I N T E R - O F F I C E M E M O R A N D U M

TO: ATTORNEYS & CLIENTS

FROM: W. Joseph Truce

DATE: November 12, 2006

RE: **George's Doctor and the Medicare Limitations**

FROM THE LOBBY BAR AT THE HYATT:

As usual the bar was packed on a Friday night and I was unwinding with my third martini after a rough day denying benefits when suddenly another drink appeared. I told George the Bartender that I had not ordered another martini and three was my limit. George smiled and pointed to a very distinguished silver haired gentleman sitting next to me who, as it turned out, was buying drinks for the house. I thanked the stranger who introduced himself as Dr. Nickelsberg.

After a couple more cocktails I asked Dr. Nickelsberg why he was in such a generous mood and the good Doctor told me he was a good friend and business associate of George's attorney and that he had learned how to beat the system which he proceeded to explain to me: Dr. Nickelsberg, in partnership with some other applicant's doctors, owns several unaccredited hospitals on which he is "on staff." George's attorney refers him a great many of his clients and he becomes the PTP and immediately certifies these "patients" for social security disability and Medicare/Medical and, once certified, he admits them to one of his hospitals whether or not he receives authorization from the carrier.

These patients are admitted for up to two weeks and while in the hospital receive epidural injections and other pain management modalities. Dr. Nickelsberg then bills Medcare/Medi-cal, accepts payment, and then doubles his billing and bills the insurance carrier. I call this balance billing Dr. Nickelsberg said proudly! After making sure I had downed my third free drink I asked Dr. Nickelsberg whether or not he had ever heard of the Board's decision in the Wayne Browner case which expressly prohibited such practice. Looking concerned the Dr. said no so I explained:

The WCAB in Browner filed their decision on 4/15/05 expressly finding that a lien claimant's recovery is limited to the amounts "allowed as Medi-Cal benefits," The decision in Browner is premised on a California Supreme Court decision in **Olszewski v. Scripps Health (2003) 30 Cal. 4th 798 and therefore even though Browner is a panel decision for all practical purposes it is binding precedent. In Browner the Board made in clear that once a medical provider accepts payment from Medi-Cal said lien claimant is barred as a matter of law from "balance billing" the defendant and it's charges are limited to the amounts "allowed as Medi-Cal Benefits."**

Sadly, we as an industry have probably paid hundreds of thousand of dollars to medical

providers who have neglected to mention that they have also accepted payments from Medi-Cal. Whenever we have a case in which an injured worker that might qualify for social security disability benefits of Medicare is admitted to an in patient or out patient facility or is receiving treatment and the source of payment is not apparent there is a better than even chance that the medical provider may have billed and accepted payment from Medi-Cal and therefore are prohibited from "balance billing."

We all issue subpoenas on a regular basis for medical records that we perceive as relevant to our case and we would recommend that the subpoena also call for the billings records, accounts receivable documents and any and all records as to payments received FROM ANY SOURCE WHATSOEVER including but not limited to Medicare and Medi-Cal. If anyone wishes a copy of the Browner decision please advise by e mail.--Make mine a double George.---joe truce