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## MEDICAL TREATMENT NOT ACCEPTED BY THE INJURED WORKER (ADJUSTER USES “GHOST DOCTORS”)

BY: SCOTT A. O'MARA

The California Constitution specifically states that the workers' compensation laws mandate that in the event of a job-related injury the employer is to provide medical care to cure or relieve the effects of the job related injury.

With the changes in the Workers' Compensation System there are some very difficult protocols that the injured worker has to follow to obtain the medical care. The injured worker's doctor has to request for authorization (RFA) from the adjuster to provide the medical care. The treating doctor's request for medical treatment is placed in a form called Request for Authorization (RFA) and the adjuster will send this to an outside doctor that is paid for by the employer, this doctor does not see the patient. The UR doctor reviews the recommendations by treating doctor, and if authorized the case will go forward with the treatment. If the treatment is denied by the Utilization Review doctor the worker has a very limited opportunity to challenge this by going to Independent Medical Review. Independent Medical Review “Ghost Doctors” do not see the patient nor are the parties allowed to know who the Independent Medical Review “Ghost Doctors” is. The case law and statute indicates that if there is a denial or limit of medical care this process supports the denial by UR and IMR the worker may be stuck with limited medical care or no medical care for the next 12 months.

There are delays and frustration that occurs in the system that has caused some workers to decide that they do not want to participate or try to receive the medical care by going through the RFA process and the UR process. The UR and IMR process can cause the delay and limitation of care.

There is another harmful tool available to the employer to attempt to lower their cost and responsibility for treatment and for a disability retirement. This is set forth in Labor Code §4056 which states that if there is a disability or a need for retirement that has developed because of the worker's refusal of the medical care and the refusal is unreasonable and this medical condition is aggravated or made worse by the worker's refusal, the employer is no longer responsible for workers' compensation care in that area, or if the retirement is mandated because of the worker's refusal treatment this is a tool to deny the disability retirement.

The doctors that the employer utilizes in Utilization Review and the potential avoidability of a consequence of care are the tools that the employer can utilize again to limit their cost in the need to provide medical care or grant a disability retirement.

This awareness that the employer uses is a cost limitation tool. This cost limitation tool is contrary to what the California Constitution states, Labor Code §4056 embraces this wall of denial and limitation of benefits.

In the event that the worker does have a job related injury, and the worker goes through the Utilization Review and IMR “Ghost Doctors” process, and the carrier approves medical care and the worker decides that they do not want to proceed in that route, this provides another employer tool to shift responsibility from the employer to the injured worker. The injured worker needs medical evidence by other doctors that provide ancillary opinions as to the medical basis for the non-acceptance of the medical care that has been offered or the limitation of the medical care. If the worker is placed in a position of the medical care that is approved by the employer and the worker rejects approved care, based upon substantial evidence of another medical opinion that justifies the rejection or limitation of the medical care, there could be medical and legal opinions that justify of not proceeding with the care affords protection to the worker potentially against Labor Code §4056 regards the doctrine of avoidable consequences.

You as a California employee need to be aware as to the importance of your communications with the treating doctor and the staff. Whether it is trying to expand the medical care beyond what Utilization Review and IMR, or not embracing the medical care that is allegedly approved by Utilization Review and IMR. If you have a treating doctor that articulates the rationales for either another approach on care or not going that route, you are providing a potential blanket of protection against the harm that Labor Code §4056 has created. There are certain situations where the worker has elected not to go the route of the medical care and seeks out the disability retirement and the court has come back and indicated that the non-acceptance of the medical care can be the reason to deny the disability retirement.

You as the California worker need knowledge and understanding, you need to communicate with your treating doctor. If in fact your treating doctor concurs as to the route of care that you want to proceed on verses what is being pushed by “Ghost Doctors”, this could give you a blanket of protection. Without this your vulnerability is very high and the employer or the administrative retirement systems can and will use this as a tool to remove their obligations that they have pursuant to the Government Code and the California Constitution. Preparation is imperative; discussion with your treating doctors is imperative and communication to your attorney to ensure that the elements are there to help provide you with protection.

It is a common element for the patient to have concerns regarding the impact of treatment and potential side effects of treatment i.e. the surgery or medication that is utilized post the treatment.

There is a website called WEBMD that provides a list of all medications that people utilize, this website also talks about the side effects. The side effects of the medications change as to who the patient is, and what their history is. Many patients are aware that the authorized surgery will have side effects. They gather the knowledge either from family members, or from their friends. Their concern is not to have the condition worsen, as there is, no guarantee offered at any time that the surgery indeed would make corrective measures and not cause side effects at a level than what it already is.

The doctors that engage in the workers’ compensation protocol whether it is the Utilization Review doctors or IMR doctors are “Ghost Doctors”. Many times these doctors engage in what is called the “catch and release program”. This is where they look at the documents quickly, or have their subordinates’ (non-medical doctors), look at the documents and then make their findings based upon that, all without seeing the patients. The concept that an approval or denial of medical care can be made without seeing the patient is a problem that is a high risk for the patient.

The “catch and release program” for some doctors is they want a volume of cases coming in. They catch the case, look at it quickly and release it, and get paid compensation for their opinion.

It is not uncommon for some patients that have friends and family that have had similar treatments offered that causes side effects.

The current system is a risk factor that the patient needs to be aware of. The legislation that was passed in Labor Code §4056 is again a tool to lower costs on job related injuries. This needs to be removed and more information needs to be provided to the patient so that they can make a reasonable decision for the care, and not have a threat of losing benefits such as treatment and/or retirement.



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