Industrial Accident Board—Jurisdiction to Hear and Decide Merits of Claim for Medical Services.

The Industrial Accident Board has jurisdiction and authority to investigate and determine the question of whether hospital treatment furnished to an employee was in accordance with the agreement made between the employer and the hospital.

Jerome G. Locke, Esq.,
Chairman Industrial Accident Board,
Helena, Montana.

My dear Mr. Locke:

You have submitted to this office your files in the matter of John Marble, Plaintiff, vs. Granite-Bimetallic Consolidated Mining Company of Montana, Defendant, and have asked this office to determine whether the Board has jurisdiction to hear and decide the issues presented by the complaint, answer, and replication, all of which you have submitted to this office.

The complaint, in brief, sets out the employment of the plaintiff by defendant for a number of years prior to and including November 27, 1918, and that during all of the time of his employment there was deducted from his salary $1.25 per month by the defendant to cover hospital and medical services. The complaint then alleges that on November 27, 1918, plaintiff was severely injured and required hospital service and doctors' care, that the nature of his injuries was such that he was under the influence of opiates for a long time and was absolutely helpless and incapable of caring for himself; that his wife was forced to care for him during this time, and that no hospital

services whatever were furnished and no doctor provided during a period alleged to be 174 weeks, and, during which time, hospital services and doctors' care were necessary. He then asks for $18 per week for 174 weeks, also for money expended for medicine, X-ray examination, and the services of a physician whom he was compelled to employ.

To this complaint, the defendant filed an answer in which it denies the right of the Board to make any order or finding on the complaint, for the reason that it has no jurisdiction to do so. And further answering, it is admitted that, while the defendant was employed by it, the $1.25 per month was deducted, but denies that this deduction was made for its use and benefit but was made for the use and benefit of one Dr. Casey, to whom it was paid under the conditions of a certain contract entered into between it and Dr. Casey, wherein Dr. Casey agreed to furnish hospital services and medical attendance to sick and injured employees. Otherwise, the answer puts in issue the allegations of the complaint. It also alleges that it is operating under Plan No. 3 of the Workmen's Compensation Act, and that the contract which it made with Dr. Casey was approved by the Industrial Accident Board.

The question of the extent of jurisdiction of your Board in this matter is not entirely clear. I quote portions of the following sections of the Code as having more or less bearing upon this matter:

Section 2917 provides, in part:

> "During the first two weeks after the happening of the injury, the employer or insurer, or the accident fund, as the case may be, shall furnish reasonable medical and hospital service and medicines as and when needed, in an amount not to exceed one hundred dollars in value, except as otherwise in this act provided."

Section 2907 provides:

> "Nothing in this act shall be construed as preventing employers and workmen from waiving the provisions of section 2917, and entering into mutual contracts or agreements providing for hospital benefits and accommodations to be furnished to the employee."

It further provides that these "contracts or agreements must provide for medical, hospital, and surgical attendance for such employee for sickness contracted during the employment, except" certain diseases. Also that "no assessment of employees for such hospital contracts or benefits shall exceed one dollar per month for each employee, except in cases where it shall appear to the satisfaction of the board, after a hearing had for that purpose, that the actual cost of such service exceeds the said sum of one dollar per month." Also that "no profit, directly or indirectly, shall be made by any employer as a result of such hospital contract or assessments." Also that "where hospitals are maintained by other than the employer, all sums

derived by assessment of employees shall be paid in full to such hospital without deduction by the employer."

Section 2908 provides:

"Each and every hospital maintained wholly or in part by payments from workmen, which furnishes treatment and services to employees for sickness and injury, as provided in this act, shall be under the supervision of the board as to the services and treatment rendered such employees, and shall, from time to time, make reports of such services, attendances, treatments, receipts, and disbursements as the board may requ're."

Section 2909 provides as follows:

"Neither an employer, an insurer, nor the board, shall be liable in any way for any act in connection with the treatment or care, or malpractice in treatment or care, of any sickness or injury sustained by an employee, or the beneficiary of any hospital contract, where such act or treatment or malpractice in treatment is caused, or alleged to have been caused, by any physician, hospital, or attendant furnished by such employer, insurer, or the board. In any action for malpractice arising out of the operations of this act, the merits of such action shall be investigated by the industrial accident board, and the finding of the board in relation thereto shall be filed with the clerk of the court in which such action is pending."

Section 2910 provides:

"In any action to recover damages for any act connected with the treatment or care, or malpractice in treatment or care, of any sickness of or injury sustained by an employee, the question of whether or not due care was given by the defendants shall be a question of law for the court."

However, the question presented by the pleadings in this case does not appear to be one arising out of malpractice, but rather one where it is claimed the services and attendance required under the contract were not furnished, and, while there may be some question as to the extent of the jurisdiction of the Board in this matter, yet in view of the fact that every hospital maintained in whole or in part by payments from workmen, and which undertakes to furnish treatment and services for such employees when sick or injured, is under the supervision of the Industrial Accident Board, the question of whether the hospital in this case did in fact do all that it was required to do is one which the Board, in my opinion, has jurisdiction to investigate and determine. It would follow that the Board, having jurisdiction to determine this fact, could proceed and determine the respective rights of the parties, even though other questions were necessarily involved. This view is further aided by Section 2940 of

the Revised Codes of 1921, indicating the intention of the Legislature to give the Board the fullest jurisdiction with reference to all matters connected with the subjects covered by the Act. This section provides as follows:

> "The board is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this act."

It is, therefore, my opinion that the Board should proceed to hold a hearing, giving all parties proper notice of the time and place, and that it has jurisdiction to determine whether hospital services and medical attendance were furnished in accordance with the agreement entered into between the defendant and Dr. Casey and the amount that plaintiff is entitled to receive in case it should find the issues in favor of the plaintiff.

In view of the decision of the Supreme Court of this State in the case of Shea v. North-Butte Min. Co., 55 Mont. 522, the determination and award of the Board would not be enforceable by execution, however, until a judgment has been entered on appeal to the proper court.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.