



# The *Carnivàle* of Risk

When the Carnivàle of Life Leads to a Claim of PTSD: A Guide for Rebutting and Defending Against this New Presumption

Presented By:

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Which classes of employees benefit from the new PTSD Presumption?

LC 3212.15 (SB542) for claims on or after 1/1/2020, sunsets on 1/1/2025:

PTSD presumed compensable for certain classes of workers, primarily State and local firefighting personnel, peace officers.

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## 2021 introduction of SB284:

Intent was to expand the LC 3212.15 PTSD presumption to include additional classes of workers, including additional firefighters, additional Peace and security officers, public safety dispatchers and communication employees.

What happened?

What are the takeaways?

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## Additional Qualifications Necessary for Presumption to Apply

Minimum 6 months of employment (actual service) required (same as LC 3208.3(d))

Service does not have to be continuous  
(*Flintroy v. Pacific Bell*, (2019) *Cal. Wrk. Comp. P.D. Lexis* 148)

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## Exceptions to 6-Month Rule:

Sudden and Extraordinary employment condition – If the psychiatric injury / PTSD is the result of a “sudden and extraordinary” employment condition, the 6-month rule does not apply.

**Sudden** – defined as “happening or coming unexpectedly” (Meriam-Webster)

**Extraordinary** – defined as “going beyond what is usual, regular or customary” (Meriam-Webster)

Aren't officers and fire fighters trained to respond and address “sudden and extraordinary” events and situations?

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## How Long does the Presumption Last?

Presumption may be extended for 3 months for each full year of service, up to 60 months after last day of actual employment.

There is an end in sight! At least for now.....The presumption under LC 3212.15 sunsets 1/1/2025. Based on trends, what do we expect next?



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## Claim Trends Since Enactment of LC 3212.15

City of Los Angeles:

Total PTSD Presumption Claims filed for the period of 1/1/2020 – 12/31/2021: 72

Breakdown: 52 Fire 20 Police



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## City of Los Angeles – Case Studies

Case Study #1: 53 -year old Fire Captain filed a cumulative trauma claim, alleging back, shoulders, knees, heart, gastrointestinal, psyche (PTSD) and hearing loss due to repetitive stress and strain of job. Retirement date 3/5/2020.

Case Study #2: 40 year old Firefighter III filed a CT claim for psyche/PTSD. Active Duty. - Injury caused by stress and nature of the job and discrimination due to his sexual preference.

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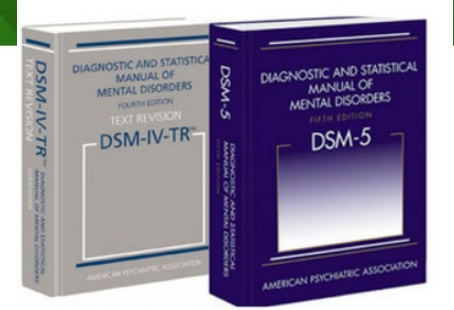


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## What Exactly is Posttraumatic Stress Disorder?

Diagnostic Manual discussion  
DSM-IV-TR – GAF Scale

DSM-5 – LC 3212.15(b) – Requires PTSD diagnosis under the “most recent” DSM



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## PTSD Diagnostic Criteria

DSM-IV-TR diagnostic criteria found on pages 467-468

DSM-5 – diagnostic criteria found on pages 271-272

- A. Exposure to actual or threatened death, serious injury, or sexual violence
- B. Distressing memories, dreams, flashbacks
- C. Persistent avoidance of stimuli associated with the event...

SUPPORT for the diagnosis

Support can be found throughout the doctor's report

Five Sources of Data

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## Five Sources of Data in a Psych Report

1. The patient's life history and their presenting complaints or symptoms
2. The doctor's report of their Mental Status Examination
3. The psychological testing data
4. A review and discussion of the patient's medical records
5. Collateral sources of information

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## The PTSD Presumption is Rebuttable, But HOW? Dissecting the Medical Reporting

Challenging the medical-legal report's psychological diagnosis (most vulnerable area)  
Psych reports must constitute substantial medical evidence to be relied upon:  
Contents of psych reports



- a. Incomplete Symptoms or Complaints (FIDOC)
- b. Mental Status Examination flaws
- c. Psychological testing shortcomings
- d. Missing medical record data
- e. Attack the diagnosis

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## DSM (Psych) Defenses

Real Examples of PTSD claims (Can a compensable consequence psychiatric response ever be PTSD?)

LC 3208.3 states the diagnosing doctor must use a version of the DSM that is "generally approved and accepted nationally by practitioners in the field of psychiatric medicine." DSM-5 vs. DSM-IV-TR.

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## *DSM (Psych) Defenses cont.*

*SB284 states, “the term “injury” includes post-traumatic stress that develops or manifests during a period in which the injured person is in the service of the department or unit,” but post-traumatic stress is not the same as a DSM Posttraumatic Stress Disorder*

*“injury” = a psychiatric injury according to 3208.3 must be the result of a psychological disorder. BUT, “post-traumatic stress” is not a disorder in the DSM!*

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## Legal Defenses to Rebut the Presumption

Are all legal criteria met for applicability of the presumption?

Thorough discovery, dig deep – the presumption can be controverted by “any” evidence.

Apportionment is viable – no anti-attribution clause

- May be able to delineate different events that should constitute separate injuries rather than one cumulative injury
- Nonindustrial Factors that contribute to development of PTSD

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## Thank you !



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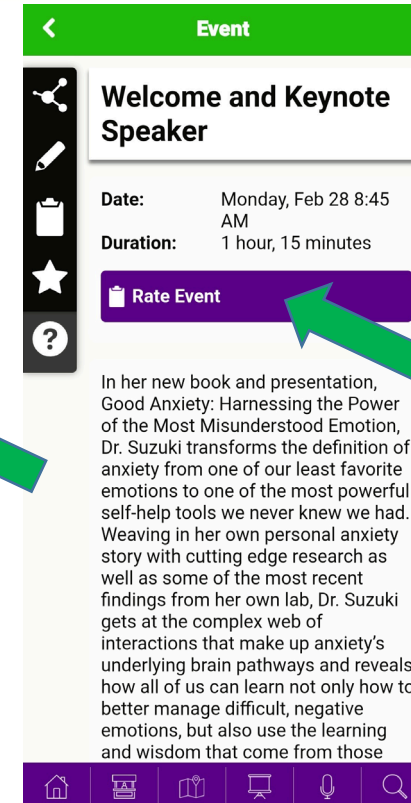
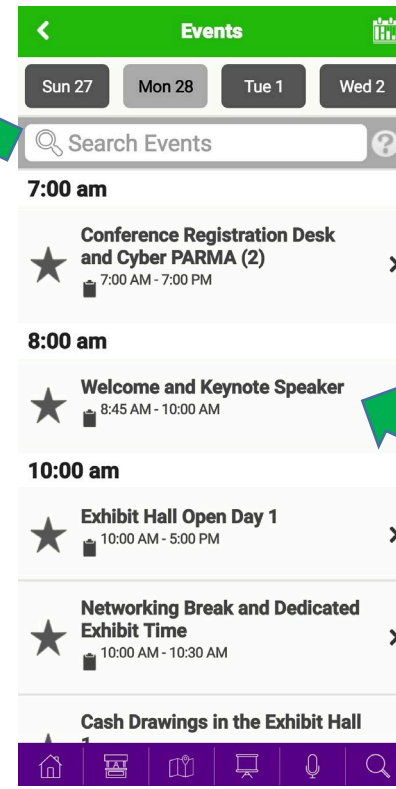
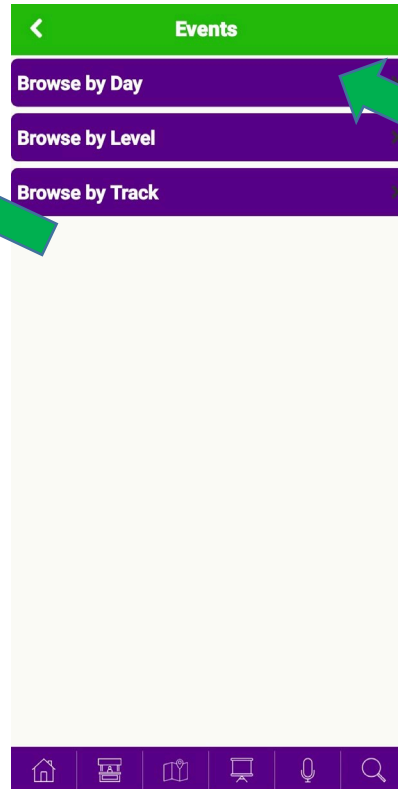
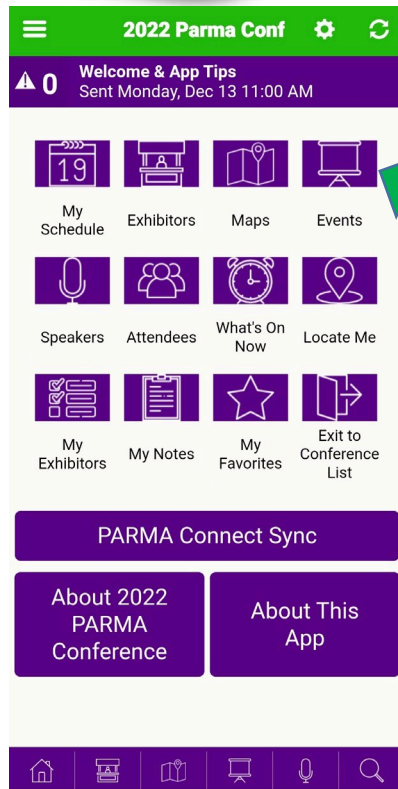
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