

State: Calif.

Sedgwick Agrees to Pay \$1.129 Million for UR Violations: Top [2016-01-05]

Sedgwick Claims Management Services agreed to pay a fine of \$1,129,600 to settle allegations of Labor Code violations stemming from a targeted inspection of utilization review practices the California Workers' Compensation Appeals Board ordered in 2013 after an injured worker who was denied hospitalization died from an infection contracted during surgery.

According to information provided by the Division of Workers' Compensation, the Audit and Enforcement Unit investigation resulted in 75 "mandatory administrative penalties" against the third-party administrator.

The investigation of 274 files that were adjusted at Sedgwick's office in Long Beach uncovered violations of Labor Code Section 4610, which establishes the rules for utilization review. According to a [document](#) provided by DWC spokesman Peter Melton, the violations include allowing someone other than a licensed physician to modify, delay or deny requests for authorization and failing to issue timely responses to requests for authorization.



Another document with more details on the audit results and the allegations was not immediately available Monday. Melton said the DWC needs to review the document to ensure it does not disclose personal information about applicants.

Sedgwick did not make anyone available for a telephone interview on Monday, but instead emailed an unsigned statement in response to inquiry by WorkCompCentral.

"There was a settlement reached, but the most important part of our statement is Sedgwick's commitment to ensuring injured workers receive the best possible care when they need it so they are able to return to full health and productivity," Sedgwick said.

Bert Arnold, president of the California Applicants' Attorneys Association and a partner at Boxer Gerson in Oakland, said on Monday the terms of the settlement appear to be a "nice start." He said he's happy to see the DWC investigating UR practices and would like to see the agency target more claims handlers and carriers.

Arnold also said he's not aware of any other times the DWC has assessed a penalty exceeding \$1 million for claims handling violations. At the same time, he said he doesn't know how the amount of the fine in the case of Sedgwick compares to the amount of money the TPA saved through the alleged violations.

"It would be interesting to know how much was denied that generated a million dollar penalty," he said. "If it was more than the million dollars, that's a bad thing. I think they should be penalized more than what they denied."

Jesse Cenicerros, president of Voters Injured at Work, said a \$1.129 million penalty is "probably a slap on the wrist" for Sedgwick and he doubts it will "change the way they do business."

"Unless an insurance company is forced to pay the price for their actions in a more expedient way, it's not sending out the message (the DWC) should be sending out when denying care and treatment, especially when it costs a life," he said.

Sedgwick did not admit to any wrongdoing or liability in the [settlement agreement](#) approved by Division of Workers' Compensation Administrative Director Destie Overpeck on Dec. 30.

The third-party administrator must submit a detailed statement of corrective measures taken in response to the findings of the Audit Unit within 60 days of Overpeck approving the agreement.

The settlement also requires Sedgwick to provide the DWC with copies of internal UR audits it conducted regarding its account with the Kroger Co. since Feb. 10, 2012. And it must provide the DWC results of all internal audits of claim files adjusted by Teresa McDivitt.

McDivitt was the adjuster on a claim filed by Charles Romano, who was injured in December 2003 while stocking shelves for Ralph's in Camarillo. After undergoing surgery on Aug. 29, 2005, he contracted methicillin-resistant staphylococcus aureus that shut down his lungs and kidneys and paralyzed him below the shoulders.

Romano sought treatment for the infection at Ventura County Medical Center and Medi-Cal footed the bill because Sedgwick refused to authorize hospitalization.

In October 2006, a workers' compensation judge issued an amended finding and award holding Romano sustained an injury to his left shoulder and that the infection was a compensable consequence of the injury. The judge ordered Sedgwick to pay all reasonable medical expenses, but the Workers' Compensation Appeals Board in a 2013 decision said the third-party administrator delayed paying for some services and refused to authorize others.

Several times, McDivitt denied treatment or refused to authorize a treatment request "without consulting with a medical professional and without referring the request for treatment to utilization review," the WCAB said.

The board said Sedgwick continued to delay and deny care until Romano died on May 2, 2008 from cardiorespiratory arrest, respiratory failure and pneumonia caused by the MRSA infection. Sedgwick didn't make any payments for medical care on the case until June 23, 2008, according to the WCAB.

The WCAB in 2013 rejected Sedgwick's petition for reconsideration on a February 2013 decision by a workers' compensation judge who proposed penalties of up to \$110,000 after ruling that Sedgwick unreasonably delayed or denied medical treatment on 11 separate instances.

While Sedgwick argued, among other things, that it didn't know why Romano needed hospitalization, the WCAB said the argument was "utterly without merit."

The board said McDivitt "studiously avoided information that might lead to the provision of benefits, a tactic that may have saved her employer some money in the short run – at great cost to Mr. Romano –

but which clearly violated the demands of (Labor Code) Section 4600."

The WCAB ordered the targeted investigation by the Audit and Enforcement Unit after saying it has "rarely encountered a case in which a defendant has exhibited such blithe disregard for its legal and ethical obligation to provide medical care to a critically injured worker."