

# Legislative & Case Law Updates



By Donald Barthel  
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## *City of Jackson v. WCAB (Rice)* (DCA, published) 82 C.C.C. 437

APPORTIONMENT ROCKS!

F:

- ▶ neck CT
- ▶ QME found DDD in 29 y/o
- ▶ Apportioned to:
  - 25% = ER
  - 25% = prior work
  - 25% = personal activities
  - 25% = “heritability and genetics”
- ▶ next exam, QME did research
  - 17% = ER
  - 17% = prior work
  - 17% = personal activities (Including prior surgery & recreational)
  - 49% = “heritability and genetics”

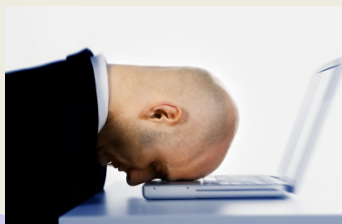


## *City of Jackson v. WCAB (Rice)*

AA requests supplemental...BIG MISTAKE

QME cites studies/articles arguing:

1. heritability = 73% in cervical spine
2. heritability = 75% in cervical spine
3. heritability = 73% (environmental factors contributed little or nothing)



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## *City of Jackson v. WCAB (Rice)*

WCJ: not substantial evidence

WCAB: not substantial evidence

R:

finding causation on "genetics" opened the door to apportionment to "impermissible immutable factors"



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## *City of Jackson v. WCAB (Rice)*

DCA says,

WRONG!

Holding: Apportionment looks good to us!

Can apportionment to “other factors” that cause a disability, including

- ▶ natural progression of nonindustrial condition or disease
- ▶ preexisting disability
- ▶ post-injury disabling event
- ▶ pathology
- ▶ asymptomatic prior conditions
- ▶ retroactive prophylactic work preclusions

(Escobedo, 70 CCC 604.)



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## *City of Jackson v. WCAB (Rice)*

There is “no relevant distinction between allowing apportionment based on a preexisting congenital or pathological condition and allowing apportionment based on a preexisting degenerative condition caused by heredity or genetics”



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## Apportionment after *Benson*

“limited circumstances” = ALL the time  
(practically)

magic (frustrating) words: "inextricably linked"



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## CAAA...

it's not that simple  
(aka thank YOU recent case law)



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## *Guritzky v. Regents of the University of California* (panel)

F:

- ▶ def orth QME, IW ortho QME, def psych QME, IW psych PTP
- ▶ all able to Benson, except IW psych PTP
- ▶ 2 out of 3 also apportioned to non-aoe/coe factors
- ▶ IW psych PTP: "inextricably linked"
- ▶ WCJ: 100%



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## *Guritzky*



H (WCAB): PTP's "apportionment determination is deficient. Rather than articulate the reasoning behind his opinion, [PTP] simply concludes, '... I believe it would be speculative to attempt to offer an apportionment of permanent psychiatric disability without speculation or guess.'...[PTP] does not explain why the apportionment determinations made by other physicians, including [the three QMEs], are either incorrect or not applicable."

Here's how you do it:

1. rescind award
2. remand for PTP supp/depo to provide non-conclusory reasons for inability to apportion



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## *Cruz v California Hospital Medical Center (panel)*

F:

- ▶ specifics– 2002, 2005
- ▶ AME: "inextricably intertwined" (why AME?!?!)
- ▶ WCJ agreed

H: "inextricably intertwined" NOT substantial evidence

remanded to:

- a) obtain different ortho AME
- or
- b) allow WCJ to assign "regular physician" (LC 5701)



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## *Cruz*

"In the case of successive injuries to the same body part, we held that a combined award of permanent disability is inconsistent with the requirement that apportionment be based on causation. The 'reporting physician is required to determine all of the causative sources of the employee's permanent disability, giving consideration not only to the current industrial injury, but also to any prior or subsequent industrial injuries, as well as any prior or subsequent non-industrial injuries or conditions'."



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## *Cruz*

“If the physician cannot do so, he or she must state the reasons why, after an evaluation or consultation with at least one other physician. We did, however, acknowledge and leave room for a combined award in those rare instances where the physician, after complying with the mandates of section 4663, simply cannot “medically parcel out the degree to which each injury is causally contributing to the employee’s overall permanent disability.”



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## *Tapia v. City of Watsonville, PSI* (panel)

F:

- ▶ fire capt = two separate CTs; 3 specifics
- ▶ AME = “intertwined” (single CT)
- ▶ WCJ agreed

H: rescinded award, remanded for supp/depo



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## *Tapia*

R: not substantial evidence

Per *Benson*, “[t]he only instance in which a combined award of permanent disability may be justified is where the evaluating physician is unable with reasonable medical probability, to parcel out the approximate percentages to which each distinct industrial injury causally contributed to the employee’s overall permanent disability.”



## *Tapia*

"Notwithstanding the clear evidence that applicant sustained three distinct industrial injuries ... [AME] does not assign specific levels of disability to these separate injuries or explain why he is unable to do so. Instead, he states, 'I am not able to break out individual dates and levels of impairment'."





## *Tapia*

“The only attempt at an explanation is the suggestion that with police officers, firefighters and transit drivers it is common to find multiple injuries over the course of their careers that actually represent a cumulative trauma exposure. That commentary is insufficient to meet the requirements of section 4663(c). [AME] must either assign a specific level of disability to each of applicant’s industrial injuries or expound as to the exact reasons he is unable to do so.”



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## *Ibrahim v. California Dept. of Corrections and Rehabilitation (panel)*

F:

- ▶ 21 claim forms, 9 apps (7 specifics, 2 CTs)
- ▶ 3 AMEs (again with the AMEs!!!)
- ▶ 2 claim can't *Benson*

H: rescinded/remanded

R: not substantial evidence



2 "merely" stated "inextricably intertwined" = "conclusory" failed to adequately explain why they could not apportion



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## Don't forget

1. 4663/4664/*Benson* require apportionment
2. exception: "limited circumstances"
3. Got "limited circumstances" or in "rare instances"?



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## Don't forget

Doctor cannot parcel out the "approximate percentage[s]"?

MUST have substantial evidence:

- ▶ non-conclusory
- ▶ analysis and reasoning
- ▶ why unable



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## Don't forget



4. magic words alone (inextricably intertwined)

does NOT

=

substantial medical evidence

OTHERWISE, “limited circumstances” (*Benson*)

=

general rule

(conflict w/4663/4664/case law)



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## *Beecham v. Swift Transportation* (Signif Panel Decision)

F:

- ▶ PQME stated employee's markers were abnormally low for a person with “negro blood”

H: PQME removed from the case

R: “impermissible racial or ethnic bias”

8 Cal. Code Reg. § 41(c)(3) All QMEs, regardless of whether the injured worker is represented by an attorney, shall with respect to his or her comprehensive medical-legal evaluation:...

(3) Render expert opinions or conclusions without regard to an injured worker's race, sex, national origin, religion or sexual preference.



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Don't forget

*Vaira v. WCAB*



3<sup>rd</sup> App Dist



## *Vaira vs WCAB*

### Facts:

- ▶ 73 y/o bent over “to pick up some brochures”
- ▶ Compression fx
- ▶ AME – 64% PD
- ▶ Apportionment: 40% to age/pre-existing osteoporosis



## AME

“With regards to causation and apportionment, it is my opinion that [applicant] certainly does have risks secondary to the aging process and the pre-existing osteopenia or osteoporosis...these two conditions lumped together would be responsible for 40% of her new current level of disability...”



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## AME depo

“[H]er age predisposed her to the injury, the osteoporosis, and possibly other factors...you put these together, and...she was pretty significantly at risk.”



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## Is this “legal” apportionment?

LEGAL

Is it “discrimination” on the basis of “age”?

Maybe...  
Maybe not!



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“To the extent [the AME] based his apportionment on...age, this would...violate...11135. The WCAB may not reduce petitioners [PD] simply because she is older...”

- ...or male
- ...or female
- ...or straight
- ...or gay
- ...etc.



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## HOWEVER

“To the extent osteoporosis or some other...condition that might contribute to a work-related disability arises or becomes more acute with age, we see no problem with apportioning [PD] to that condition.”



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“[I]n such cases, apportionment is not to age but to a disabling condition.”



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What if this causes a “disparate impact”?



What’s “disparate impact”?



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“Reducing [PD] based on a pre-existing condition that is a contributing factor of disability is not discrimination. When the WCAB determines a pre-existing condition contributes to a given disability, and apportions accordingly, this is merely a recognition that a portion of the disability exists independent of the industrial injury.”

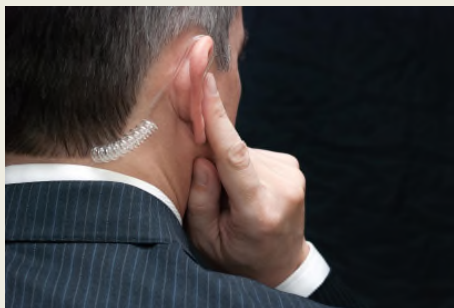


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## Here's the Dirty Little Secret



“Such apportionment is  
not  
discrimination...”



## Lesson

Make sure doctor uses correct language!  
Apportion to “age”? → **NO**  
Apportion to a condition  
(that just happens to be age-related)?



## Wanna put me out of work?

*Nadey v. Pleasant Valley State Prison*  
Cal. Wrk. Comp. P.D. LEXIS

F:

- ▶ Def sought interrogatories
- ▶ WCJ: there are other, less cumbersome, discovery methods

I: Rogs allowed?

H: Yes (panel); it was error to not compel IW's response to defendant's written inquiry

R: 4663(d)

This is a big deal!

Save time!

Save money!



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## But how far does this logic extend??



“all previous permanent disabilities or physical impairments” is (VERY) broad

Does it really mean "all"?

*Britt v. Superior Court (SCt)*  
(1978) 20 Cal.3d 844, 15 Cal. Rptr. 90

H: discovery is limited to body parts at issue

Does LC 4663 expand this?



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*Burr v. The Best Demolition & Recycling Co., Inc.*, 2018 Cal. Wrk. Comp. P.D. LEXIS

Labor Code Section 4662(a)...the following permanent disabilities shall be conclusively presumed to be total in character:

- loss of both eyes or the sight thereof,
- loss of both hands or the use thereof,
- an injury resulting in a practically total paralysis; and
- an injury to the brain resulting in permanent mental incapacity.



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## Question...

What does "practically total paralysis mean"?

Good question (paucity of case law!)

- standard is met only if the injured worker was functionally "near quadriplegia".
- WCAB placed emphasis on the word "total"
- RULE (it seems) = "near quadriplegia"



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## More questions raised...

If paraplegia alone is insufficient, what about conditions such as

- arthritis in the functioning extremities
- internal problems,
- psychological problems

can these bring an employee with paraplegia closer w/in definition of “practically total paralysis”?



## Importance...?

It's NOT just about being deemed 100%

LC 4662 Perm Total determinations mean NO APPORTIONMENT!



*Dynamex Operations West, Inc. v. Superior Court* (4/20/08, CA Sup Ct)

I: Who is (and is not) an independent contractor (for purposes of wage orders adopted by the Industrial Welfare Commission)

H: there is a presumption that individuals are employees

H: an entity classifying an individual as an independent contractor bears the burden of passing the “ABC test”



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ABC Test?



ER must establish *each* of the following:

- A. worker is free from control and direction of the hiring entity in connection with performance of the work, both under the contract for the performance of the work and in fact; *and*
- B. worker performs work that is outside the usual course of the hiring entity's business; *and*
- C. worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed



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## Dynamex "ABC" Standard

Is it supposed to overturn *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 54 Cal. Comp. Cases 80?



They seem to infer just the opposite.

What did Borello say?



Supreme Court listed the *Borello* factors seemingly in order to consider how best to construct their own “ABC” test to apply in “wage order” cases:

“The trial court described the *Borello* test as involving the principal factor of ‘whether the person to whom services is rendered has the right to control the manner and means of accomplishing the result desired’ as well as the following nine additional factors:

- 1) right to discharge at will, without cause;
- 2) whether the one performing the services is engaged in a distinct occupation or business;



## *Borello*

- 3) the kind of occupation, with reference to whether in the locality the work is usually done under the direction of the principal or by a specialist without supervision;
- 4) the skill required in the particular occupation;
- 5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work;



## *Borello*

- 6) the length of time for which the services are to be performed;
- 7) method of payment, whether by the time or by the job;
- 8) whether or not the work is part of the regular business of the principal; and
- 9) whether or not the parties believe they are creating the relationship of employer-employee.”



## Watch out Uber!





## Elguea v. Southern Cal. Pizza Co., LLC

6/13/18 DCA, 2nd App District, Div Eight

Unpublished...but a great read!

F: w/c and FEHA claims proceeding  
w/c settled via C&R with addendum:

"This Compromise & Release also includes resolution of all claims arising under any state or federal law regulation, including the California Fair Employment and Housing Act, federal and state wage and hour laws, federal and state False Claims Acts, Title VII of the Civil Rights Act, the Americans With Disabilities Act, the Family Medical Leave Act, the California Family Rights Act, the California Labor Code,...(etc)"



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## F: IW argued:

- ▶ did not understand English
- ▶ was never informed C&R was releasing civil claims
- ▶ he was represented by counsel in the FEHA action at the time of C&R settlement

I: What happens to FEHA claims?



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## H: FEHA disappears!



R:  
 "If the parties to the workers' compensation proceeding include in their release an addendum which reflects an intention to reach beyond workers' compensation, that addendum may be given effect and may encompass FEHA claims. (*Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 301)"

"Indeed, this case is stronger than *Jefferson*, in that the addendum to the workers' compensation releases Elguea signed here expressly encompasses FEHA claims. In short, the trial court correctly concluded that a release which specifically includes FEHA claims does, in fact, release FEHA claims."



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## *Camacho v. Target*

(2018) 24 Cal.App.5th 291

C&R typically does not preclude liability for civil claims

### C&R

- needs additional and specific language (satisfying Civil Code 1542)
- to resolve (settle) non-industrial claims

Don't have that language?

C&R doesn't affect the potential civil causes of action



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## Camacho

What did NOT work:

"any other claims for reimbursement, benefits, damages, or relief of whatever nature"

1. neither the C&R nor the addendum contained a reference to non-w/c claims
2. there was no language to release such claims in "clear and nontechnical language".
3. "language, which appeared in fine print and was not underlined, bolded, or capitalized, referred to other workers' compensation claims that were identified as being settled elsewhere in the remainder of the C&R and the addendum."

UPSHOT?

Don't expect to sneak it through!



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## Upshot...

...signed addendum? YES

...body of C&R? NO (WCAB doesn't have jurisdiction)  
(doesn't "smell" right!)



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## *Morehouse v. Anthony Indrieri*

2018 Cal. Wrk. Comp. P.D. LEXIS

F:

- ▶ overpaid TD after P&S = \$13,000
- ▶ def underpaid prior TD award > \$60,000
- ▶ never acknowledged underpayment until went to trial trying to get credit for overpayment



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LET'S GET THIS CLEAR, DEFENDANT! YOU WANT AN  
OVERPAYMENT CREDIT FROM MONIES THAT  
ACCRUED AS  
A DIRECT RESULT OF YOUR FAILURE TO PROPERLY  
PAID TD AWARD

(good luck with that!)



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## HOLDING: Awarded!?!?!? (YEP!)

R: whether to allow a credit is discretionary  
see *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal. App. 3d 827

Take away....?

When the facts re a credit stink...  
...it might not sink!  
(I'm a poet)



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"[W]e do not agree with the WCJ that it would be inequitable to allow to the credit...equity favors the allowance of a credit when the credit is small and does not cause a significant interruption of benefits, and where the credit for overpayment of one category of benefits is not disruptive...Here, defendant paid (VR) during a period when applicant was ultimately determined to have been [TTD]. In no circumstance would applicant have been entitled to receive both [TTD] and [VR] for the same period for the same injury... although the label may have been different, in effect there was no significant distinction between the [TTD], and the [VR] benefits paid during the same time."



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## Interpretation?



No harm, no foul!

BTW

Turns out we LOVE Commissioners

Deidre Lowe

Katherine Zalewski

not so much Deputy Anne Schmitz



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## *Robles v Southern California Gas Company*

2018 Cal. Wrk. Comp. P.D. LEXIS 98

F:

- ▶ MVA on way to union office
- ▶ for union business
- ▶ in capacity as union regional manager

H: Going & Coming defense certainly applies here...right?



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## *Robles*

H: nope!!!

injuries caused union activity are compensable (on or off employer's premises), when activity is

- ▶ condoned by
- ▶ beneficial to employer



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## *Robles*

ER

- a) "expressly released" applicant from his regular work (per CBA)
- &
- b) paid regular salary to attend contract negotiations (per CBA)

THUS, these activities were for the "benefit of defendant"

**SURPRISE**



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## *Robles*

"Defendant and the union were in the midst of contentious contract negotiations...the prior contract *had already expired.*"

"[I]"minent contract expiration is a factor that may be considered when evaluating if there is a benefit to the employer."



## *Belinda Go v. Sutter* 83 CCC 381 (2018)

F:

- ▶ UR/IMR denied RFA for surgery
- ▶ IW self-procured, thus TD
- ▶ PD increased from 7 to 23% via surgery

I: Is ER liable for PD/TD caused by self-procured treatment denied by the UR/IMR process?

H:

- ▶ WCAB panel says "yes"
- ▶ DCA & S Ct have denied request for review





## *Belinda Go v. Sutter* 83 CCC 381 (Jan 5, 2018)

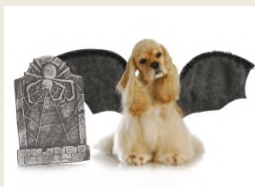
Query...

- ▶ How is "reasonable & necessary" determined?
- ▶ Is WCJ to throw-out MTUS?
- ▶ What guidelines should WCJ follow? (here WCJ found :surgery proved to be reasonable by its positive outcome)
- ▶ Cart before the horse?
- ▶ If negative outcome, would the treatment be unreasonable/unnecessary?



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## Can you spell "*LeBoeuf*" (and is it dead?)



*Hennessey v. Compass Group*  
2018 Cal. Wrk. Comp. P.D. LEXIS

F: SB 863 removed "diminished future earning capacity" (DFEC) as part of rating string for DOI after 1/1/13

PD now determined by: WPI

1.4  
occ  
age



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I: does this change make VR "expert" attempts to est. diminished future earning capacity "irrelevant and inadmissible"?

H: NO

PDRS is still only *prima facie* evidence of PD

VR reports can be used to argue for more (or less!) PD



So we pay for all VR "expert" reports?

HECK NO!

object, Object, OBJECT!



## *Beitpolous v California Correctional Healthcare 83 CCC 1078*

F:



- ▶ QME panel; two stricken leaving Dr E
- ▶ Notice indicated, “Via telemedicine. Evaluation will take place through the use of telehealth using interactive audio, video, or data communications”
- ▶ "QME was permitted to conduct examinations via telemedicine as a reasonable accommodation under the ADA" (WCAB fails to id who "permitted" this "accommodation")



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## *Beitpolous*



“[QME] was live on screen, and applicant spoke with him directly and [D.C.] was present in-person with the applicant in the exam room... ‘[QME] did all the talking. He walked her through everything.’ [DC] ‘explained his training. He did everything in a manner that QME could watch. He did things such (as) a check range of motion, grip strength, and other things. QME watched all this.’ Applicant indicated she was familiar with telemedicine because it is used in the prison system. She thought it was much more thorough than a regular exam.”



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## *Beitpolous*

- ▶ MSC: first time ER objected to QME's report and his serving as QME

I: report admissible?

H: no; replacement panel issued

R: telemedicine used...

NOT (apparently not a problem)!

"fairness and due process"



## *Beitpolous*

"[DC] did not sign the report or issue any other form of verification that would establish the reliability of [DC] measurements. In fact, neither party knew the identity or specialty of the assisting physician until the receipt of [QME's] report. Consequently, since defendant had no prior notice of [QME's] intention to use [DC] as a surrogate, defendant was not provided an adequate opportunity to object to the use of [DC] prior to the issuance of the report."





Does this mean future QME evals can be done via telemedicine for out-of-state (or Eureka-based!) applicants?



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## *Schuy (2018) 83 CCC---*

F:

- ▶ AME (yuck!) apportioned 50% (really?!) of CT of low back to non-industrial "preexisting, genetically determined degenerative disease" (DDD)
- ▶ WCJ says NOT substantial evidence
- ▶ WCAB says, "WRONG"

R: post-SB 899 we apportion to "among other things, pathology, asymptomatic preexisting condition, or genetic/hereditary factors"



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## Schuy

IW over 50?

Who has DDD?

"almost all"  
(AMA Guides)



Got any files involving:

- ▶ bad backs
- ▶ IW's 50+ y/o

Think APPORTIONMENT



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## It used to be sooooo much easier

(aka Can the WCAB make this anymore cumbersome & expensive!?!?)

*Staudt v. UCLA* (BPD) 82 C.C.C. 1441

F:

- ▶ on court's calendar 6 times
- ▶ guess who never appeared
- ▶ NOI to dismiss issued
- ▶ AA objected



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## H: good bye NOI



R: LC 5700: “either party may be present at any hearing, in person, by attorney, or by any other agent.”

Rule 10301(u) “defines a hearing to mean any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference at a district office before the appeals board.”



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## Staudt

How to handled it now...

- ▶ subpoena EE
- ▶ if EE is a no show, ER may request:
  1. order of contempt and/or
  2. sanctions and/or
  3. order compelling applicant to appear

still fails to appear...?



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## Go to trial!

Could proceed to trial on the merits (without applicant present).

Look for a defense win!!



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## IMR Decision CM17-0187339

F:

- ▶ "CRPS, chronic pain syndrome, dysthymic disorder and lumbar radiculopathy status post lumbar fusion"
- ▶ "severe pain" (9 out of 10)
- ▶ Percocet, Anaprox, Prilosec and CBD

I: shall we take a toke on ER's dime?



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## IMR Decision CM17-0187339

H: UR...what are you smoking, dude?  
IMR...are you high, pal?  
(buy your own stash!)



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## IMR Decision CM17-0187339

- R:
- 1) there are no quality studies supporting cannabinoid use and there are
  - 2) serious risks (Restricted legal access hampers research)
  - 3) Cannabis use is associated w/declines in cognitive performance
  - 4) more study is needed



Upshot?

Don't expect to light up anytime soon!



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## Multiple similar UR/IMR decisions

Primary explanation: "2016 MTUS chronic pain guidelines addressing cannabinoids, which do not recommend use of cannabinoids to treat pain especially given their potential negative side effects, including decrease in cognitive performance and possibility of psychotic symptoms in vulnerable persons."



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## Medical Treatment Stipulations re: FMT/Jurisdiction to Enforce

(aka Be Careful with those Stips!)

*Federal Express Corporation v. WCAB (Payne)*  
82 CCC 1014



- F:
- ▶ stips agreed to refer EE to AME for future treatment disputes
  - ▶ dispute arose
  - ▶ defense argued legislative changes required RFA/UR/IMR (rules do preclude AME/QME from making treatment decisions!)

H: stips trump statutory change

R: stip is consistent w/underlying purpose of UR/IMR by obviating the need to litigate future treatment disputes (AME may be faster than UR/IMR...traditionally, at least)



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## "High Volume of IMR Cases Expected to Continue"

2017 ave = 14,593 eligible applications/month

- > highest since IMR in 2013
- > 91.7% affirmed UR (denial upheld!)

9/10/18 Workcompcentral



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## CTs are derailing the system... and AAs are driving the train

91% of CT/lost time claims involve AA  
How often is that?

TWICE the atty involvement rate for all other  
claims

80% of med-only CT cases involve AA  
How often is that?

FOUR TIMES that for specifics



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## Fun (not!) Fact

42% of CT claims are filed post-term



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## WCIRB says CTs are expensive

advisory pure premium rate for Jan. 1, 2018,  
would have been:

\$1.59 per \$100 of payroll  
rather than  
\$1.96

23% difference!!!



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## Nothing new...

Workers' Compensation Action Network says  
we've got a "problem"

Do you agree?



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## What can be done?

Before the (essential—sometimes) depo,  
consider...

News Flash:



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## Lockton's report may change strategies:

- ▶ 67% of denied claims convert to paid claims within a year.
- ▶ Denying then approving claims increases costs 55% over claims paid without first getting denied
- ▶ Claims denied and then paid cost \$15,694, on average, while claims accepted and paid cost \$10,153

WOW! That's a bombshell



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## Governor Appointed, Senate Confirmed, 6 Year Term (Reappointment an option)

### Chairwoman

Katherine Zalewski

### Commissioners

Deidra E. Lowe

Marguerite Sweeney

José H. Razo

Juan Pedro Gaffney

Katherine Dodd

Vacant

### Deputy Commissioners

Patricia A. Garcia, Acting Secretary

John F. Shields


Vacant



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	Petitions for Recon	Total Case Filings
2010	2,057	144,574 <sup>(23)</sup>
2011	2,550*	148,561 <sup>(24)</sup>
2012	2,536*	158,732 <sup>(25)</sup>
2013	2,900*	162,385 <sup>(26)</sup>
2014	2,550*	170,147 <sup>(27)</sup>
2015	2,179*	171,240 <sup>(28)</sup>

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We've got ALL seven (finally)

newbies

- ▶ Juan Pedro Gaffney (80 y/o)

qualifications:

40 yrs directing a folk music chorus  
VS  
Gov Brown's h.s. friend...1955

You pick it!

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## At least he's honest

“What shall I do, should I not plead guilty?” he said when asked by a Chronicle reporter. “Yeah, I’m a friend of Jerry’s. We go way back. Jerry knew me when I was active in social action and politics. He didn’t forget that part of me.”

San Francisco Chronicle



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## Jerry’s defense:

5 must be attys

2 may be non-attys



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## Reading the tea leaves...

Cut from CAAA's cloth!



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## Gaffney quotes worth considering:

"I never lost interest, not just in labor and **workers' rights**, but in **social justice** for all, for societal well-being and for the common good"

"I consider it both opportunity and challenge to work assiduously at this, to contribute to a system of real solutions for real problems, and I will aim to be as fair and equitable in assessing the merits of claims from any side on any case that comes before this board....**At the same time, I know where I come from.**"



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The Rules Committee voted 4-0 to recommend that the full Senate confirm Katherine W. Dodd for a six-year term on the WCAB without asking any questions of the nominee.

29 y/o



## Will Dodd be balanced?

Tea leaves say...YES

- ▶ Father-in-law, Sen Bill Dodd, D-Napa
- ▶ ACLU Legis Advocate 2013-2016
- ▶ Corp Secretary at Frog's Leap Winery 2016-2017



## Katherine Dodd, per CA Bar website:

Date	License Status	Discipline	Administrative Action
Present	Active		
5/27/2015			Admitted to The State Bar of California



## Hmmmmmm...

Gov Brown instructs Sacramento to  
"study"  
AMA Guides

Recommends adopting 6th ed  
in future  
"reforms"



What does that mean?  
Is it good?  
Bad?  
Worthwhile?



## Current edition (5th)

- ▶ Abused
- ▶ Guzman
- ▶ game playing
- ▶ increasingly expensive (as AA, docs—esp AMEs—learn the tricks)



## 6th edition

- ▶ in MANY venues outside of CA
- ▶ less easily gamed
- ▶ less mistakes...
  - ...but not perfect
  - B-a-r-t-h-e-l YES
  - S-a-c-r-e-m-e-n-t-o NO

### Sacramento

- ▶ recommendation to adopt the 6th Ed. in future "reforms."



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AB 479 would require doctors to consider a number of additional factors while analyzing impairment in breast cancer claims:

- ▶ Skin disfigurement
- ▶ The presence or absence of the organ



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