

Work Comp Alert *an e-newsletter*

Defendants Prevail Using “Any Relevant Evidence” to Demonstrate the Unreasonableness of Outpatient Surgery Centers Billing

Maria Tapia vs. Sill master Staffing; and Liberty Mutual Insurance Company, Defendants, SB Surgery Center, Lien Claimant.

By Newsha Alsafar

When dealing with litigation of outpatient surgery center billing and reasonable fees due, the leading case law has been *Kunz v. Patterson Floor Coverings, Inc. (2002) 67 Cal.Comp.Cases 1588 (Kunz)*. *Kunz* explains that for billing submitted by outpatient surgery centers prior to January 1, 2004, for which there was no Official Medical Fee Schedule (OMFS), that evidence of what constitutes reasonable fees can include the providers usual fee and usual fee of other providers in the same geographical area for the same services. Additionally, it is the lien claimant that has the burden of proving the reasonableness of its charges and not the lien claimant.

The recent case of *Maria Tapia vs. Sill master Staffing; and Liberty Mutual Insurance Company, Defendants, SB Surgery Center, Lien Claimant, (Tapia)*, has went on further to clarify the *Kunz* case and held that:

(1) an outpatient surgery center **lien claimant** (or any medical lien claimant) **has the burden of proving that its charges are reasonable**; (2) the outpatient surgery center lien claimant’s **billing, by itself, does not establish that the claimed fee is “reasonable”**; therefore, even in the absence of rebuttal evidence, the lien need not be allowed in full if it is unreasonable on its face; and (3) **any evidence relevant to the reasonableness may be offered to support or rebut the lien**; therefore, evidence is not limited to the fees accepted by other outpatient surgery centers in the same geographic area for the services provided.

The facts of the *Tapia* involve a case which was settled by way of Compromise and Release in the amount of \$73,000.00 on July 10, 2006. Settlement was for a cumulative trauma industrial injury from November 1999 to January 25, 2001 to various body parts, including the right wrist. The parties stipulated that the right wrist was an accepted industrial injury and there was no dispute that SB Surgery Center provided reasonable services when they performed wrist surgery on an outpatient basis on April 9, 2002.

The only issue at hand was the reasonableness of the fees and the amount of fees that should be allowed versus the amount billed by SB Surgery Center.

SB Surgery Center billed \$23,529.00 for the outpatient right wrist surgery. SB Surgery Center provided three hours of operating room services and 1.75 hours of recovery room services. The defendant paid \$1,667.00 leaving a balance of \$21,861.34.

At the lien trial, SB Surgery Center submitted its operative reports showing the surgery took place at their facility, itemized billing for services and items used during the surgery, and prior letters to defendant for a request of documents and their involvement in the case. At no time during the lien trial did SB Surgery Center provide evidence regarding their reasonableness of the services they provided.

They just explained that there was no Official Medical Fee Schedule (OMFS) during the time the surgery was provided and since defendants did not provide evidence of what other outpatient surgery centers in the same geographical area would accept as reasonable fees, **that their billing, on its face**, should be allowed as a reasonable fee as required by *Kunz*.

There was no evidence by either party regarding fees accepted by other outpatient surgery centers in the same geographic area as evidence of reasonable fees.

Evidence provided by the defendants was testimony that would have been provided by expert witness Milt Kyle. Mr. Kyle provided evidence, not of outpatient surgery centers in the same geographic area, but *inpatient* fees that would be accepted by three hospitals in the same region, which included an overnight stay. He calculated it to be \$5,698.80. The parties also stipulated that Mr. Kyle would testify as to the Medicare fee schedule for the DRG codes involved would have allowed a fee of \$1,214.68 for the same procedure.

The court held that SB Surgery Centers billing itself is not evidence of the reasonableness of its fees and it failed to carry its burden of proving the billed amount of \$23,529.00 was reasonable.

The court explained that even if defendants presented NO rebuttal evidence, the amount billed would not have to be accepted if it is was not reasonable.

Additionally the court held that the Board can take into consideration ANY relevant evidence considering the reasonableness of fees, including labor code section 5307.1(c) and OMFS. Not one factor is relevant in the reasonableness of fees, but any relevant evidence, including rebuttal evidence by the Defendants, can be considered. The lien claimant, not the defendant, has the burden of proving why their fees are reasonable and any evidence is relevant when dealing with outpatient surgery center billing.