

**FINAL AWARD**  
(Affirming Award on Medical Fee Dispute)

Injury No.: 07-049627  
Medical Fee Dispute Nos.: 07-01407 & 07-01413

Employee: Michael Schwab

Employers: 1) Lamb Construction  
2) Yogi Krupa, Inc. d/b/a Motel 6 East

Insurers: 1) Uninsured  
1) Nationwide Mutual Insurance Co.

Health Care Providers: Concannon Plastic Surgery (07-01407)  
Specialty Surgical Services, LLC (07-01413)

Pursuant to the provisions of § 287.140 RSMo and 8 CSR 50-2.030, the above-captioned award on medical fee dispute is submitted to the Labor and Industrial Relations Commission (Commission) for review under § 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award on medical fee dispute is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 16, 2013. The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued January 16, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1<sup>st</sup> day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr. Member

Attest:

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Secretary

**BEFORE THE DIVISION OF WORKERS' COMPENSATION  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS OF MISSOURI**

HEALTH CARE PROVIDER:	Concannon Plastic Surgery
HEALTH CARE PROVIDER:	Specialty Surgical Services, LLC
EMPLOYER:	Lamb Construction/ Yogi Krupa, Inc.
INSURER:	None/ Nationwide Mutual Ins. Co.
MEDICAL FEE DISPUTE NO.:	07-01407 & 07-01413
INJURY NO.:	07-049627
INJURY DATE:	April 4, 2007
EMPLOYEE:	Michael Schwab

**AWARD ON MEDICAL FEE DISPUTE HEARING  
INITIATED BY APPLICATION(S) FOR DIRECT PAYMENT**

A hearing was held on November 19, 2012 in Jefferson City in this medical fee dispute action. Concannon Plastic Surgery appeared by counsel, Ross Bridges. Specialty Surgical Services, LLC appeared by counsel, Ross Bridges. Employer Yogi Krupa, Inc. appeared by counsel, John Thompson. Insurer Nationwide Mutual Insurance Company appeared by John Thompson. Employee Michael Schwab appeared personally. No other parties appeared.

The medical fee dispute action in Medical Fee Dispute No. 07-01407 was initiated by the filing of an APPLICATION FOR DIRECT PAYMENT by Concannon Plastic Surgery on October 2, 2012 in the amount of \$23,656.00. An APPLICATION FOR EVIDENTIARY HEARING was filed by John Thompson, attorney for Yogi Krupa, Inc. and Nationwide Mutual Insurance Company on October 19, 2012. Notice of the hearing was sent to all parties on November 9, 2012. On November 8, 2012, Ross Bridges (counsel) filed an (amended) APPLICATION FOR DIRECT PAYMENT for Concannon Plastic Surgery in the amount of \$13,297.00, and also filed an APPLICATION FOR DIRECT PAYMENT for Specialty Surgical Services, LLC in the amount of \$10,359.00 (which in the aggregate equals the initial amount of \$23,656.00 requested by Concannon Plastic Surgery in the original filing). The APPLICATION FOR DIRECT PAYMENT filed on behalf of Specialty Surgical Services, LLC was assigned Medical Fee Dispute No. 07-01413. Concannon Plastic Surgery and Specialty Surgical Services, LLC are both owned by Dr. Matthew Concannon; "Concannon Plastic Surgery" is the entity which normally bills for Dr. Concannon's personal services and "Specialty Surgical Services, LLC" is the entity which normally bills for the use of the surgical facility. Dr. Matthew Concannon has also done business as "Matthew Concannon, LLC".

The parties agreed to proceed to hearing on the two APPLICATIONS FOR DIRECT PAYMENT filed on November 8, 2012.

The evidence consisted of the testimony of Michael Schwab, and the following exhibits:

**Employer/Insurer's Exhibit A** – Photocopies of checks from Nationwide Mutual Insurance Company made payable to Michael Schwab and Finley Gibbs (Schwab's former attorney);

**Joint Exhibit 1** – Copy of email transmissions between Michael Schwab and Finley Gibbs dated November 29, 2010 and December 2, 2010;

**Joint Exhibit 2** – Letter to Michael Schwab concerning the successful completion of his Chapter 7 Bankruptcy Case;

**Joint Exhibit 3** – Notice of Meeting of Creditors in Michael Schwab's Chapter 7 Bankruptcy Case dated May 20, 2008;

**Joint Exhibit 4** – Copy of email from Janice A. Harder, bankruptcy trustee, to Michael Schwab;

**Joint Exhibit 5** – A portion of Schedule B-Personal Property from Michael Schwab's Chapter 7 Bankruptcy filing showing his workers' compensation claim as personal property in the bankruptcy proceedings;

**Joint Exhibit 6** – A portion of Schedule F-Creditors Holding Unsecured Nonpriority Claims from Michael Schwab's Chapter 7 Bankruptcy filing showing a medical debt to Matthew Concannon, LLC in the amount of \$23,656.00;

**Joint Exhibit 7** – A portion of the mailing grid from Michael Schwab's Chapter 7 Bankruptcy filing showing Matthew Concannon, LLC;

**Joint Exhibit 8** – The NOTICE OF EVIDENTIARY HEARING in this case;

**Joint Exhibit 9** – DISCHARGE OF DEBTOR in Michael Schwab's Chapter 7 Bankruptcy Case dated August 28, 2008;

**Joint Exhibit 10** – The two APPLICATIONS FOR DIRECT PAYMENT filed on November 8, 2012 on behalf of Concannon Plastic Surgery and Specialty Surgical Services, LLC.

The undersigned administrative law judge also took official notice of the file of the Division of Workers' Compensation in Injury No. 07-049627, including the evidentiary hearing held by the Honorable David Zerrer on June 23, 2010 in Injury No. 07-049627 and the amended award in the case issued by the Honorable David Zerrer on October 26, 2010.

From the evidence, it is clear that Michael Schwab ("Schwab") was working for John Lamb, d/b/a Lamb Construction (also d/b/a Lamb's Construction) for several months prior to and including April 4, 2007 refurbishing and remodeling a Motel 6 in Columbia, Boone County, Missouri. In the course of this employment, Schwab often took directions directly from the owner of the Motel 6, Mr. Vinod Gandhi, or from the hotel's manager, Mr. Shabbir Patel. Mr.

Gandhi was the president and owner of Yogi Krupa, Inc., a corporation which owned and operated the Motel 6. On April 4, 2007 at the Motel 6 Schwab was in the process of hanging a mirror approximately 4' x 4' in dimension, when the mirror broke and severely lacerated both of Schwab's wrists. Schwab contacted Mr. Gandhi and Mr. Lamb about the injury. Schwab was taken by a co-worker to the emergency room at Columbia Regional Hospital. He came under the care of plastic/hand surgeon Dr. Matthew Concannon on the same date; Dr. Concannon performed surgery to repair both wrists. Dr. Concannon's charges were \$23,656.00. Schwab also incurred charges from University Physicians for \$72.00, Columbia Regional Hospital for \$575.00, Rusk Rehabilitation for \$162.00 and Wal-Mart Pharmacy for \$343.30. All of these charges were discharged in Schwab's Chapter 7 Bankruptcy proceeding on August 28, 2008.

Schwab filed a claim for compensation against Lamb's Construction and against Yogi Krupa, Inc. in Injury No. 07-049627, and Schwab's claim proceeded to hearing before the Honorable David Zerrer on June 23, 2010. Lamb's Construction was found to be operating under Chapter 287, RSMo, but did not carry workers' compensation insurance on April 4, 2007. Yogi Krupa, Inc. was insured by Nationwide Mutual Insurance Company for Missouri Workers' Compensation purposes on April 4, 2007. In his amended award dated October 26, 2010, Judge Zerrer found that Schwab was employed by both Lamb's Construction and Yogi Krupa, Inc. at the time of his work-related accident on April 4, 2007. Thus, Yogi Krupa, Inc. and Nationwide Mutual Insurance Company were ordered to pay Schwab \$14,967.56 for permanent partial disability benefits, disfigurement, and temporary total disability benefits; Yogi Krupa, Inc. and Nationwide Mutual Insurance Company were also ordered to pay Schwab \$24,957.80 for medical benefits, which sum included the \$23,656.00 owed to Dr. Matthew Concannon (and/or to Matthew Concannon, LLC, and/or to Concannon Plastic Surgery, and/or to Specialty Surgical Services, LLC). No application for review or other appeal was taken from Judge Zerrer's amended award of October 26, 2010. On November 8, 2010, Nationwide Mutual Insurance Company issued the checks shown in Exhibit A, in the amounts of \$14,967.56 and \$24,957.80. Those checks have been negotiated by Schwab and his former attorney, and the money has been divided between Schwab and his former attorney pursuant to their agreement. Schwab has not utilized any of the money to pay Dr. Concannon or any of the health care providers.

As noted above, the medical fee dispute action was not initiated by Dr. Matthew Concannon until October 2, 2012, approximately 23 months after Judge Zerrer's final award and almost 22 months after payment of the awarded amounts by Nationwide Mutual Insurance Company to Claimant.

Section 287.140.13(6) governs the medical fee dispute process in this case. It states:

*A hospital, physician or other health care provider whose services have been authorized in advance by the employer or insurer may give notice to the division of any claim for fees or other charges for services provided for a work-related injury that is covered by this chapter, with copies of the notice to the employee, employer and the employer's insurer. Where such notice has been filed, the administrative law judge may order direct payment from the proceeds of any settlement or award to the hospital, physician or other health care provider for such fees as are determined by the division. The notice shall be on a form prescribed by the division. (Italics added for emphasis.)*

Thus, a part of the claim(s) by Concannon Plastic Surgery and Specialty Surgical Services, LLC is that the services were “authorized in advance by the employer or insurer”. On the APPLICATIONS FOR DIRECT PAYMENT filed on November 8, 2012, Counsel for Concannon Plastic Surgery and Specialty Surgical Services, LLC checked the box stating: “Authorization potentially in dispute”. Also on the line(s) under the heading “Name and Title of Person Who Authorized Services”, no name is listed. There was no evidence adduced that John Lamb authorized the services, nor was there any evidence adduced that Vinod Gandhi, Shabbir Patel or anyone else from Yogi Krupa, Inc. authorized the services. There was no evidence adduced that anyone employed by Nationwide Mutual Insurance Company, or purporting to represent Nationwide Mutual Insurance Company authorized the services. For this reason alone, the APPLICATIONS FOR DIRECT PAYMENT should be denied.

Additionally, Section 287.140.13(6), as noted above, contains the following provision: “the administrative law judge *may* order direct payment from the proceeds of any settlement or award to the hospital, physician or other health care provider for such fees as are determined by the division”; in other words, an administrative law judge is never *required*, in a medical fee dispute process initiated by an APPLICATION FOR DIRECT PAYMENT, to award any sums to be paid directly to the health care provider. Whether such payment shall be made to the injured employee, or directly to the health care provider, is solely in the discretion of the administrative law judge. The moneys being sought by Dr. Matthew Concannon (and/or by Matthew Concannon, LLC, and/or by Concannon Plastic Surgery, and/or by Specialty Surgical Services, LLC) in this case have already been ordered by the Division of Workers’ Compensation (per Judge Zerrer) to be paid to Schwab, and those moneys have been paid to Schwab. To order Employer-Insurer to pay those moneys a second time would be an obvious injustice; the medical fee dispute process was never intended to subject an employer or an insurer to multiple liabilities for the same medical charges. Therefore, even if the services in question *had been authorized* in advance, the proper exercise of discretion, in this case, would be for the administrative law judge NOT to order direct payment to the health care provider(s).

For these reasons, the APPLICATIONS FOR DIRECT PAYMENT are denied in full.

Made by: \_\_\_\_\_

ROBERT J. DIERKES  
*Chief Administrative Law Judge*  
*Division of Workers’ Compensation*