



AMA Guides & California Permanent Disability: Rating an AMA Case

September 29, 2007

Presenters:

T. Blair Megowan, DEU Manager - BMegowan@dir.ca.gov

DEU Supervisors:

Annalisa Faina – Northern California – AFaina@dir.ca.gov

Barry Knight – Central California - BKnight@dir.ca.gov

Tess Snaer – Southern California TSnaer@dir.ca.gov

State Bar of California , 80th Annual Meeting, 09-29-2007



Update on PD Issues

- **Revision of PDRS (Not Included)**
- **Major court decisions (Which PDRS to USE)**
- **Role of DEU**
- **Rating Unscheduled Impairments**

State Bar of California , 80th Annual Meeting, 09-29-2007



Which PDRS to Use



LC § 4660 (d)

- **Use 2005 PDRS for pre-existing 2005 DOI's if:**
 - There was no comprehensive med-legal report or treating doctor's report indicating the existence of PD (prior to 2005)
 - There was no obligation by the insurer to provide notice (that TD was ending) under LC § 4061

State Bar of California , 80th Annual Meeting, 09-29-2007



Must a med-legal report indicate PD to qualify for exception?

First Appellate District said "Yes"

- Costco Wholesale Corp. vs. WCAB (Chavez) (2007) – DCA certified [72 CCC 582]
- **Court held that requirements indicate PD applied to both comprehensive med-legal report and treating doctor report.**
- Favored intent of legislature to include more cases under new PDRS over strict grammatical construction.

Did QME's report 'indicate PD'?

- 2004 QME report said employee was not P&S but imposed various work restrictions.
- **Chavez Court said "No"**
- Report "...gave no opinion whatsoever about whether Chavez would suffer from permanent disability."

State Bar of California , 80th Annual Meeting, 09-29-2007



Must a prediction of PD or ‘obvious PD’ constitute a ‘showing of PD existence’?

- **4th District said “No” in Vera vs. WCAB**

(08-02-07)

“... Report must indicate that the claimant has a ratable disability that has reached P&S status.”

- **1st District in Trader Joe’s Co vs. WCAB**

“... report must at least state that the applicant is or will be disabled or, at a minimum, describe an injury that necessarily will result in permanent disability.”

[72CCC204]

State Bar of California , 80th Annual Meeting, 09-29-2007



Does beginning of TD constitute obligation to provide 4061 notice?

- **Chavez Court said “No” as did WCAB Pendergrass II**
- **Using beginning of TD as criterion would defeat purpose of statute since virtually all pre-existing-2005 cases would qualify for old PDRS.**

State Bar of California , 80th Annual Meeting, 09-29-2007



DEU Mission Remains Unchanged

- **Accurate Translation of Medical Findings into Disability.**
- **Rating System Objectives**
 - **Objectivity** – rating based on measurable observable criteria
 - **Consistency** – two workers with same impairment receive the same rating regardless of doctor or rater
 - **Equity** - to extent possible, compensation is proportional to loss *

** DEU Manager explained that responsibility falls under the FEC process..*

State Bar of California , 80th Annual Meeting, 09-29-2007



Rating Process

**Diagnosis
Findings**

**Application of
of AMA Guides**

**Application
of 05PDRS**

- **Raters' Toolkit**
- **Addresses/evaluates** rating aspect of report, not medical aspects.
- **Annotates** ratings to document underlying assumptions, caveats
- **Seeks clarification** to obtain missing information or requests application of a Guide's protocol.
- **Corrects** impairment ratings to conform to Guides protocols.

State Bar of California , 80th Annual Meeting, 09-29-2007



Unscheduled Impairments

- “In situations where impairment ratings are not provided, the *AMA Guides* suggests that physicians use clinical judgment, **comparing measurable impairment resulting from the unlisted condition to measurable impairment resulting from similar conditions** with similar impairment of function in performing activities of daily living.”
- Corollary to *AMA Guides* principle – **If rating protocol is provided for a particular condition, it should be used.**

State Bar of California , 80th Annual Meeting, 09-29-2007



Judgment Ratings

- **By Analogy**
 - Worker with Carpal Tunnel Syndrome (CTS) has negative clinical findings but positive nerve conduction study which justifies **05 Upper Extremity (UE) Rating**.
 - Doctor gives **05 UE** for acromial resection based on analogy to distal clavicle resection and similarity of post-operative impact on Activities of Daily Living (ADL's). *

** Refer to AMA Guides Table 16-27, page 506 for maximum impairment value of a distal clavicle resection arthroplasty.*

State Bar of California , 80th Annual Meeting, 09-29-2007



DRE vs. ROM **Is There a Default Method ?**

“...the **DRE Method is the primary method** used to evaluate individuals with an injury. Use the ROM Method when the impairment is not caused by an injury or when an individual’s condition is not well represented by a DRE Category.”
(AMA Guides, p. 374)

State Bar of California , 80th Annual Meeting, 09-29-2007



Principal ROM Method Criteria

- Multi-level involvement
- Recurrent Injury
- Alteration of motion segment integrity –
Fusion or increased motion
- Impairment not caused by injury

Principal Multi-level Characterizations

Flow Chart: **Single Level** NO → **ROM Method**

“...fractures at multiple levels, disk herniations or stenosis with radiculopathy at multiple levels or bilaterally.”

AMA Guides, p. 380

“If there is radiculopathy bilaterally or at multiple levels in the same spinal region.” AMA Guides, p. 380

State Bar of California , 80th Annual Meeting, 09-29-2007



DEU Position – Multi-level

- Multi-level bulges, degenerative changes, or herniations are not sufficient by themselves to invoke the ROM.
- There must be multi-level (or bilateral) radiculopathy.

Multi-level Example

- 37-year old woman experiences persistent pain in the neck and lateral right forearm and thumb (C6 distribution) following rear-end collision.
- MRI shows 3mm herniated disks at C4-5, and C5-6
- DRE or ROM ? {Answer: DRE, radiculopathy only C5-6}

State Bar of California , 80th Annual Meeting, 09-29-2007



Recurrent Injury

- Where there is recurrent radiculopathy caused by a new (recurrent) disk herniation or a recurrent injury... **p. 380**
- “there is recurrent disk herniation or stenosis with radiculopathy... in the same spinal region.” **p. 380**

DEU Position – Recurrent Injury

- A second injury to the same spinal region by itself is not sufficient to invoke ROM.
- **There must be recurrent radiculopathy.**

State Bar of California , 80th Annual Meeting, 09-29-2007



Recurrent Injury Example

- Developed low back pain and sciatica after lifting furniture at home – treated surgically with near complete relief.
- 15 months after injury, re-injured lumbar spine on the job with substantial low back pain and MRI showing bulging disk at L4-5
- **DRE or ROM?**
- **Answer: ROM; recurrent injury, same spinal region, with radiculopathy.**

State Bar of California , 80th Annual Meeting, 09-29-2007



Grip Loss

- “Because strength measurements are functional tests influenced by subjective factors... the Guides does not assign a large role to such measurements. AMA Guides, p. 507
- “In a rare case, if the examiner believes the individual’s loss of strength represents an impairing factor that has not been considered adequately by other methods in the *Guides*, the loss of strength may be rated separately.”
- **Grip impairment typically used for muscle tear, tendon release, excision of epicondyle.**

State Bar of California , 80th Annual Meeting, 09-29-2007



Restrictions on Using Grip Loss

- If combining with other impairments, must be based on unrelated etiologic or pathomechanical causes.
- **Cannot be rated in presence of decreased motion, painful conditions, deformities, or absence of parts...that prevent effective application of maximal force...**

State Bar of California , 80th Annual Meeting, 09-29-2007



Grip Example

- Social worker fractured left middle and ring fingers when hand got caught in a swinging door; persistent pain on gripping.
- Unilateral restriction from repetitive gripping.
- ROM flexion losses rate **04 UE**.
- Grip Strength satisfies validity testing and rates **10 UE**
- **What is correct rating?**

Answer: ROM flexion losses, 04 UE. Grip loss has same etiology as loss of ROM, fractured fingers.

State Bar of California , 80th Annual Meeting, 09-29-2007



Sleep Disorders

- Rating protocol in Chapter 13 dealing with central and peripheral nervous system disorders
- Typical disorders include: central sleep apnea, Parkinson's disease, multiple sclerosis.
- Must be supported by formal study in a sleep laboratory

State Bar of California , 80th Annual Meeting, 09-29-2007



Sleep Disorders

- Back pain-induced sleep disturbances normally reflected in back rating
 - Sleep is activity of daily living
 - ADL deficits are reflected in placement within DRE ranges.
 - Pain-induced ADL deficits are reflected in pain add-on.

State Bar of California , 80th Annual Meeting, 09-29-2007



Sleep Disorders – Example 13-17

- Worker gained 45 pounds following crush injury to foot which prevented exercise
- Diagnosis of obstructive sleep apnea (OSA) based on polysomnogram
- 09 WP given based on ability to complete most necessary work but work less efficiently.
- About 1 in 5 American adults have at least mild OSA

State Bar of California , 80th Annual Meeting, 09-29-2007



Gait Derangement

- “Whenever possible, the evaluator should use a more specific method.” (AMA Guides, p. 529)
- “...does not apply to abnormalities based only on subjective factors, such as pain or sudden giving-way, as with, for example, an individual with low back discomfort....”

State Bar of California , 80th Annual Meeting, 09-29-2007



Gait Derangement – Example 17-2

- 61- year-old woman falls on steps, developing severe hip pain.
- Cannot walk more than 5 blocks, must use cane outside home, cannot run
- Hip Arthritis = 03 WPI
- 20 WPI given for requirement to use cane routinely
- Higher rating more accurately represents clinical condition; rationale required.

State Bar of California , 80th Annual Meeting, 09-29-2007



Pain Add-On

- When is a pain add-on warranted?
- Is a formal pain assessment required ?
- What if there are multiple body parts experiencing excessive pain?
- Can pain be added to a DRE Rating?
- 0% Rating?

State Bar of California , 80th Annual Meeting, 09-29-2007



Generic Pain Add-On Criterion

- “If the body system impairment rating appears to adequately encompass the pain experienced... [the] rating is as indicated AMA Guides, p. 573 of errata)
- If the individual appears to have pain-related impairment that has increased the burden of his or her condition slightly... the examiner may award...impairment up to 03%...” AMA Guides, p. 573 of errata)

State Bar of California , 80th Annual Meeting, 09-29-2007



Formal Pain Assessment

- “If the individual appears to have pain related impairment that has increased the burden of his or her condition **substantially**, perform a formal pain related impairment assessment. (AMA Guides, p. 573 of errata)
- Since it does not affect rating directly, DEU does not generally require a formal pain assessment, **but description of ADL impact is always encouraged.**

State Bar of California , 80th Annual Meeting, 09-29-2007



Pain in Multiple Body Parts

- Limit 03% WPI per injury
- Doctor must allocate between injured body parts, for example:
 - Knee Arthritis - 02% add-on
 - Shoulder Instability - 01% add-on
- Note: If Doctor fails to allocate between multiple parts, and clarification is not requested, rate pain add-on with the injured body part with the highest impact on ADL activities, by reviewing both the complaints and subjective factors sections of the medical report.

State Bar of California , 80th Annual Meeting, 09-29-2007



Pain and DRE Categories

- “Each [DRE] category includes a range to account for the resolution or continuation of symptoms and their impact on the ability to perform Activities of Daily Living (ADL).” AMA Guides, p. 384
- No express provision in spine or pain chapters which precludes application of a pain add-on to DRE Ratings, **when pain-related impairment has increased the burden of the worker’s condition substantially..**
- DEU position – up to 03% may be added to any DRE-based rating if it does not adequately encompass the pain experienced.



Potential issue of overlap, if high end of DRE range is awarded solely for pain

State Bar of California , 80th Annual Meeting, 09-29-2007



Pain Add-on to Zero Rating

- “... a whole person impairment rating based on the body or organ rating system of the AMA Guides... may be increased by up to 03 WPI...”
- **Criterion assumes an underlying body system impairment rating greater than zero**

State Bar of California , 80th Annual Meeting, 09-29-2007



Less Common Impairments

Effect if Treatment – Two Types, AMA Guides, p. 20

- Apparent remission of symptoms, but questionable return to normal good health, e.g., diabetes under successful treatment with insulin (1-3 WPI range)
- Impairment caused by treatment, e.g., organ transplant patient treated by anticoagulants (evaluated using chapter (s) appropriate to the impairment)

Patellofemoral Pain

- Classified under degenerative joint disease (DJD) Table 17-31, p. 544
- Patellofemoral joint is the joint between the kneecap (patella) and the thigh bone (femur)
- Footnote to Table 17-31, allows for up to 05 Lower Extremity (LE) impairment rating for patellofemoral pain with crepitation following direct trauma to the knee – joint space narrowing not required.

State Bar of California , 80th Annual Meeting, 09-29-2007



Effect of Treatment Ratings

Hernias

- Rating criteria in AMA Guides, Table 6-9, pg 136
- Impairment Ranges from 0 to 30 WPI
- Based on Example 6-31, the rating is for unilateral or bilateral hernia.
- Impairment is divided into classes (10-point ranges) based on reducibility and persistence of protrusion and impact on ADL/s
- Evaluating physician has to give a specific value within a class

State Bar of California , 80th Annual Meeting, 09-29-2007



Multiple Impairment Procedures

- A. Permanent Disability Rating Schedule (PDRS), pg. 11
- B. Review of General Procedures for Extremities
- C. Review of Spinal ROM Procedures

→ **To Turn multiple impairments into a final PD value involves three processes:**

1. Converting finer AMA scales, e.g., UE or LE to whole person (WP)
 2. Combining of impairment or disabilities.
 3. Adjusting impairment standards into disabilities.
- **Sequencing matters !**

State Bar of California , 80th Annual Meeting, 09-29-2007



Multiple Impairment Procedures

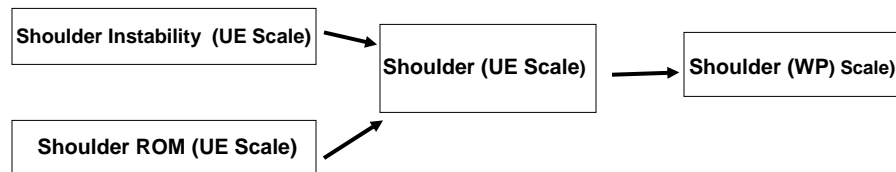
- **Combine multiple impairments of same body part (e.g., wrist or knee) using native scale (allowable combination's only)**
 - Result is one native scale impairment for each body part
- **Convert impairment for each body part to WP and adjust to PD by applying PDRS modifiers (FEC, OCCUP, Age)**
 - Result is one PD value for each body part.
- **Combine PD values for each body part within each extremity before combining with other parts of the body**
 - Result is one PD value for each extremity.
- **Combine all remaining PD values**
 - Result is final PD value

State Bar of California , 80th Annual Meeting, 09-29-2007



Combining and Converting

- **Generally combine multiple impairments of the same body part in their 'native' scale, (allowable combination's only), then convert to WP Scale.**



State Bar of California , 80th Annual Meeting, 09-29-2007



Sample Problem - Combining

- Generally combine multiple impairments of the same body part in their 'native' scale, (allowable combination's only), then convert to WP Scale.

Left Knee

- Arthritis: cartilage interval = 1mm (25 LE Scale)
- Total medial and lateral meniscectomy (22 LE Scale)

$$25 \times .40 = 10 \text{ WP}$$

$$22 \times .40 = 09 \text{ WP} \quad \text{OR} \quad 25 \text{ C } 22 = 42 \text{ LE}$$

$$10 \text{ C } 09 = 18 \text{ WP}$$

$$42 \text{ LE} \times .40 = 17 \text{ WP}$$

Answer: Table 17-2. p. 526 allows for Arthritis & (DBE) meniscectomy combination. $25 \text{ C } 22 = 42 \text{ LE} \times .40 = 17 \text{ WP}$ for 05PDRS modifications.

State Bar of California , 80th Annual Meeting, 09-29-2007



Selecting an Impairment Number

Generally, select the "Other" option when combining two or more impairments for the same body part

- Example: Shoulder ROM Impairment combined with shoulder instability impairment
 - Use Shoulder Other: Impairment # 16.02.02.00 –

Picking Impairment #'s for the Hand

- Index Amputation + Index ROM = Index Other (16.06.02.04)
- Index ROM + Ring ROM = Hand Multiple Fingers – Other (16.05.01.00)
- Index ROM + Ring Sensory = Hand/Multiple Fingers- Other (16.05.04.00)

State Bar of California , 80th Annual Meeting, 09-29-2007



Combining Rules of PDRS

05PDRS, pg. 11

- Combined PD Values for different parts of the same extremity first.

Example: What is final combined value? 27 or 28 WP ?

- Left Shoulder = 15 PD
- Right Shoulder = 10 PD
- Left Wrist = 05 PD

Answer: Combine Left Shoulder with Left Wrist

$$15 \text{ C } 05 = 19$$

Then Combine Left Upper Extremity with Right Shoulder

$$19 \text{ C } 10 = 27$$

State Bar of California , 80th Annual Meeting, 09-29-2007



Combining Rules for Spinal ROM

ROM Method yields up to 4 Whole Person (WP) values for one spinal region.

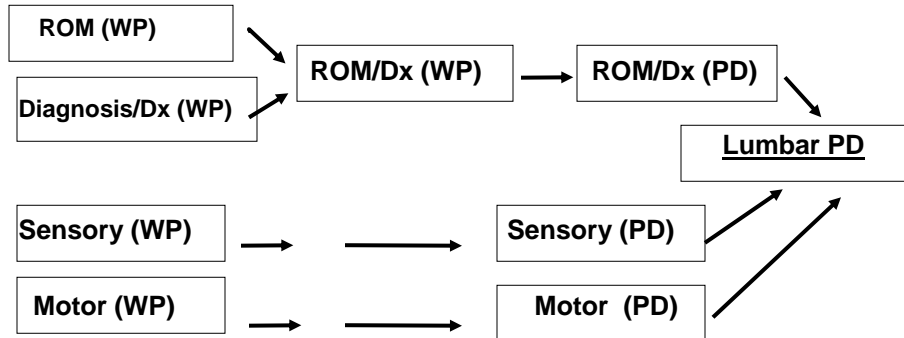
- **ROM Abnormalities**
- **Disorder/Diagnosis (Dx)**
- **Neuro-sensory (pain, touch)**
- **Neuro-motor (strength)**

State Bar of California , 80th Annual Meeting, 09-29-2007



Combining Rules for Spinal ROM

- PDRS provides up to 3 impairment #s for spinal ROM cases.



State Bar of California , 80th Annual Meeting, 09-29-2007



Impairment #'s Coincide with Dx

ROM/Dx (WP)

ROM/Dx (PD)

Disorder Table 15.7

- | | | |
|------------------------|---|------------------------------------|
| 1) Fractures | → | 15.03.02.01 (Fractures) |
| 2) Soft Tissue Lesions | → | 15.03.02.02 (Lesions) |
| 3) Spondylolysis | → | 15.03.02.03 (Spondylolysis) |
| 4) Spinal Stenosis | → | 15.03.02.04 (Stenosis) |

PDRS Impairment #'s

State Bar of California , 80th Annual Meeting, 09-29-2007