**[Cite as *State ex rel. Cleveland Clinic Health Sys. v. Indus. Comm.*, 2013-Ohio-3826.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| [State of Ohio ex rel.] Cleveland Clinic Health System – East Region, | : | |
| Relator, | : | No. 11AP-695 |
| v. | : | (REGULAR CALENDAR) |
| Industrial Commission of Ohio and Heather Ochs, | : | |
| Respondents. | : | |

D E C I S I O N

Rendered on September 5, 2013

*Nicola, Gudbranson & Cooper, LLP*, *Michael J. Bertsch*, and *Kathleen E. Gee*, for relator.

*Michael DeWine*, Attorney General, and *John R. Smart*, for respondent Industrial Commission of Ohio.

*Robert C. Bianchi*, for respondent Heather Ochs.

IN MANDAMUS
ON OBJECTIONS TO THE MAGISTRATE'S DECISION

BROWN, J.

**{¶ 1}** Relator, Cleveland Clinic Health System – East Region, f.k.a. Meridia Health System d.b.a. South Pointe Hospital ("hospital" or "relator"), has filed this original action requesting that this court issue a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to vacate its December 10, 2010 order of its staff hearing officer ("SHO") that grants the September 21, 2010 motion of respondent, Heather Ochs ("claimant"), for retroactive authorization of an August 3, 2010 surgery and to enter an order denying the motion.

**{¶ 2}** This matter was referred to a court-appointed magistrate pursuant to Civ.R. 53(C) and Loc.R. 13(M) of the Tenth District Court of Appeals. The magistrate issued the appended decision, including findings of fact and conclusions of law, and recommended that this court issue a writ of mandamus ordering the commission to vacate its SHO's order of December 10, 2010 and enter a new order that adjudicates claimant's September 21, 2010 motion. The hospital and the commission have filed objections to the magistrate's decision.

**{¶ 3}** The commission argues in its first objection that the magistrate erred when he based his conclusions of law on a post-adjudication medical report from Dr. Sheldon Kaffen that should not have been considered. The commission contends that Dr. Kaffen's report was not faxed to the commission until December 17, 2010, which was one day after the SHO's decision was typed. However, the magistrate was very clear that he was merely "not[ing]" Dr. Kaffen's explanation that there was no diagnosis code for the allowed condition of shifting of fusion hardware at L5-S1. The magistrate seemed aware of the limitations of Dr. Kaffen's report, as he prefaces this statement by pointing out that the commission also noted the same point in its brief and then explains in the following sentence that the commission also said in its brief that it believed Dr. Kaffen's addendum was "useful" on this point. Furthermore, contrary to the commission's claim, the magistrate did not base any particular conclusion of law on this undisputed fact. Dr. Kaffen's observation was more in the nature of background information to offer a possible explanation as to why Dr. Todd Hochman used the wrong allowed condition. We find no error and overrule the commission's first objection.

**{¶ 4}** We will address the hospital's sole objection and the commission's second objection together, as they are related. The hospital argues in its objection that, although the magistrate correctly found that the commission's order granting retroactive authorization of and payment for claimant's lumbar fusion surgery was an abuse of discretion because Dr. Hochman's October 13, 2010 report was not some evidence, the magistrate erred when he ordered the commission to enter a new order adjudicating claimant's September 21, 2010 motion. Specifically, the hospital contends the magistrate should not have returned the case to the commission for a new order but should have returned it to the commission for an order denying claimant's motion because no other evidence exists to support a finding that the August 3, 2010 lumbar fusion surgery was related to the allowed claim conditions.

**{¶ 5}** The commission argues the exact opposite in its second objection. The commission contends that the magistrate erred when, after excluding Dr. Hochman's report,

it did not evaluate other medical evidence upon which the commission relied to determine whether those reports constituted some evidence. The commission asserts the SHO also relied upon Dr. Thomas Mroz's operative records from the 2010 surgery he performed, Dr. Mroz's office notes, and operative records from a 2005 surgery. The commission notes that these reports predate and are not tainted by Dr. Hochman's report, and they do not refer to "lumbosacral instability," the incorrect allowed condition to which Dr. Hochman improperly referred.

**{¶ 6}** After reviewing the arguments of both the commission and the hospital, we believe the better course is to return the matter to the commission to enter a new order that adjudicates claimant's motion without consideration of Dr. Hochman's report. It is difficult to discern by the order at issue the degree to which the commission relied upon Dr. Hochman's report versus the other specifically enumerated evidentiary items, including the office notes of Dr. Mroz. Although this court has the authority to determine whether the remaining evidence would constitute some evidence to support the commission's decision, under the circumstances here, we conclude the commission should re-examine the evidence and determine whether there exists evidence to support claimant's motion. Therefore, for this reason, we overrule the hospital's objection and the commission's second objection.

**{¶ 7}** After an examination of the magistrate's decision, an independent review of the record, pursuant to Civ.R. 53, and due consideration of the commission's and the hospital's objections, we overrule the objections and adopt the magistrate's findings of fact and conclusions of law. The hospital's request for a writ of mandamus is granted, and we remand this matter to the commission to vacate its December 10, 2010 order and, in a manner consistent with the magistrate's and this court's decisions, enter a new order that adjudicates claimant's September 21, 2010 motion.

*Objections overruled; writ of mandamus granted and cause remanded.*

CONNOR and McCORMAC, JJ, concur.

McCORMAC, J., retired of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).

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**[Cite as *State ex rel. Cleveland Clinic Health Sys. v. Indus. Comm.*, 2013-Ohio-3826.]**

# APPENDIX

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| [State of Ohio ex rel.] Cleveland Clinic Health System – East Region, | : | |
| Relator, | : | No. 11AP-695 |
| v. | : | (REGULAR CALENDAR) |
| Industrial Commission of Ohio and Heather Ochs, | : | |
| Respondents. | : | |

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M A G I S T R A T E ' S  D E C I S I O N

Rendered on August 13, 2012

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*Nicola, Gudbranson & Cooper, LLP., Michael J. Bertsch,* and *Kathleen E. Gee,* for relator.

*Michael DeWine,* Attorney General, and *John R. Smart,* for respondent Industrial Commission of Ohio.

*Robert C. Bianchi,* for respondent Heather Ochs.

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IN MANDAMUS

**{¶ 8}** In this original action, relator, Cleveland Clinic Health System – East Region f.k.a. Meridia Health System d.b.a. South Pointe Hospital ("South Pointe Hospital" or "relator"), requests a writ of mandamus ordering respondent, Industrial Commission of Ohio ("commission"), to vacate the December 10, 2010 order of its staff hearing officer ("SHO") that grants the September 21, 2010 motion of respondent,

Heather Ochs ("claimant"), for retroactive authorization of an August 3, 2010 surgery and to enter an order denying the motion.

Findings of Fact:

**{¶ 9}** 1. On February 2, 2008, claimant sustained an industrial injury while employed as a registered nurse with relator, a self-insured employer under Ohio's workers' compensation laws. On that date, while walking to her car, claimant slipped on ice and immediately felt pain in her lower back.

**{¶ 10}** 2. Relator certified the industrial claim (No. 08-815113) for a lumbar sprain.

**{¶ 11}** 3. On December 5, 2005, over two years prior to the industrial injury, claimant underwent lower back surgery performed by Peter Fragatos, M.D. In his operative report, Dr. Fragatos lists the pre-operative and post-operative diagnoses as "Ruptured disk at L5/S1 with gross instability."

**{¶ 12}** In his operative report, Dr. Fragatos describes the surgery he performed on December 5, 2005:

> 1. L5 bilateral laminectomy, foraminotomy, and facetectomy and S1 laminotomy.
> 2. Bilateral diskectomy at L5 with removal of ruptured disk.
> 3. Arthrodesis L5/S1 interbody infusion [sic] with peak system and bone morphogenetic protein substitute.
> 4. L5/S1 lateral arthrodesis with tetronic plating system and bone morphogenetic protein bone substitute.

**{¶ 13}** 4. On February 11, 2008, just nine days after the injury, attending physician, Louis Keppler, M.D., wrote:

> IMAGING STUDIES: I am not pleased with positioning of the screws. There has been an extensive posterior decompression. I do not see any evidence of any remaining lamina or facet joints at L5-S1. She has an interbody device that is radiolucent. I do not see bone bridging L5-S1 disc space.
>
> PLAN: I think it would be reasonable to consider removal of her instrumentation. I think ultimately however that the possibility of requiring a second stage anterior instrumentation with fusion and anterior fixation may be necessary if she has gone on to delayed or non-union at L5-S1.

**{¶ 14}** 5. On February 26, 2008, Dr. Fragatos wrote:

> Ms. Ochs was injured on February 2, 2008 when she slipped and fell in the parking lot of South Pointe Hospital.
>
> She was seen on an urgent basis on February 5, 2008 due to progressive weakness of her legs and questionable bladder dysfunction. She underwent a CT scan along with X-rays which revealed migration of two screws.
>
> The removal of the pedicle screw fixation device will have to be performed on an emergency basis and we are requesting this through the proper paperwork.

**{¶ 15}** 6. On March 24, 2008, claimant again underwent lower back surgery performed by Dr. Fragatos. In his operative report, Dr. Fragatos describes the pre-operative diagnosis:

> Shifting of the fusion hardware at L5-S1 secondary to fall.

In his operative report, Dr. Fragatos describes the post-operative diagnoses:

> Shifting of the fusion hardware at L5-S1 secondary to fall with instability of L4 and L5 also.

In his operative report, Dr. Fragatos describes the surgical procedure:

> Removal and reapplication of hardware at L5 and S1 with interbody fusion and extension of the fusion at L4 and L5.

**{¶ 16}** 7. On April 17, 2008, following the March 24, 2008 surgery, claimant moved for an additional allowance in the claim.

**{¶ 17}** 8. Following a June 18, 2008 hearing, a district hearing officer ("DHO") additionally allowed the claim for "shifting of fusion hardware at L5-S1." The order states reliance upon the February 11, 2008 office note of Dr. Keppler,[1] the February 26, 2008 office note of Dr. Fragatos, and the March 24, 2008 operative report of Dr. Fragatos.

**{¶ 18}** 9. Apparently, the DHO's order of June 18, 2008 was not administratively appealed.

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[1] The DHO's order actually states reliance upon "the 02/11/08 office note of Dr. Fragatos." Presumably, the DHO relied upon the February 11, 2008 office note of Dr. Keppler.

**{¶ 19}** 10. On July 15, 2010, claimant initially saw orthopedic surgeon Thomas Mroz, M.D. In his office note of that date, Dr. Mroz wrote:

> Heather Ochs is a 37 year old RH who presents with primarily back pain. Previously had a L4-5 microdiskectomy in 2002. Subsequently, had a fusion of L5-S1 in December 2005 by Dr. Fergatos [sic]. Did well. However, in Feb 2008, patient fell and displaced the screw and then had a fusion revision from L4-S1 with interbody fusion at L5-S1 in March 2008. Since 2008, patient continues to have back pain. Started having left leg pain in May 2010. 80% back pain and 20% left leg pain currently. She has had persistent numbness of the left leg. Admits to weakness in the left leg.

11. In his July 25, 2010 office note, Dr. Mroz wrote:

> Studies:
>
> L Spine MRI 6-10:
>
> L4-L5: Posterior laminectomy defect is present. Canal and foramina are patent.
>
> L5-S1: Posterior laminectomy defect is present. An interbody fusion device is present. There is enhancing soft tissue surrounding the S1 nerve roots within the anterior epidural fat a.
>
> Sacrum and iliac wings: The visualized sacrum and iliac wings are within normal limits. The presacral soft tissues are normal in appearance. There is no significant central canal or neural foraminal stenosis.
>
> CT L spine
>
> Pedicle screws associated posterior fixation rods are seen at the L4, L5, and S1 levels. There are no peri-hardware lucency's or findings of hardware complication. Interbody graft is seen in the L5-S1 intravertebral disk space.
>
> Assessment/Plan:
> Severe Mechanical Back pain; L4-5, L5-1 nonunion; failed nonoperative management; neurologically intact.
> Surgery (L4-5 and L5-S1 ALIF) was offered.

**{¶ 20}** 12. On August 3, 2010, without prior authorization from either relator or the commission, claimant underwent lower back surgery performed by Dr. Mroz. In his operative report, Dr. Mroz does not state a pre-operative or post-operative diagnosis. However, Dr. Mroz describes the surgical procedure:

> 1. Left retroperitoneal approach at L4-L5 and L5-S1.
>
> 2. Removal interbody cage devices, L5-S1.
>
> 3. Revision anterior lumbar interbody fusion, L5-S1 using ailograft femoral ring with BMP-2.
>
> 4. Anterior lumbar interbody fusion, L4-L5 using femoral ring aliograft with BMP-2.
>
> 5. Placement of anterior instrumentation, L4-L5 and L5-S1.

**{¶ 21}** 13. On September 3, 2010, Todd S. Hochman, M.D., completed a C-9 request for retroactive authorization of the August 3, 2010 surgery. Relator denied the C-9 request.

**{¶ 22}** 14. On September 21, 2010, claimant moved for retroactive approval of the August 3, 2010 surgery.

**{¶ 23}** 15. On October 13, 2010, Dr. Hochman wrote:

> As you know, Ms. Ochs has been diagnosed with lumbosacral instability (724.6) as a result of her February 2, 2008, work injury. The aforementioned condition is recognized within Claim No. 08-815113. Turning your attention to the August 3, 2010, operative report, please find that one of the indications for surgery was "nonunion" indicating a failure of the previous fusion which resulted in persistent lumbosacral instability. The August 3, 2010, surgery included removal of the interbody cage at L5-S1, revision of the anterior lumbar interbody fusion at L5-S1, and an anterior lumbar interbody fusion at L4-5. The August 3, 2010, lumbar surgery was performed to treat persistent lumbosacral instability (724.6) that had persisted since the February 2, 2008, work injury. For the reasons detailed above, it is my medical opinion, that the August 3, 2010, lumbar surgery should be reimbursed through Claim No. 08-815113.

**{¶ 24}** 16. Following an October 25, 2010 hearing, a DHO issued an order granting claimant's September 21, 2010 motion.

**{¶ 25}** 17. Relator administratively appealed the DHO's order of October 25, 2010.

**{¶ 26}** 18. On December 6, 2010, orthopedic surgeon Sheldon Kaffen, M.D., at relator's request, conducted a file review. Dr. Kaffen did not examine claimant. In his five-page narrative report, Dr. Kaffen concludes:

> The following conclusions are rendered within a reasonable degree of medical certainty and probability and are based on review of the medical documentation.
>
> It is my medical opinion that the surgery performed on 8/3/10 was not necessary and appropriate for the allowed condition of sprain lumbar region and "shifting of fusion hardware at L5-S1". The surgical procedure which the claimant underwent on 8/3/10 was for the nonunion of the previously attempted fusion at L4-5 and L5-S1. This procedure is not indicated for the allowed condition of lumbar sprain. In addition, the allowed condition of "shifting of fusion hardware at L5-S1" has been corrected by the previous surgery performed on 3/24/08.

**{¶ 27}** 19. Following a December 10, 2010 hearing, an SHO mailed an order on December 18, 2010 affirming the DHO's order of October 25, 2010. The SHO's order of December 10, 2010 explains:

> The request for retro authorization and payment for the 8/3/10 surgery is granted. The [SHO] finds that this surgery was related to the allowed conditions in that it was necessary as the fusion that was performed on 3/24/08 had not been successful. The 2008 fusion was necessitated by the allowed shifting of fusion hardware at L5-S1. At surgery in 2010 it was revealed that only a fibrous union had occurred at L5-S1 following the 2008 fusion surgery. This finding is based on the operative records from the 8/3/10 surgery, the operative records from the 2005 surgery, the office notes of Thomas Mroz, M.D. and the 10/13/10 report of Todd Hochman, M.D. All proof on file was reviewed and considered.

**{¶ 28}** 20. On December 15, 2010, at relator's request, Dr. Kaffen issued an addendum to his December 6, 2010 report:

I have reviewed my medical report dated 12/6/10 generated following review of the medical documentation.

It was my medical opinion that the surgery performed on 8/3/10 was not necessary and appropriate for the allowed conditions of "lumbar strain and shifting of fusion hardware at L5-S1". It was my medical opinion that the surgical procedure performed on 8/3/10 was for a nonunion of the previously attempted fusion at L4-5 and L5-S1 initially performed on 12/5/05 by Dr. Fragatos. It is my medical opinion that the procedure performed on 8/3/10 was not indicated for the allowed conditions of "lumbar sprain and shifting of fusion hardware at L5-S1" which had been corrected by the previous surgery performed on 3/24/08.

The surgery performed by Dr. Fragatos on 12/5/05 included interbody arthrodesis (fusion) at L5-S1 and a lateral arthrodesis (fusion with plate fixation and bone graft at L5-S1). The subsequently [sic] surgery performed by Dr. Fragatos performed on 3/24/08 reports findings of "slight motion of flexion and extension at the L5-S1 levels noted following removal of the pedicle screws and plate". Slight motion indicates the presence of a nonunion of the previous fusion performed on 12/5/05. It is my medical opinion that the second attempt at fusion performed on 3/24/08 by Dr. Fragatos also failed. The failure of the fusion necessitated the operation performed by Dr. Mroz on 8/3/10. The findings at that surgical procedure consisted of a nonunion of the fusion.

It is my medical opinion that the nonunion of the fusion was first discovered at the time of surgery by Dr. Fragatos on 3/24/08 and constituted a nonunion of the fusion performed on 12/5/05. The nonunion of the fusion is, in my medical opinion, not related to the work related incident of 2/2/08.

I have also reviewed a letter dated 10/3/10 to the claimant's attorney generated by Dr. Hochman. I disagree with Dr. Hochman. He states that the claimant has been diagnosed with lumbar instability (724.8). However, since there is no diagnosis code for the allowed condition of "shifting of fusion hardware L5-S1" code 724.8 was used. Dr. Hochman also expresses the opinion that the surgery was for nonunion "indicating a failure of the previous fusion". I would agree with that statement except that failure of the previous fusion was for the surgery of 12/5/05 not from the surgery of 3/24/08.

**{¶ 29}** 21. On January 14, 2011, another SHO mailed an order refusing relator's administrative appeal from the SHO's order of December 10, 2010.

**{¶ 30}** 22. On February 25, 2011, the three-member commission, on a 3-0 vote, mailed an ordering denying reconsideration.

**{¶ 31}** 23. On August 18, 2011, relator filed this mandamus action.

Conclusions of Law:

**{¶ 32}** The commission, through its SHO's order of December 10, 2010, relied, in large part, upon the October 13, 2010 report of Dr. Hochman who opined that the August 3, 2010 surgery was performed to treat "lumbosacral instability," a condition he believed to be an allowed condition of the claim.

**{¶ 33}** Contending that "lumbosacral instability" is not an allowed condition of the claim, relator submits that Dr. Hochman's October 13, 2010 report must be eliminated from evidentiary consideration. The magistrate agrees.

**{¶ 34}** Accordingly, it is the magistrate's decision that this court issue a writ of mandamus, as more fully explained below.

**{¶ 35}** The Supreme Court of Ohio has articulated a three-pronged test for the authorization of medical services: (1) are the medical services reasonably related to the industrial injury, that is, the allowed conditions? (2) are the services reasonably necessary for treatment of the industrial injury? and (3) is the cost of such service medically reasonable? *State ex rel. Miller v. Indus. Comm.*, 71 Ohio St.3d 229, 232 (1994).

**{¶ 36}** Here, the first prong of the *Miller* test was at issue before the commission. That is, the issue before the commission was whether the August 3, 2010 surgery was reasonably related to the industrial injury, that is, the allowed conditions. *Id.* More specifically at issue is whether the claim is allowed for "lumbar instability."

**{¶ 37}** Apparently, the Ohio Bureau of Workers' Compensation ("bureau") assigns ICD-9-CM codes to all conditions that become allowed in a claim.

**{¶ 38}** Here, the commission asserts that, following its 2008 additional allowance for "shifting of fusion hardware at L5-S1," the bureau assigned ICD-9 code 724.6 to that allowed condition. (Commission's brief, 2.) ICD-9 code 724.6 covers "lumbosacral instability." It can be noted here, as the commission does in its brief, that Dr. Kaffen's

addendum states "there is no diagnosis code for the allowed condition of 'shifting of fusion hardware L5-S1.' " (Commission's brief, 5.) The commission notes in its brief that Dr. Kaffen's addendum is "useful" in that respect. (Commission's brief, 5.)

**{¶ 39}** Based upon the above scenario, the commission contends that the industrial claim is allowed for "lumbosacral instability" as Dr. Hochman apparently believed. In support of its position that "lumboscral instability" is an allowed condition, the commission submitted as a supplement to the stipulated evidence a certified copy of what appears to be a bureau document. This document purportedly shows that the bureau has assigned ICD-9 code 724.6 to the industrial claim.

**{¶ 40}** In sum, the commission contends that the industrial claim is allowed for "lumbosacral instability" because the bureau assigned ICD-9 code 724.6 to the claim in response to the commission's additional allowance of the claim for "shifting of fusion hardware at L5-S1." The magistrate disagrees with the commission's contention.

**{¶ 41}** As earlier noted, on April 17, 2008, claimant moved for an additional claim allowance. That motion was contested by relator and adjudicated by the commission's hearing officer who issued an order allowing the claim for "shifting of fusion hardware at L5-S1."

**{¶ 42}** The commission's position here is at odds with the statutorily prescribed roles of the commission and the bureau. Generally, under the statutory scheme, the bureau's role is described as "ministerial, not deliberative." *State ex rel. Crabtree v. Bur. of Workers' Comp.*, 71 Ohio St.3d 504, 507 (1994).

**{¶ 43}** Noting that R.C. 4121.39 accords the bureau limited power, the *Crabtree* court, at 507, states:

> The bureau gives way to the commission when a party contests an award, necessitating a weighing of evidence and a judgment.

**{¶ 44}** Through case law, the Supreme Court of Ohio has established parameters regarding the commission's recognition of claim allowances. Three cases are instructive.

**{¶ 45}** Additionally identified conditions that may be related to an industrial injury must be formally recognized in the claim if they are to become the basis for compensation.

*State ex rel. Jackson Tube Servs., Inc. v. Indus. Comm.*, 99 Ohio St.3d 1, 2003-Ohio-2259.

**{¶ 46}** The Supreme Court of Ohio has repeatedly rejected the proposition that a medical condition is implicitly allowed when a self-insured employer authorizes and pays for surgery performed to treat the condition. *State ex rel. Schrichten v. Indus. Comm.*, 90 Ohio St.3d 436 (2000), quoting *State ex rel. Griffith v. Indus. Comm.*, 87 Ohio St.3d 154, 156 (1999).

**{¶ 47}** Moreover, the payment of TTD compensation for a medical condition that has never been formally allowed does not create an implicit claim allowance for that condition. *State ex rel. Turner v. Indus. Comm.*, 89 Ohio St.3d 373 (2000).

**{¶ 48}** As the above three cases indicate, the concept of implicit allowance has been soundly rejected by the Supreme Court of Ohio.

**{¶ 49}** While not directly on point, the *Jackson*, *Schrichten*, and *Turner* line of cases make clear the importance of a formal adjudication of a claim allowance where that allowance has not been certified by the employer.

**{¶ 50}** Furthermore, a claim allowance can only be clarified by the commission's proper exercise of its continuing jurisdiction under R.C. 4122.52. *State ex rel. Saunders v. Metal Container Corp.*, 52 Ohio St.3d 85 (1990); *State ex rel. Morrow v. Indus. Comm.*, 71 Ohio St.3d 236 (1994).

**{¶ 51}** Based upon the above authorities, it is clear that the bureau has no authority to clarify, amend, narrow or expand the commission's allowance of the claim for "shifting of fusion hardware at L5-S1."

**{¶ 52}** Given the above analysis, it is clear that Dr. Hochman's October 13, 2010 opinion is improperly premised upon a condition that is not allowed in the claim. Thus, Dr. Hochman's October 13, 2010 report must be eliminated from evidentiary consideration. Given that Dr. Hochman's report is not some evidence upon which the commission can rely, the SHO's order of December 10, 2010 granting retroactive approval of the August 3, 2010 surgery constitutes an abuse of discretion.

**{¶ 53}** Accordingly, it is the magistrate's decision that this court issue a writ of mandamus ordering the commission to vacate its SHO's order of December 10, 2010 and,

in a manner consistent with this magistrate's decision, enter a new order that adjudicates relator's September 21, 2010 motion.

_____/s/ Kenneth W. Macke_____
KENNETH W. MACKE
MAGISTRATE

**NOTICE TO THE PARTIES**

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).