

CLIENT BULLETIN

3/23/11

***Subject to Proof*—Interpreting Services are Now Deemed an Essential Adjunctive to the Provision of Medical Treatment under Lab C 4600 and are therefore Potentially Recoverable as an Element of Treatment**

The WCAB has issued an En Banc decision in the case of **Jose Guitron v. State Compensation Insurance Fund**.ⁱ Please note that en banc decisions are binding upon all WCAB offices statewide, until an appellate court either issues a stay or overturns the En Banc decision.

REASONABLY REQUIRED INTERPRETING SERVICES PERMITTED DURING MEDICAL TREATMENT

- Acknowledging the absence of a statutory basis for permitting interpreting services as an element of providing medical treatment, the WCAB has drawn comparison to “**transportation costs**” which while also not part of the statutory scheme, have nonetheless been deemed adjunctive to treatment.ⁱⁱ
- Therefore, drawing an analogy to the justification supporting transportation expenses as a reasonable element of medical treatment, the WCAB has now held that interpreting services are an essential ***adjunctive to the provision of medical treatment***, under Labor Code 4600.

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- Interpreting services are therefore now regarded an **element of medical treatment**, provided they are reasonably required for injured workers who are unable to speak, understand or communicate in English.
- Entitlement to interpreting services is not conditional upon the type of treatment being rendered.
- But the applicant must establish that he or she **requires these services**. The fact that the applicant simply does not speak English is not enough for this proof.ⁱⁱⁱ

ENTITLEMENT TO INTERPRETING SERVICES DURING TREATMENT IS CONDITIONAL UPON PROOF THAT THE SERVICES WERE NOT ONLY REASONABLY REQUIRED BUT ALSO: [1] THEY WERE ACTUALLY PROVIDED; [2] THE INTERPRETER WAS “QUALIFIED” TO PROVIDE THE SERVICES; AND [3] THE FEES CHARGES WERE REASONABLE.

- Lien claimant has the burden of proving that the interpreting services in question were reasonably required. No specific method or degree of proof or admissible evidence is prescribed. This can be done in a number of ways.
- Whether or not the doctor’s staff has an available staff member to translate might be probative but not dispositive on the issue. A failure by the treating physician to request an interpreter shall not be deemed a basis to conclude that an interpreter is not reasonably required
- Lien claimant must also prove that the interpreter was actually present on the date of the treatment visit and that services were actually rendered at that time. (It was deemed “helpful” and “appropriate,” but not required, for the treating physician to reflect the presence of an interpreter, within the body of the report).
- The preferred practice is to obtain pre-authorization.
- The interpreter must be “**qualified**.” This means the interpreter shall either be certified pursuant to the Government Code or “provisionally qualified,” which means the parties essentially “agree” that a non-certified interpreter may render services, when a certified interpreter is not otherwise available for the medical evaluation. Also, a physician,

may use “another interpreter” if that fact is noted in the medical evaluation.^{iv}

- The fee charges must be reasonable. **8 CCR 9795.3** provides a “fee schedule” charge for interpreting services during a medical **examination** but these charges are not actually applicable for interpreting services **during treatment**. Therefore, the **fee schedule does not necessarily apply to treatment**. [For examinations, the scheduled fee is the greater of either \$11.25 per quarter hour with a 2 hour minimum or \$90.00, or market rate].
- The 2 hour minimum (\$90.00) may not apply where the treatment session takes but 10 to 15 minutes.^v
- Travel time at \$20.00 per hour may be added, providing the distance between the office of the interpreter and the doctor’s office is over 25 miles (not reasonable if other qualified interpreters are available on the master listing for the county where the service was to be provided).^{vi}

COMMENT FROM COREY INGBER

This decision should come as little surprise, since we have been receiving panel decisions, essentially upholding the same reasoning, for some time. The problem of course is that this new case will encourage interpreting services to provide treatment and it will also bolster the arguments of existing lien claimants, that this decision should be applied *retroactively*, since the issue is one of remedy and not substantive law. In other words, you should well expect interpreting lien claimants to be more aggressive. At the same time however, this case also requires the interpreting lien claimant to provide the required proof necessary to show that the charges are recoverable. This may not be easy or simple, especially when the case-in-chief resolved long ago.

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ⁱ ADJ163338/ WCAB en banc decision filed 3/17/01

ⁱⁱ “Like transportation, effective communication between an injured employee and a medical provider is an essential adjunct to treatment.” Pp 16.

ⁱⁱⁱ “the employer is required to provide reasonably required interpreter services during medical treatment appointments for an injured worker who is unable to speak, understand or communicate in English.” Pp 13

^{iv} PP 22

^v Pp 24

^{vi} 8 CCR 9795.3(b)(3)