

# CompDigest

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of California Workers' Compensation Defense Community™

## In This Issue



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## From the Desk of...

### A Broken System

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## From the Desk of...

The 2005 workers' compensation reform did not go far enough. One good change was in the area of vocational rehabilitation. The pre-2005 vocational rehabilitation system was all but discarded on 01/01/2005. The current system of vouchers for education is a much better answer to anyone seriously seeking to better themselves by way of education. Under the old system individuals would be rehabilitated to some dead end job, or job the injured worker didn't want to do. It happened many times that when the individual made his next claim you would find him doing the same type of job that he was "rehabilitated" from previously. "Vocational Rehabilitation" was a joke that the industry allowed to exist for literally decades. While the 2005 reform made some good changes, as in vocational rehabilitation, major problems are left. The current system is expensive, cumbersome, and not really tailored to meet the specific needs of injured workers. Instead, the system is grossly distorted by the special interest groups that prey on it. This leads to absurd results.

It is very easy for anyone who is not "a regular" in the workers' compensation system to recognize the grotesque absurdities in the system. For example, for a simple back injury most individuals would expect that an injured person would be referred to a doctor who would treat that person by conventional means. They would expect some diagnostic testing followed by therapy if necessary and possibly surgery in the event that the therapy was not helpful. They would not expect psychiatric therapy and testing. They would not expect testing or treatment for sleep loss. They would not expect testing or treatment for high blood pressure problems, or diabetes. They would not expect testing or treatment for TMJ problems. They would be shocked by all of this. They would be shocked by all of this because for the most part all of these test and/or treatment have nothing to do with a back injury. What all of these have to do with is satisfying the various special interest groups that are leeching off of the system.

The solution is similar to the solution used for vocational rehabilitation. Eliminate it. Eliminate psychiatric, internal, TMJ, sleep loss, etc. for almost all work related claims. Most people who have been injured do not need to go to psychologists or psychiatrists, etc. While there are some exceptions, they are very few.

Another problem is the open ended issues regarding permanent disability rating as reflected in the Almaraz/Guzman rulings. Permanent disability rating must be simple and easy to evaluate. The complexities as reflected in the Almaraz/Guzman cases are exactly what the system shouldn't be.

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## From the Desk of...

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There is one final item that needs changed. The "liberal construction" as set forth in Labor Code section 3202 should be totally eliminated. Not only should this labor code section be eliminated, the attitude that anything goes in workers' compensation should be eliminated. The system should be to provide necessary treatment and evaluation only. It should not be a feeding trough for all purveyors of the most exotic tests and treatments known to mankind.

The fact that we have attorneys so involved in this system shows that it is not working as it should. The system should be self regulated. It should work effectively and efficiently. The special interest groups should be all but mute when it comes to having any influence on the system. The core function should be first and foremost to provide the necessary medical treatment followed by the necessary pay to that injured worker so that they will not be adversely affected by the injury. If the injured worker believes that he is not receiving the necessary care or consideration that injured worker should be able to make a complaint that is reviewed. Currently files are reviewed by the Office of Benefit Assistance and Enforcement (OBAE). It could be set up that if an injured worker makes a complaint that complaint is immediately forwarded to OBAE who will investigate. OBAE has the authority to levy the necessary fines and issue the necessary orders to insure that an injured worker is protected. The huge litigation structure that exists at this time should not exist. A litigated workers' compensation claim should be very rare. Businesses in California are suffering from this system that allows the self interest leeches to engorge themselves. This might be a good time to evaluate which candidate for governor would be best suited to address the workers' compensation debacle. I leave that to the readers to decide.