LAW1199.COM NEWSLETTER™

2022 ★ ISSUE #8

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ALL DOCTORS PRACTICING MEDICINE FOR CALIFORNIA WORKERS NEED A CALIFORNIA LICENSE UNLESS WAIVED BY THE INJURED WORKER

By Scott A. O'Mara

The State of California has a Department of Industrial Relations which is established to review and protect workers' employment situations and the Workers' Compensation system. This Department has a site called *Newsline*, and on July 20, 2022, it released issue #2022-61, which sets forth some of the responsibilities that exist in the Medical Provider Network (MPN) program.

The MPN program was established to allow employers to create a limit as to which doctors injured workers can receive treatment from under the Workers' Compensation system. It also set forth certain parameters of entitlement which doctors must have relative to their licensing. *Newsline* Release Number 2022-61 *(dated July 20, 2022)* states:

> "Upon submission of an MPN Plan to the DWC for review, MPNs are required to affirm under penalty of perjury that all of the physicians listed have a valid and current license number to practice in the state of California . . . and that all of the ancillary service providers listed have a current valid license number or certification to practice by the State of California and can provide the requested medical services or goods . . .."

Newsline Release Number 2022-61 further states:

> "The California Department of Industrial Relations, established in 1927, protects and improves the health, safety, and economic well-being of over 18 million wage earners and helps their employers comply with state labor laws. DIR is housed within the Labor & Workforce Development Agency."

The mandate that medical providers must have a valid and current license to practice in the state of California establishes that California justifiably has confidence in the standard which has been set for these doctors to have a license to practice in the state. While this concept appears simple and easy to understand, a substantial aversion appears to exist to the idea of placing the mandate requiring a California medical license on all Utilization Review and Independent Medical Review doctors.

In Law1199.com Newsletter 2019 Issue #3, I reflect the California Constitution, which sets forth that the Workers' Compensation system is to be a complete system which is able to compensate workers for injuries and/or disabilities which occur, with full provision for such medical, surgical, hospital or other treatment which is requisite to cure or relieve the effects of said injury or disability. This system was then changed by the passage of Senate Bill 863, which implemented Independent Medical Review (IMR) and the Utilization Review (UR) process, which incorrectly put a cover of protection on IMR and UR doctors, who never see patients, and who deny medical care in a vast majority of cases.

I discussed the *King* case, where medication for Mr. King was stopped abruptly because of the IMR/UR system, causing him to have four seizures. This case ultimately went to the California Supreme Court, which determined that Utilization Review doctors have no accountability for the harm they cause. This goes back to specific legislation which effectively "inoculated" IMR and UR doctors from having to bear such responsibility.

The most recent Department of Industrial Relations (DIR) *Newsline* — Release Number 2022-61 — notes that the Department of Industrial Relations (DIR) has reflected an awareness of the failures which have occurred or could occur within the Medical Provider Network (MPN) and is mandating that doctors within MPNs be required to have a valid and current license to practice in the state of California. The medical groups they work for — the MPNs — also must, under penalty of perjury, assert that the physicians they list as available treating doctors meet the same licensing standard.

The fact that UR and IMR doctors do not have a standard requiring state of California licensing represents a complete failure of the UR and IMR process. This failure does not afford insurance companies, self-insured employers and injured workers the protection needed for proper medical care which will enable injured workers to return to work quickly with less cost to employers. This returns us back to the changes which occurred with the implementation of Medical Provider Networks and the UR and IMR process — and the proposed changes to the Labor Code addressed in Law1199.com Newsletter 2019 Issue #3.

California workers and their families need to be protected, and this protection is again reflected in the current issue of the Department of Industrial Relations *Newsline* (issue #2022-61, dated July 20, 2022). Complete protection is a necessity, and this newsletter and its attachment set forth the administrative changes which are needed in the Labor Code to ensure such protection.

Reviewing the Medical Provider Network list is the first step in providing care. However, this also is subject to problems because of the limits imposed by employers as to the doctors they allow on their MPN lists. Utilization Review doctors come from groups controlled by employers, yet they are a pivot point as to the type and extent of medical care an injured worker needs

The UR doctor — who, as stated above, never sees the injured worker, and who is not required to be licensed to practice in the state of California — decides what care the worker needs. If the worker wishes to appeal that decision, he/she must take the matter to Independent Medical Review (IMR), which, again, involves doctors who are not required to be licensed in the state of California, nor are the parties allowed to know who these doctors are, and, as stated above, they never see their patients.

The changes to the Labor Code I proposed in Law1199.com Newsletter 2019 Issue #3 result from the fact that the State of California Department of Industrial Relations has become aware of the failures in the provision of medical care which currently exist, and now realizes that — as a minumum — a license to practice medicine in the state of California is a necessity for all doctors selected by employers for their Medical Provider Network lists.

The concept that the denial of medical care is not a medical treatment issue is absurd, and is based upon small legislative changes which lobbyists and legislators are trying to use to minimize the provision of care to cure or relieve the effects of industrial injuries. These groups fail to recognize and accept the basic fact that injured workers simply want to get better so they can return to their jobs. The best way to maximize that is to ensure that *all doctors* involved in a worker's medical care — whether it be Utilization Review doctors or Independent Medical Review doctors, who are in essence treating doctors because they either deny or accept care which has been recommended — should be required to be licensed to practice in the state of California. *Again, mandated licensing should be a minimum standard for all Utilization Review and Independent Medical Review doctors.*

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NOTICE: *Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.*

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