

OPINION OF TRUSTEES

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In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-260 - August 30, 1990

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee; Thomas H. Saggau, Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health benefits coverage for surgical assistant services under the terms of the Employer Benefit Plan.

Background Facts

The Employee underwent surgery on March 1, 1989. A registered nurse was in attendance as the surgeon's assistant during the surgical procedure. According to information provided in support of the Complainant's position, the surgical nurses used by this surgeon are Health Professional Affiliates with hospital privileges. The Employer has paid the surgeon's charges, but it denied the charges for the nurse assistant, which were billed by the operating surgeon as services of an assistant surgeon.

Dispute

Is the Employer required to provide benefits for the services of the surgical nurse assistant?

Positions of the Parties

Position of the Employee: The Employer should provide benefits for the services of the surgical nurse assistant because she is well-qualified to assist the surgeon and such services represent a cost savings to the insurance carrier.

Position of the Employer: The Employer is not required to provide benefits for the services of the surgical nurse assistant because under Article III. A. (3)(b) the assistant must be a physician. The title of Health Professional Affiliate does not qualify a nurse to actively assist the operating surgeon in the performance of surgery, and the surgical nurse assistant is not a "physician

extender" within the meaning of Article III. A. (3)(o) 4. of the Employer Benefit Plan, as defined in Q&A 81-96 (copy enclosed herein).

#### Pertinent Provisions

Article III. A. (3) (a) and (b) of the Employer Benefit Plan state in pertinent part:

(3) Physicians' Services and Other Primary Care

(a) Surgical Benefits

Benefits are provided for surgical services essential to a Beneficiary's care consisting of operative and cutting procedure (including the usual and necessary post-operative care) for the treatment of illnesses, injuries, fractures or dislocations, which are performed either in or out of a hospital by a physician.

(b) Assistant Surgeons

If the Beneficiary is an inpatient in a hospital, benefits will also be provided for the services of a physician who actively assists the operating physician in the performance of such surgical services when the condition of the Beneficiary and type of surgical service require such assistance.

Article III. A. (3)(o) 4. of the Employer Benefit Plan states:

(o) Primary Medical Care - Miscellaneous

4. Benefits are provided for "physician extender" care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician.

#### Discussion

Article III. A. (3)(b) of the Employer Benefit Plan provides benefits for the services of a physician who actively assists an operating physician in the performance of a surgical service when the condition of the beneficiary and the type of surgical service require such assistance. In this case, the surgical assistant services were not provided by a physician.

Article III. A. (3)(o) 4. of the Plan provides benefits for "physician extender" care or medical treatment administered by nurse practitioners, physician's assistants or other certified or licensed health personnel when such service is rendered under the supervision of a physician. Health personnel whose services are covered under this provision must, at a minimum, be certified or

licensed to perform the service in question and, in order to be considered "physician extender" care, the service must be one that a physician would otherwise provide.

The operative report submitted in this case does not reflect that an assistant was used. However, a charge for an assistant surgeon was billed by the operating surgeon. In response to an inquiry from the Employer's insurance carrier, the surgeon indicated that the services charged were for those of a registered nurse who functioned as a surgical nurse assistant. Information provided to the Funds indicates that the hospital where the Employee underwent surgery grants registered nurses the title of Health Professional Affiliate and the privilege of assisting with surgery after they have completed an on-the-job training program; however, there is no state or national certification program for surgical nurse assistants. The nurse in this case was licensed to assist in the capacity of a nurse, but was not certified or licensed to actively assist in the performance of the surgical services to the extent of a physician serving in the capacity of an assistant surgeon. Because the services in question were not those of a physician nor of a practitioner who is formally trained, certified or licensed to act as a physician extender in the capacity of an assistant surgeon, the Employer is not required to provide benefits for the charge for a surgical nurse assistant.

#### Opinion of the Trustees

The Employer is not required to provide benefits for the services of the surgical nurse assistant.