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## OPINION OF TRUSTEES

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### In Re

Complainant: Employee  
Respondent: Employer  
ROD Case No: 88-578 - September 30, 1992

Board of Trustees: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William Miller, Trustee; Elliot A. Segal, 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 benefits for transdermal nicotine patches under the terms of the Employer Benefit Plan.

### Background Facts

The Employee's spouse was prescribed transdermal nicotine patches (Nicoderm) by her physician, to assist her in terminating her tobacco dependence. The Employer reimbursed the pharmacy. On March 30, 1992 the Employer's claims administrator wrote to the pharmacy requesting a refund, stating that the prescription had been paid in error. The Employer maintains that prescription drugs are only covered if they are prescribed for the necessary treatment of a sickness or injury, and that, in its opinion, the Employee's spouse's prescription does not qualify in either instance.

### Dispute

Is the Employer required to provide benefits for the transdermal nicotine patches?

### Positions of the Parties

Position of the Employee: The Employer is required to provide benefits for the transdermal nicotine patches as they were prescribed by a physician to treat an illness, and require a physician's prescription to dispense.

Position of the Employer: The Employer is not required to provide benefits for the transdermal nicotine patches since this medication is not used to treat an illness or injury as mandated in Article III. A. (4) (a) of the Employer Benefit Plan.

Pertinent Provisions

Article XX, Section (e)(6) of the National Bituminous Coal Wage Agreement of 1988 states in pertinent part:

- (6) Disputes arising under this Agreement with regard to the Employer benefit plan established in (c)(3) above shall be resolved by the Trustees.

Additionally, the Explanatory Note on Employer Provided Health Plans at Section (10) states in pertinent part:

The Trustees shall resolve any disputes, including excessive fee disputes, to assure consistent application of the health plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

Article III. A. (4) (a) of the Employer Benefit Plan states in pertinent part:

(4) Prescription Drugs

(a) Benefits Provided

Benefits are provided for insulin and prescription drugs (only those drugs which by Federal or State law require a prescription) dispensed by a licensed pharmacist and prescribed by a (i) physician for treatment or control of an illness or a nonoccupational accident....

...

Article III. A. (7)(f) states in pertinent part:

(7) Other Benefits

(f) Outpatient Mental Health, Alcoholism and Drug Addiction

Benefits are provided for:

Psychotherapy, psychological testing, counseling, group therapy and alcoholism and drug rehabilitative programs where free care sources are

not available and when determined to be medically required by a physician.

...

Article III. A. (11) (a) 24. states:

(11) General Exclusions

(a) In addition to the specific exclusions otherwise contained in the Plan, benefits are also not provided for the following:

24. Charges for treatment with new technological medical devices and therapy which are experimental in nature.

Discussion

Under Article III. A. (4) (a) of the Employer Benefit Plan, benefits are provided for prescription drugs (only those drugs which by Federal or State Law require a doctor's written prescription to dispense), that are dispensed by a licensed pharmacist and prescribed by a physician for treatment or control of an illness or non-occupational accident.

In this case, the transdermal nicotine patches are being used to treat an addiction to nicotine. Benefits for out-patient treatment of other chemical dependencies, such as alcoholism and drug abuse, are provided under Article III. A. (7)(f), and the Surgeon General's 1988 report establishes that nicotine is a highly addictive substance, comparable in its physiological and psychological properties to other addictive substances of abuse. Additionally, the patches were prescribed by a physician, this medication requires a physician's prescription to dispense, and it was dispensed by a licensed pharmacist, as required under Article III. A. (4) (a). The drug is approved by the Food & Drug Administration for this particular indication and is not considered experimental in nature. Therefore, the provisions of Article III. A. (11) (a) 24. do not apply in this case.

Article XX Section (e)(6) of the National Bituminous Coal Wage Agreement of 1988 notes that "Disputes arising under this Agreement with regard to the Employer benefit plan ... shall be resolved by the Trustees," and this is further explained by the Note added to Section (10) of the Agreement. The Trustees have interpreted the similar coverage provisions of the 1950 and 1974 Benefit Plans and Trusts to include coverage of prescription drugs for the treatment of chemical dependency, including alcohol and nicotine addiction, where such treatment is medically necessary. In order to establish consistent coverage within the Benefit Trusts and between the Benefit Trusts and the Employer Benefit Plans, transdermal nicotine patches are eligible for coverage as a prescription drug when properly prescribed by a physician and medically necessary for the treatment of an FDA-approved medical indication.

In view of the recent emergence of this drug, the Funds will continue to monitor the efficacy of its use. Presently, Funds' guidelines would limit treatment time for each drug not to exceed the manufacturer's recommendation, but these guidelines will continue to be reviewed and at such time as sufficient experience has been accumulated, the guidelines will be subject to revision. This standard replaces the simple four month limit-presented in ROD 88-575.

Inasmuch as the Employee's spouse received a prescription from her physician for transdermal nicotine patches as part of the treatment of nicotine addiction, a chemical dependency for which benefits are provided under the Employer Benefit Plan, and the prescription is approved by the Food and Drug Administration for this indication and is not considered experimental, the Employer is required to provide benefits consistent with Article III. A. (4) (a) and (7)(f) of the Employer Benefit Plan.

#### Opinion of the Trustees

The Employer is required to provide benefits for the transdermal nicotine patches prescribed for the Employee's wife and paid by the Employer on February 19, 1992.