CAAA BULLETIN
Practice Tips

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Practice Tip # 54: AMA *Guides* – AME/QME Evaluation May 11, 2007

Practice Tip #52 showed you how to make sure that the treater's reports and records will be substantial evidence of your client's impairments and disabilities under the AMA *Guides*. This Practice Tip takes the next step, and deals with the interaction between you, your client, and the AME or QME, with the purpose of making sure that your client receives the proper rating under the AMA *Guides* of his or her impairments and disabilities.

A key concept to keep in mind is "functionality." Remember, the AMA *Guides* impairment ratings are only an estimate of the effect of the injury on the applicant's ability to perform the activities of daily living (ADL). We want the A/QME to report, and ultimately we want the Judge to rate, the applicant's disability, which the *Guides* notes will require additional analyses of the results of functional capacity evaluations ("FCE's") and vocational rehabilitation assessments. Ultimately we want the Judge to rate your client's loss of future earning capacity as a result of not just the impairment of ADLs, but also the loss of your client's ability to function in his or her personal, social and occupational life.

Client Preparation

Before your client sees an A/QME , your first step is to get your client into your office to review the "medical problem questionnaire" attached to Practice Tip #52. Your client should confirm all of the problems listed in the questionnaire, and must be familiar with all body parts and problems for which you are representing him/her. You can also give your client a copy of his/her claim form and the application of adjudication so he or she is familiar with these documents.

Writing the A/QME Letter

Next up is writing to the AME or QME. As an AMA case, it needs to be handled much differently than an old schedule case, and you will want to tell the evaluating physician what you expect to be considered in the rating. Many of the issues that you will want to include in your letter were first described in Practice Tip #50, so you may want to review that tip in conjunction with the following material.

A sample AME/QME letter prepared by Ron Stein, with input from CAAA's AMA Committee, is available on the CAAA website as an attachment to this Practice Tip. Of course, depending upon the facts of your case, the knowledge and expertise of the evaluating physician with regard to the

AMA *Guides*, and even your area of practice (since we use different procedures in the North and South), you may want to pick and choose which parts of the sample letter you use. However, the sample letter does provide a comprehensive list of issues that you may want to include in your letter.

When you send your letter, recognize that because most system participants are not very familiar with the *Guides* and how ratings should be developed, you are likely to get objections from the defense regarding your letter. You can include in your letter a reminder that it is not the job of the evaluating physician to "rule" on legal objections or to assume the role of an advocate by arguing for or against differing legal interpretations of statutes and judicial precedent. The law is clear that each party is permitted to and should submit questions to medical experts based on his or her own legal theory of the case: *"Physicians in workers' compensation matters must accordingly be educated by the parties on the correct legal standards...."* (*Gay v. WCAB* (1979), 44 CCC 817, 822.) *"Written questions that will elicit medical opinion relevant to the governing legal principles should be submitted to the doctor."* C.L. Swezy, California Workers' Compensation Practice, Third Edition, "Preparing for Trial," Section 7.56, p. 267.)

The physician should be instructed that if questions submitted by the parties, either by letter or deposition, are based on conflicting legal theories, the physician must state his or her opinions and supporting rationale in the alternative; *i.e.*, one determination based on applicants' legal theories and another based on defendants' theories. This approach allows the Board and appellate courts to resolve the legal issues on the basis of the A/QME's medical determinations in accordance with their own determination of the controlling legal principles.

Medical Problem Questionnaire

Attach the claim form and application of adjudication to the A/QME letter as an exhibit List every body part and problem for which you are representing your client. Identify all problems, including specific problems, cumulative problems, a compensable consequence of the specific or cumulative problem, problems as a result of the side effects of medication and problems as to the applicant's functioning as a result of pain.

Also attach to the letter a copy of the " medical problem questionnaire" that you just went over with your client, along with all of the other medical records and reports. (If the treater made the questionnaire part of his or her medical records, the questionnaire should be sent to the A/QME.) Ask the A/QME to review the questionnaire with your client to determine if your client continues to suffer from the problems listed in the questionnaire.

You can remind the physician that the AMA *Guides* imposes *"a medical obligation"* to identify all medical conditions affecting your client as a result of the injury, a compensable consequence, or medicine your client is taking, or, if you are dealing with a specific date of injury, as a result of a cumulative trauma. As authority, you can cite the *Guides* at page 18:

As an impairment evaluator ... [i]t is also the responsibility of the physician to provide the necessary medical assessment to the party requesting the evaluation, with the examinee's consent. The physician needs to ensure that the examinee understands that the evaluation's purpose is medical assessment, not medical treatment. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the individual about the condition and recommend further medical assessment.

Other issues to raise in the A/QME letter might include:

- Remind the physician that the medical evaluation must be of the "Whole Person." Let the physician know that in order for his/her report to be considered as substantial medical evidence of the impairments of activities of daily living and disability, the report must discuss all of the applicant's problems to any body system. Don't just tell the physician he or she should use all of the appropriate chapters and tables of the AMA *Guides*; instead set out the appropriate chapters under which you believe your client's conditions should be rated. Also remind the physician that a reporting of the vital signs for your client must include the fifth vital sign – pain (you can reference Health and Safety Code §1254.7 which requires an assessment of pain "*in a manner consistent with other vital signs*").

- Let the physician know that he or she is entitled to send the applicant for diagnostic tests. If the *Guides* suggest that certain diagnostic tests are required as part of the physical examination for your client's condition, point out the passage to the physician. For example, if your client has a sleep disturbance, you may want to ask that the Epworth Sleepiness Scale be completed, or in the alternative ask the A/QME to have a polysomnogram (sleep study) be completed (see Chapter 13.3, page 317).

- Remind the physician that he or she can send the injured worker to another doctor specializing in any area of the body or problem for which he or she does not specialize. What you do not want is for the A/QME to ignore any of the problems simply because he/she does not specialize in that particular area of medicine. Remind the A/QME that the patient is not legally permanent and stationary absent completion of all specialist evaluations reasonably necessary to confirm or rule out compensable consequence injuries to other body parts and systems even if the patient has reached maximum medical improvement on the body parts and systems within the evaluating physician's expertise.

- If your client is taking medications, remind the A/QME that he/she must determine if the applicant is suffering impairment to any body system, and/or psychologically, and/or cognitively, from any side effects and if so, that the impairment must be rated and appropriately described within the parameters of the AMA *Guides* (cite Chapter 2, page 20). The A/QME should also be asked to determine if, and if so how, the side effects of the medication impact both your client's functionality in performing ADL's and your client's ability to function in his or her personal, social or occupational life.

- If appropriate, remind the physician that he/she can "rate by analogy." Cite Chapter 1, page 11, which states that where impairment ratings are not provided, the evaluating physician should use his/her clinical judgment, comparing measurable impairment resulting from the unlisted condition

to measurable impairment resulting from similar condition with similar impairment of function in performing activities of daily living.

- Similarly, remind the physician to use his/her experience and clinical judgment in determining your client's impairments and disabilities to function and to work (cite Chapter 1, page 11). Also that he/she may use any validated scale to determine your client's impairment of ADLs, and the injury's affect on your client's ability to function in his or her personal, social and/or occupational life as a result of the impairment(s), pain or both (cite Chapter 1, page 5).

- Remind the physician that the *Guides* do not preempt statutory provisions that establish a health professional's responsibility to treat a patient's pain, including California Health and Safety Code § 1254.7 and §§124960 *et. seq*. It is the responsibility of the A/QME to determine how pain impacts both your client's functionality in performing ADL's and how the pain affects your client's ability to function in his or her personal, social or occupational life. Remind the physician that if he/she determines that your client is suffering from pain, he/she must determine if the pain, is acute, nociceptive, eudynia pain or chronic nueropathic maldynia pain. This is important so that the A/QME can be guided to use Chapters 13 and/or 14 to rate the impairments.

Activities of Daily Living

As noted in Practice Tip #50, AMA *Guides* impairment rating reflect functional limitations, not disability, and measure "*the degree to which the impairment decreases an individual's ability to perform common activities of daily living* ." (Chapter 1, page 4) Thus, a central component of the A/QME evaluation must be a thorough review of all ADL limitations of your client. As noted in the *Guides*, there are many possible scales that can be used to measure limitations on ADLs, and you may want to suggest that the physician use a more sophisticated scale than the limited chart included in the *Guides*. The important point is that you should request that the physician not simply read an impairment number from a table, but do a "*more in-depth assessment of ADL, to obtain further information to supplement clinical judgment*" (Chapter 1, page 5) in order to develop the most accurate impairment rating. An upcoming Practice Tip will discuss ADLs in more depth, and will help you locate appropriate ADL scales – such as body-part and/or body-system specific ADL scales – that you can provide to the A/QME for use in your client's evaluation.

Disability Assignment

However, as noted earlier, you want the A/QME to do more than just provide an impairment rating, because the ultimate goal of this process is to obtain the most accurate disability rating for your client. As noted in the *Guides* (Chapter 1, p. 8), "*The impairment evaluation, however, is only one aspect of disability determination. A disability determination also includes information about the individual's skills, education, job history, adaptability, age and environment requirements and modifications*." In addition, on page 15 the *Guiides* says that " *a complete impairment evaluation provides valuable information beyond an impairment rating percentage and it includes a discussion about the person's abilities and limitations*."

It is your responsibility to ask the physician to conduct such a "complete impairment evaluation." One way to do this is to ask the physician to translate all impairments of daily activities into disabilities of your client to meet personal, social or occupational demands. For example, you can ask the physician,

> Taking into account the effects, if any, of pain or other symptoms and /or prescribed medication, what is/are the ability(ies) and endurance of the applicant to perform complex activities such as work on a sustained basis? Eight hours a day? Forty hours per week, or an equivalent work schedule?

Remind the A/QME that a "zero" impairment rating is clearly inappropriate if he/she determines that your client has any functional limitations (see Practice Tip #51, and *Guides*, page 5). This is important whenever there is limited objective evidence of problems causing the impairment of ADLs. Ask the A/QME whether your client can continue to perform his/her job. If not, ask the A/QME to determine if there is evidence that there are impairments of ADLs, and/or there is evidence of a reduction of applicant's ability to function in his/her personal, social or occupational life as a result of a physician-placed prophylactic restriction, a side effect of medication, pain, and/or other limitations.

Because a finding of loss of functionality can result in a loss of future earning capacity , you should ask the A/QME to let the parties know if he or she is of the opinion that a work tolerance evaluation is necessary to determine your client's work related disabilities, and /or the effect of pain and/or other impediments on your client's ability to meet personal, social or occupational demands. You should also ask the physician to let the parties know if your client should be sent to an expert such as a future earnings capacity evaluator in order to evaluate your client's loss of future earning capacity as a result of the impairments of ADLs and loss of functionality.

Conclusion

Getting an accurate AMA rating from an AME or QME requires you to take a different approach than under the old PDRS. It starts with getting the right information about your client to the evaluating physician. But it also requires that the evaluating physician make a thorough analysis of the limitations on your client's activities of daily living and of the functional limitations experienced by your client as a result of the injury. Because the rating will be a Whole Person Impairment, this evaluation must include all affected body systems and must rate every functional limitation resulting from the injury, a compensable consequence, or a side effect of medication. What this means is that the more information you provide the A/QME and the more directions you provide to the A/QME, the more likely he or she will write a report that will provide the necessary substantial evidence to allow the Judge to award the proper rating.

Note: This practice tip is intended to be advisory only, and does not define or establish any new standard or duty for practitioners.

Sample AME / QME Letter

Dear Dr. _____

This is a (Agreed) Qualified Medical Evaluation on behalf of the Applicant _____.
(Name)

Brief History of Injury and Treatment

Claims filed:

I am attaching as an enclosure to this letter the claim form(DWC-1) and the Application of Adjudication

Claims were filed for the following body parts and or systems: :
(List Body Parts and Systems)

Please review the claimed body parts, systems and problems and identify those problems that are specific problems, cumulative problems, a compensable consequence of the specific or cumulative problem, are problems as a result of the side effects of medication or are problems as to the applicant's functioning as a result of pain.

Issues presented:

[Here set forth any particular issues in this case:]

Medical Evaluation of the "Whole Person"

In rating the applicant's impairments of daily activities and disabilities, please use at a minimum the following chapters and tables of the AMA *Guides:*

[Here set forth a list of chapters and tables applicable to the injury(ies) listed on the claim form]

Please remember it is not your function to "rule" on legal objections or to assume the role of an advocate by arguing for or against differing legal interpretations of statutes and judicial precedent. Similarly, please remember you cannot decide that you will or will not use a particular methodology called for by the *Guides*..

The attorneys are the advocates and the essence of our advocacy is based on recognition of the widely divergent views which are being expressed throughout the medical-legal community about the correct legal principles interpreting the new PD statute "incorporating" the AMA *Guides* and the correct methodology called for by the *Guides*.

The law is clear that each party is permitted to and should submit questions to medical experts based on his or her own legal theory of the case: "*Physicians in workers' compensation matters must accordingly*

be educated by the parties on the correct legal standards . . . " (Gay v. WCAB (1979) 96 Cal.App.3d 555, 44 CCC 817, 822.) "*Written questions that will elicit medical opinion relevant to the governing legal principles should be submitted to the doctor.*" C. L. Swezy, California Workers' Compensation Practice, Third Edition, "Preparing for Trial," Section 7.56, p.267.)

You should state your opinions and supporting rationale in the alternative; i.e., one determination based on applicants' legal theories and another based on defendants' theories.Limitations of the AMA *Guides*

Remember that research is limited as to the reproducibility and the validity of the AMA *Guides*. This limitation is particularly true when trying to determine the actual affect of the injury on the applicant's ability to function in his or her personal, social and occupation life.

Also remember, that the AMA *Guides* are not set in stone, but they are just a guide that was put together by a group of doctors based on consensus and political decisions, and are not necessarily based on a medical decision that an individual doctor might make. Any particular Doctor or Doctors, giving advice as to the "correct" way to Use the *Guides,* has or have no better insight into the *Guides* than you.

"Liberal Construction" Reminders

Please remember the following when doing your report:

That under the California Constitution Article XIV §4 the legislature was to create a system of workers' compensation that accomplishes "substantial justice in all cases expeditiously, inexpensively, and without an encumbrance of any character."

That Labor Code §3203 requires the liberal construction of all workers' compensation statutes and regulations, with the purpose of extending their benefits for the protection of persons injured in the course of their employment.

That the California Health and Safety Code § 1254.7 and 124960 et.sec. discuss the medical providers' responsibility toward a person in pain. The AMA *Guides* do not preempt these legislative measures that deal with your's responsibility to diagnose and/or treat a patient in pain.

Diagnostic Testing

In order for your report to be substantial evidence it is important for you to take as many diagnostic tests as necessary to determine the actual impairment of activities of daily living and applicant's ability to function in his or her personal social or occupational live. For example, when dealing with a spinal injury or possible cumulative trauma to the spine, it might be important to determine if there is multi level involvement, or alteration of motion segment integrity, and therefore you might want an MRI scan, flexion/extension x-rays, emg and a CT scan of the applicant's spine. If this is a spinal injury and you find that there is any alteration of motion segment integrity, please use the procedures as set forth at figure 15-3a and 15-3b. at page 378-379 of the *Guides*. Finally, if this is a spinal injury I would also ask that you do a Range of Motion analysis in every case, even if you use the DRE method.

Additional Specialist Evaluations

Please refer the applicant to another doctor, specializing in any area of the body or problem, for which you do not specialize. Please remember that the applicant is not permanent and stationary (and/or MMI) absent the completion of all specialist evaluations reasonably necessary to confirm or rule out an injury and/ or

compensable consequence injuries to other body parts and/or body system, even if the patient has reached maximum medical improvement (MMI) on the body parts and systems within your expertise.

Additional Injuries

If this case involves a single date of injury, but you find any cumulative micro- trauma to any part of the applicant's body or to any body system, please let the parties know.

Also in examining the applicant, if you determine that the applicant is suffering from any compensable consequence of the industrial injury, and /or from any side effects from any medication the applicant is taking as a result of the industrial injury, let the parties know.

Medical Problem Questionnaire

I am including as an attachment to this letter a copy of a "Medical Problem Questionnaire" that has been completed by the applicant.

Please review the questionnaire with the applicant to determine if the applicant suffers from any of the problems mentioned in the questionnaire as a result of the injury, as a compensable consequence of same, as a result of medicine the applicant is taking, as a result of a cumulative trauma (if you are dealing with a specific date of injury), or if there are problems as to the applicant's functioning as a result of pain.

As you know, the AMA *Guides* imposes *"a medical obligation"* to identify all medical conditions. According to the *Guides* (Chapter 2, p. 18): *"As an impairment evaluator ... [i]t is also the responsibility of the physician to provide the necessary medical assessment to the party requesting the evaluation, with the examinee's consent. The physician needs to ensure that the examinee understands that the evaluation's purpose is medical assessment, not medical treatment.* ***However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the individual about the condition and recommend further medical assessment."***

Medications

Attached a list of all of the medication presently taken by the applicant:

If the applicant is at MMI and the applicant is taking any medication, You must determine if the applicant is suffering from impairment to any body system, and/or psychologically, and/or cognitively, from any side effect from a medication and if so, the side effect(s) must be rated and appropriately described within the parameters of the AMA *Guides*

If after you examine the applicant you are of the opinion that because of the medication taken by the applicant, or the side effects of same, that the applicant needs to be seen by a specialist, including but not limited to an internist, psychiatrist or nuero-psychologist, please let the parties know.

Please determine if and if so how the side effects of the medication impacts both the applicant's functionality in performing ADL's and the applicant's ability to function in his or her personal, social or occupational life.

Evaluation Report

After your examination, please include the following in your report:

- A complete history from injured worker.
- A review and summary of all prior medical reports.
- The date and location of the evaluation.
- The injured worker's present complaints.
- A list of all information received from the parties and reviewed in preparation for the examination.
- Your findings on examination of all of the applicant's body systems. Please report the vital signs for this applicant, including but not limited to height, weight and blood pressure and the fifth vital sign, pain.
- A diagnosis. Please make sure you examine all of the applicant's body systems and report on all injuries, including any compensable consequences to any body system.
- Set forth your opinion as to the cause of each of the injury(ies) and the compensable consequences of same to any and/or all of the applicant's body systems.
- Set forth your opinion as to the cause of the permanent disability and impairment.
- Set forth your opinion as to any disease process that was " lit up" by the industrial trauma.
- Set forth your opinion as to the date the date of a permanent and stationary status and maximum medical improvement.
- Set forth your opinion as to the objective, subjective and work limitations, both actual and prophylactic.
- Set forth your opinion of the current and future treatment indicated.
- Set forth your opinion as to the severity of any medical condition to any and all body systems, which has caused an impairment in the applicant's ability to perform common activities of daily living (ADL), activities such as work and causes an inability of the applicant to function in applicant's personal ,social and occupational life.

Activities of Daily Living

Please note that the AMA *Guides* states (at page 15) that " *a complete impairment evaluation provides valuable information beyond an impairment rating percentage and it includes a discussion about the person's abilities and limitations.*" In this regard, please list all of the Activities of Daily Living about which you ask the applicant.

(NOTE: As an alternative, you can provide the physician with a specific list of ADLs and ask the physician to comment on the applicant's limitations in each of the listed activities. An upcoming Practice Tip will discuss various measures of the activities of daily living, many of which are body-system and body-part specific, and will describe how to access these lists.)

Please determine the applicant's percentage loss of capacity to engage in each of the activities of daily living and the percentage loss of capacity to function in the applicant's personal social and occupational activities. Please set forth the pre-injury and post injury capacity.

Please look at all of the claimed injuries, problems, compensable consequences, the applicant's pain, and review their effects on any and all of the applicant's body systems in order to determine how the claimed injuries, problems compensable consequences and the applicant's pain impair activities of daily living and/or how those impairments translate into disabilities of the applicant to meet personal, social or occupational demands and loss of pre-injury capacity

Pain Affecting Functionality

As you know, California Health and Safety Code §§ 1254.7 and 124960 *et.seq.* discuss the medical providers' responsibility toward a person in pain. The AMA *Guides* do not preempt these statutory mandates that deal with the health professional's responsibility to treat a patient in pain. Please determine how pain impacts both the applicant's functionality in performing ADL's and how the pain affects the applicant's ability to function in his or her personal, social or occupational life.

If you determines that the applicant is suffering from pain, please determine if the applicant's pain is acute, nociceptive, eudynia pain or chronic nueropathic maldynia pain. This is important so that you can be guided to use Chapter 13 and/or Chapter 18 to rate the applicant's impairments and disabilities.

Functionality under the AMA *Guides*

Please set forth the applicant's work restrictions as a result of the industrial injury..

Let the parties know if you are of the opinion that the AMA *Guides* adequately assess the effect the injury has had on both the applicant's functionality in performing ADL's and the applicant's ability to function in his or her personal, social or occupational life.

Let then parties know if you are of the opinion that the work restrictions more accurately reflect the applicant's ability to compete in the open labor market. Remember, you can give an impairment rating by analogy that more adequately reflects the applicant's functionality (See the AMA *Guides,* page 11)

Functional Capacity Questionnaire

In order to determine if the applicant has lost any capacity to function as a result of the industrial injury, the impairment of daily activities, or as a result of loss of functionality in the applicants's personal ,social or occupational live, I request that you speak to the applicant and fill out the attached "Functional Capacity Assessment" form.

Work Tolerance Evaluation

Please let the parties know if your are of the opinion that a work tolerance evaluation is necessary to determine the applicant's work related disabilities, and /or the effect of pain and/or other impediments to the applicant's ability to meet personal, social or occupational demands.

Vocational Rehabilitation Evaluation

Please let the parties know if the parties should send the applicant to an expert, such as a vocational rehabilitation evaluator, in order to determine the applicant's potential loss of future earning capacity as a result of the impairments of ADLs, disabilities or pain.

Rating "By Analogy"

Under the AMA *Guides* (see Chapter 1, Page 11), you may use an analogy to rate an impairment or disability. Where impairment ratings are not provided, you may use your clinical judgment, comparing measurable impairment resulting from the unlisted condition to measurable impairment resulting from similar condition with similar impairment of function in performing activities of daily living. You may by analogy determine the actual impairments of ADL and the actual disability of the applicant to function in his or her personal, social and/or occupational life, as a result of the impairment, pain or both.

You should use your experience and clinical judgment in order to determine if the AMA *Guides* adequately assess the individual's impairments and disabilities to function and to work. Under the AMA *Guides* you may evaluate the applicant using any validated scale to determine the applicant's impairment of ADLs, and the injury's affect on the applicant's ability to function in his or her personal, social and/or occupational life as a result of the impairment(s), pain or both.

Substantial Evidence

Your opinions must be based on medical evidence and not on speculation or a guess. You must connect the dots between the industrial injury and any impairment or disability.

As to each of your opinions, please answer the questions of **"how?"** and **"why?"** you reached a particular conclusion. This is particularly important when you are rating the applicant by analogy, or where you determine that the AMA *Guides* do not adequately set forth an impairment rating or disability of function .

Please remember that a Judge will be reviewing this report, and the Judge will have to give the Disability Evaluation Unit instructions for rating this report. As such, please explain **how** and **why** you reached each conclusion. Make sure you set forth in this report the Chapter and Table of the AMA *Guides* you relied on to set forth an impairment, or otherwise fully explain how you determined the rating. This is particularly important if you use a software program

For example, on a tendonitis case, the *Guides* allows you to use grip strength to measure impairment where there has been surgical release or tendon rupture (see 16.7(d)). However, the *Guides* (Chapter1, page 11) also admits that "the *Guides* cannot provide an impairment rating for all impairments." Thus, in an injury where there has been no tendon rupture, but there is clear and credible evidence for a lateral epicondylitis, it is permissible under the *Guides* to rate impairment for this injury by analogy to a similar condition. Consequently, by rating this injury by analogy, you would be permitted to use Grip strength to rate the lateral epicondylitis.

See also AMA *Guides* at page 508, 16.8a: "In a rare case, *if the examiner believes the individuals loss of strength represents an impairing factor that has not been considered adequately by other methods in the Guides, the loss of strength may be rated accordingly."*

A Fnding of Zero Impairment Under the AMA *Guides*

If after you examine the applicant and review the AMA *Guides* you are considering assigning the applicant a zero impairment, please first review the AMA *Guides* at Chapter 1, page 5. According to the *Guides*, "*A 0% whole person (WP) impairment is assigned to an individual with an impairment if the impairment has no significant organ or body system functional consequences and does not limit the performance of activities of daily living ....*" Consequently, you must first determine whether the applicant has any limitations of ADLs or other functional disability before finding zero impairment.

This analysis is particularly important where there may be little or no evidence of objective problems causing an impairment of ADLs, but you find that the applicant is credible and that as a result of the injury the that the applicant can no longer perform his or her job. If you find these circumstances, please determine is if there is evidence that as a result of subjective pain, and/or as side effect of medication, and/or as a result of a physician placed prophylactic restriction, and /or as a result of other limitations, there are any impairments of ADLs and/or there is evidence of a reduction of applicant's ability to function in his or her personal, social or occupational life.

If there is evidence of impairments of ADLs or other functional limitations, according to the cited definition of "Zero Impairment" in the *Guides* you should not rate the applicant as having zero impairment. For example, under Chapter 15, in order to rate an applicant under DRE Cervical Category 1, "0% impairment," there would have to be a finding of NO impairment of any of the ADLs **and** no disability of any functions as to the applicant's personal, social or occupational life. Before you make such determination your may want to have a work tolerance evaluation done on the applicant.

Apportionment

Apportionment must be addressed. Please note the new Labor Code section 4663 requires you to comment on the percentage of **permanent disability** caused as a direct result of the industrial injury arising and occurring in the course of employment and the percentage of the disability that was caused by other factors both before and subsequent to the industrial injury. *You are not supposed to apportion as to the cause of the industrial injury.* Please remember that you must distinguish the proximate cause(s) of the injury from the proximate cause(s) of the permanent disability.

Remember the applicant has the burden to prove the cause of the injury and the fact that the injury caused permanent disability. The defendant has the burden to prove apportionment to other causes. As to the other causes you must establish that the individual would have had the disability at this time, based on the individuals medical history and not based on a statistical analysis, experiences of others in a similar circumstance and or the age of the applicant. Please state in writing the medical reasoning behind your opinion. Let us know how you moved from the medical evidence to your conclusions? **If this is a specific injury, please let the parties know what part or percentage of the apportionment is due to cumulative injury from the job?**

Please provide your analysis of the following issues:

1. The Injury
- What was the cause of the injury as compared to the permanent disability?
- What was the proximate cause of the injury?
- Would the injury have occurred, but for the industrial trauma?
- What disease process was (were) lit up by the trauma at work?
- What disease process was proximately caused by the employment trauma?

2. The Permanent Disability
- What permanent disability was directly caused by the injury?
- What was the proximate cause of the permanent disability?
- What permanent disability was directly caused by the industrial trauma and/or lit up by the industrial trauma?
- What permanent disability was caused by other factors? What other factors?
- Would the permanent disability caused by these other factors have occurred at the time you examined the applicant ,"but for", the industrial injury? If not, and without speculating when would the disability caused by these other factors have occurred?
- What would the objective/subjective work preclusion (work restrictions) and/or impairments of daily living have been as to the other cause and/or disease process not lit up by the industrial trauma to which you are apportioning, which were existing on the day before the injury or as of the last day worked?
- What would the objective/subjective work preclusion (work restrictions) and/or impairments of daily living have been as to the other cause and/or disease process(not lit up the industrial trauma)

to which you are apportioning existing on the day you examined the applicant?

- If you find apportionment to any other cause or disease process please let the parties know if the other cause or disease process was labor disabling, prior to the date of the specific injury? If not, we need to know if the disease process was lit up by the industrial injury?
- If you find apportionment, please set forth the percentage of apportionment and the medical evidence upon which you determined the percentage of apportionment (How and Why did you get to that percentage?)
- If you find a percentage of apportionment to another cause and/or disease process Please explain how and why it is causing permanent disability at the time of the evaluation and how and why it is responsible for a percentage of the disability. What medical evidence in this case did you use to arrive at the apportionment figure?
- What process did you use to separate the disability that was caused by the specific injury from any disability caused by the years that the employee worked for the employer?
- At what date and/or point in the applicant's work did the other cause and/or disease process become labor disabling? When would it have become disabling, but for the industrial injury?
- Did the industrial injury light up the other cause or disease process?
- Did the industrial injury aggravate and/or exacerbate the other cause and/or disease process?
- If the other cause and/or disease process to which you are apportioning was not labor disabling prior to the date of the injury and/ or the last date worked what has caused it to now be a labor disabling permanent disability?
- Did the work that the applicant did for the employer cause the other cause or disease process to now be labor disabling? If so, what percentage of the apportionment is labor disabling due to the work that applicant did for the employer?
- Did any treatment that the injured worker have as a result of the industrial injury cause the other cause or disease process to become labor disabling? If so what percentage of the apportioned percentage is a result of medical treatment that the injured worker had as a result of the industrial injury?
- Did the type of work the injured worker did for the employer exacerbate aggravate, accelerate and /or light up the other cause and/or disease process?
- If we are dealing with a specific injury please give your opinion as to whether any cumulative trauma the injured worker may have suffered while working exacerbate, aggravate, accelerate and /or light up the other cause and/or disease process?
- Would the injured worker have had a disability, without the industrial injury the injured worker suffered?
- Please describe in detail the exact nature of the permanent disability applicant would have had when you examined the applicant even if applicant had not had the industrial injury.

Sample Enclosures for AME / QME Letter

Activities of Daily Living

[Please note that an upcoming Practice Tip will provide information on the many available listing of ADLs, including body part specific listings of ADLs. The list below is a sample list so show the type of activities you want the evaluator to consider.]

Please evaluate any problem that applicant has in functioning in the following areas as a result of the industrial injury, a compensable consequence of same, and/ or as an effect of medication and/or pain.:

Defecating
Bathing oneself
Brushing ones teeth
Combing ones Hair
Dressing ones Self
Washing and drying oneself
Putting on own shoes
Getting on and off the toilet
Personal Hygiene after using the toilet
Opening a carton of Milk
Making ones own meal
Eating
Feeling the food
Cutting the food
Tasting the food
Writing
Typing
Using a Telephone
Seeing
Hearing
Speaking
Standing
Sitting
Reclining
Walking
Climbing
Turning
Twisting
Smelling
Grasping
Lifting
Tactile discrimination
Opening a Car Door
Turning on a Faucet
Doing Light House Work
Running Errands
Shopping
Riding in A Motor vehicle
Driving a motor vehicle
Fear of Flying, altitude
Opening a Car Door
Turning on a Faucet
Doing Light House Work
Running Errands
Shopping
Riding in A Motor vehicle
Driving a motor vehicle
Fear of Flying, altitude
Working eight hours a day, forty hours a week
Sexual dysfunctions
Problems with Orgasm
Problems with Ejaculation
Problems with Lubrication
Problems with Erection
Other deficits in Sexual Function
Sleep Disturbance (See Epworth Sleep Scale)
Day time drowsiness
Reduction of day time alertness
Sleep Apnea
Inability to sleep due to pain
Inability to sleep due to depression
Other problems as a result of the industrial injury?

The Epworth Sleepiness Scale

1. Please rank the applicant according to the following scale:
   = No Chance of Dozing
   1=Slight Chance of Dozing
   2=Moderate Chance of Dozing
   3=High Chance of Dozing

Situation:

Sitting and reading	☐
Watching TV	☐
As a passenger in a car for an hour without a break	☐
Lying down to rest in the afternoon when circumstances permitting	☐
Sitting and talking to someone	☐
Sitting quietly after a lunch without alcohol	☐
In a car, while stopped for a few minutes in traffic	☐

2. Analyze Responses

3. Rate under Table 13-4 – Criteria for Rating Impairment Due to Sleep and Arousal Disorders

Functional Capacity Assessment

Please determine the functional capacities and the applicant's ability to perform his or her job. Please remember that the AMA *Guides* require that if you are asked you must evaluate and determine what *work* activities the applicant can and can not do as a result of the industrial injury, **If you like, you can request that a functional capacity evaluation can be completed by a vocational expert, in lieu of completing the following :**

Name: _____
Employer: _____
DOB : _____
DOI: _____

A. List ALL of his or her current medications:

B. List ALL side effects from the medications

C. Do any of the medications that applicant takes affect his or her ability to drive.
Yes _____ No_____

D. Do any of the medications that applicant takes have any affect on applicant's cognitive functions?
Yes_____ No_____

E.. Does he/she have any other special medical problems?

Functional Capacity Evaluation

Please give your opinion as it pertains to applicant and his or her functional capacity:
(Circle the full capacity for each activity)

I. Total time during an 8-hour workday he or she can:

A. Sit a total of
Less than 2 Hours per 8 hour day

Less than 4 Hours per 8 hour day

Less than 6 Hours per 8 hour day

Less than 8 Hours per 8 hour day

B. Stand a total of:

Less than 2 Hours per 8 hour day

Less than 4 Hours per 8 hour day

Less than 6 Hours per 8 hour day

Less than 8 Hours per 8 hour day

C. Sit and/or Stand a total of:

Less than 2 Hours per 8 hour day

Less than 4 Hours per 8 hour day

Less than 6 Hours per 8 hour day

Less than 8 Hours per 8 hour day

D. Stand and /or Walk a total of:

Less than 2 Hours per 8 hour day

Less than 4 Hours per 8 hour day

Less than 6 Hours per 8 hour day

Less than 8 Hours per 8 hour day

E. Walk a total of:

Less than 2 Hours per 8 hour day

Less than 4 Hours per 8 hour day

Less than 6 Hours per 8 hour day

Less than 8 Hours per 8 hour day

2 His or her ability to :

(Where, based on an 8 - hour workday, "occasionally" equals 1% to 33%; "frequently" equals 34% to 66%; and "continuously" equals 67% to 100%)

	Not at All	Occasionally	Frequently	Continually
A. Bend/Stoop	___	___	___	___
B. Squat	___	___	___	___
C. Crawl	___	___	___	___
D. Climb	___	___	___	___
E. Reach Above	___	___	___	___
F. Crouch	___	___	___	___
G. Kneel	___	___	___	___
H. Balance	___	___	___	___
I. Push/Pull	___	___	___	___
J. Handling	___	___	___	___
K. Fingering	___	___	___	___
M. Feeling	___	___	___	___
N. Seeing	___	___	___	___
O. Speaking	___	___	___	___

Describe in what ways the impaired activities are limited.

Describe environmental restrictions (heights, machinery, temperature, dust fumes humidity ,vibration .etc).:

3. His or her pre-injury capacity for lifting:

	Not at All	Occasionally	Frequently	Continually
A. Up to 10 lbs	___	___	___	___
B. 11 to 24 lbs.	___	___	___	___
C. 25 to 34 lbs.	___	___	___	___
D. 35 to 50 lbs.	___	___	___	___
E. 51 to 74 lbs.	___	___	___	___
F. 75 to 100 lbs.	___	___	___	___
G. 101 to 149 lbs.	___	___	___	___
H. 150 to 175 lbs.	___	___	___	___
I. 176 to 200 lbs.	___	___	___	___

4. He or she can NOW lift:

	Not at All	Occasionally	Frequently	Continually
A. Up to 10 lbs	___	___	___	___
B. 11 to 24 lbs.	___	___	___	___
C. 25 to 34 lbs.	___	___	___	___
D. 35 to 50 lbs.	___	___	___	___
E. 51 to 74 lbs.	___	___	___	___
F. 75 to 100 lbs.	___	___	___	___

5. His or her pre-injury capacity for carrying:

	Not at All	Occasionally	Frequently	Continually
A. Up to 10 lbs	___	___	___	___
B. 11 to 24 lbs.	___	___	___	___
C. 25 to 34 lbs.	___	___	___	___
D. 35 to 50 lbs.	___	___	___	___
E. 51 to 74 lbs.	___	___	___	___
F. 75 to 100 lbs.	___	___	___	___
G. 101 to 149 lbs.	___	___	___	___
H. 150 to 175 lbs.	___	___	___	___
I. 176 to 200 lbs.	___	___	___	___

6. He or she can NOW carry:

	Not at All	Occasionally	Frequently	Continually
A. Up to 10 lbs	___	___	___	___
B. 11 to 24 lbs.	___	___	___	___
C. 25 to 34 lbs.	___	___	___	___
D. 35 to 50 lbs.	___	___	___	___
E. 51 to 74 lbs.	___	___	___	___
F. 75 to 100 lbs.	___	___	___	___

7. In your opinion, how much of the his or her capacity for lifting has been lost?

A. 0%
B. 1% - 10%
C. 11% - 20%
D. 21% - 30%
_____ E. 31-40%
F. 41-50%
G. 51-60%
_____ H. 61-70%
I. 71-80%
J. 81-90%
K. 90-100%

8. Push and/or Pull

Unlimited
Limited (describe degree of limitation)

9. He or she can use feet for repetitive movement as in operating

A. Foot controls: Right: Yes _____ No _____
Left: Yes _____ No _____
Both: Yes _____ No _____

10. He or she can use hands for repetitive movement such as:

A. Simple Grasping	Right:	Yes	_____	No	_____
	Left:	Yes	_____	No	_____
B. Firm Grasping	Right:	Yes	_____	No	_____
	Left:	Yes	_____	No	_____
C. Fine Manipulation	Right:	Yes	_____	No	_____
	Left:	Yes	_____	No	_____

11. Restriction of Activities:

A. Unprotected Heights:

No Restriction	Mild Restriction	Moderate Restriction	Total Restriction
___	___	___	___

B. Being around moving machinery:

No Restriction	Mild Restriction	Moderate Restriction	Total Restriction
___	___	___	___

C. Exposure to marked changes in temperature and humidity:

No Restriction	Mild Restriction	Moderate Restriction	Total Restriction
___	___	___	___

D. Driving automotive equipment:

No Restriction	Mild Restriction	Moderate Restriction	Total Restriction
___	___	___	___

E. Exposure to dust, fumes and gasses:

No Restriction	Mild Restriction	Moderate Restriction	Total Restriction
___	___	___	___

F. Other restrictions not other wise specified:

12. Describe in what ways the above activities are limited:

Pain Evaluation

SECTION 1- Pain intensity & where his or her pain is.

- ☐ The pain comes and goes and is very mild.
- ☐ The pain is mild and does not vary much.
- ☐ The pain comes and goes and is moderate.
- ☐ The pain is moderate and does not vary much.
- ☐ The pain comes and goes and is severe.
- ☐ The pain is severe and does not vary much.

SECTION 2 - Personal care (washing, dressing, etc.)

- ☐ He or she would not have to change his or her way of washing or dressing in order to avoid pain.
- ☐ He or she does not normally change his or her way of washing or dressing even though it causes some pain.
- ☐ Washing and dressing increases the pain, but he or she manage not to change his or her way of doing it.
- ☐ Washing and dressing increases the pain and he or she finds it necessary to change his or her way of doing it.
- ☐ Because of the pain, he or she is unable to do some washing and dressing without help.
- ☐ Because of the pain, he or she is unable to do any washing and dressing without help.

SECTION 3 - Lifting

- ☐ He or she can lift heavy weights without extra pain.
- ☐ He or she can lift heavy weights but it gives extra pain.
- ☐ Pain prevents him or her from lifting heavy weights off the floor.
- ☐ Pain prevents him or her from lifting heavy weights off the floor, but he or she can manage if they are conveniently positioned, e.g., on a table.
- ☐ Pain prevents Him or her from lifting heavy weights, but he or she can manage light to medium weights if they are conveniently positioned.
- ☐ He or she can only lift light weights at the most.

SECTION 4 - Walking

- ☐ He or she has no pain on walking.
- ☐ He or she has some pain on walking but it does not increase with distance.
- ☐ He or she cannot walk more than one mile without increasing pain.
- ☐ He or she cannot walk more than ½ mile without increasing pain.
- ☐ He or she cannot walk more than 1/4 mile with out increasing pain.

☐ He or she cannot walk at all without increasing pain.

SECTION 5 - Sitting

☐ He or she can sit in any chair as long as he or she like without pain.
☐ He or she can sit only in his or her favorite chair as long as he or she likes.
☐ Pain prevents him or her from sitting more than 1 hour.
☐ Pain prevents him or her from sitting more than ½ hour.
☐ Pain prevents him or her from sitting for more than 10 minutes.
☐ He or she avoids sitting because it increases pain immediately.

SECTION 6 - Standing

☐ He or she can stand as long as he or she wants without pain.
☐ He or she has some pain on standing, but it does not, increase with time.
☐ He or she cannot stand for longer than one hour without increasing pain.
☐ He or she cannot stand for longer than ½ hour without increasing pain.
☐ He or she cannot stand for longer than 10 minutes without increasing pain.
☐ He or she avoids standing, because it increases the pain immediately.

SECTION 7 - Sleeping

Due to the industrial injury applicant is able to sleep per night:

☐ Is not able to sleep without medication.
☐ Less than 2 hours
☐ Less than 3 hours
☐ Less than 4 hours
☐ Less than 5 hours
☐ Less than 6 hours
☐ Less than 7 hours
☐ Less than 8 hours
☐ He or she has no pain in bed.
☐ He or she has pain in bed but it does not prevent him/her from sleeping well.
☐ Because of pain, his or her normal night's sleep is reduced by less than 1/4.
☐ Because of pain, his or her normal night's sleep is reduced by less than 1/2.
☐ Because of pain, his or her normal night's sleep is reduced by less than 3/4.
☐ Pain prevents him or her from sleeping at all.

SECTION 8 - Social Life

☐ His or her social life is normal and gives him or her no pain.
☐ His or her social life is normal, but increases the degree of pain.
☐ Pain has no significant effect on his or her social life apart from limiting his or her more energetic interests, e.g., dancing, bowling, etc.
☐ Pain has restricted his or her social life and he or she does not go out very often.
☐ Pain has restricted his or her social life to his or her home.
☐ He or she has hardly any social life because of the pain.

SECTION 9 - Traveling

- ☐ He or she gets no pain while traveling.
- ☐ He or she gets some pain while traveling, but none of his or her usual forms of travel make it any worse.
- ☐ He or she gets extra pain while traveling, but it does not compel him or her to seek alternative forms of travel.
- ☐ He or she gets extra pain while traveling which compels him or her to seek alternative forms of travel.
- ☐ Pain restricts all forms of travel.
- ☐ Pain prevents all forms of travel except that done lying down.

SECTION 10 - Changing Degree of Pain

- ☐ His or her pain is rapidly getting better.
- ☐ His or her pain fluctuates, but overall is definitely getting better.
- ☐ His or her pain seems to be getting better, but improvement is slow.
- ☐ His or her pain is neither getting better nor getting worse.
- ☐ His or her pain is gradually worsening.
- ☐ His or her pain is rapidly worsening.