No. S232197

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

KIRK KING, SARA KING,
Plaintiffs, Appellants and Respondents

v.

COMPPARTNERS, INC. and NARESH SHARMA, M.D.,
Defendants, Respondents and Petitioners.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT,
DIVISION TWO (E063527)
SUPERIOR COURT, COUNTY OF RIVERSIDE (NO. RIC 1409797)
HONORABLE SHARON J. WALTERS

MOTION OF CALCHAMBER, THE NATIONAL COUNCIL OF SELF-INSURERS, PROPERTY CASUALITY INSURERS ASSOCIATION OF AMERICA DOING BUSINESS IN CALIFORNIA AS ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES (PCI) AND CAJPA FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS COMPPARTNERS, INC.

[SUBMITTED CONCURRENTLY WITH AMICI CURIAE BRIEF]

Randall G. Poppy, Esq. (SBN: 124884)
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ATTORNEYS FOR AMICI CURIAE
California Chamber of Commerce, the National Council of Self-Insurers, Property Casualty Insurers Association of America doing business in California as Association of California Insurance Companies (PCI) and CAJPA

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

The California Chamber Of Commerce (hereinafter "CalChamber"), the National Council of Self-Insurers, Property Casualty Insurers Association of America doing business in California as Association of California Insurance Companies (hereinafter "PCI") and the California Association of Joint Powers Authorities (hereinafter "CAJPA") respectfully move this court for leave to file the attached amici curiae brief. Pursuant to Rule 8.200(c), we request leave from the Presiding Justice to allow filing of this amici curiae brief.

CalChamber is comprised of over 13,000 member employers, both large and small. The Chamber is dedicated to improving California's business climate by providing businesses with a voice in state politics, legislative activities, and judicial matters. CalChamber is interested in administrative, statutory, and judicial matters that substantively affect the system of workers' compensation created by Article XIV, Section 4, of the California Constitution of the State of California.

Founded in 1946, the National Council of Self-Insurers is a national organization of employers, state self-insurer associations, state guaranty funds, and other professionals dedicated to the perpetuation and betterment of self-insurance of workers' compensation. Among the National Council's members are sixteen California employers, the California Self-Insurers Association, the California Self-Insurers Security Fund, and at least eight organizations that support the administration of workers' compensation.

The California Association of Joint Powers Authorities, CAJPA, represents 99 joint powers authorities ("JPAs") providing group self-insurance and risk management services to a vast majority of the public entities in California. Our JPA members providing workers' compensation coverage have a vested interest in this litigation. One of our primary functions is to protect the financial resources of our public entity members. Workers' compensation is a significant cost and we are interested in preserving the laws applicable to the administration of workers' compensation benefits within the Workers' Compensation Act for prompt and efficient delivery of such benefits. Our JPA members have a keen interest in this case because

it erodes the exclusive remedy of the Workers' Compensation Act, thereby increasing employer liability and the time and costs involved in the administration of benefits.

Property Casualty Insurers Association of America doing business in California as Association of California Insurance Companies (hereinafter referred to as "PCI") is a national property casualty trade association that promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers. PCI is composed of nearly 1,000 member companies, representing the broadest cross section of insurers of any national trade association. PCI members write $202 billion in annual premium, 35 percent of the nation's property casualty insurance. Member companies write 42 percent of the US automobile insurance market, 27 percent of the homeowners market, 33 percent of the commercial property and liability market and 34 percent of the private workers' compensation market. In California, PCI members write 29.5 percent of the property casualty market, including 38.1 percent of the worker's' compensation market. In addition to providing extensive services on behalf of its members before federal and state legislators

and regulators, PCI undertakes to address issues of importance to its members and the broader insurer community by providing amicus support where appropriate before federal and state appellate courts.

CalChamber has been granted amicus curiae status in numerous workers' compensation cases, most recently in *City of Jackson v. WCAB (Rice)* (ADJ8701916, writ issued 04/30/2015), *Contra Costa County v. WCAB (Dahl)* (2015), *Stevens v. WCAB* (2015), *Southern California Edison v. WCAB (Martinez)* (2013), *Valdez v. WCAB* (2013), *Baxter v. WCAB (XS)* (2011), *Environmental Services v. WCAB (Almaraz)* (2011), *Milpitas Unified School District (Guzman), City & County of San Francisco v. WCAB (Ogilvie)* (2011), *Diaz v. Carcamo* (2011), and *Benson v. WCAB* (2009).

This amici curiae brief presents an examination of the relevant legislative history and legislative intent behind Utilization Review, and a legal analysis of the jurisdictional error committed by the Appeals Board below.

Good cause for the filing of this amici brief may be appropriately demonstrated by the importance of the issue to the workers' compensation legal community. CalChamber, the National

Council of Self-Insurers, PCI and CAJPA seek to provide the court with a more in-depth analysis of the legal issues surrounding the disputed Utilization Review process, so that definitive instruction from this Court may guide both practitioners and the Appeals Board in the future.

CalChamber, the National Council of Self-Insurers, PCI and CAJPA respectfully request that the Court grant leave to file the amici curiae brief submitted concurrently with this motion.

Dated: December 16, 2016

Respectfully submitted,

FINNEGAN, MARKS, THEOFEL & DESMOND
A Professional Corporation

By:_____
Randall G. Poppy
Attorneys for Amici Curiae CalChamber, the National Council of Self-Insurers, PCI and CAJPA

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AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS COMPPARTNERS, INC.

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ATTORNEYS FOR AMICI CURIAE
California Chamber of Commerce, the National Council of Self-Insurers, Property Casualty Insurers Association of America doing business in California as Association of California Insurance Companies (PCI) and CAJPA

I. CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

California Rules of Court 8.208

Name of Interested Entities or Persons	**Nature of Interest**
Kirk King, Sara King	Plaintiffs, Appellants and Respondents
Comppartners, Inc. and Naresh Sharma, M.D.	Defendants, Respondents and Petitioners
California Chamber of Commerce, the National Council of Self-Insurers, PCI and CAJPA	Amici curiae on behalf of Petitioners

Dated: December 16, 2016

Respectfully submitted,

FINNEGAN, MARKS, THEOFEL & DESMOND
A Professional Corporation

By:_____
Randall G. Poppy
Attorneys for Amici Curiae CalChamber, the National Council of Self-Insurers, PCI and CAJPA

II. CERTIFICATION OF COMPLIANCE

I, Randall G. Poppy, swear that I have read the within Motion for Leave to File Amicus Curiae Brief and Amicus Curiae Brief and know the contents thereof; that the within brief contains 5,125 words exclusive of tables, signature blocks, and this certificate, based on the automated word count of the computer word-processing program; that I am informed and believe that the facts stated therein are true and on that ground allege that such matters are true; that I make such verification because the officers of the California Chamber of Commerce, the National Council of Self-Insurers, PCI and CAJPA are absent from the County where my office is located and are unable to verify the petition, and because as their attorney, I am more familiar with such facts than are the officers.

Sworn and executed this 16th day of December, 2016, at San Francisco, California

FINNEGAN, MARKS, THEOFEL & DESMOND
A Professional Corporation

By:_____
Randall Poppy

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Cases

Statutes

Other Authorities

Constitutional Provisions

V. INTEREST OF AMICI CURIAE

The California Chamber of Commerce is a nonprofit organization comprised of over 13,000 member employers, both large and small. CalChamber is dedicated to improving California's business climate by providing businesses with a voice in state politics, legislative activities, and judicial matters. Founded in 1946, the National Council of Self-Insurers is a national organization of employers, state self-insurer associations, state guaranty funds, and other professionals dedicated to the perpetuation and betterment of self-insurance of workers' compensation. Among the National Council's members are sixteen California employers, the California Self-Insurers Association, the California Self-Insurers Security Fund, and at least eight organizations that support the administration of workers' compensation. Property Casualty Insurers Association of America doing business in California as Association of California Insurance Companies (hereinafter referred to as "PCI") is a national property casualty trade association that promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers. PCI is composed of nearly 1,000 member companies, representing the broadest cross section of insurers of any

national trade association. PCI members write $202 billion in annual premium, 35 percent of the nation's property casualty insurance. Member companies write 42 percent of the US automobile insurance market, 27 percent of the homeowners market, 33 percent of the commercial property and liability market and 34 percent of the private workers' compensation market. In California, PCI members write 29.5 percent of the property casualty market, including 38.1 percent of the worker's' compensation market. In addition to providing extensive services on behalf of its members before federal and state legislators and regulators, PCI undertakes to address issues of importance to its members and the broader insurer community by providing amicus support where appropriate before federal and state appellate courts.

The California Association of Joint Powers Authorities, CAJPA, represents 99 joint powers authorities ("JPAs") providing group self-insurance and risk management services to a vast majority of the public entities in California. Our JPA members providing workers' compensation coverage have a vested interest in this litigation. One of our primary functions is to protect the financial resources of our public entity members. Workers' compensation is a significant cost and we are interested in preserving the laws applicable

to the administration of workers' compensation benefits within the Workers' Compensation Act for prompt and efficient delivery of such benefits. Our JPA members have a keen interest in this case because it erodes the exclusive remedy of the Workers' Compensation Act, thereby increasing employer liability and the time and costs involved in the administration of benefits.

CalChamber, the National Council of Self-Insurers, PCI and CAJPA are interested in administrative, statutory, and judicial matters that substantively affect the system of workers' compensation created by Article XIV, Section 4, of the Constitution of the State of California.

VI. SUMMARY OF ARGUMENT

The decision below completely fails to address the relevant legislative history of SB 863 by finding that a physician engaged in a statutorily mandated Utilization Review process has established a physician-patient relationship and therefore owes a duty of care to the injured worker. If allowed to stand, the decision will create extensive future litigation and can be expected to increase costs that will put upward pressure on malpractice premium rates for all physicians, and have a chilling effect on Utilization Review physicians. Further, the

decision sets forth no guidelines or boundaries to define the scope of the duty of care that the utilization reviewer purportedly owes to the injured worker, and frustrates one of the main purposes of SB 863, namely to reduce costs in order to increase benefits. By establishing potentially unlimited liability for Utilization Review physicians, the decision will increase overall costs of the system, which will put significant upward pressure on workers' compensation premium rates for employers, and potentially in higher premiums for employers, and potentially drive future and existing business away from the State of California.

VII. ARGUMENT

A historical review of the regulation of medical treatment in workers' compensation claims is appropriate. The Legislature has been constitutionally vested with "plenary power" to establish a complete and exclusive system of workers' compensation.[1] Pursuant to this authority, the Legislature has enacted a system of workers' compensation with the underlying premise whereby the employer assumes liability for industrial injury without regard to fault, in exchange for limitations on the amount of that liability. By this

[1] Cal. Const., art. XIV, § 4; Lab. Code § 3201.

"compensation bargain," the employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of the industrial injury, and in exchange, gives up the wider range of damages potentially available in tort.[2]

The workers' compensation scheme requires the employer of an injured worker to be responsible for providing all medical treatment reasonably necessary to cure or relieve the worker from the effects of the injury.[3] Since 2004,[4] Labor Code Section 4610 has required every employer to establish a medical treatment Utilization Review process.[5] The Supreme Court has held that the Legislature intended for employers to use Utilization Review to review and resolve any and all requests for medical treatment.[6]

As an adjunct to Utilization Review, the Legislature in 2013 created an Independent Medical Review process to resolve workers'

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[2] *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 16, 276 Cal.Rptr. 303.

[3] Lab. C. § 4600, subd. (a).

[4] The 2004 legislation creating and implementing Utilization Review was set forth in two statutes. The first, Senate Bill No. 228 (2003-2004 Reg. Sess.) (Stats. 2003, ch. 639, § 28, p. 4923) became effective on January 1, 2004. The second, Senate Bill No. 899 (2003-2004 Reg. Sess.) (Stats. 2004, ch. 34) became effective on April 19, 2004.

[5] Stats. 2003, ch. 639, § 28.

[6] *State Compensation Insurance Fund v. Worker's Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 237, 73 Cal. Comp. Cases 981.

challenges to UR decisions.[7] Senate Bill 863 was passed by the Legislature following intensive bargaining between business and labor interests. According to the description of SB 863 on the Division of Workers' Compensation's own website, "Labor and management agreed that in order for benefits to be increased, costs would have to be decreased where possible. They also agreed that where possible, the workers' compensation process should be made more efficient."[8]

As a primary tool for cost reduction, SB 863 created an Independent Medical Review process to resolve UR disputes. The new statutory scheme requires that "disputes [regarding the UR decision] shall be resolved pursuant to Section 4610.5."[9] In turn, section 4610.5 states that a Utilization Review decision "may be reviewed or appealed only by Independent Medical Review."[10]

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[7] This legislation was set forth in Senate Bill No. 863 (2011-2012 Reg. Sess.), which went into effect on January 1, 2013.

[8] Dept. of Industrial Relations, "Overview of SB863," www.dir.ca.gov/dwc/sb863/SB863_Overview.htm. Further evidence of the cost-benefit exchange behind SB 863 can be found in the statement of purpose contained in the report of the Senate Committee on Labor and Industrial Relations: "To reduce frictional costs, speed up medical care for injured workers, and to increase Permanent Disability (PD) indemnity benefits to injured workers." Senate Committee on Labor and Industrial Relations, 3rd reading analysis of SB 863 (2011-2012 Reg. Sess.) as amended August 30, 2012, p. 1.

[9] Lab. C. § 4610(g)(3)(A).

[10] Lab. C. § 4610.5(e).

In summary, since the 2004 and 2013 reforms, the employee's physician now submits a treatment recommendation that is reviewed under the employer's UR process.[11] Based on designated medical treatment utilization standards,[12] the employer's Utilization Review organization reviews all information reasonably necessary to determine whether to approve, modify, or deny the recommendation.[13]

A UR decision favoring the employee becomes final, and the employer is not permitted to challenge it.[14] But if the UR decision modifies, delays, or denies a request, the employee may seek review through IMR.[15] "In other words, the IMR process gives workers, but not employers, a second chance to obtain a decision in their favor."[16] Under IMR, an independent medical review organization assigns medical professionals to review pertinent medical records, provider reports, and other information submitted to the organization or requested from the parties.[17]

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[11] Lab. C. § 4610.

[12] Lab. C. § 4610, subd. (f)(2).

[13] Lab. C. § 4610, subd. (d).

[14] Lab. C. § 4610.5, subd. (f)(1).

[15] Lab. C. § 4610.5, subd. (d).

[16] *Stevens v. Workers' Comp. Appeals Bd.* (2015) -- Cal.App.4th -- (A143043) (petition for review denied 02/17/2016).

[17] Lab. C. § 4610.6, subd. (b).

The IMR process is conducted under the auspices and control of the Administrative Director of the Division of Workers' Compensation ("the AD"). Under the IMR legislation, the AD contracts with the IMR organization (Maximus) to conduct reviews and assist the division in carrying out its responsibilities.[18] But unlike IMR, which is performed by an independent review organization contracted by the State of California, UR is performed by the employer, the insurer, or their agents.[19] Under these circumstances, the employment relationship is maintained and the exclusivity bar must be applied in order to preserve the original intent of the compensation bargain.

In this regard, we urge the Court to recognize that the decision below has completely mischaracterized one of the primary cases upon which it relies. The *Vacanti*[20] case is cited in the decision below for the principle that courts have allowed tort claims in cases where the aggravation of a workplace injury did not occur in the course of employment relationship. From there, the decision below leaps to the conclusion that "if a new injury arises or the prior workplace injury is

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[18] Lab. C. §139.5(a)(2).

[19] Lab. C. § 4610.5, subd. (c)(4).

[20] *Vacanti v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800.

aggravated, then exclusivity provisions do not necessarily apply."

This statement contradicts decades of black letter workers' compensation law to the contrary. For example, the Supreme Court stated in 1968 that "the employer must compensate not only for the disability caused solely by the industrial injury, but also for that resulting from an aggravation or "lighting up" of a nondisabling disease preexisting the industrial injury."[21] Presently, even after major legislative changes to the rules on apportionment to causation, the law still requires compensation for the industrial aggravation of a nonindustrial injury.[22]

Continued publication of these erroneous and invalid legal conclusions would wreak havoc upon the orderly administration of the Workers' Compensation Act, and should not be permitted to stand.

Exclusive Remedy

Labor Code Section 3601 mandates that the provisions of the Workers' Compensation Act shall be the "exclusive remedy"

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[21] *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 796.

[22] *Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313; *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (2006) 145 Cal.App.4th 922,52 Cal. Rptr. 3d 133, 71 Cal. Comp. Cases 1687; *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (en banc).

available to employees as against employers for injuries sustained in the course and scope of employment.

Where the alleged injury is "collateral to or derivative of" an injury compensable by the exclusive remedies of the WCA, a cause of action predicated on that injury is subject to the exclusivity bar.[23] The exclusive remedy provisions apply notwithstanding that the alleged injury resulted from the intentional conduct of the employer, and even though the employer's conduct might be characterized as egregious.[24]

The exclusivity bar is applicable here. The employer is statutorily required to establish a Utilization Review process for workers' compensation treatment, and that Utilization Review organization is defined as an agent of the employer.[25] All disputes over medical treatment recommendations following Utilization Review "shall be resolved only in accordance with the Independent Medical Review process" under Section 4610.5. That section applies to "any dispute" over a Utilization Review decision. The law simply

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[23] *Snyder v. Michael's Stores, Inc.* (1997) 16 Cal.4th 991, 997, 68 Cal.Rptr.2d 476.

[24] *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 160, 233 Cal.Rptr. 308.

[25] Lab. C. § 4610.5, subd. (c)(4).

does not provide an alternative opportunity for Plaintiff to seek redress in civil court.[26]

On this point, the Plaintiffs' position (and the decision below) is simply wrong. Plaintiffs alleged that "the WCA provides no recourse for such injuries, thus necessitating the bringing of a lawsuit against the tortfeasors."[27] In fact, the law provides an appellate process through IMR for the injured worker to have challenged the UR determination.[28] There is no evidence in the record below that plaintiffs availed themselves of that appellate process.

Duty of Care

As outlined above, the rule of workers' compensation exclusivity should act to bar all efforts to obtain damages from the employer or its agents in Utilization Review. The decision below nevertheless allows Plaintiffs leave to amend the complaint to allege that the Utilization Review physician owed a duty of care to plaintiffs.

But under the facts of this case, no doctor-patient relationship was ever established. The physician reviewer never met the plaintiff,

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[26] *Tenent/Centinela Hospital Medical Center v. Workers' Comp. Appeals Bd.* (2000) 80 Cal.App.4th 1041, 1048.

[27] Plaintiffs' Reply Brief, at p. 5.

[28] The record does not reflect that Plaintiff availed himself of the IMR appeals process.

never examined the plaintiff, and never prescribed any medication. There is no opportunity for one-to-one communication between the UR physician and the employee. The Utilization Review physician activity was strictly limited to a records review for determination of medical necessity. As the trial court noted:

> **Somebody else prescribed this medication. Somebody else took it off —took him off it immediately without any slow withdrawal. *That's the person who made the medical decision* for your client, not the doctor who was simply reviewing the procedure.** [29]

Certainly, it was the treating physician who originally prescribed the medication in dispute who had the duty to know and understand the effects of the medication he was providing to his patient. It was the treating physician who had the obligation to explain those effects to his patient. It was the treating physician who had the responsibility to implement a weaning process for the medication. And therefore, if there was any question about the

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[29] The comments from the trial court are included in the decision below (Slip Op. at p. 7) (emphasis added).

conclusion of the utilization reviewer, the appropriate remedy would have been for the treating physician to have appealed the UR decision, and requested authorization for tapering of the medication for his patient.

The decision below wrongly thrusts the Utilization Review physician, who merely read plaintiff's treatment records and applied the appropriate treatment guidelines, into the role of a treating physician -- with all of the concomitant duties and obligations that are properly the responsibility of the physician actually providing treatment to the patient.

The decision below spends more than five pages pondering the possibility that plaintiffs could prove that a doctor-patient relationship existed between the Utilization Review physician and the plaintiff, and yet the decision never actually defines the scope of that relationship nor the extent of the duty created thereby. Pointing almost exclusively to a single reported case (*Palmer v. Superior Court (2002) 103 Cal.App.4th 953*), the court below decided that the Utilization Review physician established a doctor-patient relationship with the plaintiff merely by reviewing his medical records and determining the medical necessity of a medication prescribed by a

different physician. But, most importantly, the *Palmer* case (Id.) is inapposite to this one, as it did not involve a workers' compensation dispute nor did it address the exclusivity rules applicable to workers' compensation claims, but rather deep provision of medical treatment under an HMO plan, specifically regarding a procedural pleading requirement for punitive damages claims. It should be noted that the "utilization review department" in the Palmer decision was a division of the plaintiff's primary health care provider. Accordingly, the decision did not address whether a physician/patient relationship existed, but merely whether plaintiff had satisfied the procedural pleading requirement for a punitive damages claim.

It should be noted that the communications of Utilization Review are between the physicians. The reviewing physician is acting solely as a gatekeeper for the prescribing physician. Every aspect of the relationship between physician peers is regulated by statute. The statute could have imputed to the reviewing physician a responsibility to determine the ongoing care of the patient, but that is omitted because the treatment is the responsibility of the prescribing physician. The statute makes available peer-to-peer communication in the event the prescribing physician wishes to discuss authorization

(Section 4610 (h)), so a treating physician who has concerns about the ramifications of a decision to deny or modify a request may discuss the process with the gatekeeper.

The potential liability for Utilization Review organizations and the participating physicians created by the decision below cannot be overstated. The decision creates a chilling effect upon the statutorily mandated UR/IMR processes, as few if any physicians will offer their services in light of the prospect for civil lawsuits. And this does not even address the question of the need for medical malpractice insurance created by this decision. Allowing a negligence claim to proceed could even potentially avoid the MICRA statutes and allow punitive damages and/or other damages not available in an ordinary medical malpractice case.

Even if a duty of care obligation can be shown to exist, that duty necessarily arose from the underlying workers' compensation injury, and is necessarily part and parcel of that claim. As such, any "duty" would only exist exclusively within the Workers' Compensation Act, and Plaintiffs are thereby barred from pursuit of civil damages.

Conclusion

Simply stated, this case requires reversal and reinstatement of the trial court's Order because it completely fails to address the relevant legislative history outlined above, much less how and why that legislative history impacts the court's decision to find that a physician engaged in a statutorily mandated Utilization Review process has thereby established a physician-patient relationship and owes a duty of care to the injured worker. The decision fails to provide any scholarly analysis, and instead sets a reckless course of future litigation, not just for these parties but for all participants in the California workers' compensation system.

Furthermore, the decision fails to set forth any guidelines or boundaries to define the scope of the duty of care purportedly owed to the injured worker. Without providing any boundaries, the Court of Appeal created a new duty from whole cloth, unnecessarily opening the floodgates for further litigation. The decision of the Court of Appeal undercuts the specific cost-reduction purpose of the legislative reform packages outlined above, imposing a new rule that potentially creates unlimited liability upon UR vendors, which will likely lead to increased costs to employers and significant upward pressure on rates

for policyholders, making California less competitive, and harming employers and workers alike.

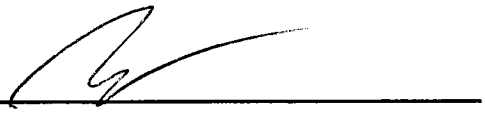
Letting this decision stand would result in wildly expanding potential liability in a system specifically designed to limit liability in exchange for certainty of benefits. We request that this Court grant the relief requested in the Opening Brief on the Merits filed by Defendants, Respondents and Petitioners on 07/15/2016, and reverse the decision in this case from the Fourth Appellate District (Div. 2), dated 01/05/2016, and reinstate the trial court's Order Sustaining the Demurrer without leave for amend, and for such other and further relief as this Honorable Court deems appropriate.

DATED: December 16, 2016

Respectfully submitted,

FINNEGAN, MARKS, THEOFEL & DESMOND

A Professional Corporation

By: 

Randall G. Poppy

Attorneys for Amici Curiae CalChamber, the National Council of Self-Insurers, PCI and CAJPA

PROOF OF SERVICE

I, Matthew Martin, am a citizen of the United States of America and am employed in the City and County of San Francisco, State of California. I am over the age of eighteen years and not a party to the within action. My business address is: Finnegan, Marks & Theofel & Desmond, P.O. Box 478011, San Francisco, CA 94147-8011.

On the date noted below, I served the attached

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED AMICI CURIAE BRIEF BY CALCHAMBER, THE NATIONAL COUNCIL OF SELF-INSURERS, PCI and CAJPA

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the U.S. Post Office mailbox at San Francisco, California, addressed as follows:

California Court of Appeal, 4th Appellate District, Division Two
3389 12th St.
Riverside, CA 92501
Re: Case No. C0653527
(By electronic filing)

Clerk of the Court
Riverside Superior Court
Civil Courthouse
4050 Main Street-Dept 3
Riverside, CA 92501

Workers' Compensation Appeals Board
P.O. Box 429459
San Francisco, CA 94142

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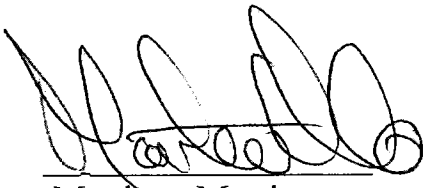
Courtesy copy

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 16, 2016 at San Francisco, California.



Matthew Martin