

2022 QME WINTER ZOOMINAR SERIES

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HOW TO ARRIVE AT ACCURATE PERMANENT IMPAIRMENT RATINGS

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ADMIN

- Check the Chat for links to your Course Materials
- Use “Right Click””Open Link in New Tab”....to keep link open during ZOOMinar
- During ZOOMinar Keep Microphone muted
- Put any comments/contributions in the “Chat” and we will discuss at the conclusion - Please Participate
- Answer Questions on Course Exam for Immediate Certificate of Completion

UPCOMING SESSIONS

- WINTER “QME SUCCESS” ZOOMINAR SERIES -
 - 3X PER MONTH DWC APPROVED CEU DISCUSSION
 - 1X PER MONTH *QME PRACTICE BUILDING SUCCESS* SERIES - NO CE CREDITS!
- 02/16/22 - Deception, Symptom Magnification, and Malingering
- 02/23/22 - The New Medical Legal Fee Schedule - No CE Credit
- 03/02/22 - SPRING ZOOMINAR SERIES:
 - Alternative Impairment Ratings Under A/G

TODAY

- Today's (02/09/22) Discussion - "HOW TO ARRIVE AT ACCURATE PERMANENT IMPAIRMENT RATINGS"
- For More Information:
 - PERMANENT IMPAIRMENT HOME RUNS & STRIKE OUTS - 6HOURS/\$175
 - THE SLIPPERY SLOPE OF SUBSTANTIAL MEDICAL EVIDENCE - 6 HOURS/\$175
 - THE QME FORENSIC SUPER SLEUTH - 6 HOURS/\$175
 - COMPLEX MEDICAL DECISION MAKING & THE QME - 6 HOURS/\$205



ESTABLISHING PERMANENT DISABILITY LABOR CODE 4660

- **THE “SCHEDULE”** - LC 4660(a) In determining the percentages of permanent disability, account shall be taken of:

1) the nature of the physical injury or disfigurement, AND

- (AME/QME/PTP/“Regular Physician”)

2) the occupation of the injured employee, AND

- (DEU Rater)

3) his or her age at the time of the injury, consideration being given to an employee’s diminished future earning capacity (DFEC adjustment factor)

- (DEU Rater).



ESTABLISHING PERMANENT DISABILITY LABOR CODE 4660

- Labor Code 4660(b)(1):
- For purposes of this section, the “**nature of the physical injury or disfigurement**” shall incorporate the descriptions and measurements of physical impairments, and the corresponding percentages of impairments published in the AMA Guides”



ESTABLISHING PERMANENT DISABILITY LABOR CODE 4660

- Labor Code 4660 (c) - the **schedule** shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule.
- Prima Facie - based on the first impression; accepted as correct until proved otherwise.
- Labor Code 4660(d) - (d) The **schedule** shall promote consistency, uniformity, and objectivity.



ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- Impairment (page 2) - “a loss, loss of use, or derangement of any body part, organ system, or organ function.”
- “An Impairment may lead to functional limitations, or the inability to perform activities of daily living.”



ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- Impairment percentages or ratings....are estimates that reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common activities of daily living, excluding work.
- The whole person impairment percentages ...estimate the impact of the impairment on the individual's overall ability to perform activities of daily living....as listed in Table 1-2.



ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- AMA GUIDES ARE CONSERVATIVE
- A 90-100% WP Impairment indicates a very severe organ or body system impairment requiring the individual to be fully dependent on others for self care, approaching death.
- A 0% Whole Person Impairment rating is assigned to an individual with an impairment if the impairment has no significant organ or body system function consequences and does not limit the performance of the common activities of daily living indicated in Table 1-2.



ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- AMA GUIDES ARE CONSERVATIVE - Examples:

1. Page 10: Subjective concerns, including fatigue, difficulty concentrating, and pain, when not accompanied by demonstrable clinical signs or other independent, measurable abnormalities, or generally not given separate impairment ratings.
2. Page 10: Physicians recognize the local and distant pain that accompany many disorders. Impairment ratings in the Guides already have accounted for commonly associated pain, including that which may be experienced in areas distant to the specific site of pathology - i.e. radiculopathy.

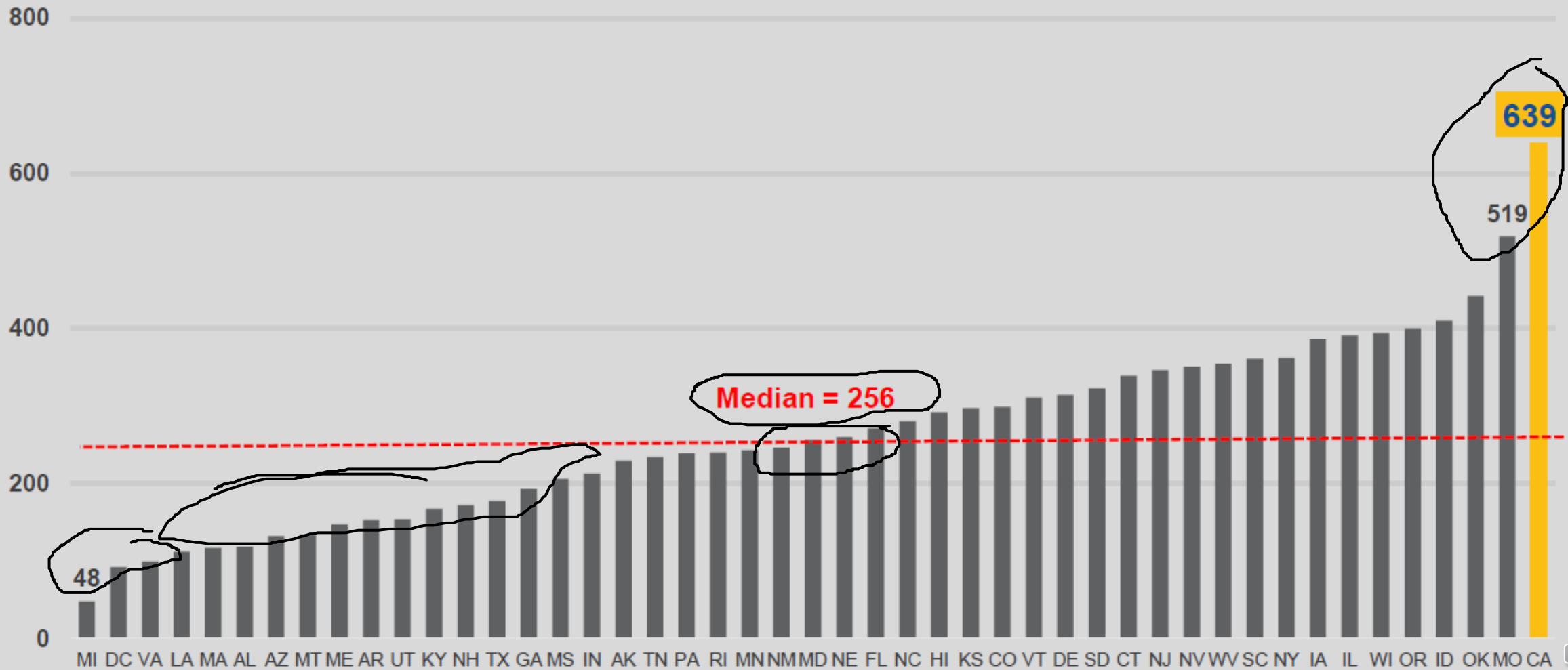


ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- ACCURACY OF THE PERMANENT IMPAIRMENT RATING - **WCIRB - 2021 State of the System:**
- California has **by far** the highest permanent partial disability (PPD) claim frequency in the country, approximately two and a half times the countrywide median.



Chart 27: Permanent Disability Claims per 100,000 Employees



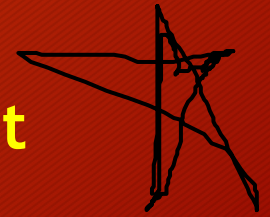
ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- Almarez/Guzman Conclusions
- The (conservative) *AMA Guides portion* of the 2005 Schedule is **rebuttable**
- The AMA Guides portion of the 2005 Schedule is **rebutted** by showing that an impairment rating based on the AMA Guides would result in a permanent disability award that would be inequitable, disproportionate, and not a fair and **accurate** measure of the employee's permanent disability.



ESTABLISHING PERMANENT DISABILITY AMA GUIDES PRINCIPLES

- When the (conservative) strict rating is accurate: “In my opinion and within reasonable medical probability, the above Permanent Impairment rating under the strict application of the AMA Guides is the most accurate description of Ms. Smith’s Impairment. I do not find a need to consult with other Charts, Tables, or Chapters within the four corners of the AMA Guides to more accurately describe the Impairment.”
- AMA Guides (p 11) - “In situations where **impairment ratings are not provided**, the Guides suggest that physician use clinical judgment, comparing measurable impairment resulting from the unlisted condition to measurable impairment resulting from similar conditions with similar impairment of function in performing activities of daily living.”



ALMARAZ GUZMAN EN BANC 09/03/09

CONCLUSIONS

- When determining an injured employee's WPI, it is not permissible to go outside the four corners of the AMA Guides, however, a physician may utilize any chapter, table, or method in the AMA Guides that most accurately reflects the injured employee's impairment
- Examples:
 - Analogy to hernia
 - Others



PERMANENT IMPAIRMENT HOMES RUNS... AND STRIKE-OUTS

- Alternative Impairment Rating Ideas:

- Functional Loss Arguments (Spine/Upper Extremity/Lower Extremity)
- Spine ROM vs. DRE
- Analogy to Hernia - loss of lifting capacity
- Analogy to Gait Disturbance
- Adding vs. Combining Impairments (Kite) ✱
- Upper Extremity - ROM Loss with added 1) Strength Loss, and 2) Grip Strength Loss
- Orthotics or any assistive device = Gait Disturbance
- Deconditioning - Analogy to Dyspnea Table 5-1 (if examinee gets out of breath easily)

- Primary vs. Secondary Impairments
- Make it SUBSTANTIAL!



