

BAD FAITH BLOG

# Insurer Must Know When It Owes (or Say Why It Shouldn't)

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An insurer is required to know the law, and to fulfill any obligations that would exist even in its “least coverage” scenario. The Louisiana Court of Appeal found an insurer committed bad faith by failing to pay a statutorily-mandated amount despite pending litigation involving the matter that could result in reimbursement in excess of that amount. The Court required the insurer to pay the minimum due first, unless there exists a legitimate concern the statutory minimum is not owed at all. The fact that more might be owed does not amount to such a concern.

*Lafayette Bone & Joint Clinic v. Guy Hopkins Const. Co.*

An employee suffered a workers' compensation-covered injury in 2003. He sought ongoing treatment, including “reasonable and necessary” prescription medications, at the Lafayette Bone and Joint Clinic (“Lafayette”). After five-plus years of covering all appointments and medications, LUBA Casualty Insurance Company (“LUBA”) (the insurer for the employer) sent a letter to Lafayette stating it would no longer reimburse medications dispensed by the facility. LUBA had made a business decision that retail pharmacy medications were significantly less than those dispensed by physicians directly, and therefore would require claimants to fill prescriptions at retail locations. A letter and prescription card were sent to all claimants encouraging the filling of prescriptions at retail pharmacies, but the letter failed to state that prescriptions had to be filled at retail pharmacies.

The employee completed five additional visits, each time refilling his prescription directly with Lafayette. LUBA authorized each visit, but did not reimburse Lafayette for any prescription medications dispensed. Lafayette disputed the claim, and ultimately the ALJ determined the medications were unauthorized. Therefore, under Louisiana statute, the insurer need only reimburse the first \$750 in expenses. Additionally, fees and penalties were not warranted against the employer even though it failed to pay the \$750 it would owe regardless of the ALJ determination. Lafayette appealed both determinations.

The Court first looked to the Louisiana's workers' compensation statutes controlling reimbursement and authorization. The Court noted the provider is entitled to the first \$750 of treatment to be reimbursed, so long as it can prove the treatment was medically necessary and charges are no higher than the rates indicated on the workers' compensation fees schedule. If the treatment is approved before given, the full amount is covered. Prior decisions had defined the statute's phrase of "nonemergency diagnostic testing or treatment" to include related prescription medications. Applying this precedent, the Court was unpersuaded that LUBA could authorize one (the visit) but deny the other (medications). Further, though an insurer is allowed to direct a claimant "as to where to obtain medication," LUBA failed to do so here. The letter it sent all claimants recommended, but did not require, prescriptions be filled at specific pharmacies. Notification to Lafayette also did not suffice: an insurer may instruct the claimant directly, but not through the provider. Having found LUBA failed to notify the claimant of an obligation to visit a specific dispenser but did authorize all treatments, the Court granted full reimbursement of the cost of medications.

The Court then addressed Lafayette's argument LUBA acted in bad faith because it failed to tender any reimbursement, including the \$750 it would owe for unauthorized treatment. LUBA failed to brief the issue. The Court determined that LUBA could not have reasonably concluded it did not owe Lafayette at least the statutory \$750 for unauthorized care pre-litigation. LUBA admitted the treatment was both "reasonably necessary" and priced within the allowable fee schedule, and thus the medical provider was entitled to the minimum amount. The Court was unimpressed with LUBA's failure to know the law included medications with authorized treatment visits. Having determined that no "valid reason or evidence upon which LUBA could rely in denying reimbursement" existed, the Court imposed the statutory penalty of \$2,000 to LUBA and awarded attorney fees to Lafayette.