

I.C. NO. 753250, JENNIFER ROSENFELT, Employee, Plaintiff v. MISSION ST. JOSEPH'S HEALTH CARE SYSTEM, Employer, SELF-INSURED (CAMBRIDGE INTEGRATED SERVICES, Servicing Agent), Defendant. OPINION AND AWARD by DOUGLAS E. BERGER, Deputy Commissioner, N.C. Industrial Commission. Filed 4 October 2002.

This case was heard before the undersigned in Asheville on April 16, 2001. Prior to the hearing, the parties entered into a Pre-Trial Agreement. This Pre-Trial Agreement is incorporated herein by reference. At the close of the hearing, the defendant agreed to pay for sympathetic blocks administered by Dr. Rauck and to pay for the knee surgery recommended by Dr. Poehling. The remaining issues to be resolved at that time were as follows: should the defendant pay for the treatment provided by Ms. Buff and Dr. Heninger and authorize both of them to continue to treat the plaintiff, should the plaintiff receive additional sympathetic blocks and authorize Dr. Rauck to treat the plaintiff and should the defendant be assessed attorney's fees for its refusal to authorize the treatment provided by Ms. Buff and Dr. Rauck as well as its refusal to authorize surgery to be performed by Dr. Poehling.

Subsequent to the hearing, plaintiff filed a motion on or about August 1, 2001 requesting that the defendant be ordered to mail the plaintiff her temporary total disability compensation checks and to order the defendant to promptly pay travel reimbursements. In an August 5, 2001 letter, defendant reported that it had paid the travel reimbursements making such an issue moot. Defendant did request that it be allowed to continue to require the plaintiff to directly pick up her checks. In an order dated August 9, 2001, the undersigned directed the parties to conduct a deposition of Nancy Faller in order that the undersigned could resolve this issue at the close of the record.

In a letter dated January 30, 2002, defendant reported to the undersigned that it would agree to pay for the treatment provide by Ms. Huff up to April 24, 2001 and for the treatment provided by Dr. Heninger up to plaintiff's entry into the individualized functional restoration program. Defendant requested that the undersigned order the plaintiff to participate in this program. In a letter dated February 11, 2002, plaintiff requested that the record remain open in order to permit the parties to conduct a deposition of Diane Wallace, an employee with Workers Comp Rx. Plaintiff reported that authorization of prescribed medications was now an issue that needed to be resolved by the undersigned. The undersigned allowed a videotaped deposition of Diane Wallace to be included in the evidentiary record as well as a videotaped deposition of defendant's in house workers' compensation administrator, Mary Silver, to be included in the evidentiary record based upon this request. Also, plaintiff reported that continued authorization of Dr. Rauck, Dr. Poehling, Dr. Heninger, Dr. Jones and Ms. Buff were ongoing issues to be resolved.

In a letter dated April 1, 2002, defendant requested for a second time that plaintiff be ordered to participate in an individualized functional restoration program. In an e-mail to counsel for both parties on April 2, 2002, the undersigned informed the parties that no administrative ruling would be made on this issue, but instead it could be resolved in the Opinion and Award rendered.

Upon the receipt of the depositions of Dr. Dement, Dr. Carlton, Dr. Poehling, Ms. Buff, Dr. Rauck, Dr. Heninger, Dr. Coleman, Dr. Faller, Dr. Hankley, Dr. Jones, Diane Wallace and Mary Silver as well as written contentions from counsel for both parties, the record in this matter was closed on June 17, 2002. A post trial addendum agreed upon by the parties requested

resolution of the issue as to whether Margaret Burke should be authorized to coordinate plaintiff's care.

On July 26, 2002 defendant requested that the record be reopened to allow into evidence a June 17, 2002 progress note. On July 26, 2002, plaintiff indicated that these records could be received into evidence without objection if a physician's June 18, 2002 note, a work restriction note and a June 21, 2002 psychology discharge note were allowed to be received into evidence. Defendant did not object to this submission.

On September 19, 2002, the undersigned e-mailed the parties inquiring as to whether the plaintiff had entered the individualized functional restoration program. On September 20, 2002, defendant sent copies of progress reports that had previously been submitted showing that plaintiff had undergone panic attacks and had been discharged from the program.

In a September 23, 2002 e-mail, plaintiff's counsel reported that Ms. Silver would not permit a designee of the plaintiff to pick up her prescribed medications at the hospital.

All objections contained in the depositions of Dr. Dement, Dr. Carlton, Dr. Poehling, Ms. Buff, Dr. Rauck, Dr. Heninger, Dr. Coleman, Dr. Faller, Dr. Hankley, Dr. Jones, Diane Wallace and Mary Silver are ruled upon in accordance with the law and the Opinion and Award in this matter.

A P P E A R A N C E S

Plaintiff: Grimes & Teich, Attorneys, Asheville, North Carolina; Henry Teich, Counsel of Record.

Defendant: Van Winkle, Buck, Wall Starnes & Davis, Attorneys, Asheville, North Carolina; Allan Tarleton, Counsel of Record.

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EVIDENTIARY RULING

The undersigned SUSTAINS defendant's objection to the receipt into evidence of Diane Wallace's second deposition on May 30, 2002.

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The undersigned finds as facts and concludes as matter of law the following as:

STIPULATIONS

1. The parties are subject to and bound by the provisions of the North Carolina Workers' Compensation Act.
2. On October 5, 1997, an employee-employer relationship existed between the employee and the defendant-employer.
3. The named employer is self-insured. Cambridge Integrated Services is the servicing agent.
4. The employee's average weekly wage is \$357.46 resulting in a compensation rate of \$238.32.
5. The employee sustained a compensable injury to her left knee on October 5, 1997.
6. Subsequent to the hearing, medical and rehabilitation records contained in three notebooks tabbed by provider and identified in the index were marked as stipulated 1a, 1b, and 1c.(These records replace the index of medical records marked as stipulated exhibit 1 at the hearing.)
7. Defendant's responses to Plaintiff's first set of interrogatories and letters from Mary Silver were marked as stipulated exhibit 2 and received into evidence.
8. Amendments to the Pre-Trial Agreement were marked as stipulated exhibit 3 and received into evidence.

9. The Form 33 filed by the plaintiff was marked as stipulated exhibit 4 and received into evidence. (The undersigned did not receive into evidence the Industrial Commission file as agreed upon by the parties.)

10. The Form 33R filed by the defendant was marked as stipulated exhibit 5 and received into evidence.

11. A transcript of the hearing was marked as stipulated exhibit 6 and received into evidence.

12. All stipulations contained in the Pre-Trial addendum dated May 30, 2002 are received into evidence.

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EXHIBITS

1. Ms. Buff's treatment plan for the plaintiff was marked as plaintiff's exhibit 1 and received into evidence.

2. Plaintiff's request for admissions and defendant's responses were marked as plaintiff's exhibit 2 and received into evidence over the objection of the defendant.

3. A June 18, 2002 physicians note, a work restriction note and a psychology discharge note were respectively marked as plaintiff's exhibits 3a, 3b, and 3c and received into evidence.

4. Over the objection of the defendant, a fee affidavit was marked as plaintiff's exhibit 4 and was received into evidence.

5. On February 4, 2002, defendant submitted a set of evaluations, reports and letters pertaining to the individualized functional restoration program recommended by Dr. Poehling.

These exhibits were marked as defendant's exhibit 1 and received into evidence without objection.

6. A June 17, 2002 psychology report was marked as defendant's exhibit 2 and received into evidence.

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Based upon all of the competent evidence adduced from the record, the undersigned makes the following

FINDINGS OF FACT

1. Prior to October 5, 1997, plaintiff had a long history of problems with her left knee. In 1972, she underwent ACL reconstruction surgery on her left knee. On December 14, 1994, Dr. Dement performed a second ACL reconstruction surgery on her left knee. On October 5, 1997, plaintiff sustained an admittedly compensable injury to her left knee while employed with the defendant.

2. Prior to October 5, 1997, plaintiff had a prior history of problems with depression. Beginning in July 1994, plaintiff began receiving the medication Zoloft for depression resulting from social stress factors that included the suicide of her child. Plaintiff continued to experience episodes of depression in 1995 and again in early 1997. In May of 1997, plaintiff discontinued the use of anti-depressant medications.

3. On October 5, 1997, plaintiff sustained an admittedly compensable re-injury to her left knee while employed with the defendant.

4. As a direct and natural result of her October 5, 1997 compensable left knee injury, plaintiff developed reflex sympathetic dystrophy.

5. As a direct and natural result of her October 5, 1997 compensable left knee injury, plaintiff developed a reoccurrence of major depression.

6. Mary Silver is the in house workers' compensation administrator for the defendant. Ms. Silver is a registered nurse and has at least eight years of practical experience in nursing. Because of her experience, Ms. Silver has greater knowledge of medical issues than a typical administrator in her position. On a number of occasions in the handling of this claim, Ms. Silver has denied authorization for payment of medications prescribed by authorized treating physicians based upon her own opinion as to whether plaintiff should take such medications as opposed to any opinion rendered by a physician.

7. At the time of the hearing, plaintiff was receiving multiple medications from a variety of authorized and unauthorized physicians with no single physician being responsible for monitoring plaintiff's intake of medications to guard against potential abuse and duplication. While none of plaintiff's physicians suspect drug seeking behavior, plaintiff is at risk in receiving medications that should not be consumed simultaneously and she is at risk of receiving duplicative prescriptions for the same medical problem. Plaintiff needs one local pain specialist to be responsible for the coordination of her intake of medications. Industrial Commission nurse Judy Clouse has recommended Dr. Margaret Burke to serve in this capacity.

8. Rather than authorize one physician to be responsible for monitoring plaintiff's medications in order to prevent duplication and abuse, Mary Silver has sought to fulfill this role by exercising the power to deny authorization for payment of medications prescribed by authorized physicians. Specifically, Ms. Silver denied authorization for Paxil and Prilosec as prescribed by Dr. Dement. The most disturbing denial of prescribed medications by Ms. Silver took place at a time when she knew the plaintiff was voluntarily entering the psychiatric ward at

her place of employment. Ms. Silver knew plaintiff had repeated anxiety attacks and knew or should have known that the denial of these authorized medications would induce additional stress upon the plaintiff.

9. The defendant employs a third party administrator, Cambridge Integrated Services, to handle its workers' compensation claims. On or about December 5, 2001, Greg Walker, a representative with Cambridge Integrated Services, authorized Workers Comp. RX to fill all medications prescribed by Dr. Rauck until further notice. At the time that he gave this authorization, Mr. Walker was under the impression that this claim involved the Reliance Insurance Company. When Ms. Silver learned that plaintiff was having her prescriptions filled by this mail order pharmacy, she successfully convinced Mr. Walker to withdraw authorization for Workers Comp RX to fill plaintiff's prescriptions. Plaintiff prefers receiving her medications by Workers Comp RX because she received her medications at home and in a timely manner after the medications had been prescribed by her authorized treating physician. The timely manner that she received her prescriptions was the result of the blanket authorization provided by Greg Walker and not anything particularly unique about this service. Medications provided by this out of state company cost more than the same medications provided by the pharmacy located at the defendant-employer's place of business.

10. Following her October 5, 1997 compensable left knee injury, plaintiff underwent her third ACL reconstruction surgery on November 4, 1997 under the direction of Dr. Dement. On July 20, 1998, Dr. Dement performed his third surgery on plaintiff's left knee when he removed a staple from her left knee. On February 4, 1999, Dr. Dement performed his fourth surgery on plaintiff's left knee removing screws that had been placed there during a prior surgery.

11. Following the February 4, 1999 surgery, plaintiff began experiencing hypersensitivity in her left knee that included cold sensitivity. Dr. Dement's June 30, 1999 medical note is the first record that identifies his suspicion that plaintiff might possibly have reflex sympathetic dystrophy. (RSD) In this note, he expresses his ambivalence by stating that there is not an obvious appearance of RSD, but that there are mild symptoms and signs. He also indicates that if the Doxipen prescribed to the plaintiff does not afford significant pain relief then he will consider referring the plaintiff to a Dr. Thompson so that plaintiff could receive either a regional or lumbar sympathetic block. At this point it is clear that the use of these sympathetic blocks was aimed at granting plaintiff pain relief regardless of whether there was a definitive diagnosis of RSD.

12. On July 1, 1999, Dr. Dement explained to Mary Silver that he had concerns that plaintiff might have RSD and that a consultation with Dr. Thompson was warranted. (When given the opportunity to cross-examine Dr. Dement, defendant did not attempt to inquire as to whether he could have been mistaken when he recorded that he spoke directly to Ms. Silver. Based upon the numerous references in Dr. Dement's medical records concerning conversations with Ms Silver and the defendant's failure to directly question Dr. Dement on cross-examination concerning the accuracy of records showing direct communications between him and Ms. Silver, the undersigned finds Ms. Silver's claim that she did not talk directly with Dr. Dement as not credible.) On July 22, 1999, Dr. Dement documented his opinion that an evaluation by Dr. Thompson was reasonable and that if he was of the opinion that plaintiff had RSD then lumbar sympathetic blocks or Bretyllium IV regional blocks should be administered on behalf of the plaintiff.

13. In an August 5, 1999 letter, Mary Silver reported to Dr. Dement that the plaintiff had requested approval of blocks from the Asheville Pain Clinic. She reported that she had not received notes from her last two visits and that she was uncertain as to whether he was now relating RSD to her original October 5, 1997 injury. However she refrained from specifically asking Dr. Dement whether the RSD was related to her compensable knee injury. She did inquire as to whether a non-invasive tool for the treatment of RSD would be appropriate. Following receipt of this letter, Dr. Dement decided to pursue a non-invasive approach utilizing a TENS unit, and continued use of medications and physical therapy. After four months of conservative treatment, Dr. Dement's December 29, 1999 medical records reveal that he believed he had observed enough clinical evidence of RSD such that plaintiff should undergo sympathetic blocks. During his deposition, Dr. Dement admitted that plaintiff's hypersensitivity had gotten worse by that time because it had become more diffuse around her knee as opposed to being localized.

14. Six weeks after recommending sympathetic blocks, Dr. Dement reported to the plaintiff that she was at maximum medical improvement. He rendered this opinion even though she had never received the sympathetic blocks that he had recommended. He failed to explain in his February 14, 2000 medical record or during his testimony as to how the plaintiff had reached maximum medical improvement without receiving the aggressive treatment that he recommended. In his deposition, Dr. Dement admitted that plaintiff had not reached maximum medical improvement.

15. In his March 7, 2000 medical record, Dr. Dement documented that he was aware that plaintiff was scheduled to begin lumbar sympathetic treatment with a pain specialist in

Winston-Salem. Beginning on March 22, 2000, plaintiff began a course of treatment for sympathetic blocks under the direction of Dr. Rauck.

16. On or about September 12, 2000, plaintiff's attorney sent Dr. Dement a letter specifically inquiring as to whether plaintiff's October 5, 1997 job injury was a significant contributing factor. On September 22, 2000, plaintiff reported to Dr. Dement that Mary Silver claimed that there had been no documentation concerning RSD. Dement stated in his September 22, 2000 medical record that he believed there was sufficient documentation. Dr. Dement's December 29, 1999 medical records reveals clearly his opinion that plaintiff has chronic RSD. At the time that the defendant filed the form 33R, Mary Silver knew or should have known that Dr. Dement had rendered this opinion that plaintiff had RSD.

17. In a Form 33 dated September 28, 2000 and received by the Industrial Commission on October 4, 2000, plaintiff's counsel requested a hearing because the defendant refused to authorize treatment by Dr. Ruark. In A Form 33 R dated November 13, 2000 and received by the Industrial Commission on November 27, 2000, defendant responded by claiming that the treatment being sought by the plaintiff was not reasonably required to effect a cure or give relief and that the condition that medical compensation was being sought was not the result of plaintiff's compensable knee injury. At the time that the defendant filed this Form 33, it had no evidence to support its claim that the sympathetic blocks being administered under the direction of Dr. Ruark were not reasonably required to give the plaintiff pain relief or that the condition being treated for by Dr. Ruark was not the result of plaintiff's compensable knee injury.

18. Plaintiff's counsel submitted a set of interrogatories that were answered by the defendant on November 21, 2000. Defendant was asked whether it admitted that plaintiff had

RSD. Defendant responded “no.” At the time that this response was made it was clear in Dr. Dement’s medical records that he had diagnosed the plaintiff with RSD. When asked for the factual basis for this denial, the defendant failed to respond. Defendant was also asked that if it denied that plaintiff’s job was a significant contributing factor in the development of plaintiff’s RSD then to please explain the factual basis for this denial. The defendant responded “not applicable”.

19. On December 5, 2000, almost a year after Dr. Dement definitively opined that plaintiff had chronic RSD and needed to undergo sympathetic blocks, defendant directed plaintiff to undergo an independent medical evaluation with Dr. Carlton. Dr. Carlton opined that plaintiff had RSD. Despite receiving this independent opinion, defendant refused to pay for the sympathetic blocks administered by Dr. Ruark.

20. Two weeks prior to the hearing, a deposition of Dr. Dement was conducted by the parties on April 2, 2001. Dr. Dement clearly opined that plaintiff’s RSD was related to her compensable October 5, 1997 knee injury and that the sympathetic blocks that she had received up to that point were appropriate. Defendant did not to ask a single question during cross-examination challenging the validity of Dr. Dement’s opinions on the cause of plaintiff’s RSD and the appropriate treatment for that condition.

21. From the very outset when the defendant filed the Form 33R, Mary Silver’s refusal to authorize the plaintiff to receive treatment for sympathetic blocks by Dr. Rauck was based upon stubborn, unfounded litigiousness.

22. The sympathetic blocks administered by Dr. Rauck were reasonably necessary to assist the plaintiff in temporarily relieving pain. If aggressive treatment with sympathetic blocks

had occurred at or about the time Dr. Dement had first recommended such treatment, the treatment by Dr. Rauck could have been more effective in giving plaintiff long term pain relief.

23. Ninety percent of Dr. Rauck's patients who undergo as many sympathetic blocks as has the plaintiff get sustained relief as a result of these blocks.

24. Plaintiff needs to undergo a formal psychological evaluation to determine whether she should undergo a surgical implantation of a spinal cord stimulator, undergo a surgical removal of the nerves of the sympathetic chain or undergo installation of a PCA pump. If plaintiff does not want to accept the risks involved with any of these surgeries, then she has reached maximum medical improvement with regard to her reflex sympathetic dystrophy. Given that plaintiff's physicians have suggested that these procedures are appropriate strategies in actually reducing plaintiff's pain, Dr. Coleman's opinion that plaintiff's psychological treatment should be shifted away from a focus on alleviating pain is given little weight at this time.

25. During December of 1999, plaintiff began to receive counseling for major depression and chronic pain from Cynthia Buff. The counseling provided by Ms. Buff has been reasonably necessary in helping relieve plaintiff's mental pain. Plaintiff has at times been at risk of committing suicide. Plaintiff's treatment has consisted of calling Ms. Buff daily to agree that she would not harm herself. Ms. Buff is able to uniquely empathize with the plaintiff given that she has RSD herself.

26. Beginning on January 21, 2000 and upon a referral by Ms. Buff, plaintiff began a course of treatment that included psychotropic medications under the direction of psychiatrist Dr. Heninger. The medications prescribed by Dr. Heninger were reasonably necessary to provide pain relief to the plaintiff.

27. In December of 1999, defendant knew that plaintiff was requesting that Ms. Buff be able to treat her for her depression.

28. On February 15, 2000, Dr. Dement reported to Ms. Buff that he could not justify workers' compensation approval of her treatment of the plaintiff's depression because it was not completely and exclusively related to her workers' compensation injury.

29. In the aforementioned Form 33 dated September 28, 2000 and received by the Industrial Commission on October 4, 2000, plaintiff's counsel requested a hearing because the defendant refused to authorize treatment by Ms. Buff. In the aforementioned Form 33 R dated November 13, 2000 and received by the Industrial Commission on November 27, 2000, defendant responded by claiming that the treatment being sought by the plaintiff was not reasonably required to effect a cure or give relief and that the condition that medical compensation was being sought was not the result of plaintiff's compensable knee injury. At the time that the defendant filed this Form 33, it had no credible evidence to support its claim that the treatment being administered under the direction of Ms. Buff was not reasonably required to give the plaintiff pain relief or that the condition being treated for by Ms. Buff was not the result of plaintiff's compensable knee injury. As early as December 1999, Dr. Dement recorded in his medical notes that counseling by Ms. Buff would be appropriate. Dr. Dement's opinion as recorded in his February 15, 2000 medical note is a misstatement of the law concerning whether plaintiff's depression could be compensable. The defendant could not reasonably rely upon this opinion as the basis to deny authorization of the treatment by Ms. Huff.

30. On or about December 14, 2000, Dr. Dement notified Mary Silver that he was of the opinion that plaintiff's knee injury, pain and surgery seemed to exacerbate plaintiff's depression. Dr. Dement prescribed plaintiff Paxil, but Ms. Silver denied authorization of

payment for this prescription. This opinion clearly supports plaintiff's claim that her depression is compensable.

31. According to defendant's interrogatory responses on November 21 2000, defendant denied authorization of the treatment by Ms. Buff because it was of the opinion that the treatment was not reasonably necessary to give plaintiff relief, effect a cure and/or lessen plaintiff's disability. Defendant did not state that the basis of the denial of the treatment by Ms. Huff was because of any issue as to whether the depression plaintiff was experiencing was caused by the October 5, 1997 compensable injury by accident.

32. Sixteen months after first being notified of plaintiff's claim for ongoing psychological treatment for her depression and chronic pain and over a week after the hearing, plaintiff underwent an independent medical evaluation by Dr. Coleman to determine whether she had work-related depression and what course of treatment should be provided. During this delay, Ms. Buff had provided ongoing counseling in part to prevent plaintiff from committing suicide. Ms. Buff had not received payment for her treatment of the plaintiff as of the date of her deposition.

33. From the very outset when the defendant filed the Form 33R, Mary Silver's refusal to authorize the plaintiff to receive treatment from Cynthia Buff was based upon stubborn, unfounded litigiousness.

34. Dr. Faller wrote a medical note restricting the plaintiff from driving to accommodate plaintiff's desire to avoid picking up checks at Mary Silver's office. Given the anxiety that plaintiff experienced in response to the control that Ms. Silver has attempted to exercise over plaintiff's use of prescribed medications, it would help reduce the anxiety plaintiff

is experiencing by requiring the defendant to continue to mail plaintiff's temporary total disability compensation checks directly to her.

35. Defendant's initial refusal to authorize payment for surgery to be performed by Dr. Poehling was based upon reasonable grounds. Dr. Dement expressed reservations about whether such a surgery would be successful given that plaintiff had developed RSD.

* * * * *

Based upon the foregoing Stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Defendant shall pay for all medical treatment for compensable injuries sustained by the plaintiff that is reasonably necessary to lessen plaintiff's disability, effect a cure or relieve pain. §97-25.

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Considering the foregoing Findings of Fact and Conclusions of Law, the undersigned enters the following:

A W A R D

1. Cynthia Buff is HEREBY APPROVED to serve as plaintiff's clinical social worker in providing ongoing counseling sessions on an as needed basis. Defendant shall pay Ms. Buff for the counseling sessions that she has provided to the plaintiff for the time period beginning December 22, 1999 to the present and continuing until further order of the Industrial Commission.

2. Dr. Wendy Heninger is HEREBY APPROVED to serve as plaintiff's psychiatrist in providing ongoing psychotherapy sessions and prescribing psychiatric medications on an as

needed basis based upon her opinion and upon the approval of the authorized pain specialist coordinating plaintiff's care. Defendant shall pay Ms. Heninger for the treatment that she has provided to the plaintiff for the time period beginning January 21, 2000 to the present and continuing until further order of the Industrial Commission.

3. Dr. Rauck is HEREBY APPROVED to serve as plaintiff's treating physician for the supervision of treatment for her reflex sympathetic dystrophy and to prescribe pain medications on an as need basis based upon his opinion and upon the approval of the authorized pain specialist coordinating plaintiff's care. Defendant shall pay Dr. Rauck for the treatment that has been rendered for plaintiff's reflex sympathetic dystrophy for the time period March 22, 2000 to the date of his deposition on July 26, 2001.

4. Dr. Gary Poehling is HEREBY APPROVED to serve as plaintiff's treating physician for the mechanical problems she is having with her left knee and to prescribe medications on an as needed basis based upon his opinion and upon the approval of the authorized pain specialist coordinating plaintiff's care. Defendant shall pay Dr. Poehling for the treatment he has rendered for the plaintiff's left knee for the time period beginning January 4, 2001 to the present and continuing until further order of the Industrial Commission.

5. Defendant shall timely authorize and pay for all medications approved by an authorized pain specialist until further order of the Industrial Commission. Dr. Burke is HEREBY APPROVED to serve as plaintiff's pain specialist responsible for coordinating her care. Each of the three physicians approved by the undersigned shall submit medication recommendations to Dr. Burke who in turn shall be responsible for communicating by fax to Ms. Silver what medications he has approved for plaintiff's care. Ms. Silver or her office shall within 2 hours of having received this written approval from Dr. Burke, either authorize payment of the

medication or notify plaintiff's counsel and the undersigned by fax that she is denying authorization of medications approved by Dr. Burke or any other authorized pain specialist that the undersigned approves to manage plaintiff's care. Ms. Silver shall provide in detail a written explanation as to why she is denying authorization of medications approved by Dr. Burke or any other authorized pain specialist to the undersigned and plaintiff's counsel.

6. If Dr. Burke is unwilling to serve in the capacity outlined above, the parties shall have 15 days from the filing of this decision to agree to an authorized pain specialist who will be responsible for the duties outlined in paragraph 5. If the parties are unable to agree, then the undersigned directs Judy Clouse to locate a pain specialist willing to comply with the undersigned's orders concerning coordination of care and report the name of this physician to the undersigned.

7. Defendant shall obtain the approval of Dr. Heninger, Dr. Poehling and Dr. Ruark for any particular job that it seeks to assist the plaintiff in obtaining. Plaintiff shall participate in vocational rehabilitation efforts offered by the defendant.

8. All out of pocket expenses plaintiff incurred for payment of medications for the treatment of plaintiff's compensable left knee, her depression and her reflex sympathetic dystrophy as prescribed by authorized treating physicians shall be paid for by the defendant.

9. Plaintiff's request that defendants be required to allow Workers Comp Rx to fill her prescribed medications is DENIED.

10. Defendant shall pay directly to plaintiff's counsel \$6,000.00 for the unreasonable defense of refusing to pay for the sympathetic blocks administered by Dr. Rauck and the unreasonable defense of refusing to pay for the psychological treatment provided by Ms. Buff.

11. Plaintiff shall elect to undergo the individualized functional restoration program recommended by Dr. Poehling or undergo one of the following three procedures: a surgical implantation of a spinal cord stimulator, a surgical removal of the nerves of the sympathetic chain or undergo installation of a PCA pump. If plaintiff declines to pursue any of these courses of treatment, then the parties shall notify the undersigned who will reset this matter for hearing to determine what, if any, permanent partial disability benefits, the plaintiff is entitled to receive.

12. Defendant shall pay expert witness fees in the following amounts, \$300.00 to Dr. Dement, \$200.00 to Dr. Carlton, \$1000.00 to Dr. Rauck, \$600.00 to Dr. Jones, \$300.00 to Dr. Heninger, \$399.00 to Ms. Buff \$400.00 to Dr. Faller \$975.00 to Dr. Coleman and \$800.00 to Dr. Hankley. Defendant shall send a copy of Dr. Poehling’s bill to the undersigned.

13. Defendant shall pay the costs.

14. **Counsel for the defendant shall provide a copy of this decision to the corporate president for the defendant. Counsel for the defendant shall provide verification that this decision has been reviewed by the corporate president.**

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ADMINISTRATIVE ORDER

1. Defendant shall permit plaintiff or her designees to pick up her prescribed medications at the pharmacy located at the defendant’s place of business. Defendant may appeal this order by requesting a hearing before a Deputy Commissioner on this matter.

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It is furthermore ORDERED that this case be REMOVED from the Asheville hearing docket.

S/

DOUGLAS E. BERGER
DEPUTY COMMISSIONER

DEB:sm