IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 53A

WCC No. 2008-2032

GAYLE PINNOW

Petitioner

vs.

HALVERSON, SHEEHY & PLATH, P.C.

Respondent.

ORDER AMENDING COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, *NUNC PRO TUNC*

Summary: In the Findings of Fact of *Pinnow v. Halverson, Sheehy & Plath, P.C.*, 2008 MTWCC 53, based on Petitioner's trial testimony, I found that Petitioner had filed a medical complaint against Michael H. Schabacker, M.D., because she was upset with him. On September 6, 2009, Dr. Schabacker wrote to the Workers' Compensation Court and stated that he had read the Court's findings in *Pinnow*, and he asserted that Petitioner had never filed a complaint against him. Dr. Schabacker requested that the Court clarify the record accordingly.

Held: Although Petitioner ultimately responded affirmatively to a question about bringing a claim against Dr. Schabacker, she began her answer by testifying that she did not remember whether she brought a claim but that she knew she "sent something to the medical." In light of the ambiguities in Petitioner's testimony, I believe it is appropriate to strike the final sentence of ¶ 43 and amend the Court's finding *nunc pro tunc*.

¶ 1 In the Findings of Fact of *Pinnow v. Halverson, Sheehy & Plath, P.C.*, 2008 MTWCC 53, based on Petitioner Gayle Pinnow's trial testimony, I found that Pinnow had filed a medical complaint against Michael H. Schabacker, M.D., because she was upset with him. On September 6, 2009, Dr. Schabacker wrote to the Workers' Compensation Court and stated that he had read the Court's findings in *Pinnow*, and asserted that Pinnow had never

filed a complaint against him. Dr. Schabacker requested that the Court clarify the record accordingly.[1]

¶ 2 The final sentence of *Pinnow*, ¶ 43, states:

> Petitioner later filed a medical complaint against Dr. Schabacker because she was upset with him.

¶ 3 This finding was based on the following trial testimony elicited from Pinnow on cross-examination:

> Q. Were you upset enough with Dr. Schabacker[,] dissatisfied enough with Dr. Schabacker[,] that you subsequently brought a claim against him?
>
> A. I don't remember. I know I sent something to the medical, yes.
>
> Q. Okay. And that obviously was fueled by your dissatisfaction with him?
>
> A. Yes.[2]

¶ 4 Pinnow's testimony led me to find that she had filed a medical complaint against Dr. Schabacker. However, although she ultimately responded affirmatively to the question about bringing "a claim" against Dr. Schabacker, she began her answer by testifying that she did not remember whether she brought a claim but that she knew she "sent something to the medical." Although I interpreted that "something" to be a medical complaint in light of the question that was put to her, her testimony is actually unclear as to what that "something" may have been. Moreover, I did not find Pinnow's recollection of the events in her case to be credible where her recollections contradicted other evidence in the record.[3] Although the parties presented no other evidence regarding this issue other than Pinnow's testimony excerpted above, in light of the ambiguities in her testimony I am striking the final sentence of ¶ 43 and amending the Court's Findings of Fact, Conclusions of Law and Judgment, *nunc pro tunc*.

¶ 5 IT IS SO ORDERED.

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[1] Docket Item No. 38.

[2] Trial testimony of Gayle Pinnow at 41:8-15.

[3] *Pinnow v. Halverson, Sheehy & Plath, P.C.*, 2008 MTWCC 53, ¶ 24.

DATED in Helena, Montana, this 13th day of October, 2009.

(SEAL)

JUDGE

c: Roy W. Johnson
J. David Slovak
Paula Saye-Dooper (courtesy copy)
Dr. Michael H. Schabacker (courtesy copy)
Attachment: Copy of Dr. Schabacker's September 6, 2009, letter which was filed after the closure of the file.

St. Vincent Healthcare
Northern Rockies Regional Pain Center

September 6, 2009

Judge James Jeremiah Shea
PO Box 537
Helena MT 59624-0537

RE: GAYLE PINNOW
2008 MT WCC 53
WCC No. 2008-2032

Dear Judge Shea:

This letter is in reference the document completed 12/19/08 entitled Findings of Fact, Conclusion of Law and Judgment concerning Ms. Pinnow's claim against Halverson, Sheehy, and Plath, P.C.

Because I had provided care to Ms. Pinnow through time, I took great interest in reading your analysis of Ms. Pinnow's claim. While reviewing the document, I discovered that incorrect information was present in the document.

The incorrect information is in the last sentence of paragraph 43 on page 12 of the document. In that sentence, it was stated that Ms. Pinnow had filed a medical complaint against me. I am unaware of any medical complaint filed against me by Ms. Pinnow. The footnote designating the source of the information in question indicates trial testimony. My understanding is that the trial testimony was that of Ms. Pinnow.

I request that you consider amending the misinformation as presented in paragraph 43 on page 12 of the document in question. I ask that this information be amended so that it is clear that no complaint was filed against me by Ms. Pinnow. I would be happy to assist in any way necessary to hasten resolution of this issue.

As an aside, it is my understanding that Ms. Pinnow filed a complaint alleging HIPAA violation against my former employer, Yellowstone Neurosurgical Associates. I was only superficially aware of that complaint and to my knowledge, I was not named.

I apologist for inconveniencing you with this matter; however, I believe it is important to rectify this issue.

Sincerely,

M. Schabacker

MICHAEL H. SCHABACKER, MD
MHS/kd/kj

DOCKET ITEM NO. 38

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