

**LAUGHLIN, FALBO, LEVY & MORESI LLP**  
*A Force in Workers' Compensation Defense*

**MARGARIS VETOES APPEALS BOARD  
ON IMR TIMELINESS:  
IMR 30-Day Deadline is Not Mandatory**

**June 23, 2016**

On June 22, 2016, in the case of *SCIF v. WCAB (Margaris)*, the Second District Court of Appeals finally resolved the ongoing dispute over the validity of IMR determinations issued beyond 30-days. The answer: the determinations are valid. The 30-day period is not a mandatory deadline.

Recall that previously, the First District Court of Appeals in the *Stevens* case included dicta in its decision alluding to the fact that the IMR 30-day period is directory, not mandatory. The decision in *Margaris* lays to rest the debate over the effect of the *Stevens* dicta.

This is a win for the defense community. We expect it to reduce the number of expedited hearings taking place on this issue, and bind the applicant to allegedly “untimely” IMR determinations.

Up until now, both the applicants’ and defense bars litigated the meaning of “shall” as laid out in section 4610.6(d). The section provides that IMR “shall” complete its determinations within the 30-day period. Applicants defined “shall” as mandatory so that a decision not issued within the 30-day period is invalid. Defendants and the Court of Appeals disagreed.

In *Margaris*, an IMR determination issued 13 days beyond the 30-day period. The WCJ held that the IMR was valid finding the time period directory. On Reconsideration, the majority of a three person panel determined that the 30-day period is mandatory thereby finding the IMR untimely and invalid. The Court of Appeals reversed that decision and held that the 30-day period is directory, not mandatory.

The Court of Appeals explained that this issue is more complex than a plain meaning interpretation. The Court cited to a long standing Supreme Court decision that stated generally, time limits applicable to government action are deemed directory unless the Legislature clearly expresses a contrary intent. It went on to say that statutory time limits are usually directory in the absence of a penalty or consequence.

“Neither section 4610.5, which relates to the initiation of IMR, nor section 4610.6, which relates to execution of IMR, provides any consequence or penalty in the event IMR does not issue within the 30-

day period.” The Court further added that the Legislature provided a list of grounds to appeal IMR directly in section 4610.6(h); untimeliness is not one of them.

The Court concluded that since IMR is a governmental action, the statutory language and the Legislature did not intend for the 30-day period to be mandatory.

### **WCAB Jurisdiction Over Medical Treatment**

The Court then turned its attention to the contention that an untimely IMR grants the WCAB jurisdiction to decide medical treatment disputes. The Court used social policy, the express language of section 4610 and the Notes from the Legislature to defeat this position. Most notably, the Court cited to the Legislature stating “in no event shall a workers’ compensation judge, the appeals board, or any higher court make a determination of medical necessity contrary to the determination of the independent medical review organization.” In short, medical determinations will not be placed back in the hands of the appeals board judges.

The applicants’ bar is now left with two remedies once the 30-day period has passed, (1) wait for the determination or (2) file a writ of mandamus to compel the director to issue an IMR determination. In either case, the bottom line is applicant is bound by IMR – regardless of whether the determination is issued within the 30 day period or not. A win for defendants.

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