DIVISION OF WORKERS' COMPENSATION 1515 Clay Street, 17th Floor Oakland, CA 94612-1402

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March 8, 2010

The Honorable Darrell Steinberg President, Senate Pro Tempore California State Senate

The Honorable Karen Bass Speaker California State Assembly

The Honorable Mark DeSaulnier Chair, Senate Committee on Labor and Industrial Relations

The Honorable Jose Solorio Chair, Assembly Committee on Insurance

Dear Senator Steinberg:

Thank you for your letter of February 4th expressing your grave concern about the status of a revision to the Workers' Compensation Permanent Disability Rating Schedule (PDRS).

As you know, a great deal of work toward the revision of the PDRS has been accomplished. The Division of Workers' Compensation (DWC) created a research platform for the PDRS, which it vetted with the public in 2007. Following the completion of its wage loss study, the division drafted rules that would have revised the PDRS in June of 2008. Those regulations were put on hold because of unprecedented extraordinary circumstances: the state entered into an economic crisis unlike anything seen since the Great Depression; unemployment grew precipitously, to where there were six workers seeking employment for every available job; and the Workers' Compensation Appeals Board (WCAB) issued en banc decisions in the Almaraz/Guzman and Ogilvie cases that called into question the widely-relied upon understanding of the PDRS and the very nature of how permanent disability is evaluated.

In writing regulations to administer the workers' compensation system I must look to the Labor Code and also examine the circumstances affecting the system. To change the PDRS with no idea how the Almaraz/Guzman and Ogilvie cases will be decided would potentially create more uncertainty by eliminating the predictably of the PDRS and the stability that predictability provides. Creating this type of unnecessary uncertainly in the current economic environment would have devastating effects for employers and workers. To keep Californians employed, businesses must rely on stability and predictably.

Against this backdrop, and absent greater legal clarity on the conclusiveness of the PDRS' methodology in establishing an injured worker's level of disability, it is not currently prudent to move forward with a revision of the 2005 PDRS. The DWC has continued its research program, collecting data on wage loss for permanently disabled workers. When the significant pending

legal issues affecting the PDRS are resolved, the DWC will be poised to use the most current, and therefore more accurate, data about wage loss as the basis for any revision to the PDRS.

Given the fundamental nature of the legal disputes over the PDRS, I recognize that ensuring an objective, consistent and uniform PDRS that provides equitable benefits for injured workers may require legislative changes. Additionally, regulatory and legislative action may be needed to address rising medical costs and insurance premiums. To that end, I have been undertaking steps to identify specific proposals which may achieve our shared goals of maintaining an objective and adequate workers' compensation system. I welcome the opportunity to work with you on crafting solutions that allow both employers and injured workers to stay afloat in this turbulent time.

Sincerely,

Carrie Nevans Acting Administrative Director

