

In This Issue

From the Desk of...

If I were King. . .

**CompDigest
of California Workers'
Compensation Defense
Community
Copyright © 2008,
Travis J. Peterson
All Rights reserved
Published by:
Red Alchemist Studios**

To view past editions of the **CompDigest**, please visit our website at www.kiplaw.com.

For a **free** subscription to future editions of the **CompDigest**, simply e-mail your request to compdigest@kiplaw.com.

From the Desk of...

If I were King I would change a number of things regarding the Workers' Compensation Laws in California. I would make changes so as to insure that injured workers receive full and adequate compensation for their injuries. I would make changes so as to eliminate payments for unnecessary medical evaluations or treatment. Of the twenty-eight years that I have been an attorney I have spent twenty-three years actively working with Workers' Compensation Claims. This includes a number of years working as an instructor for the Insurance Educational Association as well as offering my own class on Workers' Compensation Laws. As most individuals working in the industry for that length of time I have seen nothing but changes in the workers' compensation laws. I think that the most dramatic and influential change started on January 1, 2005 with the full implementation of the QME Panel System. The effect of this was not fully felt until approximately two years later. It was about this time that a number of applicant attorney firms were threatening to close their business all together. A number of applicant attorneys



Kenneth L. Peterson, Esq.
Contributing Editor

told me that they were going to retire due to the change in the laws. My clients also informed me that they had experienced a dramatic decrease in the number of workers' compensation applications which they were receiving. A number of claims that were coming through were being settled for amounts significantly less than what the settlements were going for previously. It appeared that the Workers' Compensation System in California had finally corrected itself with regards to overall costs. However, there was the question in my mind whether the workers who were seriously injured were receiving adequate compensation for those injuries.

Fast forward, if you will, to today's date. Since 2007 a number of problems have manifested themselves. One of those problems is reflected

within the Almaraz/Guzman and Ogilvie cases. These cases represent the significant shortcomings of our present system. Many authors have stated categorically that these decisions threaten the SB899 Reform of California Permanent Disability Benefit Determinations. When these cases are applied there will be an increase in permanent disability for some injured workers. However, I do not think that the overall impact of that alone is the major problem. I think that the major problem is that these cases invite additional litigation costs from the necessity of additional experts, depositions, attorney fees, as well as settlements that reflect Almaraz/Guzman fear factor. I think that these factors are easily the most detrimental aspect about these cases. Yes the Almaraz/Guzman and Ogilvie cases do threaten California Permanent Disability Benefit Determinations, but more importantly they have a dramatic impact on litigation costs and the efficient and expeditious resolution of workers' compensation claims.

The second most detrimental fact that I have seen develop is the advent of heretofore

-Continued on page 2-

From the Desk of...

Continued from page 1

new and exotic claims which are unfortunately, becoming common place now. I am seeing multiple claims which include allegations of bruxism, TMJ, headaches, salivary changes, aggravated periodontal disease, sleep impairment, damage to vision, diabetes, in addition to the usual claims of hypertension, psyche, internal, and all of the orthopedic injuries that one can imagine. I am seeing these claims on what would otherwise be very minor and routine orthopedic injuries. The claims in question are not complicated by any issues of law. They are only complicated by the fact that multiple claims are allowed under our system for what would otherwise be minor orthopedic injuries. It has been my observation that, surprisingly, a lot of the doctors are buying into internal and psyche injuries for an orthopedic injury that by itself is giving a fifteen percent whole person impairment or less. It has been my observation that the permanent disability increase is either double or triple when the claim includes allegations of psyche or internal. It doesn't make any difference who the individual is. It doesn't make any difference about the age of that individual. I truly believe that the doctors who specialize in either internal medicine or

psychiatric medicine have a vested interest in finding some injury. Think about it, if the doctors did not find any injury would they have any repeat business. I rather doubt it.

In addition to the increased permanent disability that is usually reflected by the piggyback claims of psyche and internal, you have these new claims that being routinely added such as TMJ, diabetes, sleep loss, etc. Usually it requires an additional specialist for each area of claim. I have one case where the designated "Primary Treating Physician" has referred the applicant to a total of no less than nine referrals for consultations. This is for a case where the whole person impairment for the orthopedic injury was eleven percent. Even if all of these doctors come back with a zero percent permanent disability that is related to the industrial injury, (and bear in mind most probably there will be an increase with regards to either the internal, psyche, or both), the litigation costs for this case immediately goes through the roof. All of the reports are forwarded to the treating physician who dutifully incorporates these reports and makes recommendations accordingly. The only way that the defendant can then rebut these reports is to go to an AME in each of the areas

that are now alleged, or seek to have multiple QME Panels to answer all of the allegations. Litigation costs are easily increased by tenfold for these types of claims.

This brings me back to my statement of what I would do if I were King. I would first of all eliminate any speculation that is allowed for diminished earning capacity or questions regarding extent of permanent disability. I would change the law so that all of those issues can only be addressed by the existing schedule which could have a higher dollar value. Secondly, I would not allow any type of piggyback claim to an orthopedic injury unless it was a catastrophic orthopedic injury.

I think that by making the above noted changes the injured workers would receive substantially more as a whole, for legitimate injuries. It would go a long ways in eliminating the unnecessary and parasitic costs that weigh down the California Workers' Compensation System.