

July 17, 2017

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Re: HF No. 55, 2015/16 – William Baker v Rapid City Regional Hospital and
Hartford Insurance

Counsel:

This letter will serve as my ruling and order on Mr. Wiese's Motion to Quash or in the Alternative Guidance from the Administrative Law Judge and Protective Order and for Costs submitted July 10, 2017 in the above matter. For the reasons that follow, the Motion will be denied.

Claimant has placed his mental condition, the reasons for it, and the extent to which he is disabled because of it, in issue in this case. He asserts he suffers from PTSD, anxiety and depression as a result of multiple work-related injuries, and pled a claim for permanent total disability benefits in his petition for hearing. Employer and Insurer dispute the work-relatedness of his mental condition and any claim for work-related disability associated with it; despite that, Employer and Insurer have paid for Claimant's visits with his psychologist, Dr. Hastings, and an independent medical examination performed by Dr. Gratzner.

There is no legal basis for a privilege to be asserted in this matter. SDCL 62-4-45 says in pertinent part: "No relevant information developed in connection with

treatment or examination for which compensation is sought may be considered a privileged communication for purposes of a workers' compensation claim." It goes further to note that a practitioner failing to provide a report of an injured worker's treatment can have the right to payment forfeited. It has previously been concluded that the physician-patient privilege does not extend to relevant medical information in workers' compensation proceedings. *Sowards v Hills Materials Co.*, 521 N.W.2d 649, 653 (S.D. 1994). The privilege law itself, SDCL 19-19-503, subsection 3, requires a waiver of the privilege "as to a communication relevant to an issue of the physical, mental, or emotional condition of the patient." Even the federal regulations pertaining to medical record privacy carve out an exception when state workers' compensation laws require disclosure. 45 C.F.R. 164.512(l). Claimant's entire file is subject to discovery.

Alternatively, Claimant requests the Department conduct *in camera* inspection, allow Claimant's health providers prepare a privilege log, and be paid \$3,000 to produce this information. Rule 47:03:05:09 calls for a provider to be reimbursed ten dollars for the first ten pages and thirty-three cents a page for subsequent pages of reproduced information, and the provider can be reimbursed to that extent. No privilege log is required, as any claimed privilege either does not exist or Claimant has waived it. There has been no assertion that specific records are irrelevant to the issues raised in this case, so an *in camera* inspection is unnecessary. Claimant's alternative motion must be denied.

It is so ordered.

Sincerely,

James E. Marsh
Director