



Significant Decision

No. 1702

March 29, 2017

**DANIEL RAMIREZ V. WCAB (SCIF)
IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
THIRD APPELLATE DISTRICT
C078440
FILED: MARCH 29, 2017**

California's medical dispute resolution process is a valid and constitutional exercise of the Legislature's plenary power.

Significance: In a published decision that closely follows *Stevens*, another Court of Appeal has upheld the constitutionality of the UR/IMR process for resolving disputes over workers' compensation medical treatment requests. The court emphasized that medical necessity decisions have been legislatively placed into the hands of medical professionals, instead of WCAB judges.

Facts: Daniel Ramirez' PTP sought certification for continuing acupuncture treatment, citing continued benefits and functionality. On utilization review, based on the lack of actual functional improvement, the request was non-certified. Applicant appealed through independent medical review, contending that the UR reviewer had incorrectly utilized ACOEM standards instead of MTUS. Applying MTUS, the IMR reviewer upheld the UR determination. Applicant appealed to the WCAB, alleging that the IMR determination "may have" been the result of conflict of interest or bias, asserting that the UR determination was based on a material defect equivalent to an untimely determination, and contending that the medical dispute resolution process was unconstitutional. The Appeals Board granted removal for the sole purpose of providing the applicant with a final order to seek appellate review of the constitutional questions.

Holding: The question of whether a utilization review properly follows the MTUS is directly related to a determination of medical necessity, and as such, the Board has no jurisdiction to review it.

Discussion: Although ultimately prevailing in the material issues in dispute, defendants actually lost the first two technical arguments discussed on appeal (joinder and waiver). The Court of Appeal first held that, while the Administrative Director constituted a "proper" party to these proceedings, the AD was not an "indispensable" party. Although charged with implementation of the relevant statutes, the AD does not have a personal interest in the outcome; furthermore, the government's position was adequately presented by State Fund on appeal. Secondly, the Court of Appeal disagreed with State Fund's position that the scope of a petition for review was limited to the issues actually decided by the Appeals Board on reconsideration/removal. Pointing out that the correct test under §5904 is whether a dispute was raised in the petition for reconsideration/removal, the Court of Appeal held that applicant had properly preserved all of his arguments on appeal.

Turning to the merits of the case, applicant's first argument attempted to renew the Dubon I versus Dubon II debate, and contended that untimeliness should not be the only basis upon which jurisdiction to determine medical necessity can be vested with the WCJ. Here, the Court of Appeal held that the statutory authority explicitly precludes WCAB jurisdiction to review an IMR determination based on a material defect in the conduct of the underlying UR decision. "The Legislature has provided only one method of review or appeal for a utilization review, and that is by independent medical review... To the extent that the Board has any jurisdiction to review a utilization review [under §10451.2(c)(1)(C)], it has jurisdiction only over nonmedical issues such as timeliness..." The Court of Appeal held that the facts of this case did not include any "nonmedical" issues, and thus the underlying UR was reviewable only through IMR. Whether a utilization review properly follows the MTUS is directly related to a determination of medical necessity, and as such, the Board has no jurisdiction to review it. In reaching this conclusion, the decision suggests (in dicta, and without expressly overruling Dubon II) that even though the WCAB may have jurisdiction to determine that a UR decision is untimely, the WCAB does not ever gain jurisdiction to decide the underlying medical necessity dispute.

The Court of Appeal next addressed applicant's constitutional arguments, in which he claimed that the IMR process violates principles of separation of powers because the process specifically does not allow review of a determination of medical necessity by the Board or even the courts of appeal. The Ramirez court quickly dispensed with this argument. Relying on the Stevens decision, the Ramirez court confirmed that the grant of plenary power to the Legislature to create a system of workers' compensation trumps the separation of powers clause under the state Constitution's plain terms. Finally, again expressly agreeing with Stevens, the Ramirez court ruled that California's process for reviewing medical treatment requests does not violate due process by failing to provide notice and a meaningful opportunity to be heard.

At the end of the opinion, the court addressed applicant's constitutional challenge to IMR based on the statutory anonymity provisions afforded to the IMR reviewer. Because the injured worker is provided with multiple opportunities to submit evidence and challenge the IMR determination, the Ramirez court found no due process violation. The same issue was touched upon briefly in Stevens, although some analysts contend that the discussion in Stevens was merely dicta. This time, because the issue was directly raised and addressed by the court in Ramirez, there is no doubt that the court's refusal to invalidate IMR based on the anonymity provisions is a decision that is binding upon lower courts and the WCAB. This particular aspect of the case may prove to be important, if the First District Court of Appeal ever sets oral argument in Zuniga -- a case that also raises a constitutional challenge to the anonymity provisions under IMR, and has been pending since 2014.

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