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WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA

Case No. ADJ9231258

KIRK CRUMP,

Applicant,

vs.

CITY OF SACRAMENTO DEPARTMENT OF
PARKS AND RECREATION, self-insured,

Defendants.

**FINDINGS OF FACT AND
ORDER**

The above-entitled matter having been heard and regularly submitted, the Honorable DUDLEY R. PHENIX, Workers' Compensation Administrative Law Judge, now makes his decision as follows:

FINDINGS OF FACT

1. Parties stipulations:
 - a. Kirk Crump, born January 16, 1966, while employed on August 9, 2011, as a park supervisor/ maintenance person at Sacramento, California, by the City of Sacramento, sustained injury arising out of and in the course of employment to his right shoulder.
 - b. At the time of injury the employer was permissibly self-insured.
 - c. The primary treating physician is Carl Shin, M.D.
 - d. No attorney's fees have been paid and no attorney fee arrangements have been made.

1 2. Defendant's June 6, 2014 appeal of the IMR determination did not set forth any
2 legal grounds which would support the contention that the determination should be set
3 aside.
4

5 **ORDER**

6 A. Defendant's appeal of the IMR determination (and pursuant to Labor Code
7 Section 4610.6(g), the determination of the administrative director) is denied.

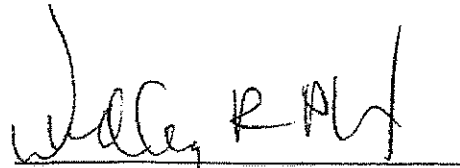
8 B. Defendant is ordered to authorize the treatment recommended by Dr.
9 Khasigian on October 7, 2013.
10

11
12 DATED: 9/15/14

13
14 Served by mail on parties
15 listed on official address record
16 on above date by

16 *V. White*

17 V. White

18
19 

20 DUDLEY R. PHENIX
21 Workers' Compensation
22 Administrative Law Judge
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OPINION ON DECISION

On October 7, 2013, almost one year ago, Dr. Khasigian, applicant's treating physician, submitted an RFA requesting authorization for an H-Wave device.

On October 29, 2013, Utilization Review denied certification of the H-Wave device.

On May 15, 2014, Maximus issued a determination indicating that the UR determination should be overturned and that the H-Wave device should be authorized.

On June 6, 2014, defendant filed a Petition Appealing the Administrative Director's Independent Medical Review Determination.

On September 5, 2014, defendant's appeal proceeded to trial before the undersigned.

Defendant's appeal contends that the Administrative Director (AD) acted in excess of her powers by assigning this matter to IMR. Defendant contends that the application for IMR was not served on defendant. Applicant's application for IMR is in FileNet but it cannot be determined if the application was, in fact, served on defendant.

Nevertheless, it is apparent that defendant was served with the December 27, 2013 Notice of Assignment and Request for Information. It is further apparent that the defendant corresponded directly to Maximus on January 3, 2014. Whether or not the application for IMR was served on defendant is unclear. However, what is clear is that defendant was fully aware of and involved with the IMR process. Interestingly, the objection to the IMR referral was not made until after the IMR Determination was sent on May 15, 2014.

Defendant next argues that the AD erred by not taking into account that the UR physician had sent the treating physician a request for additional information. Defendant cites Title 8, California Code of Regulations Section 9792.10.3(a)(6). As mentioned above, the Notice of Assignment to IMR occurred in December of 2013. Section 9792.10.3(a)(6) was not codified until May of 2014. The AD should not be asked to comply with regulations which did not exist at the time she made the decision to refer this matter to IMR.

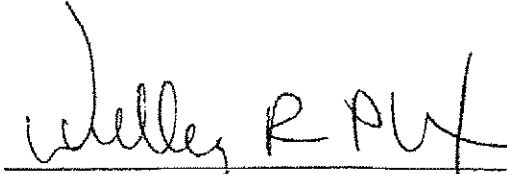
Thirdly, defendant changes tack and instead of arguing that the referral to IMR was inappropriate, argues that the IMR determination itself was based on an erroneous express or implied fact (apparently making reference to Labor Code Section 4610.6(h)(5)). The alleged plainly erroneous finding of fact is Dr. Khasigian's comment that applicant had been able to reduce his medication intake as a result of his use of the H-Wave device. A review of Dr. Khasigian's October 7, 2013 progress report confirms that this was, in fact, what he noted. Whether applicant expressed this to the H-Wave company or directly to Dr. Khasigian is not the point. The point is that applicant did, in fact, report that the device was allowing him to reduce his medications.

Finally, defendant argues that Dr. Khasigian's October 7, 2013 RFA, specifically submitted on a DWC RFA form did not constitute a valid request for treatment. The argument proceeds that because it was not a valid request for treatment, it was not sufficient to trigger the requirements for UR. If defendant truly did not feel that the RFA constituted a valid treatment request, why did the claims administrator submit the RFA

Kirk Crump
Case No. ADJ9231258
Opinion on Decision
Page 2

through UR? Why did the claims administrator then rely on the UR determination to deny authorization for this treatment? Defendant's argument here appears disingenuous.

In conclusion, after carefully considering defendant's appeal, the undersigned could find no merit to any of its contentions. Accordingly, defendant's June 6, 2014 appeal is denied. Defendant is ordered to authorize the H-Wave device as recommended by Dr. Khasigian on October 7, 2013.



DUDLEY R. PHENIX
Workers' Compensation
Administrative Law Judge

DRP:vw

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

09-15-2014

PROOF OF SERVICE FOR FINDINGS OF FACT
AND ORDER & OPINION ON DECISION

OFFICIAL ADDRESS RECORD

Case Number: ADJ9231258

CITY OF
SACRAMENTO

Insurance Company, 915 I ST FL 4 SACRAMENTO CA 95814-2604

CITY OF
SACRAMENTO PARKS
AND RECREATION
ELECTRONIC
WAVEFORM LAB

Self Insured Employer - Public, 915 I ST FL 4 SACRAMENTO CITY CA
95814

Lien Claimant - Other, 5702 BOLSA AVE HUNTINGTON BEACH CA 92649

FRIEZE PAUL ELK
GROVE

Law Firm, 3117 DWIGHT RD STE 300 ELK GROVE CA 95758

KIRK CRUMP

Injured Worker, 8204 HOMEFIELD WAY SACRAMENTO CA 95828

LAUGHLIN FALBO
SACRAMENTO

Law Firm, 106 K ST FL 2 SACRAMENTO CA 95814

Served Findings of Fact and Order & Opinion on Decision on all parties on
the Official Address Record on September 15, 2014. By: V. White. *V. White*

1 CRAIG A. PAUL ESQ SBN 95958
UAN: FRIEZE PAUL ELK GROVE
2 ERN: 4782853
LAW OFFICE OF FRIEZE & PAUL
3 3117 DWIGHT ROAD STE 300
ELK GROVE CA 95758
4 916-427-8412

5 Attorney for Applicant,
KIRK CRUMP
6

7

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BEFORE THE WORKERS' COMPENSATION APPEALS BOARD
9 IN AND FOR THE STATE OF CALIFORNIA

10

11 KIRK CRUMP,

Case No.: ADJ9231258
IMR Case No.: CM13-0047014

12

Applicant,

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vs.

APPLICANT'S OPPOSITION TO
DEFENDANTS' PETITION APPEALING
ADMINISTRATIVE DIRECTOR'S
INDEPENDENT MEDICAL REVIEW
DETERMINATION

14

CITY OF SACRAMENTO,
Permissibly Self-Insured
15 and Self-Administered,

16

Defendants. /

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Comes now Applicant, KIRK CRUMP, by and through his attorneys of record, the

18

Law Office of Frieze & Paul, and hereby submits this opposition to Defendants' Petition

19

Appealing Administrative Director's Independent Medical Review Determination dated

20

June 6, 2014 and served by U.S. First Class Mail on same date as follows:

21

1. A review of Defendants' chronology of events is accurate as far as it goes.

22

However, there are additional events that need to be included as set forth hereinbelow.

23

2. Defendants point out per Exhibit "D" that a Notice of Assignment and

24

Request for Information dated December 27, 2013 from Maximus Federal Services was

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received on December 31, 2013, wherein it was indicated that Maximus was assigned

26

to conduct an independent medical review of the October 29, 2013 utilization review

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denial for an H-Wave device. Defendants now complain that they were never served

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with a copy of the request for an IMR. However, Defendants did not object to the IMR

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1 referral, but rather, provided all relevant records requested for the IMR as set forth in
2 Exhibit "E". In fact, there is no objection to this process until after the adverse
3 determination denying the utilization review non-certification.

4 3. Defendants have not set forth any particulars as to how they have been
5 prejudiced other than to give generalities. As a practical matter, what difference did it
6 make that they were not served with this utilization review since Defendants were still
7 afforded the opportunity to send the records to IMR.

8 4. Further, Defendants state on paragraph 6 of their Petition and per Exhibit
9 "F" that they received the independent medical review determination overturning the
10 utilization review denial. What is not included in the chronology is the fact that after
11 receiving the IMR decision Defendants transmitted a fax to counsel for Applicant dated
12 May 27, 2014 indicating that they "would like to settle out the balance for the services
13 and transfer his supplies to be sent through our preferred provider". This is
14 attached hereto as Exhibit "1".

15 5. Counsel for Applicant responded by facsimile on same date, May 27, 2014,
16 that although counsel could not agree to any position that may compromise the H-Wave
17 unit supplier, counsel could agree that the supplies for the H-Wave be sent through the
18 preferred provider. Attached hereto as Exhibit "2".

19 6. Further, it is not pointed out by Defendants that Applicant did testify in his
20 deposition taken on June 2, 2014 that he is working modified duty and that he uses the
21 H-Wave device 3 to 4 times a week at night from 45 minutes to one hour per usage. He
22 further testified that this has been beneficial as it helps with his pain and allows him to
23 reduce medication intake. (Note: as of the preparation of this Opposition, the deposition
24 transcript has not yet been made available.)

25 7. It needs to be pointed out that the independent medical review (Exhibit
26 "F") criticizes the utilization review for failure to cite any medical guidelines as required
27 by the Labor Code and Regulations. This is more relevant to the overturning of the
28 utilization review than whether or not consideration should be made that the then

1 primary treating physician Dr. Harry Khasigian did not respond to a request by
2 utilization review for further information as set forth on paragraph 8 of Defendants'
3 Petition. Defendants cite Regulation §9792.10.0(a)(6). However, a review of this
4 particular Regulation pertains to the issue of timelines that utilization review has to
5 respond to a request for authorization and not to the actual underlying validity of the
6 request. In other words, the failure on the part of Dr. Khasigian to respond with further
7 information only results in the utilization review process basing its decision on those
8 records which were previously provided by the claims administrator.

9 8. It is contended that Defendants are trying to argue form over substance.
10 The utilization review that was issued in response to the RFA for an H-Wave device was
11 deficient on its face as pointed out by IMR since utilization review did not even cite any
12 medical guidelines to support a decision of non-certification.

13 WHEREFORE, it is respectfully requested that the Petition to overturn the IMR be
14 denied and that therefore Defendants be ordered to provide the medical treatment
15 requested, to wit: H-Wave device.

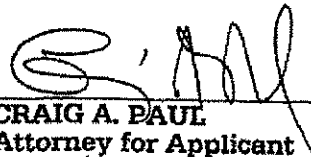
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17 DATED: June 20, 2014

LAW OFFICE OF FRIEZE & PAUL

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CRAIG A. PAUL
Attorney for Applicant

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1 **VERIFICATION**

2 I have read the foregoing Applicant's Opposition to Defendants' Petition
3 Appealing Administrative Director's Independent Medical Review Determination and
4 declare the following:

5 1. I am an attorney at law duly licensed to practice before all courts in the
6 State of California and am a partner in the Law Office of Frieze & Paul, attorneys of
7 record for Applicant, Kirk Crump, in this action.

8 2. That the contents of the foregoing document are true and correct to my
9 own knowledge, except as to matters stated therein on information and belief; and,

10 3. That the matters so stated are believed by me to be true and correct.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 20TH day of JUNE, 2014, in Elk Grove, California.

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15 
16 CRAIG A. PAUL,
17 ATTORNEY FOR APPLICANT
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May 27, 2014 11:13AM CITY OF SACRAMENTO
MAXIMUS FEDERAL SERVICES, INC.
Independent Medical Review
P.O. Box 138009
Sacramento, CA 95813-8009
(855) 865-8873, Fax: (916) 605-4270

No. 4026 P. 2

MAXIMUS
Federal Services 

Independent Medical Review Final Determination Letter

Dated: 5/15/2014

179
KIRK CRUMO
8204 HORNEFIELD WAY
SACRAMENTO, CA 95828

IMR Case Number	CM13-0047014	Date of Decision	08/09/2011
Claim Number	1900120379	Decision Date	10/29/2013
Payment Method	STANDARD	Application Received	11/04/2013
Employee Name	KIRK CRUMO		
Reviewer Name	HARRY KHASIGIAN		
Attachment(s) in Computerized IMR Application	SEE ATTACHED		

DEAR KIRK CRUMO,

MAXIMUS Federal Services has completed the Independent Medical Review ("IMR") of the above workers' compensation case. This letter provides you with the IMR Final Determination and explains how the determination was made.

Final Determination: OVERTURN. This means we decided that all of the disputed items/services are medically necessary and appropriate. A detailed explanation of the decision for each of the disputed items/services is provided later in this letter.

The determination of MAXIMUS Federal Services and its expert reviewer is deemed to be the Final Determination of the Administrative Director of the Division of Workers' Compensation. This determination is binding on all parties.

In certain limited circumstances, you can appeal the Final Determination. Appeals must be filed with the Workers' Compensation Appeals Board within 30 days from the date of this letter. For more information on appealing the final determination, please see California Labor Code Section 4610.6(h).

Sincerely,

Paul Manchester, MD, MPH
Medical Director

cc: Department of Industrial Relations, CITY OF SACRAMENTO

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WORKERS' COMP UNIT

Final Determination Letter for IMR Case Number CM13-0047014

DOCUMENTS REVIEWED

The following relevant documents received from the interested parties and the documents provided with the application were reviewed and considered. These documents included:

- Application of Independent Medical Review
- Utilization Review Determination
- Medical Treatment Utilization Schedule (MTUS)
- Medical Records from:
Claims Administrator

Provider Name	Dates of Service From	Dates of Service To
Harry Khasigian MD	12/21/2012	11/19/2013
H-Wave	09/16/2013	11/21/2013
Capital Rehab	05/17/2013	
Methodist Hospital of Sacramento	03/14/2013	
Timothy Lee MD	03/12/2013	
Sacramento Diagnostic MRI	05/16/2012	01/17/2013
Mercy Medical Group	12/11/2012	
Torrey Nickerson Physical Therapy	09/10/2012	10/22/2012
Sacramento Knee & Sports Medicine	06/04/2012	10/22/2012
Sutter Alhambra Surgery Center	07/30/2012	
Diagnostic Pathology Medical Group Inc.	07/30/2012	
One Call Medical Inc.	05/16/2012	
Enass Arahman MD	05/11/2012	

HOW THE IMR FINAL DETERMINATION WAS MADE

MAXIMUS Federal Services sent the complete case file to an expert reviewer. He/she has no affiliation with the employer, employee, providers or the claims administrator. The expert reviewer is Board Certified in Occupational Medicine, has a subspecialty in Interventional Spine, and is licensed to practice in California. He/she has been in active clinical practice for more than five years and is currently working at least 24 hours a week in active practice. The expert reviewer was selected based on his/her clinical experience, education, background, and expertise in the same or similar specialties that evaluate and/or treat the medical condition and disputed items/services. He/she is familiar with governing laws and regulations, including the strength of evidence hierarchy that applies to Independent Medical Review determinations.

CLINICAL CASE SUMMARY

The expert reviewer developed the following clinical case summary based on a review of the case-file, including all medical records:

The patient is a 48-year-old male with date of injury of 08/09/2011. The listed diagnoses per Dr. Harry Khasigian dated 03/14/2013 are:

1. Rotator cuff tear, right shoulder.

Final Determination Letter for IMR Case Number CM13-0047014

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CITY OF SACRAMENTO
WORKERS' COMP UNIT

- 2. Acromioclavicular joint arthritis, right shoulder.
- 3. Impingement syndrome, right shoulder.
- 4. Subacromial bursitis, right shoulder.
- 5. Bicipital tendinitis, right shoulder.
- 6. Status post rotator cuff repair, 03/14/2013.
- 7. Status post diagnostic arthroscopy, acromioplasty, and debridement of partial-thickness rotator cuff tear, 07/30/2012.

According to the report, the patient is 25 weeks post open rotator cuff repair and biceps decompression. He has been in physical therapy and has not worked since 03/15/2013. He says he has improved since his last visit. The objective findings show abduction is 160 degrees, flexion is 140 degrees, internal rotation is 70 degrees, and external rotation is 70 degrees of the shoulder. There is a 5-/5 resisted abduction. Speed's test is 5-/5. The treater is requesting a purchase of an H-wave device.

IMR DECISION(S) AND RATIONALE(S)

The Final Determination was based on decisions for the disputed items/services set forth below:

1. H-WAVE DEVICE; PURCHASE/INDEFINITE USE IS MEDICALLY NECESSARY AND APPROPRIATE.

The Claims Administrator based its decision on NO PRESENTED GUIDELINES.

The Expert Reviewer based his/her decision on the MTUS CHRONIC PAIN MEDICAL TREATMENT GUIDELINES , H-WAVE STIMULATION (HWT), PAGE 117, 118.

The Expert Reviewer's decision rationale:

This patient presents with chronic shoulder pain. Treater is requesting an H-wave purchase. Review of the reports show a patient compliance and outcome form which noted only 50% improvement. The progress report dated 10/07/2013 by Dr. Khasigian states that, "The patient has reported a decrease in the need for all medications due to the use of the H-wave device. The patient has reported the ability to perform more activity and greater overall function due to the use of the H-wave device." When addressing H-wave units, MTUS Guidelines, page 117 and 118, supports a one-month home-based trial of H-wave treatment as a noninvasive conservative option for diabetic neuropathic pain or chronic soft tissue inflammation if used as an adjunct to a program of evidence-based functional restoration and only following failure of initially recommended conservative care including recommended physical therapy (i.e. exercise) and medications, plus TENS. In this case, the patient has tried and failed TENS unit in the past and reports a decrease in oral medications due to H-wave use. Furthermore, the treater also reports that the patient is permanent and stationary and has returned to work on full duty. Recommendation is for authorization.

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WORKERS' COMP UNIT
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Disclaimer: MAXIMUS is providing an independent review service under contract with the California Department of Industrial Relations. MAXIMUS is not engaged in the practice of law or medicine. Decisions about the use or nonuse of health care services and treatments are the sole responsibility of the patient and the patient's physician. MAXIMUS is not liable for any consequences arising from these decisions.

Final Determination Letter for IMR Case Number CM13-0047014

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CITY OF SACRAMENTO
WORKERS' COMP UNIT

4

1 LAUGHLIN, FALBO, LEVY & MORESI
2 Andrew Nahl (SBN 232451)
3 106 "K" Street, Second Floor
4 Sacramento, CA 95814
5 Telephone: (916) 441-6045

6 Attorneys for Defendants
7 CITY OF SACRAMENTO,
8 Permissibly Self-Insured and Self-Administered

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JUN 09 2014
DIR/DWC SACRAMENTO

9 BEFORE THE WORKERS' COMPENSATION APPEALS BOARD

10 STATE OF CALIFORNIA

11 KIRK CRUMP

12 Applicant,

13 v.

14 CITY OF SACRAMENTO, Permissibly
15 Self-Insured and Self-Administered

16 Defendants.

WCAB Case No: ADJ9231258

IMR Case No: CM13-0047014

PETITION APPEALING
ADMINISTRATIVE DIRECTOR'S
INDEPENDENT MEDICAL REVIEW
DETERMINATION

17 COMES NOW the defendant, CITY OF SACRAMENTO, by and through its attorneys of
18 record, LAUGHLIN, FALBO, LEVY & MORESI LLP, and hereby files this Petition Appealing
19 Administrative Director's Independent Medical Review Determination dated May 15, 2014 as
20 follows:

- 21 1. On 10/15/13, applicant's treating physician, Dr. Khasigian, faxed a report and request
22 for authorization dated 10/7/13 for a home H-Wave Device to defendants. A copy of
23 this request is attached hereto as Exhibit "A."
- 24 2. On 10/16/13, defendant's Utilization Review provider, Allied Managed Care
25 Incorporated, sent a request for additional information to Dr. Khasigian regarding his
26 request for the H-Wave device. A copy of this request is attached hereto as Exhibit
27 "B."

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3. On 10/29/13, defendants denied the request for the H-Wave Device based on the Utilization Review determination to non-certify the request for the H-Wave device. A copy of the utilization review determination is attached hereto as Exhibit "C."
4. On 12/31/13, defendants received a Notice of Assignment and Request for Information dated 12/27/13 from Maximus Federal Services indicating it was assigned to conduct an independent medical review regarding 10/29/13 Utilization Review denial. A copy of this notice from Maximus is attached hereto as Exhibit "D." Defendants were never served with a copy of a request for an Independent Medical Review.
5. On 1/3/14, defendants provided Maximus all relevant medical records requested for the Independent Medical Review. A copy of defendant's cover letter with listing of the medical records sent to Maximus is attached hereto as Exhibit "E."
6. On 5/20/14, defendants received the Independent Medical Review Determination Letter from Maximus dated 5/15/14 overturning the Utilization Review denial of the request for the H-Wave device. As part of its reasoning for its determination, IMR pointed to the 10/7/13 request by Dr. Khasigian that reported applicant's need for all medications decreased due to use of the H-Wave device. A copy of the Independent Medical Review Determination Letter is attached hereto as Exhibit "F."
7. Defendant contends that the Administrative Director acted in excess of her powers by assigning Maximus to conduct an Independent Medical Review, since a copy of the request for the IMR was never served on defendants. This has not allowed defendants to assess whether a proper request for IMR was ever made by a party with standing to make such a request.
8. Defendant also contends the Administrative Director acted in excess of her powers by the fact that the IMR determination did not take into account that Dr. Khasigian did

1 not respond to Utilization Review's request for additional information regarding his
2 request for the H-Wave device. Regulation Section 9792.10.3(a)(6) states that when
3 making a determination on whether an application is eligible for independent medical
4 review, the Administrative Director shall consider the failure of the requesting
5 physician to respond to a request by the claims administrator for information
6 reasonably necessary to make a utilization review decision. Because Dr. Khasigian
7 never responded to defendant's request for additional information, the Utilization
8 Review denial of the request for the H-Wave unit should not be subject to
9 independent medical review.
10

11 9. Defendant believes the determination by Maximus was the result of erroneous
12 express or implied fact by relying on the claim in Dr. Khasigian's report that
13 applicant has reduced his medication use as a result of his use of the H-Wave device.
14 There is no additional follow up with regards to applicant's use of the H-Wave
15 Device. Dr. Khasigian declared applicant permanent and stationary on 11/19/13, and
16 in that report made no mention of the H-Wave device and/or whether applicant was
17 continuing to reduce his use of medications. There is no mention of the need for an
18 H-Wave device in Dr. Khasigian's discussion of need for future medical care. Dr.
19 Khasigian's 11/19/13 report is attached hereto as Exhibit "G."
20

21 10. Also, the Independent Medical Review seems to have ignored the fact that in his
22 10/7/13 request for the H-Wave device, the progress report addendum notes that
23 applicant reported the decrease of his medication to an H-Wave survey and not
24 directly to Dr. Khasigian. This is despite the fact applicant was evaluated by Dr.
25 Khasigian on 10/7/13, and there was no mention of the results of applicant's use of
26 the H-Wave device in Dr. Khasigian's narrative report.
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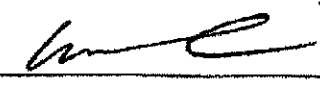
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11. Defendant also contends that the 10/7/13 request for the H-Wave device and Dr. Khasigian's subsequent failure to reply to Utilization Review's request for additional information did not constitute a valid request for treatment to trigger the requirements for Utilization Review and the independent medical review process.

WHEREFORE, based on the above, defendant respectfully requests that the issue of the request for an H-Wave Device be remanded to the Administrative Director to submit the dispute to a different independent review organization or different reviewer pursuant to Labor Code Section 4610.6(i).

DATED: June 6, 2014

Respectfully submitted,
LAUGHLIN, FALBO, LEVY & MORESI LLP

By: 
Andrew Nahl
Attorneys for Defendants
CITY OF SACRAMENTO, Permissibly Self-Insured and Self-Administered

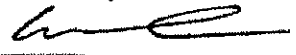
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VERIFICATION

I am one of the attorneys for the defendant in this action. The facts alleged in the above document are within my knowledge, and I make this verification for that reason; the above document is true to my own knowledge, except as to the matters that are stated in it on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 6th day of June, 2014 at Sacramento, California.



Andrew Nahl