



LAW1199.COM NEWSLETTER™

2020 ★ ISSUE #8

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

COVID-19: WILL IT EVER BECOME PERMANENT AND STATIONARY? WILL IT CAUSE HARM TO OTHER BODY SYSTEMS?

BY: SCOTT A. O'MARA

In Workers' Compensation, the point at which a determination is made as to whether an injured worker has sustained any permanent impairment is when the worker's condition has become permanent and stationary (P&S), meaning he/she has reached maximum medical improvement and his/her condition has stabilized to the point where further treatment is unlikely to change that condition significantly within the next year. A P&S determination also curtails a defendant's obligation to provide an injured worker additional temporary disability benefits, §4850 time, §4800.5 time, etc. Furthermore, a P&S determination can create limitations on an injured worker's ability to reopen a case for new and further disability.

The Workers' Compensation system generally allows five years from a worker's date of injury to reopen a case for new and further disability, but the five-year limitation on reopening can be set aside for diseases which are determined to be insidious and progressive. The COVID-19 pandemic presents many unknown factors at this point, but it could prove to be insidious and progressive, much like exposure to asbestos. Workers suffering from asbestos exposure can obtain a tentative level of impairment determination, but with the recognition that the condition will likely be progressive. In such cases, the Court in most situations can reserve jurisdiction for making a final impairment determination until the worker's condition becomes permanent and stationary or there is a total level of impairment. This concept goes beyond the five-year limitation on reopening a case for new and further disability.

On the other hand, employers embrace the five-year window and do not want insidious and progressive findings, because such findings create unlimited liability on their part and the potential for workers — if their condition is found to be insidious and progressive — to receive significant compensation if their condition ultimately reaches the point where they are 100% disabled.

In the COVID-19 studies which have been done, there are some strong findings which indicate that this virus causes lasting damage to the lungs in some patients to the extent that they may need a lung transplant to deal with the problem. Also, young people initially were thought to be at a lower risk of having serious complications related to the coronavirus. However, studies now

being done indicate that residual impairment is not exclusively limited to people of more advanced age, and that COVID-19 can impact all workers.

While discussions originally were focused on the pulmonary aspects of COVID-19, more recent studies also indicate that changes in the immune system caused by the disease can create blood clots, thereby limiting blood flow to the lungs which is essential to purify the lungs from further disease. Also, when the virus causes inflammation of the lungs, clotting can result which again affects blood flow to that area of the body, eventually even causing portions of the lungs to die out because of not being able to receive the fresh blood which is needed.

Another impact of the coronavirus is the more imminent finding of pneumonia, which, according to many doctors, can be connected to COVID-19 exposure. Pulmonary fibrosis, which can develop subsequent to a chronic inflammation, is also a factor causing dysfunction of the pulmonary system. In addition, some patients who believe their pneumonia is under control or is no longer diagnostic can nonetheless sometimes be experiencing further development of pulmonary problems which ultimately could be irreversible,

The enthusiastic desire of patients to get well can sometimes mask some of their subjective complaints. When they speak with the doctor, they are so focused on the belief that they are feeling better that they don't mention some of the important symptoms they may have, such as coughing, shortness of breath and fatigue — all of which can be indicators of pulmonary problems, as well as medical problems involving other systems. A high level of candidness is needed by all patients so their doctor can document *all* of their subjective complaints and perform additional testing, if needed, to determine whether the lungs have sustained any damage or other changes, or if damage has occurred to any other systems, such as your heart/stroke and memory.

A patient's relationship with his/her doctor is paramount so that the doctor will adequately characterize the patient's subjective complaints and administer the appropriate tests. Equally important is for the patient to recognize that some changes in function can occur, and if such changes manifest, a discussion of same with the doctor is essential, because acute respiratory distress syndrome (ARDS) can have a significant impact on a worker's health and functionality — not just in the work situation, but also domestically as well, as ARDS can cause permanent impairment or fibrosis of the lungs.

The determination as to the level of impairment and the need for medical care can be made even though a patient's condition is one which the doctor thinks is insidious and progressive and not yet permanent and stationary. The Court can then reserve jurisdiction in anticipation of the change in condition which might occur at a later stage. That change can involve the heart, kidneys, brain or a psychological condition. If the doctor is able to make the diagnosis that the worker's condition is insidious and progressive, the worker will have an open window to come back and have a determination made as to residual impairment outside the typical five-year window.

Even if the five-year window — *i.e.*, five years from the date of injury to reopen a case for new and further disability — is the only avenue allowed, this reinforces the concept of having meaningful communication with the doctor regarding the worker's subjective complaints.

These complaints can include such examples as the development of paralysis or a change in sensation on one side of the body, facial drop, speech impairment — all of which are factors which can be considered in connection with the disease itself.

Yet with the demeanor or attitude which many people have, the risk is minimization of a worker’s subjective complaints. If there is proper documentation of the subjective complaints, and at a later stage the level of impairment increases or causes damage to other systems, this then opens up the window for the worker to receive adequate compensation for his/her actual level of impairment.

Finally, the discussions which are now coming out indicate an increased risk of large-vessel stroke in younger patients, so it is important to make sure your doctor has this knowledge. I have found it is not inappropriate to go to relevant websites and pull up particular studies to share with your doctor. The doctor may not have current information, so if you provide that to him or her — and the doctor is properly embedded in health care — he/she will give consideration to this information.

Overall, with continuation of the COVID-19 crisis, we will have more knowledge as to what care and treatment is available, the level of impairment, and the changes and impact on other systems which may occur. Also, the five-year window from the date of injury to reopen a case for new and further disability potentially — depending upon the medical opinions rendered — could be extended indefinitely beyond five years if a condition is found to be insidious and progressive.

Current studies now show that some people with so-called “Full Recovery” are at higher risk for long-term problems related to COVID-19. *Protect yourself* and report your subjective complaints to your doctor. This protects your right to obtain additional care and reopen your case. *Do not settle your case by a Compromise and Release.* Doing so would amount to selling your rights for medical care and reopening.



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.*

