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# **LEGAL BRIEFS**

CASES & COMMENTS ON WORKERS' COMPENSATION

July 2006

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## **AVOID GETTING CARRIED AWAY BY TRANSPORTATION LIENS!**

The recently published Court of Appeal decision in *Zenith vs. WCAB* (March 2006) 71 CCC 374, established the concept that the defendant does not have to pay for services billed by an unlicensed provider. It further reinforces the rule that a lien claimant has the initial burden of proof which includes affirmatively establishing a legal right to provide the services for which it seeks payment. This has presented us with another possible line of defense against inflated liens for transportation services.

Unlike limousines, shuttle buses, charter buses and other for-hire passenger carriers, medical transportation companies are specifically exempted from regulation by the Public Utilities Commission per Public Utility Code §226(d). Regulation and licensing of these companies is controlled by a hodgepodge of county and municipal regulations in each locale and it will be necessary for the defense to do some research to

determine if there are licensing requirements in the location where the services were provided, and what the specific licensing requirements are.

For example, the Los Angeles County Code classifies non-emergency medical transportation as "Ambulettes" and requires that they be licensed. The Director of the Emergency Medical Services Agency for L.A. County controls ambulette licenses. L.A. County Code §7.17010A states "Ambulette" means a motor vehicle specially constructed, modified, equipped, or arranged for the purpose of transporting sick, injured, invalid, convalescent, infirm, or otherwise incapacitated persons whose medical condition requires transportation services but does not require emergency services or equipment during transport. In addition to paying licensing fees, the operator must show proof of appropriate business licenses, CHP vehicle inspections, and that the drivers have passed

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background checks and have been fingerprinted. Of further interest is that County Code section 7.17.080, effective 7/1/05, established a rate schedule for ambulettes in the county. As used in the schedule, a “litter case” is defined by 7.17.010 of the code to mean a case which requires use of a vehicle which is modified, equipped and used for the purpose of providing non-emergency transport for those patients with stable medical conditions who require the use of a litter or gurney.

**Section 7.17.080 Rate Schedule for Ambulettes**

- A. An ambulette operator shall charge no more than the following rates:
1. Response to call – Non-litter case:
 

One patient	\$36.50
Two patients, each patient	\$22.78
Three patients, each patient	\$19.25
Four patients, each patient	\$14.00
  2. Response to call – Litter patient
 

One patient	\$70.25
Two patients, each patient	\$38.50
  3. Wheelchair use: For the use of a wheelchair during response or transport, per incident \$5.50
  4. Waiting Time. For each 15 minute period or fraction thereof after the first 15 minutes of waiting, at the request of the person hiring the ambulance \$8.00
  5. Mileage rate: For each mile or fraction thereof, from the pick-up point to the destination \$3.50

B. This section does not apply to a contract between an ambulette operator and the County where different rates or payment mechanisms are specified.

**Section 7.17.081 Special Charges**

- A.
1. Night Charge: Request for services after 7:00 p.m. and before 7:00 a.m. of the next day may be subject to an additional charge of \$16.75
  2. Where other special services are requested or needed by any patient or authorized representative thereof, a reasonable charge commensurate with the cost of furnishing such special service may be made, provided that the ambulette operator shall file with the Director of the Department of Health Services a schedule of each special service proposed and the charge there for, in accordance with subsection G, Section 7.17.040, which charge shall be effective unless modified, restricted, or denied by the Director of the Department of Health Services.

(Section B redacted)

C. This section does not apply to a contract between an ambulette operator and the County where different rates or payment mechanisms are specified

This fee schedule will be useful as *prima facie* evidence of reasonable charges for providing medical transportation and should be helpful in negotiating transportation liens.

San Diego County covers licensing requirements for Non-Emergency Medical Transportation providers in EMS-Ambulance Ordinance 9668,

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but focuses mainly on Wheelchair and Gurney transport providers. Like Los Angeles, San Diego requires background checks, vehicle inspections, insurance, etc. and adds the requirement that the drivers wear uniforms!

Unfortunately, there do not appear to be similar ordinances in Orange, San Bernardino, or Riverside Counties. However, if the applicant resides in one of the counties that do not have ordinances covering non-emergency medical transportation providers, the defense may not be totally out of luck, as many municipalities have city ordinances that may apply. For example, the City of Buena Park requires a Taxi Cab Operator's License for companies that carry passengers on a fee for hire basis within the city and makes no exceptions for Medical Transportation Companies. The City of Riverside has a Municipal Code Section 5.65, which covers the requirements for licensing of convalescent transport vehicles operating within the city.

The bottom line is that a few minutes of research or a few telephone calls to the appropriate government entity may be rewarded with useful information that will give the defense the key to unlocking significant reductions of an unreasonable transportation lien.

Article by [Hy Bates](#), Technical Supervisor, Orange Office

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## FROM THE BOARD

When is an award really an award for purposes of invoking the presumption of apportionment under LC 4664? Not often, apparently, pursuant to the WCAB *en banc* decision in *Eric Pasquotto v. Hayward Lumber (et.al.)* (2006) 71 CCC 223. According to the Board, an order approving a compromise and release, without more, is not a "prior award of permanent disability" within the meaning of the code, so there is no automatic apportionment to a prior case resolved by C&R.

In addition, for consideration of medical apportionment under LC 4663, the Board held that an applicant can still demonstrate medical "rehabilitation" from the prior injury which was resolved by settlement. We suspect that some of those alleged recoveries may have actually occurred in the healing confines of the elevators while descending from the WCAB offices where the settlement papers were previously signed and approved.

At least one carrier, in response to the *Pasquotto* decision, has requested that all cases to be settled by C&R be first resolved by a stipulated Award. While this is a good start toward addressing the strict requirements of LC 4664, we suspect more will be needed. Where possible, we recommend including in both Stipulations for Award and C&R documents, a description of the disability to which the parties agree is the basis of the settlement. In some cases, where the settlement is a true compromise between extremes, or based on disputes other than the nature and extent of permanent disability, this may not be possible. However, in those cases where the PD dispute is clearly defined, an attempt should be made to characterize that part of the settlement that is based on identifiable permanent disability factors.

## FOCUS ON



### AMY RIVERA

Amy Rivera, Managing Attorney in the firm's Los Angeles County office, brings to the firm her unique background and experience in the medical profession as a Registered Nurse. She has been specializing in Worker's Compensation defense for fourteen years and joined the firm in November, 1999. She is certified as a Specialist in Workers' Compensation by the State Bar of California Board of Legal Specialization and has lectured and written extensively on numerous issues in Worker's Compensation Law.

Amy obtained her Bachelor of Science in Nursing from Catholic University of America in Washington, D.C. in 1980 and was immediately commissioned into the United States Air Force, where she attained the rank of Captain while being stationed in the wilds of Ohio and Wyoming before leaving active Air Force duty in 1984. While continuing to work full time as a nurse, she obtained her Juris Doctor from Whittier College School of Law in 1992.

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Amy has implemented industrial monitoring programs for Dade County, Florida, as well as for the Federal Bureau of Investigation and the U.S. Drug Enforcement Agency. She has chaired National Nursing Conferences and has also been a guest lecturer at numerous nursing seminars. Her nursing background includes experience in medical/surgical, obstetrical, industrial and infertility medical management. With her unique expertise, Amy takes special delight in dissecting medical reports and separating the fact from the occasional medical double-speak.

Amy and her husband make their home in Playa Del Rey, California with their two dogs, Jacko and Miles. Amy enjoys traveling, reading, and watching ice hockey. Amy's husband, Fernando, is a professional ice hockey instructor/coach (Amy's nursing background must come in handy!) and is a rising professional comedian. You can reach Amy at 818-997-2100.

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