



LAW OFFICES
of
McDERMOTT & CLAWSON, LLP

LEGAL BRIEFS NEWSLETTER

CASES & COMMENTS ON WORKERS' COMPENSATION

February 2010

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A NEW WORLD OF EVIDENCE

“We have shown the world that the new wave is here, it is present and it is ready to explode.”

- - Ashley Kutchen

The American actor on being the first person to achieve one million followers on Twitter.

“I agree completely with my son James when he says 'Internet is like electricity. The latter lights up everything, while the former lights up knowledge'.”
- - Kerry Packer, Business Man

With the explosion of social networking sites such as Facebook and Twitter, and professional networking sites such as LinkedIn, and the tremendous popularity of such sites, we are finding new and potent avenues for background investigations. New tools including powerful new search engines are allowing claims investigations to go “where no man (or woman) has gone before.”

It is amazing what people will publish about themselves to the world, or what others may publish about them. The WCAB is now beginning to recognize that there may well be evidentiary value in the unrestrained e-utterances of those who would be less than truthful about

the nature and extent of their injuries. So it was in a new panel decision, *Linda Wenneker vs. Contra Costa County et. al.* (2009) ADJ2954617 et.al. (Opinion and Order Granting Petition for Removal).

To be fair, the case really centered around whether the defendant should be allowed to enter evidence discovered long after discovery closed, but what caught our attention is the nature of the evidence. It seems the applicant had testified that she did not leave her room for days at time, did not want to see anyone, and did not socialize and could not drive much. She claimed panic attacks when around people or noise. The defense sought to introduce statements she placed on Twitter and on a website she allegedly operated, stating (among other things) “Hey, Momz, I went off to L.A. for the pre-Oscars festivities, then on to New Orleans for a wicked and wild Mardi Gras vacation” with a follow up message stating “momzBabz, it was a (censored) blast.” The defense was barred by the WCAB Judge from entering the evidence, not on the ground that such evidence was inadmissible or not substantial, but rather because it was offered too

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late. For various reasons the WCAB disagreed and has given the defense the opportunity to offer the evidence, although the trial judge must still determine whether the evidence could have been timely discovered and offered at the MSC. What is important to us, however, is that the relevance and probative value of the evidence has apparently not been questioned by either side or the WCAB. Said the WCAB Judge, “.... the proffered evidence certainly seems probative to the central issues in these matters....”

This writer was recently provided an investigation report that focused on internet resources including civil and criminal fraud charges and chat statements of people who were allegedly defrauded by a claimant. The case had been previously settled with injury in issue, but the AME had written a report relying on the (as yet) uncontested assumed honesty of the applicant regarding the history of the injury, finding probable injury AOE/COE. Although the case had a nuisance value settlement with the applicant, there were tens of thousands of dollars in self-procured treatment liens still in issue. The AME was deposed and confronted with the internet material, causing him to express serious doubts about the applicant’s honesty and thus question his prior AOE/COE assumptions.

We recommend that, when assigning cases for AOE/COE investigation, the assignment should be made to an investigative firm with good technical expertise in conducting internet based searches. Name, email address, and telephone number searches should be a starting point, and the most popular social networking sites should be checked directly for activity and posts whenever possible.

In addition to the social websites, here are some resources we originally provided to our readers in 2006 that you might find useful.

Attorneys

Who is the legal opposition? To look up attorney information from the State Bar, go to:

http://www.calbar.ca.gov/state/calbar/calbar_home.jsp

Code Sections

Want a quick text-based way to quickly search obscure California Code sections (including the Labor Code, which is occasionally obscure)?

<http://www.leginfo.ca.gov/calaw.html>

Medical Professionals

Looking for a suitable QME? Check here:

<http://www.dir.ca.gov/databases/imc/imcstartnew.asp>

Want to know if the doctor is under investigation, had his license pulled or where to find him if he moved?

<http://www.medbd.ca.gov/>

What about acupuncturists?

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=AC&p_qte_pgm_code=6500](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=AC&p_qte_pgm_code=6500)

Chiropractors

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=DC&p_qte_pgm_code=8500](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=DC&p_qte_pgm_code=8500)

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Is the clinic with the fictitious name licensed?

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=FPN&p_qte_pgm_code=6301](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=FPN&p_qte_pgm_code=6301)

Those who administer occupational therapy must be licensed to do so. You can confirm license status of an occupational therapist at:

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=OT&p_qte_pgm_code=1475](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=OT&p_qte_pgm_code=1475)

Osteopaths

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=GEN&p_qte_pgm_code=8510](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=GEN&p_qte_pgm_code=8510)

Confirm the license status of a physical Therapist

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=PT&p_qte_pgm_code=6800](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=PT&p_qte_pgm_code=6800)

Is the psychologist licensed?

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=PSX&p_qte_pgm_code=7300](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=PSX&p_qte_pgm_code=7300)

Licensed Marriage and Family Therapists:

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=MFC&p_qte_pgm_code=1800](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=MFC&p_qte_pgm_code=1800)

Licensed Clinical Social Worker:

[http://www2.dca.ca.gov/pls/wllpub/wllqryna\\$lev2.startup?p_qte_code=LCS&p_qte_pgm_code=1800](http://www2.dca.ca.gov/pls/wllpub/wllqryna$lev2.startup?p_qte_code=LCS&p_qte_pgm_code=1800)

Carriers and TPAs

Looking for the missing insurance company?

[http://interactive.web.insurance.ca.gov/webuser/idb_co_list\\$.startup](http://interactive.web.insurance.ca.gov/webuser/idb_co_list$.startup)

[http://interactive.web.insurance.ca.gov/webuser/ncdw_alpha_co_line\\$.startup](http://interactive.web.insurance.ca.gov/webuser/ncdw_alpha_co_line$.startup)

To find out if the carrier is insolvent, check here:

http://www.caclo.org/perl/site_map.pl

Looking for info on Self Insured Employers or where to contact their claims administrators?

Check here:

<http://sip.dir.ca.gov/sip.html#1>

Settlements

Need a quick way to calculate the present value of an award?

http://www.moneychimp.com/calculator/present_value_calculator.htm

For subscribers, more sophisticated present value calculators are available at

<http://www.workcompcentral.com> .

Medical Reports and Bills

Looking for Info about drugs? Check Here:

<http://www.rxlist.com/>

Want info on Medical Diagnosis?

<http://www.merck.com/mmhe/index.html>

Missing Applicants

Incarcerated? The Sheriff might have information:

LA County:

http://app4.lasd.org/iic/ajis_search.cfm

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Orange County:

http://www.ocsd.org/e_services/whosinjail/

San Diego County:

<http://www.sdsheriff.net/wij/wij.aspx>

Riverside County:

<http://inmate1.riversidesheriff.org/iis/>

Have a favorite site of your own that is not listed here? Send it to us and we will add it to our list. You can email me at

hstevens@mcdermott-clawson.com.

*Editor's note: Panel decisions after Reconsideration or Removal are helpful in predicting how other judges might (or should) rule, but are not binding on any judges. Decisions of trial level judges do not bind other judges, even at the same Board. Neither may be used as persuasive authority.

What's in a Name?

In order to be identified as a "certified" specialist in California, an attorney must be certified either by The State Bar of California Board of Legal Specialization, or an organization whose certification program has been accredited by the State Bar. *(Such an organization must have requirements for certification that are at least equal to those of the State Bar's program.)*

There is no other recognized certification for Workers' Compensation Specialists than that which is issued by the State Bar of California. California attorneys certified as specialists in Workers' Compensation must pass a written examination in their specialty field, demonstrate a high level of experience in the specialty field, fulfill substantial ongoing education requirements and must be favorably evaluated by other attorneys and judges familiar with their work.

You can find a list of specialists by going to the State Bar website. Once the testing and

experience qualifications are met, and the letters of recommendation by independent attorneys and judges are submitted, the Board of Specialization will advise a successful candidate may then use the following language on written communications: "Certified Specialist, Workers' Compensation, The State Bar of California Board of Legal Specialization." The certified specialist must renew that certification every five years.

We suggest being wary of aggressive marketing campaigns from profit-making enterprises offering to provide titles suggesting exceptional expertise in Workers' Compensation law just for attending a seminar, and even more wary of attorneys who would use those titles to suggest they may have special expertise.

Need Assistance with Training?

McDermott & Clawson, LLP is happy to assist with the training needs of your organization. Our education committee has extensive experience in providing seminars and discussions on Workers' Compensation topics of concern to adjusters and employers. We have worked with numerous carriers, third party administrators, and brokers to provide educational assistance, and would be happy to discuss your needs.

Call or email [Howard Stevens](mailto:Howard.Stevens@mcclaw.com) at (714) 288- 1700 or feel free to speak with any of our attorneys for further information.

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