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# WORKERS' COMPENSATION EMERGING ISSUES

***Nathan C. Levy***

**Opioid Epidemic.** As with many other jurisdictions, Georgia has been plagued by an opioid epidemic in recent years, with 2015 figures equating to approximately 1,300 deaths. In fact, there has been a steady increase in deaths from overdose at a level of 6-8% each year for the last five years. In order to combat this epidemic, the state legislature enacted the Georgia PDMP, or Georgia Prescription Drug Monitoring Program, which went into effect on July 1, 2017. This law creates the following responsibilities for dispensers and providers of schedule II narcotics:

1. Dispensers must report filled controlled substances Rx data to the PDMP at least every 24 hours. (This requirement was previously 7 days)
2. All Georgia prescribers with a DEA number shall register to use the PDMP no later than January 1, 2018.
3. Effective January 1, 2018, all new DEA prescribers must register with PDMP within 30 days of obtaining a DEA permit.
4. Effective July 1, 2018, any person initially prescribing a schedule II opioid or any benzodiazepine shall seek and review a patient's PDMP information, then review and monitor PDMP at least once every 90 days thereafter.
5. Prescribers who violate the requirement to check the PDMP will be held administratively liable to their licensing board.

In conjunction with the PDMP requirements, the Georgia Composite Medical Board also made modifications to address penalties to non-compliant PDMP members. As of August, 2017, all physicians are required to obtain training on proper prescribing of opioids to include guidelines for prescriptions as well as recognizing signs of addiction and abuse. Continued abuse by members can include license suspension and revocation. The response to these changes have been overwhelmingly positive and our State Board of Workers' Compensation remains in the debate stages regarding the role of opioids in claims involving injured workers.

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**State Board Changes.** Internally, the State Board has continued to improve the ICMS electronic filing system which administers all filings, notices and settlement approvals, among other activities. One of the obstacles has been access. Effective July, 2018, Georgia Insurers, Self-Insured Employers, Group Funds, and Claims offices (adjusters), will be granted access to the system on a phased-in basis. This will certainly allow for increased efficiency and access to basic claim information for the workers' compensation employer and insurer professionals on a day-to-day basis with less reliance on defense counsel for urgent filings and status reporting. The phase-in period is, in part, due to training of workers' compensation professionals being provided by the State Board due to these changes. As an administrative driven system, Georgia's State Board is constantly making changes to the form and filing issues involved in claims handling. Recently, the Board announced a relatively impactful change in claims filings requirements as it pertains to the form WC-1, or first report of injury. Effective January 1, 2019, the filing of a form WC-1 will be required in all claims, including all "medical only" claims. It was the latter claims that specifically were not required to have an associated WC-1 filing to be made at the time of the claim's inception. The Board has made it clear that penalties will be assessed if parties fail to timely file a WC-1 after the January 1, 2019 commencement date. As of August 1, 2018, ICMS has been made available for the filing of WC-1 forms in all claims with EDI to follow suit by an anticipated date of December 1, 2018.

**Case Law – Intoxication Defense.** From a case law perspective, the Georgia Court of Appeals recently scrutinized the evidentiary standards required in intoxication defenses. In Lingo v. Early County Gin, Inc, the employee was involved in a crush injury when a backing truck pinned him against a loading dock. Following the incident, medical treatment was initiated at a local hospital which included emergency surgery. A lab technician was retained by the employer in order to ensure that a post-accident urine sample was obtained in a timely manner. The sample was handed to the lab technician via a hospital nurse of whom the lab technician did not personally know. The lab technician was also unaware of the identity(s) of any other medical providers involved in the collection and chain-of-custody. The sample was tested and ultimately confirmed the presence of marijuana. The claim was denied through application of an intoxication defense.

The employer denied the claim, citing O.C.G.A. 34-9-17(b)(2) which states:

> *If any amount of marijuana is in the employee's blood within eight hours of the time of the alleged accident, as shown by chemical analysis of the employee's blood, urine, breath, or other bodily substance, there shall be a rebuttable presumption that the accident and injury or death were caused by the ingestion of marijuana..*

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In rejecting the applicability of 34-9-17(b) and the establishment of a rebuttable presumption, the Court of Appeals attacked the compliance with the procedural requirements for testing of samples established by O.C.G.A. 34-9-415. Specifically, the lab technician was not able to identify the individual who obtained the sample or how the sample was obtained. It could only be assumed that the individuals involved in the collection of the sample were a physician, physician assistant, nurse or certified paramedic, as required by statute. Moreover, without specific evidence in the record regarding the collection and chain of custody, the court would have to assume that those involved were qualified and that the sample was obtained and handled pursuant to established guidelines. This was, in the Court's opinion, a fatal flaw to the underlying defense. Ultimately, the Court of Appeals ordered a remand for factual and legal consideration without reference to or reliance upon the statutory rebuttable presumption. This will allow the Employer to maintain an intoxication defense without the application of a rebuttable presumption. For Georgia employers, this case is a very clear mandate that all aspects of drug sampling, collection and chain-of-custody must be complied with in order to establish the rebuttable presumption that is often so key in intoxication defenses.