

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

"Limited Issue" IMEs

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In the June 2001 edition of the *All About Claims* newsletter, the Division Director responded to an inquiry from an adjuster who believed that allowing Division IME doctors to opine as to a claimant's rating even if the claimant was found not to be at MMI: (1) controverts the notion and law that it is not possible or reasonable to rate someone who is not medically stable and (2) Places undue burden on the carrier via Rules of Procedure IV (N)(6) to either admit to the rating or file for a hearing on the issue of permanency.

The Director noted that the practice came about because of the number of cases in which, although the IME physician found the claimant not to be at MMI, the claimant wished to have the case concluded, i.e., perhaps the claimant did not wish to continue treatment or did not want further surgery. In such instances, the Division had received many requests to have the claimant return to the IME doctor for a follow-up visit for an estimated impairment rating so that the case could be settled. This proved to be inefficient and time-consuming for all parties concerned, including the Division and the physician, and caused further delay in concluding the case. The Division then began to strongly encourage the IME physicians that, in cases where *both MMI and an impairment rating* were requested, they issue an estimated rating in those instances where the claimant was assessed not at MMI. Again, physicians are encouraged but are not required to do so. The Division instituted this practice to foster settlement or negotiation and to decrease the need for follow-up visits and attendant costs.

The question then arises as to what action must be taken by an adjuster following receipt of such a rating. Since the statute is clear that a finding of MMI must precede an impairment rating, it follows that a rating without a date of MMI could necessarily be considered invalid under the Act. The Division has proceeded in the matter with this view in mind., and has since modified the IME Unit's "Not at MMI" notification letter to state affirmatively that a rating rendered under these conditions is not binding on the parties nor is it governed by Rules IV OR XIV. A final admission, therefore, is not required until a final rating is received.

Given the above, a similar question arises: what if impairment-only is requested on the IME application, and the doctor opines on MMI?

In the course of evaluating for impairment, physicians normally consider all of the components of the claimant's condition: past medical history, current diagnosis and condition, treatment, previous evaluations for MMI and impairment, etc. From a medical practice or clinical perspective, MMI status is an integral part of the process of evaluating for impairment, and most physicians would find it difficult to ignore MMI when asked to do a rating. Therefore, many physicians in this scenario may feel it necessary to address MMI even when it is not a requested "issue."

A recent ICAP decision and other caselaw have opined that an IME physician's finding of MMI status is "gratuitous" when MMI was not submitted as an issue to be addressed in the Division IME (e.g., *Shaffer v. Golden Technologies*, W.C. No. 4-326-734, (July 9, 2001); *Cunningham Construction v. Carroll*, Colo. App. No. 96CA1008, December 12, 1996 (not selected for publication)). These cases have allowed the DIME physician's impairment rating to stand as binding or be challenged under the 'clear and convincing' standard, but endorsed the treating physician's MMI finding as undisputed, even though the IME physician made a different MMI assessment.

If the IME physician finds the claimant not at MMI and does not perform the requested impairment rating, the Division will not accept the report as "complete." The IME unit in such instances will send to the physician, with a copy to the parties, an Incomplete Notice with instructions to complete the rating. This may involve performing the rating from the available records or may require the claimant to be called back for a follow-up exam. In most cases there should be no additional charge by the IME physician since the rating should have been completed in the first instance.