Disability and Impairment Evaluation: For The Family Physician

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Dr. Martin is a graduate of the University of Nebraska College of Medicine, Omaha, and completed his family medicine residency in Davenport, Iowa. He also completed a mini-residency in occupational medicine at the University of Cincinnati, Ohio. The majority of Dr. Martin’s practice is focused on musculoskeletal-related diagnoses. He has given numerous lectures on occupational medicine topics, with emphasis on upper-extremity repetitive-motion injuries, disability medicine, and medical review officer functions. In addition, he has authored book chapters for AMA Guides on causation analysis, return to work, and how to navigate disability systems. Dr. Martin is an international expert on the construct of complex regional pain syndrome and has lectured at the Royal Society of Medicine in London. He is a former president of the Iowa Academy of Family Physicians and the American Academy of Disability Evaluating Physicians (AADEP). A Diplomate of the American Board of Family Medicine (ABFM), he is currently on the board of directors for both the American College of Occupational and Environmental Medicine (ACOEM) and the Interstate Postgraduate Medical Association (IPMA).

Learning Objectives

1. Determine one’s role in the evaluation, whether as a treating physician, new consultant, second opinion, or independent medical examiner.
2. Classify the severity of the patient’s condition based on a combination of complaints (subjective), physical findings (subjective and objective) and laboratory data (objective), where appropriate.
3. Use available guidelines (e.g., Department of Veterans Affairs, the American Medical Association, the Social Security Administration, and state workers’ compensation boards) to assess the impact of impairment on affected organ systems, measured as loss of function.
4. Generate a comprehensive physician’s report, including a summary of reviewed medical records, the detailed medical assessment performed, a summary of questions being addressed, and the degree of impairment from the identified condition that references the impairment scheme used.

Audience Engagement System

Step 1
Step 2
Step 3

Clinical Scenario: Acute Coronary Syndromes, BrokenHearts and BlackPants
During Our Short Time Today, We Will:

- Review the various U.S. disability systems and their intricacies.
- Discuss how a family physician should approach a patient request for disability status and the implications of your decision.

Four Main U.S. Disability Systems

- Workers' Compensation
- Social Security Administration
- VA
- Personal Disability Insurance

Workers’ Compensation Systems

- Federal Programs
  - OWCP
  - Federal Employees’ Compensation Act (FECA)
  - Longshore and Harbor Workers’ Compensation Act
  - Federal Black Lung Program
  - Energy Employees Occupational Illness Act
  - FELA
  - Jones Act
- State Programs
  - State Workers’ Compensation Programs

FECA

- Criticisms
  - Paperwork requirements of the US Postal System are somewhat daunting
  - Active and focused return-to-work programs have been somewhat lacking
  - Impairment ratings done according to AMA Guides 6th edition
  - By statute, claims for permanent injuries are limited to scheduled awards
  - No compensation for spinal impairments per se

LHWA

- Enacted 1927
- Covers shore side maritime employees
- Ship builders
- No fault system
LHWA
• Administered by OWCP
• Impairment ratings based upon AMA Guides 6th edition criteria

FBLA
• Created by Federal Mine Safety & Health Act in 1977
• Covers pneumoconiosis due to coal dust exposure
• Based upon chest x-ray B-read criteria or PFT classifications
• The disability standards are predetermined and published

FBLA
• Average disability benefit typically ranges between $350,000 - $500,000 over a life span
• Cynicism has stated it may be the "retirement system for West Virginia smokers"

EEOIC
• Provides medical benefits and lump sum compensation for workers in the nuclear weapons industry
• Is typically for malignancies
• Uses AMA Guides 5th Edition for ratings
• Requires impairment rating examiners to be certified by AADEP (IAIME) or ABIME

EEOIC
Contact District Office to be placed on their examiner list
Generally straightforward evaluations

FELA
• Enacted 1908
• Railroad employees (largest employer in 1908)
• Adversarial system
• Employee must prove negligence
• Employer counters with comparative negligence
**FELA**
- Claimant can recover for pain and suffering
- May also receive benefits for sickness and disability in the form of annuities
- High-end legal cases
- Cases can be filed in either state civil court or federal district court
- Out of court settlements are common
- Not much emphasis upon Guides-based impairments

**Jones Act**
- 1920 (Merchant Marine Act)
- Covers sailors serving on vessels in US navigable waters
- Worker must bring suit against master of vessel to recover

**Jones Act**
- Out of court settlements common
- Seamen are looked upon by the court system “wards of the state” and are typically given favorable treatment
- No impairment rating system

**AES Poll Question #1**
Which of the following Federal Benefit Systems would cover a uranium processing worker involved in manufacturing a nuclear armament who develops a work-related kidney tumor?
- a) FECA
- b) FELA
- c) EEOIC
- d) LHWA

**State Workers’ Comp**
- 53 different statutes
- No-fault system
- Adversarial

**State Workers’ Comp**
- Covers medical care costs
- Wage replacement
  - Typically 2/3 of normal wage
  - Has a waiting period prior to wage replacement start-up
- Physician participation in process
  - Variable rules
  - Variable incentives / disincentives
  - Employee v. employer choice
- Variability on compensability
  - Causation important
  - Substantially related v. contributes v. lit up v. who knows
State Workers’ Comp

- Compensation for Permanent Injuries
- AMA Guides and some state guides for impairment ratings
- Impairment v. Disability Compensation
  - “Industrial Disability”
- Variable Legal and Administrative Oversight and Involvement

State Workers’ Comp

- Awards can be scheduled or unscheduled
- Reform Measure Examples
  - California
  - Texas
  - Illinois
- Trend toward evidence-based decision making
- However, many states do not have the Daubert standard within their statutes

State Workers’ Compensation

- Most frequent use of AMA Guides
- Multiple stakeholders
- Family Physicians frequently on the front line
- Don’t guess at impairment ratings
- Be careful of the verbiage
- THERE IS NO SUCH THING AS A “DISABILITY RATING”
AES Poll Question #2

Which of the following is true regarding the AMA Guides to the Evaluation of Permanent Impairment?

a) Each state uses the same edition of the Guides.
b) Its use is taught in approximately ¼ of medical schools and residencies.
c) It provides a mechanism to calculate a % impairment rating number based upon objective findings.
d) It is used to determine whether an injured worker can return to work.

VA Disability

- Available to all honorably and generally discharged
- Service connected
- Benefits
  - Monthly payment to veteran or spouse or surviving children
  - Medical care costs
  - Allowances for adaptive modifications to home or motor vehicle

VA Disability

- As part of the claims process, decision is made whether a medical examination is required
- Physicians who perform evaluations are requested to make or confirm diagnoses and determine severity of those diagnoses
- Physicians are asked to complete a series of computer-generated worksheets that are standardized
- Administrator assigns a service-related disability rating (does not have any relationship to AMA Guides)
- VA Disability is always awarded in increments of 10%

Social Security Disability

- SSDI
- SSI
- Largest disability system

Social Security Disability

- The definition of disability under Social Security is different than other programs. Social Security pays only for total disability. No benefits are payable for partial disability or for short-term disability.
- “Disability” under Social Security is based on the inability to work. Persons are considered disabled under Social Security rules if:
  - They cannot do work that they did before.
  - SSA decides that they cannot adjust to other work because of their medical condition(s);
  - The disability has lasted or is expected to last for at least one year or to result in death.
- This is a strict definition of disability. Social Security program rules assume that working families have access to other resources to provide support during periods of short-term disabilities, including workers’ compensation, insurance, savings and investments.
Social Security Disability

- SSDI
- First system
- Funded through FICA payroll tax
- For applicants who have previously contributed to the system
  - Worked 5 of prior 10 years
  - Under age 65

Social Security Disability

- SSI
- Second system
- Funded through general tax revenues
- For applicants who are blind, disabled or aged including children with severe disabilities

Social Security Disability

- Federally funded
- State administrated
- DDS reviews records to determine if there is a medically determinable impairment
  - Listing of impairments yield automatic approval
  - DDS determines residual functional capacity in non-listed impairment categories

Social Security Disability

- Role of physicians
- Comprehensive examinations
- Expert witness in ALJ hearings
- AMA Guides not used
- Descriptive listing of impact of condition upon ADLs

Social Security Disability

- Programs for employment
- Exist but are successful 2% of the time
- Physician involvement and frustrations
- However, may be a good segue into IME-type exams for the beginner physician
Social Security Disability
- Much inconsistency in the system
- Denial rate initially is 50-60%
- Initial appeal
- Re-appeal to ALJ hearing

Personal Disability Insurance
- Typically purchased by individuals or provided as a benefit of employment by private corporations
- Many insurance carriers
- Very competitive market

Personal Disability Insurance
- Typically these policies require a level of disability that precludes return to any work activity.
- There are VERY FEW policies that remain that are referred to as “own-occupation” policies which will pay benefits if a worker is unable to return to their original job but are still able to work at a lower-paying job. These policies cover some (usually not all) difference in wage.

Personal Disability Insurance
- Benefits are paid typically at 60% of original wage.
- The policy usually requires that the claimant also apply for Social Security Disability to offset the financial liability of these private policies.

Personal Disability Insurance
- Physician involvement
- File reviews
- Independent examinations
- Surveillance
- Need to understand the individual policy definition of what is considered "disabled" as it varies from policy to policy

PART TWO
Determining whether a patient is disabled or not
IMPORTANT CONCEPT

IMPAIEMENT v. DISABILITY

A Little Bit About Return to Work Recommendations

• Think of this like a black box warning for medications.
• Why?

WARNING: This drug is detrimental to your patient’s mental, physical, and social well-being.

Literature Support on Effect of Absence from Work

• Nylen and Floderus Swedish Twin Registry (2001) Unemployment and Mortality
  • RR 1.93 women; 1.43 men
• Quaade – Early Retirement (Danish)
  • Leads to increase in mortality
• Gerdtham and Johannesson (2003)
  • Not working leads to: quicker death, increase in DM, CAD, CA

The Three Issues to Consider

• Risk
• Capacity
• Tolerance

Risk

• The chance of harm to the patient, co-workers, or to the general public if the patient engages in certain work activities
• Surprisingly there is very little literature that addresses this subject

Risk – Be Careful About “Tradition”

• Spinal surgeons’ restrictions on discectomy patients
• There is no literature support for this
• Patients have better outcomes with no restrictions than if restrictions are placed
• Carragee (Spine 1999; 24:2346-2351) “Activity Restrictions After Posterior Discectomy: A Prospective Study of Outcomes in 152 Cases With No Postoperative Restrictions”
• Carragee (Spine 1996; 21:1893-1897) “Are Postoperative Activity Restrictions Necessary After Posterior Lumbar Discectomy?”
Capacity

- Measurable (usually) concepts such as strength, flexibility, and endurance
- Assumes maximal training and acclimation
- Can be changed with rehabilitation

Capacity: Physicians are Pretty Good at Measuring

- Functional Strength (Rotator Cuff)
- Endurance (EST for Firefighters)
- Functional Motion (Goniometer)
- Assumes reliable effort of the patient

Tolerance

- A psycho-physiologic concept that describes the ability to tolerate sustained work activity at a given level
- Focuses on SYMPTOMS
- Not a scientifically verifiable concept

Tolerance – Depends Upon:

- Rewards
- Peers
- Results in variability in physician-prescribed restrictions
- Essentially relegates itself to the believability of the patient

AES Poll Question #3

John is a 52-year-old plumber who has just recovered from rotator cuff surgery. He tells you that he cannot return to his job because his shoulder hurts too much, yet on examination he has normal ROM and strength. Basing his RTW decision upon his pain would be an example of utilizing:

A. Risk
B. Capacity
C. Tolerance
D. Experience

How Do Physicians Choose?

There Are Four Choices – Which One Do You Use?

1. Play Secretary
2. Try to Assess Tolerance
3. Gestalt
4. Abstain
Play Secretary

- Patient brings in a form that asks, "How much can the patient lift?"
- Doctor asks, "How much can you lift?"
- Patient says, "Ten pounds."
- Doctor writes in "ten pounds" on the form.

Try to Assess Tolerance

- Use of FCEs
- These are not Functional Capacity Evaluations, rather Functional "Tolerance" Evaluations
- Informed Consents for FCEs state that the patient can stop "due to pain" or "belief that can be injured"

Gestalt

- Based upon anecdotal experience
- Wide variability
- Like Aesop’s Fable of the Blind Men

Abstain

- Pain cannot be measured reliably
- If you base RTW opinion on Risk and Capacity alone (and appropriately) you cannot gauge tolerance within the same context
- So don’t fall into this trap

Patient Advocacy

- Mal-aligned in workers’ compensation care frequently
- Is NOT what the patient wants
- It IS what is in the best interest of the patient
- In workers’ compensation there are times when these CONFLICT
  - Attorneys
  - Employers
  - Unions
  - Family Members

Recommendations – The Seven Step Approach

1. What is the job or activity in question? Job description? Information from both employer and employee?
2. What is the medical problem? Objective findings. Temporary or permanent? Will it improve with treatment and time?
3. Is the pathology severe enough to warrant disability or restrictions?
Seven Step Approach

4. Is there significant risk of substantial harm with work activity?
   Not just an increase in symptoms.
5. Is the patient actually physically able to do the task in question?
   If not, why not?
6. If the patient has the ability, has acceptable risk, and wants to do the job or activity, certify it.
7. If the patient has the ability, has acceptable risk, but does not want to do the work, certify that the patient may work, but that there are work problems, thereby leaving the decision in the hands of the patient, not the physician.

Physician Reports for Impairment and Disability

- Write for non-physician audience
- Use more paper if necessary
- Do NOT be afraid to say “I DON’T KNOW”
- Get help
  - CME
  - Ask the requestor
- EXPLAIN yourself !!!!

Thank You
For more information on this topic, I suggest:

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