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[safetyofficerattorneys.com](http://safetyofficerattorneys.com) ★ [www.law1199.com](http://www.law1199.com) ★ SCOTT A. O'MARA, THOMAS I. HAMPTON  
BETH A. WILLIAMS, DANIEL J. PALASCIANO & JOSEPH P. HEATHMAN

## CHANGES ARE NEEDED TO RESTORE THE CALIFORNIA WORKERS' COMPENSATION SYSTEM TO FULFILL ITS PURPOSE AS DEFINED IN THE CALIFORNIA CONSTITUTION

BY: SCOTT A. O'MARA

Pursuant to the California Constitution, Article 14, Section 4, the goal of Workers' Compensation is to "cure and relieve" injured workers from the effects of their work-related injuries. Unfortunately, however, this constitutional goal was unintentionally obstructed by certain elements of legislation passed in 2004 (Senate Bill 899) and 2012 (Senate Bill 863), resulting in deleterious consequences for the California Workers' Compensation system, including rules which have either delayed medical care for many injured workers or denied their access to care altogether.

As a result, many workers have been forced to use their own private health plan to bear the economic burden for the care they need to be "cured and relieved" from the effects of their work-related injuries — a burden which rightfully should be their employer's responsibility. In addition, the costs related to private health plans have increased over a period of time because of the shift in economic responsibility to injured workers.

Of further concern is the fact that one of the corrective measures available to make the changes needed in the California Workers' Compensation system was removed as of 4/1/15 when the California Supreme Court decided not to review the *Dubon* case, which would have provided checks and balances regarding the access to medical care.

Injured workers' right to be cured and relieved from the effects of their work-related injuries as set forth in the California Constitution was impacted first by the creation of the Utilization Review (UR) process, which allowed employers to hire outside vendors given the power to make medical decisions — *i.e.*, the right to deny or approve medical care requested by treating doctors for injured workers. Additional devastating impact on the Work Comp system occurred with the passage of SB 863 in 2012 and the implementation of the Independent Medical Review (IMR) process.

As set forth in *Dubon I* and other cases, IMR has removed judicial review, as injured workers whose recommended medical care has been denied by UR are mandated to utilize the Independent Medical Review process, and its decisions are not subject to any real scrutiny as the

IMR doctors making these decisions are shrouded in a cloak of secrecy, and the parties submitting medical records for review have no right to know the names and qualifications of these physicians, and whether they are even licensed in the State of California. Thus, the prior system of checks and balances was entirely removed by Senate Bill 863. While this bill sought to expedite care to injured workers, the result has been just the opposite. Because of the IMR process, many injured workers have not been able to receive the timely medical care they need, and therefore have been off work longer and have sustained increased residual impairment.

The proposed changes to the current Labor Code would create an opportunity for California injured workers to receive real and measurable medical care compliant with the California Constitution, which, as stated above, sets forth the goal of medical care to “cure and relieve” injured workers from the effects of their work-related injuries.

As you look at the various Labor Code sections and the modifications necessary, they are simple, concise and direct, and they remove the mechanism which has not allowed injured workers to present real, meaningful evidence to a judge for an unbiased determination as to the appropriateness and necessity of recommended medical care to cure and relieve the effects of a work-related injury. Without these changes, the erosion of the California Workers’ Compensation system will continue.

Attached are more in-depth articles regarding the development of the California Workers’ Compensation system and the impact of the above-mentioned changes which have occurred with the passage of SB 899 in 2004 and SB 863 in 2012, and needed amendments to remove the deleterious rules. *(Please see 2015 Issues #1 and 5.)*



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**THE LAW OFFICES OF**  
**SCOTT A. O’MARA**

2370 Fifth Ave.  
San Diego, CA 92101-1611

4344 Latham St. – Ste. 250  
Riverside, CA 92501-1766

1-800-LAW-1199  
(1-800-529-1199)  
951-276-1199  
[www.law1199.com](http://www.law1199.com)

**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.*

