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## Workers' Compensation News - May 10, 2007, Vol. 5 Issue 105

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**Gelman, Jon L**  
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### CLEARING THE WORKERS' COMPENSATION BENEFIT HIGHWAY OF MEDICAL EXPENSE LAND MINES

Medical expenses in contested workers' compensation cases are now a significant and troublesome issue resulting in uncertainty, delay and potential future liability. The recent NJ Supreme Court decision, *University of Mass. Memorial Hospital v. Christodoulou*, 180 N.J. 334 (2004) has left the question of how to adjudicate medical benefits that were conditionally paid or paid in error. Presently there is no exclusively defined procedure to determine the allocation, apportionment of primary responsibility for unauthorized medical expenses and reimbursement. By John H. Geaney and Jon L. Gelman  
Complete Article

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### OBESE EMPLOYEES WRIGH HEAVILY ON THE BOTTOM LINE

Strains, sprains, and pains are more common in obese employees than in normal-weight workers, costing U.S. companies billions of dollars, according to researchers here.

By Jeff Miner, Contributing Writer, MedPage Today

Reviewed by Zalman S. Agus, MD; Emeritus Professor at the University of Pennsylvania School of Medicine. April 24, 2007

<http://www.medpagetoday.com/Pediatrics/Obesity/dh/5490>

### LEGISLATION INTRODUCED TO EXPAND OSHA

Yesterday, in both Houses of Congress, legislation was introduced which would substantially amend the Occupational Safety & Health Act of 1970. On the Senate side, Edward Kennedy introduced S124

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### CASES

## MEDCIARE SECONDARY PAYER REVIEW REQUIRES EXHUATION OF ADMINISTRATIVE REMEDIES

Before an action can be filed in Federal Court the beneficiary must exhaust their administrative review remedies.

Self v Leavitt, 2007 WL 1214898 (E.D.Ark.)

## YET ANOTHER QUI TAM ACTION UNDER MSP DISMISSED

"This cause is before the Court on the defendants' motion to dismiss (Docket No. 4), supporting documents (Docket Nos. 6, 11-12 & 21-22), and response thereto (Docket Nos. 8). This case, like many others brought across this country and this district, was brought as a qui tam action on behalf of the United States of America, under the Medicare Secondary Payer Act (MSP) to recover conditional Medicare payments for the Medicare Trust Fund. Plaintiff does not allege any personal injury or entitlement to benefits under Medicare but still he seeks damages twice the amount of the alleged unpaid reimbursement to Medicare plus interest, fees, and costs pursuant to 42 U.S.C. § 1395(b)(2)(A).

"Across the country and across this district, virtually identical cases to the instant case have been filed by Mr. Stalley and Erin Brockovich. Many of these cases have been tested by motions to dismiss and have been dismissed .FN1 The "majority, if not all, rulings rendered in those repeat actions conclude that Plaintiff does not have standing under the MSP because the Act does not provide for a qui tam right of action." Stalley v Wuesthoff Health Systems, Inc., Case No. 6:06-CIV-1885-ORL-19. FN The cases include: Stalley v. Wuesthoff Health Systems, Inc., Case No. 6:06-CIV-1885-ORL-19, Stalley v. Orlando Regional Healthcare System, Inc., Case No. 6:06-CIV-1824-ORL-31, Stalley v. Sumner Regional Health Systems, Inc., et al., Case No. 2:06-0074-Judge Echols, and Stalley v. Methodist Healthcare, et al ., Case No. 06-2605-M1/A.

This Court has reviewed the applicable law and the submissions of both parties. Based on this review, this Court finds no reason to depart from the well reasoned conclusions reached by the various district courts, that the MSP's private right of action does not allow for qui tam actions, and, therefore, this Court joins in their reasoning. Accordingly, it is.

Stalley v. Adventist Health System, Slip Copy, 2007 WL 1225385, M.D.Fla.,2007. April 25, 2007

## UNAUTHORIZED MEDICAL TREATMEN NOT REIMBUSRED

"At no time did petitioner file a notice of motion for medical and temporary benefits relating to his alleged need for continued psychiatric treatment. Rather, petitioner found a therapist and proceeded to undergo unauthorized treatment. No proofs were presented that petitioner requested additional psychiatric treatment from respondent and that respondent refused to provide same. "

Handschuh v, New York Daily News, 2007 WL 1248358 (N.J. Adm.) February 8, 2007

## EXCLUSIVITY

Intentional wrong exception does not apply where a teacher is accidentally injured during the course of a fight between two students. Division of workers' compensation has exclusive jurisdiction. Kibler v. Roxbury Bd. of Ed., (NJ APP DIV 2007) Decided April 11, 2007

<http://www.judiciary.state.nj.us/opinions/a4358-05.pdf>

## CALIFORNIA ADOPTS APPORTIONMENT FORMULA

California Supreme Court resolves split in authority and articulates formula for apportionment of workers' compensation claimants' permanent disability.

The proper method for apportionment of workers' compensation claimants' permanent disability required calculating the percentage of disability attributable to the new injury by subtracting the old rating from the new rating, and then consulting the statutory table for the award due this difference. Thus, 2004 legislation regarding apportionment did not supersede the apportionment formula adopted by the California Supreme Court in *Fuentes v. Workers' Comp. Appeals Bd., Brodie v. W.C.A.B.*, 2007 WL 1288365, May 3, 2007

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## CALENDAR

Tuesday, June 5, 2007 9:00 a.m. – 5:00 p.m.

Preparing to Win a Workers' Compensation Case 3-5pm

Spring Fever – NJ Law Journal Seminar Series/ West-Thomson

Ramada Conference Center, East Hanover, NJ

<http://www.law.com/jsp/nj/specials.jsp?p=cle>

## WORKSAFE Policy Program

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Jon L. Gelman, Attorney at Law

1450 Valley Rd 1st fl, PO Box 934, Wayne NJ 07474-0934

Voice: (973)696-7900 / Fax: (973)696-7988 / e-mail: [jon@gelmans.com](mailto:jon@gelmans.com)

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**Jon L. Gelman**, who practices in Wayne, NJ, wrote *Workers' Compensation Law* (West Group 2003), is a contributing member/author of the advisory board of *Modern Workers Compensation* (West Group 2001) & is a former national Vice-President of the Workplace Injury Litigation Group. Jon L. Gelman, 1450 Valley Road, 1<sup>st</sup> Floor, P.O. Box 934, Wayne, NJ 07474-0934, Voice: 973.696.7900, Fax: 973.696.7988, e-mail: [jon@gelmans.com](mailto:jon@gelmans.com), Internet: [www.gelmans.com](http://www.gelmans.com).

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