

Attachment to Writing Usable Reports - IMC Perspective
Basic Elements in Medical/Legal Evaluation Report
Suzanne P. Marria, Esq., IMC

[Items required by LC 4628 must be included or report is inadmissible and there is no liability for payment. Discuss elements as appropriate for disputed issues identified by the parties.]

1. Date of Exam (LC § 4628(b); 8 CCR § 10606(a).)

2. Location of Exam (LC § 4628(b).)

3. Who examined

a. Physician signing report must do evaluation (LC 4628(a).)

- a. Minimum face to face requirement for physician signing report (LC 4628(b); 8 CCR 49 - 49.9 [listed by specialty: neuromusculoskeletal, cardiovascular, pulmonary, psychiatric, and other injury types]
- b. **Statement** that signing physician **actually performed** evaluation (LC 4628(b).)
- c. **Statement of compliance** with IMC evaluation **procedures** (8 CCR 43 -47.) and minimum face-to-face **evaluation time requirements** (8 CCR 49 - 49.9.) or with LC 5307.6, or detailed explanation of variance and reasons for variance from IMC requirements (LC 4628(b).)

b. Name, qualifications and role of persons other than signing physician who performed 'any' services in connection with report (LC 4628(b); 8 CCR 10606.)

1. Participated in the exam (8 CCR 10606; LC 4628(a).) (Note: LC 4628(a) states, except for taking initial outline of worker history or excerpting prior medical records, **no person other than signing physician**, and nurse performing routine nurse functions **shall examine** the injured worker **or participate** in the non-clerical preparation of report.
 - a. Took History (see LC 4628(a) and (c); 8 CCR 10606.) b. Summarized prior medical records (see LC 4628(a) and (c).
[Note: If (a) or (b) above done by other person, signing physician required to review and make additional inquiries of worker as necessary and appropriate. (LC 4628(d).)]
2. Did diagnostic studies or tests (LC 4628(b).)
3. Helped draft, edit or compose the report **in part or whole** (8 CCR 10606; LC 4628(a).)
 - c. Disclosure of fees paid to persons not employed by signing physician who did diagnostic procedures or diagnostic services, unless procedure or service falls within LC 5307.1 [Official Medical Fee Schedule] (LC 4628(i).)
4. Injured worker's current (subjective), complaints (8 CCR 10606(c).)
 - a. Source of all facts stated in history of complaints (8 CCR 10606).
5. History of Injury in dispute (8 CCR 10606(b).)
6. Medical Treatment to date of evaluation (8 CCR 10606)
 - a. Was treatment reasonable and necessary to cure or relieve from the effects of the industrial injury at issue?
 - b. Was period of treatment reasonable and necessary?
7. **Job description (Practice pointer: Implied requirement under 8 CCR 10606)**
 - a. Physical demands
 - b. Mental demands
 - c. Essential job functions
 - d. Will relate to conclusions on permanent disability, conditions for return to work and whether worker is a qualified injured worker entitled to vocational rehabilitation

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8. Employment history (*not required; good practice pointer*)
9. History of prior injuries, illnesses, conditions and residuals, if any (LC 4628(a)(1); 8 CCR 10606(e).) ['a complete history']
 - a. Industrial
 - b. Non-industrial
 - c. Summarize relevant history for report
10. Summary of medical records reviewed (LC 4628(a).)
 - a. If medical records are summarized or excerpted by person other than signing physician, signing physician must review the excerpts and make additional inquiries and examinations as necessary and appropriate to identify and determine relevant medical issues. (LC 4628(c).)
11. Findings on examination (8 CCR 10606(f).)
 - a. Objective findings
 1. Tests done and results
 2. Observations /measurements from physical examination
 - b. Subjective complaints of injured worker on examination
12. Diagnosis (8 CCR 10606(g); LC 4628(a)(3).)
 - a. Injury or illness diagnosis
 - b. Nature of injury or illness found
 1. Specific injury
 - a. Occurring as result of one incident or exposure which causes disability or need for medical treatment (LC 3208.1.)
 2. Cumulative injury
 - a. Occurring as repetitive' mentally or physically traumatic activity extending over a period of time, the combined effect of which causes any disability or need for medical treatment (LC 3208.1.)
 3. Identify all information relied on in formulation of opinion (LC 4062.2(d)(3); 8 CCR 10606(d).)
13. Discussion of Period of Temporary Disability (8 CCR 10606(h).)
 - a. Period in which injured worker is unable to perform job while recovering from and being treated for immediate effects of industrial injury. Continues until worker is permanent and stationary.
 - b. Discuss nature, extent and duration of disability and work limitations
 - c. Total or partial disability (extent)
 - d. Period of temporary disability (duration)
 - e. Identify all information relied on in formulation of opinion (LC 4062.2(d)(3).)
14. Discussion of Permanent Disability (8 CCR 10606(k).)
 - a. **Whether permanent disability resulted from industrial injury (8 CCR 10606(k).)**
 - b. Date on which condition became Permanent and Stationary (8 CCR 10606(k).)
 1. Injured worker has reached maximum improvement or condition has been stationary for a reasonable period of time (8 CCR 9735 and 10152).
 2. No change in worker's condition either for better or worse is expected. (Sweeney v. IAC (1951) 107 Cal. App. 2d 155, 16 Cal. Comp. Cases 264.)

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c. Description of findings of permanent disability

1. **Must describe findings relied on and reasons for conclusion that permanent disability exists, its cause and the extent of disability (8 CCR 10606(h), (i) and (k); LC 4062.2(d).)**
2. **Objective factors of permanent disability**
 - a. **Methods of measurement of physical elements of disability (See, IMC Guidelines for evaluation of disability, available through IMC [8 CCR 44 (pulmonary), 45 (cardiac), 47 (immunologic)] [See also 8 CCR 9725, reference to "Evaluation of Industrial Disability", edited by Packard Thurber, 2nd edition Oxford University Press, N.Y., 1960.)**
 - b. **Methods of measurement of psychiatric elements of disability (See, IMC Guideline for evaluation of disability ("Psychiatric Protocols"), available through IMC [8 CCR 43]; 8 CCR 9726.)**
 - c. **For psychiatric disability, must state percentage of permanent disability resulting from actual events of employment (See LC 3208.3; for injuries on or after 1/1/90.)(8 CCR 10606(m).)**
3. **Subjective factors of disability (8 CCR 9727.)**
 - a. Describe activity which produces the disability
 - b. Describe duration of disability
 1. Terms relating to frequency of pain (effective 4/1/97) a. 'Constant' means 90-100% of time b. 'Frequent' means 75% of time c. 'Intermittent' means 50% of time d. 'Occasional' means 25% of time
 2. Watch order of words in report a. 'Intermittent, slight pain' means 50% of slight pain, or 1/2 of 10% (spine/torso or bilateral extremities) 1/2 of 05% (single joint or extremity)
 3. Describe activity which produces pain
 - c. **Activities precluded by disability**
 - d. **Activities which can be performed with disability**
 - e. **Means necessary for relief**
 - f. **Presumption of meaning of terms**
 1. **Severe** pain precludes the activity precipitating the pain
 2. **Moderate** pain could be tolerated but would cause marked handicap in the performance of the activity precipitating the pain
 3. **Slight** pain could be tolerated, but would cause some handicap in the performance of the activity precipitating the pain
 4. **Minimal** pain would constitute an annoyance but causes no handicap in the performance of the particular activity, and would be considered to be non ratable permanent disability
4. **Work Restrictions (8 CCR 10606(h).)**
 - a. Limitations imposed by physician to allow return to work during healing or on permanent basis
 - b. Uses: to make appropriate modified work assignments; rate permanent disability; develop appropriate voc rehab plan
 - c. Actual (i.e. worker cannot do) or Prophylactic (imposed to prevent undue pain, return of symptoms which cause temporary disability, permanent disability or to prevent exacerbations that would increase need for medical care)

→ In This Website - Refer also to "The Nuts and Bolts of the Einstein-Horner Calculation:
Einstein-Horner Formulation

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4. Work Restrictions (8 CCR 10606(h).) (Continued)

d. Describe work restrictions by use of terms explaining limitation of work capacity, using terms as described in the Permanent Disability Rating Schedule

Note: Permanent Disability Rating Schedule effective 4/1/97.

1. Spine and Torso Guidelines
2. Lower Extremity Guidelines
3. Table for Rating Psychiatric Disabilities

e. Review job functions to assure discussion covers both current and open market job functions

5. Estimate Loss of Pre-injury Capacity

- a. Discuss loss of this individual's pre-injury capacity both at and outside of work
- b. Identify tasks worker did at pre-injury job
- c. Identify tasks worker did outside pre-injury job
- d. Base estimate of loss on reasonable indicators of worker's pre injury physical and/or mental status, as relevant
- e. Explain factors relied on in estimating loss of pre-injury capacity

15. Medical Cause of Disability (8 CCR 10606(i).)

- a. Identify all information relied on in formulation of opinion (LC 4062.2(d)(3).)
- b. Discuss relationship before injury or exposure and disability.
- c. If psychiatric injury claimed, state percentage of total causation resulting from actual events of employment (8 CCR 10606(m).)

16. Apportionment (8 CCR 10606(1).)

- a. Case types (LC 4750, 4663 and 4750.5 [subsequent injury claims].)
- b. Statement of total permanent disability as of P & S date
- c. Description of percentage of permanent disability caused solely by industrial injury in dispute
 1. State specific findings, reasoning which supports this conclusion, and all information relied on in formulation of opinion (LC 4062.2(d)(3).)
- d. Description of percentage of permanent disability which pre-existed the industrial injury in dispute
 1. State specific basis (e.g. evidence in prior medical records) and reasoning which supports this conclusion (LC 4062.2(d)(e).)
 2. Retroactive prophylactic work restrictions are NOT valid basis
 3. Distinguish between pre-existing pathology and pre-existing disability Cannot apportion to pre-existing pathology.

17. Future or further Medical Treatment Needed (8 CCR 10606(j).)

- a. State nature of treatment and/or medications expected
 1. If future surgery expected, state expected recovery time
- b. Define frequency of treatment and/or medication expected
- c. State expectations for changes in future
 1. Nature of treatment and/or medication
 2. Frequency

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18. Vocational Rehabilitation (LC 139.5(c); 8 CCR 10001 et seq.)

a. Is injured worker a Qualified Injured Worker?

1. Definition (8 CCR 10001(c).)

a. Injured worker must meet **both medical** and vocational eligibility tests

b. "Medical eligibility" means "(T)he effects of whose injury, whether or not combined with the effects of a prior injury or disability, if any, permanently preclude, or are likely to preclude the employee from engaging in his or her usual and customary occupation or the position in which he or she was engaged at the time of injury; AND

c. "Vocational eligibility" means, "(W)ho can reasonably be expected to return to suitable gainful employment through the provision of vocational rehabilitation services."

b. Factors upon which base opinion (LC 4062.2(d)(3).)

1. Tie into job functions

2. Request job analysis from employer, if needed

19. Summary of all other information provided to AME or QME

a. All information received from parties (LC 4062.2(d)(1); 8 CCR 10606(d).)

b. All information reviewed in preparation of the report (LC 4062.2(d)(2); 8 CCR **10606(d)**; **8 CCR 35.**)

c. QME panel physician exchange of information (8 CCR 35)

20. Signature

a. **Must be original signature (LC 4628(a); 8 CCR 10606(o).)**

b. **Stamped signature not acceptable**

c. **Stamp of 'dictated but not reviewed' not acceptable**

21. Declarations

a. Required by LC section 4628(j) for dates of injury after 1 / 1 / 90:

1. "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true."
2. Date of declaration and count where signed.

b. Required by LC section 4628(b) (see above)

1. That signing physician actually performed evaluation
2. That evaluation performed complied with IMC procedures (8 CCR 43 47.), or variance and reasons for variance
3. That signing physician complied with IMC rules on minimum face to face evaluation time (8 CCR 49 - 49.9), or variance and reasons for variance

c. Required by LC section 5703(a)(2):

1. Statement in body of report that there has not been a violation of LC section 139.3 [re: illegal referral to party with whom physician has financial interest]
2. Statement under penalty of perjury that contents of report are true and correct to the best knowledge of the physician.
(Effective after 7/16/93 for all dates of injury.)

Note: Attach to completed report, summary form required by 8 CCR 36. (Form at 8 CCR 36.1 [IMC Form 1002].)

Application note:

References to LC mean California Labor Code. References to 8 CCR mean Title 8 of the California Code of Regulations.

Requirements by 8 CCR 10606 apply to all injury dates.

Requirements under LC 4628 apply to all cases involving injury on or after 1 / 1 / 90. (If injury pre-1/1/90, consult legislative history.)

Requirements under LC 3208.3 apply to cases involving injury on or after 1/1/90.

Requirements under LC 4062.2 apply to AME and QME reports for all injury dates.

Requirement under LC 5703(a)(2) applies to all injury dates. (Law effective after 7/16/93.)

Requirement under LC 139.3 applies to cases involving injury on or after 1 / 1 / 94. (If injury pre-1/1/94, consult legislative history.)

SPM:mld/Elem/Med/Lgl/2/99