S232197

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

KIRK KING, SARA KING,

Plaintiffs, Respondents

v.

COMPPARTNERS, INC. and NARESH SHARMA, M.D.,

Defendants, Petitioners.

Court of Appeal Fourth District, Division Two No. E063527

Riverside Superior Court No. RIC 1409797 (Hon. Sharon J. Waters)

APPLICATION OF CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION AND POINTS & AUTHORITIES

BERNHARD BALTAXE, SBN: 186110
Smith & Baltaxe, LLP
825 Van Ness Avenue, Suite 502
San Francisco, CA 94112
Tel. No.: (415) 292-7800

Attorney for Amicus Curiae
California Applicants' Attorneys Association

S232197

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

KIRK KING, SARA KING,

Plaintiffs, Respondents

v.

COMPPARTNERS, INC. and NARESH SHARMA, M.D.,

Defendants, Petitioners.

Court of Appeal Fourth District, Division Two No. E063527

Riverside Superior Court No. RIC 1409797 (Hon. Sharon J. Waters)

APPLICATION OF CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF CALIFORNIA APPLICANTS' ATTORNEYS ASSOCIATION AND POINTS & AUTHORITIES

BERNHARD BALTAXE, SBN: 186110
Smith & Baltaxe, LLP
825 Van Ness Avenue, Suite 502
San Francisco, CA 94112
Tel. No.: (415) 292-7800

Attorney for Amicus Curiae
California Applicants' Attorneys Association

AMICUS CURIAE STATEMENT

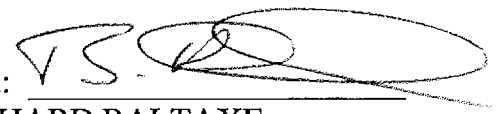
PER CALIFORNIA RULES OF COURT

RULE 8.520

Pursuant to California Rules of Court, Rule 8.520, it must be noted that the Amicus Curiae are relying on the brief filed by real-party-at-interest, which is entitled "Respondents' Opening Brief on the Merits" for reference to the facts presented at trial and on appeal, which makes up part of this Amicus Curiae Brief.

Respectfully submitted,

SMITH & BALTAXE, LLP

Dated: December 16, 2016 Signed: 

BERNHARD BALTAXE
ATTORNEY FOR AMICUS, CAAA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

Labor Code Sections:

APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, the California Applicants' Attorneys' Association ("CAAA"), through its attorneys, hereby requests leave to file an amicus brief in this case, in support of appellants, Kirk King and his wife. Amicus curiae state the following in support of this application:

1. Petitioner is an association and organization comprised of members of the California State Bar who regularly engage in the representation of men and women in the state who sustain injuries arising out of and occurring in the course of their employment. As a regular part of its activities, CAAA, after leave is granted, files amicus curiae briefs before the Workers' Compensation Appeals Board, Courts of Appeal, and the Supreme Court in cases of far-reaching significance.

2. CAAA is familiar with the issues before this Court and the scope of their presentation. CAAA believes that further briefing is necessary to address two matters not fully addressed by the parties briefs. 1) the Court of Appeal's decision below directly contradicts statutory and common law principles that the exclusive remedy in workers' compensation applies only to the employer and workers' compensation insurance carrier. The exclusive remedy does not extend to physicians providing medical treatment caused by a work injury. 2) The decision by

the court below disrupts the carefully crafted workers' compensation scheme and the grand bargain that is at its core.

3. The decision below has a devastating impact on the workers' compensation scheme and on the very people it is intended to protect, employees and employers. Granting immunity to physicians simply because they are providing treatment to an injured employee could seriously damage injured workers, strip them of their rights and puts the entire burden onto the workers' compensation scheme and the employer. The Court's ruling and decision in the instant case will have an immediate impact on amicus curiae, its members and constituents. CAAA therefore requests leave to file the following amicus brief.

Dated: December 16, 2016 Respectfully submitted,

By: _____
Bernhard Baltaxe

POINTS & AUTHORITIES

INTRODUCTION

This case is not a challenge to the Utilization Review ("UR") system implemented by the Legislature in Labor Code §4610[1] or the Independent Medical Review ("IMR") system contained in Labor Code Section 4610.5. This case is about the limits of the "exclusive remedy" contained in the Workers' Compensation Act ("Act"), promulgated under the plenary power granted the Legislature, under Article 14, Section 4, of the California Constitution. Under this "exclusive remedy" theory, employers pay limited, compensation to injured employees regardless of fault, but the employee cannot sue his or her employer for negligence. To obtain the limited benefits, an employee must only show that he or she was injured in the act and course of employment. The employer then pays compensation. The compensation does not reach the level of damages and is not fashioned to "make one whole." Rather, the compensation is limited. The employee, by law, as part of their employer-employee relationship, gives up the right to sue his or her employer even if the injury is caused by the negligence of that employer.

[1] For the purpose of this brief "Section" refers to the California Labor Code.

This is the "grand bargain" of the workers' compensation system. It is a bargain between an employer and an employee. This bargain was first made law through Article 4, Section 14 of the California Constitution. The Legislature codified it in the Labor Code. In lieu of damages, the workers' compensation system provides four benefits: (1) medical treatment, (2) compensation for the inability to earn wages on a temporary basis, (3) compensation for the permanent residual impairment caused by an injury, and (4) job retraining. Labor Code §§4600, 4650, 4658, 4658.5.

The California Constitution and Labor Code contemplate the exclusive remedy should by applied only in the employer-employee relationship. It does not apply to third parties. Petitioners, seek to extend the exclusive remedy to an independent, third party simply because that third party was involved in a UR, which is a cost cutting measure used in providing medical treatment. This novel theory is not based on law and would have potentially catastrophic consequences to the very people the Act is intended to protect, injured workers and employers. Respondent simply seek the right to pursue tort remedies against the physician who acted negligently, not the employer. Had the physician in question recommended a gradual cessation of mediation instead of immediate and abrupt cessation and had he warned of the risk of immediate and abrupt

cessation, Respondents would not be here. Respondent is not challenging the statutory scheme for determining workers' compensation benefits, including medical treatment. Respondents only seek to retain their common law right to bring a lawsuit against someone, other than the employer, who may have caused injury.

The Legislature specifically extended the exclusive remedy to include the employers' insurance company handling a workers' compensation injury claim. Labor Code §§3755, 3757. Because all employers must have workers' compensation insurance and because once the insurance company accepts the claim, it is responsible for administering the limited, compensation benefits, the Legislature specifically extended the exclusive remedy to insurance carriers. Labor Code §3700. Negligence in the claims administration process, as between carrier and employee is within the exclusive remedy. *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 810. This is by specific statute. There is no specific statute that creates an exclusive remedy between physicians involved in treatment, including utilization review doctors.

Petitioners argue the exclusive remedy must be extended to include a private company that provides medical opinion, regarding treatment procedures and the private physicians that contract with the private company contracted by the insurance carrier. This over

extension of the exclusive remedy has never been found before by this Court or any other court of this State. It flies in the face of public policy and was not intended by the Act.

STATEMENT OF FACTS

The facts of this case are undisputed and are well stated in the record below. In 2008, Kirk King injured his low back at work. His employer referred the injury claim to its' insurance carrier, State Compensation Insurance Fund ("SCIF"). SCIF accepted the claim and stepped into administer the benefits. Three years later, in July 2011, Mr. King was prescribed Klonopin by his primary treating physician ("PTP") to treat anxiety and depression suffered as a compensable consequence of the injury. Klonopin is an anti-seizure medication that is also used to treat anxiety and depression. Two years after that, in July 2013, Klonopin was abruptly stopped. As a direct result of the abrupt cessation of Klonopin, Mr. King suffered seizures. (See *Opinion below, Super Ct. No. RICI409797*)

The decision to abruptly stop Klonopin, in July 2013, was made by Naresh Sharma, M.D. Dr. Sharma made that decision as part of a Utilization Review ("UR"). UR is a cost-containment measure used in workers' compensation claims. SCIF used this UR process to determine if a refill prescription of Klonopin should be

authorized. To execute the UR process, SCIF contracted with CompPartners, Inc., which is a private company that provides services to insurance companies and employers, including coordination of Medical Provider Networks and UR. Dr. Sharma contracts with CompPartners, Inc. Id.

The PTP's written request was sent to Dr. Sharma to determine if the treatment (refill of Klonopin) was reasonably necessary. Dr. Sharma recommended immediate cessation of Klonopin. He issued a written report wherein he stated that Klonopin was not reasonably necessary. This is called a non-certification of the request for treatment. In the UR process, a non-certification of a medication means immediate cessation, unless there is a written warning about the effects of immediate cessation and a recommendation to wean from the medication. Dr. Sharma did not recommend weaning. He did not warn about the effects of immediate cessation. Id.

Mr. King filed a lawsuit against CompPartners, Inc. and Dr. Sharma for professional negligence, negligence, negligent infliction of emotional distress and intentional infliction of emotional distress. Defendants demurred to the complaint filed by Mr. King. Defendant's demurrer was based upon the exclusive remedy of

workers' compensation. Defendants alleged that because the Workers' Compensation Act prohibits an employee from suing his/her employer for an industrial injury that by extension, Dr. Sharma and CompPartners, Inc. are insulated from lawsuit for any acts they performed in association with the claim. The trial court agreed with defendants and dismissed Mr. King's complaint, without leave to amend. The Court of Appeal agreed with the trial court that defendants could not be sued for the non-certification decision, but reversed and remanded to the trial court the issue of whether or not Mr. King could allege a cause of action against Dr. Sharma of professional negligence for failing to warn of the effects of immediate cessation of Klonopin. Id.

ARGUMENT

A. The exclusive remedy is part of the grand bargain between employee and employer, not between an employee and a physician involved in treatment.

Generally, a physician who treats an injured employee is not protected by the exclusive remedy. The physician-patient relationship is not the employer-employee relationship. *Pettus v. Cole* (1996) 49 Cal. App. 4th 402 (physician sued for negligence for disclosing HIV status); *Duarte v. Zachariah* (1994) 22 Cal. App. 4th 1652 (physician sued for negligence in prescription overdoes).

The negligence caused by a physician is not reasonably expected by the employer and cannot be factored into the cost of the goods and services sold. Also, the law states the exclusive remedy applies only in the employer-employee relationship. All employers in California must carry workers' compensation insurance. This allows the risk of the no fault system of workers' compensation to be insured. Therefore, by statute, the exclusive remedy has been extended to the insurance carrier. Labor Code §3601. Had the Legislature desired to extend the exclusive remedy to UR doctors, it would have made a change to Section 3601 instead of hiding it in Section 4610.5. Also, Section 4610.5 is limited to the relationship between the employer and employee and has no impact on third party liability or that of a UR physician.

The concept of the employer paying for medical treatment is a lynch pin of the system Labor Code §4600. As part of the claims process, an injured employee selects a Primary Treating Physician ("PTP") to provide medical treatment and that PTP issues reports as part of the claims process. Section 4601 The PTP is selected from a network controlled by the employer. Labor Code §4616. The employer contracts directly with the PTP, receives reports directly from the PTP and pays the PTP, but the PTP is not protected from professional negligence by the exclusive remedy. If the PTP cuts off

a limb negligently he is liable in tort. *Stafford v. Shultz* (1949) 42 Cal.2d. 767 (police officer's suit against physician for negligent treatment of a bullet wound).

The court below found that Dr. Sharma could not be sued for professional negligence because the decision to abruptly stop Klonopin was part of the claims process and thus covered by the exclusive remedy. However, the injury caused by Dr. Sharma is not part of the claims process. The claims process is the way Mr. King came to see Dr. Sharma, just as the claims process is responsible for bringing together a PTP and an injured employee, but it that is the extent. Once Dr. Sharma undertook his responsibility as a physician to determine treatment issues, he is acting as himself and not as an employer in the claims process.

B. The derivative injury doctrine does not apply to a physician who commits malpractice while performing medical treatment or providing professional advice.

Petitioner argues that the injury to Mr. King from the abrupt cessation of Klonopin was derivative of the industrial injury. Under Sections 3600 and 3601, the employer cannot be sued in tort, but is limited in terms of liability, to the benefits of the workers' compensation system. If the subsequent injury is derivative of the initial industrial injury, it too is covered by the exclusive remedy.

This logic fails for two reasons. First, the nature of the exclusive remedy is to protect employers from negligence suits from injured employees. Here, there is no lawsuit against the employer. Second, the derivative injury doctrine is strictly limited by case law.

As the court reasoned in *Snyder v. Michael's Stores, Inc.* (1997) 16 Cal.4th 991, 62 Calif. Comp. Cases 1351, the scope of the exclusive remedy extends only to injuries collateral to or derivative of a work injury. *Snyder* at 1354. In that case, the child of an employee that was unborn at the time the employee suffered injury, filed a negligence claim against her mother's employer. Even though the injury to the unborn child was indirectly connected to the employment, the employer was still potentially liable for negligence because the injury to the unborn child, which was due to decision of a company nurse, was separate from the injury to the employee. This Court reasoned, the "derivative injury doctrine" has limits. "Neither the statutes nor the decisions enunciating the rule suggest workers' compensation exclusivity extends to all third party claims deriving from some 'condition affecting' the employee." *Snyder* at 1355. Here, there is no employee-employer relationship and the injury from stopping Klonopin is not related to the employment. This rule would apply equally to Ms. King who alleged loss of

consortium due to the second injury to her husband. "Neither the statutory language nor case law . . . suggests that third parties who, because of a business's negligence, suffer injuries – logically and legally independent of any employee's injuries – have conceded their common law rights of action as part of the societal 'compensation bargain.'" *Snyder* at 1361. The injury Ms. King suffered from was the decision to stop Klonopin and the decision not to warn of the effects of immediate cessation of Klonopin. This is injury is both logically and legally independent of Mr. King's initial injury.

In *Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, this Court again dealt with the compensation bargain and its limits. The basic bargain was described, "The employer assumes liability for industrial personal injury or death without regard to fault in exchange for limitations on the amount of that liability." *Vacanti* at 811. "Although the trade-off appears straightforward, 'this court and the Courts of Appeal have struggled with the problem of defining the scope' of the compensation bargain . . . [I] Indeed the unabated flow of published decisions *clarifying* the scope of workers' compensation exclusivity suggests considerable confusion as well as innovative lawyering." Id.

Here, respondents are surely being innovative in connecting Dr. Sharma's decision to stop Klonopin to the employment contract between Mr. King and his employer. Cases have sought to make it clear that the exclusive remedy protects the employer (and by specific and clear statute, the employer's workers' compensation insurance carrier) and does not protect third parties. The derivative injury doctrine has never been extended to a lawsuit against a treating physician for negligence. Just because a doctor is performing medical treatment or making treatment recommendations that does not give him immunity from prosecution for his own negligence in the commission of those duties. *Nation v. Certainteed Corp.* (1978) 84 Cal. App. 3d, 813 (lawsuit against employer for doctor's negligence not allowed under exclusive remedy)

C. Labor Code Section 4610.5(c) does not extend the limits of the grand bargain to Dr. Sharma who was performing a utilization review.

Defendant/Petitioners argue that the Legislature deemed it necessary to grant immunity to Dr. Sharma and all utilization review doctors. They did that, so goes the argument, by putting subsection (c)(4) into Section 4610.5, which covers review of utilization review decisions. Subsection (c)(4) states, "unless otherwise indicated by context, the definition of "employer" means the employer, the

insurer of an insured employer, a claims administrator, or a utilization review organization, or other entity acting on behalf of any of them." Labor Code §4610.5

As Plaintiff/Respondent stated in their Answer Brief on the Merits, the specific language in Section 4610.5(c), limits the definition of "employer" to that section only. The exclusive remedy is not found in that section. It is found in Sections 3600 and 3601 and in the Constitution. The exclusive remedy is not affected by the definition in Section 4610.5, which simply sets up the process for how UR decisions that are objected to by the injured employee are appealed. The appeal is, in most cases, exclusively through the Independent Medical Review ("IMR") process. This is strictly between the employee and the employer/carrier. The issue in an IMR appeal is whether or not the treatment recommended by the treating physician and thereafter denied by the UR doctor, should be paid for by the employer.

Section 4610 sets out the UR process. The employers are legally entitled to cut their costs associated with the procurement of medical treatment and thereby use UR doctors to make treatment decisions. These medical determinations are then relied upon by the employer in making payments for the performance of those medical

services. The judgment of both the treating doctor and the UR doctor are relied upon by the employer to determine what it needs to pay. The employee relies on the judgment of both the treating doctor and the UR doctor to provide him with professional medical advice. In this case, the professional medical advice was performed negligently and is not between the employer and the employee. Id.

In practice, the PTP sends his request for authorization directly to the UR doctor through a vendor such as CompPartners, Inc. Most claims adjusters have a message attached to their voice mail that provides a direct link between the PTP and the UR doctor through a simple fax number. The PTP faxes the request for authorization and any supporting documentation directly to CompPartners, Inc. The claims adjuster often is unaware of the request until the UR notice is sent. That notice tells the adjuster to either authorize the treatment as requested, authorize a modified treatment regimen or to not authorize the treatment. The notice from CompPartners, Inc. is sent to the claims adjuster, but also to the injured worker and the PTP and thereby, satisfies the employer's duty to notify the injured employee and PTP of the decision to authorize, modify or deny authorization and thus, starts the clock running to file an application for IMR. By allowing the definition in 4610.5(c)(4) to include CompPartners, Inc., the Legislature made it

possible for the employer to satisfy its notice requirement under the IMR framework and does not extend the exclusive remedy to the UR doctor.

Specifically, the definition in Section 4610.5(c)(4) allows the document prepared by CompParnters, Inc. in this case (written and signed by Dr. Sharma), to fulfill the employer's duty to satisfy the requirement of the other subsections. For example, Section 4610.5(h)(3) states that if the "employer" fails to comply with subdivision (f) . . . the time for the employee to submit a request for independent medical review . . . is extended to 30 days after service of the utilization review decision to the employee." Subdivision (f), states, "[A]s part of its notification to the employee regarding an initial UR decision . . . the employer shall provide the employee with a form not to exceed two pages, prescribed by the administrative director . . . which the employee may return . . . to initiate an independent review." This requirement is met by CompPartners, Inc. when it sends its notice to the employee and PTP with the attached two-page application for IMR. This makes it easier for the employer to comply with the strict time requirements by allowing the employer to rely on the vendor such as CompPartners, Inc. to fulfill the notice requirement. It is not necessary to this process nor a logical extension of the statutory scheme to apply the exclusive

remedy to the UR doctor. Labor Code §4610.5, State Comp. Ins. Fund v. WCAB (Sandhagen) (2008) 44 Cal. 4th 230, 241-243.

D. Finding immunity from negligence for Dr. Sharma is contrary to public policy.

This Court, recently stated in *South Coast Framing v. Workers' Compensation Appeals Board*, that purpose of the workers' compensation system is, (1) to ensure that the cost of industrial injuries will be part of the cost of goods, rather than a burden on society, (2) to guarantee prompt, limited compensation for an employee's work injuries, regardless of fault, as an inevitable cost of production, (3) to spur industrial safety, and (4) in return to insulate the employer from tort liability for his or her employees' injuries.

Turning to the facts of this case, it is difficult to find how the purposes of the Workers' Compensation Act are served by finding that Dr. Shaw should be immune from prosecution for professional negligence. The injury was seizures caused by the abrupt cessation of Klonopin. The negligence alleged is the decision to abruptly stop Klonopin and the failure to warn of the abrupt cessation. The alleged negligence cannot be anticipated by the employer. The employer is entitled to presume that a qualified, medical doctor, will

act professionally and not, negligently. The employer had nothing to do with the decisions to abruptly stop Klonopin or warn of the abrupt cessation. The employer could not anticipate it and cannot make it part of the cost of the goods produced. Further, it cannot foster industrial safety for two reasons. One, the employer has no control. The insurance carrier has no control either. The decision is purely a medical one. It requires a medical doctor to make a professional judgment call. If the Utilization Review doctor in all workers' compensation is immune from prosecution for negligence, there is no check on the doctor.

E. Petitioners argument that the extension of the exclusive remedy to UR doctors is necessary to the Workers' Compensation Act is flawed.

As argued by Petitioner, the Workers' Compensation Act is rooted in the California Constitution, Article 14, Section 4. The Constitution states the Legislature has plenary power to create a complete workers' compensation system to create and enforce a liability of all persons to compensate their workers for injuries sustained in the course of employment, irrespective of the fault of any party.

The Legislature has promulgated statutes to create and enforce this liability by and between the employee and the employer.

One of those statutes is Section 3600, which sets forth the conditions of compensation for employer liability. Liability for compensation, in lieu of any other liability, exists between an employer, without regard to negligence and an employee injured in the course of employment. Section 4600, sets out the law regarding an employer's obligation to provide reasonable medical treatment at their own expense. Section 4610, established the UR process. This UR process is a cost containment measure for employers. It in no way effected the exclusive remedy provisions of the Labor Code or case law. Sandhagen, supra at 242

Recently, Section 4610.5 was added to create a cost saving method to review UR decisions. Before Section 4610.5, if there was a dispute regarding whether or not treatment should be authorized between the treating doctor and the UR doctor, the dispute was put before a Qualified Medical Examiner ("QME"). Once the QME opined, the issue still needed to be finally adjudicated by a Workers' Compensation Judge ("WCJ"). The WCJ weighed the treatment report, the QME report and other submitted medical evidence, determined if the reports constituted substantial evidence, weighed all the evidence and issued a decision. That decision was binding, except it was subject to appeal to the Commissioners of the

Workers' Compensation Appeals Board ("WCAB") and beyond that, Courts of Appeal and the California Supreme Court. Id.

The Legislature decided that this process was too cumbersome and expensive. Too many acronyms were involved. First, the PTP issued a request, then a UR doctor reviewed and issued a decision. Next, a QME performed a physical exam and reviewed records and issued a report. The issue was then set before a WCJ that issued a final decision, subject to appeal to the WCAB and then, the appellate courts of this State. The Legislature intended to severe from this cumbersome system, the WCJ, WCAB and appellate courts as far as treatment decisions are made. Id.

As Petitioners stated in their brief, the Legislature found that "having medical professionals ultimately determine the necessity of requested treatment furthers the social policy of this state in reference to using evidence-based medicine to provide injured workers with the highest quality of medical care and that the provision of the act establishing independent medical review are necessary to implement that policy." *Petitioners' Opening Brief on the Merits*, p. 17, citing the Legislative history regarding UR and IMR . The Legislature's intent was to make treatment decisions that are "more scientifically sound" using the "independent and unbiased

medical expertise of specialists" and thereby to render "timely and medically sound determinations of disputes . . ." *Id.* How, these purposes are furthered by extending a vale of immunity over the UR doctor is unexplained by Petitioners.

Section 4610.5 lays out the method for disputes between the primary treating physician and the UR doctor to be settled using IMR instead of a QME followed by a court trial before a WCJ. This IMR process takes the QME, WCJ, WCAB and appellate courts out of the decision making process as it relates to medical treatment decisions between employer and employee. It in no way changes the relationship between physician and employee, whether that physician is a PTP or a UR doctor.

When the Legislature has chosen to place such trust in the professional hands of doctors and has not specifically, immunized those doctors from professional negligence, it follows that the Legislature understood that to have professional medical decisions means leaving in place the tort liability that ensures professionalism in the first place.

CONCLUSION

The general rule is that when an injured employee is referred by his employer to a treating doctor or is the injured worker exercises his statutory right to select a physician as his PTP from the employer's medical provider network, the chosen doctor has a duty to perform those medical services in a professional manner. Once that doctor exercises his or her professional judgment and affects the care of the injured employee, that doctor has assumed a duty to act in a professional manner. That duty is to perform the duties in a professional manner. This includes the decision to stop a treatment and the decision to warn.

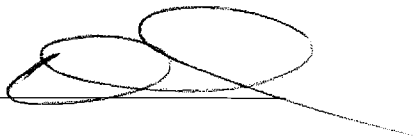
Where the employer exercises its' statutory right to contain costs by sending a PTP's treatment requests to a utilization doctor to determine if they should be authorized or denied, the employer is protected by the exclusive remedy from tort liability. However, as has always been the case, the doctors involved in that process, owe an individual, professional duty to the injured employee and are not protected by the exclusive remedy. Nothing in the addition of the IMR system did that change. Here, Dr. Sharma owed a duty to act in a professional manner. If he failed to do that, he should be subject to tort liability.

Dated: December 16, 2016 Respectfully submitted:

Bernhard Baltaxe
Attorney for Amicus Curiae
Ca. Applicants' Attorney Assoc.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) Or 8.360(b)(1) of the California Rules of Court, the enclosed brief of California Applicants' Attorneys Association is produced using 13-point Roman type including footnotes and contains approximately 4,216 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare the brief.

Dated: December 16, 2016 Signed: 

BERNHARD BALTAXE

ATTORNEY FOR AMICUS, CAAA

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KIRK KING, et al., *Plaintiffs, Appellants and Respondents,* vs. COMPPARTNERS, INC. et al., *Defendants, Respondents and Petitioners.*	)	Civil No: S232197 **DECLARATION OF SERVICE**

I, the undersigned, declare under penalty of perjury that I am a citizen of the United State, over the age of 18, and not a party to the within cause of action. My business address is Smith & Baltaxe, 825 Van Ness Avenue, Ste 502, San Francisco, CA 94109.

On December 16, 2016, I both filed with the Court and served a true copy of the *Application of File Amicus Curiae Brief* via USPS with postage fully prepaid, addressed as follows:

Patricia A. Law Jonathan Alan Falcioni Law Offices of Patricia A. Law 10837 Laurel Street, Suite 101 Rancho Cucamonga, CA 91730	Christopher D. Lockwood Arias & Lockwood 1811 S. Business Center Drive, Ste 9A San Bernardino, CA 92408	Terry L. Kesinger William D. Naeve Murchison & Cumming, LLP 18201 Von Karman Avenue, Suite 1100, Irvine, CA 92612
Jeffrey Y. Wu Fred Anthony Rowley, Jr. Munger Tolles & Olson LLP 355 South Grand Avenue, 35th Floor, Los Angeles, CA 90071	Joshua S. Meltzer Munger Tolles & Olson LLP 560 Mission Street, 27th Floor San Francisco, CA 94105	Michael A. Marks, Esq. Law Offices of Allweiss & McMurtry 18321 Ventura Blvd Suite 500 Tarzana, CA 91356
Finnegan Marks Theofel & Desmond P. O. Box 478011 San Francisco, CA 94147	Raul L. Martinez Lewis Brisbois Bisgaard & Smith, LLP 633 West 5th Street, Suite 4000 Los Angeles, CA 90071	David Didier Johnson Crowell & Moring LLC 275 Battery Street, 23rd Floor San Francisco, CA 94111
Derrick M. Au Office of the County Counsel County of Los Angeles 350 South Figueroa Street, Suite 601 Los Angeles, CA 90071		

I declare, under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct, and was executed on December 16, 2016, at San Francisco, California.

Bernhard Baltaxe (SBN: 186110)