Effectively Cross-Examining Physicians Within the Four Corners of the AMA Guides

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Welcome to the Webinar Series

- Goal is to provide insights to the challenges encountered in managing California workers’ compensation cases – therefore providing you with solutions that result in better outcomes.
- Provide opportunity to interact with highly regarded legal and medical experts who will educate, offer guidance, entertain, and answer your questions.
California Ratings
What You Don’t Know **Will** Cost you

1. 9/13 Untangling *Ogilvie*
2. 10/20 Unraveling the Mysteries of Rating
3. 11/17 Apportionment – Every Defendants’ Friend
4. 1/25 Doctor Cross-Examination

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1. Discuss Medical and Rating Issues
2. Discuss Legal Issues
3. Demonstrate Strategies – Example Cross-Examination
Team Approach Needed for Success

**Claims Professional**
Adjuster skilled in claims management and resolution, achieving goals of organization.

Experienced in use of AMA *Guides* and PDRS.

**Rating Expert**

**Legal Counsel**
Skilled in legal strategies.

**Consultant** providing medical insights to case issues and strategies.

**Medical Expert**
• How should clients approach these cases, integrating skills of medical, rating and legal?
• What are the issues, including facts and analysis?
• Where does evidence-based medicine fit it?
• How do you confront inappropriate Almaraz Guzman tactics?
• From a medical perspective, what do you recommend in preparing for cross-examination?
1. Clinical Data
Applicable? Valid? Reliable? Requires clinical knowledge

2. Clinical Analysis
Evidence-based medicine analysis for diagnosis, causation and apportionment. Requires clinical knowledge.

3. Impairment Rating
Applying AMA Guides procedures and criteria.

4. PD Rating
Applying the PDRS. Easy.
Evidence-Based Medicine

- Evidence-based medicine (EBM) or evidence-based practice (EBP) aims to apply the best available evidence gained from the scientific method to clinical decision making.
- The principles of EBM apply both to clinical management and to the assessment of causation, apportionment and work ability.
- In workers' compensation many decisions are based on precedent and personal (expert) opinions, rather than EBM; therefore actions may be based on unfounded myths versus current science.
- Physicians and other experts must base their opinions on facts and science, and those doing otherwise should be challenged.
• Physician estimates of loss of function and use of “hernia table” or conversions to define impairment are very challengeable.
Ratings Based on Section 15.13 Criteria for Converting Whole Person Impairment to Regional Spine Impairment

- Used solely to convert whole person impairment into regional impairment for jurisdictions, such as Connecticut, that rate for regional spine impairment.
- Never to be used to convert a physician’s individual opinion of loss of function of the spine to develop a whole person permanent impairment rating.
## Flaws in Assessment Process

<table>
<thead>
<tr>
<th>Defining Total Loss</th>
<th>Defining Percentage Loss</th>
<th>Defining Work Ability</th>
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</table>
| **What does total loss of the lumbar spine mean?**  
*Unable to stand, sit and move.*  
*Unable to use lower extremities.*  
*No bowel, bladder or sexual function.* | **Cannot base on subjective complaints.**  
**Physicians lack ability to adequately assess functional loss if not using a consensus derived document.**  
**No reliable basis to define baseline.** | **Need to determine**  
**Risk**  
**Capacity**  
**Tolerance**  
**Most physician assessments are unreliable.**  
**Work ability better predicted by behavioral and psychosocial issues.** |
Questions and Answers

Criteria for Converting Whole Person Impairment to Regional Spine Impairment Using the AMA Guides, Fifth

Christopher R. Brigham, MD, Gunnar Andersson, MD, Marjorie Eskay-Auerbach, MD, JD, James B. Talmage, MD, and Craig Uejo, MD, MPH

Question: Recently, in California applicant attorneys are encouraging physicians to use Figure 15-19, Side View of Spinal Column (5th ed, 427) in Section 15.13, Criteria for Converting Whole Person Impairment to Regional Impairment (5th ed, 427) to convert a physician’s estimate of loss of function of the spine into a whole person rating. A February 7, 2011, California Workers’ Compensation Appeals Board panel decision in the case of Laury v. R&W Concrete Contractors (Case No. ADJ3400378) based impairment on a physician’s clinical estimate of a 60% loss of use of the lumbar spine. This estimated impairment loss was multiplied by 90% (the relationship with the Range of Motion [ROM] method that a whole person estimate is converted into a regional impairment should occur by dividing 0.90 for the lumbosacral spine) to determine a 54% whole person permanent impairment. Is this approach appropriate?
**Answer:** No. Such approaches are markedly inconsistent with the methodology in the *Guides* and are fraught with problems. A primary goal of the *Guides* is that “two physicians, following the methods of the *Guides* to evaluate the same patient, should report similar results and reach similar conclusions.” (5th ed, 17). Physicians lack the ability to independently define current injury capacity for body part, and there is no reasonable basis to define a preinjury status. It has been clearly demonstrated that self-reported history in the context of litigation is unreliable. Therefore, the individual’s statements or the physician’s opinions of reduction in pre-injury capacity are speculative. Katz showed that the typical patient with paraplegia from a thoracic spinal cord injury rates at 58%-60% whole person impairment for the multiple consequences of devastating spinal injury, so a 54%-60% rating for back pain alone is ludicrous, and clearly a misuse of the *Guides*.
In this case, there was no reasonable basis to support the physician’s conclusion that there was 60% loss of the lumbar spine. The resulting value of 54% is nearly twice the maximum value assigned in the Diagnosis-Related Estimates (DRE) approach; the maximum for a DRE Lumbar Category V is 28% whole person permanent impairment. It is also higher than the maximum value assigned in the Sixth Edition; the maximum specified in Table 17-4, Lumbar Spine Regional Grid: Spinal Impairments (6th ed, 570-574) is 33% whole person permanent impairment.

The reason for Section 15.13, Criteria for Converting Whole Person Impairment to Regional Spine Impairment (5th ed, 427) is that certain jurisdictions (Connecticut, for example) may need to convert spinal impairments from whole person to impairment of the spine. The conversion factors differ depending on whether the impairment was obtained from the DRE method or from the ROM method. Since neither approach was used to obtain the estimated 60% lumbar impairment, application of Figure 15-19 is moot.
Whole person permanent impairment ratings should never be based on Section 15.13, as this section is solely for converting a whole person value to a regional value. Impairment assessments must be performed in accordance with the procedures defined in the Guides. Such creative misinterpretations are clearly not “within the four corners” of the Guides and thwart the purpose of having standards to define impairment.

References


Legal Questions

• What are the issues and the goals? (Clarify the issues, e.g. what has been discussed previously in this series).
• What are the expectations? (Reduction vs. Discrediting)
• Who is the doctor? (Friendly vs. Unfriendly)
• When do you choose to perform a cross examination?
• How do you prepare?
• What approaches and strategies do you use?
Example Case
Cross Examination Strategies

• Team approach to evaluation and management of an assessment
• Evaluate the report and the evaluation from legal, medical, rating and claims perspective

1. Identify issues
2. Define desired outcomes
3. Develop specific strategies with measurable objectives
50-year-old man with degenerative disc disease underwent a lumbar discectomy (single level). The panel QME, Dr. Smith, provided a conventional rating of 13% whole person permanent impairment, based on a DRE Lumbar Category III rating. The claimant was examined one year post surgery and had substantial pain complaints and examination revealed no significant objective findings. He then provided two alternative ratings, referencing Guzman, rating as if he had a "hernia" (assigning a 25% whole person permanent impairment (WPI), per Table 6-9) and loss of function of the spine (assigning 45% whole person by estimating a 50% loss of use of the lumbar spine and multiplying this by the conversion factor of 0.9 cited in Section 15.13). He attributed 90% of the permanent partial disability to "cumulative trauma".
A report was reviewed identifying the following issues:

1. The actual rating should not exceed 13% WPI, not 45% WPI as opined.
2. The facts in the case and current science support the conclusion that 100% of the PD would be apportioned to non-occupational factors.
3. Report failed to comply with standards defined in the *Guides* and did not meet standards for substantial evidence.
4. The clinical assessment revealed this is not a complex or extraordinary case warranting a Guzman analysis.
5. The alternative approaches for impairment rating are unsupportable.
Cross Examination Goals

1. Demonstrate that the report is not substantial evidence.
2. Demonstrate that the physician lacks adequate knowledge, skills and experience in the use of the AMA 
3. Demonstrate that the opinions of the physician in regards to impairment rating and apportionment are 
   unsupportable by the facts in the case, the AMA Guides, and current science.
4. Demonstrate that this case is neither complex nor extraordinary.
5. (Tactic) Utilize articles from *The Guides Newsletter* to discredit the opinion of the panel QME e.g.:


– Brigham CR. Q/A: Use of Table 6-9, *Guides Newsletter*. July / August 2010.


6. Physician to agree that the rating of the lumbar spine is no greater than 13% whole person permanent impairment and that is 100% apportionable to non-occupational factors.
Example of Cross-Examination

• Based on fact pattern Louis A. Larres, Esq. will demonstrate skills as defense attorney in performing cross-examination.
• The role of the panel QME, Dr. Smith, will be demonstrated Chris Brigham, MD (note Dr. Brigham is “role playing” and crafted questions to be asked)
• As you participate, keep in mind the fact pattern and the goals for the cross-examination.
Questions and Answers
Thank you.

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