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## **LONGER RECOVERY TIME PROPOSED FOR INJURED SAFETY WORKERS; WHAT “CATASTROPHIC INJURY” MEANS; DOCTORS SHOULD PURSUE OBJECTIVITY BASED ON MEDICAL NEED, NOT FINANCIAL REWARD**

**BY: SCOTT A. O'MARA**

Senate Bill 897, proposed legislation introduced by Sen. Richard D. Roth, has identified the unique risks and harm associated with the work of safety officers, including police officers, firefighters and deputy sheriffs. This legislation recognizes the fact that many of these officers sustain serious injuries for which the recovery time is greater than one year before they are once again ready to return to their jobs.

SB 897 creates an opportunity for these injured safety officers to continue with their careers instead of having to retire prematurely because of the limited recovery time prescribed by existing legislation. Significantly, SB 897 would allow these officers up to two years of salary continuation pursuant to Labor Code §4850, thereby giving them up to two full years to recover from their major injuries. The threshold for enabling an injured safety officer to access these additional benefits would be a “catastrophic injury arising out of and in the course of his or her duties”, as stated in the newly-proposed statute, Labor Code §4850.1.

The definition of “catastrophic injury” is now being reviewed with respect to Labor Code §4660.1. As readers may recall, this statute (L.C. §4660.1) changed the law in 2013 to limit the ability of workers to receive impairment for sleep, psychiatric and sexual conditions arising out of compensable injuries, unless the worker is the victim of either “a violent act or direct exposure to a significant violent act” or “a catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury”.

Of particular interest is a case subject to appeal which presents a different perspective as to what constitutes a “catastrophic injury”. In this matter, *Larsen v. Securities Security Systems*, the worker, Deborah Larsen, has initially been deemed eligible for permanent impairment benefits relative to an injury which occurred when she was struck by a car while walking in the parking lot

outside her work. The Workers' Compensation Appeals Board has determined that a "violent act" does not necessarily require criminal conduct, but can encompass acts which "are characterized by either a strong physical force [or an] extreme or intense force" or "are vehemently or passionately threatening". By such reasoning, the WCAB determined that the car striking Ms. Larsen constituted a "violent act" consistent with the intentions of Labor Code §4660.1.

If the *Larsen* case is appealed, the Appellate Court will certainly review the definition of a "violent act" or "catastrophic injury". However, the legislative threshold for a "catastrophic injury" as used by Sen. Roth in his proposed legislation, SB 897, clearly should not be limited to such occurrences as the collapse of a building or severe bodily injuries resulting from a shooting or stabbing. If a firefighter, police officer or deputy sheriff is directing traffic and is struck by a car, this indeed should constitute a "catastrophic injury" as well.

Later this month, the Assembly Insurance Committee (when it meets on June 22, 2016) will be reviewing Senate Bill 563, authored by Sen. Richard Pan. This bill, which was passed 38-0 by the Senate on January 26, 2016, prohibits financial incentives from being given to physicians employed by Utilization Review for denying treatment requests. Prior legislation which implemented Medical Provider Networks, Utilization Review and Independent Medical Review effectively created a system which "buys doctors" — converting their role from being patient oriented treaters guided by the Hippocratic Oath, to being, in effect, "car salesmen", financially motivated by the rewards they can receive for denying treatment.

SB 563 is clearly in line with the spirit and intentions of Labor Code §139.3, which states:

*"[I]t is unlawful for a physician to refer a person for clinical laboratory, diagnostic nuclear medicine, radiation oncology, physical therapy, physical rehabilitation, psychometric testing, home infusion therapy, outpatient surgery, diagnostic imaging goods or services, or pharmacy goods, whether for treatment or medical-legal purposes, if the physician or his or her immediate family has a financial interest with the person or in the entity that receives the referral."*

While this statute specifically refers to physicians benefitting financially from *making referrals for treatment*, the opportunity for them to benefit financially from *denying treatment* — as is the case with Utilization Review and Independent Medical Review doctors — must be considered equally unethical. Senate Bill 563 would resolve this issue and enable injured workers to return to work more expeditiously if their treatment needs are considered objectively and approved based on pure medical need instead of being denied simply because the reviewing doctors can benefit financially from making such denials.

In addition, some employers use a Medical Provider Network list, thereby limiting the acceptable doctors available to treat injured workers to those most beneficial to the employers. Not only are

those doctors eligible to receive bonuses from employers for saving them money; they also face the possibility of actually being removed from an employer's MPN list (and losing business opportunities accordingly) if they fail to provide financial benefit for the employer. In other words, employers using such tactics are basing their evaluation of doctors' performance not on acceptable medical standards, but on factors having no relationship to the quality of service these doctors provide in their role as physicians.

Legislation should be considered to restore impartiality in reviewing treatment recommendations so doctors will not be subject to the fear of being removed from an employer's MPN list simply because they have not pleased the insurance carrier's adjuster. After all, a doctor's role is to provide real medicine and seek the best results for his or her patient through an objective approach not influenced by outside factors, notably financial gain.

NOTE TO READERS: *2016 Issue #1 of the Law1199.com Newsletter series goes into greater detail regarding Sen. Roth's proposed legislation and the impact of same. Also, 2015 Issue #13 addresses legislative changes which can be made to correct the wrongs implemented by Senate Bill 863 so the law will comport with the California Constitution, Article 15, Section 4.*



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