

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**300 West 15<sup>th</sup> Street, Suite 502**  
**Austin, Texas 78701**

**DOCKET NO. 453-03-1484.M5**  
**[MDR TRACKING NO. M5-02-2843-01]**

**VONO,**  
**Petitioner,**

**V.**

**Bexar County,**  
**Respondent.**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. INTRODUCTION**

VONO (Petitioner or Provider) has appealed the decision of the Medical Review Division (MRD) denying its request for reimbursement of \$7100.10 from the \_\_\_\_\_ for the cost of multiple prescription medications prescribed by Claimant's physician. The only issues are whether the prescriptions were medically necessary and reasonable.

As set out below, the Administrative Law Judge (ALJ) finds that the prescriptions were both medically necessary and reasonable and that reimbursement of \$7100.10 is due. The particular facts and reasoning in support of this decision are set forth below in the Findings of Fact, and the legal conclusions derived from those facts appear in the Conclusions of Law.

The ALJ convened and closed a hearing on these issues on April 9, 2003. Petitioner appeared and was represented by Nicky Otts. Respondent \_\_\_\_\_ appeared and was represented by Dean G. Pappas, attorney. The evidence consisted of four multipage exhibits.

Pharmacy reimbursement cases are difficult. Here, the pharmacy filled a prescription that was issued by a physician who was treating the Claimant for his worker's compensation injury. The Carrier's dispute concerns whether the treating physician should have prescribed the medication in the first place. The pharmacy is merely the means of delivery of the medication to the patient. It is caught in a difficult position. If the pharmacy fills the prescription, it runs the risk that it will not be reimbursed by the Carrier. If the pharmacist makes substantive decisions about whether or not the medication should have been prescribed at all, the pharmacist may be accused of practicing medicine without a license.

Petitioner notes that previous SOAH decisions have found that some reduced standard should apply to pharmacy reimbursement causes because of the position they find themselves. The ALJ finds that because the Oxycontin was so expensive on a per unit dose as compared with other pain medications, this particular pharmacy should not have a reduced duty to make some assessment about medical necessity. Because of the extraordinary per unit cost of this pain medication the

pharmacy should take some extra steps to verify the medical necessity of this expensive drug if it wishes to be reimbursed by a third party. In this case, VONO has presented documentation that supports the issue of medical necessity to the level a pharmacy should be obligated to show.

## II. FINDINGS OF FACT

1. The Claimant, \_\_\_\_\_ sustained a compensable work-related injury on \_\_\_\_\_, while employed by \_\_\_\_\_. He slipped and fell on stairs and suffered injury to his left knee.
2. On January 14 and 31, 2000, Claimant was examined by Dr. Frank H. Garcia, M.D., and was diagnosed as having a partial tear of the anterior cruciate ligament, as well as the medial and lateral ligaments.
3. On March 1, 2000, Dr. Garcia performed arthroscopy on Claimant's left knee. Dr. Garcia prescribed strengthening and progressive weight-bearing as recovery therapy.
4. On July 22, 2000, after undergoing physical therapy for rehabilitation of the knee, Dr. Garcia referred Claimant to Dr. Avila to address some chronic knee pain issues not resolved by the surgery and rehabilitation.
5. Dr. Avila first treated Claimant for knee pain on July 26, 2000, and at that visit Claimant was prescribed expensive (compared to lesser expensive pain medications) time-release Oxycontin for pain relief.
6. Over the course of Dr. Avila's treatment of Claimant, he prescribed Oxycontin, Oxyir, Zanaflex, and Roxicodone to treat Claimant's knee pain.
7. VONO (Provider) filled prescriptions ordered for Claimant by Avila for the following dates of service: September 17, 2001, October 17, 2001, and November 16, 2001.
8. The collective cost of those prescriptions was \$7100.10.
9. \_\_\_\_\_ denied reimbursement to the Provider for the cost of the prescriptions, claiming that the medications were not helpful in addressing Claimant's injury.
10. Between September 17, 2001, and the middle of December, 2001, Claimant needed long-acting opiates to address his chronic knee pain. Oxycontin was the main long-acting opiate Dr. Avila prescribed for that pain.
11. While MS Contin would have also treated Claimant's pain, it is more expensive than Oxycontin. Methadone, at an equivalent dose, would have been effective in controlling pain and would have been less expensive, but it had a greater side effect profile than Oxycontin and could have been a difficult transition for the Claimant.
12. On May 9, 2002, the Provider filed a request for medical dispute resolution with the MRD, asking for reimbursement of \$7100.10 for the above-described prescriptions.
13. On November 8, 2002, the MRD denied Provider's request for reimbursement.

14. On November 14, 2002, the Provider appealed the MRD's decision to the State Office of Administrative Hearings (SOAH).
15. On December 13, 2002, notice of a hearing in this case was mailed to the Carrier, Provider, and the TWCC APA Litigation Section.
16. On April 9, 2003, Bill Zukauckas, a SOAH ALJ, held a hearing in this matter.

### **III. CONCLUSIONS OF LAW**

17. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented in this case, pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.
18. The State Office Of Administrative Hearing has jurisdiction over matters related to the hearing in this case, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
19. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
20. As the party appealing the MRD decision, the Provider has the burden of proof in this matter, pursuant to 28 TEX. ADMIN. CODE (TAC) §148.21(h).
21. Under TEX. LABOR CODE § 408.021 (a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:
  - (1) Cures or relieves the effects naturally resulting from the compensable injury;
  - (2) Promotes recovery; or
  - (3) Enhances the ability of the employee to return to or retain employment.
22. Because the prescriptions at issue were prescribed and filled before March 1, 2002, the Medical Fee Guideline for Medical Treatments and Services is applicable. 28 TAC § 134.500(b).
7. The statements of medical necessity provided September 19, 2001, and after the fact on January 11, 2002, by Dr. Fernando Avila, satisfy the requirements of 28 TAC § 134.1003(e)(4).
8. The medications Oxycotin, Oxyir, Zanaflex, and Roxycodone were necessary to treat Claimant's knee pain for the dates of service in question.
9. Based on the above Findings of Fact and Conclusions of Law, Petitioner proved by a preponderance of the evidence that the prescriptions used in Conclusion of Law No. 8, sold

to Claimant by Petitioner on September 17, October 17, and November 16, 2001, are medications that were reasonably required and medically necessary to promote his recovery from the effects of a compensable injury suffered by Claimant, within the meaning of TEX. LABOR CODE §§ 408.021 and 401.011(19)(E).

10. Petitioner is entitled to reimbursement for the prescriptions under TEX. LABOR CODE § 413.015.
11. Based on the above Findings of Fact and Conclusions of Law, the Provider's request for reimbursement of \$7100.10 for prescriptions for the three-month period should be granted.

**ORDER**

IT IS ORDERED THAT the Petitioner's request for reimbursement of \$7100.10 from the Carrier is granted, and \_\_\_\_\_ is ORDERED to reimburse VONO this amount.

**Signed this 19th day of May, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**BILL ZUKAUCKAS  
ADMINISTRATIVE LAW JUDGE**