

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

GREGORY J. AUSTIN, M.D.,
As Physician of Eugene Merola

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VS.

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W.C.C. 05-03305

THE PROVIDENCE JOURNAL CO.

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GREGORY J. AUSTIN, M.D.,
As Physician of Edgar Palma

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VS.

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W.C.C. 05-03304

RYDER TRUCK

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KIMBERLY SAND

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VS.

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)

W.C.C. 05-03301

ADECCO EMPLOYMENT SERVICES

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GREGORY J. AUSTIN, M.D.,
As Physician of Qing Lu

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VS.

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W.C.C. 05-03286

ADECCO, INC.

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GREGORY J. AUSTIN, M.D.,
As Physician of Sandra Zablocki

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VS.

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W.C.C. 05-03285

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THE PROVIDENCE JOURNAL CO.

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GREGORY J. AUSTIN, M.D.,
As Physician of Beverly Howell

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VS.

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W.C.C. 05-03284

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THE PROVIDENCE JOURNAL CO.

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GREGORY J. AUSTIN, M.D.,
As Physician of James Millard

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VS.

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W.C.C. 05-03283

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THE PROVIDENCE JOURNAL CO.

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DECISION OF THE APPELLATE DIVISION

OLSSON, J. These seven (7) matters were consolidated at the request of the petitioner at the trial level and they remain consolidated for hearing and decision before the Appellate Division. All of the petitions present the same issue – at what rate should the doctor be reimbursed for office visits in accordance with the medical fee schedule promulgated pursuant to R.I.G.L. § 28-33-7. Dr. Gregory J. Austin, an orthopedic surgeon, contends that he should be paid Eighty-four and 86/100 (\$84.86) Dollars for each visit, rather than Sixty-five and 38/100 (\$65.38) Dollars. In each of these petitions, he is seeking payment of the difference between

those rates. After thoroughly reviewing the evidence presented and thoughtfully considering the arguments of the respective parties, we affirm the trial judge's denial of all seven (7) petitions.

Through the submission of memoranda of agreement, pretrial orders, decrees and medical affidavits, it was established that Dr. Austin had treated the patients involved in these cases for work-related injuries and that the treatment was necessary to cure, rehabilitate or relieve those individuals from the effects of their work-related injuries. The parties stipulated during the deposition of Dr. Austin that the sole issue before the court is whether it was appropriate for the doctor to assign a Current Procedure Terminology (hereinafter "CPT") code of 99214 to his office visits with patients rather than 99213. Pet. Exh. 1, p. 1. The fee paid for a 99214 visit is higher than that paid for a 99213 visit.

Pursuant to R.I.G.L. § 28-33-7(a), the Director of the Rhode Island Department of Labor and Training is charged with establishing a schedule of rates of reimbursement for medical services (hereinafter the "medical fee schedule" or "fee schedule").

"The schedule shall be published by the director utilizing the Physician's Current Procedure Terminology (CPT) coding system as published by the American Medical Association. The director shall update and revise the schedule as necessary. In setting the rate of reimbursement for any service or procedure, the director shall determine, based upon available data, the ninetieth (90th) percentile of the usual and customary fee charged by health care providers in the state of Rhode Island and the immediate surrounding area, and in no case shall the rate of reimbursement exceed that amount."

Dr. Austin testified by deposition that he was familiar with the CPT coding system and fee schedule for workers' compensation, and that he was responsible for assigning a particular code for the service rendered to his patients. He explained his opinion that all of the office visits in question were properly coded as 99214 as follows:

“That they all complied with that level of code, 99214; and I think just to expand on that is that one of the biggest reasons is that in each of these cases there certainly is a medical decision which is made in isolation. That medical decision then has to be put in the context of Workers’ Compensation which has a lot of extraneous influences on the medical decision and that increases that decision making complexity to what I would consider to be moderate complexity on each of those; and then there’s counseling the patient on how that’s going to play with the work in addition to just the counseling on what he should be doing from a medical point of view.”

Pet. Exh. 1, p. 8-9. The doctor also contended that the reports he submits regarding a workers’ compensation injury do not necessarily contain all of the information he may have gathered during the office visit due to privacy concerns.

Michele Mahan Smith, the manager of coding and data quality at Rhode Island Hospital, testified as an expert witness in her field. She explained that the CPT coding system was created by the American Medical Association (hereinafter “AMA”) for physician billing, and then it was subsequently adopted by other providers and payers, such as hospitals and Medicare. The AMA also developed detailed documentation guidelines for the codes which were most recently expanded upon and published by Medicare in 1997.

Ms. Smith stated that the description of the service for each code was the same regardless of whether the payer was Medicare, Blue Cross or a workers’ compensation insurer. However, each payer sets its own fee schedule for the codes. The brief description for the 99213 code reads:

“Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: an expanded problem focused history; an expanded problem focused examination; medical decision making of low complexity.”

The description for the 99214 code states:

“Office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of these three key components: a detailed history; a detailed examination; medical decision making of moderate complexity.”

The guidelines mentioned above provide details as to what constitutes the different levels of each component, e.g., a “detailed” history versus an “expanded problem focused” history. In addition, an office visit may be coded 99214 when more than fifty percent (50%) of the visit is spent on counseling and/or coordination of care and the doctor documents in his report the amount of time spent with the patient (it must be at least 25 minutes) and describes the counseling or coordination of care activities.

Ms. Smith reviewed Dr. Austin’s written reports of the office visits for the seven (7) patients involved in these matters and compared the content to the requirements listed for a 99214 code. She concluded that in each case, the documentation in the reports did not satisfy the criteria for a 99214 code, and the proper code was 99213.

The trial judge noted that the CPT coding system provides a uniform standard for documenting medical services which allows a payer to determine the level of payment based upon the content of the reports submitted. Based upon the testimony of Ms. Smith, his review of Dr. Austin’s reports in conjunction with the code guidelines, and even the doctor’s own testimony, the trial judge found that the documentation did not satisfy the criteria for reimbursement at the higher CPT code level. Therefore, he denied all of the petitions.

The extent of our review of a trial judge’s decision is strictly circumscribed by statute. Rhode Island General Laws § 28-35-28(b) provides that the findings of fact made by a trial judge are final unless the appellate panel finds them to be clearly erroneous. Our review of the evidence presented in this matter does not reveal any clear error on the part of the trial judge.

The petitioner, in his five (5) reasons of appeal, contends that the trial judge erred in failing to accept the testimony of Dr. Austin that the need to address additional issues required by the workers' compensation system justifies the coding of the office visits as 99214 to obtain the additional compensation for the visit. He further argues that the descriptions and guidelines developed by Medicare are simply guidelines and should not be considered absolute requirements for documentation in a workers' compensation case. We disagree.

The CPT coding system was developed by the AMA, not Medicare, as the petitioner states in his memorandum. Medicare expanded on the description of the components of each code and provided detailed guidelines on how to document those components; however, those guidelines are not specific to Medicare patients. They are intended for use by any physician seeking to obtain payment from any payer, such as Blue Cross or a workers' compensation insurer, which utilizes the CPT code. Each payer sets the fee it will pay for any particular code, but the use of the CPT code provides a uniform system for evaluating the particular service provided by the doctor. Pursuant to R.I.G.L. § 28-33-7(a), the workers' compensation system adopted the CPT code and then promulgated its own fee schedule in accordance with the method set out in the statute.

Dr. Austin acknowledged that his reports may not contain all of the components set forth in the criteria for the 99214 code, but he argues that we should simply accept his judgment that the service he provided qualifies for the higher rate. To adopt such a position would be contrary to the desired goal of the CPT code – a uniform system which allows independent review of the billing to determine the appropriate fee to be paid. This is precisely why the CPT coding system requires documentation and why the guidelines were promulgated to assist physicians in documenting the services they render. The documentation provides the basis for determining

how the service should be coded. A physician can only be paid for the services documented in his report. We find no justification for ignoring this basic principle in these cases.

Dr. Austin has attempted to make a case for the idea that the type of service he renders for a patient injured in a work-related incident is different than what he provides for any other type of patient. His position is that workers' compensation cases require him to spend extra time on issues he would not otherwise have to address, such as causation and work restrictions.

First, we would note that all of the office visits in question are follow-up visits for established patients. In reviewing the reports of these visits, there are no statements as to causation. The questions of diagnosis and causation are generally dealt with in the initial evaluation, which is a different code. Once those issues are dealt with, the doctor does not repeatedly revisit them on each visit thereafter. Second, determinations as to physical limitations and restrictions on activities are not unique to workers' compensation cases. One would expect that if a person fell at home and injured his back, the physician would be advising him as to what type of activities he should avoid and how to manage his condition. We conclude that Dr. Austin's contention that he should be reimbursed at a higher level simply because he is treating work-related injuries has no merit.

For the foregoing reasons, we deny and dismiss the petitioner's appeals and affirm the decision and decrees of the trial judge in these seven (7) matters. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on

Connor and Hardman, JJ. concur.

ENTER:

Olsson, J.

Connor, J.

Hardman, J.

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WORKERS' COMPENSATION COURT
APPELLATE DIVISION

GREGORY J. AUSTIN, M.D.,
As Physician of Eugene Merola

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VS.

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W.C.C. 05-03305

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THE PROVIDENCE JOURNAL CO.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on May 5, 2006 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

John A. Sabatini, Administrator

ENTER:

Olsson, J.

Connor, J.

Hardman, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Gregory L. Boyer, Esq., and Ronald A. Izzo, Esq., on

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PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
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W.C.C. 05-03304

RYDER TRUCK)

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As Physician of Qing Lu)

VS.)

W.C.C. 05-03286

ADECCO, INC.)

FINAL DECREE OF THE APPELLATE DIVISION

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GREGORY J. AUSTIN, M.D.,
As Physician of Sandra Zablocki

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VS.

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W.C.C. 05-03285

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THE PROVIDENCE JOURNAL CO.

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VS.

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W.C.C. 05-03284

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As Physician of James Millard)

VS.)

W.C.C. 05-03283

THE PROVIDENCE JOURNAL CO.)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner and upon consideration thereof, the appeal is denied and dismissed, and it is:

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