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February 22, 2016

Letter in Support of Petition for Review
[Rule 8.500(g)]

Hon. Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Kirk King, et al. v. CompPartners, Inc, et al.
Fourth District, Div. 2 –
Published Citation: 243 Cal. App. 4th 685

Dear Chief Justice and Associate Justices:

This office represents the California Workers' Compensation Institute, and on their behalf, and for the reasons outlined below, we submit this letter pursuant to Rule 8.500(g) to urge this Court to grant the Petition for Review herein.

CWCI is a private non-profit research, information, and educational organization dedicated to improving the California workers' compensation system. Institute members include insurers writing 72% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (24% of the state's total annual self-insured payroll). The Institute's research, which is typically based on claims data collected from member companies, offers analyses and practical expertise on issues and trends affecting California workers' compensation, spotlights problems and concerns within the system, helps build consensus for workable solutions, and is often used to evaluate the impact of various legislative and regulatory proposals. CWCI is 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. On behalf of its membership, the Institute further serves as a liaison with employer, labor, medical, and vocational rehabilitation

communities within the workers' compensation system, and frequently provides input at legislative and regulatory hearings. Based upon its expertise in workers' compensation, the Institute has made multiple appearances as *amicus curiae* before the California Supreme Court and Courts of Appeal.

This case represents a judicial expansion of case law from group health insurance into the workers' compensation utilization review context, creating new civil liability within the workers' compensation system. The Institute supports granting the Petition for Review to allow this Court to more completely analyze the differences between group health vs. the adversarial roles of the various physician advocates involved in workers' compensation, including physicians treating the injured worker (advocating on behalf of the injured worker seeking broader physician discretion) vs. utilization review physicians (advocating on behalf of the payer for tighter enforcement of regulatory restrictions on treating physician discretion) and whose limited role is to address regulatory compliance with the medical treatment utilization schedule adopted by the Administrative Director of the Division of Workers' Compensation based on scientific principles of "evidence based medicine." Ultimately, the role of utilization review is to simply determine whether the treatment meets the regulatory standards of "evidence based medicine" and thus the employer needs to pay for the services. It is a regulatory compliance analysis for purposes of a payment recommendation, and the employee and his/her physician are free to undertake whatever other treatment they desire at the employee's expense under Labor Code Section 4605, though the employer would not be obligated to pay for any adverse consequences of treatment by a physician not sanctioned by the employer. Because of failure to fully appreciate those differences, the concern is that the decision below threatens the entire workers' compensation medical delivery system and may become a blunt instrument to dismantle the decades of legislative reforms leading up to the adoption of Utilization Review as a means to enforce higher quality medical decision-making and improve outcomes through "evidence based medicine."

In our view, the decision below does not adequately consider the historically adversarial roles of treating physicians and evaluating physicians in the workers' compensation system as they have evolved over many years, and the multiple legislative reforms recognizing and defining those adversarial roles. Those differing roles of the treating physician vs. the utilization reviewer are further evident from the

regulatory framework contained within 8 CCR 9792.6.1 and 8 CCR 9792.9.1 Without analyzing the clearly adversarial nature between the plaintiff/ treating physician vs. the employer's utilization reviewer, the reasoning behind the conclusion that the UR reviewer owes a duty to the plaintiff is overbroad.

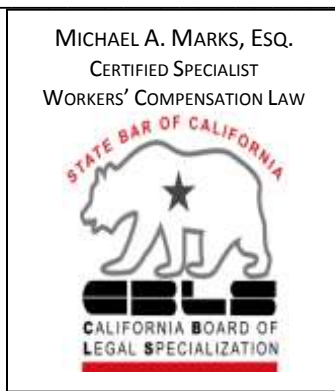
Additionally, the Court's discussion of the compensable consequence injury and the exclusive remedy provisions of the workers' compensation act is similarly misguided. Contrary to the Court's analysis, the compensability under the workers' compensation laws extends far beyond whether the individual was working at the time of the seizures. The employer is liable under workers' compensation for the consequences of subsequent negligently provided medical treatment ... when clearly not working [Herlick, California Workers' Compensation Handbook, (2006) §4.11. This utilization review process which caused the harm is "tethered to a compensable injury" [*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal. 4th 800, 815], and without full analysis of these unique workers' compensation aspects, the Court's reasoning that the workers compensation act should not be the plaintiff's exclusive remedy for a utilization review decision appears incomplete.

For the foregoing reasons, and to avoid establishment of unfortunate precedent that may result from lack of full appreciation of the workers' compensation system as it relates to the issues, CWCI asks this Honorable Court to grant review of the Court of Appeal decision herein.

Respectfully submitted,

Law Office of Allweiss & McMurtry

By: _____



Declaration of Service

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My business address is Allweiss & McMurtry, 18321 Ventura Blvd, Suite 500, Tarzana, CA 91356

On February 23, 2016, I served a true copy of the within Letter in Support of Petition for Review via USPS by enclosing the document in a sealed envelope addressed as shown below, and depositing the sealed envelope with the USPS, postage fully prepaid, in Essex Junction, Vermont

Court of Appeal Fourth District, Div. 2 3389 Twelfth Street Riverside, CA 92501	Jonathan Alan Falcioni Law Offices of Patricia A. Law 10837 Laurel Street, Suite 101 Rancho Cucamonga, CA 91730	William D. Naeve Murchison & Cumming, LLP 18201 Von Karman Ave., Ste 1100 Irvine, CA 92612
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I declare, under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct. Executed on February 23, 2016, in Essex Junction, Vermont.

Michael A. Marks, Esq. (SBN 071817)