

COA: TELEHEALTH and MED-LEGAL REPORTING

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- 2005 PDRS (for injuries in 2013 to present)
 - 15-01-02-02 – WPI – 1.4 modifier – Occ variant – age = PD rating
 - 15 = Applicable chapter in AMA Guides (The Spine)
 - -01- = Specific part of spine: Neck
 - -02- = ROM Method (as opposed to DRE method)
 - -02- - Soft tissue lesion (specific type of impairment)
 - WPI – whole person impairment (assigned by doctor)
 - 1.4 modifier: For DOI on or after 1/1/13, increase WPI rating by 40%
 - Occ Variant: accounts for arduousness of job (from PDRS charts)
 - Age variant: the older the higher the rating. (from PDRS charts)
 - Final PD = see money chart, payable at \$290.00 per week

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What Do We Do With Your WPI Ratings?

57 Year old physician with carpal tunnel on one hand.

Pre-2013 DOI:

XX.XX.XX.XX. – WPI – [DFEC] – OCC GRP – AGE

16.01.02.02 – 15 – [4] 18 – 220H – 22 – 28

Injuries after 1/1/13:

XX.XX.XX.XX – WPI – [WPI x 1.4] – OCC GRP – AGE

16.01.02.02 – 15 – [15 X 1.4] 21 – 220H – 26 - 32

Appendix C

Permanent Disability Rates

TABLE 17A: Permanent Partial Disability Indemnity for Injuries 2013, 2014 – 2021

2014 – 2019 Permanent Disability Rates											
%	Weeks	Indemnity	%	Weeks	Indemnity	%	Weeks	Indemnity	%	Weeks	Indemnity
1	3.00	870.00	26	106.75	30,957.50	51	279.25	80,982.50	76	529.25	153,482.50
2	6.00	1,740.00	27	112.75	32,697.50	52	287.25	83,302.50	77	545.25	158,122.50
3	9.00	2,610.00	28	118.75	34,437.50	53	295.25	85,622.50	78	561.25	162,762.50
4	12.00	3,480.00	29	124.75	36,177.50	54	303.25	87,942.50	79	577.25	167,402.50
5	15.00	4,350.00	30	131.00	37,990.00	55	311.25	90,262.50	80	593.25	172,042.50
6	18.00	5,220.00	31	138.00	40,020.00	56	319.25	92,582.50	81	609.25	176,682.50
7	21.00	6,090.00	32	145.00	42,050.00	57	327.25	94,902.50	82	625.25	181,322.50
8	24.00	6,960.00	33	152.00	44,080.00	58	335.25	97,222.50	83	641.25	185,962.50
9	27.00	7,830.00	34	159.00	46,110.00	59	343.25	99,542.50	84	657.25	190,602.50
10	30.25	8,772.50	35	166.00	48,140.00	60	351.25	101,862.50	85	673.25	195,242.50
11	34.25	9,932.50	36	173.00	50,170.00	61	359.25	104,182.50	86	689.25	199,882.50
12	38.25	11,092.50	37	180.00	52,200.00	62	367.25	106,502.50	87	705.25	204,522.50
13	42.25	12,252.50	38	187.00	54,230.00	63	375.25	108,822.50	88	721.25	209,162.50
14	46.25	13,412.50	39	194.00	56,260.00	64	383.25	111,142.50	89	737.25	213,802.50
15	50.50	14,645.00	40	201.00	58,290.00	65	391.25	113,462.50	90	753.25	218,442.50
16	55.50	16,095.00	41	208.00	60,320.00	66	399.25	115,782.50	91	769.25	223,082.50
17	60.50	17,545.00	42	215.00	62,350.00	67	407.25	118,102.50	92	785.25	227,722.50
18	65.50	18,995.00	43	222.00	64,380.00	68	415.25	120,422.50	93	801.25	232,362.50
19	70.50	20,445.00	44	229.00	66,410.00	69	423.25	122,742.50	94	817.25	237,002.50
20	75.50	21,895.00	45	236.00	68,440.00	70	433.25	125,642.50	95	833.25	241,642.50
21	80.50	23,345.00	46	243.00	70,470.00	71	449.25	130,282.50	96	849.25	246,282.50
22	85.50	24,795.00	47	250.00	72,500.00	72	465.25	134,922.50	97	865.25	250,922.50
23	90.50	26,245.00	48	257.00	74,530.00	73	481.25	139,562.50	98	881.25	255,562.50
24	95.50	27,695.00	49	264.00	76,560.00	74	497.25	144,202.50	99	897.25	260,202.50
25	100.75	29,217.50	50	271.25	78,662.50	75	513.25	148,842.50			

2013 Permanent Disability Rates											
%	Weeks	Indemnity	%	Weeks	Indemnity	%	Weeks	Indemnity	%	Weeks	Indemnity
1	3.00	690.00	26	106.75	24,552.50	51	279.25	64,227.50	76	529.25	153,482.50
2	6.00	1,380.00	27	112.75	25,932.50	52	287.25	66,067.50	77	545.25	158,122.50
3	9.00	2,070.00	28	118.75	27,312.50	53	295.25	67,907.50	78	561.25	162,762.50
4	12.00	2,760.00	29	124.75	28,692.50	54	303.25	69,747.50	79	577.25	167,402.50
5	15.00	3,450.00	30	131.00	30,130.00	55	311.25	71,587.50	80	593.25	172,042.50
6	18.00	4,140.00	31	138.00	31,740.00	56	319.25	73,427.50	81	609.25	176,682.50
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9	27.00	6,210.00	34	159.00	36,570.00	59	343.25	78,947.50	84	657.25	190,602.50
10	30.25	6,957.50	35	166.00	38,180.00	60	351.25	80,787.50	85	673.25	195,242.50
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12	38.25	8,797.50	37	180.00	41,400.00	62	367.25	84,467.50	87	705.25	204,522.50
13	42.25	9,717.50	38	187.00	43,010.00	63	375.25	86,307.50	88	721.25	209,162.50
14	46.25	10,637.50	39	194.00	44,620.00	64	383.25	88,147.50	89	737.25	213,802.50
15	50.50	11,615.00	40	201.00	46,230.00	65	391.25	89,987.50	90	753.25	218,442.50
16	55.50	12,765.00	41	208.00	47,840.00	66	399.25	91,827.50	91	769.25	223,082.50
17	60.50	13,915.00	42	215.00	49,450.00	67	407.25	93,667.50	92	785.25	227,722.50
18	65.50	15,065.00	43	222.00	51,060.00	68	415.25	95,507.50	93	801.25	232,362.50
19	70.50	16,215.00	44	229.00	52,670.00	69	423.25	97,347.50	94	817.25	237,002.50
20	75.50	17,365.00	45	236.00	54,280.00	70	433.25	99,187.50	95	833.25	241,642.50
21	80.50	18,515.00	46	243.00	55,890.00	71	449.25	101,027.50	96	849.25	246,282.50
22	85.50	19,665.00	47	250.00	57,500.00	72	465.25	102,867.50	97	865.25	250,922.50
23	90.50	20,815.00	48	257.00	59,110.00	73	481.25	104,707.50	98	881.25	255,562.50
24	95.50	21,965.00	49	264.00	60,720.00	74	497.25	106,547.50	99	897.25	260,202.50
25	100.75	23,172.50	50	271.25	62,387.50	75	513.25	108,387.50			

These charts are based upon L.C. §§ 4453, 4658 and the maximum weekly rates for permanent disability. Reprinted with permission by license from Jay Shergill, © 2012-2021, all rights reserved.

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Burdens of Proof – Reports and Depositions

- Do not confuse medical or scientific certainty with legal burden of proof.
 - Medical proof is based on scientific analysis – to a 95% degree of probability with a 5% probability that result is based on chance
 - Legal conclusions are weighted much lower than conclusions based on scientific probability

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Burden of Proof – Reports and Depositions

- Beyond a reasonable doubt to a moral certainty is required for criminal conviction.
- Clear and convincing proof is lower standard of proof, more like 67%-80% level of certainty, required in some administrative actions such as loss of a professional license.
- Preponderance of the evidence: A feather of weight slightly more than 50% certainty; the scales of justice are just slightly tilted in favor of a finding – required in all civil actions.
- Reasonable medical probability – 51% likelihood based upon knowledge, skill, education, experience, clinical judgment and medical competency. More probable than not.

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- Does the medical report correctly follow the descriptions and measurements of the *AMA Guides* pursuant to Labor Code section 4660(b)(1) and 4660.1(b)?
- Does the medical report follow the California permanent disability rating schedule nuances?
- Does the medical report follow decisional case law?
e.g. *Milpitas USD v. WCAB (Guzman)* (2010) 187 Cal. App. 4th 808.

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- *Milpitas USD v. WCAB (Guzman)* (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837 [Discussion is in Lawyer's Guide, Ch. 7, 7-41 through 7-49]
 - 1. What is the strict rating from the AMA Guides 5th Edition?
 - 2. Is the strict rating an accurate description of the IW's impairment and disability?
 - 3. If not, why is the strict rating inaccurate?
 - 4. What is the alternative rating under the AMA Guides 5th Edition?
 - 5. Why is the alternative rating more accurate than the strict rating?
 - 6. Are the physician's conclusions based on reasonable medical probability?
- Once the WPI is established, the physician has to make a determination of causation of permanent disability applying the principles of apportionment per LC 4663 or LC 4664.

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Why Become Familiar With The Terms?

- For accurate WPI ratings later
- For defense counsel to argue apportionment under LC Sections 4663 and 4664
- Precise terminology will allow AME/PQME and treating physician to provide rating if condition or part of body is not in the Guides
 - Infections
 - Cancer (except skin and lung)
 - Organ transplantations

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- What are “permanent objective medical findings?”
 - Objectively confirmed by diagnostic testing, imaging and/or physical examination
 - Based on national medical standards that were peer reviewed and accepted
 - Without patient’s participation, reproducible
 - E.G. MRI, EMG/NCV, x-rays, troponin testing, echocardiograms; urine, blood testing

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- WPI ratings are “consensus-derived.”
- “Disability” is different from “impairment”
 - Impairment is the loss of loss of use or derangement of any body part, organ system or organ function
 - Disability is “a person’s reduced ability to meet personal, social or occupational demands or statutory or regulatory requirements because of an impairment.”
- The Guides do not account for work disability because they don’t consider factors such as person’s knowledge, skills, abilities, experience, education and age

Required Elements for an AMA Compliant Medical Telehealth Medical Report

- Applicable law
 - Title 8 Cal. Code of Regulations Sections 36.7 and 46.2, applicable effective 5/14/2020 through at least 10/1/2021
 - 8 CCR 36.7 allows electronic service of reports in represented cases
 - Parties have to agree to electronic service of reports and provide their email address for service
 - Psyche reports are subject to limitations in Rule 36.5
 - Original report has to have an original signature and maintained for five years per Rule 39.5.

Required Elements for an AMA Compliant Medical Telehealth Medical Report

- Applicable law
 - Title 8 Cal. Code of Regulations Section 46.2, applicable effective 5/14/2020 through at least 10/1/2021: **What has to be in a telehealth medical-legal report?**
 - In-person exams can occur within 90 days [or up to 120 days if party requesting exam extends the time] of when Governor's stay-at-home orders have expired or local order has expired.
 - Doctor can perform record review and injured worker "electronic interview summary report by telephone or video conference"
 - Once stay at home orders are lifted the physician may then schedule in-person exam with all necessary precautions

Required Elements for an AMA Compliant Medical Telehealth Medical Report

- Applicable law
 - Title 8 Cal. Code of Regulations Section 46.2, applicable effective 5/14/2020 through at least 10/1/2021: **What has to be in a telehealth medical-legal report?**
 - Doctor has to send electronic interview notice the with the same content Form 110 QME Appointment Notification Form with the electronic info for telephone or video conference information
 - Upon service of the Appointment Notification notice, the parties shall send records for review at least ten days before the appointment per LC 4062.3
 - All of the pre-requisites of Section 46.2(3) are applicable e.g. where physical exam is not necessary, etc.

Required Elements for an AMA Compliant Medical Telehealth Medical Report

- Applicable law
 - Title 8 Cal. Code of Regulations Section 46.2, applicable effective 5/14/2020 through at least 10/1/2021: **What has to be in a telehealth medical-legal report?**
 - Doctor is asked to address:
 - Is injury AOE/COE?
 - QME/AME is asked about termination of IW's benefits payments
 - Or, there is a dispute over work restrictions
 - Is telehealth exam consistent with appropriate and ethical medical practice?
 - QME/AME has to attest that the evaluation “does not require a physical examination.”

Required Elements for an AMA Compliant Medical Telehealth Medical Report

- Applicable law
 - Title 8 Cal. Code of Regulations Section 46.2, applicable effective 5/14/2020 through at least 10/1/2021: **What has to be in a telehealth medical-legal report?**
 - Doctor has to prepare a comprehensive medical-legal report with the information that is available at the time of the telehealth evaluation.

Required Elements for an AMA Compliant Medical Telehealth Medical Report

- *Purpose of the exam (Tx MD, AME, PQME).
- *History of present illness.
- *Chief complaints.
- *Pre-injury and post-injury ADLs (Table 1-2, page 4 OF *AMA Guides*).
- *Past medical history.
- *Job description.
- *Review of submitted medical and legal records, list of items reviewed.
- Physical examination (includes who and what methods used), findings on exam.

Required Elements for an AMA Compliant Medical Report

- *Diagnostic and imaging study results
- *Diagnosis and impressions
- Discussion and conclusions
 - *Causation of the injury (specific, CT or both; compensable consequence?)
 - ?*Has applicant reached MMI and is P&S?
 - Objective findings (loss of ROM, neurological deficits (sensory, pain, motor), diagnosis based
 - *Discussion of negative or positive diagnostic tests or imaging studies.
 - Description of impairments for each separate part of body using specific chapters, tables and methods.

Required Elements for an AMA Compliant Medical Report

- Discussion and conclusions (continued)
 - Method of evaluating impairments (DRE, ROM, both; DBE, functional loss, anatomic loss; combining and adding where appropriate)
 - Are physician's conclusions consistent with 2005 PDRS and case law? Is impairment rating accurate? Is there an alternative rating method that is more accurate? How? Why?
 - *How does the injury affect the applicant's current ADLs?
 - Physician's rationale for using a particular method of descriptions and measurements.
 - Causation of permanent impairments – how and why impairments are caused by the industrial injury and/or "other factors" (apportionment).

Required Elements for an AMA Compliant Medical Report

- Discussion and conclusions (continued)
 - *Recommendations for further medical treatment.
 - Can applicant perform his/her usual and customary duties?
 - What are the applicant's residual functional capacities (listed in PR-4 form) and work restrictions?
 - Are the physician's conclusions based on reasonable medical probability?

Ref: Labor Code section 4628, 8 Cal. Code Regulations, section 10682, *AMA Guides*, section 2.6.

Ok, are you ready to handle a telehealth exam?

