

# Rating Strategies for 2014



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## Presentation Summary

- SB 863 Changes
- There are PD issues in ratings
- DEU will annotate issues
- Parties should follow up



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## Elimination of 15% PD Adjustment

- For DOI on/after 1/1/2013
- No more +/- 15% RTW adjustment
- Higher PD rates

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## PD Rate and Weeks

- PD Weeks remain the same
- LC 4453 (d) (8)
- PD minimum and maximum rates increase



Year	Min	Max
2012	\$130	\$230 \$270
2013	\$160	\$230 \$270 \$290
2014	\$160	\$290

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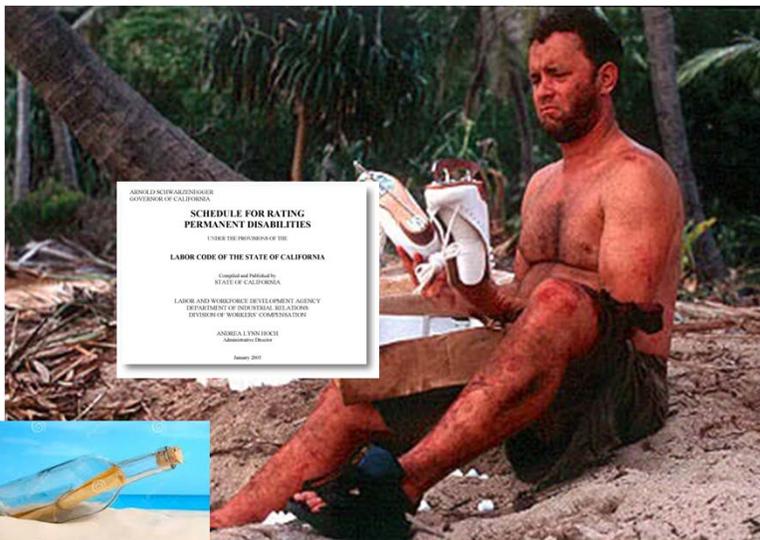
# Rating Formula Changes

- LC 4660.1 (For 2013 DOI)
- Elimination of FEC modifier
- Replacement with 1.4 modifier
- First modification of standard WP impairment



DOI 1/1/13

## Where's my 2013 Rating Schedule?



## No add-on for sleep or sexual dysfunction



DOI 1/1/13

- LC 4660.1
- Arising out of compensable physical injury
- Table 13-4 Sleep Arousal Impairment
- Does prohibition for add-on sleep dysfunction preclude use of Table 13-4 with other impairments?

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## DEU Procedure



DOI 1/1/13

- List, but do not rate the impairment in the presence of other physical impairments
- Rate if impairment is not accompanied by other impairments
- Furnish informational rating including sleep arousal upon request

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## Example #1



DOI 1/1/13

- DOI 3/1/13
- 35 year old electrician
- Lumbar DRE V: 25 WP
- Insomnia – Sleep Arousal Class I – 9 WP

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## Example #1



DOI 1/1/13

Lumbar DRE V: 25 WP

15.03.01.00 – 25 – [1.4]35 – 380H – 41 – 40 PD

Sleep Arousal Class I: 9 WP (not used)

Per LC 4660.1 there are no increases in impairment rating for sleep dysfunction or sexual dysfunction arising out of a compensable physical injury.

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## Corticospine Injuries

- Does the preclusion from rating sleep arousal extend to corticospine Table 15-6 sexual impairment?
- Nature of injury vs. arising from injury



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## No Add-on for Psychiatric Disorder

- LC 4660.1
- Arising out of compensable physical injury
- Psyche GAF
- Exception for violent act or catastrophic injury



DOI 1/1/13

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## No Add-on for Psychiatric Disorder

- What is a catastrophic injury?
- Term not fully defined
- Includes
  - Loss of limb
  - Severe head injury
  - Severe burn



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## Example #2



DOI 1/1/13

- Airline Pilot age 49 DOI 2013
- Lumbar injury, fusion L4-5 with radiculopathy
- Difficulty with most ADL
- Depressed

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## Example #2



DOI 1/1/13

Lumbar Spine Rating

Lumbar DRE V: 28 WP

15.03.01.00 – 28 – [1.4]39 – 380H – 45 – 43 PD

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## Example #2

- Applicant attorney files separate CT psychiatric injury
- Psychiatric Report
- GAF 60
- 50% due to job stress, 50% due to coping with physical injury

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## Psychiatric Rating



DOI 1/1/13

Psyche GAF 60: 15 WP

14.01.00.00 – 15 – [1.4]21 – 380H – 26 – 25 PD

Per LC 4660.1 there are no increases in impairment rating for psychiatric disorder arising out of a compensable physical injury.

Note: DEU rated the psyche impairment because there were no other impairments in report.

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## Combined Rating

Spine Injury

Lumbar DRE V: 28 WP

15.03.01.00 – 28 – [1.4]39 – 380H – 45 – 43 PD

Psyche GAF 60: 15 WP (not used)

Per LC 4660.1 there are no increases in impairment rating for psychiatric disorder arising out of a compensable physical injury.

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# Combined Rating

CT Psyche Injury

After Apportionment

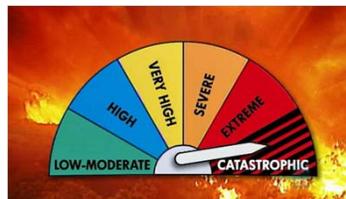
Psyche GAF 60: 15 WP

50%(14.01.00.00 – 15 – [1.4]21 – 380H – 26 – 25) 13 PD

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# Example #2

- Applicant attorney alleges catastrophic exception
- Is a spinal fusion a catastrophic injury?



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## What About Formal Ratings

- DEU rater to follow judge's instructions
- Judge's decision on whether sleep arousal, sexual, or psyche impairments are rated



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## SB 863 Effect on Almaraz/Guzman

- PDRS remains prima facie evidence
- Therefore the PDRS is rebuttable
- No effect of Almaraz/Guzman

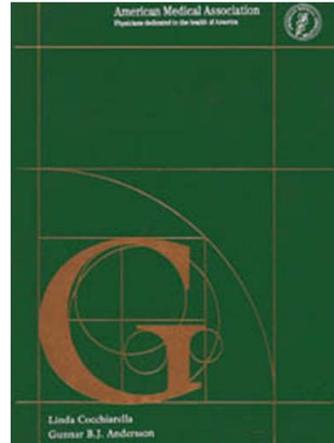
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# Almaraz/Guzman Decision

## Within Four Corners of AMA Guides

Physician may use  
any

- Chapter
- Table
- Method



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## Case Study #1

ADJ7261203 Kendrick-McGee vs. WCAB

- Multiple injuries
  - Cervical spine
  - Bilateral shoulder
  - Bilateral knee
  - Left carpal tunnel syndrome

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## Cervical Spine

- Disc protrusions at C4-5 and C5-6
- Chronic neck pain
- Physician rated using ROM method  
Diagnosis: 6 + 1 = 7 WP  
ROM: 12 WP

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## Why ROM Method?

Criteria for ROM method

Multi-level radiculopathy

Fracture

Multi-level surgery?

- If multi-level radiculopathy, possible DRE IV category (25-28 WP)

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## Left Carpal Tunnel

- 13% grip loss: 10 UE
- Physician gave as a result of carpal tunnel surgery
- Is grip loss used to rate CTS?

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## Left Shoulder

- Left shoulder impingement
- Left shoulder ROM: 5 UE = 3 WP
- Per Figure 16-40, 16-43, 16-46
- 2 WP pain add-on

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# Left Shoulder ROM

- Left shoulder ROM = 5 UE = 3 WP

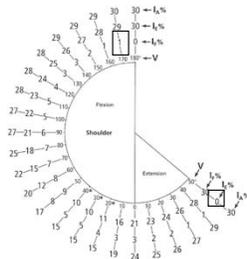


Figure 16-40  
Extension 46 = 0 UE  
Flexion 167 = 1 UE

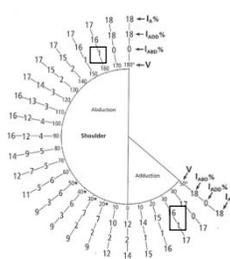


Figure 16-43  
Abduction 162 = 1 UE  
Adduction 32 = 1 UE

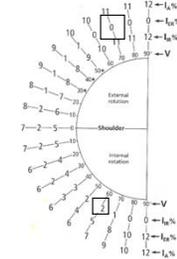


Figure 16-46  
Ex Rot 75 = 0 UE  
Int Rot 64 = 2 UE  
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# Right Shoulder

- Distal clavicle arthroplasty

- Rotator cuff repair



- Physician rated ROM and muscle strength

# Right Shoulder ROM

- Right shoulder ROM = 6 UE

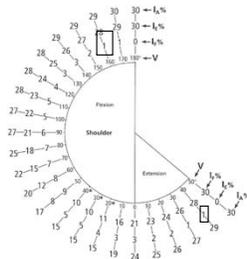


Figure 16-40  
Extension 40 = 1 UE  
Flexion 162 = 1 UE

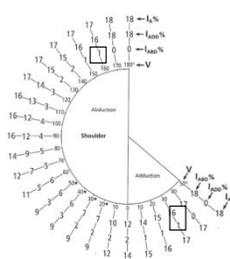


Figure 16-43  
Abduction 156 = 1 UE  
Adduction 35 = 1 UE

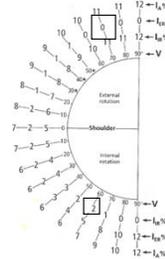


Figure 16-46  
Ex Rot 70 = 0 UE  
Int Rot 62 = 2 UE

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# Muscle Strength Impairment

## Muscle Strength

Flexion 24 X 25% = 6 UE

Extension

Abduction 12 X 25% = 3 UE

Adduction 6 x 25% = 2 UE

Int rotation

Ext rotation

Total = 11 UE

Table 16-35 Impairment of the Upper Extremity Due to Strength Deficit From Musculoskeletal Disorders Based on Manual Muscle Testing of Individual Units of Motion of the Shoulder and Elbow

% Upper Extremity Impairment			
Joint	Unit of Motion	Strength Deficit*	
		Relative Value	5%-25% <sup>†</sup>
<b>Shoulder (60%)</b>			
Flexion	24	1-6	7-12
Extension	6	0-2	2-3
Abduction	12	1-3	4-6
Adduction	6	0-2	2-3
Internal rotation	6	0-2	2-3
External rotation	6	0-2	2-3
<b>Elbow (70%)</b>			
Flexion	21	1-5	6-11
Extension	21	1-5	6-11
Pronation	14	1-4	4-7
Supination	14	1-4	4-7

\*Use clinical judgment to select the appropriate percentage from the range of values

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## Right Shoulder

- Muscle strength combined with ROM

11 C 6 = 16 UE = 10 WP

Can muscle strength be combined with ROM?

What about the distal clavicle arthroplasty?

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## WCALJ Decision

- WCALJ issued decision for 56% PD
- Rating instructions grip loss rating for carpal tunnel
- Defense objected to grip loss inclusion

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## Formal Rating

80% (15.01.02.02 – 18 – [5]23 – 360G – 26 – 32) 26 PD

Left arm

16.01.04.00 – 6 – [4]7 – 360G – 8 – 10 PD

16.02.01.00 – 5 – [7]7 – 360G – 8 – 10 PD

10 C 10 = 19 PD

Right Arm

16.02.02.00 – 10 – [7]14 – 360G – 16 – 20 PD

Left Knee 17.05.03.00 – 2 – [2]2 – 360G – 3 – 4 PD

Right Knee 17.05.03.00 – 2 – [2]2 – 360G – 3 – 4 PD

(A) 26 C 20 C 19 C 4 C 4 = 56 Final PD

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## Possible Rating Issues

### **Applicant Side**

- Multi-level cervical radiculopathy = DRE IV
- Right distal clavicle arthroplasty

### **Defense:**

- Grip loss of carpal tunnel
- Both right shoulder muscle strength and ROM rated

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## Case Study #1

- WCAB overturned judge
- PD 51% without grip
- Cited grip is rarely used per AMA Guides
- Physician rationale insufficient

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## Amended Rating

80% (15.01.02.02 – 18 – [5]23 – 360G – 26 – 32) 26 PD

Left arm

[REDACTED]

16.02.01.00 – 5 – [7]7 – 360G – 8 – 10 PD

[REDACTED]

Right Arm

16.02.02.00 – 10 – [7]14 – 360G – 16 – 20 PD

Left Knee 17.05.03.00 – 2 – [2]2 – 360G – 3 – 4 PD

Right Knee 17.05.03.00 – 2 – [2]2 – 360G – 3 – 4 PD

(A) 26 C 20 C 10 C 4 C 4 = 51 Final PD

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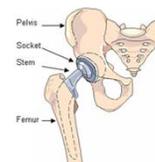
## And the moral is....

- Almaraz/Guzman does not automatically remove AMA Guides limitations on strength impairment
- Physician rationale critical
- Ultimately a judicial decision

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## Case Study #2

- ADJ16719136 Kite vs. East Bay
- Bilateral hip replacements
- Physician adds rather than combining PD
- Most accurate reflection of PD



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## Case Study #2

- WCALJ Award

Left Hip

17.03.10.01 – 20 – [5]25 – 351G – 28 – 33 PD

Right Hip

17.03.10.01 – 20 – [5]25 – 351G – 28 – 33 PD

33 + 33 = 66 PD

- Defendant asked for reconsideration
- Decision Upheld

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## Adding vs. Combining

Adding

33 + 33 = 66 PD = \$91,827.50

Combining

33 C 33 = 55 PD = \$71,587.50

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## Case Study #2

Is it within the physician's discretion to add impairments?

### Arguments for Adding

- 1) Almaraz/Guzman
- 2) Severity of Injury

To add or  
not to add



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## Case Study #2

- Arguments Against Adding
- PDRS does not allow
- AMA Guides makes no provision
- AMA Guides page 435 allows physician to note if total combined impairment is not accurate reflection

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## DEU Position

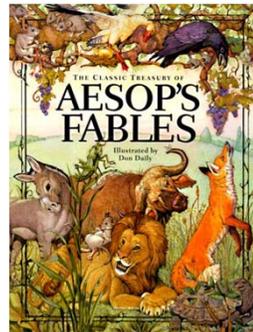
- Issue a consultative rating under strict AMA Guides
- Issue a second rating under Almaraz/Guzman
- Follow judge's instructions of formals

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## And the Moral Is.....

Adding impairments for bilateral extremities might be permissible

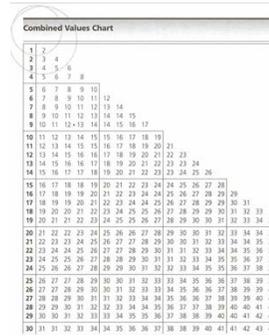
- Physician rationale
- Severity of Injury
- Complex or Extraordinary



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# Combined Values Chart

- CVS is how disabilities are combined
- Residual chart
- Compaction increases with larger numbers
- Difficult to reach 100%



# Synergy

- Sum of parts greater than whole
- Some precedent with vision and hearing
- Possible adding rather than combining multiple body parts as challenge to Guides

