

# Law & Order



## It's The Law

### **Thursday 5/3/07-State Settles Workers' Comp Apportionment Issue**

A unanimous ruling last week by the California Supreme Court settles the issue of how to apportion an employer's liability for a permanent disability.

In a long-awaited decision, the court ruled that the appropriate method for calculating a permanent disability award after apportionment is through the percentage method. As a result, employers are only responsible for the percentage of the employee's disability attributable to the current industrial injury for which the permanent disability award applies. The Supreme Court decision was the final stop in the case of *Welcher v. Workers' Compensation Appeals Board et al.*, along with the cases of *Strong v. Workers' Compensation Appeals Board et al.*, *Lopez v. Workers' Compensation Appeals Board et al.*, *Williams v. Workers' Compensation Appeals Board et al.* and *Brodie v. Workers' Comp. Appeals Board et al.* The *Welcher* decision is the leading case on whether workers' compensation cases should apportion an employer's liability for a permanent disability by subtracting percentages of an employee's disability as a result of a work-related injury - the approach supported by the California Chamber of Commerce - or by subtracting the dollar value of the injury.

### **Friday 4/6/07-Appeals Board Reverses En Banc Decisions**

The Appeals Board reversed its prior en banc decision and held that if the last payment of temporary disability indemnity was made for any period of temporary disability ending before 1/1/05, the 1997 Permanent Disability Rating Schedule applies to determine the extent of permanent disability, pursuant to LC 4660 (d), because LC 4061 required the employer to provide the injured worker with a notice regarding permanent disability together with the last payment of temporary total disability.

## **Friday 3/30/07-Calif 5<sup>th</sup> District Court of Appeals: Voc Expert's Opinion Not Irrefutable**

The California 5<sup>th</sup> issued an opinion in *Linam v WCAB* whereby it refused a claimant's request for a 100% disability rating, based on a vocational expert's finding. According to the court, a vocational rehabilitation expert's opinion may be "relevant" but it does not establish a claimant's level of permanent disability.

## **In The News**

### **Thursday 5/10/07-Associated Press-OxyContin maker, execs plead guilty**

ROANOKE, Va. - The maker of the powerful painkiller OxyContin and three of its current and former executives pleaded guilty Thursday to misleading the public about the drug's risk of addiction, a federal prosecutor and the company said.

Purdue Pharma L.P., its president, top lawyer and former chief medical officer will pay \$634.5 million in fines for claiming the drug was less addictive and less subject to abuse than other pain medications, U.S. Attorney John Brownlee said in a news release.

The plea agreement comes two days after the Stamford, Conn.-based company agreed to pay \$19.5 million to 26 states and the District of Columbia to settle complaints that it encouraged physicians to overprescribe OxyContin.

"With its OxyContin, Purdue unleashed a highly abusable, addictive, and potentially dangerous drug on an unsuspecting and unknowing public," Brownlee said. "For these misrepresentations and crimes, Purdue and its executives have been brought to justice."

Purdue learned from focus groups with physicians in 1995 that doctors were worried about the abuse potential of OxyContin. The company then gave false information to its sales representatives that the drug had less potential for addiction and abuse than other painkillers, the U.S. attorney said.

## **In The Making**

**The legislature is busy crafting several bills that will rollback SB899 reforms. These are just a few of the *proposed* changes to SB899.**

<b>Bill Number (Author)</b>	<b>Summary</b>	<b>Status</b>
AB 338 (Coto)	Would extend period for receipt of Temporary Disability benefits, up to 156 compensable weeks in a five year period	Heard & adopted in Asm. Labor 4/11
AB 644 (Dymally)	Restricts types of physicians that may modify, delay or deny requests for authorization of medical treatment	Set for hearing in Asm Insurance 4/25
AB 1073 (Nava)	Would allow employees to exceed the 24 treatment limit for chiropractic, occupational therapy and pt under certain circumstances	Pending in Asm Insurance
AB 1212 (Nunez)	Would require Admin Director of DIR to revise the schedule for determination of Permanent Disability on or before 1/1/09	Set for hearing in Asm Insurance 4/25
AB 1636 (Mendoza)	Would prohibit use of lump sum job displacement benefit voucher to an injured employee later than 74 days after termination of Temp Disability. Would require employer to provide voucher based on a reasonable estimate of percentage of permanent disability. Would require increased payment if percentage of permanent disability is later found to be higher than original estimate.	Possible hearing in Asm. Insurance 4/25