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THE LIBRARY OF INFORMATION THAT PROVIDES YOU WITH PROTECTION

BY: SCOTT A. O'MARA

In the Library of Information at website Law1199.com there are numerous articles that review the workers' compensation, retirement and impact of an injury, medical care, levels of disability, continued employment and forms of communication.

These articles are a source of information to garner pathways that can be utilized to obtain and protect medical care and other benefits.

[Article 2021, Issue #12](#) titled [Knowledge is Power for Treatment](#) specifies the recognition that the worker must have an awareness of the two types of injuries that the workers' compensation system has embraced; specific and cumulative trauma. The awareness of those injuries and the mechanism or possible injuries is helpful for the worker to appreciate the factors of employment that may be contributing to a job-related injury.

There are different doctors utilized in the workers' compensation system, a treating doctor and a forensic type doctor. The forensic doctor evaluates the etiology of the injury and comments upon the need for time off, need for returning back to work, levels of impairment and whether the worker can continue with their employment.

In the [2021 Newsletter #12, Knowledge Is Power For Treatment](#), acknowledgment that there are some doctors that are engaging in what is called "catch and release programs". They quickly do their evaluation, review records and go in and release the worker from the office. This enhances the income flow for the doctor. This is not the case in all situations, but does exist. If the worker is prepared to cover certain areas such as the mechanism of injury, whether it is a specific or a cumulative trauma the worker can articulate to the doctor those factors. Those factors are the foundation of whether the medical condition is or is not job-related. Therefore, preparation prior to the treatment and/or the forensic evaluations is important to ensure these elements are covered.

In the *Newsletter 2022, Issue #11* titled *Balanced Communication with the Doctor* reflects that the treating doctor indeed does have a different role than the forensic doctor. The treating doctor and the forensic evaluation physician will use the subjective complaints as articulated by the worker, look at the objective findings and then derive their diagnoses and potentially forms of treatment.

Subjective comments are the worker's perception as to typically the pain and discomfort that they have and what may make the subjective complaints less prominent, such as forms of treatment.

Therefore, the worker's part of their evaluation should have a broad spectrum as to what pain and discomfort they have. And, typically as articulated the pain and discomfort can vary with good days and bad days. Expressing the good days and bad days creates a wall of protection regarding veracity. The failure that occurs at times is the worker will only focus on the bad days and if that is the case, that allows the adjusting agency to seek out a review as to the veracity by showing there are factors of other activities that the worker does on a good day but did not share that with the all the doctors, treating and forensic.

The key element is not to overstate or understate the subjective complaints, but a balanced communication as to what you can or cannot do, or what you have to modify.

The balanced communication is with the forensic evaluators and the treaters. Prior to meeting with the treater or the evaluators the worker should give thought as to good days and bad days and the articulation of same.

In addition to the awareness of your subjective complaints it is important to articulate with the doctor and staff that there is a cordial relationship. If the worker goes into the office and is angry, hostile and has a belligerent attitude towards the doctor and staff, this will unfortunately color the report in a manner that is not helpful. It is not that the doctor is trying to get back at the injured worker, but it can impact their perspective.

In *Article 2024, Issue #7* titled *Impacts on Medical Care, Employment and Disability*. This reinforces the idea of the relationship of a good communication with the treating or examining doctors and their staff. This element will allow the doctor and staff to garner a complete history of the mechanism of injury, the subjective complaints, what the worker can or cannot do, and what they have to modify. The impact is on the medical care, time off of work, and residual impairment, and the very important history of pain and limit on good days and bad days.

The medical care by the California Constitution is to cure or relieve the effects of the job-related injury; this medical care can be expansive and lifelong.

The next article is [2023, Issue #9](#) titled [Medical Care for Preexisting Conditions](#). If the worker had a condition that existed prior to the job-related injury and that medical condition becomes more symptomatic due to the injury or treatment from the injury, this may be the responsibility of the employer to provide for the care needed that emanated from the injury, and provide care due to increased and/or changes to a preexisting condition because of the job-related injury.

In your preparation review the website called WebMD. The website has an area where you can look up the medications that you are taking and look for the side effects. Therefore if you are taking a medication for the job-related injury and you have the side effects from that medication that you are taking, it would be appropriate to share that information with the doctor if there are side effects. By doing so, the doctor can articulate that and if that condition continues to be more problematic or you need to continue with the care this could award you lifetime medical on that condition caused or made worse by the job-related medication.

Recently, we had the case that was resolved many years ago, and we advised the client that there is the right of five years to open the case from the date of injury. In this situation, the condition became more symptomatic. The client advised us of that and we filed a Petition to Reopen for New and Further Disability. Unfortunately for the client there has been a change in disability, he will receive additional compensation for that because he gave us the appropriate information which was that the condition had become more symptomatic since we resolved the case, and the information was provided within the five year window. ([2019, Issue #1 Protection for Injured Workers' Under the Five-Year Window](#))

There are certain medical conditions in which we can get a special order from the court that grants the condition is insidious and progressive. These typically are cancer cases. If the court grants an order that the condition is insidious and progressive there is no five year limitation. If there is a court finding that is an insidious and progressive and the jurisdiction is reserved there is no limitation to reopen the case. Reopening the case goes to the level of impairment, we do not need to have the benefit of reopening the case to increase the level of medical care. But if having the medical care increased and it is within that five year limit there is a high probability that there is an increase in permanent disability. Therefore you will receive a letter from us indicating that you have a five year window. ([2019, Issue #1 Protection for Injured Workers' Under the Five-Year Window Insidious and Progressive](#))

An awareness as to the five year window is set forth in [Newsletter Article 2021, Issue #6](#). Besides the current information there are many articles that are written that come back with studies indicating that there may be additional changes in the medical care. In [Newsletter Article 2024, Issue #14](#) a new study has come out and is one that the International Association of Research on Cancer has found that certain types of medications can be a carcinogen and a carcinogen is a factor in causing cancer. In that study that they have done indicates that there are medications

taken for hypertension indeed can be a carcinogen. It is important that as you become aware of this you share that with your doctor. The doctors may not be in a position where they want to embrace it because it is a new article, but you are putting them on notice. You need to monitor what is going on with your health, and if in fact there is a change such as the cancer causing factor, this could be brought within the workers' compensation if the hypertension medication that you are taking is because of a job-related injury.

In [Newsletter Article 2024, Issue #14](#) titled [Can Medication For Hypertension Be A Factor In Causing Cancer](#) there is a discussion that you should go to WebMD and look at the risk factors and side effects of medications.

Your preparation is paramount regarding your ability to communicate with the doctor. Your understanding as to the subjective factors and not overstating, but not understating, is also a significant element. The relationship that you have with the treating doctor and staff is a factor that helps the doctor to move forward to provide with medical care to cure or relieve.

The physicians are not paid additional compensation to go into in-depth studies. If the doctor and the staff like their patients, there is an emotional motivation that they could take additional steps necessary to get the medical care to cure or relieve the effects of the injury. Knowledge is the power for treatment, knowledge is the power to show that the condition is job-related, knowledge is the power to either continue with your employment or be in a position where you can garner a disability retirement. Knowledge is something that will develop the case and your understanding in grasping of same makes more effective communication.



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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.*

