

# COMPENSATION NEWS

MONTHLY REPORT

## En Banc decision of the WCAB on Surgery Center Billing

This is an en banc  
decision of the  
WCAB

This is a significant  
decision from the  
Workers'  
Compensation Appeals Board  
(WCAB).

The WCAB evaluated a case  
on surgery center billing charges.

The surgery center in this  
case filed a lien for \$31,007. The  
lien went to trial because the  
defendant disputed the charges.  
The Workers' Compensation  
Judge (WCJ) allowed the full  
amount of the lien. The WCJ

indicated the defendant did not  
raise the reasonableness and  
necessity of treatment in the  
Stipulations and Issues framed at  
the trial.

The WCJ indicated in the  
opinion that even if the defendant  
would have raised the  
reasonableness issue, the  
defendant did not meet the  
burden of proving the lien was  
unreasonable. The defendant filed  
a petition for reconsideration  
which resulted in this en banc  
decision.

The WCAB referred to a  
previous en banc decision in  
Kunz v. Patterson Floor  
Covering. They also cited another  
case for the proposition that the  
burden of proof lies with party or  
lien claimant holding the  
affirmative on the issue. In this  
case, the surgery center. The  
WCAB indicated that the  
defendant does not have the

burden to show that the surgery  
center bill was unreasonable.

The WCAB indicated they  
believed the WCJ misinterpreted  
their holding in Kunz.

It appears that the WCAB is  
stating that a surgery center bill  
has to be reasonable on its face.  
It wont be presumed reasonable  
as several in the industry had  
contended. It must be reasonable  
on its face even if the defendant  
doesn't challenge it. In this case  
the defendant never even raised  
the reasonableness at trial level  
and it was still sent back to the  
WCJ for evaluation of the bills  
reasonableness. Therefore, even  
though there may have been no  
defense the defendant prevailed.

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Editor: Harvey Brown  
Firm: Samuelsen, Gonzalez,  
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