

Workers' Compensation Changes 2014

Work Life In The Fast Lane



Presented by:

David H. Parker, Attorney at Law
Parker, Kern, Nard & Wenzel



Presented for:

Central Valley Safety Society
A California Non-Profit Organization



Disclaimer

The Usual Disclosure(s)

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What We Will Cover:



SB 863

What's Happened Since September 18, 2013?



Memory Lane

Division of Workers' Compensation (DWC)

Overview of Senate Bill 863

- Changes in permanent disability ✓
- Changes to supplemental job displacement vouchers ✓
- Creation of "Return to Work Fund" ✓
- Introduction of independent medical review ✓
- Improving medical provider networks ✓
- Introduction of independent bill review ✓
- Changes regarding liens ✓
- Fee schedules ✓
- Changes for qualified and agreed medical evaluators ✓
- Changes for self-insured employers ✓

2014 Legislative Changes

Several bills relating to workers' compensation were signed into law in 2013:

AB 1309 limits the ability of professional athletes who work for out-of-state sports teams to bring workers' compensation claims in California. A player employed by an out-of-state sports team who wants to bring claims for cumulative trauma (such as for arthritis or brain injuries due to multiple concussions) will have to prove that he/she worked a good part of his/her career for teams based in California or spent more than 20 percent of his/her professional time working in California.

2014 Legislative Changes

Several bills relating to workers' compensation were signed into law in 2013:

AB 607 relates to death benefits for dependent children: Existing **law conclusively presumed**, for the purpose of determining the amount of workers' compensation benefits, that **children under 18**, or certain adult children, *who were living with the employee-parent at the time of injury resulting in death, or for whose maintenance the employee-parent was legally liable at the time of the injury resulting in death*, **were wholly dependent for support on the deceased employee-parent if there was no surviving totally dependent parent.**

This bill would **eliminate the requirement** that, in order to conclusively presume that children under 18, or certain adult children, are wholly dependent for support on the deceased employee-parent, **there not be a surviving totally dependent parent.**

2014 Legislative Changes

Several bills relating to workers' compensation were signed into law in 2013:

AB 1376 relates to language assistance and interpreters. Under existing law, if **the injured employee could not effectively communicate** with his or her treating physician because he or she cannot proficiently **speak or understand the English language**, the injured employee is entitled to the **services of a qualified interpreter during medical treatment appointments**. Existing law required **that, to be a qualified interpreter for these purposes, a person meet any requirements established by rule by the administrative director, as specified**.

This bill provides that the requirement that a person meet any **requirements established by the administrative director in order to be a qualified interpreter commences on March 1, 2014**.

SB 809 involves reporting of controlled substances

2014 Legislative Changes

Several bills relating to workers' compensation were signed into law in 2013:

SB 146 deals with medical treatment and billing and copies of prescriptions.

Existing law **required a pharmacy to submit its request for payment with an itemization of services provided and the charge for each service, a copy of all reports showing the services performed, the prescription or referral from the primary treating physician if the services were performed by a person other than the primary treating physician, and any evidence of authorization for the services that may have been received.**

This bill **prohibits a copy of the prescription from being required with a request for payment of pharmacy services, unless the provider of services has entered into a written agreement, as provided, that requires a copy of a prescription for a pharmacy service, and gives any entity until March 31, 2014, to resubmit pharmacy bills for payment, originally submitted on or after January 1, 2013, where payment was denied because the bill did not include a copy of the prescription from the treating physician. The bill also clarified that an employer, insurer, pharmacy benefits manager, or 3rd-party claims administrator would not be precluded from requesting a copy of a prescription during a review of any records of prescription drugs dispensed by a pharmacy.**

2014 Case Law Changes

Several important
WCAB En Banc
decisions relating to
workers' compensation
were decided in 2014:

Roque Neri Hernandez

June 12, 2014

[2014-EB-6](#)

v.

**Geneva Staffing, Inc. dba Workforce
Outsourcing, Inc.; Tower Point
National Insurance Company,
administered by Tower Select
Insurance**

Case No: ADJ7995806

79 Cal. Comp. Cases

With regard to the SB 863 additions and amendments to the Labor Code regarding home health care services, which became effective January 1, 2013, the Appeals Board held:

1. Sections 4600(h), 4603.2(b)(1), and 5307.8 apply to requests for home health care services in all cases which are not final regardless of date of injury or dates of service.
2. The prescription required by section 4600(h) is either an oral referral, recommendation or order for home health care services for an injured worker communicated directly by a physician to an employer and/or its agent; or, a signed and dated written referral, recommendation or order by a physician for home health care services for an injured worker.
3. Under section 4600(h) home health care services are subject to either section 5307.1 or section 5307.8; section 5307.1 applies where an official medical fee schedule or Medicare schedule covers the type of home health care services sought; and otherwise, section 5307.8 applies.

2014 Case Law Changes

Several important
WCAB En Banc
decisions relating to
workers' compensation
were decided in 2014:

Jose Dubon

May 22, 2014

[2014-EB-5](#)

v.

**World Restoration, Inc; and
State Compensation
Insurance Fund**

Case No: ADJ4274323 (ANA 0387677) - ADJ1601669 (ANA 0388466)

79 Cal. Comp. Cases 566

The Appeals Board granted State Compensation Insurance Fund's petition for reconsideration of the February 27, 2014 Opinion and Decision After Reconsideration (En Banc) wherein the Appeals Board previously held that the Workers' Compensation Appeals Board may determine if a utilization review decision suffered from material defects that undermine the integrity of the decision, and if so, it may then determine the medical necessity issue based on substantial medical evidence. (See *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 313 (Appeals Board en banc) (Dubon).) Reconsideration was granted in order to allow sufficient opportunity to further study the factual and legal issues, noting that the prior decision remains in effect and binding pending a decision after reconsideration in the present matter.

2014 Case Law Changes

Several important
WCAB En Banc
decisions relating to
workers' compensation
were decided in 2014:

Warren Brower

May 21, 2014

[2014-EB-4](#)

v.

**David Jones Construction; State
Compensation Insurance Fund**

Case No: ADJ802221 (SJO 0258870)

79 Cal. Comp. Cases 550

Where the applicant had exhausted the 104 weeks of allowable temporary disability indemnity payments but was not yet permanent and stationary, and where the applicant was subsequently declared to be permanently totally disabled, the Appeals Board held:

1. When a defendant stops paying temporary disability indemnity pursuant to section 4656(c) before an injured worker is determined to be permanent and stationary, the defendant shall commence paying permanent disability indemnity based on a reasonable estimate of the injured worker's ultimate level of permanent disability.
2. When an injured worker who is receiving permanent partial disability payments pursuant to section 4650(b)(1) becomes permanent and stationary and is determined to be permanently totally disabled, the defendant shall pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated.
3. COLAs begin on the first day in January after an injured worker becomes entitled to receive permanent disability indemnity pursuant to sections 4650(b)(1) or (b)(2).

2014 Case Law Changes

Several important
WCAB En Banc
decisions relating to
workers' compensation
were decided in 2014:

April 2, 2014

[2014-EB-3](#)

Ismael Navarro

v.

**City of Montebello, administered
by Corvel Corporation**

Case No: ADJ6779197 - ADJ7472140 - ADJ7964720

79 Cal. Comp. Cases 418

The Appeals Board determined that for his two new claims of injury the applicant did not have to be evaluated by the panel qualified medical evaluator (panel QME) who previously evaluated him for his original claim of injury, holding that:

- 1.The Labor Code does not require an employee to return to the same panel QME for an evaluation of a subsequent claim of injury; and
- 2.The requirement in Rule 35.5(e) that an employee return to the same evaluator when a new injury or illness is claimed involving the same parties and the same type of body parts is inconsistent with the Labor Code, and therefore, this requirement is invalid.

2014 Case Law Changes

One important WCAB
Significant decision
relating to workers'
compensation was
decided in 2014:



Eun Jae Kim

February 7, 2014

[2014-SPD-](#)

[1](#)

v.

B.C.D. Tofu House, Inc.;

Cypress Insurance Company, et.

all

Case No. ADJ9086333

79 Cal. Comp. Cases 140

The Appeals Board held that without regard to Court Administrator Rule 10252, which limits expedited hearings to specific issues in accepted claims, an expedited hearing may be requested and conducted under Labor Code section 5502(b)(2) and Administrative Director Rule 9767.6(c) to determine whether the employee must treat in the employer's medical provider network during the 90-day delay period, under Labor Code section 5402(b), that the employer has to investigate and determine whether to accept or reject the claim.

The Affordable Care Act and Workers' Compensation

The ACA is a 906 page document when viewing it on .pdf from beginning to end. A keyword search yields not a single mention of workers' compensation or work related injuries.



The Affordable Care Act and Workers' Compensation

Steve Festa, chief claims officer for Reno, Nevada based Employers Insurance has some serious concerns about just how the Affordable Care Act will affect the insurance industry. He shares some of my concerns.

1. "I am most concerned about is that by adding 30 million or more insured, as the Affordable Care Act is projected to do, over time, that it's going to lengthen the amount of time it takes for an injured worker to see a medical provider."

[Executive: Worry About Affordable Care Act's Impact on Workers' Comp](#) by Don Jerlger August 21, 2013

The Affordable Care Act and Workers' Compensation

Steve Festa, chief claims officer for Reno, Nevada based Employers Insurance has some serious concerns about just how the Affordable Care Act will affect the insurance industry. He shares some of my concerns.

2. "...workers' compensation does not have the leverage from a pricing standpoint that health insurance does. Workers' compensation makes up only about two percent of the medical spent in this country. As the Affordable Care Act ramps up, what I look to happen is that the medical provider community will look to leverage and recover some of their profit. I think they'll lose through the Affordable Care Act (and try to make it up) from the workers' compensation community..."

Executive: Worry About Affordable Care Act's Impact on Workers' Comp by Don Jerlger August 21, 2013

The Affordable Care Act and Workers' Compensation

3.

A Few Potential Impacts of the ACA on Workers Compensation

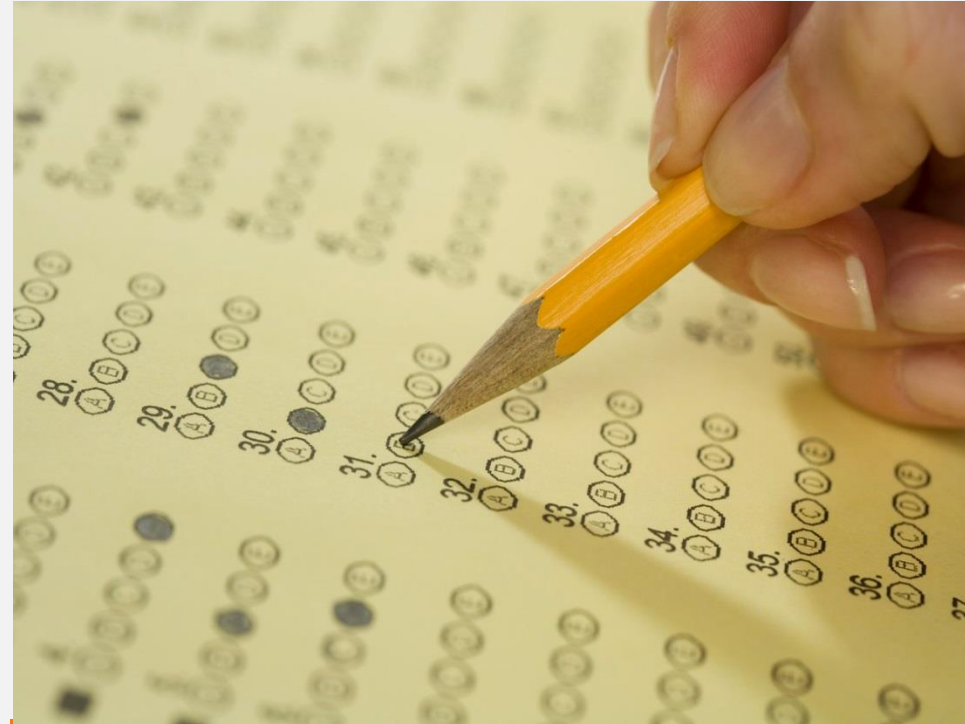


Issue	Concern	Contravening Argument
Surge in People Covered by Health Insurance	<ul style="list-style-type: none"> • System is overwhelmed • MD shortage • Patient care adversely impacted 	<ul style="list-style-type: none"> • Over time, people will have access to preventative care, improving the general health of the population • Greater use of PA's, etc.
Electronic Health Records	<ul style="list-style-type: none"> • Cost 	<ul style="list-style-type: none"> • Computerization of patient data could help flag issues and improve risk management and improve patient outcomes
Claim Shifting	<ul style="list-style-type: none"> • Provider/patient may prefer claim handled via WC system 	<ul style="list-style-type: none"> • Reduction in uninsured population reduces shifting

Questions and Answers But No Legal Advice.



If it's about the ACA...



it's anybody's guess.

Presented by:

David H. Parker, Attorney at Law
Parker, Kern, Nard & Wenzel



7112 N. First St.
Suite 300
Fresno, CA 93270

pknwlaw.com

559.449.2558