

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Honorable Melody L James, Commissioner
W.C.C. File No 1122484

Appellate Case No. 2014-002070

RECEIVED
DEC 15 2014
SC Court of Appeals

William W. Huggins, Jr.....Respondent,

v

City of Mullins and South Carolina Municipal Trust.. . . . Respondents,

Rakesh Chokshi, M.D. Appellant.

INITIAL BRIEF OF APPELLANT



Carl E. Pierce, II (S.C. Bar No. 7946)
Benjamin C. Smoot, II (S.C. Bar No 101372)
Pierce, Hens, Sloan & Wilson, LLC
321 East Bay Street (29401)
PO Box 22437 (29413)
Charleston, South Carolina 29413
(843) 722-7733
carlpierce@phswlaw.com
bensmoot@phswlaw.com
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authoritiesii

Statement of Issue on Appeal 1

Statement of the Case 1

Facts 2

Argument 4

**THE COMMISSION ERRED AS A MATTER OF LAW THAT A TREATING
PHYSICIAN’S DEPOSITION IS SUBJECT TO THE FEE SCHEDULE
REGARDLESS OF WHETHER THE CASE IS ADMITTED BY AN EMPLOYER**

I BECAUSE EMPLOYER NEVER AUTHORIZED APPELLANT’S
TREATMENT OF THE CLAIMANT APPELLANT’S COMPENSATION
FOR HIS DEPOSITION IS NOT CONTROLLED BY THE FEE
SCHEDULE 6

A. APPELLANT’S COMPLETION OF A QUESTIONNAIRE DID NOT
SUBJECT HIM TO THE JURISDICTION OF THE ACT 9

B. APPELLANT’S PROPOSED PROCEDURE TO REMIT PAYMENT
FOR HIS DEPOSITION PURSUANT TO THE FEE SCHEDULE
ONCE A COMPENSABLE CLAIM IS RECOGNIZED IS PROPER 10

II APPELLANT IS ENTITLED TO A REASONABLE FEE FOR HIS
DEPOSITION BECAUSE HE IS BEING COMPELLED TO TESTIFY ON
MATTERS THAT REQUIRE EXPERT KNOWLEDGE AND
PROFESSIONAL MEDICAL SKILL 11

Conclusion 14

TABLE OF AUTHORITIES

CASES

<u>Coleman v Dydula</u> 190 F.R.D. 320 (W.D.N Y. 1999)	13
<u>Grant v Grant Textiles</u> 327 S.C. 196, 200, 641 S E 2d 869, 871 (2007).....	5
<u>Grayson v Carter Rhoad Furniture</u> 312 S.C. 250, 252, 439 S E 2d 859, 860 (Ct. App. 1993)	6
<u>Harvey v Schultz</u> 2000 WL 33170885 (D. Kan. 2000).....	12
<u>Haslett v. Texas Industries, Inc</u> 1999 WL 354227 (N D Tex 1999).....	12, 13
<u>Lark v. Bi-Lo</u> 276 S.C. 130, 136, 276 S E.2d 304, 307 (1981).	5

STATUTES

S.C Code Ann. § 1-23-320	11
S.C. Code Ann § 1-23-380	5, 6
S.C Code Ann. § 42-1-172	12, 13
S C Code Ann. § 42-3-160	11
S C. Code Ann § 42-15-95	8
S.C. Code Ann § 42-15-90	7, 9, 11, 14

REGULATIONS

67 S.C. Reg Ann. § 1301.....	9
67 S C Reg Ann § 1302	6, 7

RULES

Rule 26(B)(4)(c), SCRCP	11, 12
-----------------------------------	--------

OTHER AUTHORITIES

2010 Medical Services Provider Manual 6, 10

STATEMENT OF ISSUES ON APPEAL

- I. DID THE COMMISSION ERR IN DETERMINING THAT A TREATING PHYSICIAN'S DEPOSITION IS SUBJECT TO THE FEE SCHEDULE REGARDLESS OF WHETHER THE CASE IS ADMITTED BY AN EMPLOYER?

- II. IF THE PHYSICIAN'S SERVICES HAVE NOT BEEN AUTHORIZED, IS THE PHYSICIAN ENTITLED TO ESTABLISH AND ENFORCE HIS OWN REASONABLE FEE FOR HIS DEPOSITION AS AN EXPERT UNDER THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

STATEMENT OF THE CASE

This case arises out of medical evaluation and treatment Rakesh Chokshi M.D. ("Appellant") provided to Respondent William W. Huggins, Jr. ("Claimant") on October 28, 2011 and November 20, 2011. Over a year and a half later, on August 23, 2013, Respondent City of Mullins and South Carolina Municipal Insurance Trust ("Employer") filed a motion to compel Appellant to provide his deposition pursuant to the South Carolina Workers' Compensation Commission 2010 Medical Services Provider Manual Fee Schedule ("Fee Schedule") and accept a fixed fee to offer testimony pertaining to Claimant's injuries in this workers' compensation case. Employer never authorized Appellant's treatment of Claimant. Appellant was first made aware that his treatment of Claimant was associated with a workers' compensation claim on or about January 18, 2013 when Claimant issued a questionnaire to Appellant pertaining to his injuries. Appellant completed the questionnaire. At all times, Appellant received payment for his services to Claimant under Claimant's private insurance policy.

Thereafter, Employer sought Appellant's deposition to cross-examine him with regard to the completed questionnaire without authorizing Appellant's services to Claimant. Employer directed that Appellant's deposition would be compensated \$400.00 for the first hour and \$100.00 for each quarter hour thereafter pursuant to fixed fees in

accordance with the Fee Schedule. In advance of the deposition, Appellant communicated to Employer that his fees for the deposition were accurately reflected in his standard deposition invoice because Appellant's services had not been authorized by Employer under the South Carolina Workers' Compensation Act ("the Act").

Under the 2010 Medical Services Provider Manual ("Provider Manual") the Fee Schedule allows for a physician's deposition to be compensated by individual consideration outside of the fixed fees offered by Employer. In determining payment by individual consideration, the Medical Services Provider Manual requires a payer to consider the prevailing charges for similar services. Appellant's fees for his deposition are commensurate with fees charged by physicians for their depositions. The fee is \$1,000.00 for the first hour and \$500.00 for each hour thereafter. Employer refused to take Appellant's deposition in accordance with Appellant's fees and the deposition was cancelled. Employer filed the motion to compel Appellant's deposition pursuant to the Fee Schedule that is the subject of this appeal on August 23, 2013.

Because Appellant was not authorized by Employer or the Commission to perform any service under the jurisdiction of the Workers' Compensation Act ("the Act"), Appellant respectfully requests that this Court find the commission erred as a matter of law and reverse the Full Commission's Decision and Order finding that Appellant is bound to the fees mandated by Employer under the Fee Schedule. Appellant is entitled to a reasonable fee as set forth in his standard deposition fee invoice under the South Carolina Rules of Civil Procedure.

FACTS

Appellant appeals the Decision and Order of the South Carolina Workers' Compensation Commission ("Commission") dated September 3, 2014 affirming the

Decision and Order of Commissioner Andrea C. Roche dated January 27, 2014 granting Employer's Motion to Compel Appellant to provide his deposition pursuant to the Fee Schedule in this matter and its sister case, *Chris Chapman v Georgia Pacific, Self-Insured Employer*, W.C.C. File No. 1209379, Appellate Case No 2014-002069

Claimant sustained a work-related accident on September 19, 2011 causing injury to his lower back and neck. On October 28, 2011 and November 20, 2011 Appellant treated Claimant at Pee Dee Orthopaedic Associates in Florence, South Carolina. Claimant was admitted, registered, and treated by Appellant under Claimant's private insurance policy. Throughout the course of Appellant's treatment of Claimant, it was never disclosed to Appellant or to his office that Appellant's treatment of the Claimant was related to an injury compensable under the Act. Claimant was referred to Appellant by Claimant's family care provider.

On or about January 18, 2013, Claimant issued a questionnaire to Appellant requesting that Appellant complete it in regard to Claimant's injuries. The questionnaire was used by Claimant for purposes of an APA Submission. In or around July 26, 2013 Employer contacted Appellant's office to confirm Appellant's deposition date to examine him with respect to Claimant's injuries. Because Employer refused to authorize Appellant's services and his treatment of Claimant, Appellant informed Employer that the fee for Appellant's deposition was \$1,000.00 for the first hour and \$500.00 for each hour thereafter in accordance with Appellant's standard deposition fee invoice. The fees proffered by Employer pursuant to the Fee Schedule were \$400.00 for the first hour and \$100.00 for each quarter hour thereafter. For an eight hour deposition, the difference between these fees is only \$1,300.00

Appellant's office explained that if it was later determined that Appellant's services were determined to be compensable under the Act that Appellant would remit payment for his deposition to conform to the fixed fees established in the Fee Schedule for a physician's deposition. Employer responded stating that it would only pay the fixed deposition fees as established in the Fee Schedule for authorized physicians. Because Appellant's services had not been authorized by Employer, Appellant cancelled the deposition upon Employer's refusal to pay Appellant's fee in accordance with his standard deposition fee invoice. Employer filed a motion to compel the deposition on August 23, 2013.

ARGUMENT

THE COMMISSION ERRED AS A MATTER OF LAW THAT A TREATING PHYSICIAN'S DEPOSITION IS SUBJECT TO THE FEE SCHEDULE REGARDLESS OF WHETHER THE CASE IS ADMITTED BY AN EMPLOYER.

Appellant requests that this Court reverse the Commission's Decision and Order finding that a treating physician's deposition in a workers' compensation case is subject to the Fee Schedule regardless of whether the Employer has authorized and admitted the physician's services. Because Employer never authorized Appellant's treatment of Claimant or entered into a contract with Appellant to compensate him for his medical services under the Act, the fixed fees contained in the Act's Fee Schedule do not control Appellant's compensation for his deposition. Appellant's completion of a questionnaire did not subject him to the jurisdiction of the Act in this case because Employer at all times denied authorization for Appellant's services to Claimant. Appellant had no reasonable expectation that the Fee Schedule would control the fee for his deposition.

A physician's decision to be bound to the Act and its Fee Schedule for their services is voluntary. An employer or insurance carrier cannot refuse to authorize a treating physician's services on the belief that treatment is associated with a non-work related injury.

and then unilaterally bind the physician to fixed fees in the Fee Schedule for the sole purpose of collecting evidence in a workers' compensation case.

Likewise, Employer cannot refuse to authorize Appellant's services for Claimant's treatment under the Act and thereafter bind Appellant to a fixed fee under the Fee Schedule for Appellant's deposition. Appellant's compensation under the Fee Schedule is only proper when he has submitted to be bound by the Act and the employer has authorized his services or when it is determined that Appellant's services are related to a compensable claim in a contested case by the Commission. Until authorization is given or a determination is made, compensation for Appellant's deposition requires individual consideration and payment of a reasonable fee for Appellant's service.

Appellant's deposition is plainly sought to collect medical evidence pertaining to Claimant's injuries. Such testimony requires the special knowledge and skill of a medical expert. As a medical expert called upon to review the circumstances surrounding Claimant's injuries, Appellant is entitled to a reasonable fee for his deposition under the South Carolina Rules of Civil Procedure which govern depositions in a workers' compensation case. Because Appellant's services were not authorized by Employer under the Act, the appropriate fee is reflected in Appellant's standard deposition invoice, not the Fee Schedule.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act sets forth the standard for judicial review of decisions by the Commission. S.C. Code Ann. § 1-23-380; Grant v. Grant Textiles, 327 S.C. 196, 200, 641 S.E.2d 869, 871 (2007), Lark v. Bi-Lo, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). Although the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact, the Court may

reverse a decision of the Commission if it is affected by an error of law or is clearly erroneous in view of the substantial evidence on the record as a whole. S.C. Code Ann. § 1-23-380. The Court may find the Commission's findings clearly erroneous if they are based on a mistaken view of the evidence. Grayson v. Carter Rhoad Furniture, 312 S.C. 250, 252, 439 S E.2d 859, 860 (Ct. App. 1993)

I. BECAUSE EMPLOYER NEVER AUTHORIZED APPELLANT'S TREATMENT OF THE CLAIMANT APPELLANT'S COMPENSATION FOR HIS DEPOSITION IS NOT CONTROLLED BY THE FEE SCHEDULE.

Without the authorization of a physician's services by an employer or insurance carrier in a workers' compensation case, the Act and its Fee Schedule do not control compensation for the physician's services including his deposition. The Provider Manual¹ states

Medical Providers must receive authorization from the employer or insurance carrier prior to providing treatment...An employer who authorizes treatment, whether verbally or in writing, enters into a contract with the provider and is responsible for paying for that service, even if it is demonstrated later that the injury was not work-related

Once authorization is given, Title 42 of the South Carolina Code of Laws holds that a physician must provide reports required by the Commission before the physician can collect a fee pursuant to the Fee Schedule:

Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission, but a physician or hospital may not collect a fee from an employer or insurance carrier until the physician or hospital has made the reports required by the commission in connection with the case

¹ See Ch II, p 7 Payment for services provided by physicians in accordance with the Provider Manual is regulated by 67 S C Code Reg §1302(A)(1) that states "The Commission shall establish maximum allowable payments for medical services provided by medical practitioners based on a relative value scale and a conversion factor set by the Commission. The maximum allowable payments and any policies governing the billing and payment of services provided by medical practitioners shall be published in a medical services provider manual "

S.C Code Ann. § 42-15-90(A). Without authorization from the employer or insurance carrier permitting a physician to provide services, the physician cannot make reports required by the commission in connection with a workers' compensation case and cannot accept payment for his services under the Fee Schedule. The physician is excluded from the workers' compensation claims resolution process.

If a physician submits a Form 14A claim for payment of services to the employer or insurance carrier or completes and returns a Form 14B physician's statement with respect to his services, the physician offers to be bound to the Act's Fee Schedule for compensation of his services.² When the employer or insurance carrier accepts the physician's form, the employer or insurance carrier must authorize the physician's services and is required to compensate the physician in accordance with the Fee Schedule as mandated by the Act. A contract is created between the physician and employer or insurance carrier binding the employer or insurance carrier to compensate the physician for his services pursuant to the Fee Schedule for an efficient resolution of the claim. Although the physician forfeits his ability to establish and enforce his own fees for his services, he enjoys certain payment under a regulated payment policy enforced by the Commission.

When an employer or insurance carrier declines to authorize the physician's services, the employer or insurance carrier denies that the physician has performed any service compensable under the Act. No contract is created between the physician and employer or insurance carrier for certain payment under a regulated payment policy. To the extent the employer or insurance carrier desires to solicit the services of the physician, the physician has retained his ability to establish and enforce his own fees for his services.

² See 67 S C Reg Ann § 1302(B) (Medical practitioners submit claims for payment to the employer or insurance carrier on the Form 14A)

The physician's services are not admitted in a workers' compensation claim. Therefore, the Fee Schedule does not control compensation for those services. See S.C. Code Ann. § 42-15-95(A) ("Fee Schedules established through the regulations of the Workers' Compensation Commission shall apply only to claims under Title 42."). If it is established later in a contested case by the Commission that a physician's services were in fact related to a workers' compensation claim, payment for those services under the Fee Schedule is then appropriate.

In this case Employer failed to authorize Appellant's services before Employer attempted to bind Appellant to the Fee Schedule for compensation of his deposition. Appellant did not complete a Form 14A for payment to Employer. Appellant did not complete a Form 14B Physician's Statement. Appellant cannot be forced into the jurisdiction of the Act by virtue of the fact that a patient he treated happened to file a workers' compensation claim. Likewise, Employer cannot unilaterally decide that some of Appellant's services are subject to the Fee Schedule and that other services such as Appellant's actual medical treatment is not. The Act requires that a physician's services be authorized before the physician can receive compensation in accordance with the Fee Schedule. The Commission erred as a matter of law when it affirmed Commissioner Roche's order directing Appellant to give his deposition pursuant to fixed fees in the Fee Schedule because Employer refused to authorize Appellant's services.

A. APPELLANT'S COMPLETION OF A QUESTIONNAIRE DID NOT SUBJECT HIM TO THE JURISDICTION OF THE ACT.

By failing to authorize Appellant's treatment of Claimant after Appellant completed Claimant's questionnaire, Employer elected to refrain from binding Appellant to the Fee Schedule for his services. Appellant's completion of a questionnaire at the

request of the Claimant did not subject him to the jurisdiction of the Act for purposes of controlling compensation for his services because Appellant was compensated by private agreement between the parties. Appellant therefore had no reasonable expectation that future services would be controlled by the Act and its Fee Schedule.

After Appellant's completion of the questionnaire on January 18, 2013 Employer made no attempt to authorize Appellant's treatment of Claimant. No contract between Employer and Appellant existed by which Appellant had voluntarily elected to be bound by the Act and its Fee Schedule or submit reports in conjunction with this workers' compensation case. See S.C. Code Ann. § 42-15-90, *supra*; 67 S.C. Code Reg. § 1301(A)³ No attempt was made by Employer to compensate Appellant for the medical services Appellant rendered to Claimant in 2011. By declining to authorize Appellant's services before, during, and after Appellant's completion of the questionnaire from Claimant, Appellant was not subject to the jurisdiction of the Act and its Fee Schedule for compensation of his deposition

B. APPELLANT'S PROPOSED PROCEDURE TO REMIT PAYMENT FOR HIS DEPOSITION PURSUANT TO THE FEE SCHEDULE ONCE A COMPENSABLE CLAIM IS RECOGNIZED IS PROPER.

Absent authorization from an employer for a physician's services under the Act, a physician has the right to consider and enforce his own fees for his services until it is determined that his services were related to treatment in a compensable claim under the Act. The Provider Manual affords compensation for a physician's deposition by individual

³ A medical practitioner or treatment facility shall furnish upon request all medical information relevant to the employee's complaint of injury to the claimant, the employer, the employer's representative, or the Commission. Payment for services rendered may be withheld from any medical practitioner or treatment facility who fails to comply with a request for this information. 67 S.C. Code Reg. § 1301(A)

consideration (IC) under CPT Code No 99074 outside of the fixed fees in the Fee Schedule that establish \$400.00 for the first hour of testimony (CPT Code No. 99072) and \$100.00 for each additional fifteen minutes thereafter (CPT Code No. 99073). CPT Code No. 99074 was adapted for Commission use and compensates testimony by deposition of medical providers under individual consideration. To determine payment by individual consideration, the Provider Manual states

“The payer will pay IC services based upon a review of the submitted documentation, the recommendation of the payer’s medical consultant and/or the payer's review of prevailing charges for similar services.”

Physician’s Independent Medical Evaluations (“IME”) in workers’ compensation cases are also compensated by individual consideration instead of by a fixed fee. Because the Commission recognized that the physician retains the ability to establish his own fee for his services when the physician’s services have not been authorized or admitted by an employer or insurance carrier under the Act, the Commission declined to bind the physician to the Fee Schedule for an independent evaluation.

Similarly, Appellant’s services are much like an independent evaluation in this workers’ compensation case, where, as here, Employer refused to authorize those services. In the event it is determined in a contested case that the injury for which a treating physician’s services were rendered is related to a claim compensable under the Act then the fixed fees in the Fee Schedule must govern the physician’s services. The physician should remit the difference between the fee paid under individual consideration and the fixed fees outlined in the Fee Schedule for a particular service, including a deposition. This is the procedure Appellant proposed to establish with Employer in anticipation of Appellant’s deposition. Employer refused to consent.

Employer maintains that its failure to provide payment for Appellant's deposition pursuant to the fixed fees in the Fee Schedule would constitute a misdemeanor subject to imprisonment under S C. Code Ann. § 42-15-90(B)(2). This contention overlooks the fact that compensation for Appellant's deposition in accordance with Appellant's own reasonable fee is provided for under the Act pursuant to the Provider Manual and Fee Schedule. Appellant's proposed remittance procedure is the proper method for compensating a physician for his services when a physician's services are not authorized by an employer or insurance carrier and the injury treated by the physician has not been deemed compensable under the Act. Employer's fear of imprisonment is misguided.

II. APPELLANT IS ENTITLED TO A REASONABLE FEE FOR HIS DEPOSITION BECAUSE HE IS BEING COMPELLED TO TESTIFY ON MATTERS THAT REQUIRE EXPERT KNOWLEDGE AND PROFESSIONAL MEDICAL SKILL.

Appellant is entitled to establish and enforce a reasonable fee for his deposition under Rule 26, SCRPC until his services have been authorized by the Employer and he has agreed to be bound by the Act and its Fee Schedule for his services. Depositions of witnesses in workers' compensation cases are "taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas" S C. Code Ann. § 42-3-160.

Further, under the Administrative Procedures Act, parties may take the depositions of witnesses in contested cases but such depositions "shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas" S C. Code Ann. § 1-23-320. Hence, the South Carolina Rules of Civil Procedure apply to Appellant's deposition in this case. Rule 26(b)(4)(C), SCRPC states in pertinent part:

Upon the request of the party seeking discovery, unless the court determines otherwise for good cause shown, or the parties agree otherwise, a party retaining an expert who is subject to deposition shall produce such expert in this state for the purpose of taking his deposition, and the party seeking discovery shall pay the expert a reasonable fee for time and expenses spent in travel and in responding to discovery. . .

Employer is seeking Appellant's deposition for the purpose of examining him with regard to Claimant's injuries and the cause of those injuries. Appellant's understanding of Claimant's injury undoubtedly requires specialized knowledge and professional medical skill that would constitute medical evidence in this workers' compensation case. The Act acknowledges such testimony can only be given by experts. See S.C. Code Ann. § 42-1-172(C) ("As used in this section, medical evidence means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician").

Other jurisdictions have addressed the issue of whether a treating physician is entitled to a reasonable fee or a statutory fee for his testimony as a medical expert. In Haslett v. Texas Industries, Inc., 1999 WL 354227 (N.D. Tex. 1999), the court found that it was customary in the district to compensate physicians at a reasonable rate for giving a deposition. The court stated "physicians provide invaluable services to the public and should be remunerated for their time when they cannot deliver medical care. They often have substantial overhead costs that they incur whether they are treating a patient or testifying about one. Litigators and their clients typically .. respect the need to compensate physician-witnesses to the extent necessary to cover their overhead costs and to pay them a fee commensurate with their professional standing and special expertise."

In Harvey v. Schultz, 2000 WL 33170885 (D. Kan. 2000), the court adopted a similar view and found that "treating physicians should ordinarily be allowed a reasonable

fee beyond the \$40 statutory limit ” Moreover, the court found that it was “customary in this district and in Kansas state courts for parties to compensate physicians at a reasonable rate for deposition testimony in cases where they are not parties.” Thus, the court ordered counsel for both parties to confer and negotiate reasonable fees for the physicians

In Coleman v. Dydula, 190 F.R D. 320 (W.D.N.Y. 1999), the defendants sought a court order to compel the plaintiffs’ treating physicians to testify at the statutory rate. Recognizing the “virtual split of authority on the issue,” the district court deemed it appropriate under the circumstances to direct the payment of a “reasonable fee” to the physicians. Specifically, the court emphasized that the plaintiffs had disclosed the physicians, not as mere fact witnesses, but as trial witnesses expected to offer opinion testimony within the scope of FRCP 26(a)(2)(A) and FRE 702. Furthermore, the court supported its decision with the policy assertion in Haslett that treating physicians should be paid a fee “commensurate with their professional standing and special expertise.”


Similarly, Appellant is entitled to the reasonable fee established in his standard deposition invoice for giving expert opinion testimony about Claimant’s injuries in this workers’ compensation case. There is no question his testimony constitutes expert medical evidence to a reasonable degree of medical certainty as it is defined in S.C. Code Ann. § 42-1-172(C) To the extent Employer contends Appellant was not retained and therefore cannot accept a reasonable fee for his services under the South Carolina Rules of Civil Procedure, Appellant was solicited by both parties for his expert medical opinion in this workers’ compensation case. Appellant is not merely an actor or viewer with respect to the occurrences that are the subject of Claimant’s injuries. Rather, he was an active participant in the evaluation and treatment of Claimant who at all times was applying his specialized knowledge and skill in the medical profession. Employer’s comparison to the facts here

with that of a plumber who repairs a faulty leak defy logic and fail to accurately portray the significance of Appellant's treatment of the Claimant. The contention that Appellant is only entitled to a \$25.00 witness fee likewise offends a common sense application of the facts here and belies the significance that the Act itself places on physician's fees. See S.C. Code Ann. 42-15-90, *supra*

The fee contained in Appellant's deposition invoice is standard among members similarly situated in his profession and area of practice. It is reasonable in light of the value of his profession within the community. The fee is also equivalent to the value Appellant's office charges for his services in its business operations. The Act's deference to the provisions, conditions, and restrictions for the taking of a deposition in a civil action and the Provider Manual's provision for a medical provider's deposition by individual consideration plainly dictate that Appellant is permitted to establish and enforce his own reasonable fee as an expert in this workers' compensation case.

CONCLUSION

Based on the foregoing, this Court should find that the Commission committed an error of law in affirming Commissioner Roche's Decision and Order that Appellant is bound to a fixed fee in the Fee Schedule for his deposition in this workers' compensation case. Employer refused to authorize Appellant's services pursuant to the Act and its' Fee Schedule. Appellant is entitled to a reasonable fee for his deposition under the South Carolina Rules of Civil Procedure. This Court should adopt Appellant's remittance procedure for the compensation of physician's depositions when the employer or insurance carrier has not authorized a physician's services. Accordingly, Appellant respectfully requests that the Court reverse the Decision and Order of the Honorable South Carolina Workers' Compensation Commission.



Carl E. Pierce, II (S.C. Bar No. 7946)
Benjamin C. Smoot, II (S.C. Bar No. 101372)
Pierce, Hems, Sloan & Wilson, LLC
321 East Bay Street (29401)
PO Box 22437 (29413)
Charleston, South Carolina 29413
(843) 722-7733
carlpierce@phswlaw.com
bensmoot@phswlaw.com
Attorneys for Appellant

December 11, 2014

Other Counsel of Record

Grady L Beard
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, S.C. 29211
(803) 929-1400
*Attorney for City of Mullins and
South Carolina Municipal Insurance Trust*

Natalie Stevens-Graziani, Esquire
Stevens Law Firm, PC
P O Drawer 127
Loris, SC 29569-0127
Attorney for William W Huggins, Jr

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Honorable Melody L. James, Commissioner
W.C.C. File No. 1122484

Appellate Case No. 2014-002070

RECEIVED

DEC 15 2014

SC Court of Appeals

William W. Huggins, Jr.....Respondent,

v

City of Mullins and South Carolina Municipal Trust.....Respondents,


Rakesh Chokshi, M.D.Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on December 11, 2014 he served one copy of the Initial Brief of Appellant, Appellant's Designation of Matters to be Included in the Record on Appeal and Appellant's Certificate of the Designation of the Record on Appeal by placing same in an envelope with proper first class postage affixed thereto, and addressed as follows to their attorneys of record:

Natalie Stevens-Graziani, Esquire
Stevens Law Firm, PC
P.O. Drawer 127
Loris, SC 29569-0127
Attorney for Respondent William W Huggins, Jr

Grady L Beard, Esquire
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Attorney for Respondent City of Mullins and S C Municipal Trust



Carl E. Pierce, II (S C. Bar No. 7946)
Benjamin C Smoot, II (S.C. Bar No. 101372)
Pierce, Hems, Sloan & Wilson, LLC
321 East Bay Street (29401)
PO Box 22437 (29413)
Charleston, South Carolina 29413
(843) 722-7733
carlpierce@phswlaw.com
bensmoot@phswlaw.com
Attorneys for Appellant

Charleston, South Carolina

December 11, 2014

PIERCE, HERNS, SLOAN & WILSON, LLC

ATTORNEYS AND COUNSELORS AT LAW

THE BLAKE HOUSE • 321 EAST BAY STREET
CHARLESTON, SOUTH CAROLINA 29401

POST OFFICE BOX 22437
CHARLESTON, SOUTH CAROLINA 29413

(843) 722-7733

(843) 722-7732 FAX

www.phswlaw.com

M TODD RAINSFORD
SONALY K HENDRICKS
KRISTEN B FEHSENFELD
CHRISTINA VON ZIELINSKI
RYAN K MILLER
WHIDBEE S PERRIN
BENJAMIN C SMOOT, II

CARL E PIERCE, II
LOUIS P HERNS
ALLAN P SLOAN, III *♦
JOSEPH C WILSON, IV †
JAMES G KENNEDY
WILLIAM P EARLY

* MEMBER SC & FL BAR
♦ CERTIFIED SC CIRCUIT
COURT MEDIATOR
† MEMBER SC, FL & GA BAR

Direct Dial: 843-725-7709
Email: bensmoot@phswlaw.com

December 11, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
DEC 15 2014
SC Court of Appeals

Re *Huggins v City of Mullins and South Carolina Municipal Trust*
Appellate No.. 2014-002070
WCC File No.: 1122484
Our File No.: D2391.02

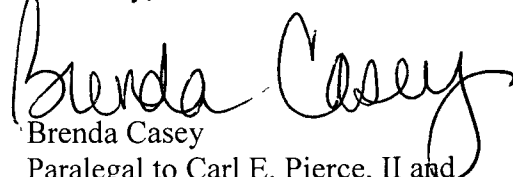
Dear Ms Kitchings

Enclosed, please find the original and one (1) copy of the Appellant's Proof of Service, Designation of Record on Appeal, Certification of Designation of Record on Appeal and Initial Brief regarding the above-referenced matter. Please file the documents and return the clocked copy within the self-addressed stamped envelope.

Please do not hesitate to contact me with any questions, concerns, or should you need anything else at this time. Please note that all counsel of record has been copied on this correspondence.

With kind regards,

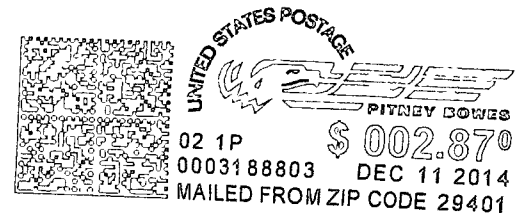
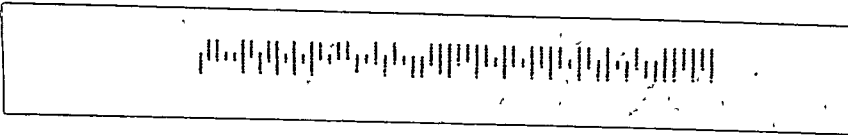
Sincerely,



Brenda Casey
Paralegal to Carl E. Pierce, II and
Benjamin C Smoot, II

/bdc

cc. Natalie Stevens-Graziani, Esquire (*with enclosures*)
Grady L. Beard, Esquire (*with enclosures*)



RECEIVED
DEC 15 2014
SC Court of Appeals

PIERCE HERNS SLOAN & WILSON, LLC
Post Office Box 22437
Charleston, SC 29413

TO: The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201