



# Double jeopardy and double recovery: compensability of medical services and new/omitted conditions

By Kindra F. Long and Amy C. Osenar ■ September 29, 2016

As many know, post-*Brown v. SAIF*<sup>1</sup>, focus has shifted from the scope of acceptance to the scope of the injury. The *Brown* decision, and the line of cases following suit, have impacted nearly every aspect of claim processing, including medical service disputes.

In *Vincent O. Robison*<sup>2</sup>, the Board concluded medical services related to an unclaimed condition are compensable so long as treatment relates to the compensable injury. The fact pattern in *Robison* was unique. An adjuster issued a partial denial for a new/omitted condition claim, and in response, claimant denied submitting a new/omitted condition claim. The adjuster withdrew the partial denial based on this representation. When claimant filed a medical service dispute, the employer argued compensability of medical services could not be considered because (1) no claim was made or accepted for the treated conditions; and (2) claimant's actions regarding the "withdrawn" new/omitted partial denial constituted an acknowledgment such conditions were not compensable. The Board disagreed. Relying heavily on *SAIF v. Carlos-Macias*<sup>3</sup>, the Board reasoned that a compensability determination regarding a medical service claim is a separate inquiry from the compensability of a new/omitted medical condition under ORS 656.267.

In *Sandra L. Read*<sup>4</sup>, the Board determined separate awards of attorney fees for prevailing on compensability and a medical services dispute that did not amount to "double recovery." In *Read*, while a hearing request was pending on a partial denial of a new/omitted condition claim, claimant requested review by the Workers' Compensation Division (WCD) regarding unpaid bills related to the new/omitted condition. The WCD transferred the medical services dispute to the Hearings Division for consolidation. While the Board acknowledged similarity between the new/omitted condition claim and the medical service claim, it found two attorney fees warranted on the basis the claims were separate issues.

As *Robison* and *Read* demonstrate, claimant's ability to pursue alternate and simultaneous theories of compensability may further complicate the nature and extent of an insurer's processing obligations. Requests for reimbursement of medical expenses can no longer be summarily dismissed as unrelated to accepted conditions. Regardless of whether a new/omitted condition claim has

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been made, to the extent medical services may relate to a compensable injury, each reimbursement request should be closely scrutinized prior to making a processing decision.

Meanwhile, Reinisch Wilson Weier PC will continue to monitor the activity at the Supreme Court and provide an update once a decision in *Brown* is reached. The hope remains the Court will modify, if not reverse *Brown*, and move away from an “injury focused” approach.

Please feel free to contact any of the Oregon practice attorneys at Reinisch Wilson Weier PC with any claim-specific questions. ■

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<sup>1</sup> *Brown v. SAIF*, 262 Or App 640, rev allowed, 365 Or 397 (2014)

<sup>2</sup> 68 Van Natta 255 (2016)

<sup>3</sup> 262 Or App 269 (2014)

<sup>4</sup> 67 Van Natta 2238 (2015)

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