

Interpretive Bulletins

Director's interpretations of issues impacting the Colorado workers' compensation system

In an effort to provide guidance on the practical applications of the Colorado Workers' Compensation Act, we will be publishing Director's interpretations of statutes and other factors affecting the system, in the form of *Interpretive Bulletins*. The purpose is to provide greater levels of consistency and predictability as to how the Colorado system is intended to operate. While the opinions do not have the force and effect of rule, they are afforded as navigational tools to clarify and simplify processes, create efficiencies, and to reduce litigation.

If you have questions regarding this information or issues you would like to see addressed in future bulletins, please direct your inquiries to Bob Summers, Director of the Division of Workers' Compensation, at 633 17th St. Suite 400, Denver, CO 80202, FAX 303.318.8632, or e-mail at bob.summers@state.co.us

Resolving Diverging Opinions When Rating Impairment

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Discussion has arisen as to what specific requirements the AMA Guides* impose on physicians to resolve disparities of opinion on the issue of impairment. This becomes particularly important where the issue is before an Administrative Law Judge to determine whether the opinion of a Division Independent Medical Examiner (DIME) has been overcome by clear and convincing evidence.

Recent decisions have found error on the part of the DIME who didn't communicate with the initial rating physician in an effort to resolve a disparity where an impairment rating is concerned. These decisions seem to be based on an incomplete reading of the Guides.

Considering the statutory requirement that permanent impairment be evaluated in accordance with the Guides, and recent decisions that deviation from the Guides may be utilized as evidence to decide whether a DIME opinion has been overcome by clear and convincing evidence, clarification is necessary.

Paragraph 6, Chapter 1.2 on *Structure and Use of the Guides*, is specific:

...[I]nformation gathering and analysis serves as the foundation upon which the evaluation of permanent impairment is carried out. It is most important that the evaluator obtain enough clinical information to characterize the medical condition

fully in accordance with the requirements of the Guides. Once this task is accomplished, the evaluator's findings may be compared with the clinical information already available about the individual. If the current findings are consistent with the results of previous clinical evaluation, they may be compared with the appropriate tables of the Guides to determine the percentage of impairment. If the findings of the impairment evaluation are not consistent with those in the record, the step of determining the percentage of impairment is meaningless and should not be carried out until communication between the involved physicians *or further clinical investigation* resolves the disparity. (Emphasis added).

The examiner is afforded the option of either communicating with the initial evaluator or conducting further clinical investigation to resolve the disparity. Further, there is no requirement that a disparity in opinions be resolved to the point of agreement as to the final rating. The basis for the disparity must be resolved in the mind of the independent medical examiner having integrated "previously gathered medical information with the results of a current clinical evaluation". (See Paragraph 1, Chapter 1.2 Structure and Use of the *Guides*).

Advocating communication with the initial rating physician *in all instances* where a rating is under challenge raises serious concerns over maintaining the objectivity of the independent medical examination. It infers that the opinion of the initial rater is somehow binding on the independent medical examiner even in the face of further clinical investigation and analysis supporting a diverging opinion. Such a requirement seriously limits the requesting party's ability to receive an independent opinion if all roads lead back to the initial rater. Most importantly, it is one of *two* options afforded by the AMA Guides.

It is the opinion of the Director, that based on the language of the AMA Guides, the exercise of one option over another does not constitute a deviation from established rating protocols nor does it form the basis for a determination that a Division Independent Medical Examiner's opinion has been overcome by clear and convincing evidence. Finally, The Division Independent Medical Examiner is not required to communicate with the physician whose rating is under challenge if the disparity in ratings is addressed through clinical investigation.

*American Medical Association Guides to the Evaluation of Permanent Impairment, Third Edition (Revised).