

Constructing a Better Panel

By R. Kyle Paske July 2, 2015

Those who are deeply familiar with Georgia Workers' Compensation law know the value of a claim can hinge considerably on whether or not the employer has properly posted and explained a valid panel of physicians (or "panel"). The panel is a list of at least six physicians from which an injured worker can choose to treat. When properly implemented, the panel guarantees the injured worker will receive treatment from a quality and reliable physician, which goes a long way toward controlling the costs associated with the injury. However, as a matter of law, if the panel is not valid, properly posted, or explained, the injured worker is allowed to treat with any physician he or she chooses. Savvy Claimant's attorneys will thoroughly investigate the validity of the panel in order to drive up the value of the claim. Future articles on this site will focus on procedures that can, and should, be implemented to ensure panels are posted and properly explained to workers. The focus of this article is on creating and maintaining a valid and useful panel, and the benefits of doing so.

According to [O.C.G.A. § 34-9-201](#), a valid panel must provide the injured worker reasonable access to at least six "unaffiliated" physicians or physician groups. [\[i\]](#) At least one of the physicians must practice orthopedic surgery, and of the six providers, no more than two can be "industrial clinics."[\[ii\]](#)

The first key to an effective panel is ensuring its validity. The most common issue with the validity of panels is the number of accessible providers. The majority of panels we encounter as litigators have the statutory minimum of six providers listed. If any listed provider closes, moves, or retires between the time the panel is created and the time of an accident, the injured worker arguably no longer has "reasonable access" to the provider. As a result, the injured worker only has "reasonable access" to five providers, and the panel is rendered invalid, allowing the injured worker to seek off panel treatment. Nothing in the statute prevents the employer/insurer from listing more than six providers on their panel. At Bovis, Kyle, Burch & Medlin, we recommend a panel list 8-10 providers, including at least two with an orthopedic surgeon. This protects the employer/insurer from having their panel rendered invalid in the above circumstance, as the injured worker will still have access to in excess of six providers, despite one or two offices being inaccessible. Of course, the employer/insurer will still need to ensure that each listed provider is willing to treat workers' compensation patients and that none of the providers are affiliated. Even after the panel is constructed, periodic efforts should be made to update it to ensure its continued validity.

The second key to an effective panel is utilization of quality, reliable physicians. As noted above, the utility of a valid panel lies with the ability to control who treats injured workers. It is in the best interests of the employer/insurer that the treating physician is skilled enough to be effective at curing ailments and returning injured workers to their pre-injury condition. Even where a panel is valid, it does not have any benefit to the employer/insurer if the physicians listed are of poor quality. We recommend employer/insurer's use physicians and physician groups that have provided good results in the past. For

this reason, it is generally better to list specific physicians, rather than entire practice groups. While cliché, the axiom “past results indicate future performance” rings true.

Please contact **R. Kyle Paske** at 678-338-3968 if you have any questions regarding the construction of a panel, or if you need recommendations for reliable treating providers.

[i] “affiliated” is not defined by statute, and little has been done by the courts to delineate its meaning in this context. However, we do know that two physicians who are practicing in a partnership are considered to be one provider, even if listed separately on a panel. From this, we can project that affiliation connotes a financial relationship between medical providers.

[ii] As with “affiliated,” “industrial clinic” is not defined by statute. While the Claimant’s bar will argue that any urgent care clinic is an industrial clinic, at a minimum, a panel should avoid listing multiple facilities which are self-labeled as industrial clinics.