

What Employers Need to Know About Compound Creams and Pharmacy Ownership Matters

Background

Recently, it has come to light that many medical experts are also owners of pharmacies where the experts' patients are filling prescriptions. In many of these cases, expensive compound creams are involved. These medications are not supposed to be mass produced. They initially came back into favor with pain management physicians and pharmacists because they were an alternative for individuals who experienced unwanted side effects from commercially manufactured prescriptions. The compounded medications were intended to be personalized for an individual patient based upon his or her specific needs. It is this individualization which allows these medications to escape the FDA approval process. However, it would appear that frequently, the "compound" medications which are being prescribed are not individualized. Rather, many patients receive the same compound, contrary to the benefit which should be derived from the individualization of these medications. In addition, compounding provides an alternative to commercially prescribed medications which are not effective in treating an individual's symptoms or cause unwanted side effects. More recently, compound medications are being prescribed as a primary prescription, even before any commercially produced medications are attempted.

What can you do?

Unfortunately, in cases where the compensability of an injury has been accepted, an outright denial of compound prescriptions can open the door for Penalties and Unreasonable Contest fees. Therefore, in most cases, the first line of defense against compound medications is the Utilization Review process. More specifically, in cases where an employee is prescribed compound medications, without having attempted conservative treatment and commercially produced medications, the reasonableness and necessity of the compound medications should be challenged. Utilization Reviews can be expensive, however, the cost of an initial Utilization Review pales in comparison to the cost of a large majority of compound medications. Therefore, from a cost/benefit analysis, a Utilization Review is an economical way to challenge compound medications.

What is Weber Gallagher doing regarding pharmacy ownership?

Once a matter is in litigation, it is critical to establish if an expert witness has ownership in a pharmacy or surgical center because of the conflict it presents. We have established a comprehensive plan to uncover these relationships through very pointed research and by subpoenaing the appropriate documentary evidence which establishes "ownership" relationships between medical experts and pharmacies. In addition, as we receive these materials, we are establishing a data base for use by our attorneys to ensure that these relationships are being brought to light and made part of the record in each and every case where a medical expert owns part of a pharmacy. Finally, we have developed a comprehensive set of cross examination questions to prevent the medical expert from disavowing the ownership relationship and to challenge the reasonableness and necessity of compound medications based upon a lack of individualization and the inappropriateness of the use of compound medications where other alternatives have not been attempted.

Comment: With the recent news focusing on these issues, we believe that the current climate is advantageous for our clients to aggressively address these issues. We believe that our comprehensive plan provides our clients with the best avenue to successfully challenge compound medications and to illustrate the inappropriate relationships between medical experts and pharmacy ownership.

10.31.17



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