



JOHNS EASTERN COMPANY, INC.

Claim Adjusters & Third Party Administrators

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CEU SEMINARS

9/18/15:
“Functional Capacity Evaluations and Aquatic Therapy”
 by Align Networks.
 11:30 AM – 2:00 PM, Holiday Inn Lakewood Ranch, 6231 Lake Osprey Drive, Lakewood Ranch, FL.

10/7/15:
“Successful Subrogation 2.0”
 by Linda Farrell with Boyd & Jenerette, P.A. 11:30 AM – 2:00 PM, Holiday Inn Lakewood Ranch.

Each presentation provides two hours of CEU credits.

For more details, contact:
 Rose Rome at rrome@johnseastern.com



A NEW INTERPRETATION OF THE 120-DAY RULE

How Does the *Babahmetovic* Ruling Affect You and Your Injured Workers?



When faced with a new date of accident involving a question as to compensability, Florida employers (and their TPAs) commonly avail themselves of the “120-day rule.” This is set forth in section 440.20(4), Florida Statutes, which provides that, “[I]f a carrier is uncertain of its obligation to provide all benefits or compensation, the carrier shall immediately and in good faith commence investigation of the employee’s entitlement to benefits under this chapter and shall admit or deny compensability within 120 days after the initial provision of compensation or benefits...”

This statute does not require that the employer/carrier advise the claimant in writing of their intent to initiate the 120-day investigation. And, historically, the First District Court of Appeal has not

explicitly required that a letter be sent for an employer/carrier to take advantage of the 120-day rule.¹

This, of course, until their recent opinion in *Babahmetovic v. Scan Design Florida, Inc. and Zenith Insurance Co.*² In this decision, the Court stated: We now hold that an employer/carrier who pays yet does not provide written notice “[U]pon commencement of payment” cannot avail itself of the 120 day rule to deny compensability, because it has elected to “pay” rather than to “pay and investigate.”³

In so holding, the Court found that the employer/

carrier in *Babahmetovic* had waived any right to deny compensability, even within the 120-day period, as no letter was sent.

To most, *Babahmetovic* represents a stark departure in the appellate court’s interpretation of Section 440.20(4) and, therefore, how employer/carriers should handle incoming claims. Perhaps the most troubling aspect of this new decision is the logistical difficulty of complying with the ruling. A situation will commonly arise involving an employee reporting an injury and being directed to an urgent care clinic. The clinic obtains authorization from the carrier, and evaluates/treats the employee.

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THE IMPORTANCE OF OFFICE ERGONOMICS

As technology continues to insinuate itself into our lives in the form of video displays, keyboards, mice, smartphones and touch screens, we need to be aware of how our habits and the arrangement of equipment can impact comfort, health and productivity. It is important to realize we often use equipment in non-traditional positions and even standard workstations need to be adjusted to meet the needs of each individual. Knowing a few basic principles of ergonomics enables you to make simple adjustments to customize your workspace, increase comfort and decrease the risk of injury and improve productivity.

Use the following guidelines to assess and make changes to your home or office workstation:

- Avoid excessive extended reaching by organizing your desktop so frequently used items are closest to you.
- When using a keyboard, position yourself so your shoulders are relaxed, elbows are at a 90° angle and with your forearms resting on your work surface or armrest of the chair. Also remember to adjust the keyboard to avoid tilt, keeping wrists in a neutral (flat) position when typing.
- Place your mouse in your immediate reach zone and position yourself so the wrist is neutral (flat) and your forearm is able to rest on the desk.
- Position your computer monitor approximately 18-30 inches away (larger monitors further away and smaller ones closer) and directly in front of you. Adjust the monitor height so the top line of text is at eye level. If the monitor allows tilt, try a slight upward tilt to avoid further neck flexion.
- Use a headset or speaker phone to avoid neck and shoulder discomfort.



- Your chair back should have a lumbar support. If your chair does not have a built-in lumbar support, try using a rolled up towel.
- Adjust the height of your chair so your feet rest flat on the floor. Sit upright in the chair with your lower back against the backrest and shoulders touching the backrest. Your thighs should be parallel to the floor and knees at about the same level as the hips.
- If your chair's armrests are adjustable, adjust them to the same height as your desk, allowing for a relaxed shoulder position.

- Lastly, try not to stay in one static position for extended periods of time. Alternate between standing and sitting and take short breaks during the work day.

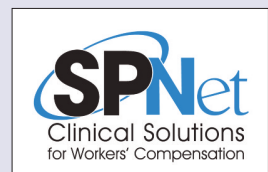
Although many workstation concerns can be managed simply with a little knowledge and some attention to detail, often an external consultant can enhance results.

Johns Eastern, through its network of strategic partners, can provide access to office ergonomic solutions for companies from self-employed individuals to large companies with thousands of workstations.

Upper extremity injuries caused by repetitive motion are often difficult and costly to treat and, due to the nature of injury and work, result in significant lost work time. A program effective at reducing these injuries is likely to have a high return on investment.

Vendor Partner:

Greg Nichols,
President, SPNet Clinical Solutions



JOHNS EASTERN GIVES BACK



Johns Eastern has finished our 2nd quarter fundraising activity by providing food and funds for Feeding Empty Little Tummies (F.E.L.T.).

We had great results thanks to our awesome

employees! Last year we donated two carloads of food and just under \$2,000. Our goal this year was to take three carloads of food and \$2,500 in cash to F.E.L.T. and we did it! We delivered three carloads of food and raised a total of \$2,792. Johns Eastern also made a corporate donation, so we will be donating a total of \$4,292 to F.E.L.T.!

In the 3rd quarter, Johns Eastern employees will raise awareness for United Way.

WE'RE GOING SOCIAL!

We invite you to like, share, hashtag and follow Johns Eastern as we create an online community to share news and ideas on:



We also invite you to check out our new blog at <http://johnseasternblog.us/>

Come get social with us!!

WE'LL SEE YOU OUT & ABOUT THIS SUMMER



Steve Henderson
NEFEC

It was great to see so many of our clients at the FERMA Summer Conference. Where will we see you?



Lori Lively
Marion County Public Schools



Tammy Beauchamp
Gilchrist County School Board



Robert Stratton
Duval County Public Schools



Awilda Fonte
Lisa Becker
Hernando County School Board



Cathy Richards
Lee County School Board



Ted & Barbara Pafundi
Pinellas County Schools

AVOID THE PITFALLS OF PHYSICIAN DISPENSING

Doctors often write prescriptions for their patients which are most commonly filled at a retail pharmacy. However, in workers' compensation, a number of physicians choose to dispense prescription medications directly from their office. Because many workers' compensation patients are often dealing with pain, some physicians cite patient convenience and access to medication therapy as supporting reasons for in-office dispensing. However, this practice often lacks the safeguards offered by retail pharmacies. Pharmacy dispensing is an important tool for ensuring safe use of medications, as it provides a complete picture of the injured worker's treatment regimen, including medications that are unrelated to their workers' compensation claim.

Benefits of Retail Pharmacy Dispensing

The dispensing of medication through a retail pharmacy versus a physician's office provides a number of benefits, including increased safety and convenience for the patient, as well as cost and operational efficiencies for employers, providers, and payers.

Retail pharmacy dispensing can enhance patient safety by:

- Identifying patients at risk for drug interactions
- Providing a real-time perspective into the patient's treatment regimen, including medications outside of workers' compensation
- Identifying therapeutic duplication

Retail pharmacies can also offer advantages over physician dispensing, such as:

- Convenient locations close to patient's home
- Extended daily hours of operation compared to a physician's office
- Pharmacists available to discuss medication concerns

Retail pharmacy dispensing expedites online transactions such as:

- Confirmation of patient eligibility, authorized prescribers, and compensable medications
- Timely payment to providers at contracted rates
- Generic substitution when appropriate

Current Trends in Physician-Dispensed Medications

The practice of physician dispensing continues to be a specific challenge in workers' compensation. Recently,

there have been some prescribing trends among dispensing physicians that employers should be aware of. These trends are contributing to increased medication costs, and in some cases, may pose safety concerns to injured workers.

New or Uncommon Tablet/Capsule Strengths - When new pill strengths are manufactured, the average wholesale price is often higher than standard strengths of the same medication. This may make them attractive to dispensing physicians from a profitability standpoint. A recent example is the muscle relaxant cyclobenzaprine, which has commonly been prescribed at strengths of 5mg and 10mg. However, in recent years, dispensing physicians have increasingly prescribed the more expensive 7.5mg strength.¹

Prescription Products Despite OTC Availability - Some medications, such as anti-ulcer treatments (Prilosec® and Zantac®), are readily available to the patient over the counter (OTC). However, when these medications are prescribed and dispensed by a physician, they cost 5-15 times more.²

Private-Label Topical Analgesics - These costly pain creams share many of the same ingredients as OTC products such as Icy

Hot®, Bengay®, and Ziks pain relief creams, but sometimes at more potent concentrations. The high concentrations of these ingredients pose potential safety concerns, including risk of skin burns.³ Private-label topicals are also more expensive than OTC products.

Healthsystems encourages the use of a retail pharmacy instead of physician dispensing, due to the potential patient safety concerns and excessive costs associated with the practice. Bottom line – ensure that you know where your injured workers are filling their prescriptions.

1. Wang, Dongchun, Vennela Thumula, and Te-Chun Liu. Are Physician Dispensing Reforms Sustainable? Cambridge, MA: Workers Compensation Research Institute, 2015.
2. Wang, Dongchun. Physician dispensing in workers' compensation. Cambridge, MA: Workers Compensation Research Institute, 2012.
3. FDA Drug Safety Communication: Rare cases of serious burns with use of over-the-counter topical muscle and joint pain relievers. September 2012. Rockville, MD: US Food and Drug Administration. <http://www.fda.gov/drugs/drugsafety/ucm318858.htm>. Accessed June 1, 2015.

Vendor Partner: Clinical Services Team, Healthsystems



DOE ISSUES TITLE IX COORDINATOR RESPONSIBILITIES

Title IX of the 1972 Education Amendments requires that a recipient, including school districts, colleges, and universities receiving federal financial assistance, designate at least one “responsible employee” whose responsibilities shall include, among other things, coordinating “its efforts to comply with and carry out its responsibilities under [Title IX], including any investigation of any complaint communicated to such recipient alleging its noncompliance with [Title IX] or alleging any actions which would be prohibited by [Title IX].”

The recipient shall notify all of its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.”

EDUCATION LAW UPDATE



These “responsible employees” are now more commonly referred to as “Title IX Coordinators.”

On April 24, 2015, the U.S. Department of Education (DOE) published a Dear Colleague letter reminding school districts, colleges, and universities of their legal responsibility to designate Title IX Coordinators. The DOE also published a resource guide for Title IX Coordinators which includes information about their roles, as well as an overview of Title IX’s requirements.

More information is available at <http://www2.ed.gov/policy/rights/guid/ocr/title-ix-coordinators.html>.

Sniffen & Spellman, P.A.

Continued from page 1

This first visit will most certainly be construed as the “initial provision of benefits” and, per *Babahmetovic*, that provision will render the employer/carrier responsible for benefits thereafter unless the “pay and investigate” letter was sent contemporaneously. This, even if at the time those benefits were provided, the employer/carrier had no reason to suspect the claim was invalid. This, even if a denial is ultimately issued within 120 days of that first provision.

Now, it would seem that a “pay and investigate” letter should be issued in every workers’ compensation claim upon the provision of any benefit, unless it is decided to deny within the first 14 days (and/or before any benefits are provided).

It should be noted that this decision is not yet final; a Motion for Rehearing was filed by the employer/carrier’s counsel at the end of May. We certainly recommend that the Court’s ultimate disposition of this case be closely monitored as, again, the current holding may significantly alter how employers/carriers should handle new claims.

¹ See, e.g., *Jeffrey’s Steel v. Conibear Equipment, Inc.*, 854 So. 2d 268 (Fla. 1st DCA 2003); *Bynum Trans. Inc. v. Snyder*, 765 So. 2d 752 (Fla. 1st DCA 2000); *Checkers Restaurant v. Wiethoff*, 925 So. 2d 348 (Fla. 1st DCA 2006). In the Motion for Rehearing pending before the First DCA, counsel for the E/SA cited an additional 14 opinions wherein a 120-day letter was not required.

² 2015 Fla. App. LEXIS 6493.

³ *Id.* at *9.

Kristen Magana, Esq.
Broussard & Cullen, P.A.

CONFERENCE CONNECTION

Southeastern RIMS
Educational Conference
August 19 - 21, 2015
Pinehurst, NC

Workers’ Compensation Institute
Educational Conference
August 23 - 26, 2015
Orlando, FL

Georgia Board of Workers’ Compensation
Educational Conference
August 31 - September 2, 2015
Atlanta, GA

Florida PRIMA
State Conference
October 11 - 14, 2015
Sarasota, FL



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NATIONAL BULLYING RATE DECLINES

For the past several years, the United States Department of Education has issued legislation and guidance in an effort to reduce bullying in schools. It appears that efforts at the federal, state and local levels to prevent bullying may be paying off.

New data indicates the first significant decrease in school-based bullying since the federal government began collecting that data in 2005. Reported bullying involving students ages 12-18

has decreased to 22% after remaining around 28% for much of the past decade.



There are three recognized types of bullying: physical, relational (or social) and verbal. Bullying of any type can occur anywhere and to any student. Research shows that students who are bullied are more likely to struggle in school and skip class.

U.S. Department of Education

IN THE SPOTLIGHT



CONGRATULATIONS!

Holly Belton has been named the 2015 Workers' Compensation Claims Professionals' Rising Star. This award, presented annually by WCCP, was established to recognize a senior level adjuster who exemplifies the professionalism needed to reach the next level in their career to become "Tomorrow's Leader."

Please join us in congratulating Ms. Belton on this achievement!

WELCOME!

Chris Deeley-Isais, the new Insurance Specialist/Risk Manager at the Clay County School Board.

Susan Legutko, the new Workers' Compensation Representative at the Clay County School Board.