

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

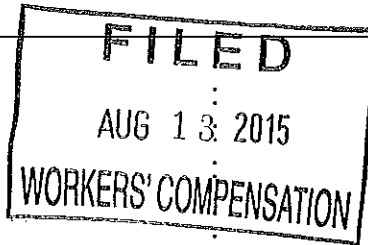
DANIEL SCARPINO,

Claimant,

vs.

UNITY POINT HEALTH – DES MOINES,

Employer,
Self-Insured,
Defendant.



File No. 5037847

NUNC PRO TUNC ORDER

On August 7, 2015, the undersigned filed an alternate care decision in this case. On August 10, 2014, claimant filed a motion for order nunc pro tunc. Defendants have not yet filed a response to the claimant's motion. However, it is clear that the undersigned made a scrivener's error in the decision that can and should be corrected by nunc pro tunc order.

In the Findings of Fact in the decision, the undersigned correctly found that Todd Troll, M.D., had referred the claimant to Thomas Hansen, M.D. In the Reasoning and Conclusions of Law, the undersigned mistakenly referred to Chris Nelson, M.D., as having made that referral instead of Dr. Troll. This was a scrivener's error.

The phrase, "nunc pro tunc" means "now for then." See: Black's Law Dictionary, page 1218 (Revised 4th Edition 1968). The definition in Black's Law Dictionary further provides: "A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e. with the same effect as if regularly done." Black's at 1218. A nunc pro tunc order "is not for the purpose of correcting judicial thinking, a judicial conclusion, or a mistake of law." Headley v. Headley, 172 N.W.2d 104, 108 (Iowa 1969). The nunc pro tunc order can be employed to correct obvious errors or to make an order conform to the judge's original intent. Graber v. District Court for Washington City, 410 N.W.2d 224, 229 (Iowa 1987). Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. November 13, 2008).

In this instance, my intention was to reflect the correct physician who had made the referral in the case. Due to a typographical error, this did not happen.


THEREFORE, IT IS ORDERED:

Claimant's motion for order nunc pro tunc is sustained.

The final, full paragraph on page 4 in the Reasoning and Conclusions of Law section of the decision is amended to read as follows:

With regard to the claimant's primary argument, I find that it is now moot and stale. I do find it is unreasonable for an employer, or its third-party administrator or case manager, to summarily and without explanation refuse to authorize a specific referral by the authorized treating physician. In this case, Dr. Troll specifically recommended Dr. Hansen and his office to evaluate the claimant for his work injury. I presume that Dr. Troll had a medical reason for naming a specific physician to see Daniel. Dr. Troll appeared to be making a specific medical judgment by naming a specific physician. The evidence in this case is that the employer or its third-party administrator did not like that recommendation although there is no reason specified in this record. There is no valid medical reason in this record to deny the referral.

Signed and filed this 13th day of August, 2015.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Philip F. Miller
Attorney at Law
808 Ashworth Road
West Des Moines, IA 50265
philmlawoffice@mchsi.com

Jennifer A. Clendenin
Attorney at Law
100 Court Ave. Ste. 600
Des Moines, IA 50309-2200
jclendenin@ahlerslaw.com

JLW/kjw