

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAYLON LLOYD, Claimant, vs. PLUNKETT'S PEST CONTROL, INC., Employer, ACCIDENT FUND NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 1664005.03 ORDER FOR NUNC PRO TUNC
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On September 23, 2022, the agency issued an alternate care decision in this case. The claimant applied for nunc pro tunc regarding parts of that decision so that Paragraph 2(b) of the order identifies the “hip” as the body part for which Dr. Sullivan will continue as the treating physician and Paragraph 2(c) to remove the reference to Dr. Miller. The defendants resisted the request with respect to Paragraph 2(c). The claimant responded to the resistance, arguing that the granting of alternate care in the form of authorization to continue to treat with Dr. Bremner and Dr. Sullivan, instead of transferring care to Dr. Miller, means that Dr. Miller will not be treating the claimant and should not manage the claimant’s prescription medications.

The phrase “nunc pro tunc” means “now for then.” See Black’s Law Dictionary, 1218 (rev. 4th ed. 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.” Id. 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. Iowa Dist. Court for Washington County, 410 N.W.2d 224, 229 (Iowa 1987); Brinson v. Spee Dee Delivery Service, No. 8-754/06-2074 (Iowa App. 2008). “[T]he intent of the trial judge is crucial to the determination of whether a nunc pro tunc order is appropriate to ‘correct’ a record.” Freeman v. Ernst & Young, 541 N.W.2d 890, 893 (Iowa 1995) (citing McVay v. Kenneth E. Montz Implement Co., 287 N.W.2d 149, 151 (Iowa 1980)).

The undersigned intended to expressly state that Dr. Sullivan would continue as an authorized treating physician for the claimant's hip in Paragraph 2(b). The defendants have no objection to granting nunc pro tunc with respect to this part of the decision. The request from the claimant would accurately reflect the intent of the undersigned and conform with the decision's findings of fact and conclusions of law. It is therefore granted.

With respect to Paragraph 2(c), the decision incorrectly refers to Dr. Miller. The undersigned expressly found transferring care for the claimant's hip, knee, and management of prescription medication to Dr. Miller from the authorized providers handling these areas of care would be unreasonable. It is therefore appropriate to grant nunc pro tunc and change the reference from Dr. Miller to Dr. Bremner and Dr. Sullivan. This makes the order section conform with the findings of fact and conclusions of law.

THEREFORE, IT IS ORDERED:

- 1) The motion is GRANTED.
- 2) Paragraph 2(b) is amended to read, "Continue to authorize Dr. Sullivan to treat Lloyd's hip."
- 3) Paragraph 2(c) is amended to read, "Continue to authorize Smith to manage the prescription medication relating to Lloyd's work injury in coordination with Dr. Bremner and Dr. Sullivan."

Signed and filed this 28th day of September, 2022.

A handwritten signature in black ink, appearing to read "Ben Humphrey", is written over a horizontal line.

BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Greg A. Egbers (via WCES)

Laura J. Ostrander (via WCES)