

## Appropriate Care: A Smorgasbord of Interesting Disability Cases

December 12, 2011 by [Martin Rosen](#)

[\*Paul Revere Life Ins. Co. v. DiBari\*](#), 2010 U.S. Dist. LEXIS 122906 (D. Conn. 2010)

**Facts and holding:** On April 29, 2008, dentist Michael DiBari (“DiBari”) submitted a claim for total disability benefits under his disability income and business overhead expense coverage (“BOE”) policies with Paul Revere Life Insurance Company (“Paul Revere”) as a result of bilateral carpal tunnel syndrome.

Paul Revere ultimately denied DiBari’s claim because after conservative treatment failed to alleviate his symptoms, DiBari declined to undergo carpal tunnel release surgery. Although DiBari’s treating physician believed there was a risk that the surgery might not be successful, he and DiBari’s neurologist both agreed that DiBari did not have any contraindications to the surgery and that the surgery was not “medically inappropriate.” Additionally, Paul Revere’s in-house board certified orthopedic surgeon and an independent hand surgeon both agreed that by failing to undergo release surgery, DiBari was not seeking and receiving “appropriate care” for his symptoms.

In order to be eligible to receive total disability benefits under the policies DiBari was required to be “receiving Physician’s Care,” among other things. Both policies defined “Physician’s Care” as the regular and personal care of a Physician which, under prevailing medical standards, is **appropriate** for the condition causing the disability.” (Emphasis added.)

Paul Revere interpreted this language to mean that DiBari must obtain “appropriate care” for his bilateral carpal tunnel syndrome.

Paul Revere brought a complaint for declaratory relief and moved for summary judgment on the grounds that by refusing the release surgery, DiBari was not receiving “appropriate care” and was thus ineligible to receive disability benefits. DiBari interpreted the same policy language to require only that he receive “regular and personal care,” which he argued did not include surgery.

The Court agreed with Paul Revere’s interpretation of the policy language, holding that the policy obligated DiBari to do more than receive “regular care”; he was required to seek and accept appropriate medical care for his condition. It was undisputed that conservative treatment failed to alleviate DiBari’s symptoms and his treating physicians agreed that release surgery did not pose any risk to DiBari, and was not medically inappropriate. Accordingly, Paul Revere was entitled to summary judgment on its complaint for declaratory relief.

**Lessons Learned:** In reaching its decision, the Court relied in part on the Northern District of California’s decision in [\*Buck v. Unum Life Ins. Co.\*](#), 2010 U.S. Dist. LEXIS 22479 (N.D. Cal. 2010), a case which the author included in last year’s *Cornucopia*

presentation. The *Buck* case also dealt with the issue of an insured's duty to undergo carpal tunnel surgery under the "appropriate care" provisions of the disability policy at issue. The policy language at issue in *Buck* was similar to the disputed policy language in the present case, requiring the insured to be "receiving medical care from someone other than himself which is appropriate for the injury or sickness." The *Buck* Court held that this language obligated a claimant to receive "appropriate care." However, the *Buck* Court declined to grant a summary judgment motion on the issue of whether the insured's failure to undergo carpal tunnel surgery equated with a failure to receive appropriate care because, in that case, there were conflicting opinions as to whether surgery was appropriate treatment for Buck.

In the present case, there were no conflicting opinions concerning whether surgery would be appropriate for DiBari. The undisputed facts demonstrated that conservative treatment failed to alleviate DiBari's carpal tunnel symptoms and that DiBari's physicians believed that the surgery was neither contraindicated nor medically inappropriate. Therefore, while the determination as to what is "appropriate care" is often fact and case-specific, a court should not decline to decide the issue on summary judgment where the facts are undisputed that the care in question is "appropriate."

From [\*A Smorgasbord of Interesting Disability Cases.\*](#)