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2026 ★ ISSUE #1

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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 provide a request for authorization (RFA) to the adjuster to provide the medical care. The treating doctor's request for medical treatment is placed on a form called Request for Authorization (RFA). The adjuster will then send this form 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” are. 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 occur in the system that has caused some workers to decide 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. 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. 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 greater than what is currently there.

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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## **AB 1054 (Gipson (A) - Introduced 02/20/2025, amended 03/24/2025)**

**BY: SCOTT A. O'MARA & DANIEL J. PALASCIANO**

AB 1054 was introduced earlier this year by Assemblyman Gipson, as an attempt to establish a Deferred Retirement Option Program (DROP) for CHP Officers and CalFire firefighters. The initial version of the bill introduced on 02/20/2025 was essentially an outline of the proposal to create the DROP system, however, there were no specifics as to how the DROP system would be set up, eligibility requirements, etc. That bill was referred to the Assembly Committee on Public Employment and Retirement ("Committee") on 03/24/2025.

On that same date, an amended version of AB 1054, which was nearly identical to the initial bill, was recommended for re-referral to the Committee, and on 03/25/2025, the bill was re-referred to the Committee. However, a hearing before the Committee scheduled for 04/23/2025 was cancelled at the request of Assemblyman Gipson. No action has been taken on this bill since that time.

Prior to the cancelled P.E. & R committee hearing, there were proposed draft amendments to the bill that were circulated which were dated 03/24/2025. These draft amendments provided a version of the details about how the DROP system would operate, eligibility requirements, etc., that went far beyond the general intent statements of the first two versions of AB 1054.

While not adopted as part of the currently amended version of AB 1054, the draft amendments shine much light on the proposed workings of a DROP system. For example, included in the draft amendments is proposed Government Code §21717.8 (a)(2), which reads as follows:

(2) The member must waive and forfeit any application, claim, or right to any disability retirement benefit administered by any public retirement system of which they are a member, and where such an application, claim, or right to any disability retirement benefit is based on a condition relating to an illness or injury that occurred prior to their election to participate in the program, regardless of whether the illness or injury is industrial or nonindustrial.

While the language of this proposed section is not a model of clarity, it seems clear that the intent of this section is to prevent a CHP Officer or CalFire member who is in DROP from applying for an Industrial Disability Retirement (IDR) when the basis of that application relates to any injury or illness that occurred prior to the member's decision to participate in DROP. This section is problematic for multiple reasons.

As a reminder, per Section 1 of AB 1054, the main intent of the proposed DROP program, as stated by the Legislature, is to encourage CHP and CalFire members to work beyond their planned service retirement date, due to the, **“deficiency in the recruitment and retention of CHP officers and CAL FIRE firefighters which has resulted in a chronic shortage of needed personnel(.)”** The Legislature goes on to state that, **“the challenges now being confronted by both the CHP and CAL FIRE are dangerously protracted requiring increasing reliance on existing experiences and expertise.”** Further, the Legislature has found that the CHP now serves as a local and statewide law enforcement entity, and the Legislature further declares that CAL FIRE's handling of catastrophic disasters in the “new normal”, and has significantly increased the complexity of its mission.

In response to this “deficiency in recruitment and retention” of qualified personnel, the DROP program has been introduced, which would increase not only the amount of available personnel for both agencies, but would specifically increase the amount of thoroughly trained, highly experienced personnel, at a time when the State of California is in dire need of such personnel.

Unfortunately, proposed Government Code §21717.8(a)(2) would most likely frustrate the intent of the DROP system, by deterring qualified personnel from electing to participate in DROP. This is because while many experienced CHP officers and CalFire firefighters have had injuries during their career, the vast majority of on-the-job injuries are successfully treated, and the injured worker returns to full duty, oftentimes for years without incident.

For example, a CHP Officer with a non-surgical back injury may be injured early in their career, get successfully treated, and then work for another 15 or 20 years in good health up until their planned service retirement date. That Officer then enters DROP and continues with his full duties. If that Officer suffers a second back injury while working in DROP that renders them unable to do their usual and customary duties, why should that Officer be barred for applying for an IDR?

Again, having such a condition put upon CHP Officers and CalFire firefighters *would likely dissuade them from opting into the DROP program.* If our CHP Officers above were to be injured on the job while working in DROP and was no longer able to work, he would not only lose the ability to continue working in the DROP program, with its concomitant financial benefits, but he would also be unable to apply for an IDR, which provides a significant tax benefit to safety personnel injured on the job. Especially if our CHP Officer were injured to the extent that they could no longer work at any job, their financial harm would be even greater.

Further, there does not appear to be a valid rationale to counter this argument. The benefit conferred by the IDR is a federal tax benefit, which does not cost the State of California anything. The State of California is not required to increase the member's retirement allowance, or contribute anything at all to the increased benefit that would come to a DROP member who was granted an IDR. The only additional benefit conferred on an IDR recipient who was injured while in DROP comes through the federal government, not the State of California.

At such time as AB 1054 or another DROP bill becomes active in Sacramento, attention must be paid to the details of any such bill, especially if a provision such as the current proposed Government Code §21717.8(a)(2) is included. Based on the foregoing, it is clear there is no rational basis for AB 1054 or an updated DROP bill to include Government Code §21717.8 (a)(2). The only potential effect this section would have on the DROP system would be to deter from the DROP program many qualified and experienced personnel that AB 1054 is attempting to persuade to keep working in the first place.

It continues to be very important to monitor the maturation of AB 1054 to insure that the legislature does not penalize those officers and firefighters who participate in DROP by negatively impacting their right to an IDR. It will be difficult to create a meaningful solution to the current staffing crisis unless AB 1054 is eventually passed in a manner that does not cause harm to CHP Officers and CalFire firefighters. One way to prevent such harm is to make sure that currently proposed Government Code §21717.8(a)(2), or any similar such provision, is not included in the final legislation.



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