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

LITIGATION FINALLY IS CHALLENGING THE MPN SYSTEM BUT FURTHER CHANGE IS NEEDED

BY: SCOTT A. O'MARA

Medical treatment is one of the basic rights enacted by the California Constitution in Article 14, Section 4, and it includes medical care to cure or relieve injured workers from the effects of their work-related injuries. However, this constitutional right has been impacted significantly by legislation passed in 2004 — Senate Bill 899 — which created the opportunity for employers to establish their own Medical Provider Network (MPN) lists of doctors they find acceptable. The selection of these doctors is made solely by employers, and up until 2018 the doctors chosen can be awarded bonuses for their conformance to the desires of insurance carriers and third-party administrators relative to the care to be provided to injured workers. The economic benefit to employers is the shifting of medical costs for which they should be responsible to injured workers and/or their private health plan. Fortunately, the continued failure of this system has been recognized in recent litigation.

Doctors have an obligation to be patient advocates responsible for the welfare of their patients. They have special education and training, and they should have devotion to their patients' needs. However, some Workers' Compensation carriers, administrators and adjusters have removed qualified doctors from their MPN lists simply for economic reasons, forgetting or ignoring their constitutional obligation to provide all injured workers the care and treatment they need to cure or relieve the effects of their injuries.

In one of the recent litigations, the carrier denied a medical group participation in the employer's Medical Provider Network. Apparently, the only justification for such denial was the employer's disinterest in having this particular provider in their MPN.

In another litigation, one of the largest carriers (if not the largest carrier) unilaterally removed a doctor from their MPN. The end result of this action was the carrier being responsible for over \$100,000 in legal fees spent on losing the MPN case, as the treating doctor won his right to reinstatement in the employer's MPN and was reimbursed his attorney fees of over \$100,000.

In many situations, the adjuster attempts to dictate and direct the medical restrictions and limitations to be imposed by the doctor. If the doctor fails to follow such direction, he/she will not receive a bonus, and may even be removed from the employer's MPN.

An examination of the present system makes clear the “stacked deck” which currently exists against California injured workers. As stated above, this “stacked deck” approach does not comport with the requirements of the California Constitution. Therefore, changes are definitely needed in the present system.

The Courts have found limits which carriers must not exceed when removing doctors from their MPN lists. These limits constitute an acknowledgment of the failure of the 2004 legislation established with the passage of Senate Bill 899. While this is a step in the right direction, additional corrective measures are clearly necessary. The modifications needed are set forth in 2015 Issues #1 and #5 of the Law1199.com Newsletter series.

I have spoken with several doctors who were removed from Medical Provider Networks and discovered that they would listen to their patients, weigh the objective findings and subjective complaints, and make medical determinations as to their patients’ need for medical care based upon substantial evidence — without being intimidated by their potential removal from an employer’s MPN. In other words, these physicians truly honor their medical obligations under the Hippocratic Oath.

In summation, *the present Workers’ Compensation medical care system needs to be changed.* Therefore, it is important to speak to your legislators about the changes needed as articulated in the previous newsletters mentioned above, as the next injured worker to be denied adequate treatment and medical benefits may be someone close to you . . . maybe even yourself.



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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

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