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**Notice! Healthcare Providers Must Intervene  
to Assert their Rights Under the  
Workers' Compensation Act**

By Ashley R. Menzel

Intervenors are commonplace in Minnesota Workers' Compensation cases. Under the workers' compensation statute, medical providers have the right to intervene and claim payment for treatment provided as the result of a work-related injury. Intervenors properly placed on notice have 60 days to formally intervene. After 60 days, the parties can extinguish their interest in any settlement for failure to properly intervene.

What happens when a medical provider chooses not to intervene, despite proper notice? Does the provider have a right to initiate their own proceeding under the Workers' Compensation Act? This issue was recently decided by the Minnesota Supreme Court in *Koehnen v. Flagship Marine*, No. A20-0053, (Minn. 2020).

In *Koehnen*, the Employee suffered an admitted work-related back injury. All chiropractic expenses were submitted to the Insurer for payment. However, the Insurer denied payment of the associated expenses. When litigation commenced, the chiropractor was properly placed on notice of their right to intervene. The chiropractor confirmed that he had received notice but *chose* not to intervene. When the claim was settled, the chiropractor's interest was extinguished by the parties for failure to intervene in a timely fashion.

Over eight months later, the chiropractor filed a Petition for Payment of Medical Expenses with the Office of Administrative Hearings. The chiropractor maintained that he was excluded from settlement negotiations, improperly extinguished, and was entitled to payment of his bills. The Compensation Judge denied the chiropractor's Petition and granted the Motion to Dismiss. The Judge held that the chiropractor's interest had been properly extinguished and that the provider lacked standing to assert an independent claim for payment.

On appeal, both the Workers' Compensation Court of Appeals and the MN Supreme Court affirmed. In doing so, the Supreme Court held that the right to intervene is not accompanied by the right to initiate a claim. The Court reasoned that the interest the chiropractor sought to assert by initiating a proceeding was the same interest he had the opportunity to assert through intervention, but voluntarily chose not to assert. The Court further stated that protection for potential intervenors is offered by both rules and statutory provisions. The law is clear that where a motion to intervene is not timely filed, the potential intervenor's interest "shall" be extinguished and the intervenor cannot collect the interest from the employee, an employer/insurer or any governmental program. Finally, a potential intervenor does not have standing to assert a direct claim for payment. It is the Employee, not the provider, who may assert a claim directly for payment of medical expenses. In sum, the intervenors interest was properly extinguished and the intervenor had no standing to bring a direct claim for payment.

At Brown & Carlson, we take great care to verify that all potential intervenors have been placed on proper notice of their right to intervene. For those providers who voluntarily choose not to exercise this right, we will seek to extinguish their interest without concern that the medical provider will later bring an independent claim for payment based on *Koehnen*.

If you have any questions regarding intervenors or other workers' compensation matters, please feel free to contact me or the Brown & Carlson Hotline at (855) 844-7070.

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