

Blackledge, Almaraz/Guzman and the DEU



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Blackledge Decision

Physician gave following impairments:

- Lumbar DRE II: 8 WP
- Patellofemoral DJD: 2 WP
- 3 WP for pain



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Blackledge Decision

- Judge Formal Instructions
- Refer to doctor report
- Take into account impairments in AMA Guides
- Consider pain add-on



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Blackledge Decision

DEU Rater

- Did not rate lumbar DRE II – criteria not met
- Did not rate patellofemoral DJD – no evidence of direct trauma



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Blackledge En Banc Decision

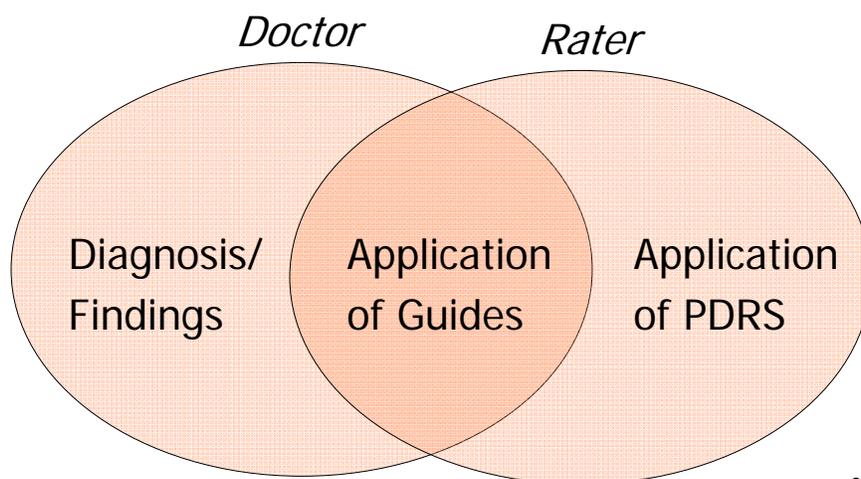
Everyone has a role in the formal rating process

- Physician assesses impairment
- Judge frames formal instruction
- Rater issues rating based solely on instructions
- Rater cannot substitute lay judgment on medical issues



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Rating Process – Overlapping Roles



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Blackledge and DEU



- Rater will note stray into role of physician or judge
- DEU will still correct chart, mathematical or combining errors
- DEU will still apply unequivocal rules of AMA Guides

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DEU and Blackledge



- New motto “Rate and Annotate”
- More impairments given by physician will be rated
- Impairments given by physician will be listed even if not rated
- More annotations on ratings
- Parties will need to follow up on annotated issues

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Example #1

- Consultative rating for 48 year old janitor
- Injured diagnosed with left shoulder rotator cuff tear and unresolved L5 radiculopathy.
- Doctor gives following impairments
 - Shoulder ROM: 12 UE
 - Grip Loss 25%: 10 UE
 - Lumbar DRE II: 8 WP



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Example #1



- Rater rates as follows:
Lumbar DRE II: 8 WP
15.03.01.00 – 8 – [5]10 – 340G – 12 – 14 PD (A)
- L Grip Loss 50%: 10 UE (not used)
- L Shoulder ROM: 14 UE = 8 WP (corrected)
16.02.01.00 – 8 – [7]11 – 340F – 11 – 13 PD (A)
(A) 14 C 13 = 25 Final PD

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Example #1



Annotations on Rating

- Unresolved radiculopathy appears to place injured in lumbar DRE III category
- Shoulder ROM corrected per AMA Guides ROM charts
- Grip cannot be used for shoulder injuries per AMA Guides page 508. Shoulder strength may be evaluated using Table 16-35

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Almaraz/Guzman Decision

- PDRS is rebuttable
- One method is to challenge any part of the rating such as impairment



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Almaraz/Guzman Overview

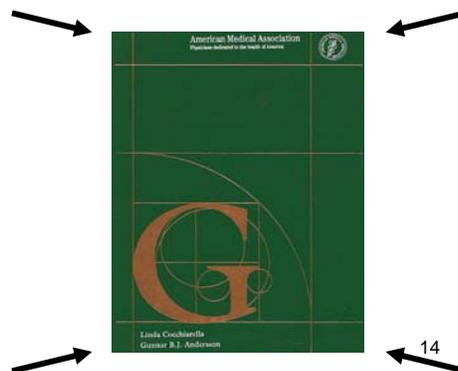
Decision	Type	Standard	Parameters
Almaraz/Guzman I	Panel	Fairness	Outside of Guides
Almaraz/Guzman II	Panel	Accuracy	Four corners of Guides
Guzman	Appellate	Accuracy	Four corners of Guides/Use outside info to support

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What are the “Four Corners”



HINT:



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Limitations of Almaraz/Guzman

- Can't arbitrarily choose a Guide's method to achieve a desired result
- Report must constitute substantial evidence
- Doctor must set forth facts and reasoning to support rating
- Does not require doctor to provide AMA-compliant rating
- Used for extraordinary or complex cases?

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Almaraz/Guzman Decision

**Within Four Corners
of AMA Guides**

**Physician may use
any**

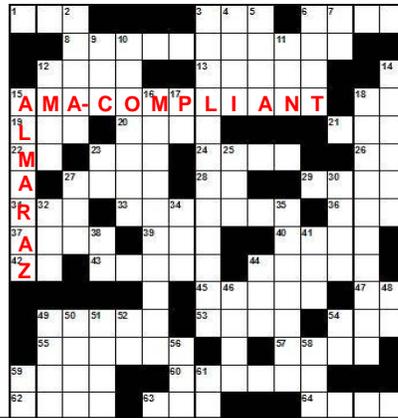
- Chapter
- Table
- Method



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Terms of Art

- Terms for by-the-book ratings:
 - AMA-compliant
 - Traditional
- Terms for non-AMA compliant ratings:
 - Alternative
 - Almaraz
 - Rebuttal
 - Non-traditional



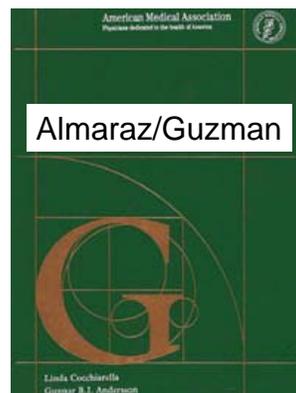
AMA vs. Almaraz Ratings

AMA Guides

- Objectivity
- Consistency

Almaraz/Guzman

- Clinical judgment



AMA Guides is Presumption

Judge Determines whether AMA Guides rating is rebutted.

Judge weighs evidence



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Rating Process

- Doctor provides impairment
- DEU rater turns impairment into disability
- DEU will apply rules of combining per PDRS



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Annotating Almaraz Ratings

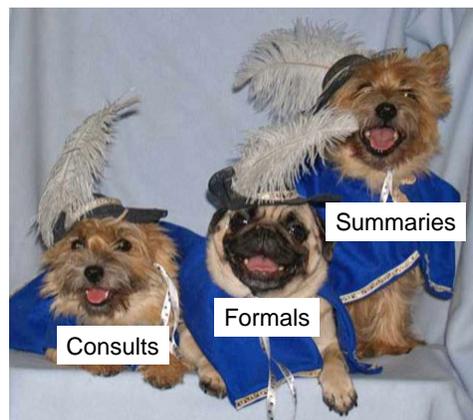
- DEU will designate Almaraz/Guzman rating with “Rating Per Almaraz Case”
- For non-scheduled ratings DEU will use “99” for last two digits of rating
- DEU may annotate possible rating issues

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DEU Approach to Ratings

Three Rating Types

- Consultative Ratings
- Formal Ratings
- Summary Ratings



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DEU Approach to Ratings

Consultative Ratings

- Ratings made at request of parties – mail in, walk in, MSC
- Provide both ratings per AMA Guides and Almaraz when possible

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DEU Approach to Ratings

Summary Ratings

- Unrepresented
- QME panel or treating doctor
- Rate per AMA Guides as presumptive and annotate existence of Almaraz rating

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DEU Approach to Ratings

Formal Ratings

- Based on judge's instructions after trial
- Follow judge instructions as finder of fact



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Application of Almaraz/Guzman

Does doctor need to specifically cite Almaraz/Guzman?

- No magic words
- Almaraz/Guzman rating is triggered by doctor's **intentional deviation** from Guides



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Application of Almaraz/Guzman

What about errors in doctor's report?

- Normal errors in doctor report will be corrected
- Does not trigger Almaraz rating



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The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.

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Example #2

- Housekeeper age 38. Lumbosacral strain, no radicular symptoms, muscle guarding with difficulty with heavy lifting.

AMA Guides Impairment

- Lumbar DRE II 8 WP

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DRE Category II

AMA Guides Table 15-3

Lumbar DRE Category 5-8 WP Impairment

- Significant muscle guarding or asymmetric ROM
- Non-verifiable radiculopathy
- Resolved radiculopathy
- Fracture <25% compression of vertebrae

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Example #2

AMA Guides Rating



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Example #2

Almaraz Rating

- Doctor states impairment best represented by Hernia Table 6-9 due to difficulty with heavy lifting
- Hernia Class II 19 WP

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Example #2

Table 6-9 Criteria for Rating Permanent Impairment Due to Herniation

Class 1 0%-9% Impairment of the Whole Person	Class 2 10%-19% Impairment of the Whole Person	Class 3 20%-30% Impairment of the Whole Person
<p>Palpable defect in supporting structures of abdominal wall</p> <p><i>and</i></p> <p>slight protrusion at site of defect with increased abdominal pressure; readily reducible</p> <p><i>or</i></p> <p>occasional mild discomfort at site of defect but not precluding most activities of daily living</p>	<p>Palpable defect in supporting structures of abdominal wall</p> <p><i>and</i></p> <p>frequent or persistent protrusion at site of defect with increased abdominal pressure; manually reducible</p> <p><i>or</i></p> <p>frequent discomfort, precluding heavy lifting but not hampering some activities of daily living</p>	<p>Palpable defect in supporting structures of abdominal wall</p> <p><i>and</i></p> <p>persistent, irreducible, or irreparable protrusion at site of defect</p> <p><i>and</i></p> <p>limitation in activities of daily living</p>

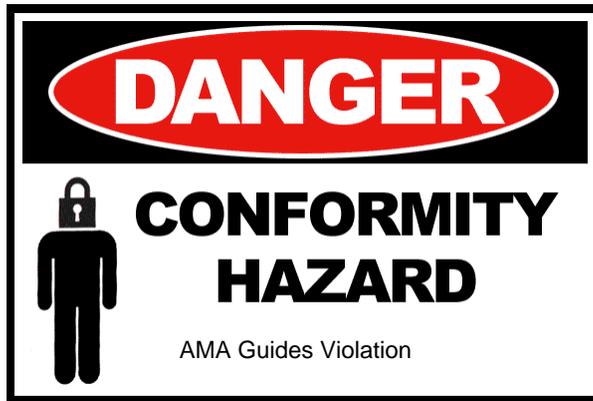
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Example #2

Almaraz Rating

- Note that impairment number for lumbar spine used
- FEC and occupation variant for spine used
- Note that 99 is used to designate unscheduled rating

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The following example does not imply that the Disability Evaluation Unit advocates the following approach as a deviation from the Guides. The AMA Guides remain the presumptive rating and should be utilized in the majority of cases.

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Example #3

- Carpenter age 38, right knee injury

Impairments per AMA Guides

- Muscle Strength Grade 4 ext/flex
- Thigh atrophy 2 cm
- Range of motion 100 degrees flexion

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Example #3

AMA Guides Rating

- Muscle Strength (Table 17-32)
Extension 12 LE Flexion 12 LE
12 C 12 = 23 LE
- Thigh Atrophy ((Table 17-6) 2 cm = 8 LE
- Knee Flexion (Table 17-9) 100 degrees = 10 LE

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Example #3

AMA Guides Rating

- Per Table 17-2 (cross usage chart) cannot combine ROM, muscle strength or atrophy
- Only greatest impairment is used
- Knee muscle strength = 23 LE x .4 = 9 WP

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Example #3

Almaraz Rating

- Doctor cites Almaraz and states that impairment best assessed by ignoring Table 17-2 and combining all knee impairments
- Doctor then combines muscle strength, atrophy and ROM impairments at WP index

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Example #3

Almaraz Rating

- Muscle Strength = 23 LE
- Atrophy = 8 LE
- ROM = 10 LE
- Combining Impairments at LE index
 $23 \text{ C } 10 \text{ C } 8 = 37 \text{ LE} \times .4 = 15 \text{ WP}$

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Example #3

Almaraz Rating

- Doctor has provided impairments per Almaraz
- Rater will still combine per PDRS pg. 1-11
- Unscheduled rating designated by last two digits 99

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Recommended Almaraz Practices

- **Include an AMA-compliant rating**
 - It is difficult to assert that the AMA-compliant rating is inadequate if we don't know what it is
- **Identify any Almaraz rating**
 - This avoids the possibility that DEU will construe the Almaraz impairment as an error and simply correct it
- **Avoid using old schedule work restrictions**
 - Specifically precluded by Almaraz/Guzman

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Summary

- Almaraz is the current law and DEU will provide ratings accordingly
- DEU will still apply PDRS rules to turn impairment into disability
- Judge ultimately makes determination if Almaraz applies based on evidence



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