



January 2010

THE IC

Medi Scene

Ohio | Industrial Commission

Keeping You Up-to-Date with the Industrial Commission

Get to Know Commissioner Kevin R. Abrams

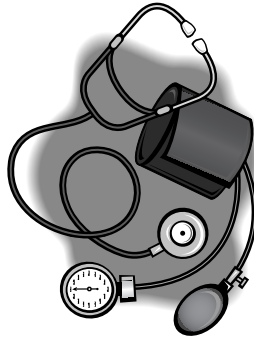
Kevin brings a wealth of workers' compensation experience to his role as Industrial Commissioner, including service as a staff attorney and Assistant Law Director for the Ohio Bureau of Workers' Compensation. He has extensive experience with self-insuring employers, which serves him well as the Chairman of the Self-Insuring Employers Evaluation Board, included in his responsibilities as the public member of the Industrial Commission.

In 1982, Kevin received his law degree from the Ohio State University College of Law. While in law school, Kevin was a member of the Ohio State Law Journal.

As Assistant Law Director for BWC since 1988, Kevin provided legal advice to BWC in virtually all areas of workers' compensation. His primary areas of responsibility included oversight of administrative and court settlements of BWC claims, self-insurance legal issues, bankruptcy and collection matters, and special projects involving claims issues. Additionally, Kevin served as Chairperson of the Self-Insured Review Panel (SIRP), liaison to Attorney General and Special Counsel for court cases, and as a frequent contact with the IC regarding interagency issues. Kevin addressed complicated claims issues in various areas such as permanent total disability, Disabled Workers' Relief Fund, and violations of specific safety requirements. Kevin is also a frequent lecturer on workers' compensation issues.

He is the public member of the OSBA Workers' Compensation Specialty Board.

Examining the Issues - Impartiality



The Industrial Commission (IC) requests independent medical examinations to assist in its consideration of an Injured Worker's application for a determination

of Permanent Total Disability. This is a unique circumstance in the Ohio workers' compensation system where the IC requests medical evidence formulated by an impartial examiner.

So what does it mean to be impartial? Let's look at the guidelines:

- These examinations are to be performed by physicians and psychologists who hold no bias with respect to the Injured Worker, the employer, or the workers' compensation system.
- Examiners are excluded from performing specialist examinations when they have examined the Injured Worker or reviewed the claim file for the employer, the Injured Worker, the Bureau of Workers' Compensation or the Industrial Commission within three years of the filing date of an application for permanent total disability.

- Physicians and psychologists are also excluded from performing specialist examinations when they have a contractual relationship with the Injured Worker, employer, or their representative, or have been the physician of record for the Injured Worker.
- Physicians or psychologists performing examinations for the Commission may not communicate with the Injured Worker other than during the examination.
- Additionally, they may not communicate with the employer, or representatives of the Injured Worker or employer.
- Physicians or psychologists may not accept the examined Injured Worker into treatment.
- Commission examinations are independent examinations. No authorization for treatment of the Injured Worker is implied or given in the Commission's request for examinations.
- The IC will not preferentially choose one examiner over another for any reason other than specialty or location.

If you find that you do not meet the impartiality requirements for an IC examination, then you should decline to examine the Injured Worker and contact Medical Services immediately. The Injured Worker will then be rescheduled with an impartial examiner.

Did you Know?

The Ohio Workers' Compensation System is administered by two separate agencies, the Bureau of Workers' Compensation (BWC), and the Industrial Commission (IC). BWC is the administrative branch, responsible for collecting premiums, managing claims, and paying medical expenses and benefits. The IC is the adjudicatory branch, and is responsible for providing a fair and impartial forum for claims resolution, conducting hearings on disputed claims, adjudicating claims involving employers' violations of specific safety requirements, and determining eligibility for permanent total disability benefits.

Continuing education review questions MediScene Jan10

1. Which of the following are true?
 - A. The Industrial Commission (IC) and Bureau of Workers' Compensation (BWC) represent a combined agency with shared responsibilities administrating the workers' compensation system in Ohio.
 - B. BWC determines eligibility for permanent total disability benefits in Ohio.
 - C. The IC is responsible for paying medical expenses and benefits.
 - D. The IC and BWC are separate agencies, with distinct and well-delineated responsibilities.
2. Specialists are excluded from performing examinations for the IC if in the three years preceding application for permanent total disability they have examined the Injured Worker or reviewed the claim file for which of the following entities?
 - A. The employer.
 - B. The Injured worker.
 - C. BWC.
 - D. The IC.
 - E. All of the above.
3. The examining specialist in an IC examination can accept the Injured Worker into treatment after the examination only if it is deemed necessary and in the Injured Worker's best interest by
 - A. The Injured Worker.
 - B. The Physician of Record.
 - C. The Industrial Commission.
 - D. BWC.
 - E. All of the above.
 - F. None of the above.
4. If the examining physician discovers that they do not meet the impartiality requirements for an IC examination, then he or she should
 - A. Call the Injured Worker and cancel the appointment, making sure to explain the reason.
 - B. Perform the examination, but explain to the Injured Worker that there might be a conflict of interest.
 - C. Have a colleague in the office perform the examination.
 - D. Decline to examine the Injured Worker, and contact IC Medical Services immediately so that the examination can be rescheduled.

(Answers: 1. D.; 2. E.; 3. F.; 4. D.)



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Did you Know?

Maximum medical improvement (MMI) is defined as a treatment plateau (static or well stabilized) where no fundamental or physiologic change can be expected within reasonable probability, in spite of continuing medical or rehabilitative procedures. An injured worker may require supportive care to maintain this level of function.

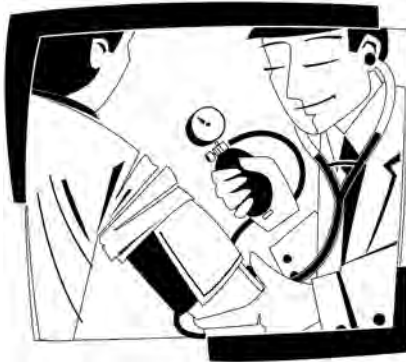
Examining the Issues- Maximum Medical Improvement

This quarter we've done a "one-eighty" with our format and moved the "Did you know?" section to the top. The reason is that this concept of "MMI" not only remains central to the determination of eligibility for Permanent Total Disability (PTD) benefits for injured workers, but also remains (surprisingly) misunderstood by many specialist examiners.

"How could this be?" you ask. "I've dealt with MMI for years not only as a treating doctor, but also as an expert examiner!" We'll try to break this down into some basic elements that might clarify the concept as it relates to PTD examinations. Consider the following:

1. The injured worker, by way of their application for PTD, has attested to the fact that he is permanently and totally disabled. He believes that he is at MMI.
2. The injured worker's physician of record and legal counsel have provided evidence in support of the PTD application. Each of them believes that the injured worker has reached MMI.
3. In many cases, the injured worker has already been found to have reached MMI by prior hearing order in the claim file.
4. MMI does not mean that the injured worker will not be allowed further treatment. As stated in the definition above, they may require maintenance treatment, for instance medication, physician visits, or counseling.
5. If there is a "new and changed circumstance," then the injured worker may go back to a temporarily disabled status. An example of this may be the request, approval, and performance of a new surgery for failed hardware that is allowing the injured worker to function at a higher level. Unless there is a worsening of the allowed condition, a mere prospect of improvement beyond a

level previously declared MMI will not justify a new recognition of TTD. The standard that must be shown is that there is a worsening of the allowed conditions accompanied by a prognosis that the worsening is only temporary.



6. A "treatment plateau," in this definition, refers to a plateau with the current treatment regimen. It is not meant to refer to a hypothetical situation where a declined or denied treatment could be rendered. It is not meant to apply to a hypothetical situation where treatment has not even been requested nor approved. The fact that an injured worker's physician or examining physician suggests that new or renewed treatment could generate improvement does not mean that TTD compensation may resume, unless there is a worsening of the allowed condition accompanied by a prognosis that the worsening is only temporary. Here are some examples:

- a. If an injured worker is scheduled for surgery next month, then they remain maximally improved at least until the time of that surgery, and may in fact remain so after the surgery. An examiner cannot speculate what they might be like after the surgery. The same could be said of a course of physical therapy, psychotherapy, or a medication change.

- b. On the other hand, if an injured worker applies for PTD, then has a procedure or treatment, and then presents for examination, this could represent a new and changed circumstance at the time of the examination, and they might then be determined not at MMI as they recover. Even this would depend on whether there has been a worsening of the allowed condition accompanied by a prognosis that the worsening is only temporary and the change is actually resulting in further improvement. This situation occurs in a PTD claim very rarely.

- c. If an injured worker has had a condition or treatment denied, if they have declined a proposed treatment, or if they and their physician for whatever reason have elected not to pursue a treatment, then the examiner should consider that the injured worker remains at MMI based on the current regimen. These denied or declined treatments, or treatments not pursued for whatever reason might include medications, surgery, psychotherapy, or physical therapy.

In summary, it is apparent that the circumstance in which an injured worker would present for a specialist examination for PTD benefits and not be considered at MMI would be rare. The role of the specialist examiner in PTD examinations is to consider if the injured worker remains at MMI with the current treatment regimen, rather than to propose or advocate for additional treatment. Specialist examiners should avoid opining that the allowed conditions are no longer at MMI, when that opinion is based on speculation of possible future treatment, which has not been performed, approved, or in some instances, requested.

Continuing education review questions MediScene Apr. 2010

1. When an injured worker is considered MMI, it means that no further treatment is necessary or appropriate.
 - A. True
 - B. False
2. An injured worker cannot and should not be considered MMI if they have an upcoming surgical procedure to address an allowed condition in their claim.
 - A. True
 - B. False
3. An example of an injured worker who presents for a PTD examination and could reasonably be considered no longer at MMI is (choose **two**):
 - A. An injured worker who is scheduled for their fourth low back operation.
 - B. An injured worker with an allowed condition of depression, who might benefit from counseling or a medication change.
 - C. An injured worker with an allowed condition of lumbar disc herniation who has had physical therapy, epidural steroids, and surgical consultation requests denied.
 - D. An injured worker with an allowed condition of lumbar disc herniation with good post-operative results who experiences recurrent disc herniation prior to the PTD examination.
 - E. An injured worker with an allowed condition of cataract, with good post-operative results after lens implantation, whose lens becomes dislocated.
4. Which of the following is false regarding MMI in injured workers who have applied for PTD?
 - A. They have attested to the fact that they are permanently and totally disabled.
 - B. Their physicians of record and legal counsel have provided evidence to support their application.
 - C. Many have already been found to have reached MMI by prior hearing order.
 - D. They are not entitled to further medical care for the allowed conditions after they apply.

(Answers: 1. B.; 2. B.; 3. D. and E.; 4. D.)



July 2010

THE IC MediScene

Ohio | Industrial Commission

Keeping You Up-to-Date with the Industrial Commission

Examining the Issues – Allowed Diagnostic Testing for Impairment Evaluation

Industrial Commission Independent Medical Examinations are performed to determine degree of impairment and functional limitations due to allowed conditions- not to establish a diagnosis. Therefore, diagnostic testing requirements are minimal.

The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; Fourth Edition, and; the Guidelines to the Evaluation of Impairment of the Oral and Maxillofacial Region (2002) clearly delineate necessary and appropriate testing for impairment rating for the various body parts and systems. These studies, as outlined below, are billable at the time of report submission, along with the usual fee for the examination (see table).

Any other testing requires prior approval. If you feel that a specific diagnostic procedure is necessary to determine impairment or functional limitations due to the allowed conditions, please call Medical Services at 614.466.4291. You will be put in contact with the Chief Medical Advisor for a physician-to-physician discussion for consideration of authorization.

It will be required that you include in your fee bill the CPT code(s) for the diagnostic procedure(s) performed.

Payment will be denied for any testing performed that is not allowed without authorization and/or was not prior-authorized.

CPT Code	Diagnostic Procedure
72040	Cervical spine x-ray, 2 or 3 views
72052	Cervical spine x-ray, complete with flexion and extension
72070	Thoracic spine x-ray, 2 views
72100	Lumbar spine x-ray, 2 or 3 views
72114	Lumbar spine x-ray, complete with bending views
72200	Sacroiliac joint x-ray, < 3 views
73100	Wrist x-ray, 2 views
73500	Hip, unilateral x-ray, 1 view
73560	Knee x-ray, 1 or 2 views (AP +/- sunrise)
73600	Ankle x-ray, 2 views (include mortise)
73620	Foot x-ray, 2 views
70320	Teeth x-ray, complete, full mouth
70140	Facial Bones x-ray, < 3 views

Reimbursement rates are according to the Bureau of Workers' Compensation (BWC) fee schedule. To inquire about rates for specific procedures, go to the BWC Web site (ohiobwc.com). Click on "Medical Providers", then "Look-Ups", then "Fee schedule look-up". Next, you will be required to click on "I accept the terms of the above agreement and want to use the Fee schedule look-up". On the following page, type in the procedure code, click search, and you will be provided with the amount of reimbursement for that diagnostic procedure. Neuropsychological testing will be reimbursed at a rate of one hundred dollars per hour, with a maximum of four hours.

Please note that the Minnesota Multiphasic Personality Inventory, Beck Depression Inventory, Battery for Health Improvement, Million Behavioral Health Inventory, Structured Inventory of Malingered Symptoms, and Bender-Gestalt tests are considered part of a psychological examination in this setting and are not billable.

Visual acuity and visual field studies are considered part of eye examinations and are not billable.

Injured Workers are not required to submit to any diagnostic testing. If you feel additional testing is necessary for evaluation of impairment or functional limitations due to the allowed conditions, and the Injured Worker declines, note the refusal and base opinions on the available diagnostic information.

CPT Code	Diagnostic Procedure
70250	Skull x-ray, < 4 views
92557	Comprehensive Audiometry
94010	Spirometry
94060	Bronchodilation responsiveness (used with asthma and reactive airway disease only)
94720	CO diffusing capacity
NPT 1	1 hour neuropsychological testing
NPT 2	2 hours neuropsychological testing
NPT 3	3 hours neuropsychological testing
NPT 4	4 hours neuropsychological testing
80053	Comprehensive metabolic panel
81000	Urinalysis, non-automated with microscopic
81001	Urinalysis, automated with microscopic
85004	Blood count

Did you Know?

All previous issues of this newsletter, The IC MediScene, can be found archived at ohioic.com, and can be reviewed for continuing education credit toward your five year recertification as an examining specialist for the Industrial Commission.

Continuing Education Review Questions - *MediScene* July 2010

1. Which of the following diagnostic tests can be billed for in addition to the examination and report fee in Industrial Commission PTD IME examinations?

- A. Chest x-ray.
- B. Arterial blood gas.
- C. MMPI
- D. Visual fields.
- E. None of the above.

2. All the following are requested of the examining physician in Industrial Commission PTD IME examinations *except*:

- A. An opinion regarding maximum medical improvement.
- B. An estimate of percentage of whole person impairment.
- C. A description of physical or mental limitations due to the allowed conditions.
- D. A determination of the diagnosis of the injured worker's condition.

3. Billing requirements for diagnostic procedures performed in conjunction with Industrial Commission PTD IME examinations include:

- A. Prior approval of the injured worker.
- B. Prior approval of Medical Services for procedures not considered necessary for impairment evaluation according to the *AMA Guides*.
- C. A CPT code on the fee bill for each procedure performed.
- D. All of the above.

4. True or false?

Prior issues of this newsletter- The IC MediScene- can be found archived at ohiobwc.com and can be reviewed for continuing education credit toward recertification as an IC examiner.

(Answers: 1. E.; 2. D.; 3. D.; 4. False)

Get to Know Commissioner Jodie M. Taylor

The role might have changed, but Jodie M. Taylor's first day on the job as the IC's newest Commissioner did not happen in an unfamiliar workplace.

When Ms. Taylor became the Employer Member of the Industrial Commission of Ohio in July 2009, she had a strong knowledge of workers' compensation issues and the Agency.

Years before she was appointed by Governor Ted Strickland to the Commission, Ms. Taylor worked at the IC as an assistant.

From 1997 to 2000, Ms. Taylor served as an assistant to Commissioner Patrick Gannon. In this role, she performed legal and legislative research, assisted during hearings, and gained an extensive understanding of the Agency.

After leaving the IC, Ms. Taylor served as an attorney for two Columbus law firms, where she represented state-fund and self-insured employers at all levels of IC hearings and in court actions throughout Ohio. She is also a board certified specialist in workers' compensation and is a frequent lecturer on workers' compensation issues.

Ms. Taylor earned her bachelor's degree in diplomacy and foreign affairs from Miami University in 1991. While at Miami, Ms. Taylor studied overseas in Luxembourg. In 1995, she received her law degree from the University of Akron School of Law.

Jodie lives in Dublin with her husband, Michael. In October 2009, they welcomed twins, a boy and a girl, Evan and Elizabeth. Her first term as an IC Commissioner ends in June 2015.

You're Invited to OhioIC.com!

Please come and visit ohioic.com. Click on "Medical Specialist Resources" and surf the site. We think you'll enjoy our new additions!

Examining the Issues

Our Mission: Scheduling PTD Examinations

The mission of the Ohio Industrial Commission (IC) is to serve the injured workers and employers of the state through expeditious and impartial resolution of issues arising workers' compensation claims.

Let's break down this mission statement to see how it applies to Permanent Total Disability (PTD) examination scheduling.

First, the "issue" of PTD arises when an injured worker files an application to the IC for consideration of eligibility for PTD benefits. In this case, the IC hearing officer will consider evidence pertinent to that application, including, but not limited to, medical evidence. Medical evidence may be presented by the injured worker or their representative as well as the employer or their representative. In addition to this, the IC obtains evidence from an independent medical specialist (that's you!) for opinions regarding maximum medical improvement, degree of impairment, and any physical or mental limitations (depending on your specialty) due to the allowed conditions.

Who do we consider a specialist? Our vision is to have specialists available who are well-trained, well-credentialed, well-respected, and experienced practitioners in their communities. (For more information about our credentialing, go to ohioic.com, and look under "Medical Specialist Resources").

This immediately turns us to the issue of "impartiality." How do we assure those persons served that we impartially select specialist examiners for these medical opinions?

The "sine qua non" of impartiality in an IC PTD examination is that the specialist holds no bias with respect to the injured worker, the employer, or the workers' compensation system. Examiners are excluded from performing specialist examinations when they have examined the injured worker or reviewed the claim file for the employer, the injured worker, the Bureau of Workers' Compensation or the IC within three years of the filing date of an application for permanent total disability. Physicians and psychologists are also excluded from performing specialist examinations when they have a contractual relationship with the injured worker, employer, or their representative, or have been the physician of record for the injured worker.

Knowing that these most essential criteria are met, personnel in charge of scheduling the examination will then determine which appropriate specialists are within reasonable proximity of the injured worker. At this point, consideration is also given to evenly distributing examinations amongst available specialists. This assures that no one individual or group of specialists are given preferential treatment with regard to examination scheduling.

Finally, we are compelled by our mission to be timely. In this regard, we monitor closely timeframes for availability of specialists for examination scheduling (how long does it take to "get in") and timelines of examiner reporting (how long does it take to get the report). This again is in consideration for all parties involved. Our targets for appointment scheduling and reporting are two weeks and ten days, respectively.

Did you Know?

Questions #1 and #3 in PTD examinations have changed. We now ask for a discussion of the rationale for your opinion regarding maximum medical improvement in question #1, and a discussion of any physical or mental limitations (depending on your specialty) due to the allowed conditions in question #3. If you do not include these elements in your report, it will be returned to you for completion before processing.

Continuing education review questions MediScene Oct. 2010

1. Which of the following concepts are addressed in the Ohio Industrial Commission's mission statement, and can be applied to PTD examination scheduling?

- A. Impartiality.
- B. Timeliness.
- C. Service.
- D. A and C.
- E. All of the above

2. Credentialing criteria for IC specialist examiners:

- A. Require two years of clinical practice experience.
- B. Can be found at ohioic.com.
- C. Require continuing education specific to impairment rating.
- D. Require board certification.
- E. C and D.
- F. All of the above.

3. When scheduling IC PTD examinations, consideration is given to:

- A. Impartiality of the examiner.
- B. The examiner's specialty.
- C. Proximity to the injured worker.
- D. Timeframe for scheduling the examination.
- E. Distributing examinations evenly to specialists.
- F. A., B., and C.
- G. All of the above.

(Answers: 1. E.; 2. F.; 3. G.)