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Training Outline

1. Almaraz/Guzman – A History
2. Decisions after Guzman
3. Claims/Litigation Strategies
4. Partnership with iRatings
ALMARAZ/GUZMAN – A HISTORY
Almaraz/Guzman – A History

• Almaraz/Guzman I
  – PDRS and AMA Guides were rebuttable
  – Allowed rebuttal if injured worker was able to demonstrate that PD rating was “inequitable, disproportionate, and not a fair and accurate measure of PD
  – Rating could be outside of the Guides
Almaraz/Guzman – A History

• Almaraz/Guzman II
  – Maintains that PDRS and AMA Guides are rebuttable
  – However, the rating must stay within the “four corners” of the AMA Guides
  – Rejected “inequitable, disproportionate, and not a fair and accurate measure” standard
  – A physician may utilize any chapter, table, or method in the AMA Guides that most accurately reflects the injured employee’s impairment.
Almaraz/Guzman – A History

• 6\textsuperscript{th} DCA (Guzman III)
  – Affirms Almaraz/Guzman II
  – \textit{Guides} cannot anticipate or describe every impairment
  – “To accommodate those complex or extraordinary cases, the \textit{Guides} calls for the physician's exercise of clinical judgment to assess the impairment most accurately.” (p. 16)
Almaraz/Guzman – A History

• Important points in decision
  – Burden rests with the party disputing that rating
  – Does not allow rating based directly or indirectly on any Schedule in effect prior to 2005
  – Must include “Strict” rating first
  – Must constitute “substantial medical evidence”
  – Cannot use obviously inapplicable sections of the *Guides*, simply to achieve a desired result
In enacting the act adding this section, it is not the intent of the Legislature to overrule the holding in Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman) (2010) 187 Cal.App.4th 808.

In Summary – Almaraz/Guzman is here to stay
• Problems with Guzman
  – Redundancy
  
  “the *Guides* cannot provide an impairment rating for all impairments...In situations where impairment ratings are not provided the *Guides* suggests that physicians 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.” (5th ed., 11)
• Problems with Guzman
  – Impairment vs. Disability
    • The *Guides* state that Impairment ratings should not be used as direct estimates of disability (p. 11)
    • Inverse is also true
  – Uniformity and consistency
    • AMA *Guides* define a structured approach to determine impairment
    • Goal is reliability in ratings - LC 4660(d)
DECISIONS AFTER GUZMAN
Decisions After Guzman

• The Good

    • Did not allow rating for strength loss as it did not satisfy Guides criteria, even though it was added as an Almaraz/Guzman rating
    • Important interpretation of “within the four corners”
  – Kendrick-McGee v. WCAB
    • Same as Aoki
Decisions After Guzman

• The Good
  
  – Debra Nickell v. PKB Investments
    • It is not the defendant’s burden to prove that the AMA rating was appropriate
  
  – Marcos Matta v. Nummi
    • A/G rating was rejected as the physician did not adequately describe the inaccuracy of the “strict” rating
    • Same as Robert Zimmerman v. Britt Lumber
Decisions After Guzman

• The Good
  – Sarah Shipp vs. Gottschalks
    • Physician analogized bilateral shoulder impairment to hernia impairment based on reduced lifting capacity
    • Board stated that “This approach runs afoul of Almaraz II's prohibition that a physician may not utilize any chapter, table, or method in the AMA Guides simply to achieve a desired result, e.g., a WPI that would result in a permanent disability rating based directly or indirectly on any Schedule in effect prior to 2005.
Decisions After Guzman

• The Bad
  – Fitzsimmons v. Scott’s Seafood
    • QME’s use of Hernia table and gait derangement under Table 13-15 complied with A/G II
  – Jose Oliveira, Applicant v. River Front Apartments
    • Allowed use of hernia rating for shoulder injury
    • Complex or extraordinary defense rejected
  – Michael Graham v. Pepsi Bottling Group
    • Also allowed Table 6-9 for back injury, but rejected use of Figure 15-19
Decisions After Guzman

• The Bad
  – Every other Almaraz/Guzman rating that is not disputed
Decisions After Guzman

• The Odd
  – City of Sacramento v. WCAB (Cannon)
    • Allows rating for plantar fasciitis using gait derangement
    • Broadly interprets “complex or extraordinary” to include conditions that are “poorly understood and are manifested only be subjective symptoms.”
  • Problems
    – Is Guzman required (p. 11)?
    – Is this really an analogy?
    – Unlisted condition?
    – Reverse Guzman?
Decisions After Guzman

• The Odd
  – Athens Administrators v. WCAB (Kite) 78 CCC 213
    • Allowed bilateral hip impairments to be \textit{added} rather than \textit{combined}
  • Problems
    – “Synergistic effect” or bad math?
    – Physician does not assign disability
    – PDRS vs. AMA Guides
Decisions After Guzman

• The Showdown
  – Lucas Wood v. U-haul
  – Donald Laury v. R&W Concrete Contractors

• Both cases deal with use of Figure 15-19 for rating the spine

• Both cite limitations with work as the basis for rating.

• However, Wood’s rating is rejected while Laury’s is upheld
  – Why?
Decisions After Guzman

• Laury notes that this figure is “clearly within the four corners”
• Wood, however, notes that this *method* is not
• AME vs. PTP
  – “parties chose him as the AME because of his expertise and neutrality”
Claims/Litigation Strategies

- Why do these errors persist?
  - Organization of applicants bar
  - Execution of strategy
  - Too many organizations in CA to effectively implement a cohesive strategy
  - Role of the DEU (Blackledge)
Claims/Litigation Strategies

- **Defense Oriented Organizations**
  - CWCDAA
  - CSIA
  - CCWC
  - CWCR
  - VICA, DVICA
  - AIP
  - AWCP
  - PARMA
  - CAJPA
  - Etc.....

- **Applicant Oriented Organizations**
  - CAAA
Claims/Litigation Strategies

• What are the most common Guzman Ratings?
  – Use of Hernia Table (UE, LE, Spine)
  – Gait derangement (Table 17-5 or 13-15)
  – Upper extremity under Table 13-22
  – Grip loss
  – Multiple lower extremity methods
  – ROM vs. DRE method, corticospinal ratings
  – Functional loss or “ADL approach”
Strategies to Correct Errors

• What can be done
  – First step is proper identification of errors
  – What are the facts of the case?
  – Additional Resources: 6th Ed, *Guides* Newsletter

• Once identified, first line of defense is correction of error from source
  – Review, Correspondence
Strategies to Correct Errors

• Correspondence Questions
  – What is “strict” rating
  – Reason for departure from *Guides*
    • Complex or extraordinary
    • Poorly understood condition
    • Objective evidence?
    • Is the discussion based on conjecture, guess, speculation or evidence?
  – Explain method used and how it is supported by the *Guides*
Strategies to Correct Errors

• Correspondence Questions
  – Is there another method that should be considered?
    • Midfoot deformity for plantar fasciitis
    • Arthritis for osteochondral defect
    • Carpal instability or excision for complex fracture
    • Corticospinal rating with ROM method
  – Reverse Guzman?
    • Riley v. City of Pasadena
Strategies to Correct Errors

• Follow Up Strategies to Correspondence
  – Deposition
    • Goal is to discredit opinion and report
    • Establish report as not substantial medical evidence
    • Question nature of condition, reason for alternate rating, method used, findings considered, knowledge of Guides, frequency of A/G ratings
  – Negotiation/Settlement
  – Trial – Expert Witness
PARTNERSHIP WITH iRATINGS
Partner with iRatings

- Experts in the 4th, 5th and 6th Editions of the AMA Guides
- Contributors to AMA Guides Newsletter
- Expert witness testimony experience
- Not physicians
  - See Quinn v. Macy's West, (2010) 38 CWCR 42
- Not Attorneys
iRatings - Services

- Rating Reviews
  - Basic, Intermediate, Complex
- Correspondence Services
- Consultation
  - Depo Preparation, File Review
- Trial Testimony
Closing Thoughts

- Almaraz/Guzman is the law of the land
- Law is not always applied in a consistent manner
- There is a framework for disputing analogous ratings within AG III and subsequent decisions
- Rely on these decisions and the facts of your case and you can successfully defend against these ratings by applying
- Partner with experts when necessary
QUESTIONS?

THANK YOU!