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assurance of compliance. The assurance of compliance was a voluntary agreement, which was negotiated and entered into by Zawaideh and the assistant attorney general.[48] Thus, we find that the rescission of this agreement of compliance is at the discretion of the parties and not compelled by law. And second, the record establishes that the assistant attorney general did not go beyond her authority in entering into the assurance of compliance. Under the Uniform Credentialing Act, the Attorney General's office has the authority to enter into an assurance of compliance with a medical professional.[49] Thus, we hold that the Attorney General is not legally required to rescind the contract.

Therefore, the district court did not err in determining that it lacked subject matter jurisdiction, because sovereign immunity bars Zawaideh's misrepresentation claims.

CONCLUSION

We hold that the district court erred in finding that Zawaideh's fraudulent and negligent misrepresentation claims were subject to, and barred by, the State Contract Claims Act. However, we find that, albeit for different reasons, the district court did not err in granting summary judgment on the issue of subject matter jurisdiction.

AFFIRMED.

CONNOLLY, J., not participating.

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[48] *Zawaideh I, supra* note 1.

[49] § 38-1,108.

KERI CLARK, APPELLANT, V. ALEGENT HEALTH NEBRASKA, APPELLEE.

825 N.W.2d 195

Filed January 18, 2013. No. S-12-271.

1. **Workers' Compensation.** Under Neb. Rev. Stat. § 48-120(2)(a) (Reissue 2010), an employee has the right to select a physician who has maintained the

employee's medical records prior to an injury and has a documented history of treatment with the employee prior to the injury. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court.

2. ____. In a workers' compensation case, the physician selected by an injured employee may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury requires.
3. ____. An employer is not responsible for medical services furnished or ordered by any physician or other person selected by an injured employee in disregard of Neb. Rev. Stat. § 48-120(2)(a) (Reissue 2010).
4. ____. The form and manner of the right of selection of a treating physician are established in Workers' Comp. Ct. R. of Proc. 50(B)(2) (2009).
5. ____. Workers' Comp. Ct. R. of Proc. 50(A)(6) (2009) provides that an employee may choose a physician if compensability is denied and that the employer will pay for medical, surgical, or hospital services later found to be compensable.
6. ____. Neb. Rev. Stat. § 48-120(2)(a) (Reissue 2010) provides that if compensability is denied by the employer, the employee has the right to select a physician and the employer is liable for medical services subsequently found to be compensable.
7. **Workers' Compensation: Words and Phrases.** Workers' Comp. Ct. R. of Proc. 49(A) and (C) (2006) defines compensability and denial of compensability. "Compensability" or "compensable," when used with reference to injuries or diseases, means personal injuries for which an employee is entitled to compensation from his or her employer. "Denial of compensability" or "compensability is denied" means a denial that the employee is entitled to compensation for personal injury from his or her employer.
8. **Workers' Compensation.** If an employer has sufficient knowledge of an injury to an employee to be aware that medical treatment is necessary, it has the affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate; if the employer fails to do so, the employee may make suitable independent arrangements at the employer's expense.

Appeal from the Workers' Compensation Court: THOMAS E. STINE, Judge. Reversed and remanded.

Sean P. Rensch and Richard J. Rensch, of Rensch & Rensch Law, for appellant.

Patrick R. Guinan, of Erickson & Sederstrom, P.C., for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

HEAVICAN, C.J.

INTRODUCTION

This is a workers' compensation case filed by Keri Clark, appellant, against her employer, Alegent Health Nebraska (Alegent), appellee. On April 18, 2010, while Clark was employed as a nurse by Alegent, she was attacked by a psychiatric patient at Immanuel Medical Center, her place of employment. The trial court found Clark suffered a compensable injury from the April 18 incident and found the incident caused an aggravation of a non-work-related head, neck, and shoulder condition for which Clark had recently undergone surgery. The trial court found medical treatment, including a 2011 surgery, was necessary and reasonable subsequent to the incident. The trial court, however, denied all compensation for treatment and bills from medical providers other than Dr. Nils Nystrom, finding that Clark failed to produce evidence of a "chain of referral" for these medical providers, pursuant to Neb. Rev. Stat. § 48-120(2)(e) and (f) (Reissue 2010), and that some of the treatment Clark received was not related to the incident. We reverse, and remand.

FACTUAL BACKGROUND

The parties do not dispute that Clark was employed by Alegent at Immanuel Medical Center as a nurse when she was attacked by a psychiatric patient on April 18, 2010, during the course and scope of her employment. Clark was grabbed from behind by the patient, by her hair and shoulder, and thrown against the wall and onto the floor, sustaining a head, neck, and shoulder injury. Six weeks prior to the incident, on March 2, Clark had undergone surgical exploration, decompression, and neurolysis of the left spinal accessory nerve for non-work-related medical issues. The surgery was performed by Dr. Nystrom.

[1-3] Alegent paid for Clark's subsequent emergency room visit after the attack. On April 23, 2010, Alegent provided Clark with Workers' Compensation Court form 50. On such form, Clark designated Dr. Nystrom as her treating physician for the injury sustained from the work incident. Section 48-120

explains the legal ramifications of selecting a treating physician for an injury subject to workers' compensation:

> (2)(a) The employee has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury . . . . The employer shall notify the employee following an injury of such right of selection *in a form and manner and within a timeframe established by the compensation court*. . . .
>
> . . . .
>
> (e) The physician selected may arrange for any consultation, *referral*, or extraordinary or other specialized medical services as the nature of the injury requires.
>
> (f) *The employer is not responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section*.

(Emphasis supplied.)

[4] The form and manner of this "right of selection"[1] of a "treating physician" are established in Workers' Comp. Ct. R. of Proc. 50(B)(2) (2009):

> The Court has a form the employer may use to give notice to the employee. In all cases, the notice:
>
> a. must be given to the employee as soon as possible after the employer knows about the injury;
>
> b. must tell the employee of the right to choose a *family physician* as the *primary treating physician*;
>
> c. must tell the employee to give the employer the name of the *family physician* chosen as the *primary treating physician* as soon as possible after getting notice from the employer, and before any treatment, unless it is *emergency medical treatment*;
>
> d. must tell the employee the employer gets to choose the *primary treating physician* if the employer is not given the name of the *family physician* as soon as possible after the employee receives the notice;

[1] See § 48-120(2)(a).

> e. must tell the employee the employer gets to choose the *primary treating physician* if an authorization is needed to verify prior treatment and is not given; and
>
> f. must tell the employee the *primary treating physician* may not be changed once the employer has been given the name, unless the change is agreed to by the employer or is ordered by the compensation court. A referral by the *primary treating physician* is not a change.

After identifying Dr. Nystrom as her "primary treating physician" pursuant to the above statute and rule of procedure, Clark sought treatment from Dr. Nystrom on April 27, 2010, attempting conservative treatment for her injury. Clark missed 3 days of work after the incident. She attempted to contact the caseworker identified by Alegent in order to make arrangements to receive workers' compensation benefits for this period of absence. Clark testified she received no response after several attempts to reach the designated contact. Neither Alegent nor its designated contact returned Clark's telephone calls or made arrangements to pay Clark for her treatment with Dr. Nystrom or absence from work. The record indicates no meeting occurred between Clark and Alegent or one of its representatives wherein Alegent would have informed Clark that she would not be paid for her medical treatment or absence from work. Furthermore, Alegent did not provide Clark with a written statement indicating she would not be paid for her medical treatment or absence from work.

On July 30, 2010, Alegent hired Dr. D.M. Gammel to examine Clark's medical records both prior to and subsequent to the work incident. Dr. Gammel issued his report to Clark's workers' compensation caseworker. In his report, Dr. Gammel issued an independent medical opinion stating that Clark was injured and had been treated by Dr. Nystrom, but had recovered and returned to "baseline" as of May 1, 2010. After the report was issued, neither Alegent nor Clark's workers' compensation caseworker made arrangements to pay Clark for her treatment or absence from work.

Clark later received treatment and/or was prescribed medication from at least seven other physicians. However, Dr. Nystrom did not refer Clark to any of these physicians and

Clark did not list any of them on the Workers' Compensation Court form 50. Clark also received treatment from three physicians who had been referred to Clark by Dr. Nystrom.

On September 14, 2010, Clark reported to the emergency room at Immanuel Medical Center. The record indicates that at that time, Clark complained to the staff on call about shoulder pain related to a work incident that had occurred 3 years ago—not the April 2010 incident at issue in this case.

On March 17, 2011, after almost a year of treatment for Clark's injury, Dr. Nystrom performed decompression surgery on Clark's head, neck, and shoulder areas, similar to Clark's March 2, 2010, surgery. Alegent disputed the reasonableness and necessity of that surgery and on February 17, 2011, had Clark evaluated by Dr. Charles Taylon. On February 22, prior to the March 17 surgery, Dr. Taylon opined that decompression surgery was not an accepted procedure for Clark's complaints.

On March 23, 2011, Clark filed suit against Alegent for expenses related to this incident. On April 6, Alegent filed its answer. Alegent admitted that Clark suffered a work-related incident on April 18, 2010, and that she was employed by Alegent as a nurse, but generally denied the nature and extent of Clark's injury. The only affirmative defense alleged in its answer was that Clark's injury or disability was the natural progression of a preexisting condition due to reasons other than her employment. Also, there was no discussion of any chain-of-referral issues in the trial court's pretrial order.

The main issue at trial was the compensability of the March 17, 2011, surgery performed by Dr. Nystrom. Alegent asserted that the medical treatment performed by Dr. Nystrom was not reasonable and necessary to treat Clark's injury. In its closing argument, Alegent argued, for the first time, that other medical benefits claimed by Clark fell outside the chain of referral from her primary treating physician. On March 1, 2012, the trial court entered an award in favor of Clark, finding that Clark's previous head, neck, and shoulder injury was aggravated by the April 18, 2010, attack and that the March 17, 2011, surgery was reasonable and necessary because of the injury caused by the attack. The trial court's award also

included payment for all medical expenses associated with Dr. Nystrom and those doctors Clark sought treatment with upon Dr. Nystrom's referral. Alegent received credit for the $777.02 amount it had already paid toward Clark's medical expenses, including her initial emergency room visit.

But because Dr. Nystrom did not refer Clark to the majority of the other doctors, the trial court denied payment of the medical expenses associated with those doctors. The trial court held that all of the medical expenses related to treatment from the doctors other than Dr. Nystrom, or those doctors Dr. Nystrom referred Clark to for treatment, were not compensable. The trial court stated that under § 48-120(2)(e) and (f), Clark had a duty to produce sufficient evidence showing a chain of referral from Dr. Nystrom to these other doctors, as Dr. Nystrom was the only doctor she designated on form 50 as her treating physician. The trial court found Clark had failed to do so in compliance with the statute and rules of procedure.

The trial court also found that treatment on September 14, 2010, at Immanuel Medical Center's emergency room was not related to Clark's April 18, 2010, work injury, because at the time of the visit, Clark complained of pain related to her past injury to her head, neck, and shoulder. Clark appeals.

ASSIGNMENTS OF ERROR

Clark assigns, restated and consolidated, that the trial court erred in (1) requiring chain-of-referral proof for all medical treatment Clark received from doctors other than Dr. Nystrom; (2) disallowing payment for certain medical benefits for various reasons, including that Alegent failed to plead as an affirmative defense that Clark violated the chain-of-referral provisions as set forth in § 48-120(2) and (3); and (3) finding that treatment on September 14, 2010, was not related to the April 18 work injury.

STANDARD OF REVIEW

The judgment made by the compensation court shall have the same force and effect as a jury verdict in a civil case.[2] A

[2] Neb. Rev. Stat. § 48-185 (Cum. Supp. 2012).

judgment, order, or award of the compensation court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.[3]

On appellate review, the findings of fact made by the trial judge of the Workers' Compensation Court have the effect of a jury verdict and will not be disturbed unless clearly wrong.[4] If the record contains evidence to substantiate the factual conclusions reached by the trial judge in workers' compensation cases, an appellate court is precluded from substituting its view of the facts for that of the compensation court.[5] An appellate court is obligated in workers' compensation cases to make its own determinations as to questions of law.[6]

ANALYSIS

Chain of Referral.

[5,6] Clark first assigns that the trial court erred in denying payment for all her medical expenses outside of the chain of referral to Dr. Nystrom, because the trial court found her injury was compensable and Alegent effectively "denied compensability" under § 48-120(2)(a) and rule 50(A)(6). Clark argues Alegent's denial of compensability entitled Clark to choose her treating physicians and avoid the chain of referral under § 48-120(2)(e) and (f). Rule 50(A)(6) of the Nebraska Workers' Compensation Court rules of procedure provides: "The employee may choose a *physician* if *compensability is denied* and the employer will pay for medical, surgical, or hospital services later found to be *compensable*." Section 48-120(2)(a) provides, in accord, "If compensability is denied by the [employer,] the employee has the right to select a

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[3] *Manchester v. Drivers Mgmt.*, 278 Neb. 776, 775 N.W.2d 179 (2009).

[4] *Id.*

[5] *Id.*

[6] *Larsen v. D B Feedyards*, 264 Neb. 483, 648 N.W.2d 306 (2002).

physician and . . . the employer is liable for medical . . . services subsequently found to be compensable."

[7] On appeal, we must determine whether Alegent denied compensability for purposes of § 48-120 and rule 50(A)(6). The Nebraska Workers' Compensation Court rules of procedure define "[c]ompensability" and "[d]enial of compensability." "'Compensability' or 'compensable' when used with reference to injuries or diseases means personal injuries for which an employee is entitled to compensation from his or her employer . . . ."[7] "'Denial of compensability' or 'compensability is denied' means a denial that the employee is entitled to compensation for personal injury from his or her employer . . . ."[8] The trial court did not consider whether Alegent effectively denied Clark compensability pursuant to the statute and rules of procedure.

[8] Larson's Workers' Compensation Law discusses the circumstances which effectuate an employer's "denial of compensation" under statutory workers' compensation provisions similar to those of Nebraska:

> The central rule defining the circumstances under which a claimant may on his or her own initiative incur compensable medical expense may be put as follows: If the employer has sufficient knowledge of the injury to be aware that medical treatment is necessary, it has the affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate; if the employer fails to do so, the claimant may make suitable independent arrangements at the employer's expense.[9]

Here, Clark became injured on April 18, 2010. Alegent was notified and paid for Clark's emergency room visit. Clark was provided with form 50 from Alegent and she filled it out, indicating that Dr. Nystrom would be her treating physician.[10]

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[7] Workers' Comp. Ct. R. of Proc. 49(A) (2006).

[8] Rule 49(C).

[9] 5 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 94.02[4][a] at 94-15 to 94-16 (2011).

[10] See *Radil v. Morris & Co.*, 103 Neb. 84, 170 N.W. 363 (1919).

Thus, at this point, Alegent had sufficient knowledge of the injury and was aware that medical treatment may be necessary. After the initial emergency room visit, on April 27, 2010, Clark reported to Dr. Nystrom, her treating physician, for treatment. Clark missed work after the incident and attempted to contact the person identified by Alegent to make arrangements to receive workers' compensation benefits for this period of absence. Clark testified she received no response after several attempts to reach the designated contact. Neither the designated contact nor Alegent made arrangements to pay for Clark's medical care.

Three months after Clark's initial treatment with Dr. Nystrom, on July 30, 2010, Alegent had Dr. Gammel examine Clark's medical records dated both before and after the incident. After his examination, Dr. Gammel issued an independent medical opinion report stating that Clark had been injured and treated by Dr. Nystrom on April 27, but that Clark had returned to "baseline" as of May 1. This report was given to Clark's workers' compensation caseworker. After the caseworker received the report, Alegent did not pay for the April 27 treatment Clark had received from Dr. Nystrom.

We find Alegent did not uphold its affirmative and continuing duty to supply medical treatment that is prompt, in compliance with the statutory prescription on choice of doctors, and adequate for Clark's specific injury. Alegent had sufficient notice of the incident; Clark's initial treatment with Dr. Nystrom, her designated treating physician; and the necessity of such treatment, but did not contact Clark or return her calls in order to cover this expense and her short absence from work. Furthermore, after Dr. Gammel reviewed Clark's case, Alegent again did not make arrangements to cover Clark's initial treatment with Dr. Nystrom or her absence from work. Thus, Alegent denied compensability for Clark's injury.[11] Clark

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[11] See, e.g., *West Side Transport v. Cordell*, 601 N.W.2d 691 (Iowa 1999); *Breckle v. Hawk's Nest, Inc.*, 980 S.W.2d 192 (Mo. App. 1998), *overruled on other grounds, Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003); *Pruteanu v. Electro Core, Inc.*, 847 S.W.2d 203 (Mo. App. 1993), *overruled on other grounds, Hampton, supra*.

contacted Alegent almost a year later concerning payment of a surgery to the injured area to be performed by Dr. Nystrom. Alegent denied compensability for this medical expense after reviewing a report from one of its own physicians, never changing its position on Clark's case.

Because Alegent effectively denied compensability for Clark's injury, Clark had a right to select her own physicians for treatment. Thus, under § 48-120(2)(a) and rule 50(A)(6), Clark was entitled to choose her treating physicians and surgeons and avoid the chain of referral under § 48-120(2)(e) and (f) after her April 27, 2010, treatment with Dr. Nystrom. Furthermore, as Clark's injury was later deemed compensable by the trial court under § 48-120(2)(a) and rule 50(A)(6), Alegent is liable for all medical treatment of Clark's compensable injury, not only by Dr. Nystrom, but also the other physicians with whom Clark chose to treat as well.

Thus, the trial court erred in not considering whether Alegent denied compensability before denying Clark payment for her medical treatment outside the chain of referral from Dr. Nystrom because (1) Clark was not subject to the chain-of-referral provisions, as Alegent denied compensability for her injury, and (2) her injury was later found compensable by the trial court. We reverse the final award of the trial court and remand the cause to the trial court for a new damage award consistent with this finding.

In light of this finding, we do not address Clark's second assignment of error, in which Clark claims that the trial court erred in disallowing payment for some of her medical benefits, namely, because Alegent failed to plead as an affirmative defense that Clark violated the chain-of-referral provisions.

September 14, 2010, Emergency Room Visit.

In her final assignment of error, Clark argues that the trial court erred in finding that the medical treatment Clark incurred on September 14, 2010, was not related to her April 18 work injury. We find that this conclusion is not supported by the evidence. Although, as the trial court noted, the record of the September 14 emergency room visit indicates the history of

Clark's long-term issues with her head, neck, and shoulder areas, it is clear from the other evidence in the record that Clark was seeking treatment not because of her older injury, but because of how the April 18 injury aggravated her previous head, neck, and shoulder injury.

Less than a month before this emergency room visit, Clark was attacked at work. The trial court held that this attack left Clark with a compensable injury, including surgery performed almost a year after the event. In light of this fact and the trial court's holding, we conclude that during her September 14, 2010, emergency room visit, Clark was explaining the history of issues she had had in this area of her body at the time of the September emergency room visit. Such explanation demonstrated to the treating staff at the time of the September 14 emergency room visit that this area of her body had become aggravated by the work incident that occurred less than a month before this time. It was inconsistent for the trial court to find that Clark's head, neck, and shoulder areas were injured in April 2010, requiring surgery in March 2011, but that a September 2010 emergency room visit regarding her head, neck, and shoulder areas, occurring between these two events, was not related to the April 2010 incident. Thus, the trial court was clearly wrong in finding that Clark's treatment on September 14 was not related to the April 18 work injury. This treatment should also be deemed compensable by the trial court.

We reverse the final award of the trial court and remand the cause for a new damage award consistent with these findings. The trial court erred in requiring chain-of-referral proof for all medical treatment Clark received. Alegent denied compensability for Clark's injury, and under § 48-120(2)(a) and rule 50(A)(6), Clark was thereby entitled to choose her treating physicians and avoid the chain of referral under § 48-120(2)(e) and (f).

Furthermore, the trial court was clearly wrong in finding that treatment on September 14, 2010, was not related to the April 18 work injury. This treatment should be deemed compensable by the trial court.

CONCLUSION

Accordingly, we reverse the decision of the trial court and remand the cause for an amended final award consistent with this opinion.

REVERSED AND REMANDED.

STATE OF NEBRASKA, APPELLEE, V.
CHAD NORMAN, APPELLANT.
824 N.W.2d 739

Filed January 18, 2013. No. S-12-339.

1. **Criminal Law: Convicted Sex Offender: Evidence.** A crime that is generally not a typical sex crime may still require registration under the Sex Offender Registration Act if the court finds that evidence of sexual penetration or sexual contact was present in the record.
2. **Convicted Sex Offender: Appeal and Error.** An appellate court will affirm a court's ruling that a defendant must register under the Sex Offender Registration Act if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found with a firm conviction that the crime involved sexual contact.
3. **Evidence: Appeal and Error.** As with any sufficiency claim, regardless whether the evidence is direct, circumstantial, or a combination thereof, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact.

Appeal from the District Court for Buffalo County: JOHN P. ICENOGLE, Judge. Affirmed.

Michael J. Synek for appellant.

Jon Bruning, Attorney General, and Nathan A. Liss for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

CONNOLLY, J.

NATURE OF CASE

Chad Norman pled no contest to third degree assault. Based solely on the factual basis for the plea, the district court ordered