



SUPREME COURT TO DECIDE UR DOCTOR ACCOUNTABILITY IN KING CASE — FIRST STEP IN CORRECTING FAILURES OF THE CALIFORNIA WORKERS' COMPENSATION SYSTEM?

By Scott O'Mara

On May 29, 2018, the California Supreme Court will hear an oral argument in the case of *King v. CompPartners, Inc.* After argument is made, the Court will have 90 days to provide its opinion regarding same. This case was previously discussed in Law1199.com Newsletter 2016 Issue #2. The focus of Mr. King's case involves the harm he claims was done to him by the cessation of his medical treatment based on the determination of the Utilization Review doctor.

In this case, the psychotropic medication Mr. King was taking required a weaning period to allow his body to adjust to no longer having that medication in his system. However, the UR doctor who evaluated the medication request on behalf of the Workers' Compensation carrier determined Mr. King had no need for this drug and simply cut off his access to it — without any consideration for weaning him off the medication, and without having any awareness as to how such decision might impact him. The lack of gradual reduction which is necessary for this psychotropic medication is the thrust of Mr. King's medical malpractice suit, which holds the Utilization Review doctor accountable for failing to accommodate the standard medication protocol.

The Workers' Compensation entities involved in evaluating treatment needs — insurance companies, self-insured businesses, and Utilization Review providers — are strongly attacking the concept of medical malpractice as claimed in the *King* case, asserting that the doctors involved — specifically, UR doctors — are simply providing opinions, not practicing medicine. The entities making this argument further claim that no physician-patient relationship exists between Utilization Review providers and injured workers. They claim that UR doctors are not “doctors” in the sense of being subject to the same standards of liability which apply to physician-patient relationships.

On the other hand, injured worker King's position is that the Utilization Review doctor who ceased his medication should have met a minimum standard of exercising reasonable diligence and care in terms of his medical needs. UR doctors uniquely are not held to any accountability if malpractice standards are not observed. This allows these doctors to unilaterally create good will with employers and their Utilization Review companies by denying care needed by injured workers — *without bearing any consequences*.

As readers are aware, medicine is a complex field. Because of this complexity, Utilization Review was created to determine the reasonableness and necessity of care which has been recommended for injured workers. In theory, the goal was to eliminate judicial review and medical care. A case comes to them, they review it quickly, and then — having no accountability — they are free to sign off the case without ever properly vetting it, with more

emphasis being placed on creating good will with the UR company than determining what is best for the injured worker.

This whole practice is in conflict with the basic concept of Workers' Compensation protocol, particularly as set forth in the California Constitution, Article XIV, Section 4, which provides that "a complete system of workers' compensation includes . . . full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of [a work] injury".

Therefore, the idea that a Utilization Review doctor can randomly cease an injured worker's care without meeting any minimal standards violates not only the role expected of every doctor, but the California Constitution as well.

The decision to be rendered in the *King* case hopefully will provide some meaningful direction so California medical reviewers will recognize their responsibility to evaluate treatment requests adequately and provide a well-considered opinion based on the individuality of each case – giving due consideration to the impact of their decisions – and not simply rubber-stamp medical care denials to the satisfaction of Workers' Compensation employers and carriers.

I have proposed legislative changes which will eviscerate the wrongdoings which have occurred as a result of Utilization Review and Independent Medical Review. For more information, see Law1199.com Newsletters 2015 Issue #1 and 2015 Issue #5. After the new legislative body is established – governor, lieutenant governor, state senate and assembly members, etc. – we will continue our efforts to reverse the complete failure of the California Workers' Compensation system which has shifted economic liability from employers to individual workers and their families.



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