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## NURSE CASE MANAGERS HAVE THE POWER OF DOCTORS

BY: SCOTT A. O'MARA

The California Constitution specifically mandates in Article 14 Section 4 that the Constitution creates and enforces a complete system of workers' compensation. The legislative enactment states all provisions of securing safety in the place of employment full provisions of such medical, surgical, hospital or other remedial treatment is required to cure or relieve the effects of the injuries. A work-related injury may have a range of impact on the worker and their needs for care. Some of the medical care can be in the form of medication, surgery, physical therapy, wheelchairs, renovation of the house, transportation, 24-hour care, and other assistance to maintain a quality of life. After the enactment of Article 4 Section for the Constitution there were other legislative changes that placed restrictions on access to medical care. The first being the Medical Provider Network (MPN) where the employer can force the worker to treat within a group of doctors the employer selects and controls, unless the worker has predesignated a treater. The next change was Utilization Review (UR) that allows the adjuster to put the treating doctor's request under review and must have approval by the UR doctor who never sees the patient. If the UR doctor does not agree with the treaters recommendations which are set forth in the Request for Authorization (RFA) the treatment can be denied up to one year unless the worker applies for review by Independent Medical Review (IMR) ghosts' doctors.

Ghost doctor in their review (IMR) are supportive of denial or limit of medical care as set forth by the UR doctor approximately ninety percent of the time.

The IMR doctors/ghost doctors are a major problem for accessing medical care. The worker, their attorney or other parties of interest are not allowed to know who the IMR doctors are, that is the reason for the characterization of naming them ghost doctors. There is unique medical care that can be obtained by the usage of a Nurse Case Manger.

The Nurse Case Manger's academic background is that they are nurses with additional education. They manage and develop particular health plans for the injured worker who is seeking either recovery or improvement from a serious injury or chronic condition. The Nurse Case Manger,

pursuant to the *Jennifer Patterson v. The Oaks Farm* ADJ3905924, which is a significant panel decision, provides medical treatment that falls within the parameter of Labor Code Section 4600.

The Nurse Case Managers often collaborate with doctors and other medical professionals to obtain the injured worker's comprehensive care that are needed to cure or relieve the effects of the injuries. The Nurse Case Manager in many situations is an advocate for the patient's coordination of care and providing of ancillary health services if needed. The *Patterson v. The Oaks Farm* ADJ3905924 is an opinion and decision after reconsideration considered to be a significant panel decision. These findings are that:

1. The provisions of a Nurse Case Manager is a form of medical treatment under Labor Code §4600; and
2. Employer may not unilaterally cease to provide approved Nurse Case Manager Services when there is no evidence of a change in the employee's circumstances or conditions showing the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury.

These findings directly impact the employer's usage of the mandate of UR and the forced appeal to IMR by the worker to the ghost doctors. The employer will attempt to establish that the employee's medical condition or circumstances are such that the use of the Nurse Case Manager is no longer required or necessary to cure or relieve the effects of the injury. By unilaterally going forward in trying to change the treatment and the usage of the Nurse Case Manager will not succeed without the above-mentioned substantial evidence.

The injured worker in many situations is in a difficult quandary because of the employers continued attempt to maintain control or eliminate the cost of medical care.

The treating doctors can be strong patient advocates, but they may not have full comprehension of the magnitude of the case and the medical necessity for accommodations in the home such as remodeling, putting ramps in, changing the bathroom, or providing a vehicle that allows the transportation of the injured worker. The treating doctors do not necessarily have the in depth knowledge as to what other medical services as mentioned above will cure or relieve the effects of the injury.

For the injured worker it is paramount that they have a strong relationship with the Nurse Case Manager so that the Nurse Case Manager can comprehend the overall picture. As stated before, the Nurse Case Manager has the power of doctors therefore this power can be of great magnitude in helping to cure or relive the effects of the injury.

If the employer unilaterally moves to curtail or cut off medical care and does not go through the steps necessary or does not recognize the Nurse Case Manager as medical care, this subjects the employer to a penalty sanction pursuant to Labor Code §5814 for failure by the employer, insurance carrier or third-party carrier to provide medical care to cure or relieve the effects of the injury. Again, there are additional perspectives as to medical care to cure or relieve, those can be set forth by the treating doctor and the Nurse Case Manager.

Nurse Case Managers have the power of the doctors and the injured worker must respect and interact appropriately with the Nurse Case Manager to reinforce this relationship. Finally, when the worker characterizes the subjective complaints to the Nurse Case Manager and/or the doctors and subjective complaints of the worker's perceptions of pain, discomfort or limitations, it is very important that if the worker has good days and bad days this is expressed. Without this expression this also will empower challenges as to the worker's needs. Therefore, in the discussion with the worker, the Nurse Case Manager and the treater have a broadened sense as to pain and discomfort and the impact of same.



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