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**Limited Scope of Independent Medical Examiners (IME) Expert Reports  
In the California Workers Compensation System  
By Luis Pérez-Cordero & Craig Andrew Lange**

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**Purpose:** In the California Workers Compensation System, there is no need for the additional expense of an Independent Medical Examiner (IME) to decipher / or tell you if an impairment rating was miscalculated and The American Medical Association (AMA) Guides were misapplied. The IME process as described by the AMA Guides was not adopted in California and does not replace the expert contribution of both California workers compensation medical and non-medical professionals: There are no Independent Medical Examiners (IME) protocols in the California QME system nor are there WCAB provisions for their admissibility as evidence.

#### **Who Can Comment on AMA Guide Misapplications**

Required skills for determining impairment or critiquing the misapplication of the AMA Guides are not the exclusive venue of medical experts. **It is the purpose of the AMA Guides to be used for the consistent and reliable acquisition of medical information, communication and utilization of medical information through a single set of standards.** When clinical findings are fully described, any knowledgeable observer may check the findings with the Guides criteria. Nowhere in the AMA Guides are non-medical professionals restricted from its use, application, or interpretation.

For both the employer and employee, balanced safeguards have helped preserve the no-fault foundation of the California Worker Compensation system. Carefully crafted legislation, regulations and case law have preserved the genesis of Section 4, Article 14 of the California Constitution for more than three generations. In the California Workers Compensation System it is important to recognize which procedures from the AMA Guides were never adopted - procedures more adept for other types of insurance claims handling than the administration of workers compensation.

#### **Who Can Perform Impairment Evaluations in California**

An impairment evaluation is a medical evaluation performed by a physician as defined by **LC § 3209.3 (a):** 'Physician' includes [medical] physicians and surgeons holding an M.D. or D.O. degree, psychologists, optometrists, dentists, podiatrists and chiropractic practitioners licensed by California State Law and within the scope of their practice as defined by California State Law. (c) [Acupuncturists are not authorized to determine impairment/disability.]

#### **An impairment evaluation is not the same as an independent medical evaluation (IME).**

The physician's role in performing an impairment evaluation is to provide an independent, unbiased assessment of the individual's medical condition, including its effect on function. It should also identify abilities and limitations for performing work activities and activities of daily living. Full and complete reporting provides the best opportunity for the impairment evaluator to explain health status and consequences to injured workers, other medical professionals, and all non-medical personnel responsible for the administration of workers compensation. Thorough documentation of medical findings and their impact will also ensure that reporting is fair and consistent and that individuals have the information needed to pursue any benefits to which they are entitled. (AMA 5th Ed., pages 18 & 19)

Major changes brought about by SB 899 have created uncertainty and the need for continued guidance. We can build confidence by having balanced presenters. Unbalanced as well as unchecked training have created gratuitous opportunities allowing portions of the AMA Guides, not adopted in California, to enter through the back door.

SB 899 never approved elements of claims handling unique to the federal Longshore & Harbor Workers Compensation Act. SB 899 never intended to adopt every aspect of the AMA Guides, including the IME procedures as a replacement to California's PTP/QME/AME evaluation procedures.

After SB 899, California's need for training by out of state professionals introduced portions of the AMA Guides never adopted by the California Legislature, the Workers Compensation Appeals Board (WCAB), the Division of Workers Compensation (DWC) and/or DWC's Medical Unit.

The AMA Guides states that physicians must be cognizant of local workers compensation prerequisites. Nothing in the AMA Guides gives the medical professional or Guides Expert the authority to discard local adopted/legislative criteria in favor of Guides criteria. (AMA 5th Ed., pgs. 12 & 18)

**SB 899, Labor Code § 4660(b)(1), and the Schedule for Rating Permanent Disabilities (PDRS) only incorporated the following aspects of the AMA Guides:** *For purposes of this section “the nature of the physical injury” or disfigurement shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).*

**The following areas of the AMA Guides were not included in the above changes:**

1. The IME as a replacement for the California Primary Treating Physician (PTP), Qualified Medical Examiner (QME), the Agreed Medical Examiner (AME) or the Panel Agreed Medical Examiner (PAME).

2. The IME Report procedures in Section 2.6 in lieu of those still in effect in California.

- We follow Chapter 7 of the Labor Code – Medical Examinations. 8 CCR § 9793 (c)(1)(2), and the rules of evidence established by the WCAB. The comprehensive P&S report is defined by 8 CCR 9793, follows the procedures of 139.2 and WCAB § 10606, and must be attested in accordance with LC § 4628. The submission of only the computer work sheets used to calculate impairment, a boilerplate or ghost written report critiquing misapplications of the AMA Guides are not replacements for the PTP P&S report (§9785 g) or the QME/AME/PAME comprehensive medical-legal report as defined by 8 CCR 9793. The physician conducting the examination must be the same physician signing the report and composing and drafting the conclusions. (LC §4628(a)(3b)

3. The stand-alone accreditation system for continued education of the American Board of Independent Medical Examiners (ABIME), The American Medical Association (AMA), The Accreditation Council for Continuing Medical Education (ACCME).

- Continuing education and training requires the co-accreditation by DWC’s Medical Unit (for medical practitioners), the Insurance Department (for case administrators), or the State Bar of California MCLE & Legal Specialization Credits (for legal professionals).

4. Chapter 14: Mental & Behavioral Disorders.

- Psychiatric Impairment shall be evaluated by using the Global Assessment of Function (GAF) scales. We follow the procedures outlined on pages 1–12 to 1-16 of the 2005 PDRS. LC § 139.2 (C)(4) – Evaluation of psychiatric disability must be in accordance with LC § 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association’s Diagnostic & Statistical Manual of Mental Disorders, 3<sup>rd</sup> Edition (Revised).

5. The stand-alone pain calculating criteria of Chapter 18.

- California requires that the quantitative add-on of a 1 to 3 WPI be applied only when there is a conventional rating impairment. (05PDRS, page 1-12, AMA 5th Ed., pgs, 572 & 573)

6. The AMA Combined Values Chart. (There are 4 errors on page 605 and one on page 606).

- Use the Combined Values Charts in Section 8 of the 05PDRS, pages 8-1 to 8-4.

7. The Guides Apportionment Methodology.

- California apportionment is addressed under LC § 4663, 4664 and the legal decisions of both the WCAB & the California Courts. (Refer to *Escobedo & Dikes*) The AMA Guides WPI is not disability. A WPI does not become California Disability until it is adjusted to account for diminished earning capacity, occupation and age on the date of injury. (LC § 4660, page 1-2)

8. For peace officers and firefighters, AMA Guides attribution causation apportionment for cancer, heart, hernias, pneumonia, tuberculosis and blood born infections.

- We abide to criteria set by Labor Codes § 3212 to 3213 and WCAB en-banc decisions.

#### **Limited Scope of Independent Medical Examiners (IME) Expert Reports**

When a physician signs the comprehensive medical-legal report [not a rubber stamp] s/he attests to: compliance and disclosure requirements of LC § 4628; preparing an evaluation that meets the medical report standards established by both the Administrative Director and the WCAB.

The multiplicity of ‘expert’ opinions (often contradictory) has required WCAB En-Banc Decisions to provide much needed guidance. For example, Escobedo for causation apportionment of disability, with further clarification provided by published opinions of the Appeals’ Court Divisions, i.e.,

E&J Gallo Winery v. WCAB (Dykes). 5th District- File #F047246 for apportionment of prior awards.

The expediency of the WCAB is helping us avoid unnecessary costly disputes.

**We are in need of a WCAB en-banc decision addressing the parameters of the 'Independent' AMA Guides** Expert's opinion. However, guidance can be found as to the scope of an expert's opinion from the Board's utilization review decision in Simmons v. Dept of Mental Health. (06-21-05).

If we follow the court's rationale, it is beyond the scope of the IME/ AMA Expert to address issues for which the dispute procedures of LC § 4060, 4061, & 4062 must be followed.

**As with the UR Reviewer, the IME/AMA Reviewer cannot:**

1. Address medical issues for which a medical examination and a California license are required, regardless of their expertise - issues for which the dispute procedures of LC § 4060, 4061 & 4062 must be followed.
2. Prepare a comprehensive evaluation contrary to 8 CCR § 9793, or without following the procedures of LC § 139.2 & WCAB § 10606, and attested to in accordance with LC § 4628.
3. Provide conclusions beyond the misapplication of the AMA Guides – such as criticisms dealing with medical protocols or the examining physician's expertise, for issues beyond the impairment criteria under consideration. Evaluators do impairment assessments according to the criteria in the Guides. (AMA 5th Ed., pg. 21)
4. Address apportionment, vocational status need for job modifications or supplemental job benefits, and the need for future medical.
5. Prepare, write or submit boilerplate or 'ghost written' reports not in compliance with the disclosure requirements of LC § 4628. Labor Codes § 4060, 4061, & 4062 defines the comprehensive medical legal reports admissible at the WCAB.

California PTP's and QME's are required to express a medical opinion that addresses the medical and legal issues in the workers compensation claim, by properly applying both medical principles and California Workers Compensation Law.

To qualify as a medical legal expert in workers' compensation, the physician must have additional training and experience in workers compensation law so the physician can apply the compensation law to the facts and medical issues being analyzed. This reason alone justifies the certification and continuing education process for QME's.

The 'special studies' by out-of-state AMA experts on erroneous impairment ratings by California physicians are not helping to encourage or motivate our medical professionals to renew their QME licenses or treaters to become QMEs. DWC's medical unit needs to become more involved in promoting balanced educational programs by certifying better trainers. **DWC's proposed medical-legal fee schedule regulations will become effective 07-01-2006. Included in the amendments is an increase to the multiplier of medical-legal fees by 25% as well as other technical changes.**

#### **Expanding Role of PTP Comprehensive P&S Report**

Section § 46 of SB 899 took away the presumption of correctness; however, it did not take out the admissibility of the comprehensive PTP's P&S report in workers compensation proceedings. In actuality, when complying with LC § 9793 & WCAB 10606, alongside the PQME/PAME the PTP's report counter balance the weighted value once only given to QME/AME reports.

As we streamline from an average of five or more comprehensive P&S reports to a possible maximum of two, the weight of a PTP comprehensive P&S report becomes apparent, especially the PTP's comprehensive P&S report that complies with 8 CCR 9785(g), and Labor Code and California Code of Regulations applicable to the medical-legal evaluations as defined by 8 CCR 9793, LC § 139.2 & WCAB § 10606, and attested in accordance with LC § 4628.

We need Primary Treating Physicians. We need AME's. We need QMEs. We need all California Medical Professionals to join, renew, and become a Qualified Medical Examiner. We need to keep the humane evaluation process of the California Workers Compensation system alive. This humanity derived from the requirement that our QME's must remain a treating physician – QME must devote at least one-third of total practice time to providing direct medical treatment (LC § 139.2 (2)).

We need medical professionals working alongside other non-medical professionals as well as workers' advocates alongside employer advocates making sure that California doesn't fall into a one-sided IME evaluation procedure.

A procedure in which only an incontestable medical report is prepared: A procedure in which the primary treating physician, the QME or even the AME is seen as biased or incapable of objectivity. We all must learn to use the Guides to insure the survival of the no-fault foundation of the California Workers Compensation System.

**Without PTP's advancing to become QME's**, we can expect the proliferation of 'medical command centers' specializing only in AMA-IME Evaluations - their staffing and management reminiscent of the 'medical-mills' of the late 70's and early 80's. We can prevent medical-carpet bagging from continuing to rise.

Further WCAB clarification/guidance is required. However no one can say that the WCAB has or will shy way from assigned duties and responsibilities. The summary of 2005 Significant Case Decisions in California Workers Compensation Law, as presented by the Honorable WCAB Presiding Judges Mark Kahn (Van Nuys) and Robert Kutz (Eureka), can also be found at [http://www.dir.ca.gov/DWC/educonf13/DWC\\_EducationalConference.html](http://www.dir.ca.gov/DWC/educonf13/DWC_EducationalConference.html)

We hope the observations in these series of articles will open a dialogue and address, when applicable, the possible need to look at current claims administration procedures and see if modifications are required. At the 13<sup>th</sup> annual DWC Educational Conference Program, the Medical Unit provided excellent guidance on new forms for requesting a PQME, a Spinal Surgery Second Opinion, and for represented employees, the new Panel AME (PAME) procedures per LC § 4062.2(e).

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