

PSYCH, SEX, AND SLEEP IN WORKERS' COMPENSATION

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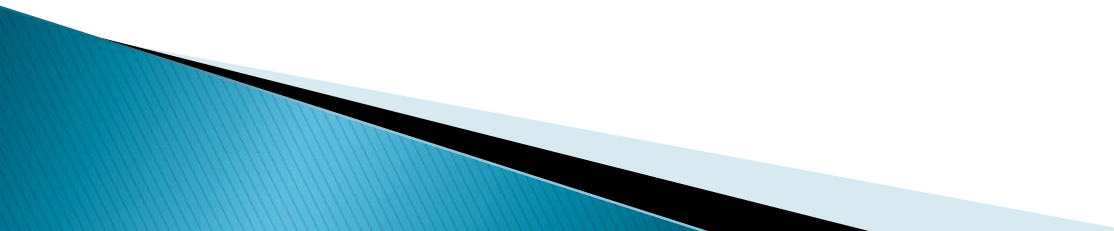
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BACKGROUND

1997 – 2005 permanent disability rated under the PDRS.

- No permanent disability for sex or sleep dysfunction
 - Psych permanent disability limited with the requirement for 51% causation and good faith personnel action defense
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2005 – PRESENT

Permanent disability based on *AMA Guides* and use of objective factors.



UNINTENDED CONSEQUENCES

- ▶ The *AMA Guides* provided impairment/disability for sleep and sexual dysfunction.

SLEEP IMPAIRMENT

Chapter 13, Table 13-4

- ▶ Four classes, 1-90% permanent disability
 - Class I 1-9%
 - Reduced daytime alertness, can perform most daily activities.
 - Class II 10-20%
 - Reduced daily alertness, interferes with some activities of daily living.

SEXUAL DYSFUNCTION (only male)

Chapter 13, Table 13–21

Three Classes

- ▶ 1–20% (various arousal deficits to no sexual function)

PSYCH IMPAIRMENT

Based on global assessment of function (GAF):

- ▶ Must have a GAF of 69 or less for impairment.
- ▶ WPI of 15% or GAF of 60:
 - Moderate difficulty in social situations, few friends, conflicts with peers.

THEN WHAT?

PD increased with the new compensable consequences in psych, sleep, and sex.

Example: low back with a DRE III (some radiculopathy) at 13%.

PD easily increased to:

- ▶ 10% for sleep
- ▶ 5% for sex,
- ▶ 15% for psych
- ▶ Total 43%

LITIGATION TIME AND COST INCREASED

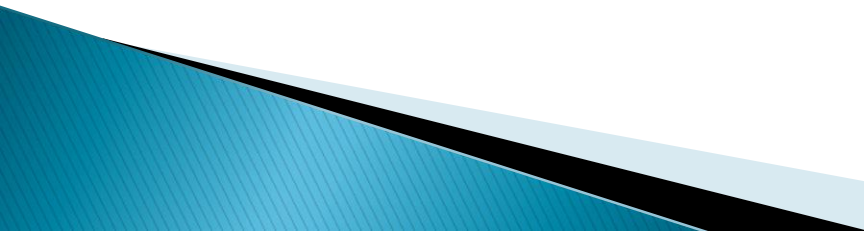
Once P&S, the parties obtain a QME in the injured body part. With the addition of psych, sex, and sleep, possibly 2–3 more QMEs, plus an additional deposition.

THEN WHAT?

LC §4660.1(c)

- (1) For injuries after 1 / 1 / 2013 there is no increase in impairment ratings for sleep dysfunction, sexual dysfunction, or psych disorder arising out of a compensable physical injury.

UNLESS:

- (2) Psych impairment not limited if:
 - (1) Victim of a violent act or significant exposure to a violent act.
 - (2) Catastrophic injury including but not limited to loss of limb, paralysis, severe burn, or severe head injury.
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PROBLEM SOLVED:

Oh, but then there is case law defining:

1. Direct cause.
2. Violent act.
3. Catastrophic injury.

EMPLOYEE CAN GET TEMPORARY DISABILITY AND MEDICAL TREATMENT FOR PSYCH, SEX, AND SLEEP AS A COMPENSABLE CONSEQUENCE

- ▶ Hernandez v. Fremont Bank
Can get psych QME for 2013 DOI
- ▶ Lopez v. General Wax
TD provided due to compensable psych consequence

DIRECT CAUSE

- ▶ Montenegro v. WCAB
Prostate cancer causing sexual dysfunction

PSYCH SYMPTOMS AS A DIRECT CAUSE, NOT A COMPENSABLE CONSEQUENCE

- ▶ Torres v. Greenbrae
Fall from tree
- ▶ Madsen v. Cavaletto
Truck accident

VIOLENT ACT

- ▶ Larsen v. Securitas
Hit by car in parking lot
Violent act defined as characterized by strong physical force (2016)

- ▶ Allen v. Carmax
Car accident with expanded definition of violent act to include strong, or physical force **or** an act vehemently or passionately threatening (2017)

CATASTROPHIC INJURY

- ▶ Guerrero v. Ramcast
Three fingers amputated when
punch press operator lost balance