



2013 DWC EDUCATIONAL CONFERENCE

Section 4616.3(a) Changes (WHEN to IF) the Employee notifies the employer of the injury - the employer shall arrange an initial medical evaluation and treatment.

Section 4616.3(b) Employer shall notify employee of the MPN and of the right to change treating doctors within the MPN after the first visit. (NOT NEW)

Note:* This sentence has been added to §4616.3(b), "Employer's failure to give notice or post notice alone, will not be a basis for treating outside the MPN - must show the failure to provide notice results in a Denial of medical care."

Note:* Section 3550 was not deleted. It still states that Employer shall post and keep posted Notice of WC Rights, including the right to receive medical and the right to select and change the treating doctor. Section 3550(e) states that failure to provide notice shall automatically permit the employee to treat with their own personal doctor.

Question 1: Is section 3550(e) still alive when dealing with MPN issues?

Question 2: What is meant by the term "denial of medical care"? See *Knight v. UPS* (2006, Appeals Board en banc), 71 Cal. Comp. Cases 1423.

Section 4616(a)(1) Now includes an entity that provides physician network services as one who can establish a MPN. Before SB 863, only the employer or insurer could establish the MPN's. Still requires that the MPN shall include doctors primarily engaged in treatment of occupational injuries. The requirement of getting to 25% of the doctors primarily treating non-industrial conditions has been stricken.



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Section 4616(a)(2) Still requires that medical treatment shall be readily available at reasonable times to all injured employees.

Question 1: How many doctors turning down applicant's request for Treatment will allow them to go outside the MPN? What happens if there are still three or more doctors to call, does it matter?

Question 2: What if doctor's office says, "Send me your file, and after the doctor looks it over, we will let you know if we can take you as a patient"? If there are only two doctors left on the list, is that enough to treat outside the MPN?

Section 4616(b)(1) Last sentence of this section reads as follows:

“Upon a showing that the medical provider network was approved or deemed approved by the administrative director, there shall be a conclusive presumption on the part of the appeals board that the medical provider network was validly formed.”

Question: Are there any circumstances under which the MPN's validity can be rebutted? What if applicant can prove fraud?

Sections that become effective January 1, 2013

Section 4603.2(a)(3) If the employer objects to employee's selection of a treating doctor outside the MPN and the Judge makes a final determination that the employee was not entitled to go outside the MPN, the employer is not liable for that treatment or other treatment at the direction of that doctor or any consequences of the treatment obtained outside the network.

Question: If the injured worker goes outside the MPN with an admitted broken leg, and after walking with a cast develops back problems, is the employer responsible for that back treatment?



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Section 4603.2(a)(2) If employer objects to treatment outside the MPN and the Judge makes a final determination that employee was entitled to treat outside, he or she can continue to treat outside the MPN at employer's expense.

Question 1: What happens if that treating doctor sends the injured employee to another specialist to treat a compensable consequence? Is that treatment covered?

Question 2: What if that doctor leaves the state or stops treating WC cases, is the injured worker required to treat within the MPN?

SECTIONS THAT BECOME EFFECTIVE JANUARY 1, 2014

Section 4616(b)(2) MPN shall establish and follow procedures to continuously review the quality of care, performance of medical personnel, the utilization of services and facilities, and costs.

Question: What happens if applicant's attorney can show that the Procedures were never followed after getting approval by the AD?

Section 4616(b)(3) MPN's must provide geocoding of network for re-approval or approval of the Plan to prove geographic access to doctors.

Section 4616(b)(4) AD has power to investigate complaints and do random reviews of MPN's.

Section 4616(b)(5) Approval of a plan may be withdrawn, revoked or suspended if the MPN fails to meet the requirements of this article. AD may adopt regulations for a schedule of Administrative penalties up to \$5000 per violation for less severe violations of the requirements of this article. The A.D. must give notice and also give the MPN an opportunity to be heard. Appeal of the A.D.'s decision goes to the Recon Unit.



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Section 4616(a)(3) Language changed to require consent of doctor to be within MPN. You should read the code section if the issue comes up in one of your cases.

Section 4616(a)(4) MPN must post on website a roster or a link to the roster of all treating doctors and shall update that list at least quarterly. Must provide to the AD their website address and the AD shall post the address of all approved MPN's on its website.

Section 4616(a)(5) MPN shall provide one or more access assistants within the **U.S.** to help employee find doctor of their own choice and to assist in changing treating doctors.

THE ACCESS ASSISTANTS MUST:

1. Have a Toll free number
2. Be available 7 a.m. to 8 p.m. PST; Monday through Saturday
3. Help schedule appointments, answer questions and contact doctors.

Note:* AD will have Regulations ready by 7/1/13.



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IMPORTANT INFORMATION

If any issue of the validity of the MPN, go to DWC website:

www.dir.ca.gov/dwc/mpn/dwcmpnmain.html.

If the MPN certification has been suspended or terminated, that fact can be discovered at the website.

If you have trouble understanding the information on the website, email

Ms. Yu-Yee Wu at yu-yee-wu@dir.ca.gov.



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There has been no change in the access standard as set out in 8CCR9767.5

- a. MPN must have at least three (3) doctors of each specialty needed for treatment of common injuries for the type of occupation of the Employer's workers. Must include chiropractors and acupuncturists.
- b. Must have three (3) primary treating doctors and a hospital for emergency health services within 30 minutes or 15 miles of each covered employee's residence or workplace.
- c. Must have three (3) providers of occupational health services and specialists within 60 minutes or 30 miles of covered employee's residence or workplace.
- d. For rural areas where health facilities are at least 30 miles apart and accessibility standards are too restrictive, the MPN may propose an alternative standard of accessibility in their Application or Notice of Plan Modification. Must show that all services are available and accessible at reasonable times to all covered employees.



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All familiar with Valdez v. Warehouse Demo Services, please make note of this change:

Section 4605 has been amended to allow the injured worker, at his or her own expense, a consulting or treating doctor who is outside the MPN. That doctor's report **cannot be the sole basis** of an award of compensation. A QME or authorized treating doctor shall address that doctor's report and shall indicate if he or she agrees or disagrees with the non-authorized (outside the MPN) doctor's findings or opinions, and shall identify the basis for their opinion.

Question: What if you have a trial and applicant has obtained a report outside the MPN and the QME and the authorized treating doctor has not commented on their agreement or disagreement with that doctor findings? (Assume he or she finds a herniated disc and the treating doctor diagnoses a lumbar sprain.)

Prepared by George W. Mason
Presiding Judge, (RET)

Changes for Expedited Hearings contained in SB 863

1. Expedited Hearings are covered by Labor Code Section 5502(b). Error in Numbering of subsections.

2. What has not changed?

(a) Temporary Disability

(b) Employees' entitlement to compensation from more than one employer

3. What's changed?

(a) Medical Treatment. These issues are still expedited issues unless medical treatment issues have been determined pursuant to UR and IMR

If medical treatment dispute has not been determined under UR/IMR it can still be decided at an expedited

If there is a disputed body part UR/IMR can be deferred and need for medical treatment for a disputed body part can be decided at an expedited

(b) MPN issues should be determined at an expedited. If there is an MPN issue this issue needs to be decided before any other expedited issues.

(c) Medical appointments for both medical treatment and medical legal exams have been added as issues that can be heard at an expedited hearing.

For medical treatment this will get into issues of authorization for change of treating doctor or who has control of medical treatment.

For medical-legal exams this could get into disputes about whether the medical legal process was followed properly or whether an employee may be compelled to attend a medical-legal exam.

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the appeals board, is filed. If a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The administrative director shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following, provided that when an expedited hearing is requested pursuant to paragraph (2), no other issue may be heard until the medical provider network dispute is resolved:

(A) The employee's entitlement to medical treatment pursuant to Section 4600, except for treatment issues determined pursuant to Sections 4610 and 4610.5.

(B) Whether the injured employee is required to obtain treatment within a medical provider network.

(C) A medical treatment appointment or medical-legal examination.

(D) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(4) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(5) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.