

IMPAIRMENT ASSESSMENT TRAINING



IN THIS EDITION:

AMA 4 Guides Impairment Assessment Training E-Newsletter

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CHAIRMAN'S MESSAGE

Christmas brings the opportunity of thanking people and wishing them well. I would like to take that opportunity to thank members of AMA Victoria (Secretariat) for the work that they have done in running the AMA 4 training process.

We have an extremely successful programme based on the principles of adult learning and small group education. As the Management Committee becomes increasingly involved in AMA 4, a variety of issues emerge which benefit from publication in this newsletter. In this issue there is an article on "Apportionment". Further interesting articles are pending.

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Merry Christmas

Tony Buzzard
Chairman

Impairment Assessment Training Management Committee

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AMA 4 NEWS

Certificate where injury not stabilised under the Wrongs Act 1958

Under the *Wrongs Act*, a person must establish that they have a significant injury to recover compensation for pain and suffering (section 28LE). Significant injury includes reaching a threshold level of whole person impairment of more than 5% for physical injuries and more than 10% for psychiatric injuries (section 28LF). An approved medical practitioner is to make an assessment in accordance with the 4th Edition of the American Medical Association Guides (section 28LH).

In cases where some but not all of the injuries have stabilised, a certificate can only be provided if the injuries that have stabilised satisfy the threshold level (section 28LN(3)).

Where the practitioner determines that the injury has not stabilised, then a further assessment should occur not less than six months later. Following this, the practitioner may issue a certificate of assessment even if they are unable to determine the degree of impairment as long as they are satisfied that the degree of impairment resulting from the injury will satisfy the threshold level once the injury has stabilised.

In such cases, the certificate must state that the practitioner is unable to determine the degree of impairment but is satisfied that the degree of impairment resulting from the injury will satisfy the threshold level once the injury has stabilised (section 28LNA).

Apportionment of Impairment Assessments

When conducting an impairment assessment the independent medical examiner may be requested to consider apportionment of the impairment. The AMA Guides 4th Edition 3rd reprint contains a definition of impairment in the Glossary.

Apportionment

This is an estimate of the degree to which each of the various occupational or not occupational factors may have caused all contributed to a particular impairment. For each alleged factor, two criteria must be met:

- a) The alleged factor could have caused or contributed to the impairment, which is a medical determination
- b) In the case in question, the factor did not cause or contribute to the impairment, which usually is a non-medical determination. The physician's analysis or explanation of causation is significant.

On page 10 of "the Guides", there is further explanation as to how this applies:

If "apportionment" is needed, the analysis must consider the nature of the impairment and its possible relationship to each alleged factor, and it must provide an explanation of the medical basis for all conclusions and opinions.

The Guides recommend that apportionment of impairment is calculated by assessing the current impairment of the affected part. The impairment of the pre-existing or non-compensable component of the same affected part is assessed then deducted from the current impairment.

This approach is recommended by the Guides but may not be suitable in specific instances where the relevant legislation directs a different approach.

The significance of this definition is to alert the examiner that there may be various factors that contribute to impairment and these should be considered when determining an impairment value.

It is essential that the examiner appreciate that apportionment can only be considered if there is a pre-existing impairment and not only a pre-existing medical condition. A medical condition can pre-exist without any impairment. It is relevant at this point to appreciate that the definition of impairment is the loss or loss of use or derangement of any body part system or function. Therefore the presence of a pre-existing medical condition does not necessarily mean that there was impairment. Furthermore the impairment must be measurable pursuant to the AMA Guides (presently in Victorian legislation the 4th Edition 3rd reprint).

Where a non-compensable impairment affects the body function, system or structure involving the compensable impairment then it may be necessary to apply an approach to apportionment which takes into account the Guides directives on page 10 and the relevant legislative requirements.

In order to consider the method and appropriateness of apportionment it is necessary for the impairment examiner to appreciate any

implications regarding which legislation the impairment assessment is being conducted. Impairment assessments are currently conducted for purposes of the Accident Compensation Act, the Transport Accident Act and the Wrongs Act. In each case there are differences which have implications for apportionment.

Accident Compensation Act

The impairment assessments are conducted pursuant to Section 91 of the Act. Prior to the impairment assessment a liability determination process is conducted and the examiner is then requested to conduct impairment assessment for the accepted injury/s.

There are also situations where the examiner is requested to conduct a dual examination that involves determining which injuries liability should be accepted for and then proceed to conduct an impairment assessment.

If there is then a dispute regarding liability then there is a dispute resolution process which can be pursued until a final determination is made.

The terminology used to describe the accepted injury may in some circumstances cause difficulties when considering apportionment.

Furthermore Section 91 7A(b) of the Act states:

b) impairments from unrelated injuries or causes are to be disregarded in making an assessment.

This Section of the Act may be interpreted that the impairment assessor needs to consider apportionment or alternatively not to include impairment arising from conditions for which liability has not been accepted. Therefore it is important to understand which medical conditions/ body regions liability has been accepted for and to only include impairment relevant to the accepted injury. There are situations where impairment arises from a medical condition that is consequential to the accepted injury eg a complication with permanent impairment arising from surgical treatment for an accepted injury. This would usually have to be included but if there is any doubt clarification from the referring Agent should be sought.

Consider some examples. If the accepted injury is "aggravation of pre-existing lumbar spondylosis" and an assessment determines that there is a DREII or 5% whole person impairment. The examiner is aware that the condition of lumbar spondylosis is likely to be longstanding and pre-existing but what is required to be determined is not only that a pre-existing condition of lumbar spondylosis pre-existed but whether there was any evidence of a pre-existing impairment. This requires good evidence in the form of either a previous impairment assessment or good-quality medical evidence that the worker was suffering from a pre-existing impairment (refer to definition of impairment) with sufficient documented symptoms and signs sufficient to satisfy the DRE descriptors that the worker had a pre-existing impairment and not just the medical condition of lumbar spondylosis.

Medical conditions such as coronary artery disease often cause difficulties with apportionment. An accepted injury may be myocardial infarction or angina. The medical examiner is aware that the worker would have suffered from pre-existing coronary artery disease with multifactorial causation factors. In order to apportion the medical examiner would require good quality evidence that the worker had a pre-existing impairment from the medical condition of coronary artery disease and not asymptomatic pre-existing constitutional disease which

if assessed according to the Guides does not attract an impairment percentage.

A straightforward apportionment example may be where there was a pre-existing shoulder injury that had been assessed with ROM according to the Guides and had not resolved. A further injury may then result in a greater restriction in ROM and if the information from the previous assessment is available then an apportionment can be applied.

Transport Accident Act

For the Transport Accident Act, the assessor is required to assess the degree of impairment of a person who is injured as a result of a transport accident. This may also involve establishing that the impairment has arisen from the transport accident injuries. The principle of apportionment of impairment can then be applied. This consideration may be straightforward for a trauma injury in a previously healthy individual where there is no evidence of a pre-existing impairment. The situation becomes complex when the injury supervenes upon a pre-existing medical condition. (e.g.: deterioration of pre-existing disease such as arthritis, lung disease, diabetes, cardiovascular disease). The likelihood of a pre-existing medical condition is not sufficient evidence to apply apportionment. There is a requirement to have evidence that not only the diagnosed medical condition pre-existed but that there was accurate information and data in order to transpose to an assessable impairment in accordance with "the Guides".

For TAC assessments, the text and example on page 10 of the Guides is a useful reference when considering apportionment.

It is not uncommon for TAC clients to be involved in more than one transport accident. In such cases, the TAC may be required to determine the degree of impairment of a person arising from each transport accident. In such situations, an assessor may then be asked to assess the current degree of impairment of a person but to apportion any ratings of impairment to account for each specific transport accident, as well as any pre-existing impairment.

For example, in the case of assessment of two transport accidents the examiner may be asked to assess the current degree of impairment of a person, and to apportion any ratings of impairment to account for:

- Impairment that pre-existed or is unrelated to either transport accident
- Impairment arising from the first transport accident
- Impairment arising from the second transport accident.

Wrongs Act

In these situations the impairment is for the alleged injuries. There is no requirement for the examiner to consider liability and the role of the examiner is to assess the injuries that are alleged and determine whether they meet the threshold. It may occur that the type of injuries that are alleged are in relation to medical conditions that are likely to have been pre-existing. It is paramount that for apportionment to be undertaken the examiner needs to be satisfied that there is sufficient evidence of a pre-existing impairment, being careful not to consider argument for liability of the alleged injury.

In general, apportionment of impairments conducted for the Wrongs Act are difficult and may require consideration of liability issues, which, unless the alleged condition is considered medically impossible to have arisen from the incident, is best not undertaken. There are

some situations where apportionment can sometimes be straightforward. An example may be where a claimant who has a pre-existing hip replacement suffers an incident and requires a revision of the hip replacement. There should be evidence to support the status of the previous hip replacement wherever it was a good, fair, or a poor result as defined in the Guides. The current status of the hip replacement would then be assessed and any apportionment applied. If the previous hip replacement was considered to be a good result and therefore was assessed at 15% whole person impairment and the current hip replacement was also assessed as good then the assessment arising from the alleged injury would be 0% provided there was no other additional impairment.

In summary apportionment of impairment requires detailed consideration of the evidence regarding any pre-existing impairment in relation to the medical condition that is being assessed for purposes of the assessment. It is not sufficient to state that there was a likelihood of a pre-existing impairment if this cannot be supported by detailed reasoning or preferably by documented evidence. If there is to be reliance only on detailed reasoning for a pre-existing impairment then the examiner should be aware that that reasoning could be challenged by either alternative reasoning that no impairment existed or further evidence. It is preferable that there is documented evidence of a previous impairment either in the form of a previous impairment assessment or clinical medical record evidence which can be interpreted to a previous impairment.

Arbitrary percentage apportionment of impairment without detailed argument is not an acceptable practice.

To summarize

The key to apportionment is good clinical documentation of evidence of the non-compensable injury status such that the non-compensable or unrelated impairment can be assessed with confidence. If there is any doubt regarding the adequacy of information to enable a fair and accurate assessment then the referring party should be advised before the evaluation is completed. If further and better information is not forthcoming then apportionment should not occur. It is essential that the reasons behind the decision to apportion or not apportion are provided in a logical and transparent manner.

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MODULES IN DETAIL

2009 Program

Core (Stream 1)	Sat 14/03/09	8:30 AM	11:00AM
Core (Stream 1)	Tues 21/07/09	7:00 PM	9:30 PM
Core (Stream 2)	Tues 6/10/09	7:00 PM	9:00 PM
Ear, Nose & Throat (Stream 1 & 2)	Tues 8/09/09	6:30 PM	9:30 PM
Endocrinology (Stream 1 & 2)	Tues 5/05/09	7:00 PM	9:00 PM
Gynaecology (Stream 1 & 2)	Wed 25/03/09	7:00 PM	9:00 PM
Hand & Upper Extremities (Stream 1)	Tues 4/08/09	6:00 PM	10:00 PM
Hand & Upper Extremities (Stream 2)	Tues 8/09/09	7:00 PM	9:00 PM
Lower Extremities (Stream 1)	Sat 14/03/09	11:00AM	2:00 PM
Lower Extremities (Stream 2)	Tues 2/06/09	6:30 PM	9:30 PM
Nervous System (Stream 1)	Tues 18/08/09	6:00 PM	10:00 PM
Nervous System (Stream 2)	Tues 12/05/09	6:30 PM	8:30 PM
Psychiatry (Stream 1)	Tues 1/09/09	7:00 PM	10:00 PM
Psychiatry (Stream 2)	Tues 16/06/09	7:00 PM	9:00 PM
Spine (Stream 1)	Tues 12/05/09	7:00 PM	10:00 PM
Spine (Stream 2)	Tues 4/08/09	7:00 PM	9:00 PM
Visual System (Stream 1 & 2)	Thurs 27/08/09	7:00 PM	9:00 PM

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We are not sending Christmas cards this year. We hope you won't mind. Instead, in keeping with our commitment to advancing the health of all Victorians, we are donating the money we would have spent on cards to the St Vincent de Paul Society's Ozanam Community Centre. The President, Board and Staff of AMA Victoria wish you and your loved ones a safe and peaceful festive season.

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