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PLIGHT OF SAN BERNARDINO COUNTY EMPLOYEES INJURED IN 12/2/15 ATTACK HIGHLIGHTS FAILURE OF UR/IMR SYSTEM

By Scott O'Mara

As most readers are aware, the Workers' Compensation system, as it currently exists, allows employers to select preferred doctors to constitute their Medical Provider Network (MPN). It then allows employers to contract with other doctors to perform what is called Utilization Review (UR), which in theory is a review process to determine the reasonableness and necessity of medical care recommended by an injured worker's doctor, but in actuality is many times simply a vehicle to deny that care and force the worker to go through what is called Independent Medical Review (IMR).

As readers also are aware, Utilization Review doctors never see the patients for whom they make medical care determinations. Likewise, Independent Medical Review (IMR) doctors never see the patients whose cases they are reviewing. In addition, however, IMR doctors hide behind a cloak of secrecy, so their identity and medical qualifications are unknown, and their invisibility makes their determinations virtually exempt from any challenge. Furthermore, the IMR process has a threshold for completing the required paperwork to initiate an IMR review, or the injured worker's medical needs will have no chance of even being considered.

The aftermath of the 12/2/15 attack on San Bernardino County employees in which 14 people were killed and 22 more were wounded provides an iconic example of the absolute failure of the UR/IMR system.

Among the 22 people seriously wounded in that horrific attack are workers with orthopedic, tissue, organ and emotional problems. Despite the obvious evidence that these problems clearly resulted from that traumatic event, the employer, the County of San Bernardino, chose not to simply approve the treatment recommended for these workers dealing with serious problems, but instead decided to review their doctors' recommendations through the employer-controlled filter of, Utilization Review and Independent Medical Review — that is, until enough issues came to the attention of the news media to force the employer to hire a group of specialists, *i.e.*, nurse case managers.

However, these specialists, while they have unique training and knowledge, are not doctors. Instead, they are nurse case managers specifically hired by the County of San Bernardino to assist the attack victims and their doctors in writing reports and requests in a manner that will meet the so-called template utilized in the Utilization Review and

Independent Medical Review protocols. As of 3/3/17, the Acting Administrative Director of Industrial Relations has defended the County of San Bernardino, maintaining that adequate care is being provided. Of significance is the fact that the County of San Bernardino admits they have specifically hired nurse case managers to facilitate access to medical care to cure and relieve the effects of the injured employees' horrific injuries.

Unfortunately, the existing protocol mandated by law has eliminated the opportunity for injured workers to present evidence to a judge as to the failure or inadequacy of determinations made by UR and IMR doctors. Moreover, in one case where such failure was established *(Dubon)*, the Court ultimately ruled that the IMR process has exclusive jurisdiction over medical care determinations, thereby disallowing the opportunity for independent judges to make relevant judicial decisions based upon meaningful evidence.

Despite the widespread empathy, sympathy and concern for the County of San Bernardino attack victims, the employer felt mandated to follow the UR and IMR protocols. They then sought to mitigate the failure of these protocols by hiring nurse case managers. Nonetheless, the continuing denial of medical care in a substantial number of cases remains a serious problem. Moreover, the hiring of nurse case managers to assist treating doctors in writing reports or requests that will satisfy the needs of Utilization Review and Independent Medical Review is not an action which will be taken by employers in cases involving less serious job-related injuries.

In addition, a substantial portion of injured workers have cases which are 15, 20, 30 or even more years old — cases which were settled by findings and award long before UR and IMR came into existence. Now these workers unfortunately are subject to the harmful changes in the law which occurred through the passage of Senate Bill 899 in 2004 and Senate Bill 863 in 2012. Denial of formerly-approved care has encouraged many of these workers to give up their Workers' Compensation medical benefits at the expense of other systems.

The time is overdue to regain the initial perspective of California Workers' Compensation which arose in the late 1800's and early 1900's when recognition was given to the concept that employers are responsible for job-related injuries. This principle is reflected in the California Constitution, which specifically sets forth in Article 14, Section 4, that we are to have ***a complete system of Workers' Compensation, with adequate provision for the comfort, health, safety and general welfare of any and all workers — and those dependent upon them for support — to the extent of relieving the consequences of work-related injuries and deaths, with full provision for such medical, surgical, hospital and other remedial needs and treatment as are requisite to cure and relieve the injured workers from the effects of their injuries***.

Are employers now going to hire nurse case managers to help all injured workers' doctors satisfy the threshold for filing the forms required by Utilization Review and Independent Medical Review? Of course not. The employer expectation, either consciously

or subconsciously, is that Workers' Compensation medical costs will decrease. *Why?* Because injured workers will either not pursue their entitled benefits or sell out their right to medical care, thereby shifting the responsibility for same to either the Federal government or their own private health plan, or they will choose to go without care altogether.

The workers injured in the horrendous County of San Bernardino attack are facing a wall which blocks the treatment they need — including surgery, medication, physical therapy, etc. — as they go through the tedious and time-consuming UR and IMR protocols which mandate unnecessary reviews of treating doctors' findings. Furthermore, despite the logical need for psychiatric or psychological care which these shooting victims clearly have, such need also has nonetheless been subjected to UR/IMR review.

Medical Provider Networks, Utilization Review and Independent Medical Review are all tools used by employers to reduce their Workers' Compensation costs. The economic benefit of these systems and protocols is entirely in favor of employers and the doctors they contract. Forgotten in this whole equation is the liability employers have for work-related injuries as mandated by the California Constitution, and overlooked and ignored is the devastating impact the existing Workers' Compensation system has on injured workers' ability to recover and return back to work.

(To see the legislative changes which have been proposed to restore the Workers' Compensation system to its intended purpose, please see Law1199.com Newsletter 2015 Issue #5.)

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