

In the ORS 656.248 Medical Fee Dispute of

**Melena K Kotsios, Claimant**

Contested Case No: 09-121H

**PROPOSED & FINAL ORDER**

February 16, 2010

THOMAS J. PURTZER MD , Petitioner

CRAWFORD & COMPANY, Respondent

Before Bruce D Smith, Administrative Law Judge

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This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to Workers' Compensation Division's Administrative Order dated June 12, 2009. Hearing convened on November 17, 2009, and the record was closed; but the record was reopened upon the ALJ's motion, and was continued for the taking of additional evidence and closing argument on January 19, 2010. Claimant was not present, and is not represented. Regina Purtzer was present on behalf of medical service provider Dr. Purtzer. Cinemark USA Inc. and its insurer Crawford & Company<sup>1</sup> are represented by attorney Linda Attridge. The documentary record consists of Exhibits 1 through 17. The record closed on January 19, 2010.

**ISSUES**

Issues are: (1) whether Broadspire correctly reduced payment for medical services Dr. Purtzer provided from July 20, 2006 through May 16, 2007, April 8, 2008, and May 8, 2008; (2) whether Broadspire is liable for medical services Dr. Purtzer provided from June 13, 2007 through January 13, 2009; and (3) whether Broadspire is liable for the special report fees and rebilling fees Dr. Purtzer charged from January 8, 2008 through January 13, 2009.

**FINDINGS OF FACT**

Claimant suffered a compensable injury on December 7, 2000; and thereafter came under the care of Dr. Purtzer and Intractable Pain Centers (Intractable Pain). (Ex. 14-1).

According to Intractable Pain's office manager Regina Purtzer, Dr. Purtzer started treating claimant on September 2005, and continued to treat her until February 2009. (Testimony of Regina Purtzer). Ms. Purtzer, who also handles billing, testified that proper reimbursement on the account had been an ongoing problem from the beginning. (*Id.*). In addition to chronic late payments, Intractable Pain objected to discounted payments made under Dr. Purtzer's contract with First Health, because the contract had been canceled. (Testimony of Regina Purtzer; Ex. 3-10).

Intractable Pain also objected to the insurer's refusal to pay rebilling charges, which the provider levied for untimely payment of bills. (Testimony of Regina Purtzer). The office charges

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<sup>1</sup> Successor to Broadspire. (References hereinafter to Broadspire also apply to Crawford & Company where appropriate.)

a \$50 monthly fee (Ex. 17-1 through -4), based on the number of months the payment is late. (*Id.*). Ms. Purtzer has revised the rebilling fee policy a couple of times in an attempt to comport the charges with the OAR 436-009-0030 provision regarding monthly service charge. (*Id.*). The service charge applies to all patients. (*Id.*).

Matters came to a head in early 2009. On February 27, 2009 the adjuster wrote to Ms. Purtzer, outlining billing statements lacking documentation, and identifying three dates of service that had been paid or were being submitted for payment. Ms. Purtzer responded that documentation had already been submitted. (Ex. 3-4).

On March 2, 2009 Dr. Purtzer faxed a memo to Ada/WC dispute: "All unpaid billings returned without EOBs. Again requested copy of contract to discount payment. Called adjuster directly." (Ex. 3-1). A note the same day from Dr. Purtzer's office reads:

"Called Pauline for a copy of contract allowing discount. States WCB [illegible]. These were returned [without] ever being processed. Received 3/2/09. Documentation re all billing previously sent at least 4 times on each DOS." (Ex. 3-2).

On March 4, 2009 Dr. Purtzer faxed a Request for Dispute Resolution of Medical Issues and Medical Fees. (Ex. 8).

On March 17, 2009 Broadspire's adjuster wrote to WCD, explaining Broadspire's position regarding the billing dispute: (1) none of the \$50 rebilling fees will be paid, because they are not authorized by administrative rules; and (2) bills are being reviewed, and if payment was erroneously withheld it will be paid by March 25, 2009. (Ex. 10-1). She included Broadspire's ledger showing charges and payments for dates of service July 20, 2006 through January 13, 2009. (Ex. 10-2).

Correspondence between the Medical Reviewer Resolution Team and Dr. Purtzer's office followed through April 30, 2009. (Exs. 11, and 12).

On May 6, 2009 the adjuster sent a memo to the medical reviewer, addressing the disputed billings, and stating that the insurer had paid Dr. Purtzer for the June 13, 2007 and July 18, 2007 dates of service; and were going to pay amounts totaling \$2,054.66 for dates of service from August 15, 2007 through June 2, 2008. (Ex. 13-1).

On May 7, 2009 the carrier paid Dr. Purtzer \$2,054.66. (Ex. 16-6). On May 28, 2009 the carrier made another lump sum payment, in the amount of \$373.59. (Ex. 16-6).

On June 12, 2009 the medical reviewer, under the director's authority, issued the Administrative Order at issue here, including the following findings and order:

"The director orders that since Broadspire issued payment to fee schedule for office visits from July 20, 2006 through January 19, 2009 no further action will be taken." (Ex. 14-4).

“The director further orders that Broadspire is not liable for charges submitted using CPT code 99080 from July 20, 2006 through January 13, 2009.” (*Id.*).

“The director also orders that Broadspire is not liable for special reporting fees or rebilling fees submitted from July 20, 2006 through January 13, 2009.” (*Id.*).

On July 10, 2009 Intractable Pain timely requested a hearing. (Ex. 15).

On January 18, 2010 the carrier issued a payment ledger, showing payments made to Dr. Purtzer for dates of service from July 20, 2006 through February 25, 2009. (Ex. 16).

## CONCLUSIONS OF LAW AND OPINION

### Scope of ALJ Review

This matter arises under ORS 656.248(12) and OAR 436-009-0008 for resolution of a dispute over payment of fees for medical services, including “rebilling fees.” (Ex. 14). The hearing is conducted under OAR 436-001.<sup>2</sup> Scope of ALJ review for this medical fee dispute is *de novo*. OAR 436-001-0225(1).

### Whether Broadspire Correctly Reimbursed Intractable Pain for Medical Services

At issue before the director was whether Broadspire correctly reduced payment for medical services from July 20, 2006 through May 16, 2007, April 8, 2008, and May 8, 2008; and whether Broadspire is liable for medical services Dr. Purtzer provided from June 13, 2007 through January 13, 2009. (Ex. 14-1).

Dr. Purtzer agrees that the charges for dates of service starting with April 8, 2008 have been paid (Ex. 17-3, and -4), although they were paid late.

Dr. Purtzer contends, however, that charges for the following dates of service remain unpaid: November 14, 2007 (Exs. 1-5, 10-2, 17-2); December 13, 2007 (Exs. 1-19, 10-2, 17-2); January 10, 2008 (Exs. 1-20, 10-2, 17-2); January 28, 2008 (Exs. 1-24, 10-2, 17-3); February 11, 2008 (Exs. 1-25, 10-2, 17-3); and March 5, 2008. (Exs. 1-26, 10-2, 17-3).

In addition to the late payment issue, Intractable Pain objects to the discounted payments made for visits billed under CPT® code 99214 in accordance Dr. Purtzer’s former contract with First Health. (Testimony of Regina Purtzer). See, *e.g.*, the payment made for May 16, 2007 date of service, which should have been paid under the Oregon fee schedule at \$149.11, but was paid instead at \$134.20. (Ex. 2-10). Dr. Purtzer points out that his contract with First Health was terminated effective January 1, 2006. (Ex. 3-10).

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<sup>2</sup> See OAR 436-009-0008(6).

I first note that the following corrections<sup>3</sup> must be made to the Administrative Order:

“On May 6, 2009 Broadspire responded that for date[s] of service June 13, 2007 [through (blank) were] *was* paid at the audited rate of \$134.20 and July 18, 2007 was paid at \$184.03 and provided documentation. October 11, 2007 and February 11, 2008 [was] *will be* paid at \$184.03, and January 28, 2008 [was] *will be* paid at \$195.” (Ex. 14-2).

Documentation for the June 13, 2007 and July 18, 2007 payments, along with the promise to pay the additional amounts, was provided by Broadspire in the May 6, 2009 fax memo. (Ex. 13-1). The carrier thereafter furnished a ledger showing that the promised payments, totaling \$2,054.66, had been made the following day – on May 7, 2009. (Ex. 16-6). These payments include all six of the dates (from November 14, 2007 to March 5, 2008) contested by Dr. Purtzer, listed above.

The carrier contends that, with its supplemental payments totaling \$373.59,<sup>4</sup> made on May 27, 2009 (Ex. 12-1) or May 28, 2009 (Ex. 16-6), all the bills addressed by the director that were billed using CPT® code 99214 have been paid in accordance with the Oregon fee schedule; and that there is no remaining dispute regarding non-payment.

I do note an error in the carrier’s accounting: in its May 27, 2009 notation regarding the supplemental payments (Ex. 12-1) it shows a total supplemental payment of \$373.59, ostensibly the sum of \$164.01 and \$194.61. Those two amounts, however, total only \$358.62. The difference of \$14.97 apparently represents a 14<sup>th</sup> supplemental payment for the visits of July 1, 2007 and following.

These supplemental payments are obviously the carrier’s response to the issue raised by Intractable Pain regarding the reductions for Dr. Purtzer’s (former) contract with First Health Network: *i.e.*, the difference between the \$134.20 payment initially made for the June 13, 2007 visit and the \$149.11 allowed under the Oregon fee schedule is \$14.91.

I agree in part with the director, and find that all disputed payments for the office visits that were billed using CPT® code 99214 from July 20, 2006 through January 13, 2009 have been paid in accordance with the Oregon fee schedule.

Dr. Purtzer also contends that reimbursements for visits billed under CPT® code 99215, such as the July 18, 2007 visit, should have been made at the allowed rate of \$204.48, instead of the \$184.03 paid by the carrier. (Ex. 13-3).

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<sup>3</sup> Bracketed matter is incorrect, and should read as italicized matter reads.

<sup>4</sup> This figure represents supplemental payments in the amount of \$14.91 each for 11 visits ending with the June 30, 2007 visit; and 14 payments of \$14.97 each for visits beginning on July 1, 2007. (My assumption is that the marginal difference in these two rates represents a mid-2007 change in the amount allowed under the Oregon fee code – cp. e.g., Exs. 1-4 and 1-5.)

There are billing statements for two office visits during this period that were billed using CPT® code 99215: on July 18, 2007 (Exs. 1-13, 13-3), and February 11, 2008. (Exs. 1-25, 13-1).<sup>5</sup> For those visits the difference between the \$204.48 allowed and the \$184.03 that the carrier paid is \$20.45. (Ex. 13-3). As best I can discern from the carrier's payment ledger (Ex. 16), and its May 27, 2009 fax memo (Ex. 12-1) the supplemental payments owing for these two visits either have not been made, or were made at the rate of \$14.97, instead of correct amount of \$20.45. Accordingly, I find that for each of these two visits the carrier owes another \$20.45, minus any amount(s) it may have already paid beyond the original payments of \$184.03 each.

#### Whether Dr. Purtzer is Entitled to Charge Special Report Fees and Rebilling Fees

At issue is whether Dr. Purtzer is entitled to charge and collect special report fees or rebilling fees of \$50 each for dates of service from July 20, 2006 through January 13, 2009. (Ex. 14-3). Dr. Purtzer bears the burden of proving that he is entitled to charge these fees. ORS 40.105; ORS 656.283(7); OAR 436-001-0170(1).

The carrier contends that it is not liable for additional charges in those instances where it had reason to challenge the amount(s) billed, or to reduce reimbursement in accordance with the applicable Oregon fee schedule and/or contractual agreements between Intractable Pain and third parties, as indicated in its audit report. (Ex. 2). In any event, the carrier notes that the administrative rules do not allow for the "rebilling fees" charged by Dr. Purtzer.

Dr. Purtzer argues that his "rebilling fee" is the same as the reasonable monthly service charge authorized under administrative rules; and is an authorized charge for payments that are not made on time in the proper amount. For the reasons that follow, I disagree.

First, some of the charges that Dr. Purtzer billed using CPT® code 99080 were in fact initially characterized as "rebilling fees." (Exs. 1-17, 1-21). Others, including the December 15, 2008 (Ex. 1-30), and January 13, 2009 (Ex. 1-32) charges, seem to be for phone calls made by someone in Dr. Purtzer's office, possibly to the adjuster. Still other rebilling charges, submitted under the 99199 code (Ex. 17-1 through -4), were levied for late and/or ostensibly non-payment of previously billed amounts, according to Ms. Purtzer's testimony. Regardless of how these charges are characterized, however, it is clear that Intractable Pain considered them as "rebilling fees." See, for example, Ms. Purtzer's December 8, 2008 fax note to the adjuster: "Do you want me to rebill these again & add another rebilling fee?" (Ex. 17-8). (Emphasis in original).

The rule allowing a medical service provider to charge a fee for late payment of a medical bill is found at OAR 436-009-0030(7), which reads as follows:

"(7) Failure to pay for medical services timely may render the insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public."

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<sup>5</sup> A third visit apparently billed under the 99215 code, on October 11, 2007 (Ex. 13-1), is not included in the HCFA forms from Intractable Pain that appear in this record. (Ex. 1). Accordingly the October 11, 2007 visit will not be addressed here.

I find that Dr. Purtzer's \$50 per month "rebilling fee" is not the equivalent of the "reasonable monthly service charge" allowed by OAR 436-009-0030(7). However Dr. Purtzer characterizes the charge, I find that it is not a reasonable monthly service charge as contemplated by the administrative rule. Dr. Purtzer for example, wants the carrier to pay \$1,000 in rebilling fees for late or incomplete payment of the November 14, 2007 office visit that was originally billed at \$160. (Ex. 17-2). By its terms, a "reasonable monthly service charge" has to bear some relation to the amount due. There is no evidence in the record from which I can find that the \$50 per month charges made by Intractable Pain here were reasonable. Accordingly, I find that Dr. Purtzer has failed to carry his burden of proof.

I find that the medical service provider is not entitled under existing administrative rules to charge or collect a "rebilling fee" for past due accounts.

With regard to charges using the 99080 code that were for phone calls, or other services besides rebilling, I adopt and affirm that part of the Administrative Order that held such charges not payable here, as follows:

"OAR 436-009-0015(11) provides that except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, an insurance carrier or their representative, the medical provider should bill for their (*sic*) report or review of the record utilizing CPT codes such as 99080. \* \* \* However, in this case all instances billed using CPT 99080 the record submitted for review does not support that a report was submitted with the billing. Since there was no supporting documentation to support the services billed, the director concludes Broadspire is not liable for charges billed using CPT code 99080." (Ex. 14-3).

## **ORDER**

**IT IS THEREFORE ORDERED** that the director's Administrative Order dated June 12, 2009 is modified in part, and affirmed in part: Broadspire is required to reimburse Intractable Pain in the amount of \$20.45 each for dates of service July 18, 2007, and February 11, 2008, with credit given for any amount(s) it may have already paid beyond the original payments of \$184.03 each for these two dates of service. The Administrative Order is otherwise affirmed.