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STEPS TO OBTAIN MEDICAL TREATMENT

By Scott O'Mara

Protect yourself and your family by predesignation of a treating doctor who is a patient advocate. (Please go to www.law1199.com to obtain a predesignation form.)

In California, workers who sustain job-related injuries are eligible to receive certain benefits. These include monies for temporary disability, permanent impairment, future medical care and vocational rehabilitation (via a voucher with a maximum value of $6,000).

As of July 2013, changes have been implemented relative to future medical care for workers who sustain job-related injuries. The goal of the medical care is to cure or relieve the injured worker from the effects of his/her injury, and this care has great potential value because it covers not only any treatment provided directly for the original work-related injury, but also any treatment provided for ancillary conditions which ultimately result from either the original injury *or* the treatment provided for that injury. For example, if medication prescribed for a job-related injury causes notable side-effects, those side-effects also become the responsibility of Workers' Compensation.

One extreme example involves a client I represented many years ago. He initially underwent surgery for a work-related knee injury, but, as a very unfortunate consequence of that surgery, he developed phlebitis, which led to a stroke. As a result of the stroke, he developed a life-long need for home health care — including home modifications. *All these extreme medical needs have been and continue to be covered entirely by Workers' Compensation because they stem from treatment for the client's original injury, which was job-related.* The cost for this care initially was $60,000 per year; it then went up to $80,000, and now has risen to $120,000 per year.

Therefore, it is very important for all California workers who sustain a job-related injury to understand not only the significance of filing a claim for such injury, but also the importance of filing it in a timely manner.

In Workers' Compensation, two types of injury are recognized — *specific injuries*, which occur at a particular place and time; and *cumulative trauma injuries*, which result not from one specific event, but from a combination of all your work activities over a period of time. A cumulative trauma injury is akin to the bending of a paper clip. If you bend it back and forth enough, it will break — not immediately, but eventually. The breakage will result not from one bend, or several bends, but from the combined effect of repeated bending over a period of time.

Cumulative trauma injuries cover a wide variety of medical conditions, such as orthopedic injuries resulting from repetitive physical demands; hypertension and heart conditions resulting from continuing exposure to stress; and skin cancer from being exposed to sunlight on a regular basis. As a result, a litany of factors in the work situation that can cause cumulative trauma injury.

Once the injured worker files a claim form on a timely basis and becomes eligible to receive medical care, the treating doctor will be a physician selected from the employer's medical provider network list — ***unless the worker has predesignated a treating physician***. This doctor will then examine the worker and make recommendations for care and treatment, and those recommendations will proceed through what is called the utilization review (UR) process. This process involves a group of physicians who have contracts with third-party administrators and employers and are responsible for reviewing the treating doctor's recommendations. If those recommendations are approved, the recommended care will be provided.

There is an ancillary body called the Medical Quality Control Board, a governing agency designed to ensure that the authorized medical care meets certain basic standards. This Board was not thought to have impact on the utilization review process and its doctors, who appeared to be able to "act in a vacuum". However, the Board recently issued a decision indicating that all licensed California doctors fall under the purview of the Medical Quality Control Board. Therefore, utilization review doctors who review the recommendations of injured workers' treating physicians have to meet certain minimum standards. If they fail to do so, they can be subject to having their medical license revoked and/or having sanctions imposed upon them by the licensing body. This then creates a system of checks and balances, and injured workers can now be assured that utilization review doctors will put some time and care into reviewing their treating doctor's recommendations.

As a result of new legislation which has been implemented for all cases as of July 2013, if a utilization review doctor makes a denial, thereby denying the injured worker access to recommended medical care, the worker does not have the right to appeal that decision through litigation, or even know the identity of the reviewer. Both of these facts create constitutional issues.

In any event, an injured worker whose care has been denied by utilization review has the right to initiate the Independent Medical Review (IMR) process, but must do so within 30 days of the UR denial. Unfortunately, this process potentially may involve important decision-making by a doctor who is neither licensed in California nor a resident of the state. However, a unique opportunity to communicate with that physician does exist through submission of additional information from the treating doctor — information which hopefully will substantiate the need for the recommended treatment.

This brings us back full circle to the importance of each worker having a personal physician who is a patient advocate, a doctor with whom the worker has a strong relationship. *You must have a predesignated doctor who is a patient advocate to be assured you will receive*

the best care possible. A doctor who does not have a personal relationship with his/her patient is not as likely to be proactive in going out of his/her way to take additional steps to benefit the patient, such as submitting further information to justify recommended treatment.

It is interesting that the newly-enacted legislation promises expeditious review of needed medical treatment, yet has set forth a two-step process through which an injured worker must proceed to obtain that care if it is not authorized by utilization review — the second step being the IMR process.

It should be noted that Independent Medical Review is done through a corporate entity called Maximus, which hires doctors throughout the world to review medical treatment recommendations and determine the necessity of the recommended care. These doctors — who do not know you and have never seen you — are given the power of deciding which is more appropriate — the treating physician's recommendations or the utilization review doctor's denial of same. While a worker does not have the right to challenge an IMR doctor's decisions through judicial procedure, an additional IMR review can be sought through Maximus.

In conclusion, while the new legislative challenges have created some hurdles for California injured workers, the individual worker still has some control when it comes to dealing with work injuries. It all begins with filing a claim for Workers' Compensation benefits on a timely basis, and predesignating a doctor who is a patient advocate — someone who will put forth sincere effort in helping you to obtain the medical care you need. *(Please go to www.law1199.com to obtain a predesignation form.)*

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