

Medi Scene

Keeping You Up-to-Date with the Industrial Commission • July 2014

Don't Forget!

List All of the Allowed Conditions!

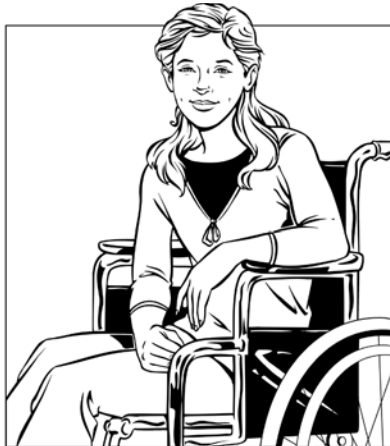
Please remember to list all of the allowed conditions in all of the claims at the outset of your report. This includes conditions that you are not asked to evaluate. These conditions must be listed unabridged, just as they appear on the Statement of Facts, which is included in the examination packet. It is important that all parties know that you are aware of all conditions allowed in the claims under consideration.

Evaluating the Issues - Disability and Impairment

The Ohio Industrial Commission Permanent Total Disability (PTD) examination, in essence, is an impairment evaluation.

The Ohio Supreme Court defines impairment as, "the amount of the Injured Worker's anatomical and/or mental loss of function caused by the allowed condition."

It is the responsibility of the examining specialist in Permanent Total Disability examinations to: 1) provide an estimated percentage of whole person impairment arising from the allowed conditions in the claim, and, 2) provide a discussion setting forth the physical or mental limitations resulting from the allowed conditions.



The Ohio Supreme Court defines disability as "the effect the impairment has on the claimant's ability to work," based on the allowed conditions in the claim.

It is the responsibility of the Industrial Commission (IC) to consider impairment arising from the allowed conditions, and disability factors (age, education and work training/experience) in determining PTD.

Disability factors are not to be considered by the examining specialist when formulating opinions regarding percentage of impairment or physical or mental limitations resulting from the allowed conditions. Considering disability factors or impairment resulting from non-allowed conditions will disqualify the report.

The following are reminders for IC examining specialists regarding impairment and disability considerations:

1. Do not state the Injured Worker (IW) is disabled. Instead, report your opinion as "incapable of work activities due to the allowed conditions," or "capable of work activities with limitations due to the allowed conditions."
2. Do not cite disability factors (age, education, training/experience) as reasons the IW is incapable of work. The IC will consider these factors when determining disability.
3. Do not base an opinion on the IW's inability to work on the assertion that the IW is incapable of full-time work.
4. If it is your opinion that the IW is capable of part-time work, specify what you mean by part-time work by indicating the hours per day and days per week.
5. Do not base your opinion on the IW's ability to return to the former position of employment, or any particular job. That is a vocational consideration. Simply state your medical opinion as to the physical or mental limitations caused by the allowed conditions.
6. Do not consider non-allowed medical conditions, or conditions outside of your specialty in your determination of impairment.

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Examining the Issues: The FCE

As you work through the packet of records for an Ohio Industrial Commission (OIC) Permanent Total Disability (PTD) Independent Medical Evaluation (IME), you might come across a Functional Capacity Evaluation (FCE). This form has likely been placed in the packet as evidence by the Injured Worker, the Employer, or by the Ohio Bureau of Workers' Compensation.

FCEs have been promoted as providing a measurement of an individual's physical ability to perform a series of work-related tasks. FCEs have been used by parties in workers' compensation cases for some time. They determine treatment plans and rehabilitation outcomes, as well as whether an individual can return to work.

The reliability and validity of the FCE to predict the ability of a person to return to work on a sustained basis has been questioned in the medical literature (Gross, et al, J Occup Rehabil, 2005; Gross, et al, Spine, 2004).

There are pitfalls in relying on an FCE when formulating an opinion during an OIC PTD IME. The first is the substantial inherent variation in FCEs. There is no accepted standard. Variables include the length of the FCE, training and

qualifications of the evaluator, expectations of the referral source, and management of behaviors such as effort during the testing.

Another pitfall is more specific to the OIC PTD IME. As stated here before, an OIC PTD IME is a focused examination. The specialist examiner is asked to answer specific questions regarding specific allowed conditions. It is required that the opinion consider limitations due solely to the allowed conditions. A test of an individual's ability to perform a series of work-related tasks, such as the FCE, is unable to distinguish the impact of unrelated physical, mental, and behavioral factors on performance. So, a specialist examiner who relies on the FCE for an opinion on physical limitations might unwittingly be considering limitations due to conditions not allowed in the claim.

Can the FCE be considered when formulating an opinion during an OIC PTD IME? Yes. However, the examining specialist should understand the potential pitfalls of doing so, and make it clear in the report that only impairment due to the allowed condition is being considered. This requires the specialist to use a broad scope of training and experience to distinguish limitations due to allowed (versus non-allowed) conditions.



Online Records Review

Congratulations to all of our specialists who have successfully transitioned to online record review. We are now statewide! The following are reminders for prudent use, review, and documentation:

- Access the records through the Industrial Commission website, not BWC's website, and click the ICON tab
- If you are not sure how to do this task, follow this web site link to [Electronic Records Access](#)
- Still not sure? Call our Helpdesk at (614) 644-6595 or toll free at (877) 218-4810, and we will walk you through it
- When you get there, you will be looking for a SPEC PAC and SPEC PAC SUP. These are what you need to review
- In your report, please document: "I reviewed the records provided to me by the Industrial Commission"

Reminder!

List the Allowed Conditions

At the outset of your report, please list all of the allowed conditions in all of the claims under consideration for PTD. These allowed conditions can be found on the Statement of Facts and the Medical Examination Worksheet. Then, consider in your report only those allowed conditions on which you are asked to opine. It is important for all parties involved to know that you are aware of all of the allowed conditions.

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Keeping You Up-to-Date with the Industrial Commission • January 2014

Examining the Issues: Darned if You Do, Darned if You Don't

Do you ever get the feeling that the Industrial Commission is just too picky about their medical reports? Do you ever feel like no matter what you do, it's never quite right?

Well, although this is undoubtedly no consolation, there are probably good reasons you might feel that way. We do work very hard to make sure that reports we send to hearing from our specialists are legally sufficient and medically competent. The details of what we consider an adequate report are born out of objections from counsel, requests for addenda and new examinations, Ohio workers' compensation case law, the principles of the *AMA Guides*, and accepted medical standards.

So under this topic of "darned if you do, darned if you don't" we're going to outline some basic guidelines regarding presenting physical or mental limitations due to the allowed conditions in your report without crossing the line into disability determination. As a medical specialist, we do want you to describe those limitations, but we don't want you to suggest you are determining disability due to those limitations.

Below are some issues – based on recent reports – which our medical specialists seem to find challenging:

1. The eight hour day, five days a week - This is not the standard for "remunerative employment" in determination of eligibility for PTD benefits. Some examiners want to use this standard as justification for

their opinion that an Injured Worker is incapable of returning to work. Instead, the specialist needs to consider if the Injured Worker is capable of any work activities, even if less than full time.

2. The former position of employment - The question for the specialist examiner in the referral letter clearly is not "can they go back to their old job". The question is: what impairment or limitation is there due to the allowed conditions? It is then the responsibility of the Hearing Officer, who serves as the disability expert in these cases, to determine how those limitations, and other factors, affect eligibility for PTD benefits.

3. Any specific job - Just as above under "the former position of employment," when the examining medical specialist offers an opinion regarding the Injured Worker's suitability for any specific job, then he or she has crossed into territory outside of his or her area of expertise.

4. Further limitations - Be specific about what you, as a medical expert, believe the injured worker can or cannot do, physically or mentally, due to the allowed conditions. Then make sure that these are consistent with what you have indicated on the accompanying form. If they are at all different from the category indicated on the form, specify in your narrative that these are "in addition to" the specified category.



REGISTER NOW! All IC specialist examiners are urged to attend an educational workshop on IME report writing, Friday, March 28, 2014. All specialists who examine for physical allowances are urged to also attend the *AMA Guides 5th Edition* review on Saturday, March 29, 2014. Consider becoming certified! **Location:** Ohio BWC, Columbus, Ohio. This special learning opportunity is offered by ABIME and satisfies CME requirements for IC and BWC examiners. Visit [ABIME's web site](#) for more information and registration.

Did you Know?

Supplemental Specialist Packets

Medical information for review for IC specialist examinations is found online under the *document type* "SPEC-PAC" and *document description* "Specialist Packet IC." However, additional information for review may be filed at a later date, and will be found under the document type "SPEC-PAC-SUP" and document description "Specialist Packet Supplemental IC." Please be sure to document in your report review of both of these packets of medical information!

Continuing education review questions MediScene Jan 2014

1. For IC PTD examinations, specialist examiners are required to document review of the following items in the electronic file:
 - A. Specialist Packet IC (SPECPAC)
 - B. All medical evidence related to the claim(s)
 - C. Specialist Packet Supplemental (SPECPACSUP)
 - D. All of the above
 - E. A and C
 - F. B
2. IC examining specialists are encouraged to go to the BWC electronic file to obtain additional information for their report.
 - A. True
 - B. False
3. Which of the following statements are true?
 - A. The IC requires its specialist examiners to document eight hours of continuing education specific to impairment rating every five years.
 - B. The BWC requires DEP members to have seven CME hours of training specific to AMA 5th Edition every two years.
 - C. A. and B.
4. What should the specialist examiner consider when performing a PTD IME?
 - A. Is the Injured Worker capable of working eight hours a day, five days a week?
 - B. Is the Injured Worker capable of going back to their old job?
 - C. Is the Injured Worker capable of working part-time as a Walmart greeter?
 - D. What are the expected physical or mental limitations due to the allowed conditions?
 - E. All of the above.

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