

## **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 AND THE GREAT MATTRESS DEBATE**

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

After a hard day denying benefits, I arrived at the lobby bar to find Dr. Nickelsberg, George the Bartender's primary treating physician, in conference with his brother-in-law, Felix Feather. Felix is the operator of a medical wholesale store owned jointly by him and the good doctor.

Dr. Nickelsberg and Felix were apparently concerned over the Board's decision in *Christopher Gerkins v. Villa Automotive; State Compensation Insurance Fund* (ADJ924376) in which the Board disallowed a mattress recommended by Dr. Nickelsberg for one of his workers' compensation patients.

Felix's medical rental company, Feathers R Us, specializes in all sorts of feel-good durable goods, such as soft mattresses, down pillows and other orthotics to assist applicants who have sustained orthopedic injuries.

As Dr. Nickelsberg had a monetary stake in Felix's enterprise, the good doctor was understandably concerned with the Board's decision in *Gerkins*.<sup>1</sup>

In its panel decision in *Gerkins* the Board noted that the defendant's Utilization Review Denial, by its UR physician, Dr. Reaper, was in response to a request for authorization for an orthopedic mattress by the applicant's primary treating physician, Dr. Andrew Monroy.

Dr. Reapers' Utilization Review report advised that the authorization for the mattress "should be denied because there are no quality studies reported on sleep posture or the use of specific commercial products (i.e., pillows, mattresses, etc.) to prevent or treat low back pain."

However, the applicant's attorney correctly went through the AME/QME procedure to rebut the Utilization Review determination and the Agreed Medical Examiner (AME), Dr. Schwartz, while admitting that the ACOEM Guidelines do not cover such devices as mattresses, commented as follows:

"However, from a medical point of view, patients with lower back difficulties certainly do benefit from an improved mattress."

The trial judge then determined that the opinion of the AME was more convincing and persuasive and allowed the recommendation for the orthopedic mattress.

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<sup>1</sup> At this point I won't even go into the apparent violation of Labor Code §139.3, which would presumably prohibit Dr. Nickelsberg from an ownership stake in Felix's company.

In granting defendant's Petition for Reconsideration and denying the request for the mattress the Board analyzed the evidentiary record and stated as follows:

The problem with the WCJ's award in this case is not a legal one, i.e., the mattress may never be awarded as medical treatment. The problem is that the decision lacks evidentiary support . . .the September 12, 2008 UR report of Dr. Reaper states that there are no quality studies establishing that the use of mattresses is beneficial in preventing or treating low back pain . . . Dr. Schwartz agrees with Dr. Reaper that there is no scientifically based evidence demonstrating that mattresses are beneficial in the treatment of low back pain. No reporting physician has explained how a mattress is reasonably required medical treatment pursuant to the ACOEM Guidelines or any other scientific medical evidence."<sup>2</sup>

As I finished my thought process in analyzing *Gerkins* I told an ashen-faced Dr. Nickelsberg that in prescribing feel-good products for his patients he was going to have to justify that said product was premised on evidence based guidelines.

I reminded Dr. Nickelsberg of the amendment to Labor Code §4600, courtesy of SB 899, which mandates in Subsection (b) that all medical treatment must comply with the guidelines adopted by the Administrative Director pursuant to Labor Code §5307.27 which incorporates the ACOEM Guidelines.

A simple conclusion that a feel-good product provides temporary relief of pain will not suffice.

**DISCLAIMER:**

All of the characters of the Lobby Bar with the exception of Kim, George, and I are imaginary, as is the story line. However, the cost savings of the ACOEM Guidelines are not.

The applicant industry for years has been providing feel-good products to applicants such as mattresses, special pillows, etc. These items are far beyond the reach of an employer's obligation to provide medical treatment pursuant to Labor Code §4600.

The California workers' compensation system was the last medical benefits delivery system in the country, perhaps the world, to utilize evidence-based guidelines for analyzing the effectiveness of medical treatment. It was about time!

Make mine a double, George.

-Joe Truce

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<sup>2</sup> Anyone wishing a copy of the Board's panel decision in *Gerkins* should request same by email. A panel decision by the Board can be admissible as evidence pursuant to Labor Code §5703(g).