



BULLETIN

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Constitutionality of IMR: Supreme Court Denies Review of Stevens v. WCAB

Last Wednesday, the State Supreme Court declined to review the 1st District Court of Appeal's October 2015 ruling in **Stevens v. WCAB** (Outspoken Entertainment) which found that:

- 1) The California Workers' Compensation Independent Medical Review (IMR) process is not unconstitutional because the state Legislature has plenary power over the workers' compensation system; and
- 2) IMR does not violate an injured worker's due process rights under the U.S. Constitution because the process for evaluating workers' treatment requests is "fundamentally fair and affords workers sufficient opportunities to present evidence and be heard."

Background: The Stevens case involved a 100 percent P.D. award with extensive future medical care for a 1997 lower extremity injury with a psych overlay and chronic pain. The treating physician in the case had prescribed pain medication and home health care for the worker (Frances Stevens), which was denied by a utilization review (UR) physician in July 2013. The injured worker disputed the UR determination that the requested services were not medically necessary and applied for an independent medical review. The UR denial was upheld by the IMR physician in February 2014.

In an appeal to the 1st DCA, the applicant argued that the IMR process (LC §4610.6) is a denial of due process because it violates the injured worker's right to a fair hearing and the right to cross examine the reviewing physician. After that argument was soundly rejected in the Appeals Court's October ruling, the applicant attorney filed a petition with the State Supreme Court in December, asking the court to essentially review the same Constitutional issues and to depublish the 1st DCA ruling so that it would not have binding precedent in other cases.

Outcome: The Institute filed an amicus brief in the case, and on Wednesday, February 17 the Supreme Court denied the petition for review and the request for depublication (see appellatecase.cases.courtinfo.ca.gov).

Outlook: Although this constitutes a win for workers' compensation payers, Constitutional challenges to IMR remain, as two similar cases [[Ramirez v. WCAB \(SCIF\)](#) and [Zuniga v. WCAB \(Interactive Trucking\)](#)] are pending before the Courts of Appeal and it remains to be seen whether those courts will disagree with the rationale in **Stevens**. If contrary rulings issue in these cases there could be renewed interest by the Supreme Court. In addition, in a third case, [Hallmark Marketing v. WCAB \(Southard\)](#), the 3rd District Court of Appeal has agreed to review the issue of whether the failure of the state's Independent Medical Review Organization (Maximus) to meet statutory deadlines for returning IMR determinations gives the Workers' Compensation Appeals Board jurisdiction to resolve the treatment dispute.

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