

# INTER-OFFICE MEMORANDUM

**TO:** ATTORNEYS & CLIENTS

**FROM:** W. Joseph Truce

**DATE:** January 10, 2007

**RE:** **George and the Pre-designation Statute**

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## **FROM THE LOBBY BAR AT THE HYATT:**

George the Bartender had just finished pouring my second martini when a beaming Dr. Nickelsberg sat down beside me. After a hard day denying benefits I tried to ignore the good doctor but it was no use. "I have great news" gushed Dr. Nickelsberg: "George has just pre-designated me as his personal physician pursuant to L.C. 4600 for all his future comp injuries"

Since he could not be ignored I asked whether Dr. Nickelsberg met all the requirements of L.C. 4600 as amended by SB 899. Dr. Nickelsberg proudly went down the requirements of L.C. 4600 as follows: Dr. Nickelsberg is a physician and surgeon licensed pursuant to Division 2 of the Business and Professions Code; he is George's primary care physician as he treated George for all of his prior WC cases; and, lastly, he certainly agrees to George's pre-designation. And, he added, George's employer provides nonoccupational health care (Group Health) thru Health Net which is a condition precedent in allowing an employee to pre-designate a physician pursuant to L.C. 4600. "Yes," glowed Dr. Nickelsberg, "with George's help I plan to represent AND care for all of the employee of the Hyatt."

**Throwing rain on Dr. Nickelsberg's parade I asked if he had bothered to read the rest of the pre-designation statute. Gathering from the puzzled look on Dr. Nickelsberg's face I concluded that he had not and after taking a sip from my third martini I explained that any employee who pre-designates a physician under L.C. 4600 as amended by SB 899 takes himself out of the comp system.**

**Dr Nickelsberg did not bother to read the entire pre-designation provisions of L.C. 4600 as the pre-designation statute goes on to state that once there has been a pre-designation "all medical treatment, utilization review of medical treatment, access to medical treatment, and other medical treatment issues shall be governed by Chapter 2.2 [commencing with Section 1340] of Division 2 of the Health and Safety Code."**

**Please note that the statute DOES NOT refer to the Labor Code but to the Statutes that govern the administration of Group Health benefits. Therefore in George's case all decisions as to medical treatment WILL NOT BE MADE BY THE ADJUSTER FOR THE COMP CARRIER but by the Group Health carrier. In other words when George needs to see a specialist he will have to go thru Health Net and the Group Health carrier will also make all decisions as to payment of the bills of Dr. Nickelsberg.**

**If there is a dispute over the provision of medical treatment George's attorney cannot file for an expedited hearing as L.C. 4600 goes onto state that all disputes of pre-designated doctors shall be resolved "pursuant to Article 5.55 [commencing with Section 1374.30) of Chapter 2.2 of Division 2 of the Health and Safety Code. PLEASE NOTE THAT ONCE AGAIN THE LABOR CODE IS NOT REFERENCED. Section 1374 provides a very cumbersome and difficult to understand appeal process which is the same appeal process that we would use in disputing a decision of our own Group Health Carrier when treating for non occupational injuries. All appeals will be decided by a State Agency called the Department of Managed Care. Imagine an adjuster handling an account where all injured workers pre-designated their physicians thereby taking all medical issues including utilization review, bill review, etc., away from the adjuster and putting the responsibility on the Group Health carrier. If applicant's attorneys think the ACOEM protocols are conservative wait until they come face to face with the Utilization Review Guidelines used by Group Medical Carriers.**

**I would think the last thing an applicant's attorney would want to do is pre designate a physician and take the injured worker out of the comp system.--Make mine a double George**

**Disclaimer: The above story is another example of my warped imagination and is entirely fictional. The opinions expressed above are mine but it would not appear that the pre-designation provisions of Labor Code 4600 can be read any other way or why would the Legislature refer to the Group Health provisions of the Health and Safety Code in the first place. Most of us in reading the pre-designation statute stop where Dr. Nickelsberg did--right before the paragraph giving all medical decisions to the Non Occupational Group Health Carrier. However my fun over trying to interpret this incredible statute may be short lived as the pre-designation section of L.C. 4600 will be repealed on 4/30/07 unless the Legislatures takes action.**