

STATE OF CALIFORNIA  
**Division of Workers' Compensation**  
**Workers' Compensation Appeals Board**

Case No. ADJ9437585

JUANA CASTANEYRA,

*Applicant,*

vs.

GARZA CONTRACTING and CALIF. FARM  
MANAGEMENT Adj'd by INTERCARE,

*Defendants.*

**FINDINGS AND ORDERS**

DONALD H. JOHNSON, Workers' Compensation Administrative Law Judge, Finds and Orders as follows:

**FINDINGS OF FACT**

1. Juana Castaneyra, born June 24, 1968, while employed on October 28, 2013, as a farm laborer, Occupational Group No. 491, at Bakersfield, California, by Garza Contracting, Inc., sustained injury arising out of and in the course of employment to the neck, hand, back, and knee.
2. There is no basis to exclude Defendant's Exhibits T, U, DD, EE, FF, JJ, MM, GGG, HHH, III, JJJ, KKK, LLL, MMM, WWW, or DDDD.
3. There are bases to exclude Defendant's Exhibits V, W, X, Y, Z, AA, BB, CC, GG, HH, II, KK, LL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, XXX, YYY, ZZZ, AAAA, BBBB, and CCCC.
4. Applicant is not required to obtain treatment within any MPN.
5. Kern Bone and Joint, even though listed on Defendant's MPN list, is not required to agree to act as the primary treating physician (PTP) for Applicant.
6. The refusal by Kern Bone and Joint to act as the PTP for Applicant, standing alone, is not sufficient to justify Applicant seeking treatment outside Defendant's MPN.
7. Applicant's seeking treatment outside Defendant's MPN without sufficient cause relieves Defendant from the general liability for the costs of such treatment.
8. Liability for specific billings for non-MPN treatment cannot be determined at this time.

**ORDERS**

IT IS ORDERED that:

1. The Applicant's objections to admission of Defendant's Exhibits T, U, DD, EE, FF, JJ, MM, GGG, HHH, III, JJJ, KKK, LLL, MMM, WWW, and DDDD are overruled and the exhibits will be received and admitted into evidence.
2. The Applicant's objections to admission of Defendant's Exhibits V, W, X, Y, Z, AA, BB, CC, GG, HH, II, KK, LL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, XXX, YYY, ZZZ, AAAA, BBBB, and CCCC are sustained and the exhibits will not be received or admitted into evidence.
3. Applicant is not required to obtain treatment within any MPN.
4. Defendant is not generally liable for the costs of Applicant's self-procured treatment outside Defendant's MPN.
5. The issue of liability for specific treatment billings for non-MPN treatment is deferred with jurisdiction reserved.

DATE: January 14, 2016



DONALD H. JOHNSON  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

SERVICE: ON ALL PARTIES AS SHOWN ON THE ATTACHED SERVICE ROSTER

BY:   
ON: January 14, 2016

**SERVICE ROSTER**

**Case Number:** ADJ9437585  
**FINDINGS AND ORDERS**

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STATE OF CALIFORNIA  
**Division of Workers' Compensation**  
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Case No. ADJ9437585

JUANA CASTANEYRA,

*Applicant,*

vs.

GARZA CONTRACTING and CALIFORNIA  
FARM MANAGMENT; Adjusted by  
INTERCARE,

*Defendants.*

**OPINION ON DECISION**

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**Remand Instructions**

The remand order of May 4, 2015<sup>1</sup> directed this WCJ to “completely adjudicate the issue presented to him”<sup>2</sup> and to “completely adjudicate the MPN dispute.”<sup>3</sup> The parties put three MPN issues in dispute at the September 30, 2015 trial: whether the injured employee is required to obtain treatment within a medical provider network; liability for self-procured treatment for non-MPN election of a treating doctor; and whether a MPN-listed physician must agree to serve as primary treating physician rather than a secondary physician.

The order stated that the injured worker and an employer do not have a dispute under Labor Code §5502(b) unless the employer’s liability for payment of the self-procured treatment is at issue.<sup>4</sup> To verify that some self-procured treatment billings existed sufficient to create a dispute, the parties were requested to add exhibits showing such billings at the June 23, 2015 status conference. Defendant added two pages of exhibits. As near as can be determined, the exhibits on these two pages comprise the following exhibit offered at the September 30, 2015 trial: T, U, DD, EE, FF, JJ, MM, GGG, HHH, III, JJJ, KKK, LLL, MMM, WWW, and DDDD. Many other exhibits were offered at the September 30, 2015 trial. Applicant objected to all the offered exhibits except those of A through S, which had been admitted at the prior trial on December 12, 2014.

**Objection to Exhibits**

Exhibits flowing from those listed at the June 23, 2015 conference should be admitted. Those extra exhibits added at the September 30, 2015 trial should not.

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<sup>1</sup> . Opinion and Order Dismissing Petition for Reconsideration, Granting Removal, and Decision After Removal, May 4, 2015.

<sup>2</sup> . *Id.* at p. 2, lines 4-5.

<sup>3</sup> . *Id.* at p. 2, lines 20-21.

<sup>4</sup> . *Id.* at p. 2, lines 14-15.

This means that Applicant's objections to admission of Exhibits T, U, DD, EE, FF, JJ, MM, GGG, HHH, III, JJJ, KKK, LLL, MMM, WWW, and DDDD are overruled, and the exhibits will be received and admitted into evidence.

Applicant's objections to admission of Exhibits V, W, X, Y, Z, AA, BB, CC, GG, HH, II, KK, LL, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, XXX, YYY, ZZZ, AAAA, BBBB, and CCCC are sustained and the exhibits will not be admitted or received.

The filing of so many billing exhibits shows that the parties have misinterpreted the request for filing of some billings. It was necessary to satisfy the remand order's requirement that liability for some payment for self-procured treatment was needed for there to be a dispute. The admitted exhibits show that the employer's liability for payment of self-procured treatment is at issue. The additional exhibits are not necessary to show this.

### **Requirement to Treat Within a Medical Provider Network**

The remand order answered this question itself. Any injured worker may treat outside of a medical provider network at his or her own expense.<sup>5</sup> That determination is binding on this WCJ in this case.

### **Whether a MPN-Listed Physician Must act as a Primary Treating Physician**

This appears to refer to the events documented in Joint Exhibit 1, the letter from Applicant's attorney of May 13, 2014. That letter states that Kern Bone and Joint is listed in Defendant's MPN list, but when contacted, refused to act as the primary treating physician (PTP.)

The letter then stated that this refusal was a breach of the warranty that all MPN-listed physicians would agree to act as a PTP. The letter then designated Dr. Michael Price as the PTP, who is outside Defendant's MPN.

A refusal of treatment by one MPN physician is not a denial of medical care within the MPN.<sup>6</sup> A refusal by five MPN physicians and ten communications with the adjuster without response is a denial of medical care within the MPN.<sup>7</sup>

Joint Exhibit 1 documents a single refusal of treatment. A single MPN-listed physician need not agree to act as a primary treating physician. The refusal of Kern Bone and Joint is not sufficient to justify Applicant seeking treatment outside Defendant's MPN.

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<sup>5</sup> . Id. at P. 2, line 13.

<sup>6</sup> . *Lynch v. County of Kern*, ADJ9415335, p. 4, lines 3-16 (WCAB Panel 2014.)

<sup>7</sup> . *Lynch v. County of Kern*, ADJ9415335, p. 4, lines 17-22 (WCAB Panel 2014) (*citing Chavez . Barrett Business Services, Inc.* 2013 Cal. Wrk. Comp. P.D. LEXIS 438 (WCAB Panel 2014.)

**Liability for Self-Procured Treatment from Non-MPN Treater**

Since Applicant was not justified in seeking non-MPN treatment, the Defendant is not liable for such treatment generally. Since any specific treatment may still be compensable even if not given within an MPN, such as emergency treatment, the liability for the specific billings listed in Defendant’s many exhibits cannot be determined. Such a determination would probably be outside the bounds of the remand order since it mandated determination of MPN issues, not billing amounts.

*D H JOHNSON*

DONALD H. JOHNSON  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

DATE: January 14, 2016

SERVICE: ON ALL PARTIES AS SHOWN ON THE ATTACHED SERVICE ROSTER

BY: *Rebecca Gonzales*  
ON: January 14, 2016

**SERVICE ROSTER 1/14/16**

**Case Number:** ADJ9437585  
OPINION ON DECISION

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