

Combatting PD Inflation

By Nasir F. Adil, Esq. & Amir F. Adil, Esq.
Law Offices of Bradford & Barthel, LLP



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Meet our Team

Nasir F. Adil, Esq.
Equity Partner
nadil@bradfordbarthel.com



Amir F. Adil, Esq.
Equity Partner
aadil@bradfordbarthel.com



Donald Barthel, Esq.
Founding Partner
dbarthel@bradfordbarthel.com



Tahmeena Ahmed, Esq.
Executive Managing Partner
tahmed@bradfordbarthel.com



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Tim Mussack
Director - AMA Analysis and
Indemnity Valuations
tmussack@bradfordbarthel.com



Kenneth Tolbert
Expert Consultative Rating Specialist
ktolbert@bradfordbarthel.com



Alex Sadek
Rating Specialist
asadek@bradfordbarthel.com



David Roman
Rating Specialist
droman@bradfordbarthel.com



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Combating Permanent Disability

In this Webinar, Nasir F. Adil will discuss best tactics to reduce permanent disability from the onset of a claim including obtaining the ISO report, getting subpoenaed records, deposing the applicant, testimony regarding ADLs, subrosa, importance of panel specialty, cover letters to the PQME, apportionment, vocational reporting, etc.



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I. Settlement



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Settlement

- Analyze exposure at every step of a claim.
- Does not mean you *have* to always settle cases early.
 - Rather, by continuously assessing exposure, *based on updated diagnosis, indemnity/TD, surgery, estimated PD, future medical, etc.*, It keeps everyone on the same page throughout the course of a claim.



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Settlement

- Every deposition is an informal settlement conference.
 - Always reach out to AA, in advance of the deposition, and
 - Get a settlement demand. If a resignation is required, let the aa know early so they can communicate that to the applicant. This often increases the likelihood of reaching settlement at the deposition.
 - Defense attorney and claims should strategize regarding C&R authority, in advance of the deposition.
 - Workers Comp 101: a defendant never regrets settling at a deposition.
 - Avoids costs associated with PD, in addition to treatment. TD, FMC, etc.



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II. Deposition



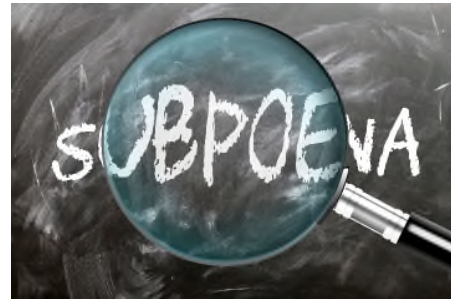
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Deposition

- An ISO report is the defendant's best friend as it allows the defense to be on our toes, thereby being aggressive.
- Get a copy of the ISO report, in advance of the deposition.
 - Often, the iso is sent with the litigation referral, so claims already has a heads up regarding prior DOI's and MVA's.
 - Get relevant subpoenaed records right away.



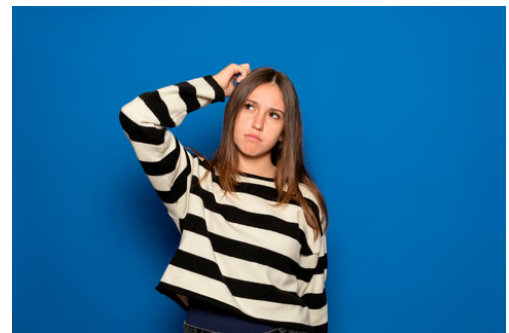
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Deposition

- By already knowing the applicant's injury history at the Deposition, it keeps the applicant honest at time of testimony. Otherwise, the applicant is able to say "they do not remember" and there is nothing for the defense to bring their attention to.
- At deposition, ask about MVA's and prior work injuries that required medical treatment
 - If you already have the subpoenaed records, it allows the defense to control testimony.



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Deposition

Remember, AA's often "coach up their clients" to say "I don't know" rather than to estimate or approximate. So, when you have concrete evidence and records of prior claims, that brings everything to light

III. Subpoenaed Records



Subpoenaed Records

- Getting them before deposition.
- Also, reassess which records to get *after* taking testimony.
- Relying on the ISO is great, but the applicant's testimony will help determine where to get further records from.



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Subpoenaed Records

- At deposition, inquire about personal treatment & medical insurance.
 - Applicant's personal treatment records help with apportionment. They may delve into pre-existing treatment for the same of relevant body parts.
 - Get medical record numbers and personal insurance information which will help expedite receipt of discovery and records.
 - This can help avoid compensable consequence claims and injuries.



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IV. Deposition

- Of course, asking about prior work injuries and MVA's is paramount.
- Also, seek testimony regarding medical history, including:
 - Have you even been hospitalizations before?
 - Have you ever undergone any surgeries?
 - Have you ever visited a hospital emergency room?
 - Have you ever sustained a sports-related injury?
 - Have you ever sustained a slip and fall injury?



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Deposition

- Importance of asking regarding activities of daily living and applicant's current condition.
 - Ask about current symptoms and complaints at time of deposition.
 - If the testimony is favorable, highlight that to the QME.



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Deposition

- Ask: has your condition improved with treatment since our injury?
 - If the testimony is favorable, highlight that to the QME and PTP.



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Ask Specific Questions Regarding Activities of Daily Living

- *Are you right or left-handed?*
- *Are you able to drive?*
- *Are you able to bathe yourself?*
- *Are you able to brush your teeth?*
- *Are you able to comb your hair?*
- *Are you able to shave?*
- *Are you able to dress yourself?*
- *Are you able to tie your shoes?*
- *Are you able to wipe yourself in the restroom?*
- *Are you able to tie your shoes?*
- *Are you able to feed yourself?*



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Deposition

- Ask specific questions regarding household chores.
- Ask how often they leave the home every week.
- Ask how often they go on walks.
 - Highlight this testimony to the QME and PTP.



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V. Surveillance



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Surveillance

- Know when to get sub rosa.
 - Often recommended when:
 - Subjective complaints outweigh objective findings.
 - Applicants are not credible, or are malingering symptoms.
 - You are “stuck” with an applicant friendly QME and need to be avoid *Almaraz/Guzman* application.



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VI. Communicating With the Doctors



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Communicating w/ Doctors

- If the applicant is on TD, but the employer has a reasonable modified work program, then let the PTP know.
 - This can eliminate TD exposure and reduced PD.



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Communicating w/ Doctors

- If the applicant is working withing doctor recommended work restrictions, then highlight that modified duty to the PQME.
- Medical legal evaluators now get paid for doing *their* job, so be aggressive with your cover letters.
- If QME's know defendants are aggressive and doing *our* job, then they have to be honest in their medical legal reports and PD assessment.



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VII. PQME Depositions



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PQME Depositions

- Every doctor deposition is different.
- Know your file inside out.
- B&B ratings department helps challenge doctor ratings and give an outline and plan of attack.
- You do not have to know medicine better than the medical doctor.
- But bring facts to the doctor's attention to challenge their opinions and prove their opinions do not constitute substantial medical evidence.



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VIII. Vocational Evaluations

- Work restrictions are gold
- Favorable surveillance is king
- Point out apportionment provided by the doctors (*Nunez*)
- Call your expert and communicate flaws in the opposing argument



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nadil@bradfordbarthel.com



Amir F. Adil, Esq.

Equity Partner
aadil@bradfordbarthel.com



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