



## Legal Brief

In the case of Davis Plumbing Company v Burns, the claimant filed a motion with the court seeking to allow him to continue to use his chosen pharmacy for dispensing medication. Since his workers' compensation claim was settled with open medicals "in accordance to the Act", he was allowed to select the pharmacy. The Act does not address who has the authority in a compensation case to select the pharmacy. It is important to understand that pharmacy selection in a workers compensation case can be costly if the employer is not given the opportunity to negotiate a discount with the provider and/or pharmacy.

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## Company News

We welcome Leah Greer to the Comp1One Case Management Team! Leah has almost twenty years of healthcare experience with seven years devoted to orthopedic injuries.

WELCOME



LEAH GREER

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## Arbitration (continued)

court judges in that employer's particular jurisdiction. However, employers should keep in mind potential disadvantages of arbitration. Since employees do not necessarily need a lawyer to prosecute cases in arbitration and the process is less complicated, there is a concern that arbitration might "open the floodgates" and lead to more claims being filed. Arbitration also limits parties' ability to obtain pre-trial discovery (such as witness depositions), which likely weighs in favor of employees. Arbitrators are believed to be more likely to



Hello from the Comp1One Case Management Team!

"split the baby" and are far less likely than circuit court judges to grant summary judgment, which means that employers with meritorious defenses are less likely to win outright. Moreover, although the trend in favor of arbitration arose in large part due to the desire to avoid the uncertainties of jury trials, arbitrating workers' compensation cases offers no benefit in this regard because in the Alabama court system workers' compensation cases are always decided by judges, never by juries. Employers should also consider the following additional factors, which might weigh for or against arbitration,

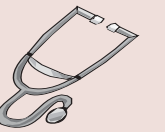
depending upon the circumstances. First, arbitration provides limited appeal rights – it is next to impossible to have an arbitration decision set aside on appeal. Given the increasingly pro-employer decisions coming from Alabama appellate courts in the last ten years, employers probably give up more than employees by limiting their right to appeal. Further, some arbitration agreements may allow arbitrators to serve without having any particular experience in workers' compensation, so the decisionmakers in arbitration could be far less knowledgeable about the law than Alabama

circuit court judges. Finally, although Alabama courts have ongoing jurisdiction over claims to resolve issues that might arise after adjudication (such as conflicts over ongoing medical treatment), there is no such procedure in arbitration. The bottom line is that arbitration is not the best solution for everyone. Employers should carefully consider their own unique circumstances and only pursue arbitration if it seems right for them.

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# Clinical Comments

## Elbow Injuries in Workers' Compensation



Stiffness is one of the great problems associated with elbow injury or disease processes that involve the elbow. The other literature has tended to avoid this subject all together especially where surgery was required. The early reports mixed age, etiologies, associated injuries and the location of the pathology and used multiple names for the same process, such as contracture, stiff elbow and arthrolysis. This leads to increased confusion regarding the stiff elbow diagnosis as well as treatment.

In Workmen's Compensation, it is not uncommon for patients to have significant elbow injuries and subsequent stiffness. Even with the most attentive supervised physical therapy the patients will often not regain their optimum range of motion after injury. Nonetheless, it is important to work with these patients in terms of gentle range of motion, both active and passive as the disease process or healing process will allow. This can be an arduous task and the elbow may continue to be stiff or the stiffness may progress while the patient is in physical therapy. At this time, it is very common to see patients, physicians and physical therapists as well as others involved in the Workmen's Compensation arena pointing fingers as to why the elbow continues to get stiff. This type of activity is usually nonproductive and not helpful for maintaining motion in the elbow. This time would be better spent trying to identify any pitfalls in the treatment and making future plans for further intervention if necessary.

Should the patient be unable to regain a suitable range of motion of the elbow, usually from -30 degrees if extension to 130 degrees of flexion, then

operative intervention could be considered. The age group that seems to benefit most from surgical release of the elbow is from the age of approximately 18 to 50 years. This age group seems to represent those who are willing and capable to participate in the rigorous postoperative treatments and who do not have significant underlying disease such as degenerative arthritis of the upper extremity. Other social or psychological factors that may influence the willingness or capability of a patient to participate in the postoperative protocol must be considered.

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Once these factors have been distilled and a patient has been treated conservatively for approximately four to six months after injury it is very reasonable to consider operative intervention. The literature supports that these patients may get notable improvement in range of motion with small risks of serious complications. Although arthroscopic releases can be done, this is usually reserved for patients' with minimal contracture in the younger age group or in the older age group who have underlying degenerative arthritis of the elbow with osteophyte formation and tight capsules. Other patient's who have more violent injury associated with their contracture as can be seen in Workmen's Compensation will have hypertrophied structure such as the

capsule that cannot be sufficiently released arthroscopically and require an open release. The open release is usually done medially and laterally to insure complete release of contracted structures while preserving the collateral ligaments. Even at the time of surgery, incomplete extension may be the result while flexion is usually obtained. This attention to technical

details, as well as preservation of critical neurovascular structures in the area can dictate a slow meticulous dissection. Other disease processes such as heterotopic bone formation must be addressed and can significantly lengthen the operative time and increase the difficulty in recovery; therefore, dictating the need for additional treatment such as postoperative radiation.

Postoperatively, one cannot expect any range of motion further than what was seen in surgery when the elbow was taken through a general range of motion. Any forceful type of manipulation will not be maintained. These releases usually do not restore the normal elbow, but it certainly can help patients get into a very functional range of motion which can be helpful in returning them to their normal activities including their return to work.



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