ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES

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RE: GEORGE THE BARTENDER AND THE FAMILY BUSINESS

FROM THE LOBBY BAR AT THE HYATT

As I eased into my customary seat at the lobby bar after a hard day denying benefits my ears were treated to a chorus of "We are Family" from a group of off key singers down at the other end of the bar.

On closer inspection, I observed none other than Dr. Nickelsberg and Dr. Ratbar, George the Bartender's treating physicians, along with Ron Summers, George's workers' compensation attorney, as well as two ladies and two teenagers that I had never seen before.

Although "We are Family" is one of my favorite songs, the refrain just now did violence to my ears.

To interrupt the chorus I announced to George that I was buying everyone a cocktail and once the singing stopped, I asked Ron what the celebration was about.

At this point Dr. Ratbar introduced the four people who I did not know, i.e., the wives of Drs. Ratbar and Nickelsberg and their sons.

I told Dr. Ratbar that I was pleased to meet his wife and that of Dr. Nickelsberg, as well as their two sons, but that did not explain the ongoing celebration.

My goal was to keep everyone talking so they would not start singing again. As I continued to buy rounds Ron explained.

As a result of what Ron referred to as the draconian reforms of SB899, Medical Provider Networks and Utilization Review, Dr. Ratbar and Dr. Nickelsberg suffered severe financial reverses as they were not able to put all of their workers' compensation patients into the usual four-year treatment program with multiple surgeries.

Not only that, but the advent of the state panel QME system, courtesy of Labor Code §4062.2, meant that they could not even charge their usual medical-legal expenses as QMEs, unless they were selected from a three-member panel by the parties. Dr. Ratbar unhappily noted that the panels were selected on a random basis by the DWC Medical Unit.

A beaming Ron went on to boast that it was he who came up with an idea for additional sources of revenue for the good doctors.

Ron knew that both Dr. Ratbar and Dr. Nickelsberg had gone to medical school together and that they met their wives while working as interns. Both Mrs. Ratbar and Mrs. Nickelsberg were registered nurses, which gave Ron the idea.

He told me proudly that he had incorporated Mrs. Nickelsberg and Mrs. Ratbar into a **life care planner** company. Ron then planned to review all of his cases, both open and closed, and forward demands to the defendant insurance companies and/or employers for a life care plan.

The new **life care planner** company Ron created for the doctors wives is to be called: **"Make a Wish - It May Come True."**

Ron went on to indicate that most insurance carriers did not respond to his demands and so he would simply self-procure his life care plan through the newly created "Make a Wish - It Could Come True" company.

Mrs. Nickelsberg and Mrs. Ratbar would then take turns interviewing his applicants as to their needs and suggesting very strongly that for orthopaedic injuries they needed a full time gardener and a pool maintenance man.

Ron told me that Dr. Nickelsberg, who Ron would designate as the Primary Treating Doctor, would then write a report indicating that gardening was detrimental to the applicant as a result of his orthopedic disability and that he should be prophylactically precluded from performing gardening.

Pool maintenance was necessary as Ron's clients needed to have **"aqua therapy"** to **"cure or relieve"** from their injuries. If his clients did not have a swimming pool he would make a demand that one be provided.

Ron explained that this is where the two teenage sons of Dr. Ratbar and Dr. Nickelsberg came in. Dr. Ratbar's son was a gardener and Dr. Nickelsberg's son was a pool maintenance man.

Ron further explained that this would generate monies for the life care planner company owned by Mrs. Nickelsberg and Mrs. Ratbar as their life care plans went for $3,500.00 per plan and would help defray college expenses for their sons by providing them with employment in the field of gardening and pool maintenance work.

I was somewhat aghast at this truly Machiavellian plan. After some reflection, I recalled the recent Court of Appeal decision in California Nurse Life Care Planning, Inc. v. WC.

In California Nurse Life Care Planning, Inc.[1] the Court of Appeal had denied the lien of California Nurse Life Care Planning, Inc., concluding that a life care planner was not a reasonable and/or necessary expense to prove a contested claim.

In its panel decision in Corniel v. Kasler Corporation the Board held that gardening services and/or pool maintenance services are not reasonable and/or necessary medical expenses pursuant to Labor Code §4600.

Ron interrupted my thought process with his boast that the minute a life care planning company served its report on the defendant carrier this greatly increased the value of the case for settlement - especially when the carrier realized that they could be paying for the applicant's gardening, housekeeping and pool maintenance services for the rest of the applicant's life.

I told Ron that I hated to rain on his parade but that in California Nurse Care Life Planning, Inc. it was found that a life care plan is not a necessary medical-legal expense and therefore there would be no reimbursement for the creation of these plans to Mrs. Nickelsberg and Mrs. Ratbar.

I went on to advise Ron that a life care plan could only conceivably be relevant if the carrier not only agreed to the preparation of the life care plan but the parties were basing a settlement agreement on the life care plan.

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[1] Anyone wishing copies of the California Nurse Life Care Planning, Inc. case or Sebastian Corniel vs. Kasler Corporation case should make the request by e-mail.

I also advised Ron that with the advent of the Medicare Set Aside Trust which the parties prepared for Medicare and approval by CMS in cases they desire to settle by C&R, life care plans have gone by the wayside.

As far as the applicant's entitlement to Labor Code §4600 treatment is concerned this issue cannot be decided by a life care planner (such as Mrs. Nickelsberg and Mrs. Ratbar) but by the applicant's primary treating physician, who in this case would be Dr. Nickelsberg.

A crestfallen Ron looked at Drs. Nickelsberg and Ratbar and said, "Well, back to the drawing board."

DISCLAIMER

Although the above story is my creation and my creation alone - the issues presented are, unfortunately, real.

Life care planners have become the new cottage industry, at least in Southern California. The cost of a so called life care plan is running between $3,500.00 to $4,500.00.

Most life care planners have ties with applicant attorneys and quite frequently are recommended by name.

As soon as a life care planner gets hold of your case they (usually a registered nurse) begin making the recommendations for so called medical treatment which quite frequently involves housekeeping services, a full time gardener and at times a pool maintenance man.

Make mine a double, George.

– Joe Truce

WJT/dgh