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The Limits on Access to Medical Treatment in the California Workers' Compensation System

Arguably, the most important benefit provided by Workers' Compensation is MEDICAL TREATMENT. Unfortunately for injured workers in California, this is often the most denied benefit. The reason behind this harsh reality is known as the Utilization Review and Independent Medical Review process, and the en banc decision of Dubon v. State Comp. Ins. Fund, handed down October 6, 2014.

When traversing the California Workers' Compensation system, trying to obtain medical treatment to cure or relieve the effects of an industrial injury, an injured worker must jump through many hoops, and may not find medical treatment at the end of the maze. The first hoop in the Workers' Compensation process is the Utilization Review process.

First, a doctor who has been approved to treat must make a treatment request on a specified form known as a Request for Authorization (RFA). This request must meet stringent requirements or it will not even be considered. Next, the treater must get the RFA to the workers' compensation insurance carrier (and hope it gets to the right person). Once the insurance company has the RFA, it CAN approve the request, but this seldom happens.

What often happens is the request is sent through the UR process. This involves the RFA, along with supporting documentation, being sent to a reviewing doctor, who the injured worker never meets. The UR reviewer has five business days to approve, deny or issue a delay letter. If the request is approved, the journey ends with medical treatment. If the response is a delay, an approval or denial must come within 14 calendar days. Once a denial (or modified approval) has been issued, the injured worker's ONLY option is to apply for Independent Medical Review (IMR).

IMR is similar to UR in that the RFA along with supporting documentation is sent to yet another doctor, who the injured worker never lays eyes on. This reviewer makes a final determination that stands for ONE YEAR.

What the Dubon case has done is remove the injured worker's ability to demand justice at the court. It held that a UR decision can be held invalid and not subject to IMR only if untimely; all other UR disputes must be resolved by the IMR process; and judges only have jurisdiction over the timeliness of a UR decision.

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What this effectively does is prevent the injured worker from disputing a treatment denial for ANY reason other than timeliness. Even if appropriate records were not sent to the reviewer, the relief is IMR.

For California's injured workers and their attorneys this process is grim and seems to be at best a denial of due process, but this is what we are stuck with until the court or the legislature turns the tide. This does not, however, mean that we will stop fighting for just results for our clients seeking Workers' Compensation. That has been and continues to be our only focus.

There has been a positive case recently with regard to obtaining medical treatment in the California workers' compensation system, a significant panel decision, Patterson v. The Oaks Farm, ADJ3905824 (July 24, 2014), has been handed down. Its holding is narrow but is ripe to be expanded upon. Patterson deals with nurse case manager services that were authorized and provided, but were later unilaterally terminated by defendant.

The court held that an 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 condition showing that the services are no longer reasonably required to cure or relieve the injured worker form the effects of the industrial injury; use of a hearing to address the medical treatment issue was expressly authorized by Labor Code section 5502(b)(1); and it is not necessary for an injured worker to obtain a Request for Authorization to challenge the unilateral termination of the services of a nurse case manager. (This case also holds that the provision of a nurse case manager is medical treatment under Labor Code section 4600). This case gives us hope that the court is carving out a way for the injured worker to get back to court to fight for medical treatment, and we hope it is a sign of things to come!