

Assembly Committee on Insurance Letterhead

(original letter on file)

September 11, 2019

Eduardo Enz, Executive Director
California Commission on Health and Safety and Workers Compensation
1515 Clay Street, 17th Floor
Oakland, CA 94612

Dear Mr. Enz:

The workers' compensation laws have some unique provisions with respect to "public safety officers" – active firefighters and many peace officers. These special rules include preferential temporary disability benefits, as well as "presumptions" that a range of conditions or injuries are job-related. There is an ever-increasing pressure to expand the safety employees who receive the benefit of these special rules, as well as adopt new and expansive presumptions for those who already receive these benefits.

Presumptions should be narrowly tailored on the basis of sound empirical data to circumstances where claims that are highly likely to be based on job-related conditions or illnesses are being denied, and the injured employee has little chance to prove that the condition or injury is, in fact, job-related. Or, in the words of former-Governor Jerry Brown, "Presumptions should be used rarely and only when justified by clear and convincing scientific evidence."

It is on this basis that I am writing to request that the Commission undertake a study with respect to the incidence of mental health conditions or illnesses that afflict active firefighters (and, in addition, peace officers), and whether or not claims of mental health conditions or illnesses filed by active firefighters (and peace officers) are being accepted or denied.

You may be aware of Senate Bill 542 (Stern), currently pending before the Legislature. The bill proposed a broad new presumption that all diagnosed mental health conditions for a currently employed firefighter or peace officer, as well as conditions diagnosed up to 5 years after separation from employment, and further including retroactive application to conditions or illnesses that occurred prior to the effective date of the legislation, are job-related. In support of the bill firefighters have argued that their profession has an inordinately high suicide rate, and therefore it must be job-related, and as a result a presumption of compensability is in order. While SB 542 has been

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narrowed, the issue of broader mental health issues affecting public safety officers remains. Firefighting is a stressful profession, and circumstances faced by firefighters can have significant long term mental health consequences, but intuition and anecdote are inadequate to justify a major change in the law. Simply stated, the data is not here as it relates to California's workers' compensation system.

I reviewed the 2018 Issue Brief, "Overview of the Behavioral Health of First Responders in California Using PTSD-Related Workers' Compensation Claims Data" prepared by the Department of Industrial Relations. The report contains useful information and insights, but more information is necessary as we evaluate the totality of circumstances arising from these injuries.

Specifically, I ask the Commission to address these questions:

- 1) Do firefighters (or peace officers) have a higher incidence of traumatic stress injuries than on-public employments which pose similar exposure to traumatic stress, such as emergency room personnel, security guards, or private ambulance service employees?
- 2) Do firefighters (or peace officers) experience a significantly higher incidence of suicide, attempted suicide or other serious mental health conditions than other employees generally?
- 3) Are claims by firefighters (or peace officers) for mental health conditions denied under circumstances where the condition appears to be job-related but the employee has difficulty proving that fact, and is the rate of denial statistically different from other claims by firefighters (or peace officers) that are subject to presumptions of compensability? As part of your response to this question, please analyze the denial rates of claims subject to presumptions of compensability, whether denial rates are different based upon the entity adjusting the claims (TPA, self-administered, or insured) and the ultimate disposition of denied claims, either upheld or reversed.
- 4) Do firefighters (or peace officers) file claims for mental health conditions at a rate statistically different from other employees?
- 5) Are claims by firefighters (or peace officers) for mental health conditions denied under circumstances where the condition appears to be job-related but the employee has difficulty proving that fact, and is the rate of denial statistically different from other claims and from other types of employees?

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- 6) In addition to quantifying data requested in number 4, above, please consult with the professional mental health community to determine the feasibility of proving or disproving the job-relatedness of these mental health conditions.
- 7) To the extent that claims for mental health conditions filed by firefighters (or peace officers) are being denied by employers, is this occurring following prior treatment that was covered by employer-sponsored or other health care coverage, where the treating provider(s) concluded the condition was job-related, or in cases where there was no prior treatment or diagnosis?
- 8) Of the claims that involve mental health conditions, what percentage of these claims were primarily for mental health issues, and what percentage of these claims involved a mental health claim as a compensable consequence to a claim for physical injuries?
- 9) To what extent are mental health claims filed by public safety officers post-separation/termination claims, as opposed to claims for which the employer had notice during the term of employment?
- 10) In the case of denied workers' compensation claims by firefighters (or peace officers) for mental health conditions, is there evidence that the claimant later sought and obtained care through employer-sponsored or other health care coverage?
- 11) What would the costs to state and local governments be if SB 542, as introduced, were enacted into law? Please separate out firefighter and peace officer expected costs.
- 12) What would the costs to state and local governments be that are associated with the retroactive application of the rules set forth in SB 542? Please separate out firefighter and peace officer expected costs.

I would welcome the opportunity to discuss with you additional refinements or modifications to this request.

Sincerely,

(signature on file)

Tom Daly
Chair
Assembly Insurance Committee