


Permanent Disability in California Workers' Compensation / Peter Swann, MD

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Permanent Disability in California Workers' Compensation



Almaraz/Guzman:
The Before & Aftermath

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PD Process 2005-2009: Before Almaraz/Guzman WCAB En Banc Decision

SB 899 (2004)
Changed how permanent disability is calculated in Workers' Compensation cases

- Mandated use of AMA Guides to the Evaluation of Permanent Impairment
- **Impairment** rating so derived multiplied by appropriate diminished future earning capacity (DFEC) Adjustment Factor per the 2005 schedule
- So – **Impairment** x DFEC = \$ worth of "Disability"




Almaraz Case: Summary

Truck Driver with Low Back Injury 

- Pulling tarp over truck
- Later laminectomy/diskectomy L4-5


AMA Guides **Impairment** X DFEC
= 14% disability (after apportionment)


Guzman Case: Summary

Secretary with Cumulative Bilateral Upper Extremity Injury / Carpal Tunnel Syndrome 


AMA Guides **Impairment** X DFEC
= 12% disability

Almaraz / Guzman Court Cases: Disagreement over Permanent Disability & Apportionment

Essentially same argument made in both cases: 

- law does not require that AMA guides be blindly followed when the Guides do not completely and fairly describe and measure the injured Employees impairment 

Almaraz/Guzman: WCAB En Banc Decision




A. The **AMA Guides** portion of the 2005 schedule **is rebuttable**;

B. **Rebuttal** = showing that impairment rating based on AMA Guides would result in a PD award that would be **inequitable, disproportionate, and not a fair and accurate measure** of the Employees permanent disability; and


Almaraz/Guzman: WCAB En Banc Decision

C. Once AMA Guides have been rebutted, WCAB may make an impairment determination that **considers medical opinions that are not based, or are only partially based, on the AMA Guides.**

D. Impairment ratings **may not be** directly or indirectly **based on any schedule in effect prior to 2005**, regardless of how "fair" such a rating might seem to a physician, litigant, or trier-of-fact.






Questions After Almaraz/Guzman




A. Is WCAB decision consistent with the Legislative Intent of SB 899?

B. Is a permanent disability award generated using AMA Guides methodology inequitable, disproportionate, and not a fair and accurate measure of the Employees permanent disability?

– **How does one decide?** 

Questions After Almaraz/Guzman


C. If the AMA guides are rebuttable, what can rebut them? 


A. Ability to perform activities of daily living?

B. Ability to perform complex activity such as work?

C. Medical consequences of performing a complex activity such as work?



D. Personal physician clinical judgment?

E. Other.... 





Questions After Almaraz/Guzman

D. How will disability ratings so derived "Promote consistency, uniformity and objectivity," as required by Labor code 4660 (d).


WCAB Reconsiders Its Reconsideration...???

- On 04/06/2009 the WCAB issued orders Granting reconsideration and allowing Amicus Briefs 
- **17 Amicus Briefs submitted: Vast majority* argue against the WCAB decision**



(*e.g. California Chamber of Commerce, County of Los Angeles, California Self-Insured Employers Association, California Workers Compensation Institute, Department of Industrial Relations Director John Duncan, Protected Insurance Program for Schools, Insurance Commissioner Steve Polzer, Safeway Inc., The Boeing Company, San Diego Schools Joint Powers Authority, The Travelers Companies Inc.)


So...
What's A Doctor To Do???



A. Determine an impairment rating using the AMA Guides to Impairment Methodology.

B. Decide in your own mind whether that rating is equitable, proportionate, and a fair and accurate measure;

1. **if it is**, your done!
2. **if it isn't**, "be creative" in deciding why it isn't and what measure(s) is more equitable, proportionate, fair and accurate.
3. **Be prepared to defend your decision!!! (e.g. Deposition)**



Questions taken at the end...