



Workers' Comp Still Poor, Especially for Illegal Aliens

EDITOR'S MESSAGE



By John Loofbourow, MD

THE CALIFORNIA Workers' Compensation system is dysfunctional. Costs are high though the benefit to all workers, and employers, is meager. Where illegal workers are concerned, the the opportunity for abuse is particularly great.

A 10-year online review of the *Sacramento Bee* reveals more than 200 articles on "undocumented" (aka illegal) workers, but none specifically addressing their problems with work injuries. These injured workers tell of border crossing and re-crossing, brushes with the law, with various profiteers both local and foreign. They speak of adventure, hope, opportunity, of self sacrifice, separation from loved ones.

In the face of permanent injury, illegals often face loneliness or despair. Caught in a process they find unintelligible, dehumanizing, and inefficient, they are almost universally eager to tell their story to someone, anyone, willing to listen.

I can attest that personal histories — like that recounted below — are not new. I heard them 50 years ago when I worked summers with *braceros* near Chico; and 40 years ago when I practiced in Woodland as a young GP. (I spoke a peculiar mix of Spanish learned in a Chihuahua mining town, an internship in Panama, and from those 1950's Guanajuato *braceros* who still live in my thoughts and my heart.)

What is new is the degree of dysfunction and abuse in the Workers' Compensation program. In the following case, names and locations are altered; but the details are real.

Ricardo Morales is *guapo*, a handsome 25-year-old with carefully groomed hair and mustache who looks like he stepped out of a Mexican soap opera. His family has a small piece of grazing land on which they run a marginal cattle operation in Mexico. He came to California six years ago for the adventure and to gather a "stake" to buy his own livestock.

Ricardo crossed the border by paying a *coyote* about \$1,500 in US dollars. In Tijuana, he joined a man and woman in a safe house, where they were given clean clothes and bed. Each was provided with a new identity in a search through several thousand California driver's licenses for a good likeness — Ricardo changed his mustache and hair to match the license photo. They memorized new names, birth dates, and vital information about "friends" in Tijuana.

On the appointed day, each was separately driven to the border crossing. Ricardo and the woman passed but the other man was very anxious and apparently failed. They returned the driver's licenses to their handlers, were given a ticket on public transportation and told to get off at a certain stop.

There they were met by another driver, an attractive young woman who quickly placed them in the trunk of her car. She spoke enough Spanish to say: "We may be stopped within the next hour or two. So long as you hear the radio playing loudly, you may move about. At one point the car may stop, and I will turn off the radio. Do *not* move or make

any noise whatsoever until we are on the road again." By evening they reached another safe house near Fresno, and were provided with showers, clean clothes and food. The following day they were released on their own.

Morales found work in grapes. I asked how, since he was illegal. "My employer said my papers are legal. I just have to use the new name, that works with the (social security) number."

He worked in vineyards, planting, pruning, spraying — whatever was required. Sometimes he earned nearly \$10 per hour before deductions, a rate of pay inconceivable at home. He accumulated about \$4,500.

Last year, Ricardo took a job picking olives; it was piece-work and he could earn more money. He fell from a 14-foot ladder, suffering a compound fracture of the left tibia-fibula and several fractures in his low back. An ambulance took him to the hospital, and he doesn't recall much more until after surgery.

On discharge, he came to Sacramento for care by an orthopedist for his left leg, and by a chiropractor for his back and overall case management. The leg fractures healed well, but he has severe back and leg pain. His primary doctor has treated him with acupuncture, manipulation, and other modalities.

"How long, how often, are you treated?"

"Five days weekly for the past ten months. But I'm not better. I always have pain in the left foot and leg, and low back. I can't stand, walk, or sit still for more than a few minutes at a time. The doctor occasionally sends me to another doctor for pain medicine. That doctor suggests an MRI, I have asked my regular doctor and he only says he's considering it."

Recently, Morales got legal counsel. He was offered, and tried, retraining as a cook but understood little because the program was in entirely in English. It also seemed a waste because he still plans to return to Mexico. He is scheduled for a more thorough workup and an assessment of permanent disability.

He says his lawyer eventually expects to negotiate a settlement based on an adjudicated percentage of disability. The lawyer charges 12 percent of the settlement plus allowed costs. The lawyer will cash the settlement check, for a fee, because Morales would have difficulty. Then Morales will reclaim his real name and go home. Ricardo says he feels trapped - having spent all his savings, he is borrowing money from a cousin to meet expenses.

I believe the majority of all seriously injured workers are far more likely to be victims of systematic abuse, rather than abusers of the system. Illegal workers are additionally handicapped culturally, subject to abuse by employers and others.

Especially where injury is significant or carries a residual disability, they can be "churned" by various rapacious professionals. They may be sent back and forth through a bewildering maze of medical facilities, repeated history-taking forms, informed consents, duplicated and reduplicated testing, failed communication, cancelled appointments, and hours upon hours in an endless series of aptly named waiting rooms. Usually, they carry with them a dismal symbol of their situation: an inch-thick billfold or envelope stuffed with frayed cards and bits of folded paper containing addresses, phone numbers, dates, business cards. These multiple bloodless documents define the case.

Though this case involves a chiropractor, there are also physician comp injury mills. The carpetbaggers of Workers' Comp are itinerant specialists who take regular half or whole day leases of office space, to schedule multiple boilerplate worker visits. Effective oversight has been lacking. There has been no objective measure of the quality of medical care, and no systematic patient evaluation of care. And while the legal profession is no

doubt sometimes abusive, the only way the system worked for Morales is because a lawyer intervened.

In my opinion, Comp injury care is the very *worst* and most costly medical care possible. Recent changes in Workers' Compensation regulations may reduce costs, but it is equally important that they benefit workers, and encourage providers to give better medical care. Physicians are not in control of these changes, but can express our opinions. We will serve our patients and our profession best if we actively participate in the ongoing revision of Workers' Compensation, emphasizing efficient and humane treatment for all workers.

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