

# INTER-OFFICE MEMORANDUM

**TO:** ATTORNEYS & CLIENTS

**FROM:** W. Joseph Truce

**DATE:** June 5, 2006

**RE:** **George tries to get out of the MPN**

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

After my first martini , I advised George the bartender that one of the best things about SB 899 was that it allowed employers and/or insurance carriers to retain medical control. George's response: "of course I can go to any doctor I want even though the Hyatt has an MPN as my employer has not complied with either LC Section 3550(e) or Administrative Rule 9767.12." George's opinion is supported by a recent panel decision of the WCAB entitled *Metoyer v. Zenith Insurance Company* filed December 5, 2005.

In *Metoyer* the applicant sustained an admitted industrial injury, retained an attorney who then sent him to a doctor that was not in the Zenith MPN.

The applicant testified at trial that he was never advised properly as to Zenith's MPN. Applicant also stated that Notice had not been posted on the employer's premises on how to utilize the physicians in the MPN pursuant to LC Section 3550(e). Applicant further testified that the defendant had not complied with new Administrative Rule 9767.12 requiring the Claims Administrator and/or employer "to notify each covered employee in writing about the use of the MPN before implementation of the plan at the time of hire, or when an existing employee transfers into the plan..." The WC Judge ruled that the employee was not legally required to utilize physicians within the MPN as the employer did not post a conspicuous notice as to the provisions of the MPN pursuant to LC Section 3550(e) nor did the employer and/or insurance carrier comply with Administrative Rule 9767.12 with respect to notice employees of the MPN.

The panel decision in *Metoyer* is reported in the California Workers' Compensation Reporter (34 CWCR 14).

We want to encourage our clients that have Medical Provider Networks to bend over backwards to communicate in writing the information on how to access the MPN and comply with the notice requirements of LC Section 3550(e) and Administrative Rule 9767.12.

Make mine a double, George....