

IN THE COURT OF APPEALS

STATE OF GEORGIA

SELECTIVE HR SOLUTIONS, INC., )  
D/B/A ECONO AUTO PAINTING, )  
ET. AL., )

Appellant )

v. )

MARIA MULLIGAN, )

Appellee )

Case No. A10A0008

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BRIEF OF AMICI CURIAE:  
MEDICAL ASSOCIATION OF GEORGIA  
AND  
GEORGIA PHARMACY ASSOCIATION

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**BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLEE'S  
APPEAL TO THE COURT OF APPEALS**

**I - STATEMENT OF INTEREST**

Pursuant to Court of Appeals Rule 26, *Amici* hereby disclose their identities and interest in this proceeding.

The **Medical Association of Georgia** is Georgia's largest statewide professional association of licensed physicians. The **Georgia Pharmacy Association** is Georgia's largest statewide association of licensed pharmacists.

*Amici* hereby provide this Friend of the Court Brief to express their deep concern that their members be allowed to rely on the plain language of Georgia State Board of Workers' Compensation's Rule 205 because without this procedure they will not have the confidence to be able to continue providing health care to

their patients who are injured workers with any expectation that they will ever be paid for their work. A medical care delivery system should not be allowed to emerge which serves to benefit insurers to the detriment of medical providers and their injured patients. Accordingly, *Amici* join Appellee Maria Mulligan in her appeal and her contention that the critical issue to be addressed by the Georgia Court of Appeals is whether Employers/Insurers waive their right to raise defenses when they do not comply with the requirements of Board Rule 205 and medical providers have relied on this Board Rule to provide services in accordance with the same.

#### **ARGUMENT AND CITATION OF AUTHORITY**

The Workers' Compensation Act, including its amendments, constitutes a "complete code of laws," subject to strict construction since it is in derogation of common law. See, Atkinson v. Atkinson, 47 Ga. App. 345, 170 S.E. 2d 527 (1933). The exclusivity of the statutory scheme for the delivery of medical care is the result of the fundamental nature of the Workers' Compensation Act – "it constitutes a complete code of laws upon the subject of the rights and remedies of employers, employees and their dependants." See, St. Paul Fire & Marine Insurance Company v. Miniweather, 119 Ga. App. 617, 168 S.E. 2d 341 (1969). In Thomaston Mills, Inc. v. Kierbow, 185 Ga. App. 57, 363 S.E. 2d 276 (1987), the Court of Appeals again acknowledged the Workers' Compensation Act to be a

“complete code of laws” and stated it will “neither rewrite the law nor hedge it about with restrictions not included in it.” The Court of Appeals concluded, “We are not at liberty to impose any limitations or exceptions upon an employee’s statutory right to recover compensation in the absence of a clear legislative intent.”

The purpose of medical treatment in the Workers’ Compensation system is to provide that treatment to a patient injured at work that appears “likely to effect a cure, give relief, or restore the employee to suitable employment.”<sup>1</sup> The Georgia Legislature created the Georgia Workers’ Compensation system to ensure that workers in Georgia quickly received both wage replacement benefits and medical treatment. Physicians, pharmacists, and other medical providers have been, are, and will be a necessary part of the success of that system. Without medical providers, the system cannot provide the medical treatment to which injured workers are entitled. Because the Workers’ Compensation Act constitutes a complete code of laws, Employer/Insurers are statutorily precluded from interfering in the treatment provided by the “authorized treating physicians” except in the manner permitted by the statutory scheme.

Medical treatment within the Workers’ Compensation system is highly regulated, both by statute and rules of the State Board. Medical providers have strict limits on payments that they are able to recover when they provide treatment

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<sup>1</sup> O.C.G.A. §34-9-200(a).

to a patient injured at work. The State Board of Workers' Compensation adopts the Georgia Workers' Compensation Medical Fee Schedule on a regular basis. This fee schedule establishes the maximum amount that medical providers can receive for treatment rendered to a patient injured at work.<sup>2</sup> Not only are medical providers limited in the amount that they can receive for treating an injured worker, they also are limited in how they can receive payment. Medical providers are statutorily prohibited from charging patients injured at work for authorized medical treatment and infers that they can incur civil liability for doing so.<sup>3</sup> Medical providers also must file the proper forms to receive payment.<sup>4</sup>

The Georgia Workers' Compensation system is quite clear that it does not require medical providers to obtain pre-authorization from an employer or insurer in order to provide medical treatment to a patient injured at work.<sup>5</sup> This lack of a requirement for pre-authorization helps ensure that authorized medical providers can quickly provide medical treatment.

Our members want to provide prompt, effective medical care to their patients. Most of our members provide treatment through different medical delivery systems including Medicare, Medicaid, private health insurance, and Workers' Compensation. Our members accept that any medical delivery system

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<sup>2</sup> O.C.G.A. §34-9-203(a); O.C.G.A. § 34-9-205(b); Board Rule 203(a).

<sup>3</sup> O.C.G.A. §34-9-205(b).

<sup>4</sup> O.C.G.A. §34-9-203(c); Board Rule 205(a).

<sup>5</sup> Board Rule 205(b)(2)

will have procedures and regulations that will have to be followed that are unique to that delivery health care system. Medical providers have office staffs that focus on these matters on a daily basis. In fact, requesting advance authorization for any medical care/service beyond a mere office visit has had to become an integral part of most medical practices.

Medical providers are spending more of their time getting permission to practice medicine instead of actually practicing medicine. A recent authoritative study conducted by Lawrence Casalino, M.D. and other physicians confirmed that significant time and cost is expended by physicians, their staffs and allied health professionals in dealing with administrative issues with health plans. The Casalino study found that physicians spend an average of three full time work weeks a year interacting with plans. This study defined Plan “interaction” as including authorizations, formularies, claims/billing, credentialing, contracting, quality data and appointments.<sup>6</sup> Physicians spend one hour per week, nursing staff 13.1 hours per week and clerical staff 6.3 hours per week interacting with plans to obtain authorization to provide services to plan members. Thus, merely to obtain authorization, the Casalino study concluded that 20.4 hours per week or 27% of the total plan interaction was consumed by physician and staff activities in obtaining authorization for delivery of treatment/services, costing health care providers 8.9

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<sup>6</sup>*What Does it Cost Physician Practices to Interact with Health Insurance Plans?* Casalino, et al, Health Affairs 28, No. 4 (2009), w533-w534.

billion dollars nationally. With the amount of time that medical offices must devote to tasks other than providing medical treatment, it is necessary that they be able to have simple and effective procedures for advance authorization to ensure that they can effectively fulfill their roles in any medical delivery system.

Fortunately, in Board Rule 205 and the Form WC-205, the participants in Georgia's Workers' Compensation system came up with a simple and effective procedure to allow medical providers to deal with the problem of pre-authorization in the Georgia Workers' Compensation system. This rule allows medical providers to request pre-authorization in writing. The vehicle of seeking advance authorization assures the medical provider that payment will be rendered for the services provided. Enforcement of this rule will keep good medical providers in the Workers' Compensation system because physicians will easily be able to obtain answers on pre-authorization questions. It is also the only pre-authorization procedure available to medical providers providing treatment in a Workers' Compensation claim.

Board Rule 205 plainly states,

An authorized medical provider may request advanced authorization for treatment or testing by completing Section 1 and 2 of Board Form WC-205 and faxing or e-mailing same to the insurer/self-insurer, along with supporting medical documentation. The insurer/self-insurer shall respond by completing Section 3 of the WC-205 within (5) five business days of receipt of this form. The insurer/self-insurer's response shall be by facsimile transmission or e-mail to the requesting authorized medical provider. If the insurer/self-insurer

fails to respond to the WC-205 request within the five business day period, the treatment or testing stands pre-approved.

This rule is straightforward. The authorized medical provider faxes or e-mails the Board Form WC-205 and supporting medical documentation requesting advanced authorization. The insurer has five business days from receipt to respond by facsimile or e-mail. If no response is received, the treatment is pre-approved. The plain meaning of the language is that the insurer must pay for treatment if it does not timely respond to a Form WC-205 from an authorized medical provider.

Medical providers recognize that they must follow certain procedures or regulations to obtain advance authorization in any medical care delivery system. However, medical providers are not attorneys. Their staffs do not have legal training. The rules for advance authorization should be straightforward. Board Rule 205 is a straightforward rule set up to be used by medical providers.

Medical providers must be able to rely on Board Rule 205 and the Form WC-205 itself when they decide advance authorization for proposed treatment or testing is needed in a Workers' Compensation claim. Board Rule 205 is the only mechanism provided to by the Georgia Workers' Compensation system to assure medical providers that they will be paid for the treatment they provide. The State Board of Workers' Compensation even created a form for medical providers to use in submitting pre-authorization requests under this rule. A medical provider can simply fax or e-mail the completed form to an insurer. The insurer responds by

indicating either that the treatment is approved or denied. If no response is provided by the insurer, the medical provider knows that the treatment is approved because both Board Rule 205 and the Form WC-205 indicate that a failure to respond means that the treatment is approved. The system is straightforward and effective.

Medical providers also must be able to rely on the consequences set forth by the 205 process if the insurer fails to respond. This is not simply because medical providers should not be expected to follow the rules enacted by the State Board of Workers' Compensation for advance authorization, understand that they have advance authorization for that service, perform that service, and then not be paid. Even more than that, medical providers need predictability in their practices. Their office staffs are trained to implement the appropriate procedure or regulation for obtaining advance authorization. Our members are willing to abide by the law and take the time and expense to become familiar with and implement the 205 process, but we must have consistency and certainty that this process is being followed and enforced in a uniform manner by the State Board of Workers' Compensation.

Unfortunately, Board Rule 205 was not enforced by the State Board of Workers' Compensation in the case at bar. Medical providers throughout the State are finding that the 205 process is not being followed in a uniform and predictable manner. As a result, our members are forced to conclude that Board Rule 205, the

only advance authorization process provided by the Workers' Compensation medical delivery system, is meaningless. If this matter is not dealt with promptly and effectively, many well qualified medical providers will leave the Workers' Compensation system because they have no choice. Medical providers will have no confidence in payment for work done if they are not paid when the State Board of Workers' Compensation itself makes a straightforward rule for their use and then does not enforce it as written. The law must be enforced. Nothing less is or should be acceptable to our members.

If Rule 205 is not enforced, those medical providers who continue providing treatment to Georgia's injured workers will simply not treat injured workers unless they can pay out of pocket for treatment. Since most injured workers will not have the financial capacity to pay for surgery and other costly medical treatments, the treatments will simply not happen. The Workers' Compensation system was created to provide medical treatment to injured workers quickly and effectively so they can return to work. A failure to enforce Rule 205 of the State Board of Workers' Compensation would result in a system that did exactly the opposite.

An ineffective medical delivery system hurts all the participants in the Georgia Workers' Compensation system. Medical providers cannot provide treatment. Injured workers endure pain while waiting for treatment to be approved. Delays in waiting for treatment result in less favorable outcomes when

treatment is received. Issues regarding approval of medical treatment clog up the Workers' Compensation judicial system because of the uncertainty of the law. Injured workers will wait even longer for treatment because there are fewer medical providers. The list of effects could go on and on. Instead of ignoring the plain language of Board Rule 205, this Court should affirm the Superior Court's enforcement of that plain language of Board Rule 205 and find that the treatment rendered by the treating physician to the Appellee was pre-approved by the Appellant's failure to timely respond to the Form WC-205.

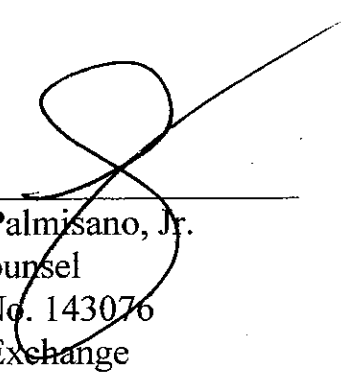
Wherefore, Amici Curiae ask this to enforce Board Rule 205 and establish that the participants in the Georgia Workers' Compensation system, including medical providers, can rely on the plain language of the Rules of the State Board of Workers' Compensation.

Respectfully submitted,

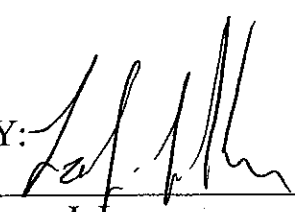
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The Georgia Pharmacy Association

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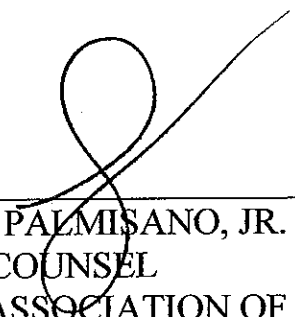
**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing **BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLEE'S APPEAL TO THE COURT OF APPEALS** upon the following counsel this date by depositing a copy of the same in the United States mail, postage prepaid, and properly addressed as follows:

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