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No. 91963-1

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CLARK COUNTY,

Defendant/Petitioner,

vs.

PATRICK J. McMANUS,

Plaintiff/Respondent.

Filed *E*
Washington State Supreme Court
FEB 10 2016 *by h*
Ronald R. Carpenter
Clerk

BRIEF OF AMICUS CURIAE
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 ORIGINAL

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice. WSAJ Foundation operates an amicus curiae program and has an interest in the rights of persons seeking legal redress under the civil justice system, including an interest in the rights of claimants under the Industrial Insurance Act, Title 51 RCW (IIA or act).

II. INTRODUCTION AND STATEMENT OF THE CASE

This appeal provides the Court with an opportunity to clarify its decision in Hamilton v. Labor & Indus., 111 Wn. 2d 569, 761 P. 2d 618 (1988), regarding the IIA “special consideration” rule and whether a jury passing upon the correctness of a Board of Industrial Insurance Appeals decision should be instructed that special consideration be given to the opinions of a claimant's attending physician. This review arises out of a worker's compensation claim filed by Patrick J. McManus (McManus) with the Department of Labor & Industries (Department). McManus' employer Clark County (County) is self-insured under the IIA.

The underlying facts are drawn from the published Court of Appeals opinion and the briefing of the parties, as well as the Court's Instructions (CP 81-97), Special Verdict Form (CP 98) and proposed Instruction No. 10

(CP 58). See Clark County v. McManus, 188 Wn. App. 228, 354 P. 3d 868, *review granted*, 184 Wn. 2d 1018 (2015); McManus Supp. Br. at 1-4; McManus Pet. for Rev. at 1-8; County Ans. to Pet. for Rev. at 1-5; McManus Br. at 4-13; County Br. at 1-12.

For purposes of this brief, the following facts are relevant: McManus worked full time as a street sweeper operator for the County between 1999 and 2011. In 2011, he filed a worker's compensation claim for occupational disease, contending he suffered a work-related disability due to the repetitive trauma of driving street sweepers. The Department allowed McManus' claim and awarded benefits. The County appealed this determination to the Board of Industrial Insurance Appeals (Board), and an industrial appeals judge conducted a hearing on the merits. The proposed decision and order upheld the Department determination, concluding that the repetitive jarring and bumping involved in operating the street sweepers constituted distinctive conditions of employment and that McManus sustained an aggravation of a preexisting low back condition that arose naturally and proximately out of employment.

At the Board hearing, McManus' attending physician testified in support of his claim. Dr. Won, board certified in preventive and family medicine, opined that McManus' low back disability is employment-

related.¹ The County presented contrary opinions by two forensic medical experts, one a board certified neurosurgeon and the other a board certified orthopedic surgeon. These forensic experts had reviewed McManus' medical records, and one of them had examined him on one occasion.

The County appealed the proposed decision and order of the industrial appeals judge. The Board affirmed, adopting the proposed decision and order.

The County appealed the adverse Board decision to superior court, and the case was tried before a jury. The court instructed the jury on the Board's findings, as well as the presumptive correctness of its decision, the legal issue for determination, and the County's burden of proving the Board decision incorrect. See Court Instructions 4 & 5; Special Verdict Form. The court also instructed the jury regarding its role in determining the credibility of witnesses. See Court Instructions 1, 7.² The court rejected McManus' proposed Instruction No. 10 regarding the "special consideration" rule, which provides as follows:

You should give special consideration to testimony given by an attending physician. Such special consideration does not require you to give greater weight or credibility to, or to believe or

¹ It appears undisputed that Dr. Won was an attending (or treating) physician for McManus under the IIA. See WAC 296-20-01002 (providing "attending provider" includes a physician and is one who "actively treats an injured or ill worker").

² These instructions appear to be drawn from Washington Pattern Jury Instructions (Civil) WPI 1.02 and WPI 2.10.

disbelieve, such testimony. It does require that you give any such testimony careful thought in your deliberations.

McManus, 188 Wn. App. at 241 (quoting proposed Instruction No. 10).³

The sole question before the jury was whether the Board was correct in determining that McManus' low back condition arose naturally and proximately from the distinctive conditions of his employment as a street sweeper operator. See id. at 235-36; Special Verdict Form. The jury concluded that the Board was incorrect in this determination. See McManus at 236.

McManus appealed to the Court of Appeals, Division I, which reversed and remanded for a new trial due to evidentiary and instructional errors unrelated to the special consideration rule. See id. at 231. A majority of the court rejected McManus' claim that the trial court erred in refusing to give proposed Instruction No. 10, which sets forth the special consideration rule. See id. at 241-42. The majority held that refusing to give the instruction was not an abuse of discretion, concluding it was unnecessary in light of the general instructions given addressing witness credibility. See id. The majority explains:

...McManus was able to argue that Dr. Won, as his treating physician, was better qualified to render an opinion on the etiology of his injury than the Department's [sic-County's] witnesses. And

³ This proposed instruction is identical to the current WPI 155.13.01, which is reproduced in the Appendix to this brief, along with the related "Note on Use" and "Comment."

the jury was informed that it could accept this theory. Thus, under the circumstances, the trial court's general instruction was sufficient.

Id. (bracket added; citation omitted). One judge dissented regarding the failure to give proposed Instruction No. 10, relying upon this Court's opinion in Hamilton:

Both the majority and the trial court stray from proper adherence to applicable Supreme Court precedent by determining that the instructions given in this case were sufficient because the claimant's attorney was permitted to argue a rule of law to the jury, in the absence of an instruction on that rule by the trial judge.

Id. at 248 (Dwyer, J., concurring and dissenting).

McManus and the County petitioned this Court for review and only McManus' petition was granted. See Order (12/2/15).⁴

III. ISSUE PRESENTED

In adjudicating workers' compensation claims under the Industrial Insurance Act, does Hamilton require that special consideration be given to the opinions of a claimant's attending physician, and when a Board of Industrial Insurance Appeals decision is reviewed in superior court by a jury should it be instructed to this effect?

IV. SUMMARY OF ARGUMENT

Under Hamilton v. Labor & Indus., 111 Wn. 2d 569, 761 P. 2d 618 (1988), special consideration should be given to the opinion of the claimant's attending physician in adjudicating a worker's compensation

⁴ In light of the Court's denial of the County's petition a new trial must follow.

claim. A fact-finder is not required to give the attending physician's opinion more weight or credibility, but should be mindful of an attending physician's pivotal role in the claims adjudication process under the IIA.

This special consideration rule is subject to the doctrine of stare decisis, and the County's apparent argument that Hamilton be overruled should be rejected because its holding is neither incorrect nor harmful. The special consideration rule is grounded in the unique nature of Washington's Industrial Insurance Act, Title 51, RCW. It applies at *every* stage of proceedings, from the initial determination by the Department of Labor and Industries or self-insurer, through administrative review by the Board of Industrial Insurance Appeals, up to and including judicial review by the courts.

Hamilton properly holds that juries reviewing workers' compensation determinations should be instructed on this rule. The Department and self-insured employers, industrial insurance hearing officers, the Board, and superior court judges conducting de novo review of Board decisions are all well versed in application of the rule. This is not true of a jury undertaking de novo review on the record. In order for a jury to conduct meaningful review of a Board decision, it needs to be apprised of the rule of law that is applied throughout the adjudicative process. Otherwise, the letter of the IIA and its remedial purposes are not met.

V. ARGUMENT

A) Overview Of The IIA System For Adjudicating Workers' Compensation Claims, And The Role Of The Attending Physician In The Process.

The IIA And Its Adjudication Process

As explained in Dennis v. Labor & Industries, 109 Wn. 2d 467, 745 P. 2d (1987), the IIA

...was the result of a compromise between employers and workers. In exchange for limited liability, the employer would pay on some claims for which there had been no common law liability. The worker gave up common law remedies and would receive less, in most cases, than he would have received had he won in court in a civil action, and in exchange, would be sure of receiving that lesser amount *without having to fight for it*.

109 Wn.2d at 469 (emphasis added); see also Stertz v. Industrial Ins. Comm'n, 91 Wash. 588, 590-91, 158 P. 256 (1916). The act provides a no fault compensation system, and must be liberally construed in favor of claimants. See RCW 51.04.010; 51.12.010; see also Dennis, 109 Wn. 2d at 470 (recognizing "the guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker"; citations omitted).

The IIA claims-handling process is administered by the Department, unless the particular employer is self insured, as in this case. See Ch. 51.28

RCW (regarding claims handling procedures); Ch. 51.14 RCW (regarding employer self insurance program). A self insured employer claims handling process must comport to that of the Department, and is subject to its supervision. See generally RCW 51.14.030; .080; .130.

Disposition of a claim by the Department or self insured employer is subject to review by the Board. See Ch. 51.52 RCW. When there is an appeal by an employer, the employer has the burden of presenting a prima facie case showing the Department's order is incorrect; once this occurs, the burden shifts to the claimant or Department to prove by a preponderance of the evidence the order on appeal is correct. See RCW 51.52.050(2); Olympia Brewing Co. v. Dept. of Labor & Indus., 34 Wn. 2d 498, 504-05, 208 P. 2d 1181 (1949), *overruled on other grounds by* Windust v. Dep't of Labor & Indus., 52 Wn. 2d 33, 39-40, 323 P.2d 241 (1958). Under this appeal process, an industrial appeals judge conducts an evidentiary hearing on the record and issues a proposed decision and order (PD&O). See RCW 51.52.100-.106. Upon filing of a petition for review the PD&O is subject to review by the Board, which issues a final decision subject to court review. See RCW 51.52.106; .110.

Industrial insurance appeals from the Board to the superior court are governed by RCW 51.52.115. Appeals may be tried to the bench or a jury, and the trier of fact conducts de novo review on the record. See id. On such

review, the Board's decision is deemed prima facie correct, and the party attacking the decision must support its challenge by a preponderance of the evidence. See Ruse v. Dep't of Labor & Indus., 138 Wn. 2d 1, 5, 977 P. 2d 570 (1999); Gorre v. City of Tacoma, 184 Wn. 2d 30, 357 P. 3d 625 (2015). Further review before an appellate court is limited to examination of the record to determine whether substantial evidence supports the superior court's decision on de novo review or whether the court's legal determinations flow from such findings. See Ruse, 138 Wn. 2d at 5-6.

The Role Of The Attending Physician Under The IIA

In Shafer v. Labor & Indus., 166 Wn.2d 710, 213 P. 3d 591 (2009), holding that a claimant's workers' compensation claim is not final for purposes of appeal until the attending physician receives a copy of the Department's closure order, the Court explained:

The IIA makes it abundantly clear that a worker's attending physician plays an important role once the worker has chosen that physician for treatment. For instance, the physician is required to inform the injured worker of his or her rights under the IIA and lend assistance in filing a claim. RCW 51.28.020(1)(b). Physicians are also required to follow rules and regulations adopted by the Department as well as provide reports to the Department regarding treatment given to the worker. RCW 51.36.060. In addition, there are numerous other statutory and regulatory obligations that an attending physician is required to assume once the worker's claim is accepted by the Department. *See, e.g.*, ch. 296-20 WAC.

The acknowledged requirement that an attending physician is to receive a copy of a closure order demonstrates that he or she is a critical component to the final resolution of claims.

166 Wn. 2d at 720; see also RCW 51.36.010 (recognizing a claimant's right to select attending physician subject to conditions imposed by Department).⁵

Under this statutory scheme the attending physician is required to follow the Department's "evidence-based coverage decisions and treatment guidelines, policies [etc.]" See RCW 51.36.010(1). To assist attending physicians in treating claimants and processing their claims, the Department publishes an "Attending Doctor's Handbook" (Handbook), which provides comprehensive information, guidelines and forms for providers and their staff. See PUBLICATION F252-004-000 [10-2012] (<http://www.lni.wa.gov/IPUB/252-004-000.pdf>). Among other things, the Handbook contains suggestions on how attending physicians should function on behalf of their patients, including the suggestion that attending physicians rate the impairment of their own patients, as opposed to leaving that to others such as consultants conducting independent medical examinations (IMEs). See Handbook at 46. Among the reasons listed for the attending physician undertaking the rate impairment process is the following:

- **Risks of litigation may be significantly lower** (as compared with IMEs). This is partly because, according to case law, the opinion of the attending doctor is "entitled to

⁵ The full text of the current version of RCW 51.36.010 is reproduced in the Appendix to this brief.

special consideration” in department decisions [*Hamilton v. Department*, 111 WN. 2d 569 (1988)].

Id.⁶

B) This Court’s Decision In *Hamilton* Recognizes The Need For Juries To Be Instructed Regarding The Long-Standing “Special Consideration” Rule For Attending Physicians, And Court of Appeals Decisions Reading *Hamilton* Differently Must Be Disapproved.

In *Hamilton v. Labor & Indus.*, supra, this Court recognized “a long-standing rule of law in workers’ compensation cases that special consideration should be given to the opinion of a claimant’s attending physician.” 111 Wn. 2d at 571.⁷ *Hamilton* is quite clear that a jury conducting de.novo review of a Board decision needs to be instructed on this rule, notwithstanding subsequent Court of Appeals precedent suggesting otherwise, which is discussed below.

⁶ An extract from the current on-line version of the Handbook, consisting of Pages A-C (introductory materials), i-ii (table of contents), and 46-48 (regarding “impairment ratings”) are reproduced in the Appendix.

⁷ While *Hamilton* appears to have been the first case where this Court considered the propriety of whether a jury should be instructed on the special consideration rule, the rule was otherwise well-settled long before *Hamilton*. See *Spalding v. Dept. of Labor & Ind.*, 29 Wn. 2d 115, 128-29, 186 P. 2d 76 (1947) (recognizing “that special consideration should be given to the opinion of the attending physician,” but declining to establish a “hard and fast rule,” concluding issue is for the jury.); *Groff v. Dept. of Labor & Ind.*, 65 Wn. 2d 35, 44-46, 395 P. 2d 633 (1964) (emphasizing “that special consideration should be given to the opinion of the attending physician,” and that in order to properly review a superior court determination regarding an industrial claim the superior court should provide an explanation as to why the attending physician’s testimony was not preferred over that of other medical experts); *Chalmers v. Dep’t of L. & Indus.*, 72 Wn. 2d 595, 598-602, 434 P. 2d 720 (1967) (reaffirming special consideration rule but concluding attending physician’s testimony was based upon insufficient foundation resulting in a failure of proof by claimant).

In Hamilton, the Department challenged a jury verdict overturning a Board decision denying disability benefits. In particular, the Department argued that a court instruction on the special consideration rule constituted an impermissible comment on the evidence in violation of Wash. Const. Art. IV §16. See Hamilton, 111 Wn. 2d at 570.⁸ The Court of Appeals had determined the instruction was an impermissible comment on the evidence. See id. In a unanimous opinion this Court reversed, concluding the instruction did nothing more than set forth an accurate statement of applicable law. See id. at 571-73. In the course of its analysis, this Court explained the need for providing such guidance to the jury, recognizing that the instruction

...reflects binding precedent in this state and correctly states the law. Since this is a rule of law, it is appropriate that the jury be informed of this by the instructions of the court. *To refuse to do so would convert the rule of law into no more than the opinion of the claimant's attorney.*

Id. at 572 (emphasis added). Under this analysis, the jury is not required to give an attending physician's opinions more weight, only "careful thought."

Id. The Court concludes that when the instruction is considered in conjunction with the (standard) instruction regarding weighing testimony

⁸ The jury instruction in Hamilton provided:

In cases under the Industrial Insurance Act of the State of Washington, special consideration should be given to the opinion of the plaintiff's attending physician. Hamilton at 570.

and credibility of witnesses it is neither confusing nor misleading. See id. at 578. The Court further notes that the instruction is in keeping with both the letter and spirit of the IIA, and the remedial purposes of the act. See id.

Despite the plain and straightforward analysis in Hamilton, three Court of Appeals opinions have either questioned the effectiveness of instructing the jury regarding the special consideration rule, or cast its use as a matter of trial court discretion. See McClelland v. ITT Rayonier, 65 Wn. App. 386, 393-94 & n. 1, 828 P. 2d 1138 (1992); Boeing Co. v. Harker-Lott, 93 Wn. App. 181, 186-89, 968 P. 2d 14 (1998), *review denied*, 137 Wn. 2d 1034 (1999); Larson v. City of Bellevue, 188 Wn. App. 857, 883-84, 355 P. 3d 331 (2015). Each of these cases questions this Court's holding in Hamilton, undermining its precedential effect.

In McClelland, the court affirmed a summary judgment upholding denial of benefits because the attending physician's opinion lacked the requisite objective proof required for the particular occupational disease claim. 65 Wn. App. at 393-94. While the court acknowledged the special consideration rule, it was not implicated in resolving the appeal because of the failure of proof. See id. Nonetheless, in dicta the court observed:

We are unsure what the Supreme Court means by "special consideration". Hamilton explained that this does not require a jury to "give more weight or credibility to the attending physician's testimony but to give it careful thought." 111 Wn. 2d at 572. We assume that the jury gives careful thought to every witness's

testimony. If the attending physician's testimony does not carry any more weight or credibility with the jury, how then does the jury give it special consideration?

Id. at 694 n.1. This criticism is misconceived. All Hamilton requires is that, *in the course of* weighing credibility of witnesses, including expert witnesses, the jury be mindful of the special consideration an attending physician's testimony warrants.

In Harker-Lott, the court simply misreads Hamilton. While the court acknowledges that special consideration should be given to an attending physician, it concludes:

But the *Hamilton* court did not hold that an instruction to that effect was mandatory. Rather the court held only that such an instruction was not a comment on the evidence. No case has specifically held that such an instruction must be given when the evidence supports it.

93 Wn. App. at 186. This analysis overlooks a key aspect in Hamilton. While the Court indicated use of the special consideration rule instruction was "appropriate," and did not use the term "mandatory," it also described the special consideration rule as a "rule of law" and indicated that refusing to give the instruction "would convert the rule of law into no more than the opinion of the claimant's attorney." 111 Wn. 2d at 572. This analysis recognizes a *need* for instructing the jury on the special consideration rule.⁹

⁹ See §C., infra, regarding whether the special consideration rule instruction should be given in all cases.

It accurately reflects the requirement that a jury must be instructed on the applicable law. See Barrett v. Lucky Seven Saloon Inc., 152 Wn. 2d 259, 267, 96 P. 3d 386 (2004) (providing that “[a]s with a trial court’s instruction misstating the applicable law, a court’s omission of a proposed statement of the governing law will be reversible error where it prejudices a party”; quotation omitted).

Harker-Lott also misreads Hamilton in a second respect when it concludes that “[t]he concept of giving special consideration to an attending physician was not so esoteric that the jury needed a special instruction from the judge to understand it.” 93 Wn. App. at 187. This ignores Hamilton’s recognition of the IIA as “a unique piece of legislation,” 111 Wn. 2d at 572, and also overlooks the attending physician’s pivotal role in the claims adjudication process. See §A, supra.

In Larson, the court relies upon the flawed analysis in Harker-Lott in concluding use of the special consideration rule instruction is a matter of trial court discretion. 188 Wn. App. at 883-84.

Overall, the analysis in these Court of Appeals decisions of Hamilton and the special consideration rule is misguided, and should be rejected.

C) The County's Apparent Request To Overrule *Hamilton* Should Be Rejected Because It Is Neither Incorrect Nor Harmful, And The Court Should Reaffirm That A Jury Needs To Be Instructed On the Special Consideration Rule In Order For It To Undertake Meaningful De Novo Review Of A Board Decision.

The County argues before this Court that WPI 155.13.01 should never be given, and further suggests that Hamilton should be reexamined and overruled. See County Ans. to Pet. for Rev. at 6-9.¹⁰ Hamilton is neither incorrect nor harmful, and should remain binding precedent under the doctrine of stare decisis. See State v. Devin, 158 Wn. 2d 157, 142 P. 3d 599 (2006) (applying incorrect and harmful test for overruling precedent). A jury instruction regarding the special consideration rule is necessary for the jury to meaningfully review the Board decision.

In urging that Hamilton should be reexamined and the special consideration rule instruction discarded, the County principally relies on the criticisms leveled against Hamilton by the Court of Appeals opinions discussed in §B, supra. As previously explained, these decisions misapprehend this Court's holding in Hamilton.

The County is also incorrect in asserting that use of the special consideration rule instruction has "a detrimental impact upon the trier of

¹⁰ Alternatively, the County asserts the trial court did not abuse its discretion in rejecting proposed Instruction No. 10 because not putting "on a pedestal lackluster testimony from an attending physician by the trial judge in this instance allowed for a more equitable adjudication of the issue presented." County Ans. to Pet. for Rev. at 12.

fact fairly adjudicating the issues on appeal based upon the facts and substance of a witness's testimony as opposed to their status." County Ans. to Pet. for Rev. at 6. The special consideration rule is not about the mere "status" of the attending physician, it is about the pivotal role he or she plays in the claims adjudication process.

Moreover, it is the failure to instruct on the rule that has a detrimental impact. In the absence of a jury instruction on the special consideration rule, the jury cannot conduct meaningful de novo review on the record of a Board decision that is presumed correct under the law. Notably, the Board itself recognizes and applies the special consideration rule. See In Re Merle Free, Jr., BIIA Dec., 89 0199 (1990); In Re Donald Anderson, BIIA Dec., 87 3724 (1989).¹¹ As noted in §A, the Department applies the rule in adjudicating claims. And, because self-insured employers are bound to comply with Department claims handling processes, they too must apply the rule. Certainly superior court judges reviewing a Board decision apply the rule.

Ultimately, the County would have the jury be the only trier of fact that would be unenlightened as to the special consideration rule in resolving a claimant's injury or occupational disease claim. This cannot be the law.

¹¹ These are "significant decisions" of the Board under RCW 51.52.160.

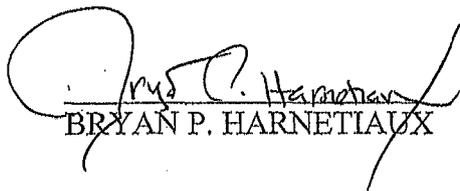
Without instruction on this unique aspect of worker's compensation law a jury cannot reasonably be expected to appreciate this point of law to the same extent as other fact-finders adjudicating workers' compensation claims, from the Department on up. See McManus Pet. for Rev. at 16-18.

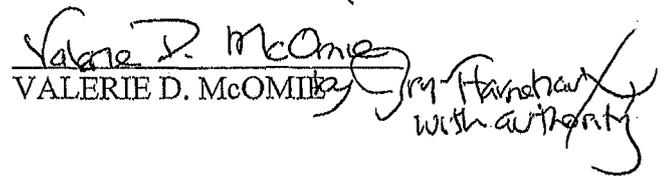
The special consideration rule instruction needs to be given to the jury so that it fully understands the nature of the lens to be used in conducting review. To the extent WPI 155.13.01's Comment suggests otherwise, it should be disapproved. See Appendix.¹² Whether any set of circumstances may override the need to instruct the jury on the special consideration rule is not presented here.¹³

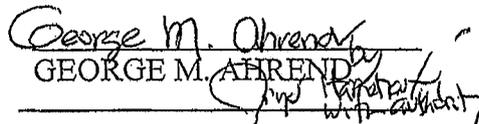
VI. CONCLUSION

The Court should adopt the arguments advanced in this brief and resolve this appeal accordingly.

DATED this 29th day of January, 2016.


BRYAN P. HARNETIAUX


VALERIE D. McOMIE *By Harnetiaux with authority*


GEORGE M. AHREND *By Harnetiaux with authority*

On Behalf of
WSAJ Foundation

¹² The parties have not suggested that the text of WPI 155.13.01 should be modified in any respect, so this question is not addressed in this brief.

¹³ Any such circumstances would have to be of an extraordinary nature to deprive the jury of an understanding of this critical rule of law. See e.g. Harker-Lott, 93 Wn. App. at 187-88 (refusing special rule instruction for multiple reasons, including because attending physicians' testimonies were in conflict).

APPENDIX

6A Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 155.13.01 (6th ed.)

Washington Practice Series TM
Washington Pattern Jury Instructions--Civil
Database updated June 2013
Washington State Supreme Court Committee on Jury Instructions
Part XI. Workers' Compensation
Chapter 155. Workers' Compensation

WPI 155.13.01 Testimony of Attending Physician

You should give special consideration to testimony given by an attending physician. Such special consideration does not require you to give greater weight or credibility to, or to believe or disbelieve, such testimony. It does require that you give any such testimony careful thought in your deliberations.

Note on Use

Use of this instruction should be considered in conjunction with the reference in WPI 1.02, Introductory Instruction (as modified by WPI 155.01), to the role of the jury in weighing the testimony of witnesses, as well as the provisions of WPI 2.10, Expert Testimony.

Comment

In *Hamilton v. Department of Labor and Industries*, 111 Wn.2d 569, 761 P.2d 618 (1988), the Washington Supreme Court held that the following instruction given by the trial court did not constitute an unconstitutional comment on the evidence: "In cases under the Industrial Insurance Act of the State of Washington, special consideration should be given to the opinion of the plaintiff's attending physician." The court found that this instruction did not give the personal opinion of the trial judge and that it embodied a long-standing rule of law in workers' compensation cases that special consideration should be given to the opinion of a claimant's attending physician.

The instruction on attending physicians need not always be given. In *Boeing Co. v. Harker-Lott*, 93 Wn.App. 181, 186-88, 968 P.2d 14 (1998), the court upheld the trial judge's refusal to give WPI 155.13.01 as being within the range of discretion. The appellate court gave three reasons for its holding: a more general instruction was given that allowed the plaintiff to argue "special consideration" to the jury, the testimony of the attending physicians was in conflict, and the proposed instruction did not involve esoteric concepts that were key to the plaintiff's case. The general instruction in *Harker-Lott* directed jurors to evaluate each witness' testimony by taking into account "the opportunity and ability of the witness to observe, any interest, bias or prejudice the witness may have, the reasonableness of the testimony of the witness considered in light of all the evidence, and any other factors that bear on believability and weight." *Boeing Co. v. Harker-Lott*, 93 Wn.App. at 187, 968 P.2d 14. This general instruction was based on former WPI 155.01.

According to *Hamilton*, this instruction "does not require the jury to give more weight or credibility to the attending physician's testimony but to give it careful thought." *Hamilton*, 111 Wn.2d at 572, 761 P.2d 618. As two Court of Appeals opinions have pointed out, however, jurors are supposed to give careful thought to the testimony of *every* witness. *McClelland v. ITT Rayonier, Inc.*, 65 Wn.App. 386, 394 n. 1, 828 P.2d 1138 (1992); *Boeing Co. v. Harker-Lott*, 93 Wn.App. at 188 n.14, 968 P.2d 14.

[Current as of May 2002.]

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 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 51. Industrial Insurance (Refs & Annos)
Chapter 51.36. Medical Aid (Refs & Annos)

West's RCWA 51.36.010

51.36.010. Findings--Minimum standards for providers--Health care provider
network--Advisory group--Best practices treatment guidelines--Extent and duration
of treatment--Centers for occupational health and education--Rules--Reports

Effective: July 28, 2013

Currentness

(1) The legislature finds that high quality medical treatment and adherence to occupational health best practices can prevent disability and reduce loss of family income for workers, and lower labor and insurance costs for employers. Injured workers deserve high quality medical care in accordance with current health care best practices. To this end, the department shall establish minimum standards for providers who treat workers from both state fund and self-insured employers. The department shall establish a health care provider network to treat injured workers, and shall accept providers into the network who meet those minimum standards. The department shall convene an advisory group made up of representatives from or designees of the workers' compensation advisory committee and the industrial insurance medical and chiropractic advisory committees to consider and advise the department related to implementation of this section, including development of best practices treatment guidelines for providers in the network. The department shall also seek the input of various health care provider groups and associations concerning the network's implementation. Network providers must be required to follow the department's evidence-based coverage decisions and treatment guidelines, policies, and must be expected to follow other national treatment guidelines appropriate for their patient. The department, in collaboration with the advisory group, shall also establish additional best practice standards for providers to qualify for a second tier within the network, based on demonstrated use of occupational health best practices. This second tier is separate from and in addition to the centers for occupational health and education established under subsection (5) of this section.

(2)(a) Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced registered nurse practitioner of his or her own choice, if conveniently located, except as provided in (b) of this subsection, and proper and necessary hospital care and services during the period of his or her disability from such injury.

(b) Once the provider network is established in the worker's geographic area, an injured worker may receive care from a nonnetwork provider only for an initial office or emergency room visit. However, the department or self-insurer may limit reimbursement to the department's standard fee for the services. The provider must comply with all applicable billing policies and must accept the department's fee schedule as payment in full.

(c) The department, in collaboration with the advisory group, shall adopt policies for the development, credentialing, accreditation, and continued oversight of a network of health care providers approved to treat injured workers. Health care providers shall apply to the network by completing the department's provider application which shall have the force of a contract with the department to treat injured workers. The advisory group shall recommend minimum network standards for

the department to approve a provider's application, to remove a provider from the network, or to require peer review such as, but not limited to:

- (i) Current malpractice insurance coverage exceeding a dollar amount threshold, number, or seriousness of malpractice suits over a specific time frame;
- (ii) Previous malpractice judgments or settlements that do not exceed a dollar amount threshold recommended by the advisory group, or a specific number or seriousness of malpractice suits over a specific time frame;
- (iii) No licensing or disciplinary action in any jurisdiction or loss of treating or admitting privileges by any board, commission, agency, public or private health care payer, or hospital;
- (iv) For some specialties such as surgeons, privileges in at least one hospital;
- (v) Whether the provider has been credentialed by another health plan that follows national quality assurance guidelines; and
- (vi) Alternative criteria for providers that are not credentialed by another health plan.

The department shall develop alternative criteria for providers that are not credentialed by another health plan or as needed to address access to care concerns in certain regions.

(d) Network provider contracts will automatically renew at the end of the contract period unless the department provides written notice of changes in contract provisions or the department or provider provides written notice of contract termination. The industrial insurance medical advisory committee shall develop criteria for removal of a provider from the network to be presented to the department and advisory group for consideration in the development of contract terms.

(e) In order to monitor quality of care and assure efficient management of the provider network, the department shall establish additional criteria and terms for network participation including, but not limited to, requiring compliance with administrative and billing policies.

(f) The advisory group shall recommend best practices standards to the department to use in determining second tier network providers. The department shall develop and implement financial and nonfinancial incentives for network providers who qualify for the second tier. The department is authorized to certify and decertify second tier providers.

(3) The department shall work with self-insurers and the department utilization review provider to implement utilization review for the self-insured community to ensure consistent quality, cost-effective care for all injured workers and employers, and to reduce administrative burden for providers.

(4) The department for state fund claims shall pay, in accordance with the department's fee schedule, for any alleged injury for which a worker files a claim, any initial prescription drugs provided in relation to that initial visit, without regard to whether the worker's claim for benefits is allowed. In all accepted claims, treatment shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease; PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the pharmacy quality assurance commission as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

(5)(a) The legislature finds that the department and its business and labor partners have collaborated in establishing centers for occupational health and education to promote best practices and prevent preventable disability by focusing additional provider-based resources during the first twelve weeks following an injury. The centers for occupational health and education represent innovative accountable care systems in an early stage of development consistent with national health care reform efforts. Many Washington workers do not yet have access to these innovative health care delivery models.

(b) To expand evidence-based occupational health best practices, the department shall establish additional centers for occupational health and education, with the goal of extending access to at least fifty percent of injured and ill workers by December 2013 and to all injured workers by December 2015. The department shall also develop additional best practices and incentives that span the entire period of recovery, not only the first twelve weeks.

(c) The department shall certify and decertify centers for occupational health and education based on criteria including institutional leadership and geographic areas covered by the center for occupational health and education, occupational health leadership and education, mix of participating health care providers necessary to address the anticipated needs of injured workers, health services coordination to deliver occupational health best practices, indicators to measure the success of the center for occupational health and education, and agreement that the center's providers shall, if feasible, treat certain injured workers if referred by the department or a self-insurer.

(d) Health care delivery organizations may apply to the department for certification as a center for occupational health and education. These may include, but are not limited to, hospitals and affiliated clinics and providers, multispecialty clinics, health maintenance organizations, and organized systems of network physicians.

(e) The centers for occupational health and education shall implement benchmark quality indicators of occupational health best practices for individual providers, developed in collaboration with the department. A center for occupational health and education shall remove individual providers who do not consistently meet these quality benchmarks.

(f) The department shall develop and implement financial and nonfinancial incentives for center for occupational health and education providers that are based on progressive and measurable gains in occupational health best practices, and that are applicable throughout the duration of an injured or ill worker's episode of care.

(g) The department shall develop electronic methods of tracking evidence-based quality measures to identify and improve outcomes for injured workers at risk of developing prolonged disability. In addition, these methods must be used to provide systematic feedback to physicians regarding quality of care, to conduct appropriate objective evaluation of progress in the centers for occupational health and education, and to allow efficient coordination of services.

(6) If a provider fails to meet the minimum network standards established in subsection (2) of this section, the department is authorized to remove the provider from the network or take other appropriate action regarding a provider's participation. The department may also require remedial steps as a condition for a provider to participate in the network. The department, with input from the advisory group, shall establish waiting periods that may be imposed before a provider who has been denied or removed from the network may reapply.

(7) The department may permanently remove a provider from the network or take other appropriate action when the provider exhibits a pattern of conduct of low quality care that exposes patients to risk of physical or psychiatric harm or death. Patterns that qualify as risk of harm include, but are not limited to, poor health care outcomes evidenced by increased, chronic, or prolonged pain or decreased function due to treatments that have not been shown to be curative, safe, or effective or for which it has been shown that the risks of harm exceed the benefits that can be reasonably expected based on peer-reviewed opinion.

(8) The department may not remove a health care provider from the network for an isolated instance of poor health and recovery outcomes due to treatment by the provider.

(9) When the department terminates a provider from the network, the department or self-insurer shall assist an injured worker currently under the provider's care in identifying a new network provider or providers from whom the worker can select an attending or treating provider. In such a case, the department or self-insurer shall notify the injured worker that he or she must choose a new attending or treating provider.

(10) The department may adopt rules related to this section.

(11) The department shall report to the workers' compensation advisory committee and to the appropriate committees of the legislature on each December 1st, beginning in 2012 and ending in 2016, on the implementation of the provider network and expansion of the centers for occupational health and education. The reports must include a summary of actions taken, progress toward long-term goals, outcomes of key initiatives, access to care issues, results of disputes or controversies related to new provisions, and whether any changes are needed to further improve the occupational health best practices care of injured workers.

Credits

[2013 c 19 § 48, eff. July 28, 2013; 2011 c 6 § 1, eff. July 1, 2011; 2007 c 134 § 1, eff. Jan. 1, 2008; 2004 c 65 § 11; 1986 c 58 § 6; 1977 ex.s. c 350 § 56; 1975 1st ex.s. c 234 § 1; 1971 ex.s. c 289 § 50; 1965 ex.s. c 166 § 2; 1961 c 23 § 51.36.010. Prior: 1959 c 256 § 2; prior: 1943 c 186 § 2, part; 1923 c 136 § 9, part; 1921 c 182 § 11, part; 1919 c 129 § 2, part; 1917 c 28 § 5, part; Rem. Supp. 1943 § 7714, part.]

Notes of Decisions (6)

West's RCWA 51.36.010, WA ST 51.36.010

Current with all laws from the 2015 Regular and Special Sessions and Laws 2016, chs. 1 and 2

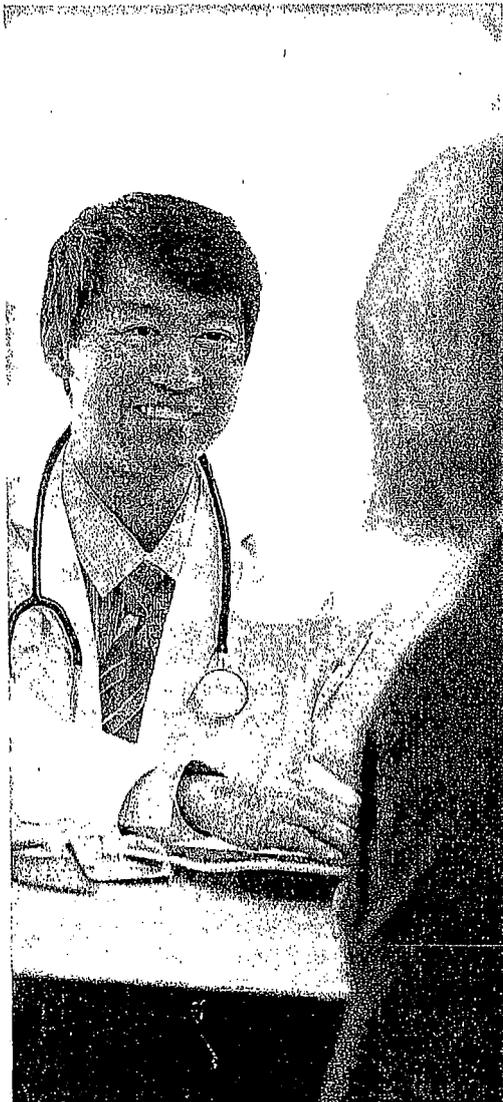
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Attending Doctor's Handbook

For Doctors and Office Staff



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Quick Tips for Providers

When you treat patients covered by State Fund or Self-Insured workers' compensation

For more information, see the "Quick Reference Guide to L&I Services" at the back of this book or the sections in this handbook referenced below. **Note:** The quick reference guide includes URLs to areas of L&I's website that cover information specifically for providers.

<h3>Report of Accident</h3> <ul style="list-style-type: none"> Must be submitted within 5 days; 2 days is the best practice. Include the provider number on the initial Report of Accident. See Section 2, Pages 6-21. 		<h3>Correspondence</h3> <p>We need your help! To get your documents to the right file, write the worker's claim number and name in the upper righthand corner of every page of all correspondence. Please submit only on 8.5 x 11 size white paper to assure quality electronic imaging. See Appendix I, Page 84.</p>													
<h3>When Documentation is Due</h3> <table border="1"> <tr> <td>Report Types:</td> <td>Due:</td> </tr> <tr> <td>Initial Report of Injury Office/Chart/Progress Reports. See Page 24.</td> <td>Within 5 days of 1st visit Every 30-60 days</td> </tr> <tr> <td>Supplemental Reports</td> <td>ASAP upon request</td> </tr> <tr> <td>Consultation Reports</td> <td>At 120 days</td> </tr> <tr> <td>IME Reports</td> <td>When authorized</td> </tr> <tr> <td>Extended Service Report</td> <td>When service is billed</td> </tr> </table>		Report Types:	Due:	Initial Report of Injury Office/Chart/Progress Reports. See Page 24.	Within 5 days of 1st visit Every 30-60 days	Supplemental Reports	ASAP upon request	Consultation Reports	At 120 days	IME Reports	When authorized	Extended Service Report	When service is billed	<h3>Transfer of Attending Doctor</h3> <p>If you accept a new patient formerly treated by a different doctor for a work-related condition, ask the worker to request transfer of care:</p> <ul style="list-style-type: none"> Online at www.TransferCare.Lni.wa.gov or By submitting a "Case Transfer" card or note to the claim manager at the following address. <p>Department of Labor & Industries P.O. Box 44291 Olympia, WA 98504-4291</p> <p>See Section 3F, Page 29.</p>	
Report Types:	Due:														
Initial Report of Injury Office/Chart/Progress Reports. See Page 24.	Within 5 days of 1st visit Every 30-60 days														
Supplemental Reports	ASAP upon request														
Consultation Reports	At 120 days														
IME Reports	When authorized														
Extended Service Report	When service is billed														
<h3>Chart/Progress Notes</h3> <p>Use the SOAPER format for all doctor's office/chart/progress notes and 60-day narrative reports to reduce the number of phone calls and letters from the claim managers:</p> <ul style="list-style-type: none"> S The worker's subjective complaints O The doctor's objective findings A The doctor's assessment P The doctor's treatment plan (This should include what you tell the worker regarding expectations for recovery, medication side effects, etc.) <p>In workers' compensation, claim managers have unique needs for work status information. To meet this need, we suggest adding an "ER" to the SOAP contents:</p> <ul style="list-style-type: none"> E Employment issues. Has the worker been released for or returned to work? When is release anticipated? R Restrictions to recovery. Describe the physical limitations, both temporary and permanent, that prevent return to work. What other limitations, including unrelated conditions are preventing return to work? Can the worker perform modified work or different duties while recovering? Is there a need for return-to-work assistance? (Use the <i>Activity Prescription</i> form when appropriate.) <p>For more information, see Section 3B, page 24-25.</p>		<h3>Helping Your Patient Return to Work and Preventing Long-Term Disability (LTD)</h3> <p>Minor strains and sprains too often lead to permanent, total disability. Disability may be prevented by taking measures <i>soon after the injury</i>, such as job modification, case management, and light-duty work addressing risk factors for LTD. Strong communication among you, your patient, your patient's employer and others is key. Many resources are available.</p> <p>For more information, see Section 1C, Page 4; Section 2E, Page 8; Section 2F, Page 8; and Section 2H, Page 16.</p>													
		<h3>Treatment Limits</h3> <p>By law, workers' compensation claims are closed when a patient's condition reaches Maximum Medical Improvement (MMI) and it has been determined that a patient is able to work in any occupation.</p> <ul style="list-style-type: none"> MMI is defined as a level of recovery to a point where the injury or illness will not improve with continued care. A patient may still have subjective complaints and objective findings that fluctuate over time. Workers' compensation in Washington cannot pay for palliative or maintenance care. Workers' compensation laws in Washington only permit curative and rehabilitative care necessary for an injured worker to reach MMI status. In some cases permanent partial disability awards (settlements) may be made to the worker. <p>See Section 3J, Page 30, and Section 5, Page 46.</p>													

Find it fast! Photocopy this page and the "Quick Reference Guide to L&I Services" at the back of this book and keep them in a convenient location.

About the October 2012 Update Edition to the *Attending Doctor's Handbook*

This October 2012 update edition of the *Attending Doctor's Handbook* contains selected updates to the March 2005 edition. New or updated information is located inside the front and back covers of the book and in the center "insert." Pages i through 90 have not changed.

We've also included the Updates and Additions table below to introduce topics not covered in Pages i through 90 or to call out changes to existing sections. Until L&I publishes a completely new edition of this handbook, you will find the original content and the Updates and Additions table, together with links to online resources, make this document a useful reference tool for your practice.

We also want to draw your attention to two significant developments:

1. Please take a look at the **Workers' Compensation Reforms** insert in the center of this book. Among the reforms is the new Medical Provider Network, which we invite Washington's attending health-care providers to join. This is an open network—L&I will accept all qualified providers who meet network requirements. Details are in the insert.
2. Continuing Education (CE) Credits associated with this publication have changed. Please disregard all references to CMEs in Pages i through 90. However, readers who successfully complete the online ADH CE activity receive a certificate for 3 hours of Category 2. For more information, go to www.CMECredits.Lni.wa.gov.

Updates and Additions to the *Attending Doctor's Handbook*, October 2012

Section	Page	Title	Comments
2	6 & 18	Claim Filing	<p>The Occupational Health Best Practice is to submit the report of accident within two days.</p> <p>"FileFast" allows workers and medical providers to file the <i>Report of Accident</i> online at www.FileFast.Lni.wa.gov. Workers without computer access can file by phone at 1-877-561-FILE (3453). Employers statewide can file online at www.EmployerROA.Lni.wa.gov.</p> <p>The <i>Report of Accident</i> was revised to allow more space for ICD codes and address Medical Provider Network requirements. Ordering information: www.Lni.wa.gov/FormPub/Detail.asp?DocID=1599;</p> <p>To transfer care to a different provider, workers should go to www.TransferCare.Lni.wa.gov to submit their request or they should use the Case Transfer Card available at www.Lni.wa.gov/FormPub/Detail.asp?DocID=1618.</p>
11		Special Return to Work Resources	<p>The 2012 edition of the <i>Attending Provider's Return to Work Desk Reference</i> is available at www.Lni.wa.gov/FormPub/Detail.asp?DocID=1492. Readers who pass the online CME Activity receive 3 hours of Category 1 CME credit. Go to www.CMECredits.Lni.wa.gov to learn more.</p> <p>Contact local L&I service locations to obtain ergonomic and job modification assessments, early return to work, and risk management assistance. Office locations and phone numbers are listed at www.Offices.Lni.wa.gov.</p>

(Continued on Page C)

Updates and Additions to the *Attending Doctor's Handbook*, October 2012

Section	Page	Title	Comments
2	17	Physician and Chiropractic Consultants	<p>Pain management specialists are available at L&I for State Fund claims to provide second opinions at the attending doctor's request on how to manage workers with pain issues or who take high doses of opioids. These consultants will review claims and call the attending doctor to confer on treatment options.</p> <p>Locate chiropractic consultants in Washington at www.FindADoc.Lni.wa.gov. Click on "Search for L&I providers" and then choose "advanced search." Fill in "located near." Then, under "provider types and specialties," select chiropractor in the first box and "chiropractic consultant" in the second box.</p>
	20	The State Fund: Communicating with the Department	<p>Send secure messages to the claim manager through L&I's online Claim & Account Center. Join or login at www.ClaimInfo.Lni.wa.gov to review the status of a claim or bill, and see medical records. L&I pays for good communication. Remember these billing codes are available to you:</p> <p>Telephone Calls 99941-9443 Physicians only 98966-98968 Non-physician</p> <p>Secure messages through L&I's online Claim & Account Center 99444-99443 Physicians only 98969 Non-physician</p>
	22	Communicating with a Self-Insured Employer	To locate the contact information for a self-insured employer or their third party administrator, go here: www.Lni.wa.gov/ClaimsIns/Insurance/Selfinsure/EmpList .
3	25	Reports	The <i>Supplemental Medical Report</i> and four other forms were replaced by the <i>Activity Prescription Form</i> . See www.Lni.wa.gov/ClaimsIns/Providers/Claims/ActivityRx for when to use it, how to complete it, and billing codes.
	25	Authorization for Services	Authorization requirements have changed for advanced imaging and other services, see www.Lni.wa.gov/ClaimsIns/Providers/AuthRef/GetAuth.asp .
	28	Pain Management	L&I adopted opioid dosing guidelines developed by agency medical directors. Four hours of Category 1 CME credit are available for successful completion of the online CME activity. Go to: www.agencymeddirectors.wa.gov/opioiddosing.asp . This website also includes an opioid dosing calculator you can download, use from the website or access from a mobile device: www.agencymeddirectors.wa.gov/mobile.html .
	31	Pensions	See "Structured Settlement" in the Workers' Compensation Reforms insert in the middle of this book.
4	33	Medical and Surgical Guidelines	Current guidelines are online at: www.TreatmentGuidelines.Lni.wa.gov .

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Impairment Ratings

If, after reaching medical stability (see definition of “Maximum Medical Improvement,” page 30), your patient is left permanently impaired, he or she should undergo an impairment rating examination. This examination can be performed by attending doctors, a consulting doctor or through an independent medical examination. The rating exam usually will be initiated by the claim manager based on your reports, but can be initiated by you (through the claim manager) or the self-insured employer.

The rating will determine the monetary award level your patient is eligible to receive for the permanent impairment.

A. Impairment Versus Disability

The terms “impairment” and “disability” often can be confusing.

- Impairment is the loss of function of an organ or part of the body.
- Disability is the inability to perform a specific task or job.

For example, if a classical pianist and a truck driver both lose a finger, both would have the same impairment and receive the same award amount. However, their disabilities would be different because the truck driver would be able to continue in his or her job and the pianist would not.

Awards must be based on impairment and not on disability. [WAC 296-20-200(4)]

B. Who Should Do Impairment Ratings?

The law allows only certain practitioners to perform rating and independent medical examinations. [WAC 296-20-2010 and WAC 296-23-317] Doctors licensed in the following fields may conduct these exams:

- Medicine and surgery
- Osteopathic medicine and surgery

- Podiatric medicine and surgery
- Dentistry
- Chiropractic (department-approved chiropractic examiners only)

You do not have to be an independent medical examiner or have special credentials to rate your own patient except that chiropractic examiners need to be approved by the department.

Attending doctors are encouraged to rate impairment for their own patients. Both the doctors and their patients may find they prefer it! Here are some advantages:

- The attending doctor is able to provide a rating based on their management of the patient’s care *over a period of time*. For this reason, a rating done by the attending doctor can take into account *fluctuations in the patient’s condition*, which other examiners may not be able to do.
- Reimbursement for this service is higher than many doctors realize. (See Section 6D, Selected Billing Codes of Interest to Doctors, page 51.)
- By doing your own rating exam, you may save your patient a long wait for an Independent Medical Examination (IME), as well as the inconvenience of recounting the history of the injury or disease to a new doctor.
- Your patient’s monetary award for impairment may be significantly expedited.
- Risks of litigation may be significantly lower (as compared with IMEs). This is partly because, according to case law, the opinion of the attending doctor is “entitled to special consideration” in department decisions [*Hamilton v. Department*, 111 WN.2d 569 (1988)].
- Patients often have more confidence in the rating provided by their attending doctor (or a referral consultant chosen by the attending doctor).

- The impairment rating report can be BRIEF! Many doctors assume the department wants a lengthy report, similar to an Independent Medical Examination. This is generally not true.

To ensure reimbursement, you should request authorization from the claim manager. Also, if you prefer, you may consider asking a consultant to perform the rating. Please note that these consultant codes are payable only to doctors the department has approved as examiners.

C. How to Do a Rating

Most physicians can do ratings after a brief reading of the *Medical Examiners' Handbook* (MEH), which offers FREE category 1 Continuing Medical Education (CME) credit. The MEH is accredited by the American College of Occupational and Environmental Medicine (ACOEM), which designates this educational activity for a maximum of 3 category 1 credits toward the AMA Physician's Recognition Award.

The handbook is a guide to the Washington State impairment system. It includes a complete copy of the Washington State Category Rating System. This is the system used to rate impairment of most parts of the body, including the spine; the respiratory, cardiac, gastrointestinal, dermatologic, and urologic systems; and mental health.

If you are interested in doing impairment ratings on your own patient or in becoming an independent medical examiner, you can order a copy of the *Medical Examiners Handbook* by contacting the Labor and Industries service location nearest you, or by calling the warehouse at 360-902-5754. Form # F252-001-000.

The most important thing to remember about rating impairment is that the claim manager is looking for a fair, reasonable rating with a clear statement about the objective findings on which the rating is based. Extreme ratings, either too high or too low, generally cause problems of adjudication, so every effort should be made to assure that the rating is equitable and consistent with the rating system used. To rate extremities (except amputations), hearing loss, and other systems not covered by the Category Rating System, MDs, and DOs should use the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. A copy can be ordered by calling 800-621-8335 or 312-464-5651, or by writing to the following address:

Order Department
American Medical Association
PO Box 109050
Chicago, IL 60610-9050

D. Independent Medical Examinations (IMEs)

You may prefer to have your patient undergo a rating exam through an independent medical examination (IME). IMEs are used to establish medical facts about an injured worker's physical condition so that appropriate assistance can be given to the worker and administrative decisions made about his or her claim. They also are used to determine impairment ratings.

Like rating exams, IMEs can be requested by the claim manager, by you (through the claim manager) or by the self-insured employer.

Doctors conducting IMEs must be approved by Labor and Industries' Health Services Analysis section and the Office of the Medical Director. Doctors wishing to be approved should obtain a copy of the *Medical Examiner's Handbook*, described above.

As the attending doctor, you should automatically receive copies of all IMEs done on your patients. The claim manager may ask for your assessment of the exam findings. Please reply to the claim manager as soon as possible.

Quality IMEs

The Legislature has mandated that Labor and Industries monitor the quality of independent medical examinations [RCW 51.32.114] and set standards for conducting exams [RCW 51.32.112].

To that end, the department has developed a tracking system for worker complaints about IMEs.

If your patient feels he or she was treated unfairly during an IME, please encourage the patient to report this (preferably in writing) to the Provider Review and Education Unit. The patient can send the complaint to the address shown in item # 9 in Appendix I.

Doctors also may report problems to the same address. Be sure to include the worker's name, claim number, the name of the examiner(s) and the date and location of the IME.

OFFICE RECEPTIONIST, CLERK

To: Sandi Babcock; Douglas M. Palmer/Steven L. Busick (c/o; Brett B. Schoepper
Cc: Stewart A. Estes, on behalf of Washington Defense Trial Lawyers; Valerie D. McOmie, for WSAJ Foundation; George M. Ahrend, for WSAJ Foundation; Bryan Harnetiaux, for WSAJ Foundation; amicuswsajf@wsajf.org
Subject: RE: Clark County v. McManus (S.C. #91963-1) - Letter Request and Proposed Amicus Curiae Brief

Received on 01-29-2016

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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Sent: Friday, January 29, 2016 4:42 PM
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Cc: Stewart A. Estes, on behalf of Washington Defense Trial Lawyers <sestes@kbmlawyers.com>; Valerie D. McOmie, for WSAJ Foundation <valeriemcomie@gmail.com>; George M. Ahrend, for WSAJ Foundation <gahrend@ahrendlaw.com>; Bryan Harnetiaux, for WSAJ Foundation <bryanpharnetiauxwsba@gmail.com>; amicuswsajf@wsajf.org
Subject: Clark County v. McManus (S.C. #91963-1) - Letter Request and Proposed Amicus Curiae Brief

Dear Mr. Carpenter

Attached are the letter request and proposed Amicus Curiae Brief on behalf of the Washington State Association for Justice Foundation. These documents are being provided to counsel listed above per prior arrangement.

Respectfully submitted,

Bryan Harnetiaux
WSBA No. 5169
On behalf of WSAJ Foundation

Via Sandra Babcock, Special Assistant to WSAJ Foundation