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HEARSAY-PHYSICAN LETTER:

Vaughan v. Broward General Medical Center, 38 Fla. L. Weekly D22
(Fla. 1st DCA December 19, 2012).

The authorized orthopedist dictated a "To whom it may concern" letter after a chart review and opined in the letter that the MCC of the claimant's need for treatment was not related to her industrial accident. The E/C used the letter to support its denial of the claim. The parties were unable to schedule the deposition of the physician before the merits hearing. The E/C asked for a continuance of the merits hearing at the outset, which the claimant did not object to, but the E/C indicated no prejudice would occur if the hearing were to proceed (this statement was later withdrawn). As such, the request for a continuance was denied and the hearing proceeded.

At the merits hearing, counsel for the Claimant objected to the introduction of the letter on the following grounds: hearsay, authentication, untimeliness under Section 440.29(4) (counsel for the E/C acknowledged correct procedure had not been

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followed), and the fact that it was not an office note contemporaneous with an office visit. The JCC overruled Claimant's evidentiary objections on the basis that Claimant had not initially objected to the continuance requested by the E/C. The JCC denied the claimant's requests based on the letter from the authorized physician.

On appeal, the 1st DCA held that the JCC erred by admitting the letter into evidence over the objections of the claimant and by relying on the letter in support of the denial. The doctor's letter was hearsay not within the exceptions set out in sections 90.803(4) or (6), Florida Statutes (2011). *ITT/Palm Coast Utils., CIGNA v. Douglas*, 696 So.2d 390 (Fla. 1st DCA 1997) (citing *Scotty's, Inc. v. Sarandrea*, 645 So.2d 121, 123 n. 1 (Fla. 1st DCA 1994) (holding doctor's letter is inadmissible hearsay)).

The court noted the record didn't establish that Section 440.29(4) was followed; the letter appeared on its face to have been prepared for the purposes of litigation in that it addressed a legal issue only and was not associated with a medical office visit; the opinion in the letter conflicted with opinion that the physician expressed in earlier office note, and letter was not within hearsay exceptions for statements for purposes of medical diagnosis or treatment or business records.

CED/rjc