



### **AB2200 ANOTHER ATTACK TO THE CALIFORNIA CONSTITUTION ? BY: SCOTT A. O'MARA**

The California workers' compensation system has a strong foundation that evolves from systems that manifested through Europe and the United States in the late 1800s and the 1900s.

President Roosevelt reflecting the workers' compensation systems stated:

Industrial accidents are risk of trade which the law must place on the employer alone.

See Newsletter 2015; Issue #5 *“Proposed Legislation to Restore the Workers' Compensation System to Conform with the Constitutional Mandate”*.

The California Constitution specifically set forth in Article 14, Section 4, that the workers' compensation systems is to be a “complete system” which will “create and enforce a liability on the part of all persons to compensate any or all of their workers for injury or disability, and their dependants for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of the employee - - [with] such provisions for such medical, surgical, hospital and other remedial treatment as is requisite to cure (or relieve) the effects of such injury.”

There have been several legislative enactments that have been marketed as a vehicle to access the medical care to cure or relieve more expeditiously. The reality of it is these prior legislative enactments have delayed and denied many workers for the care to cure or relieve.

SB899 signed on April 19, 2004 by Governor Schwarzenegger which created an opportunity for the employer to control who the physicians are that the worker can seek for medical care to cure or relieve, i.e., creating the Medical Provider Network (MPN) list.

SB899 has denied and delayed many workers from care that is necessary to cure or relieve the effects of the job related injury.

There are additional legislative changes that greatly limit the appeal to the judicial system for Utilization Review (UR) denial for injuries occurring on or after January 1, 2013 that the Ghost Doctors in the Independent Medical Review (IMR) would be the ones making the determination. They are called “Ghost Doctors” because no one is allowed to know who they are, and where they are licensed. These Ghost Doctor Systems (IMR doctor) now remove the right to go before a judge to weigh if this is substantial evidence to justify the findings of the UR and Ghost Doctor /IMR. See Newsletter 2018; Issue #3 *“UR & IMR Problems Continue; Workers' Comp Reform Needed To Restore Checks And Balances”*:

The California Legislative body is aware that the amended and changed workers' compensation systems are not fulfilling the obligation as set forth by the California Constitution. The California State Legislative reviewed other legislative work which was calling for an adoption of a single-payer healthcare system.

The single-payer system was offered in 1994 as a ballot of initiative in Proposition 186 which was turned down by the voters. Again, the single-payer system was offered by legislative efforts in SB840 and this was vetoed by Governor Schwarzenegger. SB562 in 2017 also pushed the single-payer system but did not go forward.

Specific legislation must follow the California Constitution that the medical care is to cure or relieve the effects of the injury. This medical care can be lifetime medical; the California Constitution also embraces the concept for provisions of lost wages either through temporary disability, permanent disability and significantly provides for potential of lifetime medical care. The medical care is expansive beyond the scope of all private health providers. This care can be so expansive that it can require a renovation of a house to accommodate the disabled worker's maneuvering through his/her home to use the restroom to bathe to the need for a special bed. It can also be a provision for the use and purchase of a special vehicle to accommodate the work-related injuries.

The constitutional rights to obtain healthcare to cure or relieve the effects of the injuries previously had in totality been resolved by the Workers' Compensation Appeals Board. This right has been adversely affected by the UR and IMR systems. The attempt to make the determinations that judges previously have made was attempted by the usage of Ghost Doctors and IMR doctors. The new system that is being offered AB2200 will not provide access to healthcare to cure or relieve the platform to establish the new system of single-payer is complex and does not provide meaningful directions by the members as to what tools are necessary. The many participants in the committee will have narrow views and not be able to go back and implement care that previously had been available prior to the MPN list, UR and IMR systems.

One of the complaints that the employers have made is that the cost of workers' compensation continues to grow. When the system is studied, part of the growth is the change in medical care to cure or relieve. The medical care that is available now in 2024 is substantially greater than what was available 20-30 years ago. We have an increase in surgical approaches, care and medication that was not available 20-30 years ago. This costs more, but it does provide an opportunity to cure or relieve. The limiting that is done by the carriers and the self-insured's is to limit the increased costs. A substantial portion of the increased costs is the science and the change of medical care that is available to cure or relieve.

The legislation that is being examined is specifically stated as follows:

It is the intent of the legislator to establish a comprehensive universal single-payer healthcare coverage program and healthcare cost control system for the benefit of all residents of the state.

Currently AB2200 that was offered on February 7, 2024. This is marketed as a way to create (The California Guaranteed Health Care for All Act) a guaranteed healthcare for all programs to provide comprehensive universal single-payer healthcare coverage and a healthcare cost control system for all benefits of the residence of California.

The plan claims to take over the current workers' compensation system. The idea is that as the employers and tax payers have experienced a rise in the cost of health care and health care coverage in recent years "including premiums, deductibles and co-payments" restrict provider networks and high costs out of charges. The idea is to have control. Also stating that businesses have experienced an increase in costs of health care benefits for their employees and many employers are shifting to pay a larger share of their costs of coverage to the employees or dropping coverage entirely.

The right to execute those rights for healthcare to cure or relieve was to be resolved by the Workers' Compensation Appeals Board. It has been adversely impacted by the UR and IMR systems that attempt to remove, review and mandate from the appeals board to Ghost Doctors. In a new system that is being examined, the guaranteed health care for all will not be a system that affords greater medical care to cure or relieve, but another vehicle to delay medical care.

Authors of the bill do not have the complete awareness of this legislative direction required They have plans to set up a very complex system of other outside parties coming in and setting up the system and review same.

SB2200 means well, but lacks substance and creates another cause of harm to the injured worker and opens up large areas of additional liability to the employer. As part of the bargain entered into, work injuries are limited to any causative action against the employer, and that is part of the bargain entered into that by getting the medical care and the benefits the worker limits their access to a full cup of justice.

With the enactment SB2200, this will create another venue for the worker to sue civilly the employer for failure to provide a safe place of employment and will create additional costs.

There is no doubt that UR and IMR systems are failing. Changes need to be ones that accept the constitutional mandate to cure or relieve the effects of the injury. The bargain entered into the worker has restricted rights for damages from the employer other than the medical care to cure or relieve payment from temporary disability or payment from permanent disability and potentially lifetime medical.

The solution of the committees appointed pursuant to SB2200 is to review if the legislation is dangerous if not closely monitored with a full understanding of the California Constitution that medical care to cure or relieve the effects of the injury.

The proposed legislation from SB2200 needs to be thoroughly examined by the Unions and Associations. They need to appreciate the negative impact if there continues to be a shift of responsibility away from the employer to the worker and the union.



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