

WHEN IS MEDICAL CARE JUSTIFIED WITHOUT PRIOR AUTHORIZATION UNDER ALABAMA WORKERS' COMPENSATION LAW

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In *Fluor Enterprises, Inc., d/b/a Fluor Signature Services v. Darrell Lawshe*, 2009 WL 350882 (Ala. Civ. App.), the Alabama Court of Civil Appeals clearly held Alabama that:

"[i]n those instances when the employee is justified in seeking medical treatment without prior authorization by the employer, the employer may be liable for those expenses. See, e.g., Kimberly-Clark Corp. v. Golden, 486 So. 2d 435, 437 (Ala. Civ. App. 1986). Justification for failing to seek prior authorization from the employer includes:

'(1) where the employer has neglected or refused to provide the necessary medical care; (2) where the employer has consented to the selection by the employee; (3) where notice of and request for alternative care would be futile; and (4) where other circumstances exist which justify the selection of alternative care by the employee.'"

"The employer's failure to render the necessary treatment transfers its right to select the treating physician to the employee just like authorizing the injured employee to select his own physician does. Once the employee is entitled to and elects to choose his or her own physician, treatment by that physician can continue as long as the employee is satisfied with the treatment, subject to the employer's right to challenge medical expenses or treatments it believes are not reasonably necessary or inappropriate under § 25-5-77(a) or (i)."

Where the Defendant has known of the injury to the employee, has known of his need for medical care and has neglected or refused to provide necessary medical care, the injured employee is justified in seeking medical care without prior authorization from the employer. Based on *Fluor Enterprises, Inc., d/b/a Fluor Signature Services v. Darrell Lawshe*, *supra*, the

injured employee is entitled to continue treating with the physician he selects and the employer must bear the expense of the medical care.

We have found that most people make good decisions when they are well informed about their legal rights. To protect yourself and your family, you are welcome to call our office for a free consultation. We will be pleased to answer your questions and help you make important decisions that may make a big difference in the final outcome. This is particularly true in the area of workers' compensation insurance and workplace safety or when there has been an industrial accident or a construction accident resulting in severe injuries.