

IN THE COURT OF APPEALS  
FOR THE STATE OF GEORGIA

**CHARLES R. KENDRICK,** ) Case No. : A17A0094  
 )  
Appellant/ Petitioner, )  
 )  
vs. )  
 )  
**SRA TRACK, INC. and** )  
**PRAETORIAN INSURANCE CO.** )  
**c/o QBE AMERICAS, INC.,** )  
 )  
Appellees/ Respondents. )

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**BRIEF OF AMICUS CURIAE  
GEORGIA DEFENSE LAWYERS ASSOCIATION**

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## STATEMENT OF INTEREST

Founded over 40 years ago, the Georgia Defense Lawyers Association (GDLA) offers its 800 plus members a forum to discuss defense strategies, points of law, and emerging issues. Through this forum, the GDLA aims to elevate the standards of trial practice; to develop, establish, and secure court adoption or approval of a high standard code of trial conduct and courtroom manners; to support and work for the improvement of the adversary system of jurisprudence in our courts; to work for elimination of court congestion and delays in civil litigation; to promote the administration of justice; and to increase the quantity and quality of the service and contribution which the legal profession renders to the community, State, and nation.

Amongst the GDLA's more than 800 members are solo practitioners and members of law firms of varying sizes. Likewise, the GDLA's attorneys practice in nearly every area of civil defense litigation and represent businesses in nearly every industry. In order to carry out its mission and represent the interests of its members' clients, the GDLA is committed to assisting the court by offering information and context which bear on significant cases.

The case currently before this Court of Appeals is one such significant case. The Court has been asked to rewrite and expand portions of the Workers' Compensation Act such that medical benefits will be considered "compensation."

The Appellant asks this Court to hold that payment of medical benefits be included in the meaning of “compensation” under O.C.G.A. § 34-9-221 in order to create a statute of limitations for controverts of medical only claims. While the petitioner may frame the issue as protecting a right of individual employees, the interpretation proposed by the petitioner actually substantially limits employers’ existing rights and does so at the expense of employees and citizens of Georgia. Insurance companies and their insured businesses who offer employees any kind of initial medical treatment will run the risk of assuming liability for the duration of the claim. As insurers and employers deal with the fallout of this “you touch it, you buy it” policy, employees will feel the trickle-down effects through paycheck deductions and even job loss.

This Amicus Curiae submits that the petitioner’s position in this appeal is more than just creative overreaching with respect to the definition of “compensation.” Rather, it is an impermissible burden-shifting, an improper expansion of legislatively-created rights, and a gross violation of the rules of statutory construction which will harm insurers, large corporations, small business owners and even minimum-wage workers. Accordingly, this Court should affirm the rulings of the Administrative Law Judge and the State Board of Workers’ Compensation’s Appellate Division that the employer was permitted to deny the

compensability of a “medical only” claim at any point, where indemnity benefits were never issued and the claim was not intended to be accepted as compensable.

## FACTS

The Appellant worked for the Appellee employer, SRA TRACK, INC., and allegedly was injured in the course of his employment on January 13, 2013. (Record pp. 93, 116, 119). He obtained a workers’ compensation prescription card from QBE Specialty, although he could not recall how he came to be in possession of the card. (R. 120-124, 511-512). He used the card to pay for prescription medication related to his alleged work injury through December 2013 (Id.). Upon learning his prescription card was no longer authorized, the Appellant filed a notice of claim and request for hearing on January 28, 2014. (R. 9-11, 89). The Appellees controverted the claim in its entirety on March 4, 2014. (R. 89, 523).

After a July 24, 2015 hearing, the Administrative Law Judge (ALJ) denied the claim on its merits.<sup>1</sup> The Appellant then appealed to the Appellate Division of the State Board of Workers’ Compensation raising, for the first time, a procedural question as to whether O.C.G.A. § 34-9-221(h)’s statute of limitations should have

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<sup>1</sup> As the ALJ’s Award was not transmitted to the Superior Court and is not part of the record before this Court, the ALJ’s analysis of the merits is not properly before this Court. Thus, the Amicus will not address the merits here.

prevented the employer from controverting the claim in the first place. The Appellant's Enumeration of Error brief to the Appellate Division contains the first mention of O.C.G.A. § 34-9-221(h) or the Appellant's term "medical compensation" in this claim. The Appellate Division affirmed the ALJ's Award without addressing the idea of "medical compensation," and because the Superior Court did not enter an order on the Appellant's appeal, the State Board's decision was affirmed by operation of law.

### **ARGUMENT AND CITATION OF AUTHORITY**

**I. The State Board's Orders Should be Affirmed Because the Plain Meaning of "Compensation" Makes O.C.G.A. § 34-9-221 Inapplicable to the Case *Sub Judice*.**

The Merriam-Webster Dictionary defines "compensation" as "payment to unemployed or injured workers or their dependents," as well as simply "payment, [or] remuneration." In its very basic definition, compensation refers to a payment to a person, not providing of medical benefits. As our Supreme Court has explained, "[w]hen we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant. To that end, [courts] must afford the statutory text its plain and ordinary meaning." *Deal v. Coleman*, 294 Ga. 170, 172(1)(a) (2013) (citations and punctuation omitted); *Bell v. Gilder Timber Co.*, 337 Ga. App. 47, 49, 785 S.E.2d 682, 684 (2016). "Further, when

interpreting a statute courts must give meaning and intent to all words, bearing in mind that “[w]here the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden.” *Arby's Rest. Grp., Inc. v. McRae*, 292 Ga. 243, 245 (2012); *Six Flags Over Ga. II v. Kull*, 276 Ga. 210, 211 (2003).

By its plain and unambiguous definition, “compensation” does not include provision of or payment for medical benefits. “Compensation” is literally defined as a payment made to an unemployed or injured worker. The provision of medical benefits would not be a payment to an injured worker and would not meet the plain, regularly understood definition of “compensation.” Accordingly, this Court should affirm the decision below.

**II. The State Board’s Orders Should be Affirmed Because the Workers Compensation Act Never Intended to Define the Term “Compensation” Within O.C.G.A §34-9-221(h) so Broadly as to Include Medical Benefits.**

Furthermore, in looking to the intent of the General Assembly, it is clear that the drafters of the Georgia Workers’ Compensation Act never intended “compensation” as used in O.C.G.A. §34-9-221(h) to include payment of medical benefits. O.C.G.A. §34-9-221(h) provides the time limitations for controverting a claim, absent the discovery of new evidence or a change of condition, where compensation is being paid without an award. Board Rule 221(h) elaborates on the practical applications of O.C.G.A. §34-9-221(h) and specifically sets out that

O.C.G.A. §34-9-221(h) “applies only when income benefits are being paid under forms WC-2, WC-2A, or subsection B of Form WC-1.” Form WC-2, “Notice of Payment or Suspension of Benefits,” memorializes the payment or suspension of income benefits but does not have any space or section for medical benefits. Likewise, medical benefits are omitted from Form WC-2a, “Notice of Payment or Suspension of Death Benefits,” for obvious reasons. Finally, Subsection B of Form WC-1, is the “Income Benefits” subsection, which stands apart from the “Medical Only” subsection of the same form. Even the fact that Board Rule 221(h) specified Subsection B of WC-1, rather than the entire WC-1 Board form, again emphasizes the exclusion of medical benefits from the purview of O.C.G.A. §34-9-221(h).

As a result of the narrow but plain language used by the legislature, there is no mention of medical benefits or mention of forms referring to medical benefits or their payment in Board Rule 221(h). As such, where Board Rule 221(h) provides examples that specifically exclude medical benefits, there is no basis for believing “compensation,” as used in O.C.G.A. §34-9-221(h) was ever meant to include medical benefits. Indeed, the definition of “compensation” is easily discerned in the strict reading and construction of the statute.

This very Court has already determined “the statutory scheme regarding time constraints for a ‘notice to controvert’—the 21-day period after knowledge of

the injury of O.C.G.A § 34-9-221(d) and the ‘within 60 days of the due date of the first payment of compensation’ of O.C.G.A § 34-9-221(h)—relates solely to income benefits.’” *ITT-Cont'l Baking Co. v. Powell*, 182 Ga. App. 533, 535 (1987). In *Powell*, this Court was asked to address an employer’s right to deny or controvert a medical bill received outside the 81-day period. This Court reasoned that “[e]ven if an employer is required to notify the board of its refusal to pay medical expenses, it is not a statutory requirement as the statutory scheme regarding time constraints for a ‘notice to controvert’—the 21-day period after knowledge of the injury of O.C.G.A § 34-9-221(d) and the ‘within 60 days of the due date of the first payment of compensation’ of O.C.G.A § 34-9-221(h)—relates solely to income benefits. *Id.* The *Powell* opinion goes on to discuss the claimant’s unauthorized treatment with an off-panel provider before concluding and holding the employer’s failure to controvert earlier did not preclude it from denying medical benefits. The ultimate issue is the same here as in *Powell*—whether an employer may controvert medical treatment after more than 81 days—and this Court’s answer should remain the same.

Several other holdings from this Court and the Supreme Court support such a position. For example, in *Raines and Milam v. Milam*, the Court of Appeals dealt specifically with a claim in which an insurance carrier denied a claim more than 21 days after the death of father and son employees and even after the payment of an

ambulance service bill. 161 Ga. App. 860 (1982). At the time the mother /wife brought the two workers' compensation claims, Ga. Code §114-705(d) (now O.C.G.A. §34-9-221(d)) read:

If the employer controverts the right to compensation, it shall file with the board on or before the 21<sup>st</sup> day after knowledge of the alleged injury or death, a notice in accordance with the form prescribed by the board stating that the right of compensation is controverted..., the date of the alleged injury or death, and the ground upon which the right to compensation is controverted.

Although the statute did not discuss whether compensation had been paid under the predecessor to O.C.G.A. §34-9-221(h), this Court declined to estop the employer/insurer from controverting the claim. Instead, this Court looked to potential sanctions for an employer/insurer other than forfeiture of their right to controvert a claim. This Court went on to note “[o]ur laws abhor penalties and forfeitures...,” and “a law imposing a penalty must be strictly construed.” *Milam*, 161 Ga. App. 862 (1982).

Similarly, in *Sale v. Leachman*, the Supreme Court cited *Renfro v. Colquitt* and its precedent regarding “[f]orfeitures are not favored, and courts incline against them. When a statute may be construed so as to give a penalty, and also so as to

withhold the penalty, it will be given the latter construction.” 218 Ga. 834, 837 (1963); citing *Renfroe v. Colquitt*, 74 Ga. 618 (1885).

The courts’ abhorrence toward penalties and forfeitures warrants further discussion. According to this Court, O.C.G.A. §34-9-221(h) should be strictly construed to first avoid forfeiture and then avoid penalty where possible. The *Milam* holding provides a clear statutory construction which avoids forfeiture of the employer’s ability to defend a workers’ compensation claim. O.C.G.A. §34-9-221(h) can and should be construed to define compensation as wage benefits only; thus, the statute does not intend to create a penalty or forfeiture in medical-only claims. This is the construction the statute should be given. The claim at issue here involves a similar type of medical payment, as the only payment made was for prescriptions. As the employer/insurer in *Milam* was not estopped from raising defenses to the claims, the employer/insurer in the claim at bar should not be estopped from raising defenses to this claim.

And in *Meredith v. Atlanta Intermodal Rail Services*, the Supreme Court of Georgia specifically addressed the statute of limitations for controverting a claim pursuant to O.C.G.A. §34-9-221(h). 274 Ga. 809 (2002). Here, the Court affirmed an Award denying indemnity benefits, and held that an employer is not precluded from defending a claim for benefits where a notice to controvert was untimely. Moreover, the *Meredith* case sets forth the opinion of the Georgia Supreme Court

that “the state board has interpreted subsection (h) as applying ‘only when income benefits are being paid.’” 274 Ga. 812. The court noted “the General Assembly has failed to overturn either the court decisions or agency rules despite frequent amendments to the statute.” *Id.* Thus, the court declined “to interpret subsection (h) as extending to cases like this one where the employer has not paid any compensation.” As such, it is clear that compensation is meant to include only income benefits in the eyes of the Supreme Court of Georgia as well.

It also should be noted that in *Cartersville Ready Mix Co. v Hamby*, the Court of Appeals discussed the legislative intent behind O.C.G.A. §34-9-221 being to minimize hardship on the injured worker and to “provide some form of protection to the employee’s right to continued receipt of the compensation.” 224 Ga. App. 116, 118 (1996). This legislative intent would not be fulfilled in any part in the case at bar. The current claim involves a claimant who has never received wage benefits or medical benefits other than a few prescriptions. As such, he is not in need of protection regarding continued receipt of compensation. Any legislative intent behind O.C.G.A. §34-9-221 in protecting an employee for such continued benefits is not met by the claim at bar.

Likewise, in *Southeastern Aluminum Recycling, Inc. v. Rayburn*, the Court of Appeals specifically discussed the term “compensation” to include “all of the accrued income benefits..., including penalties provided for any late payment.”

172 Ga. App. 648 (1984). The Court of Appeals, in *Rayburn*, did not include any discussion of the payment of medical benefits in that definition. *Id.*

The Appellant has argued that while there are cases where “dicta suggests O.C.G.A. §34-9-221(h) only applies to wages,” there are no cases regarding medical compensation. This position is partially correct: there are no cases regarding “medical compensation” and O.C.G.A. §34-9-221(h), but that is because there is no such thing as “medical compensation” for the purposes of this subsection. The Workers’ Compensation Act itself makes clear that medical benefits are not compensation. More to the point, cases such as *Milam* and *Powell* make it clear that medical benefits are not compensation such that O.C.G.A. §34-9-221(h) applies. Moreover, an exploration around the language of all parts of O.C.G.A. §34-9-221 and Board Rule 221 is further evidence of the legislative intent and meaning of “compensation” as used in O.C.G.A. §34-9-221(h). The exploration of the statute and board rule clearly establish “compensation” as used in O.C.G.A. §34-9-221(h) means only the payment of wage benefits, not medical benefits. Thus, the State Board did not err in allowing the employer to controvert this medical-only claim, and the Order should be affirmed.

### **III. The State Board's Orders Should be Affirmed Because the Overly Broad Definition of Compensation Proposed by the Appellant Would be Impermissible Burden Shifting.**

By requesting that medical treatment be considered "compensation" which may only be controverted after 81 days if there is new evidence or a change of condition, the Appellant asks the Court to shift the burden of proof and to deprive employers of substantive rights. Neither request is appropriate or permissible.

As noted above, in *Milam*, the Court of Appeals held that the failure of an employer/insurer to file a notice to controvert a claim within 21 days after knowledge of the alleged injury or death as required by O.C.G.A. §34-9-221(d) did not prevent the controverting of a claim more than 21 days after the employer's notice or knowledge. In *Holt Service Company v. Modlin*, the issue was the effect of former Board Rule 705(d), which provided that "[i]f Form No. WC3 is not filed on or before the 21st day after knowledge of the injury or death, the accident will be presumed to be compensable, subject to rebuttal." 163 Ga. App. 283 (1982). The substantive issue in *Modlin* was the right of an employer/insurer not to be required to rebut the presumption of compensability. The Court of Appeals in *Modlin* noted "the claimant in a workers' compensation proceeding has the burden of proof to show that his injury is compensable" and the "effect of Rule 705(d) is to shift the burden of proof on the main point that claimant would otherwise have to prove." 163 Ga. App. 285, 286. Furthermore, this Court held in *Modlin* that

Rule 705(d) was in excess of the Board’s authority because it provided that, upon an employer/insurer’s failure to controvert a claim within 21 days of knowledge of the injury or death, the burden was shifted to the employer/insurer to prove an injury was not compensable. *Id.*

Both *Milam* and *Modlin* concerned O.C.G.A. §34-9-221(d) (or its predecessor, Ga. Code Ann. §114-705(d)), which are directed at the issue of the compensability of a claim. The Board Rule at issue in *Modlin* granted the claimant a “rebuttable presumption of compensability” and was, therefore, invalid as substantive rule-making. O.C.G.A. §34- 9-221(d) and Board Rule 221(d) now omit the burden-shifting language regarding the rebuttable presumption of compensability.

Likewise, case law remains settled that at any and all points during the pendency of a workers’ compensation claim, the claimant carries the burden of proving his injury—and thus his need for treatment and disability benefits—is work-related, or compensable. See, e.g., *Copeland v. Continental Kewitt*, 218 Ga. App. 305, 461 S.E.2d 277 (1995); *Argonaut Insurance Co. v. King*, 127 Ga. App. 566, 194 S.E.2d 282 (1972); *Riley v. Taylor Orchards*, 226 Ga. App. 394, 486 S.E.2d 617 (1997); *Aetna Cas. & Sur. Co. v. Honea*, 71 Ga. App. 569, 31 S.E.2d 421 (1944). “[T]he late filing of a WC-3 does not create an estoppel to raise defenses, nor does it shift the burden of proof to the employer. What it does is

subject the employer to penalties if the claim is held to be compensable.” Hiers and Potter, Ga. Workers’ Compensation Law and Prac., (5<sup>th</sup> ed.), p. 488.

The Appellant’s argument, if accepted by this Court, would again shift the burden of proof from the claimant to the employer as Board Rule 705(d) unlawfully did. The Appellant asks the Court to rewrite a provision of presumed compensability if an employer fails to controvert a medical only claim within 81 days. Not only has the Court previously found such provisions inappropriate, but the Legislature has also agreed that such provisions should be removed from the Act.<sup>2</sup>

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<sup>2</sup> There is one distinguishable distinction where the Legislature and Courts have allowed a rebuttable presumption to shift the burden of proof to an employer, and that is in certain death claims. When an employee dies, from unknown causes, in a place and at a time where (s)he might reasonably be expected to be performing his /her job, there is a presumption that the death arose out of and in the course of the employment. Once the presumption is applied, the burden of proof shifts from the claimant to the employer/insurer. The employer/insurer must show that the decedent’s death *did not* arise out of the employment, and this burden cannot be met by simply suggesting *possible* causes of death. S. Bell Tel. Co. v Hodges, 164 Ga. App. 757 (1982). Even in this scenario, however, it should be noted the claimant has the initial burden to prove the decedent was in a place and at a time where (s)he might have been reasonably expected to be performing his or her job. Moreover, the claimant must prove the employee’s death was from unknown causes. Then, and only, then does the employer/insurer have the obligation or opportunity to provide evidence which would explain the employee’s death and thereby prove the claim is not compensable.

The rationale behind the presumption—and the burden placed on the insurer—is that the death itself removes the witness best able to show causation. General Accident Fire & Life Insurance Company v. Sturgis, 136 Ga. App. 260

Indeed, the Legislature and courts have considered scenarios in which medical benefits are provided before a determination has been made as to whether a claim is compensable, and both have taken action to prevent such scenarios from shifting the burden of proof or binding the employer to liability. For example, in 2010 and 2011, a dispute arose as to whether Rule 205 impermissibly shifted the claimant's burden of proof with respect to the compensability of his injury. At the time, Board Rule 205(b)(4) stated that an employer who failed to comply with the time constraints set forth in Rule 205(b)(3) would be responsible for payment of the medical treatment requested.

The case of *Mulligan v. Selective HR Solutions, Inc.* went to the Supreme Court to determine whether this language denied the employer a right to contest the compensability of the medical treatment or the underlying injury, and the Supreme Court maintained that the time frame in 205 is only applicable in situations where treatment is related to the job injury. 289 Ga. 753 (2011). That year, effective July 1, 2011, the Legislature amended Rule 205 (b)(4) to read “[w]here the employer fails to comply with Rule 205 (b)(3), the employer shall pay for the

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(1975). Thus, the presumption does not apply when a claimant sustains a compensable, nonfatal accident for which (s)he received disability benefits, before later dying. Fowler v City of Atlanta, 116 Ga. App. 352 (1967). On the other hand, the presumption does apply where a decedent is found alive but dying, comatose or otherwise unresponsive. General Acc. Fire & life Ins. Co. v Sturgis, 136 Ga. App. 260 (1975); Hartford Acc. & Indem. Co. v Trigg, 144 Ga. App. 74 (1977).

treatment/test requested *related to the compensable injury* in accordance with the Chapter.” (emphasis added). Again, the courts and Legislature intended to disavow any potential interpretation that allowed impermissible burden shifting. The Appellee respectfully requests the Court continue to rebuff attempts at burden-shifting by affirming the Orders of the ALJ and State Board below in this case.

**IV. The State Board’s Orders Should be Affirmed Because the Overly Broad Definition of Compensation Proposed by the Appellant Would Have Far-Reaching and Deleterious Effects on the Workers’ Compensation System.**

From a practical standpoint, the Appellant’s misinterpretation of O.C.G.A. § 34-9-221(h) would impact the entire life cycle of a workers’ compensation claim and, along the way, the rights of all parties involved. An examination of numerous other references to “compensation” contained in the Act confirms medical benefits and indemnity benefits are not interchangeable.

Under the current and proper construction of the statute, the medical treatment and indemnity portions of the claim diverge almost immediately from the outset of a claim. Even the initial statute of limitations, set out in O.C.G.A. §34-9-82(a), treats medical benefits differently than income benefits:

The right to compensation shall be barred unless a claim therefor is filed within one year after injury, except that if payment of weekly benefits has been made or remedial treatment has been furnished by

the employer on account of the injury the claim may be filed within one year after the date of the last remedial treatment furnished by the employer or within two years after the date of the last payment of weekly benefits.

Then, assuming a claim is accepted as compensable, there is a deadline for income benefit payments which does not exist for medical benefits. The “first payment of income benefits shall become due on the twenty-first day after the employer has knowledge of the injury or death.” O.C.G.A. § 34-9-221(b). If the claim is controverted after indemnity benefits are paid, the controvert must be filed within 60 days of the due date in order to avoid penalty. O.C.G.A. § 34-9-221(h). The Georgia Legislature provided no such rules or guidelines for when an employer must commence payment for medical treatment and/or when medical treatment could be controverted. In the absence of any such timeframe, it is clear that the Legislature intended for an employer to retain the right to deny medical treatment without a statute of limitations. In exchange, a claimant has no statute of limitations on his or her receipt of medical treatment. The statute of limitations for change of condition, O.C.G.A. § 34-9-104, does not apply to medical only claims. *Gen. Ins. Co. of Am. v. Bradley*, 152 Ga. App. 600 (1980). Thus, claimants may receive medical treatment related to the injury until the claim is settled or, for dates of injury after July 1, 2013, until 400 weeks have passed from the date of injury.

Likewise, the Act repeatedly allows for suspension of income benefits—e.g., where a claimant refuses to sign a WC-207 or accept suitable employment—but suspension of medical benefits is only available where the claimant undergoes a change of condition for the better. O.C.G.A. §§ 34-9-207(c), 34-9-240(a). In both of these statutes, the term compensation references income benefits. However, if the Appellant’s argument were accepted and extended, a claimant’s medical benefits might also be suspended for failure to accept suitable employment or failure to provide a WC-207.

Another place in the Georgia Workers’ Compensation Act where a distinction between wage and medical benefits is made is in the realm of settlements, whether liability or no-liability. A case cannot be settled on a no-liability basis if the case is one in which liability has been established. Liability is established if an award has been issued finding the claim to be compensable or if the employer has paid workers’ compensation disability benefits (or salary in lieu of same). See O.C.G.A. § 34-9-104. Mere payment of medical expenses does not constitute a bar to the use of a no-liability settlement since the mere payment of medical expenses does not constitute a binding acceptance of liability with regard to a claim. *Wier v. Skyline Messenger Serv.*, 203 Ga. App. 673 (1992).

The Appellant’s expansion of “compensation” to include medical payments would render no-liability settlement obsolete. A “no liability” settlement

agreement would be obsolete in all but the first 81 days, during which time neither party may have enough information to truly assess the value of case. Employers could see business-impacting rises in their Experience Modification (MOD) rates if any medical treatment provided for more than 81 days made a claim compensable. Employers may be less likely to settle, and more inclined to litigate, thereby increasing the burden on the Court. Furthermore, employers burdened with increased MOD rates and premiums may be forced to reduce their workforce and cut employees' pay.

Looking at the places where the Georgia Workers' Compensation Act distinguishes between the payment of wage benefits and the payment of medical benefits, the meaning of compensation cannot be readily defined equally as payment of wage or medical benefits. These two payments are treated differently throughout the Georgia Workers' Compensation Act. Making "medical benefits" synonymous with "compensation" would be both confusing and impractical, if not deleterious.

## **CONCLUSION**

For the good cause shown above, the aforementioned Amicus Curiae prays that the Board's decision will be AFFIRMED.

RESPECTFULLY SUBMITTED,

This 30<sup>th</sup> day of November, 2016.

Peter Muller, President  
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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **BRIEF OF AMICUS CURIAE** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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