

APPORTIONMENT SIMPLIFIED



EZ QME CONTINUING EDUCATION

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APPORTIONMENT SIMPLIFIED



- Single most difficult/Single most impactful.....
- **APPORTIONMENT:** To divide and share out according to a plan....to make a proportionate distribution of....
- The new approach to apportionment requires doctors to look at the current disability and parcel out its causative sources — nonindustrial, prior industrial, current industrial — and decide the amount directly caused by the current industrial source. This approach requires a thorough consideration of, not disregard for, past injuries.
- It's applied to the final adjusted rating of permanent disability, not the standard rating. Also, it's applied to each body part rating string as appropriate, not to an overall rating of disability after the disability of body parts is combined.
- **History:**

SENATE BILL 899



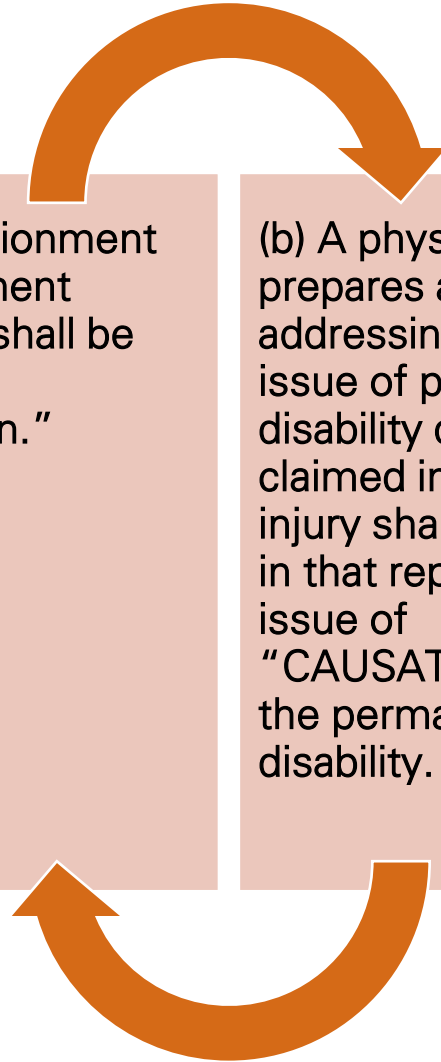
- PASSED 04/19/2004.....PURPOSES:
 - Reducing costs: The legislation aimed to control and reduce the overall costs associated with the workers' compensation system. It introduced several measures to achieve this, such as revising the formula used to calculate disability benefits and implementing stricter guidelines for evaluating permanent disabilities.
 - Promoting efficiency:streamline and improve the efficiency of the workers' compensation system.
 - Enhancing benefits: Senate Bill 899 aimed to provide fair compensation to injured workers while balancing the financial burden on employers....
 - Combat fraud and abuse: The legislation aimed to address concerns regarding fraudulent claims and abuses within the workers' compensation system. It included provisions to increase penalties for fraudulent activities, such as misrepresentation of injuries or engaging in fraudulent billing practices.
 - LC 4750 Out.....LC 4663 Revised.....LC 4664 New
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LABOR CODE 4663

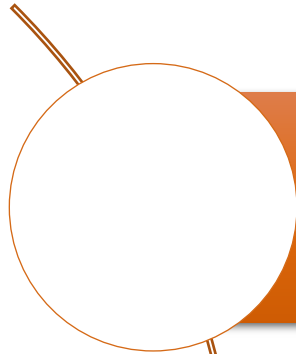


(a) Apportionment of permanent disability shall be based on "causation."

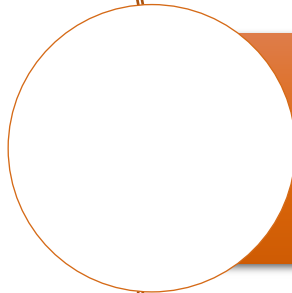
(b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of "CAUSATION" of the permanent disability.



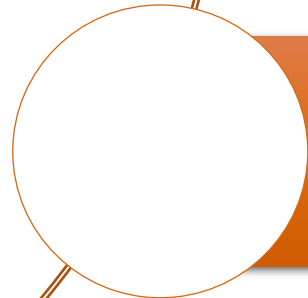
LABOR CODE 4663



LC 4663: (c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding:



What approximate percentage of the permanent disability was caused by the direct result of injury arising out of (AOE) and occurring in the course of employment (COE) and,



What approximate percentage of the permanent disability was caused by "other factors" both before and subsequent to the industrial injury, including prior industrial injuries.

LABOR CODE 4664



(a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.

(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

i.e. – no “medical rehabilitation”

Both 4663 and 4664 address “prior industrial injury”

ESCOBEDO

- Escobedo - ... "in the context of Apportionment determinations, the medical opinion must:
- Disclose familiarity with the concepts of apportionment,
- Describe in detail the exact nature of the apportionable disability, and....
- Set forth the basis for the opinion, so that the Board can determine whether the physician is properly apportioning under correct legal principles."
- Principles:
 - Be CLEAR on the "nature of the disability/impairment."
 - Set forth the "basis for the opinion"
- Concept: SUBSTANTIAL MEDICAL EVIDENCE

SUBSTANTIAL MEDICAL EVIDENCE



- SUBSTANTIAL MEDICAL EVIDENCE - DEFINITION
 - *West v. IAC* (1947) 79 Cal. App. 2d 711, 12 Cal. Comp. Cases 86
 - *Zemke v. WCAB* (1968) 68 Cal.2d 794, 33 Cal. Comp. Cases 358 (Supreme Court in Bank))
 - *Henry GRANADO, Petitioner, v. WORKMEN'S COMPENSATION APPEALS BOARD, Haslett Warehouse and California Casualty Indemnity Exchange – January 1968*
 - *Garza v. WCAB* (1970) 3 Cal.3d 312, 35 Cal. Comp. Cases 500 (Supreme Court in Bank))
 - *Escobedo v. Marshalls* (2007) 70 Cal. Comp. Cases 604
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APPORTIONMENT OF THE PERMANENT IMPAIRMENT



Garza - any award, order or decision of the board must be supported by substantial evidence in the light of the entire record

Zemke – an opinion that does not disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence

West - an expert opinion is no stronger than the facts upon which it is based.

Granado – a mere legal conclusion does not form a basis for a finding

APPORTIONMENT OF THE PERMANENT IMPAIRMENT



Bassett – the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the *reasoning* by which he/she progresses from the material to the conclusion, and, it does not lie in the mere expression of the conclusion, thus, the opinion of the expert is no better than the *reasons* upon which it is based.

APPORTIONMENT OF THE PERMANENT IMPAIRMENT

Sample Footer Text

Conclusory Opinions vs. Substantial Opinions – Escobedo

In order to constitute substantial medical evidence, a medical opinion must be 1) predicated on “reasonable medical probability” ...

...a medical opinion is NOT substantial medical evidence if it is based on:

Facts no longer germane (relevant)

Inadequate medical histories or examinations,

Incorrect legal theories

Surmise, speculation, conjecture, or guess.

Further, a medical report is NOT substantial evidence unless it sets forth the *reasoning* behind the physician’s opinion, not merely his or her conclusions.”



APPORTIONMENT OF THE PERMANENT IMPAIRMENT



- THE “WINNING” APPORTIONMENT FORMULA (*Escobedo*)
 - Reasonable Medical Probability
 - “Relevant Facts” – What ARE Relevant Facts
 - Adequate History & Exam – What IS an Adequate History? What IS an Adequate Exam?
 - Must not be Speculative
 - How and Why Reasoning – What must have Reasons?
-

My formulation of the Apportionment of the Permanent Impairment follows:

- Left Knee #1:
 - First Apportionable Impairment: My Impairment rating is 10% Whole Person Impairment due to “abnormal motion” (fill in the Impairment – i.e. abnormal motion, gait derangement, etc.)
 - LC 4663: In my opinion and within reasonable medical probability, 80% of the Permanent Impairment is due to the 01/01/19 industrial injury, and 20 % of the Permanent Impairment is due to “other factors.” In this case, other factors include:
 - Escobedo “Other Factors”:
 - Pre-existing disability
 - Disability caused by the natural progression of pre-existing disease or conditions
 - Pathology
 - Asymptomatic prior conditions
 - Retroactive prophylactic work restrictions
 - Substantiating “Reasons” for this conclusion include:
 - Reasonable medical probability: My opinion on the above Apportionment “approximate percentages” (█ %/ █ %) is predicated on “reasonable medical probability.”
 - Relevant Facts: The facts relevant to the above Apportionment “approximate percentage” upon which I rely include:
 - Mechanism of Injury:
 - Response to Appropriate Medical Care:
 - Pre-existing condition(s):
 - Prior Industrial Injury:
 - Adequate History:
 - Adequate Examination:
 - “How” and “Why” Reasoning:
 - No Speculation: The above opinion on the Apportionment “approximate



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- CONCLUSIONS