

DOCKET NO. 453-03-2108.M4
MDR TRACKING NO. M4-02-4712-01

THE UNIVERSITY OF TEXAS SYSTEM,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
RICHARD TAYLOR, D.O.	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The University of Texas System (Carrier) appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD), which ordered Carrier to reimburse Richard Taylor, D.O. (Provider), \$314.00 for injections rendered to Claimant _____. In this decision, the Administrative Law Judge (ALJ) finds that Provider is entitled to full reimbursement for the injections.

I.
JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, and notice. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed on May 8, 2003, at the State Office of Administrative Hearings (SOAH) before Steven M. Rivas, ALJ. Carrier was represented by Paige Duncan, attorney. Provider was represented by Dick Swift, attorney.

II.
DISCUSSION

A. Background Facts

Claimant sustained a compensable back injury on ____, and was referred to Provider as part of her treatment. On November 14, 2001, Stephen Hardin, a Physician Assistant (P.A.) employed by Provider, administered a series of nerve block injections to Claimant's back. Provider billed Carrier \$314.00 for the injections, and Carrier denied payment because it asserted Provider was not registered as Mr. Hardin's supervising physician at the time Mr. Hardin administered the injections. Provider filed a request for Medical Dispute Resolution (MDR) with the Commission's MRD, which ordered full reimbursement. Carrier filed a request for hearing before SOAH.

B. Applicable Law

Under the licensing statute for Physician Assistants, TEX. OCC. CODE ANN § 204.204, a physician assistant shall be supervised by a supervising physician. A physician assistant may have more than one supervising physician. The supervising physician oversees the activities of, and accepts responsibility for, medical services provided by the physician assistant. Also, the supervision must be continuous, but does not require the constant physical presence of the supervising physician where physician assistant services are being performed. However, if a supervising physician is not

present, the supervising physician and the physician assistant either must be in contact with each other by radio, telephone, or another telecommunication device, or have access to that mode of communication.

The provisions of TEX. OCC. CODE ANN § 204.205 stipulate that a supervising physician must:

- (1) hold an unrestricted and active license as a physician in this state;
- (2) notify the medical board of the physician's intent to supervise a physician assistant;
- (3) submit to the medical board a statement that the physician will:
 - (1) supervise the physician assistant according to medical board rule; and
 - (B) retain professional and legal responsibility for the care provided by the physician assistant; and
- (4) receive approval from the medical board to supervise the physician assistant.

C. Evidence and Analysis

Carrier denied reimbursement based solely on its contention that Provider was not registered as Mr. Hardin's supervising physician with the Texas State Board of Physician Assistant Examiners (the Board)¹ at the time Mr. Hardin administered the injections to Claimant. Both parties agreed Mr. Hardin was issued his temporary P.A. license on October 19, 2001, and received his regular license on November 1, 2001. On November 30, 2001, Mr. Hardin received his full P.A. certification.

According to Provider, he submitted the appropriate notice of intent form to the Board on September 17, 2001. Mr. Hardin held a temporary license at the time he administered the injections to Claimant on November 14, 2001, and Provider argued his tenure as Mr. Hardin's supervising physician began October 19, 2001, the day Mr. Hardin was issued his temporary license.

Provider asserted he submitted the appropriate documents to the Board in March of 2002, to add Robert J. Byrnes, D.O., as Mr. Hardin's co-supervising physician. Later, Provider testified, he was informed that due to "clerical errors," Provider had not been named co-supervising physician, but instead had been deleted as Mr. Hardin's supervising physician and replaced by Dr. Byrnes.

Carrier asserted it informed Provider that he was not listed as Mr. Hardin's supervising physician when it denied payment for the injections.² As a result, Provider testified he contacted the Board and informed them he intended to be named Mr. Hardin's co-supervising physician with Dr. Byrnes, as permitted under TEX. OCC. CODE ANN § 204.204. Provider testified the Board admitted he was deleted as Mr. Hardin's supervising physician because of clerical errors, and that he was informed by the Board his supervisory status of Mr. Hardin would be backdated to October 19, 2001.

Carrier called Joyce Maxam, R.N., to the stand. Ms. Maxam is the Director of Medical Services at Medical Business Management Services, and asserted that she too contacted the Board and was informed the Board did not intend to backdate Provider's supervisory status. Furthermore,

¹ Under TEX. OCC. CODE ANN § 204.051, the Texas State Board of Physician Assistant Examiners is an advisory board to the Texas State Board of Medical Examiners.

² The date of service was November 14, 2001, and Provider's name was deleted as Mr. Hardin's supervising physician in March of 2002. Apparently Carrier did not confirm Provider's supervisory status until four months after the date of service.

Ms. Maxam testified, the Board informed her that due to budget constraints, it had not been able to properly address Provider's dilemma.

The ALJ would have benefitted from testimony of a Board representative because neither party had any compelling evidence to support the conflicting positions of the Board. The only evidence that clerical errors caused Provider's non-supervisory status was Provider's testimony of a conversation he had with a Board representative, who allegedly spoke of clerical errors. Consequently, the only evidence that the Board did not intend to backdate Provider's supervisory status was Ms. Maxam's testimony of a conversation she had with a Board representative, who allegedly informed her that budget constraints prevented the Board from properly addressing this matter.

The only real evidence that addresses Provider's supervisory status was Carrier's Exhibit #2, a five page letter from the Board.³ Page three appears to be a printout of a computer screen that clearly indicates Provider's supervisory status of Mr. Hardin began on October 19, 2001, the date asserted by Provider in his testimony. Carrier argued that although that appears to be the case, that was not the Board's intention. Unfortunately for Carrier, it presented insufficient evidence to clarify or dispute the apparent intent of the Board.

The ALJ additionally agrees with Provider that, notwithstanding budget constraints, it would have been highly imprudent if the Board agreed to backdate Provider's supervisory status unless it knew good cause to backdate existed.

D. Conclusion

The ALJ cannot assume the Board's intentions were anything other than what is reflected on page three of Exhibit #2. For the foregoing reasons, the ALJ concludes Provider was Mr. Hardin's supervising physician as required under TEX. OCC. CODE ANN § 204.204, at the time Mr. Hardin administered the injections to Claimant on November 14, 2001. Consequently, Provider is entitled to full reimbursement.

III. FINDINGS OF FACT

1. Claimant, ____, suffered a compensable injury on ____.
2. As a result of her compensable injury, Claimant was referred to Richard Taylor, D.O. (Provider), for treatment.
3. On November 14, 2001, Claimant was administered injections as part of treatment by Stephen Hardin, a Physician Assistant (PA) employed by Provider.
4. Provider billed the University of Texas System (Carrier) \$314.00 for the injections, which Carrier denied, because it argued Provider was not registered as Mr. Hardin's supervising physician.

³ Labeled as "State's Exhibit #2," a five-page document from the Board dated March 28, 2003. Page three appears to be a printed computer screen display titled "Supervising Physician Inquiry." Provider is listed as the supervising physician, and Mr. Hardin is listed as a P.A. under Provider's supervision, effective October 19, 2001.

5. Provider requested medical dispute resolution with the Texas Workers' Compensation Commission's (the Commission) Medical Review Division (MRD) seeking reimbursement for the injections administered to Claimant.
6. On November 13, 2002, the Commission's MRD found Provider was entitled to full reimbursement.
7. Carrier filed a request for hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing was sent April 2, 2003.
9. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The hearing convened and closed on May 8, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Carrier was represented by Paige Duncan, attorney. Provider was represented by Dick Swift, attorney.
11. Provider was registered with the Texas State Board of Physician Assistant Examiners (the Board) as Mr. Hardin's supervising physician beginning October 19, 2001.
12. In March of 2002, the Board deleted Provider as Mr. Hardin's supervising physician due to clerical errors when Provider attempted to add Robert J. Byrnes, D.O., as a co-supervising physician of Mr. Hardin.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. The Carrier, as Petitioner, has the burden of proof in this matter under 28 TEX. ADMIN. CODE § 148.21(h).
5. Provider was Mr. Hardin's supervising physician when Mr. Hardin administered the injections to Claimant on November 14, 2001.

6. Pursuant to the foregoing Findings of Facts and Conclusions of Law, Provider is entitled to full reimbursement for the injections administered to Claimant on November 14, 2001.

ORDER

IT IS, THEREFORE, ORDERED that Carrier, University of Texas System, pay Provider, Richard Taylor, D.O., \$314.00, for the injections administered to Claimant on November 14, 2001.

Signed this 7th day of July, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE