

In the Medical Fee Dispute of

**Olivia M. Snook, Claimant**

Contested Case No: 14-065H

Administrative Order No: MF 14-0847

**PROPOSED & FINAL ORDER**

March 9, 2016

JULIO ORDONEZ, MD, Petitioner

LEGACY HEALTH, Respondent

Before David D. Lipton, Administrative Law Judge

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Pursuant to notice, a hearing convened on October 5, 2015 in Portland, Oregon before David D. Lipton, Administrative Law Judge. Claimant, Olivia M. Snook, was not present. The party in interest in this proceeding is Julio Ordonez, M.D. who was present and represented by Jodie Phillips Polich. The self-insured and self-administered employer, Legacy Health, was represented by Amy Osenar. She was accompanied by the employer representative Carmen Jones. The hearing was continued for argument to address whether additional evidence other than that considered by the Director in preparing the November 26, 2014 Order number MF 14-0847 could be admitted and considered. An Interim Order addressing this issue was entered on January 15, 2016. Thereafter, recorded telephonic closing argument was presented on February 24, 2016 and the record closed. Exhibits 1 through 35 received from the Workers' Compensation Division were admitted. Also admitted was Exhibit A believed to have been in the possession of the Workers' Compensation Division at the time of its proceeding.

### **ISSUE**

Julio Ordonez M.D. appeals Order number MF 14-0847 and contends that the insurer should pay for his review and May 9, 2014 report addressing Thomas Rosenbaum, M.D.'s April 21, 2014 independent medical examination report. In the event that he prevails, he seeks an award of attorney's fees and a penalty.

### **FINDINGS OF FACT**

I hereby incorporate, as though fully set forth, the January 15, 2016 Interim Order.

I concur with and adopt the Findings of Facts recited in Administrative Order MF 14-0847. In summary, on March 26, 2014 counsel for Legacy requested a 15 minute conference with Dr. Ordonez. The office staff for Dr. Ordonez responded on March 26, 2014 that his fee for a telephone conference was \$800.00 per hour and his fee for a medical records review was \$650.00 per hour. Based on the request for a 15 minute conference and anticipating 30 minutes to review the record, Dr. Ordonez's office requested a fee in the amount \$525.00.

Thomas J. Rosenbaum, M.D. conducted an independent examination of Claimant and prepared a report on April 21, 2014.

On April 30, 2014 the office of Legacy's attorney wrote to Dr. Ordonez confirming a telephonic conference for May 8 and enclosing a copy of Dr. Rosenbaum's report for Dr. Ordonez to review. On May 2 the office of Dr. Ordonez advised Legacy that the IME report had been received and had been scheduled to be reviewed on May 6. On May 8 the conference between Dr. Ordonez and Legacy's attorney was conducted. On May 9 Dr. Ordonez prepared a report to Legacy's attorney addressing Dr. Rosenbaum's IME report; reciting his general agreement with the report. He billed \$1462.50 for his review of the report and preparation of his response.

On June 10 Legacy wrote to Dr. Ordonez acknowledging receipt of his bill for the May 9 report. It advised Dr. Ordonez that Legacy had not requested a report and would not be paying his bill for that report. On June 19 Legacy's attorney advised Dr. Ordonez' office that a report responding to Dr. Rosenbaum's IME report had not been requested. Dr. Ordonez' office responded on June 24. It advised that the review of Dr. Rosenbaum's IME report had not been included in the pre-payment request. It explained that in anticipation of the conference, Dr. Ordonez had spent 15 minutes reviewing claimant's chart, an additional 15 to 20 minutes reviewing Dr. Rosenbaum's IME report and 2 hours, 15 minutes preparing his response to that report.

On July 3 Legacy advised the office of Dr. Ordonez that it appeared that Dr. Ordonez had spent 15 minutes reviewing his medical records, 15 to 20 minutes reviewing Dr. Rosenbaum's IME report and 15 minutes participating in the telephone conference. Legacy had paid Dr. Ordonez for a 15 minute telephone conference and a 30 minute record review. It now appeared that Legacy owed Dr. Ordonez for an additional five minutes equal to \$162.50. A check was enclosed for that amount. It advised that Legacy had not requested a report responding to Dr. Rosenbaum's IME report and so would not be paying for one. On September 12, 2014 Dr. Ordonez' office referred its dispute to the Workers' Compensation Division. On October 28 Legacy's attorney advised WCD that it was disputing the claim for preparing the May 9, 2014 report because the report had never been requested.

Administrative Order MF 14-0847 was issued on November 26, 2014. Responding to whether Legacy was liable for Dr. Ordonez' May 9, 2014 review of Dr. Rosenbaum's report and preparation time in preparing a response, the Director concluded that Legacy had not requested a response to that report and therefore was not responsible to pay for the report that Dr. Ordonez submitted.

Dr. Ordonez appealed the decision on December 24, 2014

### **OPINION AND CONCLUSION**

I concur with and adopt the Findings of Fact recited in the Administrative Order. In addition, I note that there is no evidence of what was discussed during the May 8, 2014 telephonic conference between Legacy's attorney and Dr. Ordonez. Nor is there any evidence whether the report submitted by Dr. Ordonez on May 9 was of any significance in Legacy's subsequent acceptance of claimant's left L4-5 disc herniation.

No rule requires the insurer to request an attending physician respond to an IME report. There is no evidence that Legacy did so here. Therefore, I find that Legacy is not responsible for Dr. Ordonez' review of Dr. Rosenbaum's IME report and preparation of a written response beyond what Legacy has already reimbursed Dr. Ordonez.

**ORDER**

IT IS HEREBY ORDERED that Administrative Order MF 14-01847 is affirmed.