



LAW1199.COM NEWSLETTER™

2017 ★ ISSUE #8

safetyofficerattorneys.com ★ www.law1199.com ★ SCOTT A. O'MARA, THOMAS I. HAMPTON
BETH A. WILLIAMS, DANIEL J. PALASCIANO & JOSEPH P. HEATHMAN

TREATING DOCTORS MUST BE PROACTIVE TO OBTAIN APPROVAL OF TREATMENT FOR INJURED WORKERS

BY: SCOTT A. O'MARA

Doctors can provide professional services for work-related injuries, either in the capacity of a treating physician or a forensic expert. A treating doctor's role is based upon the responsibility of providing care to workers who have sustained job-related injuries. In the California Workers' Compensation system, two types of job-related injuries are recognized — *specific injuries* and *cumulative trauma injuries*.

A *specific injury* is one which occurs at a particular place and time, such as a broken arm or leg sustained in a vehicle collision; cuts or fractures incurred in an altercation; back or knee strain resulting from lifting heavy objects; etc. On the other hand, a *cumulative trauma* injury is one which results not from one specific event, but from a combination of work activities which cause cumulative trauma to a particular part of the body over a period of time. A cumulative trauma injury is akin to the bending of a paper clip. If you bend it back and forth enough, it will break — not immediately, but eventually. The breakage will result not from one bend, or several bends, but from the combined effect of repeated bending over a period of time.

The California Constitution addresses the need for care resulting from either type of work-related injury. Article 14, Section 4, acknowledges that Workers' Compensation is to be a "complete system" with "full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such [work-related] injury". Thus, the concept of curing an injured worker from his or her work-related injuries includes not only the provision of medical, surgical and hospital treatment, but also other "remedial treatment", including such modalities as chiropractic care, acupuncture, nursing care, prescription and non-prescription medication, surgical supplies, prosthetics, orthotics, crutches, wheelchairs and various other devices and modalities designed to "cure and relieve".

Medical treatment is not specifically limited, but may be reviewed by the adjuster and ultimately approved or denied by the established Utilization Review (UR) and Independent Medical Review (IMR) processes.

The changes which have occurred in injured workers' access to medical care have been challenging and often limiting for both the treating doctor and the injured worker in certain situations. Despite these changes, some practitioners have been able to work with the new system and provide appropriate care for their patients. Other practitioners, however, have considered the changes as too great an encumbrance on their practice, and have therefore withdrawn from their involvement in the Workers' Compensation arena. As a result, some opportunities have been created for other doctors to expand their practice and provide care to injured workers.

Legislative enactments in 2012 established a stricter definition as to the meaning of "reasonable medical care" and the right of injured workers to receive that care. As a result of these changes, doctors need to provide more substantial medical evidence to justify the care and treatment recommended, and also demonstrate a strong correlation between the worker's injury and the care sought.

Labor Code §4600 sets forth a more general interpretation as to the meaning of "medical treatment", finding such treatment to be care which is reasonably required to cure or relieve an injured worker from the effects of a work-related injury. Determinations regarding such care are to be based upon a schedule adopted by the Workers' Compensation system called the Medical Treatment Utilization Schedule (MTUS). Prior to these alleged "objective" standards, greater latitude was given to the opinions of treating physicians based on their personal interaction with their patients, their ability to compare subjective complaints with objective findings, and their recognition that each patient has his or her own personal response to various methodologies of treatment. In that scenario, the treater could readily justify the care which he or she recommended outside the current MTUS guidelines.

Senate Bill 863 mandated that after the year 2013, if the treaters recommended medical care and the access to same are denied by a Utilization Review doctor who has not seen the injured worker, the worker and his/her treating doctor are limited to appealing the UR denial through the Independent Medical Review process — an avenue which does not allow the traditional review of the treaters opinions by a WCAB judge.

However, many proactive treating doctors, when they file a Request for Authorization (RFA), have unilateral contact with the Utilization Review doctor and provide supplemental information regarding the necessity for the care recommended. This one-on-one communication is a very powerful vehicle which in many situations provides important additional information to the UR

doctor to help that doctor obtain a clearer picture as to the injured worker's actual needs, thereby sometimes resulting in UR approval of the care in question.

Therefore, the treating doctor and his/her staff must be aware of the proactive steps which can be taken to improve the chances of the recommended treatment for an injured worker being granted:

1 — Filing a Request for Authorization (RFA) form indicating the treatment requested, with substantiation of the need for such request and its connectivity to the job injury.

2 — Anticipating that the UR doctor — who again does not see the injured worker and makes his/her medical determinations as to the appropriateness and necessity of the treatment recommended based solely on the documentation provided to him/her — may very well deny the recommended care unless further substantiation of the need for same is made through personal communication by the treating doctor with the UR doctor.

Thus, proactive treaters are a substantial element in accessing recommended medical care for injured workers, as these doctors are much more likely to gain approval of that care.

Also, in other situations, while the Utilization Review doctor may not embrace the care recommended, the Independent Medical Review doctor could approve the same care after the treating doctor has provided supplemental information to the IMR doctor justifying the necessity for such care.

The Workers' Compensation Appeals Board (WCAB) has limitations placed upon it by the Court of Appeal as to when it can intervene and weigh empirical data justifying the treaters recommendations and then overturn the IMR doctor's findings. Traditionally, the WCAB has embraced these limitations and maintained that UR and IMR determinations are to be regarded as directive and cannot be overturned.

However, on 5/19/17, in the *Stevens* case, the Court of Appeal — by unanimous decision — sent the issue as to an injured worker's access to medical care back to the WCAB, which then rescinded the denial of the worker's IMR appeal and returned the matter back to the trial level for further proceedings. The outcome in this matter has overturned the prior decisions which in essence reinforced the idea that IMR decisions are "written in concrete". The *Stevens* case would appear to represent the recognition that the standards set forth by MTUS are not necessarily the ultimate means for accurately determining an injured workers need for recommended medical care, and the realization that treating doctors have a unique understanding of the needs of their patients and are in the best position to make medical decisions for them. Significantly, this case opens the door for the WCAB to overturn IMR determinations based upon an incorrect usage or interpretation of the MTUS guidelines.

Clearly, the treating doctor's role in providing care and treatment to cure and relieve the effects of workers' injuries is very complex. However, this complexity creates a unique opportunity for doctors who are either knowledgeable of the Workers' Compensation arena or are willing to be educated regarding its many facets. Once an understanding of the Work Comp protocol is in place, treating doctors can provide greater assistance to the injured workers they treat.

The second role for doctors in the Workers' Compensation arena (besides being a treater) is the role of forensic expert, either as an Agreed Medical Evaluator or a Qualified Medical Evaluator. In either of these capacities, the forensic expert makes determinations regarding an injured worker's medical condition and the causation of that condition; whether the worker has reached maximum medical improvement; and, if so, the nature and extent of any disability, as well as the need for further medical care. This is a unique area of medicine in which many doctors are involved, and it provides these doctors with a unique opportunity to make a substantial difference in the lives of the injured workers for whom they make medical determinations.



LAW1199.COM NEWSLETTER™
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

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.*

