California Orthopaedic Association
Medical Reports – Post SB863

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Change is the only constant
Proverb
DISCLAIMER

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The materials are intended to be a reference tool only and are not meant to be relied upon as legal advice.
1. Causation of Injury v. Causation of Disability
2. AME/Panel QME process
3. Independent Medical Reports
4. Limitation on Home Health Care Services
5. Utilization Review
1. Causation of Injury v. Causation of Disability

• Causation of injury affects MT
  (If cause of IW’s injury = 1% industrial, IW gets 100% MT needed to treat injury)

• Causation of disability affects PD
  (If cause of IW’s disability = industrial, IW gets PD% payout, less % of apportionment to non-industrial factors.)
1. Causation of **Injury** v. Disability

In 1953, an engineer, Frank Gideon, *falls at work* due to an idiopathic seizure and suffers a severe brain injury.

**Causation of injury? Industrial or Non-industrial?**

_Employers Mutual Liability Insurance Company of Wisconsin v. Industrial Accident Commission (Gideon)_ (1953) 18 CCC 286.
1. Causation of **Injury** v. Disability

As in the *Gideon* case, IW’s idiopathic seizure caused his **fall at work**. He fell 53 feet to the concrete below and suffered major orthopedic injuries. The physician apportioned 100% to the non-industrial seizure and found no industrial injury.

**Causation of injury? Industrial or Non-industrial?**

The apportionment laws changed significantly in 2004. SB899 significantly changed the analysis for **cause of disability**. However, the analysis for **causation of injury** remains the same as when *Gideon* was decided in 1953.

1. Causation of Injury v. Disability

_Harris Ranch Inn v. WCAB (Orrala), (2011) 77 CCC 94_

As in the _Gideon & Reyes_, the baker’s idiopathic seizure caused his fall at work. Despite defendant’s argument, SB899 did not change analysis for causation of injury, only for causation of disability.
Dr. Lawrence states:

“Ms. Jennifer slipped off a step near the entrance to her office. She fell onto her outstretched arm and sustained a proximal humeral fracture. The fracture has healed with no loss of range of motion or any other type of disability. Therefore, she did not sustain an industrial injury.”

Has Dr. Lawrence correctly analyzed causation of injury?
1. Causation of Injury v. Disability

Dr. Ann states: “Ms. Hathaway, a bank teller, was grazed with a bullet in the upper right temple during a robbery. Her physical wound has healed, leaving only a minimal scar. She is entitled to over-the-counter medication for any pain, as a result of this injury. However, she has severe psychiatric problems triggered by the robbery and subsequent physical injury. Still, under the new law SB863, IWs are no longer entitled to WPI ratings due to psych injuries, therefore she has no industrial injury, no permanent disability, and no need for further medical treatment.”

Causation of Injury?

1. **Physical Injury** - OTC meds qualify for future medical treatment

2. **Psych Injury** - Even under SB863, all psych injuries, *even compensable consequences*, may qualify for the provision of MT.
1. Causation of Injury v. Disability

- Causation of **injury** affects **MT**
  If cause of injury = 1% industrial, IW gets 100% MT needed to treat injury
  (Analysis affects **AOE/COE** issues)

- Causation of **disability** affects **PD**
  If cause of disability = 1% industrial, IW gets 1% of the PD rating payout.
  (Affects **apportionment** issues)
1. Causation of Injury v. Disability

Causation of Injury:

The doctor in this case did not properly discuss or analyze causation of injury or causation of disability.

Causation of injury should be discussed in a separate paragraph from causation of disability to avoid confusion and error as occurred in this case.
1. Causation of Injury v. Disability

Causation of injury must include a discussion of both the **physical** and the **mental** injury, but they have different evidentiary standards:

**Physical:** Was the bullet wound to Ms. Hathaway’s temple an industrial injury?
- AOE = Arises out of employment.
- COE = Course of employment

**Psych:** Was her psych injury industrial? The psych injury must meet the LC §3208.3 threshold to qualify.
1. Causation of Injury v. Disability

_Rolda v. Pitney Bowes_ (2001) 66 CCC 241 (En banc) sets forth the LC §3208.3 standard:

1. **Did psych injury involve “actual events of employment”** (legal issue – IW’s b/p)

2. **Is there > 50% industrial causation** (medical issue – IW’s b/p)

3. **Were there personnel action(s)? If so, were they lawful, nondiscriminatory & in good faith?** (legal issue – D’s b/p)

4. **Were personnel action(s) the substantial cause (35-40%) of the psych injury** (medical issue – D’s b/p)
1. Causation of Injury v. Disability

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Physician should provide a discussion of causation of both the physical and mental disability:

1. Physical Disability - Scar may be ratable per Table 8-2 of the AMA Guides.
1. Causation of Injury v. Disability

Table 8-2 Criteria for Rating Permanent Impairment Due to Skin Disorders*

<table>
<thead>
<tr>
<th>Class 1</th>
<th>Class 2</th>
<th>Class 3</th>
<th>Class 4</th>
<th>Class 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%-9% Impairment</td>
<td>10%-24% Impairment</td>
<td>25%-54% Impairment</td>
<td>55%-84% Impairment</td>
<td>85%-95% Impairment</td>
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<tr>
<td>of the Whole Person</td>
<td>of the Whole Person</td>
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<tr>
<td>Skin disorder signs and symptoms present or intermittently present and no or few limitations in performance of activities of daily living; exposure to certain chemical or physical agents may temporarily increase limitation and requires no or intermittent treatment</td>
<td>Skin disorder signs and symptoms present or intermittently present and limited performance of some activities of daily living and may require intermittent to constant treatment</td>
<td>Skin disorder signs and symptoms present or intermittently present and limited performance of many activities of daily living and may require intermittent to constant treatment</td>
<td>Skin disorder signs and symptoms constantly present and limited performance of many activities of daily living, including intermittent confinement at home or other domicile and may require intermittent to constant treatment</td>
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Causation of Mental Disability?

2. Mental Disability - Even though SB863 bars increases in WPI for psych injuries which are a compensable consequence of the physical industrial injury, direct psych industrial injuries are fully rateable.
2. AME/Panel QME

LC §4062.2.(f) – Parties can agree to AME anytime (“except as to issues subject to the IMR” per LC §4610.5.)

For the most part, AMEs and Panel QMEs will no longer be used to determine MT issues…but may weigh in on causation of injury, need for future MT, etc.
See Reg §35(g)(2): “For any evaluation performed on or after July 1, 2013, pursuant to Labor Code Section 4061, and regardless of the date of injury, an Agreed Medical Evaluator or Qualified Medical Evaluator shall NOT provide an opinion on any disputed medical treatment issue, but shall provide an opinion about whether the injured worker will need future medical care to cure or relieve the effects of an industrial injury.”
3. Independent Medical Reports

What about medical reports outside the MPN? Are they allowed if paid for at parties’ own expense?

Supreme Court granted review of *Valdez v. WCAB*, (2012) 77 CCC 506 on 10.10.12.

DCA had held that parties’ are entitled to medical reports at their own expense per LC §§4064(d) & LC4605.
3. Independent Medical Reports

What about medical reports outside the MPN? Are they allowed if paid for at parties’ own expense?

Post SB863 - LC §4064(d):
“However, no party is prohibited from obtaining any medical evaluation or consultation at the party’s own expense.”
3. Independent Medical Reports

Post SB863 - LC §4605:

An IW, at their own expense, may obtain “a consulting or any attending physicians whom he or she desires.” Any such report “shall not be the sole basis of an award of compensation. A QME or PTP shall address any report procured by this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.”
3. Independent Medical Reports

PLEASE NOTE: LC §3751(b) provides:

“If an IW has filed a claim per LC §5401, a provider of medical services shall not, with actual knowledge that a claim is pending, collect money directly from the IW for services to cure or relieve the effects of the injury… unless the medical provider has …written notice that [the claim] has been rejected...

Any medical provider who violates this subdivision shall be liable for three times the amount unlawfully collected, plus reasonable attorney's fees and costs.”
4. Limitation re Home Health Care Services

**LC §4600(h):** Employer not liable for home health care services provided “more than 14 days prior to the date of the employer’s receipt of the physician’s prescription.”

**LC §5307.8:** “No fees shall be provided for…any services provided by a member of the employee's household, to the extent the services had been regularly performed in the same manner and to the same degree prior to the date of injury.”
5. Utilization Review (UR)

**Step 1:** Doctor must submit “complete” (and legible) DWC Form RFA

**Step 2:** Claims administrator/ specialist (CS) may defer UR if “liability disputed.”

**Step 3:** CS must process complete RFA through UR

**Step 4:** If UR invalid, is issue determined by WCAB?

**Step 5:** If UR valid, CS to notify parties, and IW may appeal to IMR
5. Utilization Review (UR)

Step 1:
NEW Reg 9792.9.1 (a) Drs must use DWC RFA Form found in 8 CCR 9785.5 to request MT, and not a narrative request. Data may be typed directly onto the form, and a copy of the form must be printed. The data can not be saved onto the form, once the form is closed out.

This DWC form RFA may be found at:
http://www.dir.ca.gov/dwc/DWCPropRegs/IMR/IMRFormRFAClean.pdf
5. Utilization Review (UR)

**Step 1:** NEW Reg 9792.6.1 (t) “Request for Authorization”– (RFA) means a written request for a specific course of proposed medical treatment. A RFA must be set forth on a “DWC Form RFA,” completed by a *treating physician*, as contained in California Code of Regulations, title 8, section 9785.5…

The *form must be signed by the physician* and may be mailed, faxed or emailed.”
5. Utilization Review (UR)

Step 1:
NEW Reg 9792.6.1 (t)
Defines “completed,” for the purpose of this section and for purposes of investigations and penalties, means that information specific to the request has been provided by the requesting treating physician for all mandatory fields indicated on the DWC Form RFA.”

Problems may result if the request is not legible.
5. Utilization Review (UR)

Step 1:

What is CS’s obligation if Form RFA not complete?
9792.9.1(c)(2) CS may treat the form as complete or return it to Dr. marked “not complete” w/in 5 business days from receipt.

UR time period is not triggered until CS receives a “complete” and legible RFA.
5. Utilization Review (UR)

Step 3:

**UR Time Period:**

- **LC 4610(g)(1)** For prospective MT request - UR decision must issue w/in “14 days from date of the MT recommendation by the physician.”

- **8 CCR 9792.9.1(c)** UR must be completed w/in 14 days from receipt of complete DWC Form RFA.
5. Utilization Review (UR)

**Step 4:** What if UR decision is invalid?

In general, non-compliance with regulations may result in determination that UR decision is invalid.

*SCIF v. WCAB (Sandhagen)*, (2009) 74 CCC 835 (3rd DCA) (CA S. Ct.) If UR untimely, report is invalid and inadmissible as evidence.
5. Utilization Review (UR)

**Step 4:** What if UR decision is invalid?

Expedited Hearing appropriate venue to determine validity of UR decision. (See *Corona v. Los Aptos*, ADJ380850 (2011) 2011 CWC PD LEXIS 156 and subsequent decision issued on 9.5.2012.) Essential medical records were not provided to UR doctor in a timely fashion.
5. Utilization Review (UR)

Step 4:

What if UR decision is invalid?

*Becerra v. Jack’s Bindery, (9/11/12)*

2012 Cal Wrk Comp PD LEXIS 451, Violation of 9292.1(e)(3) – CA failed to timely send UR denial to PTP.
5. Utilization Review (UR)

Step 4:

What if UR decision is invalid?

_Academy of Arts College v. WCAB (Zedd), (2011) 76 CCC 352_

UR denial not signed by physician as required by Labor Code.

Defendant must follow all requirements for a proper UR determination or UR decision will not be valid.