

## DEU and Almaraz/Guzman



## The Almaraz Story

- Mario injured back as a truck driver
- AMA Guides Impairment was 12 WP
- Doctor gave light work and “no prolonged sitting” restrictions, and said there was at least one component of job he couldn’t do
- WCJ gave 14% PD based on Guides impairment



## Guzman Story



- Joyce developed bilateral CTS as a secretary
- Doctor gave 3 WPI for each arm based on AMA Guides page 495
- Doctor provided an alternate rating of 15 WPI per arm based on based on ADL losses
- WCJ gave 12 PD based on Guides impairment

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## Almaraz/Guzman I

- PDRS and Guides were both prima facie evidence and therefore rebuttable
- If Guides impairment led to inequitable or disproportionate PD rating, it could be rebutted
- A rebuttal impairment can be partly or wholly outside of the Guides



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## Almaraz/Guzman II

- The PDRS is rebuttable
- Physician provides method that accurately reflects impairment
- Must stay within four corners of AMA Guides
- May use any chapter, table or method



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## Limitations of Almaraz/Guzman

- Report must constitute substantial evidence
- Can't arbitrarily choose a Guide's method to achieve a desired result
- Doctor must set forth facts and reasoning to support rating
- Work preclusions not allowed

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## Guzman Appellate Decision

- Upheld Almaraz/Guzman II
- Physician needs to explain why alternative rating necessary
- Explain how alternative rating arrived at

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## Complex or Extraordinary

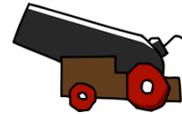
- Page 16 of Guzman Decision
- Guides cannot anticipate every impairment
- Physician uses clinical judgement to accommodate complex or extraordinary cases



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## City of Sacramento vs. Cannon

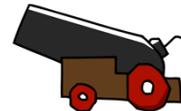
- Published Appellate (C072944)
- Police Officer developed left plantar faciitis
- Limp with necessity to wear orthotic
- Subjective symptoms only



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## Cannon Decision

- AME initially found no impairment under strict application of AMA Guides
- Supplemental gave 7 WP Gait impairment by analogy
- Findings and Award 0% PD
- On appeal, WCAB gave 7 WP for Gait



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## Cannon Decision



- No standard rating
- Physician may use expertise to rate by analogy
- Defense appealed that Almaraz/Guzman used only on “complex or extraordinary cases”

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## Cannon Appellate Decision

### **Complex or extraordinary**



- Poorly understood conditions
- Manifested only by subjective symptoms

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## Player Roles in Formal Ratings

Blacklege Case (En Banc ADJ1735018)

Physician – medical expert who provides impairment ratings

Judge – determines substantial evidence and formulates rating instructions

Rater – rates Formal rating instructions

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## Matta vs. Nummi



Physician Role

- ADJ1865813
- Left ulnar nerve injury
- Alternate rating
- Analogy to chronic pain – Table 13-22
- 22 WP
- Panel Decision
- Rating rejected
- No explanation why Guides inadequate
- Why rating by analogy necessary?

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## Zemke vs WCAB (1968)



Medical report cannot rise above its own inadequate premises

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## Physician Best Practices

- Provide standard AMA Guides rating
- Explain how standard rating arrived at
- Determine if accurate rating or explain why not
- Provide alternative rating if necessary
- Explain how alternative rating arrived at
- Stay within four corners of AMA Guides
- Provide rationale why this is accurate rating

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## Malhotra vs. DDS



Judge Role

- ADJ360205
- Injury to right little finger
- Physician rated on finger ROM – 2 WP
- 16.06.05.04 - 2 - [1] 2 - 214G - 3 - 4 PD

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## Malhotra vs. DDS



- Grip measurements showing 62% grip loss
- Judge utilized grip impairment in formal instructions

16.01.04.00 – 12 – [4]15 – 214F – 15 – 20 PD

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## Malhotra vs. DDS

- Defense asked for reconsideration
- Reconsideration granted
- Judge outside role
- Judge cannot create impairment ratings



Physician driven

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## Judge Role

- Weighs all evidence
- Determines if doctor opinion is substantial evidence
- May reject Almaraz/Guzman rating



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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

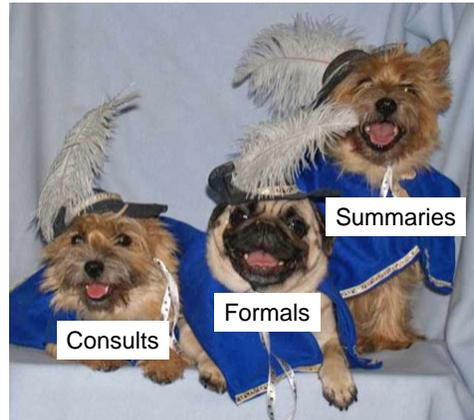
- DEU will designate Almaraz/Guzman rating with **“Rating Per Almaraz Case”**
- For non-scheduled ratings DEU will use **“99”** for last two digits of rating
- DEU may annotate possible rating issues

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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

**2 for 1**

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# DEU Approach to Ratings

## Summary Ratings

- Unrepresented
- QME panel or treating doctor
- Issue two summary ratings when Almaraz/Guzman applicable



Cross Index  
Ratings

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## Formal Ratings



- DEU rater will follow Judge's instructions
- If physician provides both standard AMA Guides rating and Almaraz/Guzman rating – Judge must choose
- Body part listed on formal instruction may affect impairment number used



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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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## Laury vs. R&W Concrete

- ADJ3400378
- Five Spinal Surgeries
- Two level fusion L4-S1
- ROM method rated 22 WP



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## David vs. Walt Disney

ADJ3864345

Two level cervical fusion

AME Report:  
Cervical DRE IV: 26 WP  
3 WP for pain



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## David vs. Walt Disney

Physician gave alternative rating

AMA Guides Figure 15-19

60% loss of capacity of cervical spine:	48 WP
Add on for pain	<u>3 WP</u>
Almaraz/Guzman rating	50 WP

Rating did not account for work impairment

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## David vs. Walt Disney

- Judge rejected Almaraz/Guzman rating
- Cervical Spine rated

15.01.01.00 – 29 – [5]37 – 560J – 49 – 49 PD

- Applicant petition for reconsideration
- WCAB denied reconsideration

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## AMA Guides Figure 15-19

### Strengths



- Figure 15-19 on page 427 of AMA Guides
- In the spine chapter
- Physician expert opinion when used

### Weaknesses



- Guides has method for rating spine
- Figure 15-19 regional conversion chart
- How does physician arrive at functional loss?

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## Miguel Jordan vs. Abel Engineering

- ADJ7827229
  - Panel Decision
  - Lumbar Injury
  - MRI 6 mm disc bulge
- AME Physician**
- DRE II – 8 WP
    - Muscle guarding
    - Non-verifiable radiculopathy

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## Miguel Jordan vs. Abel Engineering

### **Analogy to Hernia Class III 30 WP**

- DRE not accurate
- Abnormal MRI disc bulge
- Precluded from heavy lifting, bending, stooping, pushing, pulling
- Complex and extraordinary – I treat every examinee as such

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## Hernia Table 6-9

**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
Palpable defect in supporting structures of abdominal wall  <i>and</i> slight protrusion at site of defect with increased abdominal pressure; readily reducible  <i>or</i> occasional mild discomfort at site of defect but not precluding most activities of daily living	Palpable defect in supporting structures of abdominal wall  <i>and</i> frequent or persistent protrusion at site of defect with increased abdominal pressure; manually reducible  <i>or</i> frequent discomfort, precluding heavy lifting but not hampering some activities of daily living	Palpable defect in supporting structures of abdominal wall  <i>and</i> persistent, irreducible, or irreparable protrusion at site of defect  <i>and</i> limitation in activities of daily living

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## DEU Consultative Ratings

Per AMA Guides

Lumbar DRE II: 8 WP

15.03.01.00 – 8 – [5]10 – 340G – 12 – 10 PD

Per Almaraz Case

Hernia Class III: 30 WP

15.03.01.99 – 30 – [5]38 – 340G – 41 -38 PD

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# Miguel Jordan vs. Abel Engineering

## Case Disposition



- Judge rejected Hernia analogy rating
- Applicant filed reconsideration
- WCAB denied reconsideration

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## Table 6-9 for Spine

### Strengths



- Utilizes Table within Guides
- Doctor states more accurate assessment of impairment

### Weaknesses

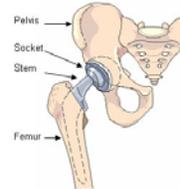


- AMA Guides has method for rating
- No criteria for use of Table 6-9
- Possible introduction of work preclusion

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## Kite vs. East Bay

- ADJ6719136
- Bilateral hip replacements
- Physician adds rather than combining PD
- Most accurate reflection of PD
- Synergistic effect



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## Kite vs. East Bay

- WCALJ Award 66% PD

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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# DEU Consultative Ratings

## Rating per AMA Guides



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 C 33 = 55 PD

# Combined Values Chart

- CVS is how disabilities are combined
- Residual chart  $A + B(1-A)$
- Compaction increases with larger numbers
- Difficult to reach 100%

1	2
2	3
3	4
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98	99
99	100

## DEU Consultative Ratings

### Rating per Almaraz Case



#### 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

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## Combining vs. Adding

- A scientific formula has not been established to indicate the best way to combine impairments – *AMA Guides page 10*
- Impairments and disabilities are generally combined – *PDRS page 1-10*
- In general, impairment ratings within the same region are combined – *AMA Guides page 10*

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## Combining Vs. Adding

- Cases of bilateral impairment....If the total combined whole person impairment does not seem to adequately reflect the actual extent of alteration in the individual's ability to perform ADL, this should be noted.

– *AMA Guides page 435*

Multiple impairments must be combined in a prescribed manner – *PDRS page 1-5*

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## Adding vs. Combining

- AMA Guides prima facie evidence
- Complex or extraordinary
- Physician expert opinion

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## Borella vs. DMV

- ADJ7181658
- DMV test examiner injured in auto accident
- Injuries to lumbar spine, cervical spine, right leg and psychiatric

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## Standard AMA Guides Rating

PSYCHIATRIC - MENTAL AND BEHAVIORAL

75% [14.01.00.00 - 26 - [8]36 - 251I - 45 - 43] 32 PD (A)

CERVICAL - DIAGNOSIS-RELATED ESTIMATE (DRE)

15.01.01.00 - 18 - [5]23 - 251E - 21 - 20 PD (A)

LUMBAR - DIAGNOSIS-RELATED ESTIMATE

15.03.01.00 - 13 - [5]17 - 251E - 15 - 14 PD (A)

RIGHT-LEG - GAIT DERANGEMENT

17.01.07.00 - 7 - [5]9 - 251E - 8 - 7 PD (A)

(A) 32 C 20 C 14 C 7 = 57 PD AFTER APPORTIONMENT

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## Borela vs. DMV

- Judge added impairments as follows:  
  
Psyche = 32 PD  
Cervical = 20 PD  
Lumbar = 14 PD  
Right leg = 7 PD  
73 PD
- No physician opinion to add impairments
- Decision overturned on reconsideration
- Rating based on combining PD reduced to 57 PD

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## Borela vs. DMV

- Decision to add impairments rather than combine must be:
- Physician driven
- Judge approved



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## Sweetman vs. Bank of America

- ADJ7835380
- Injury to lumbar spine, right wrist with sleep arousal
- QME opined that impairments should be added

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## Sweetman vs. Bank of America

### **Physician Rationale**

- Individual with back injury would need to use hands more
- No overlap between impairments

### **Judge Decision**

- Add orthopedic impairments
- Combine sleep arousal

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## Impairment Rating

DRE V: 26 WP

75%[15.03.01.00 – 26 – [5]33 – 110C – 25 – 25] 19 PD

R Grip Loss

16.04.02.00 – 6 – [4]7 – 110E – 6 – 6 PD

Sleep Arousal Class I: 11 WP

13.03.00.00 – 11[6]14 – 110I – 20 – 20 PD

19 + 6 = 25 C 20 = 40 PD

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## Sweetman vs. Bank of America

- Extended Kite beyond bilateral extremities
- Based on physician opinion
- Judge weighs rationale



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## Weighing Almaraz/Guzman



- Explanation as to why the standard AMA Guides rating not accurate
- How does physician arrive at alternative rating?
- Did physician provide rationale for alternative rating?
- Is the rationale based on work restrictions or inability to compete in labor market?

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## Weighing Almaraz/Guzman



- Is there a method for rating this condition in the AMA Guides?
- Does the severity or nature of the injury justify an Almaraz/Guzman rating?
- Is the physician rationale specific to this injury or more general to all cases?

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## Parties Options

- Negotiate



- Request supplemental report



- Deposition physician



- Trial

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## Questions

