



LAW1199.COM NEWSLETTER™

2022 ★ ISSUE #11

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BALANCED COMMUNICATION WITH THE DOCTOR



By Scott A. O'Mara

California's Workers' Compensation laws were enacted by the legislative body to ensure fair and just treatment for California workers who incur injuries in the course of their employment. This legislation has been enacted to provide workers with the medical care they need to cure or relieve the effects of their work injuries through their entire lifespan. The specific language guaranteeing workers access to this right is set forth in the California Constitution, Article XIV, Section 4, which specifically states:

[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 such injury . . .

The determination as to the need for care to cure or relieve is based upon several factors. One is the doctor's opinions and findings regarding the job-related injury. The physician's evaluation will be based upon his or her examination of the patient, as well as statements made by the patient as to pain and discomfort and/or restrictions they believe they have — which are referred to as subjective complaints.

In addition, the evaluating doctor will use objective findings — based upon an x-ray, MRI, EKG or other objective testing, such as the configuration of blood drawn from the patient, or elements found within a urine sample.

The injured worker's description of subjective complaints is a significant element in the determination as to the type, necessity and length of care which may be needed. These complaints can have substantial importance in the doctor's determinations regarding these factors . . . as well as the credibility of the worker.

Injured workers must realize that these are not cavalier statements. They are statements which can impact their care and their access to same — potentially throughout their lifetime.

Prior to meeting with a physician, an injured worker should give some thought and preparation as to their subjective complaints to make sure the characterization they give provides a broad spectrum as to what they are experiencing relative to any restrictions, limitations, discomfort, etc. ([Law 1199 – 2019 #4](#) / [Law 1199 – 2019 #8](#))

Regarding subjective complaints (other than extreme medical problems), injured workers may have times when they have good days and bad days. Articulating this fact — if it is accurate — will support the credibility of the worker, as opposed to the worker who only wants to articulate their pain and discomfort without acknowledging that they may have times when they are doing better.

Prior to being evaluated by the doctor, an injured worker — if given the opportunity to speak with his or her attorney — can share their perspective regarding pain and discomfort. If the attorney is educated and balanced, they will ensure that the worker's articulation will provide a broader view of what is being experienced, as opposed to a narrow view of only the days which are totally disabling because of pain and discomfort.

Many eyes will always evaluate the concept of subjective complaints, which will be considered not only by an injured worker's primary doctor, but also any secondary doctors who may be called in to review an ancillary problem, as well as any nurse case managers and adjusters. Therefore, a worker's subjective complaints can prove to be paramount as to their perceived credibility, as well as their access to — or denial of — medical care.

Substantial evidence is the determining factor which allows or denies the ability of an injured worker to receive appropriate medical care. The substantial evidence is based upon full and complete reflection of a worker's injuries to his/her doctor. Substantial evidence can either make or break a case, and is the standard established by the courts. ([Law 1199 – 2019 #4 / Law 1199 - 2019 #8](#))

Medical care provided to injured workers is intended to cure or relieve the effects of their work injuries. It can be expanded, and some of the expansion may result from the form of treatment. If the worker takes medication for a job-related injury, and that medication cause an ancillary problem — such as dryness of the mouth, diarrhea, constipation, gastrointestinal problems, etc. — the ancillary problem (or problems) become the responsibility of the Workers' Compensation system.

Injured workers would be wise to keep a list of the medications they are taking — including both those prescribed by their doctor or other doctors, and over-the-counter medications, such as Tylenol or aspirin — and go to WebMd to research the side-effects of those medications. The question is always this: *Do any of the side-effects listed for your medications match symptoms you are experiencing?* Please be aware that any symptoms or problems caused by medication taken for a job-related injury can also be deemed to be work-related — and therefore become the responsibility of Workers' Compensation — if the symptom or problem first appeared or worsened after the medication was commenced. Therefore, if you discover after researching this matter that any of the listed side-effects of your medications *do* match symptoms you are experiencing, please inform the doctor of same so this information is documented, and also inform your attorney to ensure that they have filed on all the body parts and medical conditions relevant to your case.

Medical care also has an expansive element. For example, if an injured worker is diabetic and has a work-related heart condition, and the doctor opines that the diabetes is negatively impacting the heart, medical coverage extends not only to the heart, but to the diabetes as well.

Also, medical care can develop to the point where it includes not only medication, testing and surgery; it also can include such other aspects as renovation of an injured worker's living area and assistance with transportation. There are situations where the job-related injury has been a factor in causing a stroke which mandates 24-hour care and renovation of the worker's home. In that situation, medical care is expanded accordingly to meet the worker's needs.

Ancillary to the medical care needed to cure or relieve the effects of a work injury is the interpretation as to the worker's level of impairment — and this level can be expanded. As established by law, once an award has been granted by the court establishing a level of disability, the worker has five years from the date of injury to reopen their case for new and further disability if the effects of the injury have expanded. The five-year window applies only to permanent disability; it does not impact access to medical care, nor does it limit such access. These elements in the Workers' Compensation system — medical care and level of impairment — are significant factors which require an understanding and knowledge on behalf of the injured worker. If an injured worker does not have access to these perspectives, there is a high probability that limitations will be placed upon them. ([Law1199 – 2019 #1](#))

The reflection of subjective complaints is a very significant component in the provision of medical care and the level of impairment. If an injured worker's subjective complaints are not given broad consideration, it creates a unique opportunity for the employer to question the worker's credibility. In fact, the question of a worker's credibility is part of the training and focus which adjusters have as they look for ways to remove or limit the care which is provided to an injured worker, as well as the level of disability.

We have seen the evolution of the Workers' Compensation system to include medical provider network (MPN) lists, as well as Utilization Review and Independent Medical Review — the development of which has been beneficial to employers, and detrimental to workers.

A new step which also is being pushed is the concept of a "carve-out (ADR -- Alternate Dispute Resolution)". If done improperly, a "carve-out (ADR -- Alternate Dispute Resolution)" creates great risk of harm to injured workers. ([Law1199 – 2019 #4 and #8](#))

Again, it is a necessity for workers to have an understanding that the information which will be sought from them should not be limited just to their bad days, but should articulate that they have both good days and bad days — a concept which reinforces their credibility. This is something that injured workers involved in a "carve-out (ADR -- Alternate Dispute Resolution)" may not grasp or understand because the foundation of evidence in a case is delayed

without an attorney's involvement. If an attorney is involved at the initial stage of a case, the attorney can share his/her concerns and thoughts, which then can be placed in an environment which is objective and addresses not just bad days, but both good and bad days, thereby creating a high level of veracity for the worker. Balanced Communication is an absolute need. Your attorney will help to develop that communication.

If an injured worker does not have the opportunity to discuss this matter with his or her attorney, there is a high probability that the subjective complaints will be overstated or possibly understated. If an injured worker does not acknowledge problems which are evolving, this can remove needed care.

An example would be a worker who has a very serious injury to the right leg, causing this individual to rely more and more on the left leg, and they develop problems with their upper extremities when going up and down stairs. The condition of the upper extremities can be considered a compensable consequence of the right leg injury, and the worker would therefore be eligible to receive care for the upper extremities as well. If the worker does not understand the connectivity of the injury, the treatment and the medication, it limits the care which could be received, and limits the doctor's complete understanding of the situation. However, if the worker appreciates the connectivity of these factors, it expands the care which he/she can receive.

For job-related injuries, medical care is a significant factor in leading to a good quality of life. The relationship and the balanced communication the patient has with their physician is one which can provide a clearer picture as to both their current needs and their future needs. Be prepared to not overstate or underestimate your subjective pain or the activities you can or cannot do, or your limitations. **COMMUNICATION MUST BE BALANCED.**

(11/3/22)

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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
