

## BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY KONO,

Claimant,

vs.

ROYAL PLUMBING, LLC,

Employer,

and

EMC INSURANCE COMPANIES,

Insurance Carrier,  
Defendants.

File No. 1663131.03

ALTERNATE MEDICAL  
CARE DECISION

Head Note No.: 2701

## STATEMENT OF THE CASE

This is a contested case proceeding under Iowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, Timothy Kono. Claimant appeared through his attorney, R. Saffin Parrish-Sams. Defendants appeared through their attorney, Lori Brandau. Claimant's petition was filed on October 20, 2021. Defendants filed an answer on November 1, 2021. Defendants do not dispute liability for the condition on which the claim for alternate care is based.

The alternate medical care claim came on for hearing on November 2, 2021. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 6 through 9, and defendants' exhibits A through E. Claimant called Laura Cunningham, PA-C, as a witness. Counsel for both parties also offered oral arguments to support their positions.

## ISSUE

The issue presented for resolution is whether the claimant is entitled to alternate medical care consisting of an order preventing defendants from requiring claimant to treat with Thomas Koithan, D.O., a psychiatrist.

## FINDINGS OF FACT

Claimant, Timothy Kono, sustained multiple injuries on April 9, 2019, when he was working in a 10 to 11-foot-deep trench that collapsed, essentially burying him alive. Claimant sustained multiple physical injuries, including injuries to his hips, legs, knees, ankles, and low back. Claimant also sustained a mental health injury, including post-traumatic stress disorder (PTSD), anxiety, and depression. The condition for which claimant seeks alternate care involves the mental health diagnoses of PTSD, anxiety, and depression. Defendants have admitted liability for these conditions.

This is the third alternate care petition that claimant has filed. The first was dismissed prior to hearing as the requested care was authorized. The second was heard by the undersigned on August 12, 2021. The decision was filed on August 13, 2021, and claimant's petition was granted. In that decision, defendants were ordered to authorize and pay the reasonable costs for claimant to receive an emotional support dog of his choosing, and for all reasonable costs related to the care of the dog. (See August 13, 2021 alternate care decision and August 30, 2021 ruling on defendants' motion to reconsider)

Prior to the August alternate care hearing, in January 2021, defendants had claimant seen by C. Scott Jennisch, M.D. Dr. Jennisch provided a report on August 6, 2021, after reviewing updated treatment records. At the August hearing, defendants indicated they were willing to authorize the plan of care Dr. Jennisch had provided, as an alternative to providing the emotional support dog claimant was requesting. Ultimately, I determined that at that time, Dr. Jennisch's recommended treatment plan was not reasonable care, as it would be disruptive to claimant's established care, and not reasonably suited to treat his particular injury. Defendants did not appeal that decision.

Since that time, claimant has continued his treatment with Shannon L. Sandahl, LISW, and Laura Cunningham, PA-C. Claimant was referred to PA-C Cunningham at the direction of James L. Gallagher, M.D., F.A.P.A., who was claimant's authorized treating physician for his mental health care prior to Dr. Gallagher's retirement in July of 2021. Prior to his retirement, Dr. Gallagher had transitioned claimant's care to PA-C Cunningham, under his supervision. After his retirement, Steven Reeves, M.D., assumed supervision of PA-C Cunningham related to claimant's care.

On October 18, 2021, defense counsel wrote to claimant's attorney and advised that pursuant to Dr. Jennisch's recommendation, the "management" of claimant's mental health care would be transitioned from Dr. Reeves, who is an internist, to Dr. Koithan, a board-certified psychiatrist. (Defendants' Exhibit C, p. 4) Defense counsel included with that letter a letter she wrote to Dr. Reeves, dated September 21, 2021, summarizing their conversation and her understanding of Dr. Reeves' opinion regarding the transfer of care. (Def. Ex. C, pp. 5-6) In that letter, counsel notes that Dr. Jennisch recommended Dr. Koithan, and Dr. Koithan agreed to receive claimant as a patient. Based on their conversation, counsel's understanding was that Dr. Reeves agreed that

“the management of Mr. Kono’s mental health care should be transitioned” from Dr. Reeves to Dr. Koithan. (Def. Ex. C, p. 5) Dr. Reeves checked “agree” under the statement “I concur with the recommendation that the management of Mr. Kono’s mental health care be transitioned from me to Dr. Thomas Koithan.” (Def. Ex. C, p. 6)

Claimant’s counsel responded the following day, October 19, 2021, objecting to the transfer of care from Dr. Reeves to Dr. Koithan. (Claimant’s Exhibit 6) Claimant subsequently filed the alternate care petition at issue on October 20, 2021. On October 25, 2021, defense counsel wrote again to claimant’s attorney, clarifying that defendants are not withdrawing authorization for claimant to continue treatment with PA-C Cunningham or Shannon Sandahl. (Def. Ex. E, p. 9) Rather, as PA-C Cunningham must be supervised by a physician under Iowa law, defendants were following the recommendation of Dr. Jennisch and transitioning claimant’s care to Dr. Koithan, as opposed to Dr. Reeves. Defendants also point out that while Dr. Reeves is an internist in Creston, Dr. Koithan is a board-certified psychiatrist, who practices in the metro area and used to practice with Dr. Gallagher. (Def. Ex. E, p. 9) Finally, defendants note that as a psychiatrist, Dr. Koithan is in a better position than Dr. Reeves to ensure that claimant receives “appropriate medical care.”

PA-C Cunningham testified at hearing. She obtained her physicians’ assistant license in 2015. Prior to that, she worked with patients in a clinical capacity. Overall, she has about 12 years of experience treating patients with mental health conditions. As a certified physicians’ assistant, she is able to diagnose, treat, and prescribe and manage medications. Under Iowa law, a physicians’ assistant must be “supervised” by a licensed physician. PA-C Cunningham explained that this supervisory relationship is defined by a contract between the physician and physicians’ assistant. Additionally, the treatment being provided by the physicians’ assistant must be within the physician’s area of practice. (Testimony) A physicians’ assistant can have more than one supervising physician, and PA-C Cunningham testified that she has multiple supervising physicians depending on the needs of each patient.

PA-C Cunningham testified that Dr. Gallagher specifically asked her to assume care of his patients in anticipation of his retirement. As Dr. Gallagher used to practice with Dr. Koithan, she was asked why Dr. Gallagher did not choose him to take over his practice instead. While PA-C Cunningham could not speculate, there were some references to a possible issue between Dr. Koithan and the medical board, which has apparently not been resolved or made public at this time. In any event, at a time when Dr. Gallagher was claimant’s authorized treating physician, he referred claimant to PA-C Cunningham, who has fully assumed his mental health treatment, along with his therapist Shannon Sandahl.

PA-C Cunningham testified that she reviewed Dr. Jennisch’s report. She noted that between the time Dr. Jennisch initially saw claimant in January 2021 and the time he issued his report in August 2021, she had already initiated some of his treatment recommendations. She testified that she had already begun aggressive medication management prior to receiving his report. With respect to Dr. Jennisch’s

recommendation that claimant engage in vocational rehabilitation, PA-C Cunningham does not believe he is clinically able to participate in vocational training currently, but does believe he will continue to improve. She outlined claimant's multiple triggers for his post-traumatic stress disorder (PTSD), also outlined in her September 9, 2021 record, and stated that those triggers can easily cause a relapse of claimant's currently stable condition. (Testimony, see also Cl. Ex. 9, pp. 1-2)

Finally, with respect to Dr. Jennisch's recommendation that claimant be transitioned to a psychiatrist, PA-C Cunningham stated that she does not believe such a transition is necessary, nor would it be helpful, at this time. Her main concerns involve the fact that reliving the events of the trauma claimant experienced is very difficult for him, and having to explain it again to a new, unfamiliar provider would potentially exacerbate his condition. She noted that any potential benefit claimant might receive from Dr. Koithan is outweighed by the risk of additional trauma. Especially in this case, as claimant's feelings of a loss of control in his life is one of his PTSD triggers. She noted that claimant was able to transition to herself and Ms. Sandahl because he had a good relationship with Dr. Gallagher, and Dr. Gallagher had made those referrals. As such, claimant has developed a level of comfort and trust with herself and Ms. Sandahl.

Regarding claimant's treatment, claimant has shown improvement in his mental condition. As of her most recent appointment with him, he is no longer suicidal. He is clinically stable and continues to improve. Her current treatment plan is to continue with intensive medication management, continue his therapy with Ms. Sandahl, and continue to encourage him to engage with others socially. She recently suggested he try group therapy in order to show him he is not alone. She testified that she is qualified, competent, and capable of treating claimant's mental health conditions, and would also make a referral to a psychiatrist or any other health care provider if she felt it was necessary. However, forcing claimant to see Dr. Koithan at this point is not necessary, and could actually undermine his progress. An additional concern involves having two providers prescribing medications, which is duplicative and could also lead to errors.

On a more personal level, PA-C Cunningham testified that she would not be comfortable entering into a supervisory agreement with Dr. Koithan, as he does not practice the same way she does. She is comfortable with Dr. Reeves, because she has worked with him previously. With respect to Dr. Reeves' practice area, she noted that as an internal medicine physician in a rural area, it is very common to treat and evaluate mental health conditions. As such, while it is not his specialty, it is within his scope of practice, which is why he is able to supervise her care of claimant. With respect to Dr. Reeves' agreement with the transfer of care to Dr. Koithan, PA-C Cunningham could not say why he signed the letter. However, she noted that he did not discuss it with her prior to signing the letter. Further, Dr. Reeves has never seen claimant, and is not involved with his care.

Claimant provided a signed, sworn affidavit in lieu of testifying at hearing. (Cl. Ex. 8). The affidavit was admitted over defendants' objection.<sup>1</sup> Given that defendants did not have the opportunity to cross-examine claimant, the affidavit is given less weight than the live testimony of PA-C Cunningham. However, claimant essentially echoes PA-C Cunningham's concerns. Claimant makes it very clear that he believes he has improved with his current treatment, and the thought of switching to someone new is triggering to him. He does not want to explain the events leading to his injuries to someone new, that he does not know or trust, and did not choose, as it will force him to relive the trauma. (Cl. Ex. 8)

Claimant has an established treatment relationship with providers he trusts, and his condition is improving with their treatment. There is no reasonable justification or basis for defendants' transfer of care from a previously authorized provider. I find that defendants' transfer of care to Dr. Koithan is an interference of care and unreasonable.

### REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical

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<sup>1</sup> Only paragraphs 1 through 6 of exhibit 8 were admitted, in order to comply with the page limitations for evidence in an alternate care proceeding. It was noted for the record that claimant did sign the affidavit and it was notarized on October 27, 2021.

care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. See Iowa Code § 85.27(4). Thus, by challenging the employer's choice of treatment and seeking alternate care, claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Long, 528 N.W.2d at 124.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). Defendants are not entitled to interfere with the medical judgment of their own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

The right to choose the care means the right to choose the provider, not the treatment modalities recommended by the provider. The employer must provide the treatment, testing, imaging or other treatment modalities recommended by its own authorized treating physician, even if another consulting physician disagrees with those recommendations. Haack v. Von Hoffman Graphics, File No. 1268172, p. 9 (App. July 31, 2002) [MRI and x-rays]; Cahill v. S & H Fabricating & Engineering, (Alt Care, File No. 1138063, May 30, 1997) (work hardening program); Hawxby v. Hallett Materials, File No. 1112821, (Alt Care, February 20, 1996); Leitzen v. Collis, Inc. File No. 1084677, (Alt Care, September 9, 1996). The right to choose the care does not authorize the employer to interfere with the medical judgment of its own treating physician. Boggs v Cargill, Inc. File No. 1050396, (Alt Care, January 31, 1994).

This agency has a long history of denying attempts by defendants to change the course of a claimant's authorized treatment without some basis for the change. Generally, defendants are not allowed to disturb claimant's entitlement to medical care by changing the authorized treating physician. Burkett v. Com Force, File No. 1199960 (Arb., July 16, 2001). An employer/insurance carrier cannot transfer care from authorized doctor to another doctor unless there is a "rational justification" for the transfer. LaRue v. Blake Byrket Trucking, File No. 1265132 (Alt Care, August 7, 2000). The defendant is required to follow the medical recommendations of an authorized physician despite the fact that time has passed. McFarland v. Amana Society Builders, File No. 5008275 (Alt Care, May 20, 2003) (holding defendants had to honor authorized physician's referral to pain management clinic even though it was made two years prior). If a claimant has an established treatment regimen, it is unreasonable to interfere with the rapport between the claimant and the treating providers by transferring care without a specific basis or reason. Tucker v. Colony Heating & Air Cond., File No. 1648828.04 (Alt. Care, July 13, 2021).

Ultimately, determining whether care is reasonable under the statute is a question of fact. Long, 528 N.W.2d at 123. In this case, it is clear from both evidentiary documents and the arguments of defense counsel that this transition of care is based solely on the recommendation of Dr. Jennisch, who is not an authorized treating

physician and saw claimant one time, in January of 2021. There is no “rational justification” for the transfer of care. The prior authorized treating physician, Dr. Gallagher, specifically referred claimant to PA-C Cunningham for his continuing treatment following Dr. Gallagher’s retirement. While defendants are not withdrawing authorization for claimant to continue treating with PA-C Cunningham or Shannon Sandahl, bringing Dr. Koithan in at this time may have that ultimate effect. As claimant points out, this agency has no authority to force PA-C Cunningham to enter a supervisory contract with Dr. Koithan, and she has expressed that she is not willing to do so.

PA-C Cunningham testified that claimant’s condition is currently stable, and he continues to show improvement. Many of Dr. Jennisch’s treatment suggestions had already been implemented prior to receipt of his report. She is qualified, competent, and capable of managing claimant’s mental health treatment. More importantly, she has serious concerns about a transfer of care at this time, given claimant’s PTSD triggers. No authorized treating provider has suggested a change from Dr. Reeves as supervising physician to Dr. Koithan is medically necessary, or even in claimant’s best interest. Dr. Reeves’ signature on a letter authored by defense counsel, without first discussing the details with PA-C Cunningham, is given very little weight. Dr. Reeves has never treated or even met claimant, and is not, in fact, “managing” claimant’s mental health care. Rather, PA-C Cunningham is managing his mental health care. Under Iowa law she must have a licensed physician in a supervisory role, but that role appears to be very limited in this case. Any potential benefit to claimant of forcing him to treat with Dr. Koithan is outweighed by the risk of a potential relapse or exacerbation of his mental health condition. Defendants’ attempt to transition claimant’s mental health care to Dr. Koithan is an unreasonable interference with claimant’s medical care at this point, given that there is no rational justification for the change.

#### ORDER

THEREFORE, IT IS ORDERED:

The claimant’s petition for alternate medical care is granted. Defendants shall not transfer claimant’s care to Dr. Koithan.

Signed and filed this 3<sup>rd</sup> day of November, 2021.



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JESSICA L. CLEEREMAN  
DEPUTY WORKERS’  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

R. Saffin Parrish-Sams (via WCES)

Lori Brandau (via WCES)