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June 22, 2012

The Honorable Ted W. Lieu, Chair
Senate Labor & Industrial Relations Committee
State Capitol, Room 4090
Sacramento, CA 95814

RE: AB 808 (Skinner) as amended May 29, 2012
Scheduled to be heard by the Senate Labor & Industrial Relations Committee on June 27, 2012
Position: OPPOSE

Dear Senator Lieu;

I am writing to inform you that the University of California (UC) opposes AB 808, which would establish a legal presumption for certain hospital employees in the workers' compensation system that any methicillin-resistant Staphylococcus aureus (MRSA) infection is related to their employment. The University believes that the existing laws governing the California workers' compensation system and the determination of the compensability of industrial injuries are equitable for both employees and employers. Existing workers' compensation law requires that the payment of benefits to an injured employee depend on the existence of an injury that not only occurs during the course of the employee's duties, but that the injury also arises out of their employment.

Proponents of AB 808 argue that the establishment of a presumption for these injuries is needed because hospital workers have an increased likelihood of exposure to MRSA and blood-borne diseases. However, there is no evidence that hospital workers filing claims for these injuries are being denied benefits under the existing system and thus no evidence that a presumption for these injuries is justified. To the contrary, historical workers' compensation claims data for employees at the UC medical centers demonstrate that claims filed for these injuries are generally accepted.

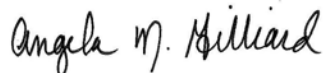
Since 2007, an average of 97 percent of all UC medical center claims submitted for contagious diseases, which includes claims for blood-borne infectious diseases, MRSA and aerosolized infectious diseases, are accepted. In fiscal year 2011, of the 636 workers compensation claims that have been submitted by medical center employees for contagious diseases, only 17 have been denied. This data illustrates that the existing workers' compensation system is functioning as intended and that injured employees are receiving benefits for these injuries when evidence demonstrates that the injury arises out of their employment.

The practical impact of the creation of a presumption is that the University will have a higher burden of proof when attempting to rebut a claim that it believes to be non-work-related. Given the lifetime benefits afforded under the workers compensation system, it is reasonable to presume that the creation of the presumption under AB 808 could incentivize some individuals to file questionable claims.

Presumptions circumvent the basic test of compensability in the existing workers' compensation system and shift the burden of proof to the employer to prove an employee's job duties did not cause their injury. Although these presumptions are considered rebuttable, the truth is the everyday application of these presumptions leads to an insurmountable burden that employers cannot overcome. Some may argue that a UC medical center could conduct pre-employment testing as well as periodic testing of employees for MRSA. Besides the costs of testing, (approximately \$50 and \$100 per test for both MRSA), in conducting these tests UC could expose itself to potential litigation over the legality of the test under California's Fair Employment and Housing Act. Further, there is no guarantee that the results of a pre-employment test would be sufficient to rebut the presumption.

The University appreciates your consideration of its concerns. Should you have any questions concerning the University's position on this bill, please do not hesitate to contact me at 916-445-9924.

Sincerely,



Angela M. Gilliard, JD
Legislative Director – Health

cc: Assembly Member Nancy Skinner
Members, Senate Labor and Industrial Relations Committee
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