April 7, 2011

The Honorable Nancy Skinner
California State Assembly
State Capitol, Room 4126
Sacramento, CA 95814

SUBJECT: AB 375 (SKINNER) – WORKERS' COMPENSATION: HOSPITAL EMPLOYEE PRESUMPTIONS
OPPOSE

Dear Assembly Member Skinner,

The below named organizations **OPPOSE** your **AB 375 (SKINNER)**, which would create special rules for certain hospital employees in the workers' compensation system by creating a legal presumption that any back injury, blood-borne infectious disease, or MRSA infection is related to employment. Injuries occurring within the course and scope of employment are automatically covered by workers' compensation insurance, regardless of fault. Presumptions of industrial causation for specific employees and injury types are simply not needed and create a tiered system of benefits that treats employees differently based on occupation and undermines the credibility and consistency of our workers' compensation system.

What presumptions mean
AB 375 creates a presumption of industrial causation for certain hospital workers who manifest a neck or back injury, MRSA infection, or blood borne disease during their employment, and for a time period *after* employment, the length of which depends on the number of years employed as a hospital worker. The practical impact of creating a presumption of industrial causation is that hospitals will have a higher burden of proof when attempting to contest a claim that they believe is non-industrial. Workers' compensation insurance is a "no fault" system that is intentionally constructed in a way that leads to the vast majority of claims being accepted. In fact, when determining compensability a Workers' Compensation Appeals Board administrative law judge is required to interpret the facts liberally in favor of injured workers.

> *Labor Code Section 3202: "This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."*

California's no-fault system of workers' compensation insurance that must be "liberally construed" with the purpose of extending benefits to injured workers does not create many obstacles for employees who believe that they have been injured at work. The creation of a presumption for employees, absent some significant justification, serves only to make it nearly impossible for an employer to contest any claim for benefits.

Not only does this special standard for accepting claims apply to hospital workers while employed, but it continues for up to 180 days (depending on the injury) after leaving employment. This means that a former employee could come back and file a claim based on this presumption for up to six months and the employer would be virtually powerless to question the compensability of the claim. This presents a number of problems, not the least of which being that there is no rationale for basing the duration of an employee's post-employment presumption on the length of their service with a specific employer.

No evidence supporting presumption

Supporters of **AB 375** have argued that healthcare workers are more prone to musculoskeletal injuries and that there is a contact hazard for MRSA, and blood borne illnesses. The fact that hospital employees face specific types of risks in the workplace is not a justification for altering the legal standard for determining what is or is not an industrial injury. All employees, in every type of occupation, face risks inherent to their employment. This is anticipated by current labor law, which requires every employer to evaluate the specific risks faced by their employees and develop an "Injury and Illness Prevention Plan" that mitigates those risks. There is nothing unique about hospital workers that make them deserving of a separate legal standard for certain injuries and illnesses that, for them, are most likely to be industrial. In fact, it logically follows that the most obvious types of occupational injuries and illnesses for any given occupation would be far more likely to be accepted as industrial by employers and less in need of a legal presumption to obtain benefits.

There is no demonstrated need for hospital workers to have special legal status in the workers' compensation system. There has been no statistical evidence presented that would indicate, in any way, that workers' compensation claims by hospital employees for neck and back injuries, exposure to MRSA, or exposure to blood borne illnesses are being inappropriately delayed or denied by employer or insurers. There has been no demonstration that hospital employees are uniquely impacted in a negative way by the current legal standard for determining compensability of industrial injuries.

Troubling precedent

Although there is a long history of legal presumptions being applied to public safety employees in the workers' compensation system, there has never been a presumption applied to private sector employees. **AB 375** would be the first such presumption applied to private sector employees, and it would be based solely on the fact that specific work-related risks exist for hospital workers. This means that any employee with specific industrial risks should be deserving of the same type of change in policy. We don't believe that the legislature should go down the path of trying to identify likely injuries for every occupation in the state with the goal of creating special rules for those employees. This is an unrealistic expectation in an insurance program that covers thousands of types of employees and employers.

Workers' compensation insurance is a no-fault system that not only covers any injury occurring in the course and scope of employment regardless of fault, but also requires arbiters of disputes to liberally construe the law to benefit injured workers. There is not a need to legally anticipate the types of injuries most likely to occur based on occupation and create separate legal presumptions for specific employees and occupations.

For these reasons, the below named organizations are **OPPOSED** to your **AB 375.**

Cordially,

California Chamber of Commerce
Acclamation Insurance Management Services
Allied Managed Care
California Association of Joint Powers Authorities
California Hospital Association
California Manufacturers and Technology Association
California Coalition on Workers' Compensation

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