

Treating Physicians' Role in Helping Injured Workers Return to Sustained Employment

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The Commission on Health and Safety and Workers' Compensation sponsored and approved a study of stakeholders' views and insights concerning the efforts of treating physicians and others to help injured workers return to long-term, sustained employment. Much of the discussion below is based on portions of the final report of that study, "Return-to-Work in California: Listening to Stakeholders' Voices," July 2001.

What prevents injured workers from returning to sustained employment?

For many injured workers, workers' compensation benefits alone are insufficient to replace lost wages. Returning to work in sustained employment, therefore, is probably the best way for an injured worker to avoid significant financial losses. In addition, scientific evidence shows that returning to medically suitable modified-duty work aids healing and recovery. Many obstacles, however, hinder successful and sustained return-to-work. These include financial disincentives of important stakeholders in the workers' compensation system, communication problems, unclear procedures, and adversarial relationships between stakeholders.

*** Delays in receiving medical care**

Many workers have reported that claims administrators wait 90 days before accepting a claim, and that in this period the workers cannot obtain medical care in the workers' compensation system. It appears that claims administrators believe they are permitted to delay for 90 days because under current law, an unanswered claim is not "presumed compensable" until 90 days after the date the claim form was filed. (See Labor Code section 5402.) In addition, if a physician knows that a worker has a pending workers' compensation claim, the physician is prohibited from collecting payment from the worker. (See Labor Code section 3751.) Without treatment in this initial three-month period, injured workers face aggravation of their injuries and possible long-term deterioration of their health, which can later make it difficult for the worker to return to work.

* **Delays in returning to work**

After an injured worker has been off work on temporary disability benefits for 90 days, workers' compensation laws require the employer, claims administrator, and the treating physician to take specific steps designed to return the worker to work, either through placement with the same employer or through vocational rehabilitation services. (See Labor Code sections 4626, 4637, and 4638.) The laws do not require or specify proactive steps at an earlier stage, to help the worker return soon after injury, even though promptly returning to suitable, transitional work can help prevent long-term disability.

(In contrast, state disability rights laws require employers "to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition." Physical disability covers losses that "limits an individual's ability to participate in major life activities," which can include working in a particular job while recovering from an occupational injury. See Government Code sections 12926 and 12940(n).)

* **Communication gaps**

Because of the delays described above:

- Treating physicians are often not informed about the injured worker's job or different jobs that could be assigned or offered to the worker while recovering.
- Employers are often not informed about specific changes that could or should be made in the workplace to accommodate the injured worker and prevent reinjury.
- Injured workers are often not informed about steps, if any, that can or will be taken to help the worker return to work.

Instead, there may be tendencies either to keep an injured worker entirely off work while recovering to avoid the possibility of aggravating the injury and help the employer avoid the cost of temporary accommodations; to immediately release an injured worker to full duty to help the employer avoid the cost of temporary disability indemnity payments; or to terminate the injured worker's employment.

What is the role of the treating physician?

The treating physician in the workers' compensation system plays a pivotal role in helping the injured worker return to sustained employment. He or she interviews and examines the worker, makes a diagnosis, and determines necessary treatment.

* **Work restrictions**

The treating physician also formulates work restrictions, specifying:

- When the worker can return to work;
- The kinds of work the worker can do safely while recovering;
- Changes that may be needed in work schedule, assignments, or equipment;
- Permanent restrictions if the worker sustains a permanent disability.

* **Distrust of the treating physician**

Distrust of the treating physician, however, hinders successful return-to-work. Injured workers may perceive that physicians selected by the employer or claims administrator will require the worker to return to work prematurely to please the employer or claims administrator who wants to avoid paying for temporary disability benefits while the worker is recovering. Conversely, employers and claims administrators may perceive that physicians selected by the worker will maximize time off to please the worker who wants to stay off work, and that physicians selected by the worker's attorney will maximize descriptions of disability to please the attorney (whose fees are based on extent of permanent disability).

As a result, injured workers, employers, and claims administrators lose trust in the treating physician and therefore disregard or challenge the physician's findings and recommendations, thus forcing the parties into formal disputes requiring evaluations by qualified medical evaluators (QMEs) and agreed medical evaluators (AMEs).

What should be the role of the treating physician?

* **Knowledge of the system; ability to communicate**

It is commonly agreed that to be effective in helping injured workers return to work, the treating physician must have an in-depth understanding of the workers' compensation system, to be able to write useful medical reports, and must understand the physical requirements of the injured worker's regular job and other available jobs, to be able to formulate clear and specific work restrictions.

In addition, the treating physician must truly listen and communicate with others. Views differ, however, as to whom the physician should work with or believe -- the injured worker on the one hand, or the employer or claims administrator on the other.

*** Opposing views**

Injured workers and labor union representatives have felt that correct diagnosis and proper treatment are essential to helping injured workers return to sustained employment, and that the treating physician must listen to the injured worker and believe the worker's reports of pain in order to arrive at a correct diagnosis. Specifically, they have expressed views that the treating physician should do the following:

- Believe injured workers' reports of pain and other experiences with their injuries.
- Be responsive to workers' needs and preferences in understanding their injuries and seeking alternative treatments.
- Respect injured workers' concerns and preferences about staying off work, returning to modified-duty work, or finding another job.
- Educate workers about their injuries.
- Establish trust with the injured worker, which is essential for successful treatment, recovery, and return-to-work.
- Not allow themselves to be influenced by employers or claims administrators in their medical determinations of when an injured worker can return to work.

In contrast, employers and claims administrators have felt that treating physicians should not always believe injured workers' reports of pain. Instead, the treating physician should actively work with the employer or claims administrator to return the injured worker to work as soon as medically possible. Specifically, they have expressed views that the treating physician should do the following:

- Not always believe what injured workers say about the pain they are experiencing. Instead, use objective standards to determine a worker's level of pain.
- Not always accommodate an injured worker's preference to stay off work.
- Educate workers as to when it is safe to return to work, even while still experiencing some pain.
- Educate workers about the return-to-work process and the advantages of returning to work.
- Be willing to speak with claims administrators or their case managers about individual cases, and be open to considering methods to shorten the worker's time off work.

Recommendations

How can the roles described above be reconciled? Recommendations have been proposed to help ameliorate some of the blame, distrust, and hostility that pervade the workers' compensation community and to begin to resolve some of the specific concerns and problems reported by the study participants. Of those recommendations, the following would enhance the role of the treating physician in helping injured workers return to sustained employment:

A. Information About Roles and Responsibilities

To help dispel misunderstandings and improve our understanding of what can be expected of treating physicians and other major providers of services in the workers' compensation system, informational materials about these providers should be developed and disseminated. The materials would describe the providers' roles and responsibilities, their training, how they are paid, and how they are regulated. The materials could be developed in consultation with a cooperative, multipartite task force. Members of the task force could include treating physicians, as well as injured workers, employers, claims administrators, QMEs, AMEs, applicants' attorneys, defense attorneys, rehabilitation counselors, and case managers.

B. Model Practices

A set of model practices of treating physicians, employers, and claims administrators should be developed, based on ethical "codes of conduct" and, where possible, evidence-based standards of care. The model practices could build upon some of the information developed in implementing Recommendation A, above.

To ensure that the model practices take into account the educational needs and practical concerns of all persons involved, the model practices could be developed in consultation with the task force described in Recommendation A. In addition, to ensure that the model practices take into account scientific and professional knowledge about successful return-to-work efforts and that they comply with all applicable laws, an advisory body could be established consisting of persons with expertise in disability management, epidemiology, health economics, health policy, health services research, workers' compensation law, occupational safety and health law, and employment law.

To achieve some common understanding of treating physicians' "best practices" in communicating with others, assumptions could be explored that underlie opposing views as to whom the physician should work with or believe. It may well be, for example, that opposing views as to whether treating physicians should work with employers to achieve medically appropriate return-to-work are based on different assumptions (and lack of information) about the nature of a treating physician's communication with an employer, and that opposing views as to whether treating physicians should consider injured workers' reports of subjective symptoms

are based on misunderstandings regarding the extent that medical conditions such as soft tissue injury can be measured objectively.

C. Strategies To Overcome Problems in the System

1. Educating Treating Physicians

To overcome problems stemming from lack of knowledge, educational programs for workers, employers, treating physicians, and unions should be designed and implemented. Suggested educational topics for treating physicians include the following:

- * Effects of the workers' compensation claims process on injured workers' earning power
- * How to specify and explain work restrictions to claims administrators
- * Treating occupational injuries and making appropriate referrals
- * Determining whether a musculoskeletal injury has underlying neurogenic drivers
- * Treating the psychological aspects of an occupational injury, including making appropriate referrals

Discussions should be held with the task force described in Recommendation A, to expand and elaborate upon these educational ideas.

2. Reducing Delays in Treatment and Recovery

To reduce delays in treatment and recovery, it has been suggested that medical care be provided and paid for while a new claim is pending and that evidence-based-care algorithms be developed that allow pre-approval of treatment for conditions for which tests or treatment are clearly indicated. Further discussions should be held with the task force described in Recommendation A, to evaluate whether these suggested strategies can move forward.

A copy of "Return-to-Work in California: Listening to Stakeholders' Voices," by Juliann Sum, J.D., Sc.M, and John Frank, M.D., M.Sc., Institute of Industrial Relations, UC Berkeley, July 2001, can be obtained from the Commission on Health and Safety and Workers' Compensation by calling 415-703-4220. This report is also available online: www.dir.ca.gov/chswc.