

## **ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES**

For past installments of the *George the Bartender* series, please visit our web site at <http://www.kttlaw.us/memos.html>

### **RE: GEORGE THE BARTENDER SUES DR. NICKELSBERG FOR TRIPLE DAMAGES AND ATTORNEY'S FEES PURSUANT TO L.C. §3751**

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

When I arrived at the lobby bar after a hard day of denying benefits, it was obvious that George the Bartender was quite upset. Despite my repeated attempts, I could not get George's attention as he was deeply involved in an argument with his treating physician, Dr. Nickelsberg, while Ron Summers, George's attorney, was trying to mediate the dispute.

As it appeared George would be engaged in this verbal altercation with Dr. Nickelsberg for some time, I ordered my Beefeater's martini, straight up with two olives, from Kim, the Hyatt's breathtakingly beautiful cocktail waitress.

Kim saw the quizzical look on my face and explained to me that the argument was over money.

Kim told me that Dr. Nickelsberg, while treating George for his carpal tunnel syndrome, billed George directly as the good doctor was not satisfied with the reimbursement he was receiving from the bill review company representing the Hyatt's insurance carrier.

I already knew about George's carpal tunnel claim, which was based on the repetitive serving of martinis to me. George's claim was accepted and George's attorney designated Dr. Nickelsberg as George's primary treating physician.<sup>1</sup>

At this point the yelling match between George and Dr. Nickelsberg ended with the doctor making a quick exit from the lobby bar. Ron then filled me in on the latest legal developments in George's case. Ron told me that they had gone to trial today on George's lien for self-procured medical treatment. George was seeking reimbursement from the defendant for the monies he paid to Dr. Nickelsberg.

Ron sadly told me that the Workers' Compensation Judge (WCJ) had denied reimbursement on the basis of Labor Code §3751. As Ron was unfamiliar with this statute he had to borrow a Labor Code.

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<sup>1</sup>Dr. Nickelsberg was actually designated as the PTP by George's attorney, Ron Summers. It always amuses me that ever since 1977 we have referred to an injured worker's free choice of physician but in reality the physician is selected by their attorney. When the Legislature amended Labor Code §4600 in 1977 to provide that the applicant could select his/her physician after 30 days from notice of the injury, I am sure that the Legislature was contemplating a selection somewhere between Dr. Kildare or Dr. Welby. Instead we got Dr. Seuss. No wonder we have the Medical Provider Networks now.

**RE: GEORGE THE BARTENDER SUES DR. NICKELSBURG FOR TRIPLE DAMAGES AND ATTORNEY'S FEES PURSUANT TO L.C. §3751**

July 21, 2008

Page 2

Labor Code §3751 provides in relevant part as follows:

**“If an employee has filed a claim form pursuant to §5401, a provider of medical services shall not, with actual knowledge that a claim is pending, collect money directly from the employee for services to cure or relieve the effects of the injury for which the claim form was filed, unless the medical provider has received a written notice that liability for the injury has been rejected by the employer and the medical provider has provided a copy of this notice to the employee. Any medical provider who violates this subdivision shall be liable for three times the amount unlawfully collected, plus reasonable attorney’s fees and costs.” (Emphasis added.)**

Ron went on to tell me that the WCJ ruled that the defendant’s carrier’s only liability was to pay for medical treatment pursuant to Labor Code §4603.2, which mandated that the medical provider (Dr. Nickelsberg in this case) must submit all billings to the defendant along with all reports and/or documents as required by the Administrative Director.

Once the medical provider has complied with Labor Code §4603.2, the defendant must then respond by either payment of said medical bills or an objection as provided by said section.

The WCJ went on to note that Dr. Nickelsberg had other legal options open to him, other than charging George directly. Dr. Nickelsberg could have filed a lien with the Board, along with a Declaration of Readiness to Proceed to enforce payment of his bills.

Ron then glumly told me that once George read Labor Code §3751 he felt he was entitled to “three times the amount unlawfully collected, plus reasonable attorney’s fees and costs,” directly from Dr. Nickelsberg.

L.C. §3751 poses several unanswered questions such as:

- (1) Who has the right to bring an action under this section? It doesn’t say. Maybe the defendant can also bring an action directly against the medical provider.
- (2) Should an action pursuant to L.C. §3751 be filed in Superior Court or at the WCAB? I would say the Board, but your guess is as good as mine.

**DISCLAIMER:**

The above characters, story and mythical trial before the Board are, of course, a work of fiction.

However, Labor Code §3751 clearly indicates that a medical provider cannot charge an injured worker for services unless the medical provider has received a written notice “that liability for the injury has been rejected.” Please note the statute does not refer to a partial denial, such as a denial of a body part or a claim that said treatment is unreasonable or unnecessary.

**RE: GEORGE THE BARTENDER SUES DR. NICKELSBURG FOR TRIPLE  
DAMAGES AND ATTORNEY'S FEES PURSUANT TO L.C. §3751**

July 21, 2008

Page 3

Therefore, when we have a request for reimbursement for self-procured medical treatment consisting of a claim for reimbursement for medical bills paid by the injured worker, we want to determine first whether or not liability for the injury has been rejected. If not, it would not appear that we have liability for reimbursement to the applicant as the medical provider cannot bill the injured employee directly pursuant to Labor Code §3751.

As I finished my second martini, I thought about Dr. Nickelsberg having to reimburse George "three times the amount unlawfully collected" in addition to reasonable attorney's fees and costs.

The very thought induced me to say:

"Make mine a double, George."

WJT/jrh