

McGuire, about that same time to assist him in his practice. McGuire is licensed through the nursing board.

4. McGuire is a full time hourly employee for Dr. Martini and works in his office and under his supervision. She performs services as authorized under her license and as directed by Dr. Martini. In performing services as directed by Dr. Martini, she began taking a number of office calls with Hill beginning in November 2000.
5. Dr. Martini's patient ledger reveals that Hill consulted with McGuire on various occasions beginning November 21, 2000. Basically, all of the office calls managed by McGuire consisted of consultation with Hill about her chronic pain problems and addressing appropriate medical prescriptions. The ledger shows that McGuire consulted with Hill on 13 occasions between November 21, 2000 and July 27, 2001.
6. With few exceptions, the office notes of McGuire indicate that she consulted with Dr. Martini concerning each of her contacts with Hill. Dr. Martini and McGuire sometimes discussed Hill's situation before her appointment and other times following what were essentially interviews with Hill about how well she was coping with her pain syndrome. Dr. Martini's initials appeared on almost every call handled by McGuire, and he consulted with her about Hill's pain treatment throughout the time periods in question.
7. Dr. Martini never relinquished his treating physician status and nothing in the record indicates that Hill ever requested a change in treating physicians. He continued to supervise and manage Hill's case during the time periods in question.

Travelers informed Dr. Martini that it was denying payment for certain services provided to Hill through McGuire. Specifically, Travelers wrote letters to Dr. Martini on January 22, March 2 and 28, 2001, indicating that it was refusing to pay. Travelers indicated to Dr. Martini that it believed he had delegated the responsibility of treating physician to McGuire without prior authorization.

IV. DISCUSSION

The workers' compensation laws provide for the Department to regulate costs for medical services. § 39-71-704, MCA. Therefore, the Department has adopted rules requiring medical providers to obtain prior authorization of treatment costs in certain circumstances. The Department's rules provide that:

24.29.1517 PRIOR AUTHORIZATION (1) When prior authorization is required, the provider must request the authorization a reasonable amount of time in advance of the time the procedure is scheduled to be performed. The request must contain enough information to allow the insurer to make an informed decision regarding authorization. The insurer may not unreasonably withhold its authorization. An insurer's denial must contain an explanation of the reasons for its denial. Reasonableness will be judged in light of the circumstances surrounding the medical procedure and the claim.

- (4) Prior authorization is required when:
 - (b) there is a request for change of treating physician

Travelers argues that when Dr. Martini delegated authority for his nurse practitioner, McGuire, to consult with Hill during office calls without him being present, a de facto change in treating physician occurred without authorization. Travelers contends that *EBI/Orion v. Blythe*, 281 Mont. 50, 55, 931 P.2d 38, 41 (1997) controls in this matter. However, *EBI/Orion* is distinguishable. In *EBI/Orion*, the Court stated that, "Dr. Rogers does not qualify as a 'physician' (treating or otherwise) for the purposes of an IME examination." Here, however, the issue is not whether McGuire could perform an independent medical examination (IME), but whether Dr. Martini somehow transferred his duties as a treating physician to McGuire.

Here, the record shows that McGuire was an employee and an assistant for Dr. Martini and worked out of his office, and was directly under his control whether or not he was in the examining room during each visit from Hill. Clearly, he was responsible for managing Hill's treatment and routinely counseled with McGuire about the appropriate pain management plan for Hill. Further, in almost all the visitations in question, the facts show that Dr. Martini reviewed the case with McGuire either before, during or following Hill's office calls.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under §§ 39-71-704(6) and 39-71-2401, MCA.
2. Christine McGuire, FNP, was not Tamise Hill's treating physician during the times in question. Dr. Martini maintained complete control over Hill's case and never actually or implicitly transferred treating physician status to McGuire. Therefore, there was no need for prior authorization pursuant to ARM 24.29.1517. Dr. Martini's request for payment for the contested services provided Tamise Hill through his assistant, Christine McGuire, FNP, is granted.

VI. ORDER

Travelers Property Casualty is ordered to pay Dr. Martini for the disputed medical services rendered to Tamise Hill.

DATED this 19th day of October, 2001.
DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GORDON D. BRUCE
GORDON D. BRUCE
Hearing Officer

NOTICE: This Order is signed by the Hearing Officer of the Department of Labor and Industry under authority delegated by the Commissioner. Any party in interest may appeal this Order to the Workers' Compensation Court within thirty (30) days after the date of mailing of this Order as provided in § 39-71-2401, MCA and ARM 24.5.350. The Court's address is:

Workers Compensation Court
P.O. Box 537
Helena, MT 59624-0537
(406) 444-7794