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June 2016 Workers' Compensation Law Update

Oh, What a Tangled Web They Weaved ! Dallas Attorney and Family Members Accused of Big Time Comp Fraud

So far, all we know is that the scam involved Federal workers' compensation claims, but it is hard to believe that Texas workers' comp was not hit as well. More to come on that, but in the meantime, spread the word. Attorney Tshombe Anderson was arrested last Friday, and his wife Brenda Anderson and sister Lydia Bankhead are in federal custody. The fronts they are alleged to have used were Best First Administration Durable Medical Equipment of Austin, Union Medical Supplies & Equipment LLC, Sky-Care Medical Supplies & Equipment LLC, and American Federal Union Claims Advocates LLC. This story ran in the Dallas Morning News, and here's the link: <http://crimeblog.dallasnews.com/2015/08/dallas-attorney-and-family-members-charged-with-defrauding-workers-comp-out-of-22-million.html/> .

Attorney Anderson worked for Union Treatment Center (UTC) from the Spring of 2010 to sometime in May, 2011 according to the complaint filed in the lawsuit. UTC has facilities for treating work injuries in Austin, Corpus, Killeen and San Antonio. In Googling UTC at www.healthandrehab.com we found a posting from June 17, 2016, wherein the company was distancing itself from the conviction of chiropractor Garry Craighead, who had been affiliated with UTC, and stating that "[t]o its knowledge, UTC is not the subject of any criminal investigation." We note that Mr. Tshombe's arrest occurred after this posting!

Thinking the name sounded familiar, we looked Craighead up, and found that (among other things) he was denied admission to the Texas workers' comp Approved Doctor List back in 2007. He was sentenced on June 10th this year for taking kickbacks from pharmacies, hospitals, ambulatory surgical centers and other providers in return for referring patients to them. It seems he also failed a drug test. He was sentenced to 14 years in prison and ordered to pay \$17.9 million back to the government, give up his plane and surrender property he had in Williamson County.

Interestingly, marketing materials for UTC claim that the doctors there are affiliated with OPEIU Local 298-AFL-CIO in Austin, and that their physicians are a multi-disciplinary group of doctors that are fellow union brothers and sisters.

Trying to Settle a SIBs Case? Think Again!

The Texas Supreme Court issued a decision blowing apart an attempt at settlement of a partial SIBs quarter. Bonnie Jones and the workers' comp carrier had taken a dispute over the 14th quarter of SIBs through the agency and into district court. The DWC had determined that Ms. Jones was not

entitled to benefits for that quarter and Ms. Jones took the case up. In the district court proceedings, Ms. Jones agreed to a partial payment for the quarter and the proposed judgment incorporating the settlement was sent to the DWC. The Labor Code requires that all proposed judgments be submitted to the DWC so the agency can decide if there is a reason to intervene in the case. After reviewing the proposed judgment, the DWC exercised its right to intervene and oppose the judgment on the basis that the agency had already found that Jones had not fulfilled the mandatory work search requirements for the 14th quarter, and that a partial SIBs award, even if both parties agreed, “flouts the statutory formula’s edict to calculate the monetary entitlement in a precise way.” The trial court went ahead and granted the judgment anyway, and the court of appeals affirmed, citing the long-standing general policy of encouraging settlement. But, as stated in the Supreme Court’s opinion, the trial court and court of appeals “ignor[ed] the particularities that the revamped workers’ comp scheme provides.” Bottom line: SIBs entitlement is all or nothing for each quarter – no partial settlements allowed. One wonders whether the parties attempted the same settlement at the agency level. It seems an odd case for the agency to spend resources to pursue what seems to be an issue of minor significance. *Texas Dept. of Ins., Division of Workers’ Compensation v. Bonnie Jones and American Home Assurance Company*, (Tex. 2016) No. 15-0025, opinion issued June 24, 2016.

Don’t Compound the Problem!

The State Office of Administrative Hearings recently decided to deny payment for compounded medications which are usually various topical creams which are touted as relieving pain or healing scars. Texas insurance carriers have been seeing bills of more than \$12,000 for a one month prescription. It was thought by some that so long as the compound didn’t contain an “N” drug from the DWC’s closed formulary, preauthorization under DWC Rule 134.600 was not required. But the insurance carrier in this case decided to deny payment based on the defense that Rule 134.600 requires that investigational or experimental drugs be preauthorized. SOAH determined, based on expert testimony from Dr. Suzanne Novak and her expertise in the application of the ODG treatment guidelines, that compounded drugs are by their very nature investigational and experimental. That being the case, the creams would require preauthorization. Many in the pharmacy and treatment industries disagree, but for now, at least we know which way the wind is blowing.

Implants Approved by FDA

Treatment for opioid dependence has long been an issue in workers’ compensation. Now that the FDA has approved implants which will provide a constant, low dose of the drug buprenorphine to a patient who is already stable on other forms of the drug, such as pills or sublingual films, requests for the implant should begin to show up in preauthorization requests, given that buprenorphine is an “N” drug.

2016 Workers’ Compensation Summit

As many of you know, a broad-based conference was recently held in Dallas by invitation only to discuss common national issues in workers’ compensation in light of a perceived trend to “opt-out” plans and the specter of nationalization or doing away with a workers’ compensation system

altogether. SLS partner Jane Stone was invited to the Summit as a representative of the National Workers' Compensation Defense Network. You may have been following the progress of the Summit on Bob Wilson's website. The purpose was to open a dialogue as to what is right in worker's compensation programs, and what can be improved. The discussions were lively to say the least, given that the attendees were so diverse in their views and experiences. The conversations lasted for 2 days among regulators, judges, insurance professionals, physicians, academics, union representatives, lawyers (from all sides), and injured workers (both satisfied with the system and unhappy with it). After the initial conference, the attendees responded to a survey to determine the priority of topics that were most important. The results of the survey will be published sometime after July 4th.

New Things to Worry About

The US National Toxicology Program, a federal interagency group under the NIH, is said to have linked radiation from cell phone exposure to cancer in rats in a new study. The researchers exposed rodents for two years (apparently, a rodents' life span) to radiation levels designed to roughly match what a human with heavy cell phone use or exposure might experience. The study results are a long way from determining if the results of the experiments would be the same if the subjects were humans. We wonder if the danger to humans will be more or less than the dangers of using a cell phone while driving (or walking). In any event, if cell phone usage is a work requirement for a particular injured worker who develops cancer, or gets hit by a bus while distracted by his phone, there may be some workers' compensation claims filed.

NWCDN Conference Coming to Chicago in September

National Workers' Compensation Defense Network (NWCDN) Fall Conference is being held in Chicago on September 21st and 22nd. The conference is limited to clients of NWCDN members and is by invitation only. If you are a client of the firm and would like to go, please contact Jane Stone at the email address listed above.

Kids' Chance of Texas is Up and Running!

As you know, Kids' Chance is a scholarship program for children whose parents have been killed or seriously injured at work. Donations are tax deductible and we welcome contributions. More important is that we are looking for eligible scholarship recipients. If you know of an eligible child, please contact Kids' Chance in care of Jane Stone, who is on the founding board, at jstone@slsaustin.com, or call her at 512-343-1300. A big kick-off event is planned for the Fall, too, and if you or your company are interested in being a sponsor (with appropriate attribution), please let us know. The deadline for sponsorships is fast approaching.