

Fake News I Can't Believe I Just Said That!

By: Robert Sherwin
Lewis, Marenstein, Wicke, Sherwin & Lee

For the past one and one half years, we've heard this phrase used as a defense mechanism to deny facts that are actually true. I never thought I would give credence to the phrase myself, but here I am, using it to attack an outrageous article and subsequent editorial published in the LA Times on February 4 and 5. The Times saw fit to publish a scathing attack on the City's DROP program and the firefighters/police officers who suffer a work related injury while in the program.

The article focused on firefighters and officers who entered DROP and subsequently filed workers' compensation claims resulting in a claim of temporary disability compensation (IOD pay). The Times highlighted one firefighter and four officers and did everything in their literary power to suggest the individuals were fraudulently collecting worker's compensation benefits and double dipping against the City. The article went further to state that nearly all officers and firefighters in DROP had filed cumulative trauma type claims and were collecting temporary disability while simultaneously collecting their DROP money. In other words, the City was paying twice at the same time for a firefighter or police officer off work on IOD status.

The article then asserted that all cumulative trauma injuries are "presumptive" injuries, suggesting that a firefighter or police officer need only file such a claim without any medical proof of the injury in order to collect benefits. The reporters claimed they searched through "thousands of pages" of City workers' compensation documents and could not find one instance of a specific trauma type of injury for a firefighter or police officer in DROP. In essence, they asserted that all injuries being claimed were cumulative trauma presumptive injuries.

They suggested there was little incentive for a police officer or firefighter on IOD status to return to work because they received both their full salary under IOD and their DROP money simultaneously....in other words....they were double dipping.

Finally, they reported on the history of DROP and how it came to be. They quoted ex-Mayor, Richard Riordan, who suggested he was duped by the LA Police Protective League into endorsing and approving the DROP program in order to appease the Union. When learning of the number of work comp claims for DROP members, Riordan called it "total fraud."

So here I am, an attorney who has represented injured firefighters and officers for nearly 35 years, using a phrase I detest, "fake news," to describe the shoddy attempt by the Times to disparage and defame the hard working men and

women of the City's two finest departments. Why is it "fake news"? Because many of the so called facts relied upon by the reporters and editor were flat out false...100% dead wrong!

They were wrong that all cumulative trauma claims are "presumptive injuries." While some injuries are presumptive for sworn safety members (heart trouble, cancer, hernias, pneumonia, back trouble for peace officers), the injuries reported by the Times (knees, carpal tunnel and hypertension) are not presumptive and must be proven by medical evidence obtained through independent medical examiners agreed upon by the City. I emailed the Times Editorial department and personally spoke with one of the reporters regarding their error and requested they correct the implication that all officers and firefighters are receiving disability compensation for presumptive injuries when in fact they are not. I explained to them the actual process and daunting task of proving a claim medically and the standard of proof required. I am still waiting for the correction.

"These outrageous attacks on Fire and Police benefits are 100% dead wrong"

I challenged the Times on their claim that they couldn't find any injuries other than cumulative trauma injuries. I provided them with information on one of my existing clients (a FF/PM) who sustained serious injury to both shoulders while lifting a patient on a gurney. The injury has resulted in surgery to both shoulders causing the firefighter to be off work an extended period of time. I offered to produce dozens more of these cases to see if they were actually interested in reporting the truth rather than claim they scoured "thousands of pages" of work comp documents without finding the evidence right before their noses. I am still waiting for a response.

And with regard to the gratuitous remark of the late Mayor claiming he signed onto DROP because of political pressure? Nonsense and I so told the Times. Mr. Riordan is a bright man who made his fortune dealing as an investment banker and venture fund capitalist before he became the Mayor of one of the largest Cities in the United States. That man didn't sign onto any-

thing unless he fully understood it's financial implications.

Finally, the article concludes by giving lip service to some officers and firefighters who assert that periods of extended temporary disability are due to the unreasonable delays and denials of medical care that have been in existence since legislative reforms in 2004 and 2012. Rather than perform due diligence and research on that issue, they dismiss it summarily. Had they investigated the assertion, they would have found it to be true, especially with regard to officers and firefighters off work while surgery requests are being litigated. Indeed, the delays and denials of medical treatment are perhaps the most significant result of past reforms and clearly an integral reason for extended periods of IOD.

So why am I ranting and raving about all of this? Because you deserve better. Is DROP perfect? Probably not. Are there people who abuse the workers' compensation system? Yes and I'm not here to defend them. However, recent studies and statistics show that of all fraud in the workers' compensation system, only 2% comes from injured workers while the rest is from employers, insurance carriers and doctors. I'm not defending the injured workers who tells me or a doctor they can't do something physical and then they are shown on film doing that exact act. No sir...I'm here defending all the other firefighters and police officers who earned their pensions and the right to enter DROP to help the City gain up to five more years of their experience.

The officers and firefighters who are in DROP are older and at a greater risk for suffering an injury to a body part that has been punished for 20 to 30 years of wearing heavy turnout gear or a gun belt. If a firefighter or officer gets injured while in DROP, so be it. Treat them with respect and provide them with timely medical care so they can return to work within a reasonable time. Contrary to the implication by the Times, most officers and firefighters want to work and be productive for the City.

The Times' article and editorial were written to suggest a broad base conspiracy by police officers and firefighters to bilk the City while in DROP. While that kind of fake and misleading reporting may draw readers and sell papers, it's unfair to those who have put themselves in harm's way for those same readers. Fraud should be investigated and prosecuted when its present. But before making those accusations across the board, get your facts straight and do your homework. Our officers and firefighters deserve better from the main newspaper for the City of Angels.