



NEWS AND NOTES

Newsletter – Previous Issues

All prior issues are available online. If you are missing any issues, click [here](#).

If the link doesn't work the address is:
<http://www.bradfordbarthel.com/Ratings/Training.htm>

This newsletter is available electronically only.

If you have suggestions for articles, please send a note to Phil Billman (pbillman@bradfordbarthel.com).

When the eagles are silent, the parrots begin to jabber.

Sir Winston Churchill
British politician (1874 - 1965)

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A Case Study

Everyone understands that a report that provides a large amount of impairment should be reviewed. What about small amounts of impairment...

FACTS – A 31 year old swim instructor suffers a shoulder injury in 2010 with impairment due to loss of motion.

Medical Report

Motion measurements for the injured shoulder are provided 8% UE impairment or 5% WPI.

Shoulder – loss of motion:
16.02.01.00 – 5 – [7]7 – 390G – 8 – 7% PD

B & B Ratings Analysis

The doctor miscalculated the level of impairment and failed to provide motion measurements for the opposite uninjured joint for comparison.

Possible Actions

1. Attempt to settle case using findings of B & B Analysis.
2. Send a note to doctor, copy and paste sections from B & B Analysis.
3. Ignore the B & B Analysis and settle for the doctor's original value.

A Case Study (from page 1)...

The Actual Story

Letter sent to doctor explaining error in calculation and the reasoning for measurements of the opposite uninjured joint.

Doctor response:

The doctor admitted an error in dictation or adding. Motion measurements for the opposite uninjured shoulder were included.

Result

The opposite uninjured shoulder measurements did not change the level of impairment. The 'correction' changed the impairment to 7% UE, converted to 4% WPI.

Shoulder – loss of motion:

16.02.01.00 – 4 – [7]5 – 390G – 6 – 5% PD

Potential savings in max PD dollars –

\$1,380.00

How many times can you spend an extra \$1,400 before it gets to be a lot of money?

In the above case, sending the report to the DEU with an explanation of the error would most likely have provided the same result. But, you would never know if the opposite joint had less than average motion without asking the doctor.

Recent Case Law

Almaraz/Guzman

California Supreme Court decided not to review Almaraz.

What's it mean?

The 6th District Court of Appeal ruling in Guzman stands as good law.

Are we going to see a 'flood' of A/G impairments?

The 6th DCA says should be used "To accommodate those complex or extraordinary cases..."

However, an attorney who is a member of CAAA's amicus committee stated (in an article on WorkComp Central) both Almaraz and Guzman were not extraordinary cases...extraordinary is no longer a valid objection...they are all extraordinary.

Stay tuned.

In future issues we'll discuss the most popular methods used by doctor to increase impairment using A/G.

Ogilvie

The 1st District Court of Appeal reversed and remanded the WCAB en banc decision.

The 1st DCA could not decide if Ogilvie had effectively rebutted the FEC portion of the 2005 PDRS.

Recent Case Law (from page 1)...

What's it mean to you?

The rebuttal of the FEC portion of the PD formula can still happen, but there are new rules. 1st DCA states there are three ways:

1. Where it can be shown there is a factual error in the application of the formula or the preparation of the PDRS; or,
2. Where it is demonstrated that – due to industrial injury – the employee is not amendable to rehabilitation; or,
3. Where there is evidence of omission of medical complications aggravating the employee's disability in preparation of the PDRS.

So, you can still rebut the FEC, but good luck in trying to get it done.

Interesting Panel Decision

**Monica Ledesma, Applicant v. Firestone Vineyard, State Compensation Insurance Fund, Defendants,
2011 Cal. Wrk. Comp. P.D. LEXIS 78**

WCAB rescinded WCJ finding. WCAB found that use of Table 6-9 (hernia table) was within four corners of *AMA Guides*, but doctor failed to provide sufficient explanation as to why it was more appropriate.

!! IMPORTANT NOTICE !!

I am not an attorney; the opinions in this section are those of the editor and should not be construed as legal advice.

B & B Department Profile

We will profile another Ratings Department employee next month.



Interesting Fact:

The IRS Commissioner admitted that he does not prepare his own taxes. He stated he finds the tax code "complex". (C-SPAN's "Newsmakers" Program - 8 Jan 2010)

So what?

If the IRS Commissioner has his taxes prepared by a professional, there is no reason you shouldn't do the same with your P&S/MMI reports! The *AMA Guides* are complex!

Here's the good news. If I realize that I'm insane, then I'm okay with it. I'm not dangerous insane.
Charlie Sheen