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
Elimination of 15% PD Adjustment

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

PD Rate and Weeks

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

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<th>Year</th>
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<tr>
<td>2014</td>
<td>$160</td>
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</table>
Rating Formula Changes

• LC 4660.1 (For 2013 DOI)

• Elimination of FEC modifier

• Replacement with 1.4 modifier

• First modification of standard WP impairment

Where’s my 2013 Rating Schedule?
No add-on for sleep or sexual dysfunction

- 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?

DEU Procedure

- 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
Example #1

• DOI 3/1/13

• 35 year old electrician

• Lumbar DRE V: 25 WP

• Insomnia – Sleep Arousal Class I – 9 WP

Example #1

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.
Corticospine Injuries

• Does the preclusion from rating sleep arousal extend to corticospine Table 15-6 sexual impairment?

• Nature of injury vs. arising from injury

No Add-on for Psychiatric Disorder

• LC 4660.1

• Arising out of compensable physical injury

• Psyche GAF

• Exception for violent act or catastrophic injury
No Add-on for Psychiatric Disorder

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

Example #2

- Airline Pilot age 49 DOI 2013
- Lumbar injury, fusion L4-5 with radiculopathy
- Difficulty with most ADL
- Depressed
Example #2

Lumbar Spine Rating

Lumbar DRE V: 28 WP

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

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
Psychiatric Rating

Psyche GAF 60: 15 WP


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.

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.
Combined Rating

CT Psyche Injury

After Apportionment

Psyche GAF 60: 15 WP


Example #2

- Applicant attorney alleges catastrophic exception

- Is a spinal fusion a catastrophic injury?
What About Formal Ratings

- DEU rater to follow judge’s instructions

- Judge’s decision on whether sleep arousal, sexual, or psyche impairments are rated

SB 863 Effect on Almaraz/Guzman

- PDRS remains prima facie evidence

- Therefore the PDRS is rebuttable

- No effect of Almaraz/Guzman
Almaraz/Guzman Decision

Within Four Corners of AMA Guides

Physician may use any

- Chapter
- Table
- Method

Case Study #1

ADJ7261203 Kendrick-McGee vs. WCAB

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

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)
Left Carpal Tunnel

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

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
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

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

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
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?

WCALJ Decision

• WCALJ issued decision for 56% PD

• Rating instructions grip loss rating for carpal tunnel

• Defense objected to grip loss inclusion
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
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

Possible Rating Issues

Applicant Side
• Multi-level cervical radiculopathy = DRE IV
• Right distal clavicle arthoplasty

Defense:
• Grip loss of carpal tunnel
• Both right shoulder muscle strength and ROM rated
Case Study #1

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

Amended Rating

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

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

Right Arm

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
And the moral is….

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

Case Study #2

- ADJ16719136 Kite vs. East Bay
- Bilateral hip replacements
- Physician adds rather than combining PD
- Most accurate reflection of PD
Case Study #2

- WCALJ Award

Left Hip
Right Hip
33 + 33 = 66 PD

- Defendant asked for reconsideration

- Decision Upheld

Adding vs. Combining

Adding

33 + 33 = 66 PD = $91,827.50

Combining

33 C 33 = 55 PD = $71,587.50
Case Study #2

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

Arguments for Adding

1) Almaraz/Guzman

2) Severity of Injury

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
DEU Position

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

And the Moral Is…….

Adding impairments for bilateral extremities might be permissible

• Physician rationale
• Severity of Injury
• Complex or Extraordinary
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