

Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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TID WELCOMES NEW ATTORNEY TO ORANGE COUNTY OFFICE

TID is pleased to welcome attorney Donisha S. Brooks to the firm. Donisha joined the firm on March 12, 2018 in the firm's Santa Ana office.

Donisha graduated cum laude from the University of Southern California and received her juris doctor from UCLA School of Law. She was admitted to the California State Bar in 2015. While in law school she started her workers' compensation experience working as a hearing representative and since passing the bar has practiced in the field of workers' compensation.

Donisha is proficient in Spanish. In her spare time she enjoys sports, music and do-it-yourself projects. Please welcome Donisha to the firm. Her email is DBrooks@TIDlaw.com

When Does The WCAB Have Jurisdiction Over Medical Treatment Disputes?

The Utilization Review ("UR") and Independent Medical Review ("IMR") process was enacted by the legislature to be the sole means for determining the medical necessity of medical treatment. The system took away the jurisdiction of the Workers' Compensation Appeals Board ("WCAB") to make decisions over the medical necessity of treatment recommendations and placed these determinations in the hands of physicians. However, challenges to the system have continued.

In the Appeals Board en banc decision of *Jose Dubon v World Restoration Inc. and State Compensation Insurance Fund (Dubon II)* (2014) 79 Cal. Comp. Cases 1298, it was established that:

- 1) A UR decision is only invalid and not subject to IMR if untimely;
- 2) The WCAB has jurisdiction over the timeliness of a UR decision;
- 3) All other disputes regarding UR are resolved by IMR;
- 4) If a UR decision is determined to be untimely, the medical necessity of the treatment may be made by the WCAB based on substantial medical evidence.

The "untimely" concept for obtaining the jurisdiction of the WCAB for medical treatment disputes has been expanded in several cases.

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In the panel decision of *Bodam v. San Bernardino County/Department of Social Services* (2014) 79 Cal. Comp. Cases 1519, the defendant is to comply with all time requirements in conducting UR including communicating the UR decision. That means even if the UR decision itself is timely, if it is not timely communicated to the physician, applicant, and/or applicant's attorney, the WCAB will have jurisdiction over the medical necessity of the treatment request.

In the panel decision of *Weimer v. Hillyard* (2017) 45 CWCR 73, jurisdiction of the WCAB over medical treatment was granted when the primary treating physician ("PTP") submitted an RFA for medications with the wrong claim number. The claims administrator sent the RFA back to the PTP marking the RFA "INCOMPLETE request for MED" stating the claim number was incorrect. The PTP re-submitted the RFA and UR non-certified the request. The WCAB found the first RFA provided enough information to correctly identify the employee. Therefore, the UR decision based on the second RFA was untimely and the WCAB had jurisdiction over the medical treatment dispute.

Challenges that have been made to UR/IMR decisions that have not been successful in granting WCAB jurisdiction over medical treatment disputes involve challenges over material defects, discrimination, IMR reviewing physician was not licensed in California, and untimely IMR decisions. These examples are found in the following cases:

- In the panel case of *Bissett v. Peace & Joy Center* (2016) 44 CWCR 172, the applicant claimed a material defect in the UR denial based on not reciting the contents of a telephone conversation between the PTP and UR reviewer in the UR denial.
- In the Court of Appeal published case of *Ramirez v. WCAB* (2017) 82 Cal. Comp. Cases 327, the applicant claimed a material conflict of interest and that the UR denial may have been based on bias on the basis of race, national origin, ethnic identification, religion age, sex, orientation, color or disability.
- In panel case of *Navroth v. Mervyn's Store* (2016) ADJ8209954, the IMR reviewing physician can be

licensed in another state and does not have to be licensed in California.

- In the Court of Appeal published case of *CHP v. WCAB (Margaris)* (2016) 81 Cal. Comp. Cases 561, found that IMR decisions need not be timely to be valid and binding (past the 30 day deadline) and do not grant WCAB jurisdiction to decide the issue. The applicant's remedy is to bring an administrative writ of mandate.

Although UR and IMR have been strongly upheld as the means of resolving medical treatment disputes, there is an exception when the defendant does not strictly comply with the UR time limitations. Claims administrators and UR professionals need to be cognizant of different factual scenarios which could result in an untimely finding and strictly comply with all UR time frames or risk an invalid UR decision and the treatment dispute decided by a judge at the WCAB.

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