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Case Number 242,2014

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HOWARD VANVLIET,	)	
	)	
Claimant Below – Appellant,	)	
	)	
v.	)	No. 242, 2014
	)	Court Below – Superior Court of the
	)	State of Delaware, in and for Kent
	)	County, C.A. No. 13A-06-002 JTV
D & B TRANSPORTATION,	)	
	)	
Employer Below – Appellee.	)	
	)	
	)	

APPELLEE'S ANSWERING BRIEF

ON APPEAL FROM THE INDUSTRIAL ACCIDENT BOARD

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

DECISIONS:

STATUTES:

RULES:

NATURE OF PROCEEDINGS

Appellant, Howard VanVliet ("Claimant") was injured in a compensable work accident on February 14, 2001 while working for Appellant, D & B Construction ("Employer").

On August 23, 2010, Claimant filed a Petition to Determine Additional Compensation Due with the Industrial Accident, seeking preauthorization of the cervical spine surgery, which later was found to have already been performed by Dr. Gayatri Sonti, D.O. on August 11, 2010. He then filed a separate Petition to Determine Additional Compensation Due for temporary total disability and medical expense benefits. Employer filed a Motion to Dismiss, on the basis that preauthorization had not been obtained for the procedure as required by 19 *Del. C.* § 2322D(a)(1). The Industrial Accident Board ("Board") dismissed Claimant's Petition relating to surgery and medical expenses "provided by a non-certified provider for which there was no preauthorization."[1] Claimant appealed the Board's Decision to the Superior Court.

Before the Superior Court rendered an opinion with regard to Claimant's Appeal, Claimant filed an unrelated Petition to Determine Additional Compensation Due for pain management treatment.

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[1] *VanVliet v. D & B Transp.*, No. 1184191, at 2 (Del. I.A.B. Dec. 21, 2010).

The Superior Court reversed and remanded to the Board the December 21, 2010 Decision upon concluding that "if medical services, which have not been preauthorized, are performed by an uncertified physician, the claimant may still recover those services if he can prove that they are reasonable and necessary for his work-related injury."[2] Upon remand, the Board on May 15, 2013 found the surgery and pain management treatment reasonable, necessary, and causally related to the work accident.[3] Employer appealed the Board's Decision to the Superior Court on June 11, 2013.

While Employer's Appeal was pending before the Superior Court, the Supreme Court of the State of Delaware decided the matter of *Rescare Home Care v. Amanda Wyatt*, which addressed the healthcare provider certification requirement in 19 *Del. C.* § 2322D(a) .[4]

The Superior Court, relying on *Wyatt*, reversed the Board's Decision with regard to the surgery and affirmed its decision concerning the pain management treatment.[5] Claimant appealed the April 30, 2014 Order of the Superior Court to this Honorable Court on May 15, 2014.

The Opening Brief of Claimant was filed on June 27, 2014.

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[2] *VanVliet v. D & B Transp.*, 2012 WL 5964392, at *4 (Del. Super. Nov. 28, 2012).

[3] *VanVliet v. D & B. Transp.*, No. 1184191, at 19 (Del. I.A.B. May 15, 2013).

[4] *Wyatt v. Rescare Home Care*, 81 A.2d 1253 (Del. 2013).

[5] *D & B Transp. v. VanVliet*, 2014 WL 1724833, at *3-4 (Del. Super. Apr. 30, 2014).

This is the Answering Brief for Employer/Appellee.

SUMMARY OF ARGUMENT

1. Denied that the Superior Court erred as a matter of law.

STATEMENT OF FACTS

Claimant was involved in an acknowledged February 14, 2001 industrial accident. He underwent surgical intervention to his cervical spine in 2001 and received various benefits, to include total disability and permanency benefits. In 2005, Claimant received additional compensation for medical treatment expenses relating to the 2001 surgery.

On August 23, 2010, without having received treatment for almost five years, Claimant filed a Petition to Determine Additional Compensation Due, seeking authorization for further surgical intervention to his cervical spine. However, this procedure had already been performed by Dr. Gayatri Sonti, D.O., on August 11, 2010. Claimant filed a second Petition to Determine Additional Compensation due, also dated August 23, 2010, for total disability benefits and compensation of medical expenses relating to the 2010 cervical spine surgery. The Board consolidated the petitions and scheduled them for Hearing on December 22, 2010.

In the interim, Employer filed a Motion to Dismiss, arguing that Dr. Sonti was not a certified healthcare provider and had not sought preauthorization for the operation.

At the Legal Earing on Employer's Motion to Dismiss, the Board dismissed Claimant's demand for medical expenses relating to the 2010 cervical spine

surgery.[6] The Board explained that for an employer to be required to pay services rendered by an uncertified provider, "the doctor and Claimant need to first get preauthorization for the proposed treatment. That did not happen in this case."[7] The Board found the retroactive request for authorization insufficient.[8] Claimant appealed this ruling to the Superior Court.

While the appeal was pending, Claimant filed a separate Petition to Determine Compensation Due on September 11, 2012 for medical expenses and ongoing pain management treatment.

The Superior Court found there to be "some ambiguity concerning the compensability of medical services performed by an uncertified doctor which are not preauthorized."[9] The Superior Court reasoned that "if medical services, which have not been preauthorized, are performed by an uncertified physician, the claimant may still recover those services if he can prove that they are reasonable and necessary for his work-related injury."[10] The Superior Court remanded the

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[6] *VanVliet v. D & B Transp.*, Hearing No. 1184191, at 2 (Del. I.A.B. Dec. 21, 2010).

[7] *Id.*

[8] *Id.*

[9] *VanVliet v. D & B Transp.*, 2012 WL 5964382, at *4 (Del. Super. Nov. 28, 2012).

[10] *Id.*

matter to the Board to determine if the 2010 cervical spine surgery was reasonable and necessary.[11]

The Board consolidated the remand with Claimant's September 11, 2012 Petition.[12] On remand, the Board accepted the opinions of Claimant's medical experts and held that the surgery was reasonable and necessary.[13] The Board also found the pain management treatment to be reasonable, necessary, and causally related to the work accident.[14] Employer appealed both of these findings to the Superior Court.

The Superior Court held "that the medical expenses relating to the claimant's spine surgery are not recoverable under 19 *Del. C.* § 2322."[15] The Superior Court noted that Dr. Sonti is a Maryland surgeon who is not certified, although other doctors in her office are certified, and preauthorization had not been obtained for the procedure.[16] Relying on the Supreme Court of the State of Delaware's opinion in *Wyatt*, the Superior Court held that Claimant could not "recovery his medical expenses from his 2010 spinal surgery because Dr. Sonti

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[11] *Id.*

[12] *VanVliet v. D & B. Transp.*, No. 1184191, at 2 (Del. I.A.B. May 15, 2013).

[13] *Id* at 17.

[14] *Id* at 19.

[15] *D & B Transp. v. VanVliet*, 2014 WL 1724833, at *1 (Del. Super. Apr. 30, 2014).

[16] *Id* at 1, 3.

was not certified nor preauthorized to perform the treatment as required by 19 *Del. C.* § 2322D(a)(1)."[17] The Superior Court affirmed the Board with regard to the pain management treatment.[18]

[17] *Id.*

[18] *Id* at 4.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ERR AS A MATTER OF LAW IN HOLDING THAT THE AUGUST 11, 2010 SURGERY WAS NOT COMPENSABLE.

A. *QUESTION PRESENTED:*

Did the Superior Court err as a matter of law when it held that the August 11, 2010 cervical spine surgery performed by Dr. Sonti was not compensable pursuant to 19 *Del. C.* § 2322D(a)(1)?

B. *SCOPE OF REVIEW:*

The Court reviews decisions from the Superior Court concerning statutory construction to determine "whether the Superior Court erred as a matter of law in formulating or applying legal principles."[19] In doing so, the Court utilizes *de novo* review.[20] If the Court determines that "the statute is 'clear on its face and is fairly susceptible to only one reading, the unambiguous text will be construed accordingly,' unless the result is an absurdity."[21] "Where the text of a statute is ambiguous, however, this Court, 'will resort to other sources [of the statute's

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[19] *Delaware Ins. Guar. Serv. v. Christiana Care Health Serv.*, 892 A.2d 1073, 1076 (Del. 2006) (internal quotation marks omitted).

[20] *Id.*

[21] *Wyatt v. Rescare Home Care*, 81 A.2d 1253, 1260 (Del. 2013).

apparent purpose], including relevant public policy."[22] When interpreting a statute, the Court reviews and compares "all sections of the statute, 'in light of all the others to produce a harmonious whole.'"[23]

C. *MERITS OF THE ARGUMENT:*

Pursuant to 19 *Del. C.* 2322D(a)(1), a healthcare provider who is not certified under the Delaware Workers' Compensation Act must obtain preauthorization with the employer/insurance carrier for medical services provided to an employee/claimant to be compensable.[24] This rule applies to "all treatments to employees."[25] There are two exceptions to the above: the first is the single office visit or instance of treatment exception, which allows compensability of a provider's first contact with a claimant, regardless of whether or not they are certified and/or obtained preauthorization; the second is the emergency services exception, which pertains to medical care providers in a hospital or similar setting.[26] If an uncertified provider who not seek preauthorization for treatment

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[22] *Id* at 1261.

[23] *Id.*

[24] 19 *Del. C.* § 2322D(a)(1).

[25] *Id.*

[26] 19 *Del. C.* § 2322B(8)(b) and § 2322D(b).

provided to a claimant in violation of Section 2322D and does not meet either exception, the treatment is not be compensable.

This conclusion is reached through a straightforward reading of the Workers' Compensation Act. As the language of the statute is clear, public policy and secondary sources should not be considered by the Court in its review.

The effects of this conclusion are not absurd. An uncertified provider must simply seek authorization from the carrier before treating a workers' compensation patient. Such action need not be taken in emergency situations or when the provider is conducting an initial consultation. However, preauthorization is required in all other scenarios if the provider is to receive reimbursement.

The reverse is illogical. For instance, Section 2322F(g) requires the Board to fine a provider for treating a claimant in violation of Section 2322D.[27] It is irrational to conclude that a healthcare provider would be entitled to compensation for the very same service that they were punished for providing.

The Supreme Court of the State of Delaware recently decided this issue in *Wyatt*, where the claimant had sought treatment with Dr. Balepur Venkataramana, M.D., for a back injury and concealed that same was work related.[28] Dr.

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[27] 19 *Del. C.* § 2322F(g)

[28] *Wyatt*, 81 A.2d at 1257.

Venkataramana examined the claimant and operated on her spine two days later.[29] Dr. Venkataramana was not certified and had not obtained preauthorization.[30]

The Court found that when a "provider is neither certified nor preauthorized, compensation for medical treatment is generally not available, with narrow exceptions for care provided on the first visit to the provider and for care provided in the emergency unit of a hospital or in a pre-hospital setting."[31] The Court held that Section 2322D(a)(1) "exempted the employer from having to pay for medical treatment provided by Dr. Venkataramana, apart from the care provided during the Claimant's first visit with him."[32]

The Court also addressed the Superior Court's November 28, 2012 Order concerning this case *sub judice*.[33] The Superior Court had found the statute to be ambiguous and reasoned that treatment from an uncertified provided who had not obtained preauthorization was compensable if the claimant proved same was reasonable and necessary.[34] The Court opined that "[t]he interpretation by the

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[29] *Id.*

[30] *Id* at 1258.

[31] *Id* at 1263.

[32] *Id.*

[33] *Id* at 1262-63.

[34] *Id* at 1262.

Superior Court in *Vanvliet* does not address the entire statutory framework."[35] The Court explained that the first visit exception "would be superfluous if the statute were intended to function as the court in *Vanvliet* determined."[36] The Court held "that the statutory framework is unambiguous when all of the provisions are read *in pari materia*."[37]

Turning to the matter at hand, it is undisputed that Dr. Sonti was not certified under the Delaware Workers' Compensation Act at the time of the August 11, 2010 cervical spine surgery and had not obtained preauthorization for same.[38] Claimant does not argue that either exception is applicable. Therefore, Employer is exempt from paying for the procedure pursuant to Section 2322D(a)(1) and *Wyatt* and the Order of the Superior Court dated April 30, 2014 should be affirmed.[39]

Claimant's argument at that Dr. Sonti is not subject to Delaware Law because she does not have minimum contacts with the state is misplaced.[40] Claimant avers that "[r]equiring Dr. Sonti to follow the rules and regulations of the

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[35] *Id.*

[36] *Id* at 1263.

[37] *Id.*

[38] *VanVliet v. D & B Transp.*, 2012 WL 2964392, at *1 (Del. Super. Nov. 28, 2012).

[39] *Wyatt*, 81 A.2d at 1263.

[40] *See* Claimant's Opening Br., pg. 11.

state of Delaware when she does not practice in Delaware and has not become a certified provider under Delaware's Worker's [*sic*] Compensation State [*sic*] would be a violation of her due process rights."[41]

Claimant had not raised the issue of Dr. Sonti's minimum contacts before filing the appeal with the Court. Employer concedes that he did raise a very general jurisdictional argument to the Superior Court but such did not reference Dr. Sonti not having minimum contacts with the state.[42] Therefore, this issue is barred from review pursuant to Supreme Court Rule 8.[43]

Moreover, this argument fails to appreciate the fact that Dr. Sonti is not a party to this action. Dr. Sonti has not been named as a defendant, a judgment has not been entered against her, nor has enforcement of an order involving her been attempted. Simply put, whether or not Delaware can establish personal or general jurisdiction over Dr. Sonti has no bearing on the outcome of this case.

Nevertheless, Dr. Sonti does have minimum contacts with the State of Delaware pursuant to *International Shoe Co. v. Washington.*[44] In *World-Wide Volkswagen v. Woodson*, the United States Supreme Court explained the relevance of foreseeability in

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[41] *Id* at 13.

[42] *See* B38-B39.

[43] Supr. Ct. R. 8.

[44] *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

establishing minimum contacts for a due process analysis.[45] It is not that the defendant's product may enter the forum state but rather "that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there."[46] The United States Supreme Court explained further that subjecting a nonresident to suit in the forum state is not unreasonable if the conduct comes from efforts "to serve directly or indirectly" the market in the forum state.[47] Here, every other provider in Dr. Sonti's medical practice was Delaware certified at the time of surgery, and she, herself, is not certified under the Delaware Health Care Practice Guidelines.[48] Dr. Sonti even testified that due to her office being located on the Maryland Delaware border, she "get[s] a lot of patients from Delaware."[49] Therefore, her firm intended to treat workers' compensation claimant from Delaware.

Additionally, in *McGee v. International Life Insurance Company*, "the suit was based on a contract which had a substantial connection with that [forum] State."[50] The United State Supreme Court found the judgment entered in the forum state did not violate the nonresident's due process rights.[51] Similarly to the scenario in *McGee*, Dr. Sonti

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[45] *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297 (1980).

[46] *Id.*

[47] *Id.*

[48] *D & B Transp. v. VanVliet*, 2014 WL 1724833, at *1 (Del. Super. Apr. 30, 2014).

[49] *See* B69, B71.

[50] *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957).

[51] *Id* at 223-24.

treated a Delaware resident for an injury relating to the resident's workers' compensation claim that he had brought in Delaware. The treatment has a substantial connection to the Delaware claim.

Claimant also argues that *Wyatt* does not apply to the facts of this case because the uncertified provider in *Wyatt* is an in-state physician while Dr. Sonti is out-of-state.[52] Section 2322D(a)(1) makes no distinction between in-state and out-of-state uncertified providers, nor does *Wyatt*. Therefore, the preauthorization requirement applies to all uncertified providers, regardless of whether they are in-state or out-of-state.

The Board has found that no such distinction exists under Delaware Law.[53] For example, in *Pope v. Delaware*, the claimant sought payment of medical expenses from an uncertified provider based in Pennsylvania, who had not obtained preauthorization.[54] The claimant argued that *Wyatt* was distinguishable because her provider was based out-of-state.[55]

The Board held that "[n]either the statutory provisions nor the *Wyatt* decision contain any exception to the application of the law with respect to out-of-state providers."[56] The Board stated that "the statute sets up a clear requirement that, with certain limited exceptions, a health care provider must either be a certified provider under

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[52] *See* Claimant's Opening Br., pg. 15.

[53] *Pope v. Delaware*, No. 1305408 (Del. I.A.B. Feb. 18, 2014).

[54] *Id* at 1.

[55] *Id* at 2.

[56] *Id* at 3.

the Delaware system or obtain preauthorization before rendering compensable services."[57] The uncertified provider must preauthorize all treatment after the initial consult "in order for the treatment to be deemed compensable under the Workers' Compensation Act."[58] "There is no statutory exception for the fact that the medical provider is based in another state."[59] The Board dismissed the claimant's medical bills other than those relating to the first visit.[60]

Claimant suggests that the Board has drawn distinctions regarding out-of-state providers when evaluating their "proximity to Delaware."[61] In *Polk v. Green Acres Pavilion*, the employer contested claimant's treatment with an out-of-state, uncertified provider who had not received preauthorization.[62] The claimant had relocated to North Carolina, which is where the treatment was performed.[63] The Board's holding in that matter is identical to that of the Superior Court in this case in its November 28, 2012 Order, in that the claimant merely loses the presumption of reasonableness for services performed by uncertified providers who were not preauthorized.[64] However, in *Shay v.*

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[57] *Id* at 2.

[58] *Id* at 3.

[59] *Id.*

[60] *Id* at 4.

[61] *See* Claimant's Opening Br., pg. 15-16.

[62] *Polk v. Green Acres Pavilion*, No. 1253843, at 1 (Del. I.A.B. Dec. 4, 2009).

[63] *Id* at 2.

[64] *Id* at 4-5.

Christiana Care Health Services, the provider was from Maryland.[65] The Board noted that this was not a situation like that of *Polk* where the claimant lived in North Carolina "and sought treatment from a local doctor. Claimant in this case lives in Delaware and chose to travel to another state of the sole purpose of seeking treatment."[66] Thus, the Board denied payment of the medical expenses.[67]

The Board's distinction of *Polk* in *Shay* appears to be that the Board would apply the lost presumption of reasonableness standard, as detailed in *Polk*, for claimants living further away from Delaware than in its neighboring states. However, the reasoning in *Polk* has been overturned by the Supreme Court of the State of Delaware in *Wyatt*, the Superior Court in its Order dated April 30, 2014, and the Board in *Pope*. Therefore, there is no other standard for determining the compensability of treatment from uncertified providers other than Section 2322D(a)(1), as confirmed by *Wyatt*. Claimant's reliance on *Polk* is flawed because it is no longer good law, but even if it had not been overruled, the Decisions of the Board in *Polk* and *Shay* are not binding authority on the Super Court or the Supreme Court of the State of Delaware.

Claimant alleges that the Superior Court's ruling goes against the intended purpose of the Workers' Compensation Act and "allows the carrier to be absolved of

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[65] *Shay v. Christiana Care Health Serv.*, No. 1090250, at 2 (Del. I.A.B. May 25, 2010).

[66] *Id.*

[67] *Id* at 4.

payment for otherwise compensable treatment on a technicality."[68] However, it is Claimant's proposed interpretation of the statute that goes against the legislature's intended purpose. As stated by this Court in *Wyatt*, if all treatment by non-preauthorized, uncertified providers was compensable, the "exception for the first office visit would be unnecessary, rending the provision meaningless."[69] Therefore, the Order of the Superior Court dated April 30, 2014, which follows *Wyatt*, is consistent with the Delaware Workers' Compensation Act.

[68] *Id* at 18.

[69] *Wyatt*, 81 A.2d at 1263.

CONCLUSION

WHEREFORE, based upon the above facts and Delaware Law, Employer/Appellee respectfully requests the Supreme Court of the State of Delaware to affirm the Order of the Superior Court dated April 30, 2014, which held that Employer was exempt from paying for the August 11, 2010 cervical spine surgery performed by Dr. Gayatri Sonti, D.O., an uncertified healthcare provider who had not obtained preauthorization for the procedure.

Respectfully submitted,

/s/ Cheryl A. Ward

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Date: July 18, 2014

BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE

LINDA POPE,

Employee,

v. Hearing No. 1305408

STATE OF DELAWARE
(COLONIAL SCHOOL DISTRICT),

Employer.

ORDER

This matter came before the Board on February 6, 2014. Pending is a Petition to Determine Additional Compensation Due filed by Linda Pope ("Claimant") on October 24, 2013. Claimant seeks a recurrence of total disability, payment of medical expenses and compensability of a right shoulder condition. Part of this claim includes medical expenses for shoulder surgeries performed on February 20 and October 30, 2013, by Dr. Matthew Kelly at the Orthopedic Institute of Pennsylvania.

The State of Delaware ("State") seeks partial dismissal of Claimant's petition with respect to Dr. Kelly's medical bills. The State asserts that Dr. Kelly is not a certified provider under title 19, section 2322D of the Delaware Code. In addition, the treatment in question was not preauthorized by the State or its insurance carrier. The State argues that non-emergency care by a non-certified provider and that is not preauthorized is not compensable, citing *Wyatt v. Rescare Home Care*, Del. Supr., No. 112, 2013, Holland, J., 2013 WL 6097901 (November 20, 2013).

Claimant does not dispute that Dr. Kelly was not a certified provider under section 2322D. Claimant also does not dispute that the treatment in question was not preauthorized. Claimant, however, does argue that *Wyatt* is distinguishable. Claimant observes that the medical provider in *Wyatt* was located in Delaware. Dr. Kelly, however, is not based in Delaware. As such, he has no incentive to become a certified provider pursuant to Delaware law. Claimant also argues that the failure to seek preauthorization should not be held against her.

Analysis: "Certification *shall be required* for a health care provider to provide treatment to an employee, pursuant to this chapter, *without the requirement that the health care provider first preauthorize each health care procedure, office visit or health care service to be provided to the employee with the employer or insurance carrier.*" DEL. CODE ANN. tit. 19, § 2322D(a)(1) (emphasis added). Thus, the statute sets up a clear requirement that, with certain limited exceptions, a health care provider must be either a certified provider under the Delaware system or obtain preauthorization before rendering compensable services. As Employer observes, the Delaware Supreme Court reviewed this issue in *Wyatt*. The Court was clear:

> We hold that the statutory framework is unambiguous when all of the provisions are read *in pari materia*. The statute requires that providers be either certified or preauthorized and that the treatments provided are reasonable and necessary to treat a work-related injury. When the provider is either certified or preauthorized, the claimant is entitled to the *presumption* that treatments provided were both "reasonable and necessary." This presumption is rebuttable, however, meaning that an employer could attempt to rebut it by showing evidence to the contrary.
>
> Where, however, the provider is neither certified nor preauthorized, compensation for medical treatment is generally not available, with narrow exceptions for care provided on the first visit to the provider and for care provided in the emergency unit of a hospital or in a pre-hospital setting.

Wyatt, 2013 WL 6097901 at *7 (footnotes omitted; emphasis in original).

Neither the statutory provisions nor the *Wyatt* decision contain any exception to the application of the law with respect to out-of-state providers. As the Court observes, the statutory scheme is unambiguous. As long as the treatment is reasonable, necessary and related to the work accident, a first visit to *any* health care provider is compensable. DEL. CODE ANN. tit. 19, § 2322D(b). After that initial visit, however, in order for the treatment to be deemed compensable under the Workers' Compensation Act, the medical provider must either be a certified provider (under section 2322D) or the medical provider must "first preauthorize each health care procedure, office visit or health care service" with the employer or insurance carrier. DEL. CODE ANN. tit. 19, § 2322D(a)(1). Otherwise, compensation for the medical treatment is "generally not available." *Wyatt*, 2013 WL 6097901 at *7

As the *Wyatt* Court observed, there are only two other statutory exceptions to the requirement of certification or preauthorization. Both are contained in title 19, section 2322B(8)b. The first is healthcare services "provided in an emergency department of a hospital, or any other facility subject to the Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd." The other is "any emergency medical services provided in a pre-hospital setting by ambulance attendants and/or paramedics." There is no statutory exception for the fact that the medical provider is based in another state.[1]

[1] The Board understands Claimant's point that an out-of-state provider who only sees an occasional patient from Delaware has little incentive to become a certified provider under Delaware law (even though the certification process is not unduly burdensome and can be done online). As such, the application of the certification-or-preauthorization standard essentially forces a claimant who happens to be out-of-state to always seeks preauthorization for all treatment apart from the first visit. This seems harsh but the Board cannot create statutory language. That is for the General Assembly to do. The Supreme Court has declared the statutory framework to be "unambiguous." As such, the Board has no basis to read in to the law an exception for out-of-state providers that does not appear in the statutory language. "When no ambiguity exists, and the intent is clear from the language of the statute, there is no room for statutory interpretation or construction." *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982)(en banc). When a statute is unambiguous, a reviewing court or board's task is "to apply the literal

In the present case, there is no allegation that the treatment in question was not provided in an emergency department or in an emergency pre-hospital setting. It is also undisputed that Dr. Kelly is not a certified provider under Section 2322D, and that the treatment he provided was not preauthorized by Employer or its insurance carrier. Therefore, as a matter of law, his medical bills are not compensable under the Workers' Compensation Act with the sole exception of Claimant's first visit with the doctor. With that one exception, Claimant's claim with respect to payment of Dr. Kelly's medical bills is dismissed. The remainder of Claimant's petition is unaffected by this and is to proceed as scheduled.

IT IS SO ORDERED this 18th day of February, 2014.

INDUSTRIAL ACCIDENT BOARD

Marilyn J. Dotz for John D. Daniello
JOHN D. DANIELLO

Alice M. Mitchell
ALICE M. MITCHELL

Mailed Date: 2-19-14

Karen Smith
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Christopher F. Baum, Hearing Officer for the Board
Samuel D. Pratcher, III, Esquire, for Claimant
Andrew M. Lukashunas, Esquire, for Employer

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meaning of the words in the statute to the facts which were before it." *DiStefano v. Watson*, 566 A.2d 1, 4 (Del. 1989).