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WORKCOMPNEWS ALERT - IMMEDIATE ATTENTION

CASE LAW UPDATE:

**Smith v. WCAB, Cal. Youth Auth. (State Comp. Ins. Fund)
(WCAB No. GRO 16225, 16226, 16352)
Amar v. WCAB, Mel Clayton Ford (State Comp. Ins. Fund)
(WCAB No. GOL 89438)
(Cases Consolidated for Appellate Review)
[Cite Pending]**

In a pair of cases consolidated for purposes of appellate review, the Court of Appeal, Second District, Division Six, issued a published opinion holding that applicant attorneys are entitled to fees under Labor Code § 4607 for efforts in obtaining awarded medical care for their clients following denial by the insurance carrier. Due to the possible impact of this opinion, a full summary case is provided and the reader is strongly advised to read the full case at:

<http://www.courtinfo.ca.gov/opinions/documents/B190054.PDF>

In *Smith v. WCAB*, the applicant sought epidural injections for his *back* eight years after obtaining an award for injury to his *neck, right shoulder and psyche* which included future medical care. When the request was denied, the applicant was ultimately ordered to be evaluated by an AME. The AME found the treatment request was appropriate and the treatment was thereafter authorized without the need of further action before the WCAB.

In *Amar v. WCAB*, the applicant had entered into a stipulated award including medical treatment consisting of weight-loss and also for diabetes, due to a right foot injury. Following utilization review, subsequent requests for weight loss and diabetes treatment were denied and ultimately denial of diabetes treatment was supported by the WCAB while the defendant was ordered to reinstate the weight-loss program.

Neither of the above cases involved a formal petition to terminate medical treatment pursuant to Labor Code § 4607.

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In both of the above cases, applicants requested fees for resisting proceedings to terminate an award of medical treatment pursuant to Labor Code § 4607.

In both cases, the Trial Judge as well as the WCAB denied applicant's request for fees and the appeal on the attorney fee issue ensued.

The Second District Court of Appeal, with Presiding Judge Gilbert authoring the opinion, and Judges Coffee and Perren concurring, held that applicant was entitled to fees under Labor Code § 4607 for resisting proceedings to terminate medical care under the above facts.

The Court relied upon the reasoning of a writ denied case, which stated that denial of a portion of previously awarded treatment is 'tantamount to a petition to deny medical care'. The Court continued, supporting their opinion by noting the liberal construction policy set forth in Labor Code § 3202, citing an additional writ denied case, and finally opining that there is no distinction in the efforts of an applicant attorney in opposing a formal petition to terminate medical care and an applicant attorney who must initiate proceedings to challenge the informal denial of medical care.

[Editor's Note: It should also be noted that if the Court's recitation of facts is correct, the applicant in Smith v. WCAB was not previously awarded future medical treatment for his back. Based on the Court's opinion, it is unclear how the epidural injection for the applicant's back was construed to be part of an award for future medical care to the applicant's neck, right shoulder or psyche.]

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