Appeals Board (WCAB) held that medical reports from doctors who are not part of the MPN are inadmissible in a workers compensation case, if the MPN had been properly implemented, and the employee had not predesignated an outside physician. [[Elayne Valdez v. Warehouse Demo Services](#), April 20, 2011]

Recently, the Second District Court of Appeal, in an [unpublished opinion](#), has annulled *Valdez*, ruling that Labor Code Sections 4605 and 4616.6 do not prohibit use of reports from doctors who are not part of the MPN.

For background, Labor Code Section 4605 establishes the right of an employee to provide, at his own expense, a consulting physician or any attending physicians whom he desires. Meanwhile, Labor Code Section 4616.6 states, regarding MPN's, that ". . . no other reports shall be admissible to resolve any controversy arising out of this article". The Court of Appeal held that this statutory language was not meant as a general rule of exclusion barring any use of medical reports other than those generated by a MPN physician.

As an unpublished decision, the ruling of the Court of Appeal is not controlling, but this may forecast future movement of California courts on this important issue, and impact the ability of employers to control costs through an MPN.

If the decision is confirmed through further holdings by the Courts, employers could lose control of the workers compensation medical care cost savings attributed to pre-selected and screened MPN's. This may result in greater latitude to control medical care by the attorneys representing injured employees. This may also mean potential increases in the workers compensation premium costs for California businesses. <http://bit.ly/Peo351>

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