

McCray v. United Electric Company

Georgia Court of Appeals Highlights Importance of Properly Posting the Panel of Physicians

Employers and insurers in Georgia are well aware of the importance of maintaining a valid panel of physicians. A recent decision by the Georgia Court of Appeals serves as a reminder that having a compliant panel is only part of the equation — the panel must also be posted in a prominent place as required by O.C.G.A. § 34-9-201(c).

In *McCray v. United Electric Co.*, the claimant, an electrician, injured his shoulder when a two-to-three-pound light diffuser fell and struck him. The employer accepted the claim as medical only and immediately directed the claimant to its panel of physicians where he selected Nova Medical Centers for treatment.

Despite receiving authorized medical care, the claimant later argued the employer's panel was invalid because it was not properly posted. The employer explained employees met each morning around a "gang box" at the construction site, where a laminated panel of physicians was taped to the underside of the toolbox lid. The employer also maintained a panel at its corporate office. The administrative law judge (ALJ) concluded this constituted a reasonable posting under the circumstances of a construction project, and both the Appellate Division and Superior Court affirmed.

The court of appeals disagreed, not because it found the panel invalid, but because neither the ALJ nor the Appellate Division addressed the statutory requirement that the panel be posted in a prominent place. The court remanded the case for additional findings regarding whether the panel's location complied with O.C.G.A. § 34-9-201(c).

In reaching its decision, the court relied on its earlier opinion in *Lilienthal v. JLK, Inc.*, where it held "accessible" is not synonymous with "prominent." Although the Georgia's Workers' Compensation Act does not define the term "prominent," the court explained its ordinary meaning includes a location that is readily noticeable, conspicuous and easily seen. A panel hidden inside a locked room, or, potentially, taped to the underside of a toolbox lid, may be accessible once someone directs an employee to it, but that alone may not satisfy the statute.

The court instructed the Appellate Division to determine two important issues on remand:

1. Whether a panel taped to the underside of the gang box lid was posted in a "prominent place" as required by O.C.G.A. § 34-9-201(c); and
2. Whether maintaining a panel at the employer's corporate office satisfies the posting requirement for employees working at remote construction sites.

Practical Takeaways

Although the court did not invalidate the employer's panel, *McCray* raises important practical questions for employers with mobile workforces and multiple job sites.

Construction companies, contractors, utility companies, transportation businesses and other employers with employees working away from a central office should carefully review where their panels are posted. Simply maintaining a compliant panel and presenting it to an injured employee after an accident may no longer be sufficient if the panel is not displayed in a location that is plainly visible before an injury occurs.

Employers should consider:

- Posting panels in multiple conspicuous locations whenever feasible.
- Ensuring panels remain visible throughout the workday and are not hidden behind doors, lids or other barriers.
- Reviewing panel placement at temporary and remote job sites.
- Training supervisors on panel requirements so they can promptly direct injured employees to authorized medical providers.

Because the case remains pending before the Appellate Division, additional guidance is likely. The Board's decision could significantly affect employers with traveling employees and businesses operating at multiple locations throughout Georgia.

Until then, employers should review their panel of physicians posting practices to ensure they comply not only with the statutory requirements but also with the court of appeals' emphasis on prominence and visibility.

If you have questions regarding this decision or would like assistance reviewing your company's panel of physicians compliance, please contact a member of Swift Currie's workers' compensation practice group at swiftcurrie.com

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.