

1 **WORKERS' COMPENSATION APPEALS BOARD**  
2 **STATE OF CALIFORNIA**

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4 **VICTOR TALLENT,**

5 *Applicant,*

6 **vs.**

7 **INFINITE RESOURCES, INC.; AMTRUST**  
8 **NORTH AMERICA,**

9 *Defendants.*

**Case No. ADJ7756026**  
**(Oakland District Office)**

**ORDER DENYING**  
**PETITION FOR**  
**RECONSIDERATION**

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11 We have considered the allegations of the Petition for Reconsideration and the contents of the  
12 report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our  
13 review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we  
14 will deny reconsideration.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

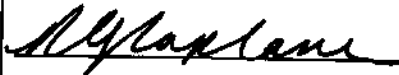
3 **WORKERS' COMPENSATION APPEALS BOARD**

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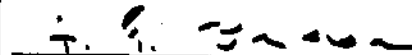
DEPUTY

6 **RICK DIETRICH**

7 **I CONCUR,**

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11 **RONNIE G. CAPLANE**

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14 **FRANK M. BRASS**



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16 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

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18 **MAR 19 2014**

19 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
20 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

21 **HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**  
22 **LARSON, VANDERSLOOT & RIVERS**  
23 **VICTOR TALLENT**

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**TALLENT, Victor**

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**VICTOR W. TALLENT V. INFINITE RESOURCES, INC.  
AMTRUST NORTH AMERICA  
WCAB CASE NUMBER: ADJ 7756026**

**ROSA M. MORAN  
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE**

**REPORT AND RECCOMENDATION  
ON PETITION FOR RECONSIDERATION**

Defendant, Infinite Resources, Inc. and Amtrust North America, by and through their attorney, Melanie Ogren, Esq. filed a timely verified Petition for Reconsideration of the Findings and Award and Decision issued by this Court on December 31, 2013. For the reasons set forth below, Defendant's Petition for Reconsideration of the Findings and Award of December 31, 2013 should be denied.

**INTRODUCTION**

Applicant, Victor Tallent, born [redacted], while employed on June 8, 2008 as a mechanic, occupational group 470, by Infinite Resources, Inc. sustained injury arising out of and in the course of employment to his neck, psyche and back. The causation of applicant's injury is not disputed in defendant's petition for reconsideration. Applicant sustained admitted industrial injury on June 8, 2008 to

his neck, back and psyche as a compensable consequence. Due to the severity of applicant's injury, two multilevel cervical fusion surgeries with plating and fusion cages were undertaken. The consequences of applicant's injury and surgeries have been devastating including loss of motion in the cervical spine, chronic pain, significant functional limitations, loss of ability to continue in his occupation, difficulties with activities of daily living and depression as a compensable consequence.

Multiple physicians including orthopedists, neurosurgeons and a host of other medical practitioners have treated and reported on applicant's injury and treatment. In short summary, applicant's primary treating physician was a chiropractor who initially referred him for treatment with pain management physicians. The pain management physicians provided conservative treatment. Applicant then selected Justin Frieders, D.C. for a State Panel QME Evaluation on December 18, 2008. Dr. Frieder's opined that applicant was not yet permanent and stationary and required treatment with an orthopedist and neurologist. After some delay, Applicant was seen by an orthopedic surgeon, Dr. Shortz, and underwent cervical discectomy and spinal fusion utilizing fusion cages and implantation of a cervical plate.

On March 9, 2010 applicant was reevaluated by Dr. Frieders who deferred to the surgeon on whether applicant had recovered from the fusion surgery. Dr. Frieders also reported applicant was presenting complaints of depression and referred him to a psychologist. The surgeon, Dr. Shortz re-examined applicant and reported that his condition was worsening and requested authorization for further surgical procedures. The state panel QME then referred applicant to a Dr. Hieu Ball, M.D. for orthopedic consultation due to concerns that applicant may have sustained segmental instability from his cervical surgery. After evaluating the applicant, Dr. Ball reported that applicant had breakdown at the spinal level adjacent to the surgical area.

Based on Dr. Ball's recommendations, a second cervical surgery was performed on July 19, 2011 with removal of the cervical plate and implantation of a new plate and cervical cage. After post-surgical recovery and treatment, applicant was found permanent and stationary as of February 1, 2012 by Dr. Shortz. Dr. Shortz did not provide a permanent disability rating and instead deferred back to the Panel QME, Dr. Frieders to provide such. Dr. Frieders then provided a final report detailing applicant's impairment factors and future medical needs.

Petitioner's sole contention on reconsideration is that it was denied due process by this trier's of fact reliance on the State Panel report of Dr. Frieder's. Petitioner's contends that State Panel QME Frieders, as a licensed chiropractic physician, is not qualified to provide opinions on any impairments or disability as it relates to neurological or sensory disorders, sleep, chronic pain, scarring or the effects of medication usage.

### DISCUSSION

Both parties provided comprehensive post trial legal briefs thus their arguments will not be readdressed in great detail. Rather, the core dispute between the parties on reconsideration is whether Dr. Frieders, as a chiropractic practitioner, can legitimately opine on all impairments found within the four corners of the AMA Guides.

Petitioner's contention is that as chiropractic QME, Dr. Frieders is limited to commenting solely on AMA Guide impairments that fall strictly within a chiropractic scope of treatment. Applicant contends that as a licensed QME, Dr. Frieders may comment on all sections within AMA Guides.

I have again carefully considered the parties arguments as both counsel

provided lengthy and thorough analyses highlighting the benefits and potential pitfalls of chiropractic practitioners being allowed to work with the AMA Guides as a whole. After review, I stand by my opinion that Dr. Frieder's is competent and statutorily bound to utilize all sections of the AMA Guides to provide an opinion on impairment that most accurately describes applicant condition. I believe that petitioners concerns are misfocused in that Dr. Frieder's in reporting as a Panel QME is not providing treatment outside his licensure nor is he opining on causation of applicant's injuries. The causation of applicant's impairments are thoroughly addressed in the records of the treating neurosurgeon, radiologists, psychologists and other medical professionals who have provided care to the applicant.

I find that Dr. Frieder's role as the State Panel QME is statutorily limited to evaluation of impairment. The State Panel QME's role, requirements and limitations are clearly set out in the Labor Code and Administrative Regulations and further interpreted by case law. Dr. Frieder's is a licensed chiropractor and State Panel QME deemed competent by the State of California to provide evaluations on impairment ratings that most accurately reflect an injured workers condition. Every QME, in order to obtain licensure is required to undertake formal training in the use of the AMA guides and preparation of evaluation reports. Nothing provided by petitioner shows that Dr. Frieder's lacks the capacity or

training to utilize the guides as he is actually required to do as a State Panel Physician. Case law specifically calls for panel physicians to use their judgment, experience, training and skill to provide an expert opinion using any section of the AMA Guides that most accurately reflects the injured workers' impairments. To accomplish this task, evaluators will in some cases have to utilize areas of the AMA Guides that are not specifically within their area of practice. For example, orthopedists may have to outline neurological deficits, pain factors and or use an internal medicine guide outside the orthopedic chapter if this other guide or table provides a more accurate depiction of applicant's impairments. Likewise, physical medicine and pain specialists may use orthopedic charts and tables when appropriate to provide the most accurate impairment determination. While I understand petitioner's concerns, if one follows their argument all of the above evaluations would be barred. Given the mandatory AMA Guides training and testing provided by the State of California before one can be licensed as a QME, I find that a chiropractic practitioner can accurately describe impairment factors that are consistent with the medical record and fall within the four corners of the AMA Guides. To bar a licensed QME, from use of certain sections of the AMA Guides solely because he is a chiropractic practitioner would be discriminatory and in direct conflict with case law interpretations that an injured worker is due the most accurate depiction within the Guides of their impairment.



Finally, petitioner's argument fails to take into account that the QME does not arrive at his or her opinion in a vacuum. The opinions set out in a QME report to constitute substantial evidence must take into account the entire medical record. In the instant case, Dr. Frieders provided a thorough and accurate impairment rating considering the physical effects of applicant's injury and supported his findings with range of motion measurements and physical examination finding sensory deficits. Dr. Frieders then opined that neither the range of motion nor the diagnostic related estimates in the Guides accurately reflected applicant's impairments so he described impairments provided within the four corners of the guides that he felt provided the most accurate reflection of applicant's impairment. Dr. Frieder's findings were consistent with the medical record and I stand by my opinion that his collective reports constitute substantial evidence upon which the present award is based.

#### Recommendation

Based on all of the foregoing, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

February 18, 2014

  
ROSA M. MORAN  
WORKERS' COMPENSATION JUDGE