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John A. Norwood
Counselor at Law

Erin Norwood
Publisher

Contributors
Brittany Trudeau
Ted Wait

Contact Us

info@nalobby.net

Capitol Place
915 L Street, Suite 1110
Sacramento, CA 95814

(916) 447-5053
(916) 447-7516 fax

California Links

State Senate

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Insurance**

Secretary of State

Workers Compensation Court Case Endangers The System, Increases Liability Exposure

The California Chamber of Commerce recently filed a friend-of-the-court brief in a California Supreme Court case that will determine whether doctors who review workers' compensation cases can be sued for certain medical decisions. The brief in *King v. CompPartners, Inc* argues that the appellate court incorrectly found that utilization review doctors – those who look at records to decide whether a worker's treatment was appropriate, but do not examine the patient personally – have established a physician-patient relationship and therefore owe a duty of care to the injured workers.

If allowed to stand, the decision will create extensive future litigation and can be expected to increase costs that will put upward pressure on malpractice premium rates for all physicians, and have a chilling effect on utilization review physicians, according to the CalChamber. Establishing potentially unlimited liability for utilization review physicians will potentially lead to higher premiums for employers and could drive future and existing business away from California.

The case also will determine whether medical malpractice claims against utilization review doctors are barred, because all workers' compensation claims are under the purview of the state Division of Workers Compensation. National and statewide insurer groups joined the CalChamber on the brief.

For background, as court filings state, the plaintiff in the case, Kirk King, sustained a back injury while working in February 2008. In July 2011, King suffered anxiety and depression due to chronic back pain resulting from the injury. He was prescribed an antianxiety drug. Two years later, the workers' compensation insurance company hired CompPartners Inc to review the medical treatment for injured employees such as King. A CompPartners doctor decided King's prescription was not medically necessary and the prescription was discontinued. King sued, asserting he was injured due to seizures he suffered because of the sudden cessation of the drug. His lawsuit contended that the CompPartners doctor had a duty to warn King of the dangers of abruptly ceasing the medication.

The trial court rejected the lawsuit on the grounds that the claim should have been handled through the workers' compensation system. The Fourth District Court of Appeal partly reversed the ruling, finding that the trial court should have allowed King to amend his

complaint because it was plausible that the CompPartners physician had a duty to warn King about the risk of seizures.

Person's License Suspended Because Of Inability To Afford Costs And Administrative Fees, Federal Judge Orders Conference In Traffic Case

As reported last week, Senator Bob Hertzberg, D-Van Nuys, introduced SB 185, a bill that seeks to end the policy of automatically suspending a driver's license when someone has failed to pay a fine for minor traffic tickets. Now, a federal judge in San Francisco has ordered a conference in the case of a driver who got a \$200 ticket for turning right at a stop light in suburban Sacramento. The motorist filed a federal complaint this week against the Department of Motor Vehicles, the California Judicial Council and the Sacramento County Superior Court, saying he is one of millions of people who had their licenses suspended because they couldn't afford costs and administrative fees.

The 2014 ticket ultimately grew to \$1,665, plus an additional \$55 to reinstate his license, according to Howard Hershings, who filed the unusual challenge in US District Court in San Francisco. The document said the courts should not order someone jailed for nonpayment, without first holding an ability-to-pay hearing, which the plaintiff contends is required under federal rules. Hershings maintains the fines collected have less to do with public safety than serving as a revenue source for the court system.

US District Judge Yvonne Gonzalez Rogers set February 6 for a conference to determine whether she will issue a temporary restraining order against the government entities.

Hundreds of millions of dollars are raised for the court system through fees and penalties – \$858 million in 2013-2014, by one estimate — and several billion dollars over five years. The amount of fees owed the state but which go uncollected was about \$11.2 billion, according to a January 2016 report by the Legislative Analyst's Office.

Senate Labor and Industrial Relations Committee to Lead Process of AB 2883 Clean-Up Legislation

Senator Steve Bradford, Chairman of the S-L& IR Committee, has agreed to carry SB 189 this session to address a number of problem issues caused by the enactment last year of AB 2883. That bill altered both the process and eligibility of for person to be exempt from workers' compensation. In short, AB 2883 limited eligibility for exemption to an individual who owns 15% or more of the stock of a corporation or partnership, or has a management position in an LLC. In order to be exempt, the individual must sign a statement under penalty of perjury confirming his or her eligibility and desire to be excluded from coverage.

Although AB 2883 was not intended to apply to inforce WC policies, through an anomaly it was determined to apply to all policies in effect after 1-1-17.

Ever since AB 2883 was signed into law in Sept of last year errors and/or problems with this

legislation have been surfacing. Among the issues are application to nonprofit associations, application to open corporations, as opposed to closely held companies, the 15% threshold, application to stock ownership in a trust and what qualifies as management duties in partnerships and LLCs.

SB 189 is a placeholder bill that will be the vehicle to address these and others issues. As introduced, the bill only reduces the stock ownership threshold to qualify to be exempt from WC from 15% to 10%.

Discussions among interested and affected groups have been ongoing since the initial problems with the bill surfaced. A hearing on the bill will not likely occur until sometime in April of this year. However, it is likely the eligibility threshold will be reduced and/or eliminated in some cases, trust ownership addressed, application to nonprofits and open corporations will be refined.

Do not expect a quick resolution or an urgency bill. Legislators, staff and interested parties will take the time necessary to get these changes right this time around.

Storms Cause Surge in Flood Insurance Demand

A long series of winter storms has done a great deal to alleviate drought conditions in California, refilling reservoirs and re-building the depleted snowpack in the Sierra Nevada Mountains. While this comes as a relief to a state that was facing mounting water shortage crises, the record-breaking amounts of precipitation that have so drastically changed the course of California's drought has also caused flooding and property damage throughout the state.

Insurance agents have reported an increase in interest in flood insurance with the rising waters, often spurred by news reports of upcoming storms. Many consumers had let their flood insurance coverage lapse during the drought as flooding was not an issue that was of imminent concern. Data from the National Flood Insurance Program shows that from when the drought began in 2012 to September of 2015, the number of policies provided through the program in California had gone down by 12%. However with news outlets reporting at the end of 2016 that an atmospheric river of storms was headed for Northern California in the new year, many insurance agents found that they were receiving a flurry of phone calls from consumers who did not know whether or not they were covered by flood insurance.

Keith Thomas, an agent for State Farm, stated that "There's always a rush to purchase when it's in the news." In most cases though, by the time that consumers have heard about an upcoming storm, it's too late for them to get coverage. Most flood insurance policies mandate a 30 day waiting period after the plan has been purchased before it will take effect, a fact that most consumers are not aware of when they call. "Generally, they want instant coverage. Unfortunately you can't get instant flood coverage when you see a big cloud coming," Thomas said.