Ankenævnet *for* Forsikring

Den 19. februar 2020 blev i sag nr. 93886:

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xxxxxxxxxxxxxxx

mod

Bupa Denmark Services A/S
Palægade 8
1261 København K

afsagt

k e n d e l s e :

_____

Forsikringstageren har sygeforsikring. I klageskrift af 24/6 2019 til nævnet har klagerens advokat bl.a. anført:

> "**PÅSTAND:**
> Indklagede, BUPA Insurance Limited, skal anerkende, at [klageren] er berettiget til dækning af sine udgifter i forbindelse med sin hospitalsindlæggelse i perioden 22. juli til 31. juli 2018 og behandlinger knyttet hertil.
> …
> **SAGSFREMSTILLING:**
> [Klageren], der er forsikret hos forsikringsselskabet BUPA, blev den 22. juli 2018 indlagt på [hospital 1] på foranledning af hotellet, han boede på. Hotellet tilkaldte en ambulance, fordi han ikke havde checket ud.
>
> [Klageren] har selv forklaret, at han var faldet på hotelværelset og havde slået sin venstre skulder, ligesom han var dehydreret.
>
> [Klageren] var indlagt på [hospital 1] fra den 22. juli 2018 til den 26. juli 2018, jf. journaludskrift fra [hospital 1] (bilag 2). Af journalnotater af 22.-23. juli fremgår, at han har smerter i begge skuldre (side 45-47 i journalen), og af journalnotater af 24-25. juli 2018 fremgår beskrivelser om undersøgelser af skulderen, herunder at han havde brækket sin venstre skulder og havde smerter i højre skulder (side 33-34 og 67-68 i journalen).
>
> [Klageren] blev under indlæggelsen bl.a. også testet negativt for indtagelse stoffer og alkohol, jf. den toksikologiske rapport i journalnotater af 22. juli 2018 fra [hospital 1] (side 13ff), ligesom han blev screenet og frifundet for at lide af depression eller angst, jf. journalnotatet af 23. juli 2018 i

samme journal og journalnotat af 26. juli 2018 på side 71-72, hvor behandlingsforløbet opsummeres.

[Klageren] blev efterfølgende indlagt på [hospital 2], hvor han var fra den 26. juli 2018 til den 31. juli 2018, jf. journaludskrift fra [hospital 2] (bilag 3). Af journaludskriften herfra fremgår bl.a., at han var indlagt på [hospital 1] for behandling af et hjerteanfald og brud i begge skuldre, jf. notat af 26. juli 2018 på side 39 og notat af 27. juli 2018 på side 63-64.

Derudover fremgår det, at han var screenet for psykiatriske symptomer, og at han ikke havde angst eller depression, jf. journalnotat af 27. juli 2018 på side 54, samt også journalnotat af 26. juli 2018 på side 40 og udskrivelsesnotat af 31. juli 2018 på side 3-4 i journalen.

Den samlede udgifter tilknyttet [klagerens] hospitalsindlæggelser og behandling beløber sig til ca. 243,666.68 $, jf. fakturaer (bilag 4).
…
[Klageren] anmodede BUPA om dækning af sine hospitalsregninger i henhold til forsikringen. I breve af henholdsvis 27. juli 2018 vedrørende [hospital 2] og 15. august 2018 vedrørende [hospital 1] afviste BUPA imidlertid at dække regningerne (bilag 5 og 6). Til støtte for afvisningen henviste BUPA til, at [klagerens] indlæggelse skyldtes stofmisbrug.

[Klagerens] amerikanske advokat ankede BUPA's afvisning ved brev af 17. januar 2019 (bilag 7) og henviste navnlig til den negative toksikologiske rapport, jf. også bilag 2.

Afvisningen blev dog tiltrådt i brev af 6. marts 2019 fra BUPA's appeludvalg (bilag 8). BUPA fastholdt, at indlæggelsen skyldtes stofmisbrug og supplerede med, at der også var tale om selvforskyldt sygdom/skade samt mentale og adfærdsmæssige lidelser, som hver for sig heller ikke er dækket af forsikringen, jf. betingelsernes pkt. 7.2, pkt. 7.10 og pkt. 7.12.
…
[Klageren] bestrider begrundelsen for afvisningen og ønsker derfor sagen indbragt for Ankenævnet for Forsikring.

ANBRINGENDER:
Det gøres til støtte for klagen overordnet gældende, at hospitalsindlæggelserne i det hele er dækket af [klagerens] forsikring hos BUPA, og at BUPA ikke har godtgjort, at indlæggelsen er omfattet af en af undtagelsesbetingelserne i afsnit 7 (punkterne 7.1 – 7.30).

Der er tale om en behandlingsforsikring, som i udgangspunktet dækker forsikringstagers hospitalsindlæggelser kun under den forudsætning, at de har været medicinsk nødvendige, jf. de indledende afsnit i betingelserne omkring dækningsområdet (punkt 2.1. og 2.2.).

I det konkrete tilfælde har indlæggelsen utvivlsomt været medicinsk nødvendig. [Klageren] blev hentet og indlagt akut ved ambulance og efterfølgende undersøgt for bl.a. væsentlige smerter i skulderen. Behandlingen er derfor i udgangspunktet omfattet af forsikringen, og det påhviler BUPA at godtgøre, at en af forsikringsaftalens undtagelser finder anvendelse, hvilket de ikke har gjort.

Det skal i den forbindelse holdes in mente, at forsikringsaftalen netop er en behandlingsforsikring (ikke en ulykkesforsikring). BUPAs forsikringsbetingelser definerer derfor heller ikke positivt, hvil-

ke 'skader' der er omfattet af forsikringen, men definerer generelt, at alle behandlinger er omfattet, i det omfang de ikke er undtaget i henhold til betingelserne i afsnit 7.

Undtagelsen i punkt 7.2.
BUPA har som anført henvist til punkt 7.2., hvorefter selvforårsaget sygdom eller skade – herunder skade i forbindelse med selvmordsforsøg, alkoholindtagelse og indtagelse af narkotika og stoffer – er undtaget fra dækning.

Det fremgår ganske vist flere steder i [klagerens] journaler fra [hospital 1], at han tager medicin relateret til hans mentale tilstand – her under xanax og zolpidem, og at han drikker alkohol – dog kun på social basis, og han er ikke afhængig heraf, jf. bilag 2.

Det må i den forbindelse fastholdes, at [klageren] som noget af det første blev testet for diverse stoffer samt alkohol, og at den toksikologiske rapport var negativ, jf. også lægens bemærkning herom i det opsummerende notat på side 72-73.

Rapporten viser således følgende:
- Amph U Screen Result – Negative
- Barb U Screen Result – Negative
- THC U Screen Result – Negative
- Cocaine U Screen Result – Negative
- Opiate U Screen Result – Negative
- PCP U Screen Result – Negative
- Ethanol Level – Non Detected

En eventuel indtagelse af medicin, alkohol eller andet har derfor ikke været af et beviseligt omfang, som kan begrunde, at [klagerens] indlæggelse skulle være undtaget fra forsikringen.

De objektive beviser, herunder den toksikologiske rapport og hospitalsjournalerne, dokumenterer tværtimod, at [klageren] netop ikke ved indlæggelsen var under indflydelse af alkohol eller stoffer, ligesom rapporten dokumenterer, at han blev undersøgt for en fysisk skade i form af smerter i skuldrene, som han også blev opereret for, idet de viste sig at være brækkede.

Undtagelserne i punkt 7.10. og 7.12.
BUPA henviser som grundlag for afvisning også til undtagelsen i forsikringsbetingelserne om behandling for mentale og adfærdsmæssige lidelser, jf. punkt 7.10. og 7.12.

Som ovenfor anført, fremgår det ganske vist af journalerne, at [klageren] forud for indlæggelsen havde modtaget behandling i form af beroligende medicin og søvnmedicin, ligesom han var til konsultation ved en psykiater to gange om måneden. Det fastholdes imidlertid, at den primære årsag til behandlingen var smerter i skulderen, jf. de beskrevne undersøgelser i journalerne samt den negative toksikologiske rapport.

I dette tilfælde er der som anført tale om en behandlingsforsikring, men skeler man til praksis for ulykkesforsikringer, og den i tilfælde af samvirkende skadesårsager anvendte hovedårsagslære, følger det netop heraf, at det er den væsentligste årsag (hovedårsagen) til en skade, der bestemmer, om der er tale om en dækningsberettiget forsikringsbegivenhed, jf. Dansk Forsikringsret, Henning Jønsson & Lisbeth Kjærsgaard, 10. udgave, 2019, s. 261-262.

Fra praksis kan bl.a. henvises til Ankenævnet for Forsikrings afgørelse af 20. januar 2016 i sag nr. 88462. I denne sag var klager besvimet og havde slået baghovedet. Forsikringsselskabet afviste, at der var tale om en ulykke og henviste til klagers tidligere alkoholisme og brug af antabusbehandling på skadestidspunktet, samt at en speciallægeerklæring viste tegn på blodpropper i hjernen, hvorved det ikke kunne udelukkes, at forandringer i hjernen var årsagen til klagers besvimelse. Forsikringsselskabet fastholdt derfor, at sygdom var hovedårsagen til klagers besvimelse. Nævnet fandt det imidlertid ikke bevist, at hovedårsagen til klagerens besvimelse skyldtes sygdom.

Der kan også henvises til Ankenævnet for Forsikrings afgørelse af 22. november 2017 i sag nr. 90821. Her blev klageren under dykning utilpas og steg op til overfladen. Under opstigningen fik hun dykkersyge, som hun efterfølgende blev behandlet for. Forsikringsselskabet afviste at yde forsikringsdækning med henvisning til bl.a., at klageren gentagne gange forud for det anmeldte ulykkestilfælde havde haft besvimelsestilfælde, og at den eksisterende lidelse havde medvirket til utilpasheden og dermed til, at klageren fik dykkersyge.

Nævnet udtalte imidlertid, at selskabet ikke havde løftet bevisbyrden for, at hovedårsagen til ulykkestilfældet var sygdommen, idet de lægelige akter ikke påviste egentlig eksisterende sygdomstilfælde i hjerne eller hjerte.

Afgørelserne viser, at lægeerklæringer, der ikke peger på akutte sygdomsmæssige forhold, men udelukkende refererer til tidligere sygdomme, ikke udgør tilstrækkeligt grundlag for at afvise dækning med henvisning til, at en ulykke er sygdomsfremkaldt.

Overført til den konkrete sag blev [klageren] testet og screenet negativ for depression og alkohol-/narkoindtag, ligesom [hospital 1] heller ikke fandt tegn på aktuel sydom i øvrigt, jf. journalnotat af 23. juli 2018 i bilag 2. Desuden fremgår det klart, at [klageren] blev undersøgt og opereret for smerter i skulderne.

Det gøres herefter sammenfattende gældende,

- **at** [Klagerens] behandlingsforløb i juli 2018 primært udsprang af en fysisk skade omfattet af forsikringsdækningen,
- **at** der ikke foreligger bevis for, at den konkrete behandling, der ønskes dækket, udsprang af selvforskyldt skade i form af selvmordsforsøg, alkoholindtagelse eller anvendelse af stoffer
- **at** der heller ikke foreligger bevis for, at den konkrete behandling, der ønskes dækket, skyldtes en psykisk eller adfærdsmæssig lidelse, og
- **at** BUPA derfor ikke har ført tilstrækkeligt dokumenteret bevis for, at der i denne sag er grundlag for at afvise dækning med henvisning til en af forsikringsaftalens undtagelsesbestemmelser

OPGØRELSE AF KRAV:
De samlede hospitalsudgifter kan opgøres til skønsmæssigt $ 243,666.68, jf. bilag 4."

Selskabet har i brev af 12/8 2019 til nævnet bl.a. redegjort for sagsforløbet og afgørelsen således:

"[The Complainant] obtained a Bupa Insurance Limited [the Insurer] Complete Care Plan with policy no. … [the Policy] on 1 December 2011. The reason for the Complainant's complaint stems from the fact that the Insurer denied coverage under the Policy for the Complainant's hospitalizations (and treatment carried out in connection with these) at [hospital 1] during the period 22 July to 26 July 2018 and at [hospital 2] during the period 26 July to 31 July 2018. The Insurer denied coverage on the basis of sections 7.2, 7.10 and 7.12 of the Policy, as the Insurer assessed that the Complainant's medical condition at the time of the hospitalizations was the direct result of the Complainant's substance abuse.

The Insurer is of the firm opinion that the Complainant's injury – for which the Complainant was hospitalized – was a direct cause of the Complainant's substance abuse, as the Complainant's shoulder injury was inflicted during a seizure induced by benzodiazepine withdrawal. The Insurer supports its opinion on the medical records received from the First Hospital and the Second Hospital, respectively, as well as statements from the hospital staff, the Complainant's [family members] and the Complainant himself reproduced in the aforementioned medical records. The Policy clearly excludes coverage of any care or treatment received due to alcohol use or abuse, drug use or abuse, or the use of illegal substances or illegal use of controlled substances, including any accident resulting from any of the aforementioned criteria. Against this background, the Insurer maintains that the rejection of coverage was legitimate under the Policy.

Statement of Defense
In the Complainant's Statement of Claim to the Insurance Complaints Board dated 24 June 2019 [the Complaint], there are numerous factual details which are not consistent or complete based on the medical records received by the Insurer. As such, the Insurer would like to provide further clarification and explanation.
…
The Complainant was hospitalized at the First Hospital from 22 July 2018 to 26 July 2018. During this hospitalization, the Complainant was consulted numerous times by physicians and psychiatrists as part of the diagnosis and treatment. Notes from these consultations are included in the medical record from the First Hospital enclosed by the Complainant as appendix two [the First Medical Record].

On 22 July 2018, the Complainant was brought to the First Hospital by ambulance by Emergency Hospital Services [the EMS]. The EMS reported that they were summoned to the Complainant's hotel by the hotel staff as the Complainant had not checked out in due time. The EMS team reported that the Complainant had taken medication in the form of 'Vyvanse,' 'Seroquel' and 'Aiergil'. The EMS further reported the presence of the Complainant's [family members] who stated that the Complainant was currently visiting them in … but that the Complainant lived in [country] The EMS noted that the Complainant was described by the family members as being 'depressed lately', and they stated that the Complainant might had taken an extra dose of his nerve pills prescribed to him in [country of residence]. According to the [family members], an overdose on prescription pills had happened to the Complaint before and they further noted that he had been hospitalized in the past for the same reason.

Upon admission to the First Hospital by the EMS on the evening of 22 July 2018, the Complainant was described during a mental status examination as appearing with 'altered mental status' and for this reason, the Complainant was '… Acted' (a 72-hour psychiatric hold). The Complainant was further described as disoriented, confused and showed decreased responsiveness. However, the

… Act was discontinued following the initial consultation as the examining hospital employee assessed the Complainant as not being suicidal or homicidal.

On the evening of 22 July 2018, the staff at the First Hospital ran a toxicology screening of the Complainant, which – as set out by the Complainant in the Complaint – was negative for i.a. alcohol, amphetamine, and cocaine. However, this first toxicology screening included in the First Medical Record makes no mention of a test for benzodiazepines, which the Complainant had developed a dependency to, and for which he had suffered overdose episodes in the past.

During a physical examination on 23 July 2018, the Complainant explained that he was under psychiatric treatment taking 'Ambien' and 'Aiprazolam' and that he had gone to a party and consumed alcohol. He was then brought to the hospital without recollection of what had happened. In connection with this physical examination, the Complainant was diagnosed with 'rhabdomyolysis' which to the Insurers understanding is a complex medical condition involving the rapid dissolution of damaged or injured skeletal muscle. Drug or alcohol abuse, medical drug use, trauma, NMS and immobility are listed as the primary causes to the condition in adults.

Also on 23 July 2018, the Complainant was consulted by a psychiatrist. During this consultancy, it was noted that Complainant explained that he had ingested more alcohol than usual as well as sleep medication, and that he did not feel well. It was furthermore noted that the Complainant stated that he had regularly seen a psychiatrist in [country of residence] and that he would ingest 'Wellbutrin XL 150 mg' in the morning and 'Zolpidem' in the night. As evidenced by the First Medical Record, the Complainant stated that he would drink alcohol on a routine basis while continuing to take the medication prescribed to him by his psychiatrist in [country of residence], despite being aware of the potential side effects and harm of mixing alcohol with the prescribed controlled substances.

On 24 July 2018, another consultation with the Complainant took place at the First Hospital. In the First Medical Record, the Complainant is described as a poor historian who was inconsistent with his answers. Further, it was noted that the Complainant was unable to completely determine exactly when and how the shoulder pain started. Also during this consultation, the Complainant admitted to being a chronic 'Xanax' abuser. Furthermore, in a psychiatry progress note dated 24 July 2018 the Complainant was noted as suggesting that a combination of 'Zolpidem' and alcohol may have triggered his fall. In a progress note created 25 July 2018 by the staff of the First Hospital, the staff assessed that the Complainant had been inconsistent in his answers and that he had not given the true story about what had happened. In another psychiatry progress note from 25 July 2018, the Complainant was again described as a poor historian.

A psychiatry progress note dated 26 July 2018 describes that the Complainant had ingested 'Zolpidem' with alcohol prior to his injury and that in general, he had a tendency of taking his prescription medication simultaneously with alcohol. During this Consultancy, the possibility of a detoxification was discussed. The Complainant's [family member] requested a detoxification at the First Hospital; however, the Complainant expressed an intention of taking care of the situation, himself, in [country of residence]. In this progress note, it is further stated that the Complainant had experienced a seizure, and that he would ingest 15 'Zolpidem 10 mg' tablets and seven 'Zolpidem 1 mg' tablets on an average. As a result of these high dosage ingestions, a detoxification was suggested by the consultant; however, the Complainant refused again stating he would handle his own detoxification in [country of residence].

On 26 July 2018, the Complainant left the First Hospital against medical advice and was admitted into the Second Hospital on the same day. In the Second Medical Record, it is stated that the Complainant left the First Hospital as he was unhappy with the care at the First Hospital rehabilitation.
During an initial consultancy on 26 July 2018 at the Second Hospital, the Complainant reported that he was in the First Hospital for a seizure episode due to withdrawal from benzodiazepine, and that he had recently changed his dosage of 'Xanax' and 'Ambien'.

The toxicology test run at this Second Hospital, performed 26 July 2018 showed an abnormal level of both benzodiazepines and opiates.

The Complainant was during a consultancy on 27 July 2018 diagnosed as having benzodiazepine withdrawal with seizures as well as having abused substances. From a drug test performed 29 July 2018, it appears that the Complainant was again tested positive for both benzodiazepines and opiates.

On the same day, the Insurer denied coverage of the costs to be expensed by the Complainant in connection with his hospitalization of the Second Hospital. The reason for the denial was that the Complainant's at that time current medical conditions was triggered by the Complainant's substance abuse.

On 31 July 2018, the Complainant was discharged from the Second Hospital. In the discharge summary from the Second Hospital dated 31 July 2018, the Complainant was described as having a 'history with severe anxiety' and that the Complainant had 'self medicated with benzos for years.' It is noted that he was presented initially at the First Hospital as he was ingesting 8 mg of 'Xanax' daily, 150 mg of 'Ambien' daily as well as 300 mg of 'Seroquel' daily. While at the First Hospital, the Complainant had undergone a withdrawal seizure resulting in further injury.

The Insurer denied coverage of the Complainant's hospitalization at the First Hospital on 15 August 2018. The reason was again that the Complainant's at that time current medical condition was a direct result of the Complainant's abuse of substances.

The Complainant with legal assistance appealed both of the Insurer's rejections of coverage under the Policy on 17 January 2019. On appeal at Bupa Appeal Committee [the Committee], the rejections of coverage were upheld with reference to sections 7.2, 7.10 and 7.12 of the Policy. Further, the Committee made reference to the medical records received from the First Hospital and Second Hospital, respectively. More specifically, the Committee emphasized that the medical records made multiple references to 'rhabdomyolysis', 'altered mental status', 'overdose', 'substance abuse', 'benzodiazepine dependence', 'benzodiazepine withdrawal with seizures', 'depression', 'anxiety' and 'insomnia', and the Committee was assessed that all of those conditions directly linked the Complainant's treatment to the general exclusions under the Policy.

Submissions
The Complainant's medical condition and the consequences thereof at the time of the hospitalizations was a direct result of the Complainant's abuse of substances The Insurer maintains that the Complainant's hospitalizations at the First Hospital and the Second Hospital are not covered under the Policy in accordance with sections 7.2, 7.10 and 7.12 of the Policy. As set out in the Insur-

er's responses dated 27 July 2018 and 15 August 2018 as well as the decision from the Committee rendered 6 March 2019, it is the opinion of the Insurer that the Complainant's medical condition at the time of the respective hospitalizations was the direct result of the Complainant's abuse of prescription medications (controlled substances) prescribed to him by his psychiatrist in [country of residence].

The Insurer does not dispute the Complainant's allegation that the primary reason for his treatment was shoulder pain. However, the Insurer finds that the shoulder injury was a direct cause of the Complainant's substance abuse as the Complainant's shoulder injury was inflicted during a seizure induced by benzodiazepine withdrawal supported by statements from the Complainant himself. The Complainant would not have suffered a seizure induced by benzodiazepine withdrawal if the Complainant had not abused benzodiazepine medicaments and by way of this developed a severe benzodiazepine dependency. As the Policy excludes coverage of any care or treatment received due to alcohol use or abuse, drug use or abuse, or the use of illegal substances or illegal use of controlled substances, including any accident resulting from any of the aforementioned criteria, the Insurer maintains that the rejection of coverage was legitimate. As the treatment and care was received due to the aforementioned reasons, it is of no relevance whether the Policy be classified as a treatment and care insurance or an accident insurance.

The consultation notes reflected in the First Medical Record and the Second Medical Record, as well as the Complainant's statements included therein, clearly evidence that the Complainant has a history of abusing benzodiazepines. In a statement from the Complainant entered into the medical records, the Complainant himself noted that he was a chronic abuser of 'Xanax'. It is also noted that the Complainant suggested that a combination of 'Zolpidem' and alcohol may have triggered his fall. This fall was in fact – as evidenced by the Second Hospital Record – assessed by the medical staff as having been the result of a seizure induced by benzodiazepine withdrawal. The Second Medical Record notes that the Complainant had an additional seizure during his stay at the First Hospital. This seizure was clearly linked to benzodiazepine withdrawal as the Complainant had been weaned down to one mg 'Xanax' three times daily prior to leaving the hospital against medical advice. This second seizure caused another fall resulting in further injury to the Complainant.

The Complainant is on multiple occasions described by the attending physicians and psychiatrists as being an inconsistent, poor historian who is not providing the entire story. Further, the medical records contain statements from the Complainant himself that he is a chronic 'Xanax' abuser and that he on a social basis consumes alcohol in combination with his prescription medicine. He stated multiple times that he had consumed alcohol while still taking his medicine on the night of the accident and then lost recollection of what had happened. In fact, the medical records also make multiple references to 'rhabdomyolysis', 'altered mental status', 'overdose', 'substance abuse', 'benzodiazepine dependence', 'benzodiazepine withdrawal with seizures', 'depression', 'anxiety' and 'insomnia' independently of each other which all support the view that the Complainant abused substances.

The Complainant's [family members] reported to the staff at the First Hospital that the Complainant had been 'depressed lately' and that 'he might have been taking extra doses of his nerve pills'. They further confirmed that the Complainant had been hospitalized in the past for the 'same reason'. The Complainant was evaluated by a psychiatrist who made the recommendation that the Complainant be sent to an inpatient drug rehab facility. In the discharge order from the Second

Hospital, it is recommended as part of the discharge orders that Complainant should enter a rehab drug program within one week.

The Insurer does not dispute that the Complainant was admitted for medically necessary care and treatment, but rather that the need for this care and treatment was directly caused by the Complainant's substance abuse, which excluded coverage from the Policy. The Complainant's primary reason for treatment may have been shoulder injury and pain; however, this shoulder injury and pain was a direct result of the Complainant's benzodiazepines withdrawal caused by prior abuse of substances. Taking together all of the medical records' notes from the paramedics, physicians, nurses and staff as well, as the doctor's refusal to surgically intervene at the First Hospital and the toxicology test results from the Second Hospital, it is apparent that the Complainant's condition and mental state were not free of alcohol, illegal use of controlled substances or drug use or abuse.

The Insurer stresses that it has not used doctor statements that point only to the Complainant's previous illnesses as sufficient grounds on which to refuse coverage. The Insurer has denied the claims based on all the information on the medical records, including doctor and staff notes on the Complainant's condition at the time of treatment.

Reference is also made to the decision from the Insurance Complaints Board rendered on 18 March 2015 in case no. 86558. In that case, the complainant was hospitalized following a seizure during which the complainant had fallen and injured his back. The insurance company declined coverage with reference to the fact that the injury was a result of sickness and the worsening of the consequences of an accident caused by sickness. The sickness in question was the complainant's alcoholism. The Insurance Complaints Board emphasized the importance of the fact that the medical records stated that the complainant fell due to a seizure related to his alcoholism.

Simply put and to summarize – had the Complainant not had an abusive use of substances, the Complainant had not suffered the seizure that accordingly to the medical records resulted in the Complainant's fall that led to the shoulder injuries. There is direct causation between the Complainant's substance abuse and the fall in which the Complainant suffered his injuries.

The Complainant was initially not tested for benzodiazepine which was the primary cause of the seizure during which the Complainant was injured

Based on the notes included in the medical records, had the First Hospital tested for benzodiazepines, the results would have been positive (see the toxicology results from subsequent treatment at the Second Hospital). Throughout the First Medical Records, it is reflected that the Complainant had an overdose. Even if his alcohol intake was minimal on that day, he experienced an impact due to the mix of alcohol and the medications he was taking. The progress notes from the First Hospital confirms that there was a 'possible overdose of a combination of alcohol and the sleeping medication he takes.' The Complainant was aware that the medications he took should not be combined with any alcohol consumption. Additionally, there are several notations in the medical records where the Complainant states (and his family members present at the First Hospital confirm) his abuse of prescribed medication. Furthermore, the Complainant stated that he was a chronic Xanax abuser. Due to the overall state of the Complainant, the medical staff at the First Hospital declined surgically intervene on the Complainant's non-displaced shoulder fracture.

Further, reference is made to the decision from the Insurance Complaints Board rendered on 7 February 2018 in case no. 91460. In that case, the complainant alleged that she had fallen out of her bed and in connection injured her left hand. The insurance company declined coverage with reference to the fact that the complainant's alcohol usage was the primary contributor to her accident and that the policy in effect did not cover injuries if the insured had consumed alcohol. Upon review of the case files, the Insurance Complaints Board found that the primary contributor to the complainant's accident was self-induced intoxication despite that fact that the complainant had not been tested positive for alcohol consumption. Among other things, the Insurance Complaints Board emphasized the fact that the complainant had admitted to having a long-term heavy intake of alcohol during consultations at the hospital.

Against this background and taking all of the above into consideration, the Insurer maintains that the Complainant's hospitalizations at the First Hospital and the Second Hospital are not covered under the Policy in accordance with sections 7.2, 7.10 and 7.12 of the Policy.

Validity of the claimed amount
In the Complaint, the total hospital expenses are calculated at approximately USD 243,666.68. The Complainant has enclosed a number of invoices as appendix four allegedly related to his two hospitalizations in July 2018 an which the claim is based. Upon review, it is the view of the Insurer that appendix four seems to consist of a mixture of invoices, notices and payment confirmations. Further, it is not possible to determine whether the payment confirmations and notices relate to the invoiced amounts as a majority of the notices as well as all payment confirmations are unspecified. For these reasons, the Insurer is unable to assess the validity of the claimed amount, and the Insurer requests (A) that the Complainant provides a detailed specification of the claim."

Klagerens advokat har i brev af 2/9 2019 til nævnet bl.a. anført:

"BUPA anfører indtil flere gange i sit svarskrift, at [klageren] angiveligt skulle være alkoholiseret og havde taget medikamenter sammen med alkohol, samt at han angiveligt skulle være kendt som en misbruger af medikamenter.

Faktum er imidlertid, at der på tidspunktet for den første undersøgelse ikke blev fundet spor af misbrug. BUPA's synspunkt om, at der *ville være fundet også benzodiazepiner, hvis man havde foretaget undersøgelse heraf* er udelukkende baseret på en hypotese.

BUPA anfører i den forbindelse, at hvis man ved indlæggelsen på [hospital 1] havde testet [klageren] for også benzodiazepiner, ville man have fundet spor heraf, idet man fandt spor herpå ved undersøgelsen på [hospital 2].

Det bemærkes, at [klageren] blev indlagt den 22. juli 2018 på [hospital 1] og over flyttet til [hospital 2] den 26. juli 2018 – altså 4 dage senere. Benzodiazepiner er sporbare i kroppen i op til 10 dage efter, og som der også er redegjort for i klageskriftet, fremgår det af journalerne, at [klageren] havde modtaget behandling i form af beroligende medicin og søvnmedicin, ligesom han var til konsultation ved en psykiater to gange om måneden.

Hertil kommer, at [klageren] på tidspunktet for undersøgelsen på [hospital 2] forinden havde modtaget smertedækkende behandling i 4 dage på [hospital 1].

Det er derfor kun naturligt, at man ved undersøgelsen på [hospital 2] har kunnet spore stoffer svarende hertil. Det indebærer imidlertid ikke bevis for, at [klageren] lige op til indlæggelsen den 22. juli 2018 skulle have taget en overdosis sammen med alkohol i en mængde, der kan begrunde en antagelse om, at hans krav er omfattet af en af undtagelsesbetingelserne i forsikringsaftalen – navnlig ikke når alle de faktisk udførte test var negative. Dette i sig selv skaber en formodning for, at [klageren] ikke var påvirket af alkohol eller andet.

På tidspunktet for indlæggelsen var [klageren] desuden væsentligt medtaget som følge af smerter og dehydrering, og var ifølge journalerne – som også anført af BUPA i svarskriftet – *'a poor historian who was inconsistent with his answers'*. Det blev da også efterfølgende konstateret, at han havde slået og brækket sine skuldre, hvilket i sig selv tilsiger, at han har været væsentligt smertepåvirket.

Alle notater vedrørende hans tilstand og hans egne udtalelser må nødvendigvis læses i dette lys.

Det gælder også det af BUPA fremhævede, som er anført i lægenotat af 23. juli 2018 på side 40 i journalen fra [hospital 1]. Her er tydeligt tale om pågældende læges eget gæt på, hvad der er foregået. Som det fremgår i samme notat, er [klageren] således 'not clear of what happened'. I samme notat fastslår lægen i øvrigt: 'Found to have rhabdomyolysis' (som er en muskelsmertelidelse). Dette blev imidlertid senere tilbagevist, og man konstaterede på [hospital 2], at [klageren] havde brækket sine skuldre.

Sammenfattende fastholdes det herefter, at behandlingsforløbet udspringer af en forsikringsdækket begivenhed, at BUPA efter forsikringsaftalen derfor er forpligtet til at betale de udgifter, som knytter sig hertil, og at BUPA ikke har påvist et bevismæssigt grundlag for deres afgørelse om, at forholdet er omfattet af en af undtagelsesbetingelserne.

Endelig for så vidt angår kravets størrelse henvises til vedlagte opgørelse udarbejdet af BUPA selv (bilag 9), hvoraf fremgår at kravet er 243.666,88 USD, som også anført i klageskriftet."

Selskabet har i brev af 21/9 2019 til nævnet bl.a. anført:

"Bupa Insurance Limited [the Insurer] maintains its overall position as set out in the Statement of Defense [the Defense] submitted to the Insurance Complaints Board on 12 August 2019.

The Insurer fully maintains its submissions set out in the Defense. Thus, the Insurer is of the firm opinion that the [the Complainants] medical condition and the consequences thereof at the time of the hospitalizations were a direct result of the Complainant's abuse of substances. The Complainant had not suffered the seizure, which, according to the medical records, led to the fall that resulted in the shoulder injury if the Complainant had not had a long-term abusive use of substances.

The Insurer further supports its position on the following submission.

The test results from the toxicology screening conducted at the [hospital 1] cannot by relied upon as decisive evidence that no substance abuse had taken place, as no screening for benzodiazepines was conducted.

The Complainant states in the reply submitted to the Insurance Complaints Board on 2 September 2019 [the Reply] that the test results from the toxicology screening conducted at [hospital 1] did not show any signs of *substance abuse*.

The Insurer disputes this statement.

As set out in the Defense, the test results were indeed negative for, i.a., alcohol, amphetamine and cocaine. However, the toxicology screening did not test for benzodiazepines, which were the substances primarily abused by the Complainant. The statement that the Complainant's substance abuse revolved around benzodiazepines is supported not only by medical records received from the First Hospital and from [hospital 2], but also by the Complainant himself. As no testing for benzodiazepines was conducted at the initial toxicology screening, it cannot be concluded from the test results that the toxicology screening results showed no signs of *substance abuse*.

In fact, statements from the Complainant himself indicate that he ingested a mixture of alcohol and prescription medicine before attending a party and then lost recollection of events before waking up at the First Hospital. The Complainant has not been able to provide any other information of the events of the evening he suffered the seizure leading to his shoulder fracture, and he is described several times as a 'poor historian and inconsistent on his answers' and as not giving the 'true story of what had happened'. The Insurer does not claim that the Complainant's ingestion of alcohol by itself was the cause of the Complainant's seizure. The Insurer is of the opinion that the aforementioned *mixture* of alcohol and prescription medicine contributed to the Complainant's unfortunate accident. The Complainant ingested an unknown amount of alcohol (allegedly a low amount as the toxicology screening was negative for alcohol at the time of testing, however, bearing in mind that hours had passed from the Complainant's consumption of alcohol and until the toxicology screening was conducted) mixed with a high dose of prescription medicine. Therefore, the toxicology screening conducted at the First Hospital provides little information relevant to the case at hand, and in no way may abuse of benzodiazepines be ruled out with reference to a test that did not even include benzodiazepines in the first place.

As evidenced by statements from the Complainant's family members, the Complainant had a history of overdosing on prescription medicine and had been hospitalized for this exact reason in the past. Further, the Complainant admitted to having a long-term heavy intake of benzodiazepines during consultations at the hospitals, going as far as describing himself as a chronic Xanax abuser. Once the Complainant was screened for benzodiazepines in connection with the hospitalization at the Second Hospital, the test results showed an *abnormal* level of both benzodiazepines and opiates. The Complainant was also diagnosed with an *overdose* at the First Hospital. On the basis of the medical records and statements from the Complainant himself included therein, the Insurer disputes the Complainant's allegations that the medicaments ingested by the Complainant in connection with his hospitalization at the First Hospital was the sole reason for the result of an *abnormal* level of both benzodiazepines and opiates.

Concluding on the medical records as well as statements from the Complainant's [family members] as well the Complainant himself, the Complainant was in a poor physical condition as a result of a long-term abuse of substances (primarily in the form of benzodiazepines). This long-term substance abuse eventually led to the seizure during which the Complainant unfortunately injured his shoulder. More specifically, medical records as well as the Complainant himself prove that the

initial seizure was induced by a withdrawal of benzodiazepines and that an additional seizure also induced by benzodiazepine withdrawal resulted in further injury to the Complainant.

The Complainant further claims in the Reply that the 'rhabdomyolysis' diagnosis given by the medical staff at the First Hospital *'[clearly is] the doctor's own guess as to what* happened' and that this was later refuted.

The Insurer disagrees with this claim.

The medical staff diagnosed the Complainant with 'rhabdomyolysis' on multiple occasions, more specifically on 23 July 2018 and again on 25 July 2018. There is no evidence supporting the allegation that this diagnosis was later refuted. However, even if the diagnosis was to be refuted, it is of little importance as the matter at hand concerns a seizure induced by benzodiazepine withdrawal (i.e. directly related to a long-term substance abuse), and it was during this seizure the Complainant suffered his shoulder injury. During a second seizure also induced by benzodiazepine withdrawal while hospitalized at the First Hospital, the Complainant suffered further injuries. Against this background and taking all of the above into consideration, the Insurer maintains that the rejection of coverage of the expenses incurred by the Complainant in connection with his two hospitalizations was legitimate under the Complete Care Plan with policy no. … Medical records prove that the Complainant's injury – for which the Complainant was hospitalized – was a direct result of the Complainant's long-term substance abuse. Sections 7.2, 7.10 and 7.12 of the Policy unambiguously exclude coverage of any care or treatment received due to alcohol use or abuse, drug use or abuse, or the use of illegal substances or illegal use of controlled substances, including any accident resulting from any of the aforementioned criteria. Further, the Insurer's rejection of coverage under the given circumstances is in line with case law from the Insurance Complaints Board, e.g., the decision rendered on 18 March 2015 in case no. 86558 as well as the decision rendered on 7 February 2018 in case no. 91460 referred to and described in the Defense."

Til dette har klagerens advokat fremsendt mail af 31/10 2019, hvori det bl.a. er anført:

"I denne sag vedrørende [klagerens] klage over BUPA International finder klager ikke anledning til at sende yderligere bemærkninger udover dog en præcisering vedrørende følgende afsnit i Statement of Rejoinder:
'The Complainant further claims in the Reply that the 'rhabdomyolysis' diagnosis given by the medical staff at the First Hospital '[clearly is] the doctor's own guess as to what happened' and that this was later refuted'

BUPA's bemærkning er baseret på en misforståelse. Det, der fra klagers side gøres gældende, er, at lægen gætter på, hvad der faktuelt er foregået, forinden [klageren] blev indlagt – herunder, at [klageren] skulle have tage alkohol sammen med medicin. Det er altså ikke et synspunkt om, at lægen gætter på diagnosen vedrørende en muskelsmertelidelse.

Som anført i replikken må alle notater vedrørende [klagerens] tilstand og hans egne udtalelse nødvendigvis læses i det lys, at han på tidspunktet for indlæggelsen var væsentligt medtaget som følge af smerter og dehydrering, ligesom man også senere konstaterede, at han havde slået og brækket sin skuldre.

> Det fastholdes herefter i det hele, at BUPA ikke har ført bevis for, at [klageren] lige op til indlæggelsen skulle have tage en overdosis sammen med alkohol i en mængde, der kan begrunde en antagelse om, at hans krav er omfattet af en af undtagelsesbetingelserne i forsikringsaftalen – navnlig ikke når alle de faktisk udførte tests ved indlæggelsen var negative.
>
> Sidstnævnte skaber i sig selv en formodning for, at [klageren] ikke var påvirket af alkohol eller andet."

Hertil har selskabet i brev af 11/11 2019 til nævnet bl.a. anført:

> "[The Complainant's] submission dated 31 October 2019 does not give rise to any additional comments from Bupa Insurance Limited [the Insurer] apart from one clarification to the following section from the Complainant's submission of 31 October:
> *'Som anført i replikken må alle notater vedrørende [klagerens] tilstand og hans egne udtalelse nødvendigvis læses i det lys, at han på tidspunktet for indlæggelsen var væsentligt medtaget som følge af smerter og dehydrering, ligesom man også senere konstaterede, at han havde slået og brækket sin skuldre.'* [our underlining]
>
> As set out at page 3 of the Insurer's Statement of Rejoinder, medical records only support that the Complainant initially fractured one of his shoulders as a result of the first seizure. He fractured his *other* shoulder during the second seizure while hospitalized. Both seizures were reportedly induced by benzodiazepine withdrawal.
>
> In all, the Insurer maintains that the rejection of coverage of the expenses incurred by the Complainant in connection with his two hospitalizations was legitimate:
> - Firstly, the Complainant's initial hospitalization was necessitated by a seizure as this seizure resulted in injury to the Complainant. The Complainant suffered further injury as a result of a second seizure while hospitalized;
> - Secondly, the Complainant's two seizures were, according to the medical records, induced by benzodiazepine withdrawal;
> - Thirdly, this benzodiazepine withdrawal was directly linked to the Complainant's long-term abuse of substances; and
> - Lastly, the Complainant's insurance policy with the Insurer unambiguously excludes coverage of any care or treatment received due to alcohol use or abuse, drug use or abuse, or the use of illegal substances or illegal use of controlled substances, including any accident resulting from any of the aforementioned criteria."

Nævnet har fået forelagt bilag fra sagen. Et uddrag gengives i det følgende.

Af brev af 30/10 2018 fra hospital 1 fremgår bl.a.:

> "Your … year old male member presented to our emergency department accompanied by EMS with altered mental status as evidenced by disorientation, confusion, and decreased responsiveness. EMS had reported to us that your member took an undisclosed amount of Vyvanese, Seroquel and Alergil. His family reported him to have a history of depression and right clavicle open reduction internal fixation. He was hypertensive with a pressure of 172/97, and tachycardic at 116.

Anormal laboratory data included; WBC 21.3, chloride 96, CO2 17, AGAP 31.4, BUN 20.2, creatinine 1.2, magnesium 2.3, D-dimer 2.52, albumin 4.9, ALT 68, AST 58, CK total 2542, and glucose 170. Blood gasses showed; p02, 174, and oxyhemoglobin 98.3. Chest x-ray revealed; subsegmental atelectasis or infiltrates and/or a left sided pleural effusion; cadiomegaly. IV adenosine, IV Vasotac, IV Lopressor, and a banana bag were initiated. He was admitted under a … Act for medical management and supportive care with rhabdomyolysis, altered mental status, and overdose. A constant observer was placed at his bedside. Your member reparted left shoulder pain. Orthopedics was consulted and noted a large amount of soft tissue swelling and ecchymosis around the shoulder area. His active range of motion was quite limited due to pain. Left shoulder x-ray was completed and showed a non-displaced fracture of the humural head without dislocation. Orthopedics decided to treat it non-operatively. On 7/23/18, rapid response was called as your member began having seizures resulting in him being transferred to intensive care. IV Ativan was infused. A cardic monitor and frequent vital signs were initiated. A central line was inserted. Medications during this admission included; IV Levaquin, IV Zosyn, IV Rocephin, Hydralazine, and nebulization's. On 7/26/18, your member left against medical advice despite the consequences being clearly communicated with him."

Af journalnotater fra hospital 1 fremgår bl.a.:

"Visit Reason: Alterede mental status; weakness
Arrival Time: 07/22/2018 20:04:00 …
Vist Information
Chief Complaint: weakness and
Patient Diagnosis: Altered mental status; Overdose; Rhabdomyolysis
…
Time seen: Date & time 07/22/2018 20:34:00
History source: EMS.
Arrival mode: Ambulance.
…
History of Present Illness
The patient presents with altered mental status. The onset was Today. The course/duration of symptoms is constant. The character of symtoms is disoriented, confused and decreased responsiveness. The degree at present is moderate. Baseline status: disoriented, confused, decreased responsiveness. The exacerbating factor is none. The relieving factor is none. Risk factors consist of Depression. Prior episodes: none. Theray today: see nurses notes. Associated symptoms: none. Additional history: HPI given by EMS. As per EMS, EMS reports that pt was in his hotel when the hotel called EMS because he had not checked out yet. EMS reports that the patient took Vyvanse, Seroquel, and Alergil. Pt no other complaints at this time. Family members present … and states that pt is living in [country] and currently visiting them, he was depressed lately and he might have been taking an extra dose of his nerve pills prescribed in [country of residence], they said this happened before and was hospitalized in the past for same reason.
…
Physical Examination
…
General: Alert, no acute distress.
Skin: Normal for ethnicity, Wound[s]: R arm and ankle, hematoma.
Head: Normocephalic, atraumatic.
Neck: Supple, trachea midline, no tenderness, no JVD, no carotoid bruit.

Eye: Pupils are equal, round and reactive to light, extraocular movements are intact.
Cardiovascular: Regular rate and rhythm, No murmur, Normal peripheral perfusion, No edema.
Respiratory: Lungs are clear to auscultation, respirations are non-labored, breath sounds are equal, Symmetracal chest wall expansion.
Chest wall: No tenderness.
Back: Normal range of motion.
Musculoskeletal: Normal ROM, normal strength, no tenderness, no swelling, no deformity, no calf tenderness.
Gastrointestinal: Soft, Nontender, Non distended, Normal bowel sounds, No organmegaly.
Nerological: No facal neurological deficit observed, normal sensory observed, normal motor observed, normal coordination observed, Level of consciousness: Slow, Alert and orientated but confused.
Psychiatric: Cooperative.
…
07/22/2018 22:30 EDT
…

Amph U Scrn Rslt	Negative
Barb U Scrn Rslt	Negative
Cocaine U Scrn Rslt	Negative
Opiate U Scrn Rslt	Negative
PCP U Scrn Rslt	Negative
THC U Scrn Rslt	Negative

…
07/22/2018 20:24 EDT
…

Ethanol Lvl	<10 mg/dL Normal

…
CT Head or Brain W/O Contrast (07/22 21:12)
…
Noncontrast study was performed showing no acute intracranial bleed or acute extra-axial fluid collection. There is no midline shift or evidence of hydrocephalus. If early CVA i.s suspected, correlation with a MRI of the brain is suggested for better characterization and to rule out any underlying pathology. There is no focal mass effect or edema seen on this limited noncontrast study. Limited views of the paranasal sinuses and calvarium shows no focal acute abnormality.
…
Consult Note … 7/23/2018 10:44 AM (ET)
…
Psychiatry Consult Note
…
Patient seen on: 7/23/18
Reason: depression
Chief Complaint: I drank
History of Present Illness: …-year-old male admitted to [hospital 1] through the emergency room with a possible overdose and alcohol abuse patient says that he took alcohol more than the usual and he takes sleep medication and I believe he takes zolpidem he says that he did not feel well and he was brought here to the emergency room at this time the patient denies that the was done as a suicidal attempt he says that he drinks more or less on a routine basis and continues to

take the medications that he has been prescribed by his psychiatrist in [country of residence]. Supportive psychotherapy reality addition provided.
Past Psy Hx: Patient says that he sees a psychiatrist in [country of residence] every 2 weeks and that he takes Wellbutrin XL 150 mg in the morning and zolpidem the night denies psychiatric hospitalization denies suicidal attempts
Past Medical Hx: Denies any major medical issues
Social Hx: He works as a … in … that is where he lives he admits to drinking denies drugs
…
Insight: Needs improvement
Judgment: Needs improvement
Assessment: …-year-old male that was brought to the emergency room was … acted at this time the patient is not suicidal or homicidal and he denies that he had been expressing suicidal ideations or acting on he was asked he was … acted for altered mental status.
…
Assessment and Plan: We will discontinue … act and one-to-one patient may be discharged when he gets medically cleared patient states that he has an appointment with a psychiatrist in [country of residence] in the coming week. Medication management and chart reviewed. Individual Psychotherapy provided. No Change to medication regimes. Case discussed with staff will continue to follow.
…
Admission H&P … 7/23/2018 6:46 PM (ET)
…
Date/Time Patient seen: 07/23/2018
…
Chief Complaint:
near syncope
History of Present Illness:
… y/o m with psych problem living in [country] under psych treatment taking ambien and alprazolam that went to party and drank alcohol and was brought to the hospital. Pt is not clear of what happened. Found to have rhadomyolisis. Iv fluid was started and psych eval
…
Date of Examination 07/24/2018 02:33:18 EDT
Report
CTA chest with and without contrast
…
Impression:
No central pulmonary embolic disease…
Date of Examinatin 07/24/2018 12:00:00 ET
Report
Bilateral lower extremity venous ultrasound
…
Impression:
No evidence of deep vein thrombosis or active disease.
…
Consult Note … 7/24/2018 9:47 PM (ET)
…
Date/Time Patient Seen: 7/24/2018
…

18. 93886

Reason for Consultation: Bilateral shoulder pain
History of Present Illness:
This is a …-year-old male seen in consultation regarding bilateral shoulder pain. Patient is a poor historian and inconsistent on his answers. And unable to completely delineate as to exactly when the shoulder pain started. Also unable to determine exactly how the shoulder pain started. As to whether the pain started prior to his hospitalization or while in the hospital. His current greatest complaint is pain in and around the left shoulder.
…
Social History:
Patient admits to being a chronic Xanax abuser. Alcohol on a social basis …
…

EXT: Bilateral upper extremities are examined. The left upper extremity shows large amount of soft tissue swelling present . Ecchymosis noted to the left shoulder and left arm area. There is tenderness on palpation over the shoulder. He is active range of motion to the shoulder is quite limited in passive range of motion is also limited wth associated pain. Pulses and sensation are intact distally. The right shoulder also reveals some soft tissue swelling present. With al.so resolving hematoma present to the right arm area. Surgical scar over the clavicle is healed without any signs of infection. Is able to actively flex and abduct his arm. With some associated pain.
…
Assessment:
Bilateral shoulder pain. Patient appears to have an avulsion fracture of the lesser tuberosity on the left side. This fracture is currently minimally displaced.

Plan:
I will obtain MRIs of bilateral shoulders to evaluate the ihtra-articular pathology in more detail. This patient will probably most probably be treated in a nonoperative fashion.
…
Date of Examination 07/25/2018 10:32:11 EDT
Report
Exam: MRI of the left shoulder
Clinical data: Patient had a seizure and fell and dislocated his shoulder
…
Impression:
Complete tear of the supraspinatus tendon with retraction with a portion of the bone attached to the tendon retracted inferior to the acromium.
Complete tear of the is for assessment is tendon
…
Psychiatry Progress Note
Patient seen on: 7/25/2018
Brief History: Patient is a …-year-old male who was admitted to [hospital 1] through the emergency department with possible overdose of a combination of alcohol and sleeping medication, and zolpidem, that he had been taking. … acted had been discontinued since patient had denied suicidal ideas in reference to his combination of alcohol and zolpidem.
Patient presently is presenting with fracture of the left humerus and a rotator cuff tear and with complaints of right shoulder pain. Patient remains confused and is poor historian.
…
Insight: Needs improvement.

Judgment: Needs improvement.
Assessment/Diagnosis: 1. Major depression, 2, status post ethanol toxicity.
Plan: I am going to continue present medication plan of care as ordered.
Medication management and chart reviewed. Individual Psychotherapy provided.
Changes to medication regimes will not be done at this time. Case discussed with staff.
…
Psychiatry Progress Note
Patient seen on: 7/26/18
Brief History: Brief History: Patient is a …-year-old male admitted to [hospital 1] through the emergency room after he was evaluated and he stated that he had ingested zolpidem with alcohol the toxicology screen was negative for any drugs on or for alcohol he has been Baker acted and when I review the case and I asked him if he had intended to kill himself he denied it so the … act was listed by me and process of discharging the patient was to be continued when the patient was medically cleared. The patient denied any other complications denied feeling depressed he says that he has tendency of taking so p.m. alcohol and I warned him of the possibility of respiratory arrest with a combination. In any event that afternoon I spoke to [family member] told me that she did not want [the complainant] to be discharged and I explained to her that once he is medically cleared and he said if this does not show that there has been an intentional suicide or idea we could not keep him here the patient had told me that he was going to go back to … where he lives to take care of the situation. Consequently the patient was to be discharged a day. [Family member] told me that he was a very heavy user of pills he will take up to 30 ambiens at the along with 15 Xanax which she told meals amounts I explained to her that if he had done that he would have died and according to her toxicology screen was negative he would have already been having seizures in any event this situation progressed and the patient was having physical therapy and apparently had a seizure which time he was transferred to the intensive care unit he fractured his left shoulder had an MRI done which showed severe fair and he says that yesterday when he was in the orthopedic bed he tried to hold help himself with the handlebar with herpes and that he reinjured his shoulder in any event the patient denies that he has been doing this on the purpose of killing himself. He went on to tell me that he would take on an average of 15 zolpidem 10 mg tabs and 7 tabs of 1mg provided to him by his doctor in [country of residence]. At this time I asked them what they wanted to do with regards to his detoxification and [family member] wants him to be detoxified here with the patient came in he said that he had no insurance now he says that he has insurance in any event he says that he was to go back to [country of residence] and continue with the detoxification schedule their I remember I reminded him that he should be looking for a lower doctor that would really detoxified and not feeding with amounts of medications that he been taking so that he could abuse. I discussed the case with case management and I instructed them to through his insurance find out if he had detox privileges that he does to call the facility to see if we can transfer him directly from this facility to their facility and if they do not then we will have to provided with a list of the places that he could go to as per the patient is is that he wants to go to [country of residence] is capable of making his own decisions but [family member] does not want to do that patient at this time and continues to denies suicidality and homicidality says that yes that he wants help but apparently they help but he wants is his own way. Supportive psychotherapy reality orientation was provided with moderate to poor results.
…
Insight: Poor
Judgment: Poor

Assessment/Diagnosis: Major depression, #2 substance dependence mixed, #3 status post ethanol toxicity
The patient is to hopefully be transferred to a rehabilitation program if his insurance company accepts them if not then we will provide him with information for other local rehabilitation programs and I explained that at length to the patient's mother and the patient he eventually wants to go back to [country of residence].
Plan:
Medication management and chart reviewed. Individual Psychotherapy provided.Changes to medication regimes. Case discussed with staff."

Af journalnotater fra hospital 2 fremgår bl.a.:

"***Emergency Documentation***
…
Associated Diagnoses: Humerus fracture, bilateral; Benzodiazepine withdrawal with seizures; Substance abuse;
…
Time seen: Date & Time 07/26/2018 12:53:00
History source: Patient, [family members]
Arrival mode: Private vehicle
…
History of Present Illness
The patient presents with Bilateral shoulder pain. The onset was 2 days ago. The course/duration of symptoms is constant and worsening. Location: Bilateral upper extremity. The character of symptoms is pain. The degree at present is moderate, Risk factors consist of obesity and recent hospitalization, Associated symptoms: … y/o M presents with complaints of bilateral shoulder pain. Patient reports both shoulders 'popped out' during seizure episode. Patient has recent change in dosage Xanax, Ambien. Patient reports he was at [hospital 1] for seizure episode due to withdrawal from benzodiazepine. Patient states he had Brain CT and Brain MRI performed. Patient and family states they left AMA due to being unhappy with care at [hospital 1] rehab.
…
Service Date/Time: 7/27/2018 13:43 EDT
…
Document Subject: … Psychiatrist Consult Note
…
<u>General Treatment Plan</u>
Patient currently presents with an extensive history of benzodiazepine dependency as well as hypnotic medications. Patient will continue taking the Ativan as a as needed I will start the patient on Ativan 1 mg 3 times a day and gradually tapered. Patient is also having difficult time sleeping therefore temazepam at 30 mg will be given concern about the patient going through withdrawals at this time once the patient is medically cleared he needs to attend inpatient or outpatient rehabilitation program. Patient also benefit from taking antidepressants to help patient's symptoms of underlying anxiety, which is the reason why patient this time is abusing his medications.

<u>Subjective</u>
<u>History of Present Illness</u>
Patient is a …-year-old male that arrived to the hospital with extensive history of benzodiazepine dependency and hypnotics. Patient developed fracture of the humerus was called to evaluate pa-

tient's symptoms of dieting and dependency. According to [family member] happens to be at the patient's bedside she informed that the patient has been taking approximately 8 mg of Xanax daily as 150 mg of zolpidem. He is getting the medication prescribed from endorse. Patient at this time reports that he is not going through symptoms of withdrawal but did have recently a seizure patient was recently discharged from [hospital 1]. This time patient seems fairly calm does not seem to be to have acute emotional distress does not seem to be going to withdraws he denies any severe symptoms of depression. Aware that he has a dependency issues looking forward to receiving outpatient or inpatient treatment. I spoke with the [family member] at length were informed that she will like for the patient to be transferred to a rehab facility once he has been medically cleared.

Past Psychiatric History
Denies ever being seen by psychiatrist or psychologist has no prior psychiatric hospitalizations or prior suicidal attempts. Patient later stated that he had been seen by her primary care physician has given him numerous antidepressants and none seem to work patient reports that the only medication that seemed to help him is the Xanax. For symptoms of anxiety which he has symptoms of panic attack-like symptoms.
…
Toxicology
Amphetamine Screen-Urine: Negativ (07/26/18 22:08:00 EDT)
Barbiturates Screen-Urine: Negative (07/26/18 22:08:00 EDT)
Benzodiazepines Screen-Urine: Postive Abnormal (07/26/18 22:08:00 EDT)
Cannabinoids Screen-Urine: Negative (07/26/18 22:08:00 EDT)
Cocaine Screen-Urine: Negative (07/26/18 22:08:00 EDT)
Opiates Screen-Urine: Positive Abnormal (07/26/18 22:08:00 EDT)
PCP (Drug) Screen on urine: Negative (07/26/18 22:08:00 EDT)

Addendum by [doctor] on July 27, 2018 17:08:02 EDT
…
Chief Complaint
as per pt he had a seizure 2 day ago injured both shoulders and has been having bilateral shoulder pain. as pet pt he signed out AMA from [hospital 1]

History of Present Illness
Patient is a …-year-old male who left AMA from [hospital 1] as they were not satisfied with the care they were receiving. Patient initially presented there as he was ingesting 8 mg of Xanax daily, 150 mg of Ambien daily, as well as 300 mg of Seroquel dally. Patient while at [hospital 1] rehab had undergone a withdrawal seizure resulting in bilateral humeral fractures. He had been weaned down to Xanax 1 mg 3 times daily prior to leaving AMA. Now presents with complaints of bilateral arm pain. Denies any chest pain, shortness of breath, headache, nausea, vomiting, dysuria, fevers, chills, headache, nausea, vomiting.
…
Discharge Summary
…
Dates of Service
07/26/2018-07/31/2018

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Admission Information
cc bilat arm pain.

Hospital course
…-year-old male with history of severe anxiety, self medicated with benzos for years, who left AMA from [hospital 1] as they were not satisfied with the care they were receiving. Patient initially presented there as he was Ingesting 8 mg of Xanax daily, 150 mg of Ambien daily, as well as 300 mg of Seroquel dally. Patient while at [hospital 1] rehab had undergone a withdrawal seizure resulting in bilateral humeral fractures. Presents with complaints of bilateral arm pain and found to have bilateral humeral fractures.

Postoperative Diagnosis
Left side:
Fracture humerus proximal-left
Detachment rotator cuff with avulsion fracture proximal humerus-left
Right side:
Humerus proximal-right
No tear of the rotator cuff

Operative Procedure Performed
Left side:
Open treatment humerus fracture proximal with internal fixation using plate screw construct-left
Open repair rotator cuff with fiber tape and anchors-left
Right side:
Open treatment humerus fracture with internat fixation using plate and screw construct-right.
Hospital course significant for post op pain and severe anxiety.
pt requested transfer to an acute inpatient rehab facility and for this reason he remained over the weekend. On Monday, July 30 data was review by insurance company and was denied. Unfortunately I received notification after 5 PM.
Patient is to be discharged to home with home health care.
Patient was evaluated by psychiatry Dr. …, made medication recommendations, recommended inpatient drug rehab facility, he will not follow-up with patient in the outpatient setting.
pt is able to ambulate and flex both ue
...
Discharge Diagnoses and Plan
1. Humerus fracture, bilateral S42.309A, Humurus fracture, bilateral S42.309A
1. Seizure R56.9
2. Benzodiazepine withdrawal with seizures F13.239, Benzodiazepine withdrawal with seizures F13.239
3. Benzodiazepine dependence F13.20
3. Substance abuse F19.10, Substance abuse F19.10
…
8. Axiety F41.9
9. Insomnia G47.00
…
Follow Up Appointments
[Doctor] within 2 Weeks
Rehab drug program within 1 week"

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Af forsikringsbetingelserne fremgår bl.a.:

"**IN-PATIENT BENEFITS AND LIMITATIONS**

2.1 HOSPITAL SERVICES: Coverage is only provided when in-patient hospitalization is medically necessary.

(a) For coverage outside the Bupa provider network:
   i. standard private or semi-private hospital room and board is limited to a maximum benefit of one thousand dollars (US$1,000) per day.
   ii. Room and board within an intensive care unit is limited to a maximum benefit of three thousand dollars (US$3,000) per day.

(b) For coverage within the Bupa provider network:
   i. standard private or semi-private hospital room and board is covered up to one hundred percent (100%) of the usual, reasonable and customary hospital charges.
   ii. Room and board within an intensive care unit is covered up to one hundred percent (100%) of the usual, reasonable and customary hospital charges.

(c) Emergency medical treatment is covered as provided in policy condition 6.4.

2.2 MEDICAL AND NURSING FEES: Physician, surgeon, anesthesiologist, assistant surgeon, specialists, and other medical and nursing fees are covered only when they are medically necessary for the surgery or treatment. Medical and nursing fees are limited to the lesser of:

(a) The usual, customary and reasonable fees for the procedure, or

(b) Special rates established for an area or country as determined by the insurer.

2.3 PRESCRIPTION DRUGS: Drugs prescribed while in-patient are covered at a hundred percent (100%).

EXCLUSIONS AND LIMITATIONS

…

This policy does not provide coverage or benefits for any of the following:

…

7.2 SELF-INFLICTED ILLNESS OR INJURY: Any care or treatment, while sane or insane, received due to self-inflicted illness or injury, suicide, attempted suicide, alcohol use or abuse, drug use or abuse, or the use of illegal substances or illegal use of controlled substances, including any accident resulting from any of the aforementioned criteria

…

7.10 MENTAL AND BEHAVIORAL DISORDERS: Diagnostic procedures or in-patient treatment or psychiatric disorders, unless resulting from treatment for a covered condition. Mental illnesses and/or behavioral or developmental disorders, chronic fatigue syndrome, sleep apnea, and any other sleep disorders.

…

7.12 COMPLICATIONS OF NON-COVERED CONDITIONS: Treatment or service for any medical, mental, or dental condition related to or arising as a complication of those medical, mental, or dental services or other conditions specifically excluded by an amendment to, or not covered by, this policy."

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Nævnet udtaler:

Klageren blev om aftenen den 22/7 2018 indbragt på hospital 1 med ambulance fra det hotel, hvor han boede i forbindelse med familiebesøg i byen. Hotellet havde tilkaldt akutberedskabet, fordi klageren ikke havde checket ud. Klageren havde taget piller og var ved indlæggelsen desorienteret, forvirret og med nedsat reaktion. Hans familie forklarede, at han kunne have taget en ekstra dosis af sine ordinerede nervepiller, hvilket var sket før med hospitalsindlæggelse til følge. Klageren blev i henhold til lokal lovgivning taget i 72 timers lægelig forvaring begrundet i rhabdomyolysis, ændret mental tilstand og overdosis, og han blev konstant overvåget. Blodprøver var negative for alkohol og euforiserende stoffer, og en hjerneskanning viste ikke tegn på blødninger eller unormale forhold. Han blev over midnat den 23/7 2018 overflyttet til intensiv afdeling, fordi han fik anfald.

Den 23/7 2018 havde hospitalets psykiater ophævet den lægelige forvaring, da klageren benægtede selvmordsforsøg, hvorefter klageren kunne udskrives, når det var medicinsk forsvarligt. Klageren havde endvidere oplyst, at han konsulterede en psykiater hver 14. dag i sit bopælsland, og at han tog ordineret antidepressiv medicin og sovemedicin.

Af et journalnotat af 23/7 2018 fremgår, at klageren har været næsten bevidstløs, og at han er en "… y/o m with psych problem living in [country] under psych treatment taking ambien and alprazolam that went to party and drank alcohol and was brought to the hospital. Pt is not clear of what happened. Found to have rhadomyolisis. Iv fluid was started and psych eval". Klageren oplyste, at han var en "chronic Xanax abuser".

Skanninger den 24/7 2018 af klagerens brystparti og underekstremiteter påviste ikke blodpropper i lungerne eller vener. Klageren klagede over skuldersmerter ved begge skuldre den 24/7 2018. En MR skanning foretaget af venstre skulder den 25/7 2018 påviste brud på venstre skulderblad og en rotatorcuff skade. Om årsagen til skuldersmerterne fremgår det af et journalnotat af 24/7 2018, at "Patient is a poor historian and inconsistent on his answers. And unable to completely delineate as to exactly when the shoulder pain started. Also unable to determine exactly how the shoulder pain started. As to whether the pain started prior to his hospitaliza-

tion or while in the hospital. His current greatest complaint is pain in and around the left shoulder". Af et journalnotat af 25/7 2018 fra MR-skanningen fremgår, at "Clinical data: Patient had a seizure and fell and dislocated his shoulder". Af et journalnotat af 26/7 2018 fra klagerens samtale med hospitalets psykiater fremgår blandt andet, at klageren "apparently had a seizure which time he was transferred to the intensive care unit he fractured his left shoulder had an MRI done which showed severe fair and he says that yesterday when he was in the orthopedic bed he tried to hold help himself with the handlebar with herpes and that he reinjured his shoulder".

Klagerens familie ønskede, at klageren forblev på sygehuset for at blive afvænnet, da han havde et stort forbrug af piller, og psykiateren oplyste, at hospitalet ikke kunne beholde ham efter, at han var medicinsk udredt. Klageren lod sig udskrive fra hospital 1 den 26/7 2018 mod lægernes anbefaling og blev samme dag indlagt på hospital 2. Af et journalnotat fra hospital 2 fremgår blandt andet, at klageren var en "…-year-old male with history of severe anxiety, self medicated with benzos for years, who left AMA from [hospital 1] as they were not satisfied with the care they were receiving. Patient initially presented there as he was ingesting 8 mg of Xanax daily, 150 mg of Ambien daily, as well as 300 mg of Seroquel dally. Patient while at [hospital 1] rehab had undergone a withdrawal seizure resulting in bilateral humeral fractures. Presents with complaints of bilateral arm pain and found to have bilateral humeral fractures". Klageren blev opereret i begge sine skuldre og udskrevet den 31/7 2018 med anbefaling om, at han kom i afvænning for medicinmisbrug inden for en uge.

Klagerens krav er dækning af sine udgifter i forbindelse med hospitalsindlæggelserne på hospital 1 og hospital 2, som han har opgjort til USD 243.666,88. Selskabet har afvist at yde dække med henvisning til blandt andet forsikringsbetingelsernes punkt 7.2.

Det fremgår af punkt 7.2 i forsikringsbetingelserne, at forsikringen ikke dækker "7.2 SELF-INFLICTED ILLNESS OR INJURY Any care or treatment, while sane or insane, received due to self-inflicted illness or injury, suicide, attempted suicide, alcohol use or abuse, drug use or abuse, or

the use of illegal substances or illegal use of controlled substances, including any accident resulting from any of the aforementioned criteria".

Klageren har anført, at han var faldet på hotelværelset og havde slået sin venstre skulder, ligesom han var dehydreret, og at alle notater vedrørende hans tilstand og hans egne udtalelser nødvendigvis må læses i det lys, at han var væsentligt medtaget af smerter og dehydrering. Han har endvidere anført, at den toksilogiske rapport og lægejournalerne dokumenterer, at han ved indlæggelsen ikke var under indflydelse af alkohol eller stoffer, og at han blev undersøgt for en fysisk skade i form af smerter i skulderne, som han også blev opereret for, idet de viste sig at være brækkede. En eventuel indtagelse af medicin, alkohol eller andet har derfor ikke været af et beviseligt omfang, som kan begrunde, at hans indlæggelse skulle være undtaget fra forsikringsdækning. Selv om han forud for indlæggelsen havde modtaget behandling i form af beroligende medicin og søvnmedicin og var til konsultation hos en psykiater to gange om måneden, var den primære årsag til behandlingen smerter i skulderen.

Selskabet har ikke bestridt, at klageren blev indlagt for nødvendig lægelig behandling, men har med henvisning til lægejournalerne anført, at behovet for den lægelige behandling var en direkte følge af klagerens medicinmisbrug, og at hans skulderskader er opstået under et anfald som var foråsaget af abstinenser for benzodiazepiner. Selskabet har endvidere anført, at klageren ved indlæggelsen ikke blev screenet for benzodiazepiner i blodet.
Efter en gennemgang af sagen, herunder journalerne fra hospital 1 og 2, kan nævnet ikke kritisere selskabets afgørelse. Nævnet har blandt andet lagt vægt på, at den direkte anledning til klagerens indlæggelse på hospital 1 var mistanke om en overdosis af piller, og at han ved indlæggelsen var desorienteret, forvirret og med nedsat reaktion. Nævnet har endvidere lagt vægt på, at hans familie har oplyst, at han havde et misbrug, at han tidligere har været indlagt efter at have taget for mange nervepiller, og at klageren selv har bekræftet, at han var "a chronic Xanax abuser", som er et benzodiazopin. Nævnet har også lagt vægt på, at klageren ved indlæggelsen ikke blev screenet for benzodiazopin i blodet, at han senere blev overflyttet til intensiv afdeling, fordi han fik anfald, der i lægejournalen for hospital 2 er beskrevet som abstinenser

for benzodiazepiner, og at de forskellige undersøgelser af klageren på hospital 1 har vist, at han ikke havde en hjerneblødning eller blodpropper i lunger eller vener.

Nævnet finder endvidere på baggrund af journalnotaterne fra hospital 1 og 2, at klagerens skulderfrakturer, som han blev opereret for på hospital 2, er opstået, fordi han er faldet under et anfald som følge af abstinenser for benzodiazopiner. Nævnet finder således, at klagerens skulderskader er opstået som en følge af hans medicinmisbrug.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Carsten Sennels