## ANSWER TO QUESTION NO. 7

The attorney should advise Joan it is very likely she has a workers' compensation remedy for the medical treatment related to her exposure at the workplace. But, her claim for weekly wage loss benefits is much more tenuous. The disability claim will be unsuccessful if all Joan can demonstrate is an inability to return to work at 3C's.

Employees are entitled under the workers' compensation statute to have the employer pay for medical treatment resulting from a "personal injury arising out of and in the course of employment." MCL 418.301(1); MCL 418.315(1). Joan's skin irritations would almost certainly be deemed a personal injury arising out of and in the course of employment. The fact that Joan brought to the work place a latent sensitivity to the chemicals does not preclude benefits because the employer takes the employee as it finds him or her. See, *Deziel v Difco Laboratories, Inc,* 394 Mich 466, 475-76 (1975). Where the employee brings to the workplace a pre-existing problem, however, the employee must demonstrate that work caused a condition "medically distinguishable" from the pre-existing condition itself; that is, the employee must prove work caused a change in the pathology of the pre-existing problem. *Rakestraw v General Dynamics Land Systems,* 469 Mich 220, 234 (2003); *Fahr v General Motors Corp,* 478 Mich 922 (2007). Here, Joan would argue that work exposure caused a change in pathology and produced a problem "medically distinguishable" from her previously quiescent problem.

An examinee may argue that here work merely elicited the symptoms of a pre-existing latent condition and symptomatic aggravation does not satisfy *Rakestraw/Fahr.* While that point might be debated, the previously dormant nature of Joan's condition and the lack of indication that the skin irritations are just temporary should yield the conclusion that she has suffered a work-related personal injury. The ultimate answer is less important than recognition of the "personal injury" *Rakestraw/Fahr* rule and recognition that a pre-existing problem does not necessarily preclude a claim the employer is responsible for aggravating it.

**Disability (Wage Loss) Benefits:** To prove entitlement to weekly wage loss benefits, the employee must demonstrate that he or she is "disabled." The workers' compensation statute defines "disability" as follows: "'disability' means a limitation of an employee's wage earning capacity in work suitable to his or her

qualifications and training resulting from a personal injury or work related disease." MCL 418.301(4) (first sentence); MCL 418.401 (1). The Supreme Court has emphasized that an employee's inability to return to his/her last job or the inability to return to just one type of employment that he/she had performed in the past does not, standing alone, suffice to demonstrate "disability." *Stokes v Chrysler LLC,* 481 Mich 266, 278-79 (2008); *Sington v Chrysler Corp,* 467 Mich 144, 155 (2002). The one exception can be where the employee is only qualified and trained to do one type of job and has no skills that might transfer to other job fields. Joan's community college degree, as well as the skills she used in working at 3C's, qualify her to perform other suitable work. Consequently, Joan's inability to return to 3C's will not, standing alone, suffice to prove "disability." Joan's only chance of prevailing on this issue would be to demonstrate that all other work suitable to her qualifications and training, *e.g.,* working in the medical field, performing customer relations and clerical type of work elsewhere, etc., is either not currently available in the labor marketplace or pays less than her maximum earning capacity. *Stokes,* 481 Mich at 280-81. And, in this regard, Joan would need to show she is making a good faith job search for all work suitable to her qualifications and training and/or that all available work pays less than she earned at 3C's. *Id.* at 283.