

## MOTION FOR MEDICAL AND TEMPORARY BENEFITS

VIEW FROM THE BAR

1/6/15

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Over the past decade the Division of Workers Compensation, under the leadership of the current Chief Judge, has increased the focus and raised the importance given to the quick resolution of Motions for Medical and Temporary Benefits (MMT). From the top down, all the Judges of the Compensation court now seriously and fastidiously deal with pending Motions for medical care; a vast change from the past.

This is not to say the statutory scheme, involving two to sixth month trials for emergency medical care, is in any way greatly improved; but the Judicial attitude and the courts concern and attention to the Motions for Med/temp is across the board excellent. The legal framework is still antiquated, arcane, and mired in delay; but the court does the best it can within a statutory framework as old as the 'Model T' (1911 original Workers Comp. N.J. statute). The Motion's for Medical and Temporary Benefits are no longer regulated to the back burner, but dealt with expeditiously and with utmost concern, by the Division, and the Judges. The change was slow in coming, but has played out over the last 20 years.

Recently I have been involved in a MMT trial where the insurance appointed treating physician has testified, reversed his position on the stand, and the Court ordered immediate Medical treatment. Usually the authorized treating doctor "cut off" of treatment is sacrosanct, as the case law holds that the authorized M.D. must be given greater weight than any other doctor.

But in some cases, the Judge can use case law, logic and common sense to overcome a treating authorized insurance doctor's arbitrary and capricious cut off of all treatment. The Judge was incensed that we had to drag the authorized surgeon into court, to reveal the paucity of his written report, and have him reverse his position in open court, with untold delay in treatment. The Judge commented that this paradigm is surfacing all too often in the Workers' Compensation arena.

A second MMT, which our office filed in December 2014, under the new (2008) statute dealing with Emergent Motions for treatment (N.J.S.A. 34:15-15.3), was assiduously dealt with by two seasoned Judges, hours before the Christmas vacation, and the day after New Year's, ensuring immediate action, and possibly saving the life of my client. The new law mandates a respondent answer within 5 five days and an emergency hearing be held within 10 days of motion filing.

The new emergent motion statute specifies the critical nature of the motion, to be filed only if a physician states:

- a. the injured worker is in need of emergent medical care.
- b. the specific nature of the irreparable harm or damage.
- c. that any delay of treatment will result in irreparable harm or damage.

(N.J.S.A. 34:15-15.3)

Although seldom used, the new statute can be truly a lifesaver in emergent situations. The immediate tackling of my case by the Judge, via tel. conference, immediate judicial action, --effectively cutting thru the red tape of a mega insurance company, and allowing a lifesaving resolution in 12 hours, (well before the statutory 10 days), is a testimony to the creative and effective action of the Judge and the new serious attitude towards Medical Motions, encapsulated by the NJ Division of Workers Compensation.

Last October, 2013, I encountered another first: a Judge of Workers Compensation was so incensed at the delay of authorized treatment, that she entered an order *Sua Sponte* per N.J.A.C. 12:235-3.16(f), to "compel medical treatment within 15 days" of the order. No motion had been filed on this emergent request for humanitarian intervention. The court on its own volition entered the Order for treatment! ["Sua Sponte: (sooh-uh spahn-tay) adj. Latin for "of one's own will," meaning on one's own volition, usually referring to a judge's order made without a request by any party to the case."]

But of course problems do remain. Recently I have had a client who worked approximately 30 years with the same employer, grievously injured at work, with major surgery and treatment. But the company ran afoul of the law, owed millions for fraud, folded up, and after 27 years of paying Workers Comp. Insurance; failed to even apply for a policy in its last few years of existence. The owner had disappeared, under threat of numerous lawsuits.

I requested the UEF (uninsured employer's fund) step in and pay for treatment and temporary pay to keep the petitioner from becoming homeless. Hospital charity care stepped in for the major operation and treatment, but my client suffered with no possible income. The case is still floundering, within the statutory hoops of the UEF, calling for every possible due process protection of the fraudulent owner, before any hope for redress. As the UEF attorney explained to me, no Motion for Med/Temp may be filed against the State of N.J. UEF fund, and furthermore, if such an order was entered, the UEF cannot recognize the order! Any order for Medical treatment or temporary pay is null and void against this state agency, and cannot be enforced. (Subchapter 7. Uninsured Employer's Fund. 12:235-7.1(c); in part states..."no judgment or order for the payment of benefits shall be entered against the UEF.").

Only after personal or substituted service is effected against the Corp. officers and owner, ...only after a trial or motion is entered, ...only after same is docketed in the NJ Civil Court, ...only then is possible redress offered. The cost may well be prohibitive, starting at \$79 to \$179 for a skip trace for corp. officers who have flown the coup, living out of state, plus the cost of publication of substituted service, etc... The cost in time is the real harm to the injured worker and his family who faces sub-par care, limited to hospital ER or clinic, with no income for his family. What does this do to my client? This arcane UEF statutory scheme and policy directly contravenes the legislative policy regarding the provision of treatment to injured workers. This gaping hole in the Workers Compensation statutory scheme should be redressed immediately.

A first step may be a relaxation of the strict UEF requirements, but in practice I have never seen this done, although the statute directly allows for same: (Subchapter 7. Uninsured Employer's Fund. 12:235-7.1(d). "The UEF may relax or dispense with requirements under the subchapter where appropriate and with the consent of the judge hearing the case."). The State Legislature should tackle and reform the UEF process in the case of Motions for Medical and Temporary benefits and acute medical need.

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