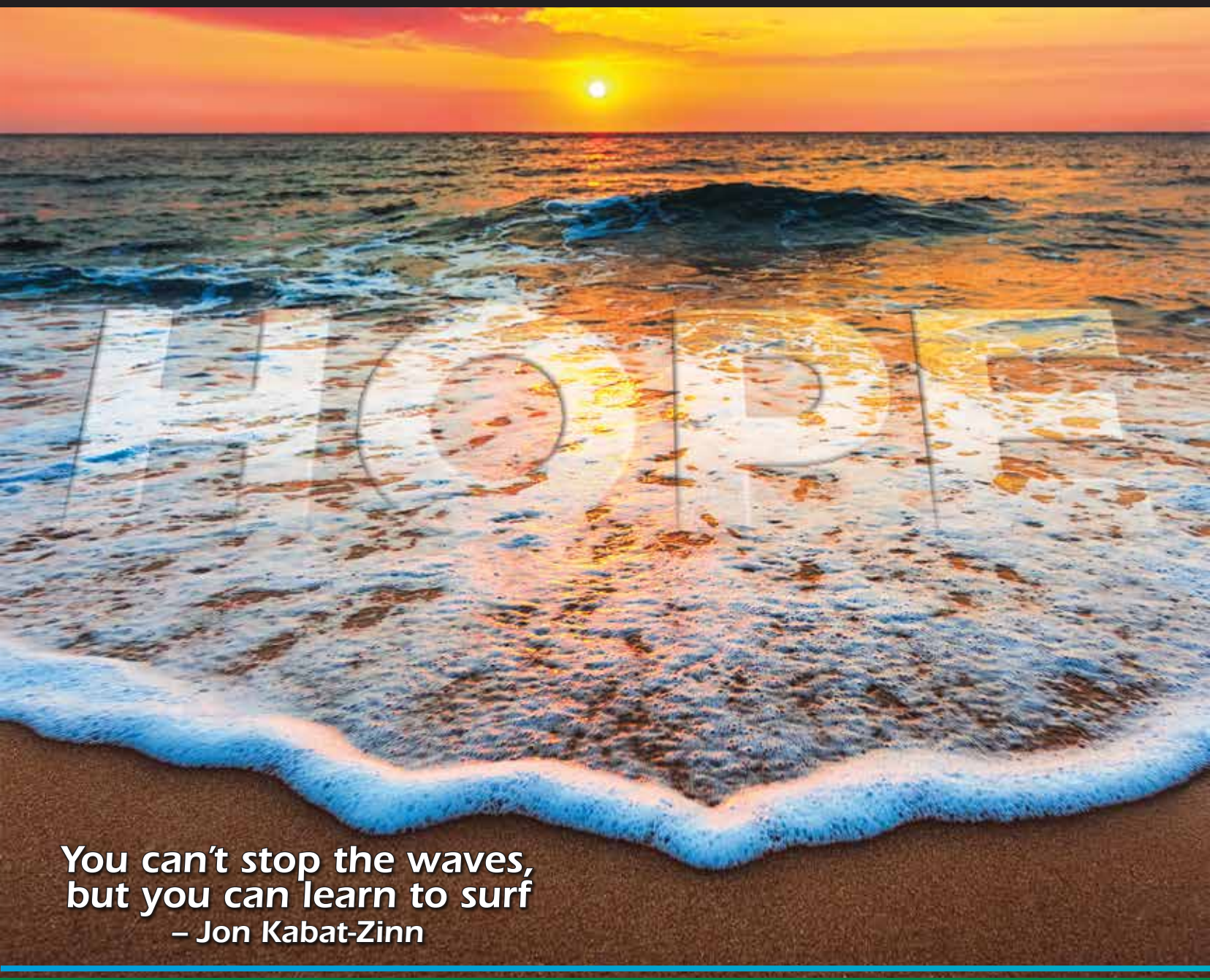
Spring 2021 Edition

WH Workplace Health



You can't stop the waves,
but you can learn to surf
– Jon Kabat-Zinn

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The Costly Combo of Opioids and Workers' Compensation

Scott Masson, D.O.

It's no secret the nation is facing a prescription opioid epidemic. Interestingly, opioids have little data to support long-term use and have a poor side effect profile. Given the abundance of information against the use of opioids in chronic pain patients, some providers have stopped prescribing them altogether.

Not only are opioids ineffective long-term, but they are also expensive. This is especially true in workers' compensation cases.

Among such cases, data suggests the overall cost of care for patients on opioids is significantly higher than opioid-naïve patients. The Hopkins-Accident Research Fund Study in 2012 found "workers prescribed even one opioid had average total claims costs four to eight times greater than claimants with similar claims who didn't get opioids."

Why is opioid therapy so expensive?

In a nutshell, the costs of opioid therapy are about more than merely the price of the medication itself. The Center for Disease Control and Prevention (CDC) poses strict guidelines on opioid-prescribing physicians, requiring frequent follow-up visits and random urine drug screening to ensure patients are compliant with their treatment programs. Considering the additional visit-burden and laboratory testing required for patients on these medications, it is clear why their care is so much more expensive.

Additionally, opioids can cause sedation and impaired mental capacity. These side effects can predispose patients to additional injury at work, resulting in extra time off, more claims, and further increases in their cost-of-care.

If these medications don't improve outcomes and are expensive, how can we prevent their use while getting workers to maximum medical improvement in an efficient, cost-effective manner? The answer may lie in early involvement of pain management physicians.

Pain management physicians provide specialized evaluations and recommend the appropriate imaging to come up with the correct diagnosis. They can then develop a plan to treat the pain at its source. This is done by employing targeted therapies, including:

- Injections and nerve ablations for conditions like disc herniations or whiplash injuries
- Non-opioid medications for the specific type of pain the worker is experiencing
- Other therapies like TENS units and braces

Because of the arsenal of treatment options at hand, pain management physicians are the best equipped specialists to facilitate improvement in the worker's overall condition while decreasing the chance the patient ends up requiring expensive treatments like long-term opioid therapy.

Scott Masson, D.O., is board-certified in anesthesiology and pain medicine and fellowship-trained in chronic interventional pain management. He brings the latest innovation in interventional pain management to his patients at Alliance Spine and Pain Centers. Dr. Masson is adept at treating all types of pain in all locations. He specializes in minimally invasive spine procedures, neuromodulation, and intrathecal pain pump therapy. Contact an Alliance Referral Coordinator today to find out how Dr. Masson and Alliance can make a difference for your patients.

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WH CONTENTS

2021 Upcoming Educational Events
Workplace Health Magazine gets around!

Disclosure: Event dates could be postponed, cancelled, or virtual. Please use the following as a guide. If you would like your event added to the Workplace Health magazine calendar of events, please contact Michelle Wilds at michellewilds@selectonenetwork.com. Workplace Health magazine would love to come and cover your event.

APRIL 2021

April 14 – Georgia Workers' Compensation Association
Virtual Experience

April 19-29 – Risk Management Society
RIMS Live – Annual Conference
Virtual Experience

MAY 2021

May 7 – Alabama Workers' Compensation Department of Labor
Great Wolf Lodge
LaGrange, GA

May 11-12 – National Council on Compensation Insurance
2021 Annual Issues Symposium
Virtual Experience

May 20 – Alabama Workers' Compensation Department of Labor
Birmingham, AL

May 24 – Jimmy Simpson Golf Tournament
Lookout Mountain Golf Club
1730 Wood Nymph Trail
Lookout Mountain, GA

JUNE 2021

June 3 – Moore Ingram Johnson & Steele Claims Adjuster Seminar
Virtual Experience

June 7 – Atlanta Claims Association
Annual Golf Outing
Country Club of Roswell
2500 Club Springs Drive
Roswell, GA

June 14-16 – National Public Risk Management Association
PRIMA 2021
Virtual Experience

June 13-16 – Workers' Compensation Claims Professionals
29th Annual Claims Management and Leadership Conference
Hyatt Regency Coconut Point
5001 Coconut Road
Bonita Springs, FL

June 17 – Alabama Workers' Compensation Department of Labor
Birmingham, AL

JULY 2021

July 12-16 – Southern Association of Workers' Compensation Administrators
73rd Annual Conference
The Omni Homestead Resort
Hot Springs, VA

July 15 – Alabama Workers' Compensation Department of Labor
Birmingham, AL

July 18-21 – Florida Self Insured Association
Naples, FL

July 27-31 – Florida Risk Management Society
Naples, FL

AUGUST 2021

August 8-10 – Alabama Self-Insurers Association
Summer Conference
Hilton Sandestin Beach Resort
Sandestin, FL

August 30-Sept 1 – Georgia State Board of Workers' Compensation
Annual Workers' Compensation Conference
Atlanta, Georgia (possibly virtual)

SEPTEMBER 2021

September 9-12 – Society of Human Resource Management
Annual Conference and Expo
Las Vegas Convention Center
Las Vegas, NV and Online Live

September 16 – Alabama Workers' Compensation Department of Labor
Birmingham, AL

September 19-21 – Georgia Workers' Compensation Association Annual Conference
Athens, GA

September 22-24 – Georgia Society for Human Resource Managementm ,
Stone Mountain, GA

September 29-30 – National Workers' Compensation Defense Network
Philadelphia, PA

OCTOBER 2021

October 3-6 – SCWC Self-Insurers Association Conference
Myrtle Beach, South Carolina

October 7-9 – Institute of Continuing Legal Education
St. Simons Island, GA

October 20-22 – National Workers' Compensation and Disability
2021 National Comp Conference
Mandalay Bay
Las Vegas, NV

October 29-31 – Georgia Association of Occupational Health Nurses
2021 State Conference
Brasstown Valley Resort and Spa
Young Harris, GA

NOVEMBER 2021

November 15-19 – Southern Association of Workers' Compensation Administrators
All Committee Conference
St. Simons Island, Georgia

DECEMBER 2021

December 12-15 – Workers' Compensation Institution
2021 Workers' Compensation Educational Conference and Annual Safety and Health Conference
Orlando World Center Marriott
Orlando, FL

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Workers' Compensation

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Baselines and Care Plans for Our Aging Workforce

Zaneb Yaseen, M.D.

The aging workforce encompasses those who continue careers after the age of forty (40). Every day in the United States, 10,000 Baby Boomers turn sixty-five (65). It is predicted the majority of the workforce will be over the age of forty (40) in the next five to ten (5-10) years. As the workforce ages, the need for more descriptive care plans will increase. We have to adjust our job descriptions and work restrictions, not only to meet the requirements of the job, but also to ensure the skill sets of the aging workforce are considered.

Why is our workforce aging? There are a number of reasons to consider, including, financial restrictions, enjoyable, positive, and productive working environments; and overall, people are living longer, healthier lives, causing the life expectancy to increase.

What sort of care plans should we consider for the aging workforce? Obviously, physical abilities change as aging occurs. However, it is important to make efforts to avoid bias and promote equitable work environments for those who are more mature. Taking value in mature workers with their skill sets and abilities can lead to a successful work environment.

Certain skill set requirements are more physical, which can lead to injury. Retraining and modifications of these skill set requirements can mitigate risk to injury or harm. It is important to acknowledge medical issues can lead to other issues such as absenteeism. Considering alternative and more flexible assignments can help keep people at work longer.

It is important for mature employees to understand and follow Occupational Safety and Health Administration (OSHA) rules and regulations. Avoiding dangerous situations and knowing of physical limitations can help promote a safer working environment. Taking scheduled breaks to avoid fatigue can also be helpful. Being aware of and maintaining personal health issues is also key. Some medical conditions can interfere with work performance. Staying healthy by eating well, resting, and exercising are a few things that can help employees to perform well in their career. When doing repetitive activities, such as lifting, being mindful and maintaining proper technique and form is imperative. These personal acts and practices can prevent injuries that often plague the aging workforce.

If an injury does occur at work, it is vital to report it promptly. This allows more efficient and timely management of the injury and, if needed, establish care with a workers' compensation physician. Once this occurs, management of the injury can be handled appropriately including work restrictions if needed, nonsurgical options, and if necessary, surgical management.

Zaneb Yaseen, M.D., FAAOS, is a board-certified orthopaedic surgeon fellowship trained in sports medicine. She received a Bachelors of Science and Masters of Science in electrical engineering with a concentration in Biomedical Engineering from The George Washington University and her Medical Doctorate degree from the University of Tennessee. She is a member of the American Academy of Orthopaedic Surgeons, American Orthopaedic Society for Sports Medicine, and has been published numerous times. Dr. Yaseen works at the Warner Robins office.

A Word from the Florida Chairman

David Langham, Deputy Chief Judge

In early 2020, much was said about Florida legislative issues. There was focus upon electronic medical records (HB 1147), raises for Florida's Compensation Judges, and extending PTSD benefits to correctional officers (HB415). There was little discussion of pandemics, viruses, or lockdowns.

Times have sure changed. The impact of COVID-19 started to become newsworthy in late February. On March 1, 2020, Governor DeSantis issued the first Executive Order (20-51) and more followed.

There are sixty (60) days each year in which our legislature strives to address so many issues. The budget consumes significant time. Florida's budget is working its way up toward the $100 billion mark. In addition, each year, there are legislative bills. In the 2021 session, much is already being discussed regarding pandemics. The Florida State House even has a Pandemics and Public Emergencies Committee now.

There will be much discussion of the virus and its impact during the next few months of legislative activity. Topics are numerous, including:

- Civil liability for damages relating to COVID-19 (HB7/SB72)
- Protecting consumers against fraud during a pandemic (HB9)
- School protocols during a COVID-19 state of emergency (HB227)
- COVID-19 impact on school accountability (HB359/SB886)
- Prohibited landlord practices (HB499/SB576)
- Community-based post-COVID acceleration initiative (HB2477)

There is nothing as yet with specific reference to workers' compensation. Many seem to have concluded that COVID will not lead to increased workers' compensation premiums anytime soon. While there are those who have sought benefits for COVID, there has been a corresponding decrease in employment also related to the infection's impact on the economy. There are, therefore, those who believe overall workers' compensation losses may not soon be impacted significantly.

The effect of the disease on workers' compensation, however, has been significant. The Division of Workers' Compensation has worked to bring data to the discussion. Each month, it publishes a report with information on claims, payments, geographic prevalence, and more. Those who harbor concerns and questions about COVID and workers' compensation should visit the Division's website *(https://www.myfloridacfo.com/division/wc/)* and click on the "reports" tab.

Beyond that direct impact, there have been many ancillary impacts, as well. In the world of litigation, all workers' compensation state mediations have been conducted telephonically since March 2020. While that has lessened the foot traffic in the OJCC offices, the change has not resulted in less mediations. The OJCC added a new mediator position in early 2020, and so it should be no surprise that more mediations were held in the first half of 2021 (July 1 through December 31) than in the same period of 2020. The success of mediation has remained despite the telephonic limitations.

The hearing process has changed somewhat. How and where to hold a hearing remains up to the assigned judge. However, in March of 2020, the OJCC began using Internet videoconference capabilities in specific instances. Since

that time, the preponderance of trials in Florida workers' compensation have been virtual.
Many anecdotal reports have come up regarding delays in medical care and recovery secondary to COVID. Causes include: closed doctor's offices, mandated delays in surgery, availability/appropriateness of medical transportation, and more. Throughout, it has been the overwhelming perspective that service providers, attorneys, adjusters, and others are striving together to assure that care is provided as expeditiously as practical. Their efforts have not gone unnoticed.

Thus, the impacts are clear. The future remains uncertain. Whether substantive steps are taken in the 2021 legislative session or not, the substantive changes to the workers' compensation community are worthy of attention and study. Whether the community returns post-COVID to the old "normal" or a "new normal" remains to be seen.

But…the dynamic and collegial community has proven that it is up to any challenge.

David W. Langham has been the Florida Deputy Chief Judge of Compensation Claims since 2006. His legal experience includes workers' compensation, employment litigation, and medical malpractice. He has delivered hundreds of professional lectures, published over forty articles in professional publications, and has published over 950 blog posts regarding the law, technology, and professionalism. David is a student, a teacher, a critic, a coach, and a leader. He lives in Pensacola, Florida, with his wife, Pamela Langham, Esq.

OnSite Early Symptom Intervention and Prevention Services

Adam Wilkinson

As many employers begin a fresh new year, they are also looking for ways to improve their Occupational Safety and Health Administration (OSHA) recordable numbers, DART rates, and Workers' Compensation costs. OnSite Early Symptom Intervention (ESI) programs can create positive changes in these statistics and in the overall well-being of workers.

ESI programs employ health care professionals to provide assessment and first aid care for workers in the early stages of soreness, which, if not appropriately managed, could result in injury. Examples of these include: sprains, strains, contusions, and abrasions. ESI programs allow employers to refer employees to onsite personnel for triage/intervention prior to filing a workers' compensation claim or referring to a physician. The ESI health care professional may be able to prevent a "soreness" from becoming a rotator cuff tear or a "pinch" from becoming a significant low back issue.

An effective ESI program reduces the number of recordable injuries, improves DART rates, and decreases Workers' Compensation costs in numerous ways:

- Decreases trips to off-site care. Because the employee doesn't have to travel off-site for care, transportation costs, replacement wages to cover time away from work, and the elevated costs associated with an emergency room visit are avoided.
- Increases ability to monitor employees' symptoms. An ESI team member can monitor the employee throughout a day to encourage compliance with symptom management. Job coaching in the employee's work area can provide valuable input for symptom reduction with possible changes to work flow, first aid intervention, guidance for stretching, or other ergonomic modifications.
- Improves employee morale. An onsite ESI program is viewed as an employee-friendly initiative. It conveys the message that the company wants to provide professional services to help alleviate workers' discomfort.

The following is feedback from a national distribution company that instituted an Early Symptom Intervention Program:

"The WorkStrategies Early Symptom Intervention (ESI) program helped me achieve health and safety goals in a 350-employee distribution center environment. It provides early intervention employee care to soft tissue strains and sprains as well as reducing overall organization costs. Employee feedback on early intervention services is that the first aid treatment and advice from the WorkStrategies professional gave them a game plan for their self-care, while continuing to work. The results from the program are a focus on early intervention, a more productive and self-aware workforce, with overall direct and indirect costs savings greater than $200,000 in a 6-month period."

R. Allen Bragg, CSP, ARM
Safety Manager

So, as you can see, the Select Medical OnSiteTM Service is an effective and affordable way to reduce the rate and severity of work-related injuries, as well as improve employee morale and overall quality of life.

Adam Wilkinson, PT, DPT, has over ten years of experience in industrial rehab and is the WorkStrategies Coordinator for Physio in Georgia. He is responsible for maintaining clinical excellence in the treatment of our injured workers which includes case management communication with claims managers, physicians, and case managers, as well as providing internal workers' comp education for clinical and non-clinical employees. Contact Adam at adam.wilkinson@myphysio.com.

TROY LANCE GREENE ATTORNEY AT LAW

Mr. Greene is a Magna Cum Laude graduate of Mercer University and the Walter F. George School of Law. He is a former member of the Board of Directors of the Georgia Defense Lawyers Association and a member of the Defense Research Institute. He is involved in several committees and organizations involving workers' compensation matters. He is a member of the National Eagle Scouts Association and the Toombs County Bar Association.

Mr. Greene was a law clerk for the judges of the Middle Judicial Circuit. He also served as juvenile court associate judge in the Middle Judicial Circuit. He was formerly employed with Allen, Brown, and Edenfield in Statesboro. He has been a member and partner of the firm of McNatt, Greene and Peterson for over 26 years.

Mr. Greene represents several insurance companies and self-insurers in Georgia and has been in practice for over 26 years in the field of insurance and workers' compensation defense. Mr. Greene is well versed in property and casualty matters, premise liability and electrical contact cases. In this regard, he has represented utilities in the state for several years. He has tried a great number of workers' compensation hearings before administrative law judges in the state. He has significant trial experience and has tried many jury trials to verdict. He has been involved in four jury trials in the last eighteen months. He continues to represent insurers and self-insurers in his new practice.

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Getting Leverage Without Light-Duty Work to Offer

Ken David

There are fewer jobs available now. Period. So, it follows that employers' ability to provide light duty-work to injured workers is even more difficult. In the face of these challenging times, there are a few tools you can use to minimize your costs even when employers cannot bring their employees back to work.

Here are some tips on getting leverage without having a light-duty work offer:

1. Use the WC-104 to cap and reduce benefits: If a claim is not designated catastrophic, then, as soon as the authorized treating physician (ATP) releases an employee to work with restrictions, you can file Board form WC-104.

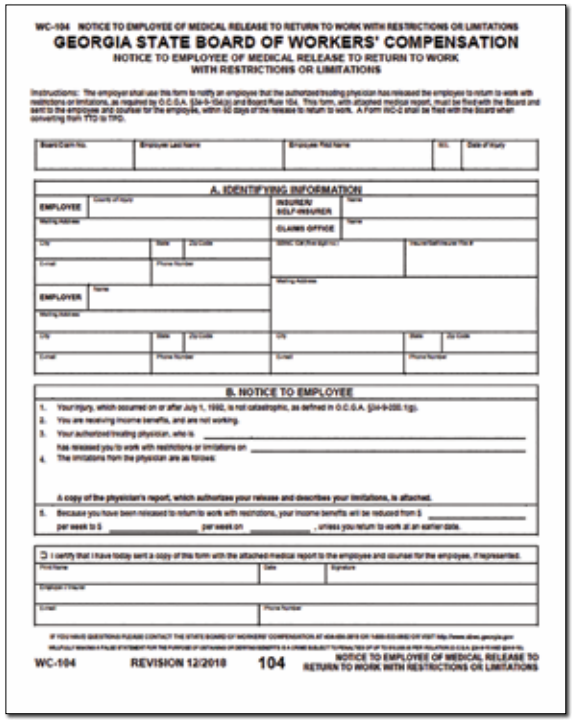
   What it does: Filing the form caps the employee at 350 weeks of benefits. That by itself is not very exciting. However, the form also allows you to reduce the employee's benefits to the maximum TPD rate, which is $450 per week for any accident occurring after July 1, 2019. (If an employee is already at a TTD rate of less than $450, then the rate they are getting stays the same.)

   How to do it: Once the ATP releases the employee to any form of light-duty work, you can file the WC-104. The form must be filed within sixty (60) days of the light duty release. However, unlike when suspending benefits based on a full duty release, when filing the WC-104, the ATP does not have to actually examine the employee. The ATP can issue the light duty release in response to a questionnaire. Of course, some doctors may require examining the patient before issuing a release, but you could potentially do this appointment via telemedicine.

2. File a PMT(b): If an employee is failing to attend doctors' appointments and/or physical therapy, you can file a PMT(b) and potentially have his benefits suspended. Failure to show up for doctors' appointments has been a big issue during the pandemic. Doctors' offices have become good at creating safe environments for patients. Again, telemedicine can play a role here, too.

   How it works: The first step is to file a form PMT with the Board. Once the form is filed, a call is scheduled with the judge to discuss the employee's missed appointments. If the missed appointments continue, the judge can suspend benefits.

   While benefit suspension is a possibility with the PMT(b), the goal of the procedure is to get the employee back to the doctor. Compliance with medical treatment is crucial for achieving a full-duty release.



WC-104 NOTICE TO EMPLOYEE OF MEDICAL RELEASE TO RETURN TO WORK WITH RESTRICTIONS OR LIMITATIONS

GEORGIA STATE BOARD OF WORKERS' COMPENSATION

NOTICE TO EMPLOYEE OF MEDICAL RELEASE TO RETURN TO WORK WITH RESTRICTIONS OR LIMITATIONS

Instructions: The employer shall use this form to notify an employee that the authorized treating physician has released the employee to return to work with restrictions or limitations, as required by O.C.G.A. §34-9-104(c) and Board Rule 104. This form, with attached medical report, must be filed with the Board and sent to the employee and counsel for the employee, within 60 days of the release to return to work. A Form WC-2 shall be filed with the Board when converting from TTD to TPD.

A. IDENTIFYING INFORMATION

EMPLOYEE

INSURER/ SELF-INSURER

CLAIMS OFFICE

EMPLOYER

B. NOTICE TO EMPLOYEE

1. Your injury, which occurred on or after July 1, 1992, is not catastrophic, as defined in O.C.G.A. §34-9-200.1(g).
2. You are receiving income benefits, and are not working.
3. Your authorized treating physician, who is _____ has released you to work with restrictions or limitations on _____
4. The limitations from the physician are as follows:

A copy of the physician's report, which authorizes your release and describes your limitations, is attached.

5. Because you have been released to return to work with restrictions, your income benefits will be reduced from $ _____ per week to $ _____ per week on _____, unless you return to work at an earlier date.

☐ I certify that I have today sent a copy of this form with the attached medical report to the employee and counsel for the employee, if represented.

WC-104 REVISION 12/2018 104 NOTICE TO EMPLOYEE OF MEDICAL RELEASE TO RETURN TO WORK WITH RESTRICTIONS OR LIMITATIONS

Ken David is the founder and the managing partner of Atkins David LLC. Since 1993, he has concentrated his practice in workers' compensation on behalf of employers, both big and small, and their insurance companies/third party administrators. Through his twenty-seven years representing employers whose workers are injured on the job, Ken has developed a related practice of Workplace Crisis Management.

HR Mental Health: Thinking About Tomorrow

Rushe Hudzinski

March 2021 marks a year since we entered the shelter-in-place directive based on a viral pandemic we were racing to find control over. The past year being a time of crisis for employers is an understatement. Protective equipment additions, lack of safety supplies, remote work, reduction in force, unemployment claims, benefit program modifications, mandates from the Center for Disease Control (CDC), and continuing policy changes were only the tip of the iceberg for organizational Human Resource (HR) teams.

With the constant juggling, employers did not see the toll in mental health conditions related to depression, anxiety, bereavement, isolation, insomnia, loss of income, and general fear. These conditions exacerbated existing ones, making employees more vulnerable to illnesses, heart attack, and stroke. The picture was bleak and the employer's responsibilities high.

HR teams dealt with the changing landscape of COVID-19 on a daily basis, in most cases without a break in pace. The pandemic forced the reiterating of mental health wellness, work/life balance, and self-care. But…

As HR took care of the organization, who was taking care of them?

It's easy to say that HR, as employees, had the same program offerings, but many in the executive levels forgot HR was the implementation group. They did not have access to take advantage of the provided assistance, because the HR team essentially was the assistance.

"People need to feel psychologically safe," said Dr. Michelle Paul, professor-in-residence at the University of Nevada, Las Vegas. Psychological safety means employers have to go above and beyond in terms of implementing policies, procedures, and protocols than what might initially feel necessary." This was the task for organizational HR teams and not a small undertaking.

Although pandemic protocols and adjustments will continue, it is time to double back and do a litmus test on organizational HR professionals. You should ask them:

- How are they doing mentally?
- How are they doing physically?
- Do they need support?
- Do they need a break to re-energize?

It is important to remember organizational HR teams have supported frontline workers while being right there alongside them in the trenches. Offering a range of assistance to cover gaps for HR professionals such as financial support services, vacation time, or social support networks, invests in the organizational backbone insuring future support with the pandemic requirements.

Thinking about tomorrow is paramount as we move through 2021 and beyond. Help guarantee resiliency by pivoting to add direct resources for HR professionals so they can provide the required and continued support to the organization.

Rushe Hudzinski is a professor of Management and Human Resources at Savannah Technical College and serves as the Business Strategy Educational partner for Workplace Health/ SelectOne Network. She is a graduate of Elmira College and Syracuse University. She holds the Global Professional in Human Resources (GPHR) and the SHRM Senior Certified Professional (SHRM-SCP) certifications and presents on strategic human resources and risk management trends and practices.

Spinal Cord Stimulator Alternative

Ankur Patel, D.O., RPh

Certainly, the interventional pain physician has a plethora of treatments available within his/her toolbox. Any abbreviated list of the most commonly used interventional techniques includes: epidural steroid injections, radiofrequency ablation, large joint injections, nerve blocks, medial branch blocks, and so forth.

However, one of the infrequently used treatments may be considered for the appropriate patient with disc herniation(s), protrusion(s), or unrelieved pain post spine surgery. The Racz Procedure, also known as epidural adhesiolysis (Lysis of Adhesions), is an alternative to spinal cord stimulation (neuromodulation) for post-laminectomy patients who have developed scar tissue and/or patients with acute pain without history of previous surgery. Many times, this procedure has proven to be of benefit in patients with acute disc herniation, acute exacerbation of a chronic back issue secondary to work injury, spinal stenosis, and excessive scarring in the anterior lateral epidural space.

The Racz Procedure was invented and developed by Gabor Racz, M.D. Dr. Racz is Professor Emeritus and former Chairman of the Department of Anesthesiology at Texas Tech University Health Sciences Center in Lubbock, Texas. In his procedure, lysis of adhesions is performed by advancing a specialized, sheer resistant catheter into the epidural space under live fluoroscopy to the target region known as "the triangle." Subsequently, a mixture of steroid, local anesthetic, normal saline, and hyaluronidase followed by hypertonic saline is injected under live fluoroscopy whereby scar tissue in the foramen surrounding and constricting the exiting nerves is "lysed." This ultimately should free the nerves, relieving pressure, and, thereby, providing the patient with pain control.

While this procedure is completed a majority of the time in an outpatient setting, depending on the severity of pain and scarring, patients can be admitted inpatient whereby they are subjected a three-day protocol of multiple infusions. Regardless, of the length of treatment, patients show response to therapy within several days to weeks after the completion of the procedure. Usually, they are prescribed stretching and "neural flossing" exercises via physical therapy colleagues.

Dr. Gabor Racz is a close, personal friend. I was fortunate to be a part of the last fellow class to train under him and learn first-hand the Racz Procedure from the person whom many in the pain arena affectionately call "The Father of Pain Medicine." I believe, for the appropriate patient, the Racz Procedure can be an alternative and cost-effective treatment to spinal cord stimulation for multiple pain generators of the spine in the injured patient.

Ankur Patel, D.O., RPh, is a board-certified anesthesiologist, pharmacist, and fellowship-trained interventional pain management physician at his new practice, Southern Pain and Spine in Gainesville, GA. He is dedicated to advancing patient care to the highest levels via a conservative approach on medications while using his interventional pain management training under the tutelage of Gabor Racz, M.D. and Miles Day, M.D. at the prestigious pain fellowship on the campus of Texas Tech University Health Sciences Center in Lubbock, Texas. His new locations opening summer/fall 2021 – Athens, Newnan, and Dalton/Chattanooga.

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Opening soon in Athens, Newnan, Dalton/Chattanooga

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Workers' Compensation Fax: 678-971-5205

Knee Arthritis: Total Knee Replacement in Workers' Compensation Injuries

Charles E. Claps, D.O.

"Wow, my knee really hurts. It must be arthritis."

We have all heard friends, family, and/or colleagues say this phrase, blaming arthritis as a reason for pain in any joint. What is arthritis, though, and how does it relate to a workers' compensation injury?

There are many different types of arthritis, but the most common, osteoarthritis, is inflammation in any joint caused by the degradation of articular cartilage. Articular cartilage is cushioned between the bones that make up a joint. The knee is comprised of the end of the femur (thigh bone), the top of the tibia (shin bone), and the back of your patella or knee cap. As arthritis progresses, the cushion between these bones gets thinner and can cause significant pain.

Arthritis can occur as an underlying condition caused by wear and tear of the joint, but injuries to the knee can also increase the likelihood of arthritis progression or cause a flare-up of underlying arthritic pain. Post-traumatic arthritis is cartilage damage related to a previous injury. Many injuries to the knee—such as articular and bone fracture, impaction injuries to the joint, meniscus tears, and ligamentous injuries—can cause cartilage damage resulting in significant pain and disability. Previous damage to the cartilage or the surrounding structures can cause increased laxity and abnormal joint contact pressures. These issues will cause the cartilage to wear at a faster rate and increase the likelihood for arthritic pain in the future.

As an orthopedic surgeon specializing in hip and knee replacement, I see many patients who have suffered this type of trauma. Frequently, we are able to treat these symptoms and issues conservatively. Non-surgical treatment can include: anti-inflammatory medications, physical therapy, corticosteroid or viscosupplement injections, as well as bracing. When these conservative treatments fail and the patient is unable to work due to the pain in their knee secondary to their underlying arthritis caused by an injury, knee replacement is an appropriate option.

Knee replacement is a surgical procedure that resurfaces the ends of the bone which make up the knee joint. Less than a centimeter of bone containing the damaged cartilage is removed and is replaced with metal and plastic components. In doing so, the pain generators in the knee are removed and patients can expect to have a pain-free, functional knee. The procedure usually takes an hour to perform and most patients go home the same day as their surgery.

Most workers' compensation patients are able to return to work with light duty restrictions after a few weeks, but the full recovery time is ten to twelve (10-12) weeks with a goal of returning to full duty at that time. Although knee replacement is certainly not the first line of treatment for an arthritic flare up or post-traumatic arthritis caused by a workers' compensation injury, when conservative measures have failed, surgery is the appropriate treatment for these patients.

Charles E. Claps, D.O., Specializes in outpatient and rapid recovery hip and knee replacement surgery. Dr. Claps is a board-certified Orthopaedic Surgeon and received his medical degree from the Lake Erie College of Osteopathic Medicine in Erie, PA., He completed his residency in orthopaedic surgery at the University of Pittsburgh Medical Center, Harrisburg, PA and his fellowship in Joint Reconstruction at the Wake Forest University, Winston-Salem, NC.

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Amazing Case Managers having fun at a WPH Connect event

Should I Stay or Should I Go? Working from Home & Traveling for Work

Ann M. Joiner and Emily J. Truitt

Even before the COVID-19 pandemic, statisticians showed an ever-increasing flexible workforce. Americans frequently work from home, the sidelines of their kid's soccer practice, and in the car. Therefore, it is incumbent upon employers and insurers to familiarize themselves with potential liabilities surrounding such flexibility, including traveling for work and working from home.

In Georgia, it is an employee's burden to show an alleged workplace injury has arisen out of and occurred within the course of employment.

Traveling Employees

Where employees are said to travel for work, Georgia courts label them under the traveling employment doctrine. This doctrine broadens the scope of an employee's physical location, hours, and activities. A traveling employee is often said to be "continuously working" and; therefore, even acts of ministration, such as grabbing a bite to eat, would be compensable.

There have been instances where an employee fell to his death on the stairs of his hotel and another where an employee fatally fell off his stool in a restaurant while eating lunch. In *Thornton v. Hartford Acc. & Indemn. Co., 786 (1945)*, a traveling employee was merely crossing the street from his hotel to a restaurant when he was injured. The Supreme Court of Georgia found compensability and reasoned it was "the very nature of his employment [that] carried him upon the highways and streets." Consequently, we recommend employers establish clear guidelines about expectations of employees when traveling.

Teleworkers

Teleworkers are similar to traveling employees given they both fit into a category where the employer has less control of the circumstances. Just as the employer cannot regulate the safety of some hotel steps, an employer cannot protect against hazards within an employee's home.

Unlike the Georgia caselaw regarding traveling employees, there has yet to be a published appellate case analyzing teleworkers. Some attorneys have suggested *Amedisys Home Health, Inc. v. Howard, 269 Ga. App. 656 (2004)* be considered as applicable precedent. However, in Howard the employee was a twenty-four-hour on-call field nurse. Thus, while she was injured at home (and her claim found compensable), the Court analyzed her as a traveling (a.k.a. continuous) employee. We await legislation specific to teleworkers.

Should I Stay or Should I Go?

With flexible employees, the best thing an employer can do is set boundaries. Whether traveling or teleworking, we recommend employers fix work hours whenever possible. Scheduled breaks, as opposed to unscheduled ones, create insulation from an example of an employee working from home who injures their back on a break, walking up her basement steps to the kitchen.

As with any claim, the initial investigation of remote work injuries is critical. Asking where exactly the employee was injured, what they were doing when they were injured, whether they were coming or going, and whether it occurred during a scheduled break are pivotal.

Ann Joiner is a partner at Swift, Currie, McGhee & Hiers, LLP with fifteen years of experience representing employers, self-insureds, and third-party administrators in workers' compensation claims. She can be contacted at ann.joiner@swiftcurrie.com, or (404) 888-6210.

A Word from the Georgia Chairman

Frank R. McKay, Judge

A belated happy new year to the readers. Surely, 2021 has to be better than 2020.

Already, the first half of fiscal year 2021 (July 1 through December 31, 2020) is better than the first half of fiscal year 2020. More than 16,000 jobs were created across all regions of the state by economic development projects in Georgia during this time, generating nearly $6 billion in new investments. This represents a forty percent (40%) increase in new jobs created and a forty-seven percent (47%) increase in new investments compared to the first six months of fiscal year 2020. The state's food processing, manufacturing, and logistics and distribution industries created nearly seventy percent (70%) of new jobs generated. Fiscal year 2021 state tax revenues are up six percent (6%) compared to FY 2020 and the state does not anticipate further budget cuts.

Also, during the first half of fiscal year 2021, under the leadership of Governor Brian P. Kemp, Georgia was named the *Top State for Business for 2020* by both *Site Selection* and *Area Development* magazines for the eighth and seventh consecutive years, respectively. In addition, the Georgia Department of Economic Development's International Trade Division (GDEcD) earned the top rating from the U.S. Department of Commerce in recognition of "continuing significant contributions to an increase in U.S. exports."

Georgia workers' compensation claims were down nine percent (9%) in 2020 as compared with 2019. The total number of First Reports of Injury filed with the State Board of Workers' Compensation (SBWC) in 2020 was 128,774. There were 16,502 settlement stipulations filed with the Board in 2020 which was only a bit over four percent (4.3%) less than in 2019. All hearings were suspended in March and the Board transitioned quickly to offering virtual hearings using the Zoom video conferencing platform. The first virtual hearing was held on May 19. In person hearings resumed on a limited basis on July 6 with strict COVID-19 protocols in place. Currently, about sixty percent (60%) of hearings going forward are via Zoom. Parties are realizing the benefit of being able to have witnesses testify at a live hearing from remote locations whether it be their home, office, out-of-state, and even out-of-the-country witnesses have testified via Zoom.

While the total number of hearings held in 2020 was down forty percent (40%), the number of motions filed and ruled upon were up thirty-two percent (32%) and the number of WC-PMTs filed were up thirty percent (30%) with the number of PMT conference calls up twenty percent (20%) and the number of PMT orders issued were up thirty-two percent (32%) and the number of WC-PMT-B requests were up seventy-eight percent (78%) (the PMT-B started mid-year 2019). The number of evidentiary hearings requested in 2020 was down ten percent (10%). The Board finished the year with no backlog of cases waiting to be tried or ruled upon.

The Appellate Division began hearing oral arguments on appeals on April 16 via Zoom and has continued to do so. The Board began conducting mediations on Zoom in April, as well, and continues to do so. The number of mediations requested was down fourteen percent (14%), but the number of mediations held was only down four percent (4%) due to ADR's quick transition to virtual mediations on Zoom. The Managed Care and Rehabilitation Division also conducts it conferences via Zoom. The Board, through its Public Education Committee, anticipates offering its Annual Spring Regional Educational Seminars in a virtual format this year.

The SBWC continues full operations despite the COVID-19 protocols and challenges. The Board remained open for business for all stakeholders from day one of the pandemic and never had to close its doors. This is a tremendous credit to the wonderful and resourceful people who work at the Board day-in and day-out. Many new and different ways were developed to maintain operations; some of which will be permanent improvements. We're confident 2021 will end better than it has started.

Judge McKay was appointed Chairman of the State Board of Workers' Compensation on March 1, 2013. Prior to becoming Chairman and the Presiding Judge of the Appellate Division, Judge McKay was a partner in the Gainesville firm of Stewart, Melvin & Frost, where he concentrated his practice primarily in workers' compensation.

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Improving Workers' Comp Communication Flow

Shane Mangrum, M.D.

Physicians play an important role in the process of caring for injured workers and facilitating their eventual successful return to work. As part of this role, medical providers ideally do the following:

1. Assess impairment
2. Provide treatment and care
3. Communicate with third parties

Physicians are used to the "providing treatment and care" part of things. They can be neglectful, however, when it comes to the issues related to impairment and recognizing the importance of clear, timely communication with third parties. Medical providers often do not see themselves or their work as part of the return-to-work process. They might consider it to be someone else's job, or so it can seem.

The truth is physicians are a critical part of the workers' compensation process of facilitating a successful return-to-work for an injured employee. A study by the U.S. Department of Labor (DOL) has shown "employees treated by physicians who more frequently used the recommended best practices experienced quicker return-to-work" than those not employing best practices.

Communication is critical to successful outcomes. Poor communication from medical providers is cited as the number one issue causing delays in return to work according to WorkCompWire. However, all communication does not have to be poor. Studies have shown that when communication is good, timely, and in-line with best practices, the result is fewer disability days and lower disability costs per employee – all according to the DOL.

Here is a list of things physicians can do to improve communication and be better facilitators of successful return-to-work for injured employees:

1. **Clarify use of terms and definitions shaping the process of RTW.**
   Terms like restriction, limitation, and tolerance have very specific meanings to adjusters and employers. Physicians, though, may have a more loose sense of definitions for these terms. Restriction, for example, is defined by the American Medical Association's (AMA) A Physician's Guide to Return-to-Work as "what the patient should NOT do on the basis of risk of harm." Limitation is defined as "something the patient cannot physically do." Tolerance, on the other hand, relates more to how comfortable a person is doing a given task. These differences have real meaning in the workplace and in the area of workers' compensation, and to do our jobs well, physicians need to use them deliberately.

2. **Provide streamlined, clear forms to communicate restrictions, limitations, expectations.**
   A return-to-work/work status form should be supplied for every office visit. Remember, it's not your job as a clinician to decide IF they return to work, only to help safely navigate the necessary restrictions to avoid additional injury or exacerbation of the existing injury.

3. **Be available to communicate in order to navigate potential hurdles to positive outcomes.**
   Communication is the key. As much as we may try, everyone looks at these situations through their own lens. Sometimes, a single phone call is all it takes to clarify matters and smooth the path back to optimal function.

Shane Mangrum, M.D., is a board-certified physiatrist at Polaris Spine & Neurosurgery Center in the Atlanta metropolitan area. He is double-boarded in physical medicine and rehabilitation, as well as sports medicine. He takes a holistic approach to spine treatment and other musculoskeletal disorders, specializing in non-operative interventions.

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Time to Frett? - 85-Year "Lunch Break" Exception Overturned

Harry Tear and Bryan Janflone

The Supreme Court of Georgia recently issued a decision regarding the compensability of accidents that occur during scheduled breaks. For eighty-five (85) years, the Supreme Court's decision in *Ocean Acc. & Guar. Corp. v. Farr, 180 Ga. 266 (1935)* allowed employers to deny workers' compensation claims arising from accidents that occurred during a scheduled break when the employee was free to do as they pleased (commonly known as the "lunch break" exception). However, Georgia courts have recently expressed concern over inconsistencies between the scheduled break rule and the ingress/egress rule (allowing for reasonable time for employees to enter/leave the work premises).

The Court of Appeals did not have the power to overturn the established case law in Farr. However, the Supreme Court of Georgia did just that in *Frett v. State Farm Employee Workers' Compensation, 844 S.E.2d 749 (2020)*.

In this case, the employee, Rochelle Frett, logged off at her scheduled break time and walked to the breakroom to heat up her food. After removing her food from the microwave, Frett began to exit the breakroom when she slipped and fell on water, suffering an injury. The employer/insurer denied the claim, but the administrative law judge (ALJ) awarded benefits after a hearing. On appeal, the Board reversed the ALJ's decision and upheld the denial of benefits. The Superior Court and the Court of Appeals affirmed the decision of the Board relying on the Farr decision.

However, the Supreme Court of Georgia overturned Farr, noting the inconsistency in finding that accidents occurring during an employee's ingress and egress arose out of employment, but accidents happening during a scheduled break did not. The Court also noted the Court of Appeals applied the ingress/egress rule to cases where the employee was leaving the premises for lunch, which further confused the law in this area. The Court ultimately decided the Farr decision was inconsistent with the application of the "arising out of employment" requirement.

"In this case, consideration of the 'arising out of' perquisite should be straightforward. It is undisputed that Frett was injured when she slipped and fell on the wet floor of the breakroom on her employer's premises. It logically follows that her injury was causally connected to the conditions under which she worked, and her injury, therefore, 'arose out of' her employment." However, the Court noted this analysis is inconsistent with Farr and ultimately decided to overturn Farr.

In sum, an accident that occurs during a scheduled break on the employer's premises can be compensable. Of course, the accident will need to be causally connected to the employee's employment. It should also be noted that an injury transpiring during a scheduled break off the employer's premises would likely not be compensable.

Like all claims, the compensability analysis is extremely fact-dependent, but the specific exception allowing employers to deny claims occurring during scheduled breaks no longer exists.

Harry Tear joined Moore Ingram Johnson & Steele in 1997 and is a partner in the litigation department. He specializes in workers' compensation insurers defense and has represented many insurance companies, third-party administrators, and self-insured employers throughout Georgia. He graduated from The University of Virginia in 1991 and the University of Georgia School of Law in 1994.

COVID-19 Impacting Georgia Workers' Compensation Claims

Todd Ross, Esq.

In the Fall 2020 edition of this publication, I wrote an article concluding COVID-19 is not a compensable workers' compensation claim under Georgia's Occupational Disease Act. However, our world of workers' compensation has not been immune to the impacts of the pandemic. Looking at some of the impacts of COVID-19 to the administration of Georgia's Workers' Compensation Act, we can review the past, present, future, and the unknowns.

Past impacts of the pandemic have included many months of cancellation for all Court appearances before the Georgia State Board of Workers' Compensation. Orders from the Chief Justice of the Georgia Supreme Court brought hearings before the Board to a screeching halt, and continued for many months. Certainly, the closure of the Court system for Board hearings led to the settlement of many claims which were otherwise destined for hearings and appeals. It also created a back log for those claims which did not settle. In order to continue its work, the Board transitioned to offering to conduct hearings via Zoom. However, neither party was required to consent to Zoom hearings due to statutory constraints upon the Board's authority to mandate same. However, the Board did have the authority to convert to Zoom mediations and Zoom appellate arguments. Thankfully, the Board availed itself of its powers to conduct Zoom mediations and appeals. In fact, the Board has considered continuation of Zoom only appeals once we reach the end of the pandemic. We shall see. Meanwhile, other delays occurred regarding medical treatment for follow-ups, independent medical exams and functional capacity evaluations. All due to COVID-19.

Present impacts of COVID-19 reveal the resumption of in-person hearings; however, the Board is only hearing one case at a time. We have not yet returned to the Board hearing three to five cases per day. Thus, the delays continue and the back log, though lessened, remains. Moreover, the Board has adopted COVID-19 protocols and requires a teleconference with all parties prior to the hearing to adhere to said protocols. All parties, witnesses, and the lawyers must answer a series of questions in the negative otherwise, the case is postponed. Any party, witness, or attorney who cannot satisfy the Board's COVID-19 protocols results in an automatic postponement of the hearing. Further frustrating the process are third party protocols for COVID-19 and the availability of hearing rooms across the State as a result thereof. Throughout Georgia, the Board conducts hearings as a guest of numerous local courthouses. When those courthouses are closed due to local COVID-19 protocols, the Board is unable to utilize the space and conduct the hearings. I personally have seen a postponement due to a courtroom closure which was completely out of the Board's control.

Future impacts from COVID-19 will see the continued delays and postponements mentioned above. However, beyond inconvenient and frustrating delays to the administration of workers' compensation in Georgia, COVID-19 will begin to impact the merits of litigated cases. Certainly, one can foresee an employee not reporting for work, pursuant to a properly executed O.C.G.A. § 34-9-240 notification to do so, based upon an allegation of either a personal diagnosis of COVID-19 or an exposure to COVID 19 which requires quarantine. The Board has broad authority to excuse non-compliance with 240 because the statute itself provides an exception if the Board finds that the refusal was justified. In light of COVID 19, the Administrative Law Judges of the Board will likely find mandatory quarantines as a result of the pandemic to justify an employee's refusal to report to work. Other cases where COVID 19 will impact the merits include those which require an employee to meet their burden to conduct a diligent job search pursuant to *Maloney v. Gordon County Farms, 265 Ga. 825, 462 S.E.2d 606 (1995)*. As a defense attorney, I have often argued that the refusal to conduct a job search by beating the pavement with one's feet is an insufficient job search. This is especially true for those employees who rely upon their own unavailability of computers and internet access to justify their less than diligent job search. One can foresee arguments against in-person job searches based upon the pandemic.

Unknown impacts of COVID-19 upon the administration of Georgia's Workers' Compensation program remain. It is axiomatic that we do not know that which we do not know. However, the beauty of Georgia's Workers' Compensation Act is its ability to account for the unknown. For example, in 1933, the Georgia legislature adopted the Occupational Disease Act which addressed the compensability of COVID-19 nearly a century before its appearance. Likewise, with the application of all current statutes, Board Rules, and with the wise oversight of the Board's interpretation of same, we will survive the impacts of COVID-19 to the administration of Georgia's Workers' Compensation Act.

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UNDERGRADUATE DEGREE Washington University in St. Louis; St. Louis, MO, Biology and History (Phi Beta Kappa, summa cum laude)

Dr. Owen will see patients at Alpharetta and Cumming.

Bert **Finney, Jr., M.D.**

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SmarTrac: Monitoring Home Exercise Programs

George F. Bahri, M.D.

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For more information on SmarTrac, email info@OnTracMD.com or call 305-252-0963 at extension 100 or visit https://www.smartracpt.com/

Dr. George Bahri received his bachelor's in biomedical sciences from the University of South Florida in Tampa, graduating top of his class. He completed his graduate degree in medicine at Nova Southeastern University College of Osteopathic Medicine in Ft. Lauderdale and orthopedic training at Largo Medical Center-NSU COM. With an extensive amount of training in platelet-rich plasma and stem cells, Dr. Bahri can provide orthopedic treatment using the latest cutting-edge technology for both adolescents and adult patients. https://www.orthoonejacksonville.com/

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New Alabama Law Provides Expansive Immunity from Liability for COVID-19 Claims

Brett Adair and Melisa C. Zwilling

On February 12, 2021, Alabama Governor Kay Ivey signed legislation into law that provides for civil immunity for most entities related to COVID-19. Included in the legislation is protection against claims for damages by individuals who alleged they contracted or were exposed to COVID-19 during a declared state of emergency. In addition, immunity extends to healthcare providers for services related to COVID-19.

Covered Entities

Entities afforded protection under the new law include businesses, health care providers, educational entities, churches, government entities, cultural institutions, and any employee, agent, officer, member, director, or manager of such entities. To qualify for immunity, entities should ensure they are operating in accordance with public health guidance issued by state and federal officials regarding COVID-19.

Retroactive Application

The law will be applied retroactively to claims filed on or after March 13, 2020. The immunity is set to expire on December 31, 2021, or one year after the COVID-19 health emergency officially expires.

Immunity Exceptions

Covered entities may not be held liable for any damages, injury, or death suffered by a person or entity as a result of an act or omission of such covered entity. Immunity does not apply if a claimant is able to prove *"by clear and convincing evidence that the covered entity caused the damages, injury, or death by acting with wanton, reckless, willful, or intentional misconduct."*

In the event such conduct is proven, damages are limited to actual economic compensatory damages. Non-economic and punitive damages are not generally available; however, punitive damages may be awarded for wrongful death.

Workers' Compensation Claims Not Included

The immunity provided by this law does not extend to workers' compensation claims. As such, employers may still be liable for employees who contract COVID-19 at work. Accordingly, all possible precautions should continue to be taken to prevent the spread of the virus to and/or among employees.

The text of the new law may be found at: https://legiscan.com/AL/text/SB30/id/2289784. If you have any questions concerning this law or any other employment or COVID-19 issue, Carr Allison's attorneys will be happy to assist.

Brett Adair is a shareholder of Carr Allison and chairs the firm's Employment Law Practice Group. He commissioned and leads Carr Allison's COVID-19 task force to assist the firm's clients in navigating the pandemic and developing best practices to protect employees and avoid legal exposure. He is admitted to practice before all state and federal district courts in Alabama, the Middle District of Georgia, and all state courts in Georgia. He received his Bachelor of Science at Auburn University and his Juris Doctorate from The University of Alabama School of Law, magna cum laude. badair@carrallison.com • Phone: 205.949.2930

Melisa C. Zwilling is considered a national authority on Medicare Secondary Payer issues, but has refocused her passion for the law in response to the multitude of issues Carr Allison's clients are facing related to COVID-19. Melisa earned degrees in both Business Administration and Management of Technology from Athens State University and received her law degree, cum laude, from The University of Alabama School of Law.
mzwilling@carrallison.com • Phone: 205.949.2949

Safety is a Value

Mike Greger

Safety First! Safety is our #1 Priority.

We see these phrases everywhere. I have personally lived with these slogans for most of my career. There are other priorities, right?

- Shipping product to the customer is a priority; without the customer, there is no business.
- Manufacturing the product is a priority; without manufacturing, there is no product to ship.
- Maintenance is a priority; without good maintenance, you may not have functioning equipment to make the product.

Safety being the number one priority may not always be achievable, nor realistic. Safety has a "higher density" than other priorities and constantly needs to be pushed to the top. Many in my field have struggled with this.

A few years ago, the CEO of my former company proclaimed that Safety was no longer going to be considered a priority. Okay… he had my attention. Where was he going with this? I was excited to hear him say, "Safety is a Value." I felt the metaphorical weight suddenly lift off my shoulders. Safety being a Value, instead of a priority, means Safety no longer has to compete with the other priorities. You manufacture - Safely. You perform maintenance- Safely, etc. Safety is like the air we breathe.

Safety as a Value is more than a slogan and must be fully supported from the CEO, cascaded down to the floor associates. The following are practices that support Safety as a Value:

- Safety Mindset – teaches associates to live their lives with safety as a value, 24/7. The associate not only looks out for themselves, but also their coworkers, family, and friends. Safety is not a switch that turns off when the associate goes home.
- Hazard Awareness and Mitigation – we must teach associates structured hazard awareness methodology to give them the tools to predict potential incidents and take proper mitigation steps to prevent those incidents.
- Job Stop Triggers – these are a predetermined and agreed set of criteria that will cause an associate to stop a job. This authority empowers the associate to stop a job or task, in order to protect themselves or their fellow associates. "If this happens, I will stop the job." Just as important, management must support the decision of the associate to stop a job.
- Recognition – Recognizing safe behavior reinforces the associates' actions, leading to good results, which we then celebrate. Recognition of safe behavior may come in many forms including a simple and genuine "thank you."

As we become proficient at the above practices, Safety becomes a part of everything we do, both at work and away. Safety truly becomes a Value.

Mike Greger has worked for over thirty years in manufacturing and recently formed Greger Safety Solutions. The company's mission is to help companies achieve their safety goals by offering a full range of services which can be tailored to meet the various challenges facing today's companies. For more information, visit Mike's website at gregersafetysolutions.com.

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Sleuth, There It Is: Combatting Fraud in Response to COVID-19

Dustin S. Thompson

The COVID-19 pandemic delivered many unfortunate truths about the world around us and dynamically changed the landscape of our workplace. Another unfortunate truth is our workers' compensation systems must continually combat fraud. According to the National Insurance Crime Bureau (NICB), workers' compensation fraud is the fastest-growing component of insurance fraud costing $7.2 billion annually. Consequently, the significance of fraud requires us to don our Sherlock Holmes' thinking caps throughout a workers' compensation claim whether from an employer, adjuster, or attorney perspective.

Avenues for exploring and discovering potential fraud prior to the pandemic included surveillance and social media investigations. However, the pandemic has impacted achieving success with surveillance and online investigations. This is because our claimants are not as active as they were pre-pandemic. Thanks to pandemic restrictions, most claimants are now out of the public eye. Moreover, when in public, claimants are wearing masks or have a different appearance (longer hair, beards, etc.) making it more difficult to identify them. These same pandemic effects are resulting in less social media content.

How do we ethically adapt our pre-pandemic investigative tools to now uncover fraud and use it to our advantage?

With traditional surveillance, it is more important to relay all relevant information to your investigator, not only to ensure accurate identification, but to improve the investigator's report; thus, your case. It is my practice to always provide the investigator with the most recent photo of the claimant, height, weight, known tattoos, confirmed address, individuals sharing the residence, the mechanism of injury, the injured body part(s), and most importantly, the person's current work restrictions and contentions about what he/she is unable to do.

Make the purpose of the surveillance clear to the investigator. These rudimentary facts will deliver the most effective and persuasive report for use at a hearing or during settlement negotiations.

What should we avoid during traditional surveillance?

The restrictions of the pandemic may create the urge to push limits to surveil claimants. However, it is critical to only use investigative means which will allow the surveillance to be admitted as evidence at a hearing. This means no direct contact with the claimant. The law requires a reasonable expectation of privacy to be maintained. The same standard applies to social media. We should not request to friend, follow, etc. a claimant's private social media account to gain access to it. However, public accounts are fair game.

How do you effectively use evidence of fraud?

The answer is case dependent. However, the evidence can be bolstered by your attorney through written discovery, depositions, impeachment at the hearing, presentation to the treating physician, and otherwise as leverage during settlement negotiations.

Dustin S. Thompson is an attorney at Swift, Currie, McGhee & Hiers. He exclusively represents and defends employers, insurers, and TPAs in workers' compensation claims and subrogation matters. Dustin possess a breadth of knowledge of the workings and requirements of various regulatory agencies with a keen understanding of the Georgia State Board of Workers' Compensation rules and cases as well as the Georgia rules of evidence. Dustin.Thompson@swiftcurrie.com; 404-888-6214.

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ABOUT THE PUBLIC RISK MANAGEMENT ASSOCIATION

The Public Risk Management Association (PRIMA) is North America's largest risk management association dedicated solely to the practice of public entity risk management. For three decades, PRIMA has been dedicated to providing hard-hitting, practical education and training for public entity risk management practitioners like you.

There are more than 2,200 PRIMA member entities, of which 1,800 are local governments. These entities realize that membership provides the necessary tools and solutions needed in today's complex and changing risk management environment.

The Georgia Chapter of the Public Risk Management Association (PRIMA) was established in 2004 to provide education, training and professional development opportunities for public sector risk management professionals in the State of Georgia.

Our mission is to enhance the professional skills of our members through:

- quarterly meetings with topics and speakers directly related to the profession
- our annual Educational Series is generally held in spring, an education-intensive multi-day seminar where members learn, network, and meet with private sector representatives from businesses offering services to the membership.
- Networking opportunities throughout the year, allowing members to effectively share and exchange ideas and solutions with their colleagues.

We work to further the best interests of governments, governmental agencies, intergovernmental risk pools, school districts and other special districts in their risk management activities.

LEARN MORE ABOUT GEORGIA PRIMA

We invite you to join us at an upcoming meeting to discover how Georgia PRIMA can contribute to the success of your risk management programs, and benefit your career through our many professional development opportunities.
Workplace Health is excited to be a partner with Georgia PRIMA.

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JULIAN M. EARLS, JR., M.D.

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- Return employees to work quickly and effectively
- Reduce pain through quality services resulting in the best outcome for each claim

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A Message from the Publisher

Thank you so much for joining us in this Spring Edition of Workplace Health…2021. Wow. After the horrors and disappointments of 2020, it is time to look forward, be positive, and take our creative marketing strategies to a whole new level.

We all know everything there is to say about last year. Most all of us felt isolated and/or disconnected. We long for the familiarity of how it "used to be." But, times change, things happen, and we learn to adapt to the change. Covid-19 has offered a rare opportunity for our Workers' Compensation family to reflect, readjust and be thankful for the time we have with each other.

One of the things I've greatly missed is…hugging! Anyone who knows me, knows Southern Hospitality is in my blood and we like to hug in Savannah. And, while I'm grateful for all of the blessings my family and business have, I truly miss my workers' comp family.

Workplace Health and SelectOne partnered with other vendors to create signature online virtual networking events for our clients. Covid-19 has forced our team to be more creative with our marketing strategies. Successful business owners have been forced to think outside of the box if we are going to survive the down time. We have created unique signature virtual events and we have added Workplace Health Connect, Workers' Comp Happy Hour Networking Events. This has allowed our team to stay in front of our target clients and let them know how much we appreciate their business. We adapted to the "new normal." Here are a few things we did:

- Paparazzi Bling Event – supporting other local businesses
- Virtual Ride-Along Ghost Hunt – teamed up with a local tour company to offer a live ghost walk through Savannah
- Gift baskets – delivered several gift baskets and designer masks to clients who had achieved other goals—particularly one workers' comp client who does gift baskets as her side hustle
- Workplace Health Connect Events / Networking at its BEST!

We all know nothing will replace the actual act of human contact. Networking. Laughing. Smiling. Hugging. I long to be back attending events with my Workers' Comp Family. For now, though, we're happy to support our clients any way we can while still following all CDC rules. We adapt and we get creative…so there's a lot more coming your way.

Happy Spring to you and your staff. May this year bless us all and may we serve our clients to the best of our abilities.

All the best,

Garlana Mathews– President/Publisher Workplace Health Magazine

WH Workplace Health

Pain Management: No Longer the Black Hole for Workers' Comp Claims

Keith C. Raziano, M.D.

Pain management has often carried a negative stigma in workers' compensation claims as it appeared to have no endpoint while simultaneously failing to improve the functionality of the injured worker. This stigma, in many circumstances, can be attributed to a non-functional approach to pain management.

There are two (2) approaches to general pain management:

1. A palliative approach focuses solely on the subjective report of discomfort. There is minimal concern for the functionality of the patient as this is the approach taken with patients who typically have a terminal diagnosis. The best example of this is hospice care. An individual is provided a terminal diagnosis and has severe discomfort which needs to be properly managed for end-of-life care. The long-term effects of intervention or opioid medications are not taken into consideration as they are simply not relevant within a limited time frame as it relates to the course of treatment. Opioid tolerance and dependence are not concerning as doses can be continually escalated until end-of-life.

2. The functional approach is the more appropriate approach to pain management where a diagnosis is non-terminal. This approach focuses primarily on the functionality of the patient which is the true determinant as to whether or not the pain of an individual is being properly managed. Non-opioid medications and adjuvant medications are the primary focus of treatment, as well as cognitive behavioral therapy (when needed) and appropriate interventional therapy. These treatment algorithms apply methodologies which do not create tolerance or dependence and allow for long-term and meaningful mitigation of pain so patient function can be maintained and improved. In the past, these strategies may not have been properly applied, thus the negative stigma attached to pain management and workers' compensation.

In order to break this cycle, it is imperative to maintain a focus on functional pain management in the workers' compensation system. As the majority of injuries occuring are non-terminal, application of a palliative approach to pain management will simply not be beneficial or appropriate. Adherence to a functional approach is critical and this is how the cycle is "broken." Identification of conservative pain management physicians that avoid inappropriate prescription of opioids and unnecessary procedures and focus instead on improvement of function is paramount.

To ensure good outcomes, placing conservative pain management physicians on panels and allowing early evaluation of patients can help to prevent a patient from falling into a nonfunctional treatment algorithm or cycle. This is the key to good patient care and outcome.

Keith C. Raziano, M.D., has practiced medicine for over eighteen years and is the CEO/Managing Director of the Physicians Spine & Rehabilitation Specialists. He received his undergraduate degree in Biology from the University of Miami and his medical degree from the University of Miami School of Medicine. Dr. Raziano is board-certified in Physical Medicine and Rehabilitation with an additional subspecialty and board-certification in Pain Medicine from The American Board of Physical Medicine and Rehabilitation. He has served as a national instructor, consultant, and lecturer and has published numerous medical studies and essays and served as a Contributing Editor to Harvard Medical School's Rehab in Review.

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Florida Workers' Compensation Law Quick Sheet

Waiting Period: Seven days. No compensation shall be paid for the first 7 days of disability except for medical benefits. However, if the injury results on disability of more than 21 days, compensation shall be allowed from the date of disability. § 440.12, Fla. Stat.

Compensation Rate: In Florida, the compensation rate is 66-2/3 percent of the average weekly wage subject to the maximum compensation rates in effect on the date of the injury. Florida Statute 440.15

Year	2016	2017	2018	2019	2020	2021
Max Rates	$863	$886	$917	$939	$971	$1011

Maximum Rates: After August 1, 1979, the maximum compensation rate shall not exceed 100 percent of the statewide average weekly wage. The statewide average wage means the average weekly wage paid by employers subject to Florida Employment Compensation Law as reported to the department for the 4 calendar quarters ending each June 30th, which average wage shall be determined by the department on or before November 30th of each year. Florida Statue 440.12(b).

TEMPORARY DISABILITY

In the case of disability total in character but temporary in quality, 66-2/3 percent of the average weekly wage shall be paid to the employee during the continuance thereof, not to exceed 260 weeks. Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement, whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined. In the case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and the other remuneration that the employee is able to earn post injury, as compared weekly. However, the weekly temporary partial disability benefits may not exceed an amount equal to 66-2/3 percent of the employee's average weekly wage at the time of the accident. Such benefits shall be paid during the continuance of such disability, not to exceed a period of 260 weeks. Once the injured employee reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined. Section 440.15(2), Fla. Stat. (b) Notwithstanding paragraph (a), an employee who has sustained the loss of an arm, leg, hand or foot , has been rendered a paraplegic, paraparetic, quadriplegic, or quadriparetic, or has lost the sight of both eyes shall be paid temporary total disability of 80 percent of her or his average weekly wage. The increased temporary total disability compensation provided for in this paragraph must not extend beyond 6 months from the date of the accident; however, such benefits shall not be due or payable if the employee is eligible for, entitled to, or collecting permanent total disability benefits. The compensation provided by this paragraph is not subject to the limits provided in s 440.12(2). If, at the conclusion of the period of increased temporary total disability compensation, the employee is still temporarily totally disabled, the employee shall continue to receive temporary total disability compensation as set forth in paragraphs (a) and (c). The period of time the employee has received this increased compensation will be counted as part of, and not in addition to, the maximum periods of time for which the employee is entitled to compensation under paragraph (a) but not paragraph (c).

Regarding a claimant who remains totally disabled after the 260-week disability period expires, the 1st District Court of Appeal, in an en banc decision, held that the claimant is deemed at maximum medical improvement by operation of law and is therefore eligible to asset a claim for permanent total disability benefits.

Contact us for more information: 850.518.6916

PERMANENT TOTAL DISABILITY

In the case of total disability adjudged to be permanent, 66-2/3 percent of the average weekly wage shall be paid to the employee during the continuance of such total disability. No compensation shall be payable under this section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment. In the following cases, an injured employee is presumed to be permanently and totally disabled unless the employer or carrier established that the employee is physically capable of engaging in at least sedentary employment within a 50-mile radius of the employee's residence: spinal cord injury resulting in severe paralysis of an arm, leg, or the trunk; amputation of an arm, hand, foot, or leg resulting in the effective loss of use of that appendage; severe brain or closed-head injury as evidenced by; severe sensory or motor disturbances; severe communication disturbances; severe complex integrated disturbances of cerebral function; severe episodic neurological disorders; or other severe brain and closed-head injury conditions at least as severe as any condition in provided in sub-subparagraphs a.-d.; second-degree or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more of the face or hands; or total or industrial blindness. In all other cases, in order to obtain permanent total disability benefits, the employee must establish that he or she is not able to engage in at least sedentary employment, within 50-mile radius of the employee's residence, due to his or her physical limitation. Entitlement to such benefits shall cease when the employee reaches age 75, unless the employee is not eligible for social security benefits under 42 U.S.C. § 402 or § 423 because the employee's compensable injury has prevented the employee from working sufficient quarters to be eligible for such benefits notwithstanding any age limits. If the accident occurred on or after the employee reaches age 70, benefits shall be payable during continuance of permanent total disability, not to exceed 5 years following the determination of permanent total disability. § 440.15(1) (a)-(f), Fla. Stat.

IMPAIRMENT BENEFITS

Once the employee has reached the date of maximum medical improvement, impairment benefits are due and payable within 14 days after the carrier has knowledge of the impairment. Income impairment benefits are paid biweekly at a rate of 75 percent of employee's average weekly temporary total disability benefit not to exceed the maximum weekly benefit under § 440.12; provided, however, that such benefits shall be reduced by 50 percent for each week in which the employee has earned income equal to or in excess of the employee's average weekly wage. An employee's entitlement to impairment income benefits begin the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier, and continues until the earlier of: 1) the expiration of a period computed at the rate of 3 weeks for each percentage point of impairment; or 2) The death of the employee. Notwithstanding paragraph (c), for accidents occurring on or after October 1, 2003 an employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier, and continues for the following periods: 1) Two weeks of benefits are to be paid to the employee for each percentage point of impairment from 1 percentage up to and including 10 percent; 2) For each percentage point of impairment from 11 percent up to and including 15 percent, 3 weeks of benefits are to be paid; 3) For each percentage point of impairment from 16 percent up to and including 20 percent, 4 weeks of benefits are to be paid; 4) For each percentage point of impairment from 21 percent and higher, 6 weeks of benefits are to be paid. Sections 440.15(3)

DEATH BENEFITS

Florida Statue 440.16: If the death results from an accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(a) Within 14 days after receiving the bill, actual funeral expenses not to exceed $7,500

(b) Compensation, in addition to the above, in the following percentage of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in § 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66-2/3 percent of the average wage:

1. To the spouse, if there is no child, 50% of the average weekly wage, such as compensation to cease upon the spouse's death;
2. To the spouse, if there is a child or children, the compensation as above and, in addition, 16-2/3percent on account of the child or children; however, when the deceased is survived by a spouse and also a child or children. Whether such a child or children are the product of the union existing at the time of death or a former marriage or marriages, the judge of compensation claims may provide for the payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interest of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children;

and in the case of death of such spouse, 33-1/3 percent of each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the r ate of 50 percent of the average weekly wage as provided in § 440.12(2), unless the remaining available benefits in lieu of any further indemnity benefits. In no case shall a surviving spouse's acceptance of a lump-sum payment affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33-1/3 percent, for each child, of the average weekly wage;
4. To the parents, 25 percent to each, such compensation to be paid during the continuance dependency;
5. To the brothers, sisters, grandchildren, 15 percent for each brother, sister or grandchild.

(c) To the surviving spouse, payment of postsecondary student fees for instruction at any career center established under § 1001.44 for up to 1,800 classroom hours or payment of student fees at any community college established under part III of chapter 1004 for up to 80 semester hours. The spouse of a deceased state employee shall be entitled to a full waiver of such fees as provided in § 1009.22 and § 1009.23 in lieu of the payment of such fees. The benefits provided for in this paragraph shall be in addition to other benefits provided for this section and shall terminate 7 years after the death of the deceased employee, or earn the total payment in eligible compensation under paragraph (b) has been received. To qualify for the educational benefit under this paragraph, the spouse shall be requires to meet and maintain the regular admission requirements of, and be registered at, such career center or community college, and make satisfactory academic progress as defined by the educational institution in which the student is enrolled.

Compensation for the death of aliens not residents of the United States or Canada shall be the same as provided for residents.

STATUTE OF LIMITATION

Florida Statute 440.19: Except to the extent provided elsewhere in this section, all employee petitions for the benefits under this chapter shall be barred unless the employee, or the employee's estate if the employee is deceased, has advised the employer of the injury or death pursuant to § 440.185(1) and the petition is filed within 2 years after the date on which the employee knew or should have known that the injury or death arouse out of work performed in the course and scope of employment.

Payment of any indemnity benefit or the furnishing of remedial treatment, care, or attendance pursuant to either a notice of injury or a petition for benefits shall toll the limitation period set forth above for 1 year from the date of such of such payment. This tolling period does not apply to the issues of compensability, sate of maximum medical improvement, or permanent impairment.

TIME FOR PAYMENT OF COMPENSATION PENALTIES FOR LATE PAYMENT

Florida Statue 440.20: Unless the carrier denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as requires by § 440.14, 440.15, and 440.16, in accordance with those sections. Upon receipt of the employee's authorization as provided for in § 440.12 (1) (a), the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution as defined in § 655.005 or onto a prepaid card in accordance with § 440.12(1). Compensation by direct deposit or through the use of a prepaid card is considered paid on the date the funds become available for withdrawal by the employee.

The carrier must pay the first installment of compensation for total disability or death benefits or deny compensability no later than the 14th calendar day after the employer receives notification of the injury or death, when disability is immediate and continuous for 8 calendar days or more after the injury. If the first 7 days after disability are nonconsecutive or delayed, the first installment of compensation is due on the 6th day after the first 8 calendar days of disability. The carrier shall thereafter pay compensation in biweekly installments or as otherwise provided in § 440.15, unless the judge of compensation claims determines or the parties agree that an alternate installment schedule is in the best interest of the employee.

If the carrier is uncertain of its obligation to provide all benefits or compensation, the carrier shall immediately and in good faith commence investigation of the employee's entitlement to benefits under this chapter and shall admit or deny compensability within 120 days after the initial provision of compensation or benefits as required under subsection (2) or § 440.192(8). Additionally, the carrier shall initiate payment and continue the provision of all benefits and compensation as if the claim has been accepted as compensable, without prejudice and without admitting liability. Upon commencement of payment as required under subsection (2) or § 440.192(8), the carrier shall provide written notice to the employee that it has elected to pay the claim pending further investigation, and that it will advise the employee of claim acceptance or denial within 120 days. A carrier that fails to deny compensability within

120 days after the initial provision of benefits or payment of compensation as required under subsection (2) or § 440.192(8) waives the right to deny compensability, unless the carrier can establish material facts relevant to the issues of compensability that it could not have disclosed through reasonable investigation within 120-day period. The initial provision of compensation or benefits, for purpose of this subsection, means the first installment of compensation or benefits to be paid by the carrier under subsection (2) or pursuant to a petition for benefits under § 440.192(8).

MEDICAL TREATMENT

Florida Statue 440.13: Subject to the limitations specified elsewhere in this chapter, the employer shall furnish to the employee such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require, which is in accordance with established practice parameters and protocols of treatment as provided for in this chapter, including medicine, medical supplies, durable medical equipment, orthoses, prostheses, and other medically necessary apparatus. Remedial treatment, care, and attendance, including work-hardening programs or pain-management programs accredited by the Commission on Accreditation of Rehabilitation Facilities or Joint Commission on the Accreditation of Health Organization or pain management programs affiliated with medical schools, shall be considered as covered treatment only when such care is given based on a referral by physician as defined in this chapter. Medically necessary treatment, care, and attendance does not include chiropractic services in excess of 24 treatments or rendered 12 weeks beyond the date of the initial chiropractic treatment, whichever comes first, unless the carrier authorizes additional treatment or the employee is catastrophically injured.

MILEAGE REIMBURSEMENT

When an injured employee is required to travel to a medical provider, reasonable and necessary travel costs shall be reimbursed to the employee when the travel costs are incurred between employee's home, or place of employment, and the place of examination or treatment. When travel is by private vehicle, the rate of mileage is 44.5 cents per mile.to impairment income benefits begins the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier, and continues for the following periods: 1) Two weeks of benefits are to be paid to the employee for each percentage point of impairment from 1 percentage up to and including 10 percent; 2) For each percentage point of impairment from 11 percent up to and including 15 percent, 3 weeks of benefits are to be paid; 3) For each percentage point of impairment from 16 percent up to and including 20 percent, 4 weeks of benefits are to be paid; 4) For each percentage point of impairment from 21 percent and higher, 6 weeks of benefits are to be paid. Sections 440.15(3)

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Alabama Workers' Compensation Law Quick Sheet

TEMPORARY TOTAL DISABILITYBENEFITS (TTD) (§ 25-5-57(a)(1); (§25-5-68)

Effective Date	**7/1/15**	**7/1/16**	**7/1/17**	**7/1/18**	**7/1/19**	**7/1/20**
1. Waiting Period*	3 Days	3 Days	3 Days	3 Days	3 Days	3 Days

*(Note: Except for scheduled injuries. Also, if TTD lasts longer than 21 days, waiting period must be paid after 21st day)

2. Maximum	$813	$832	$843	$865	$892	$920
3. Minimum	$224	$229	$232	$238	$245	$253
4. Max # Weeks	..... Unlimited					
5. Total Maximum	..... Unlimited					

TEMPORARY PARTIAL DISABILITYBENEFITS (TPD) (§ 25-5-57(a)(2))

1. Maximum Weekly $ ..... $220 .....
2. Maximum # Weeks for Unscheduled Injuries ..... 300 .....

*(Note: 300 includes Temporary Total Disability Benefits paid as well; thus, if 299 weeks of Temporary Total Disability Benefits paid, only one week of PPD would be due.)

3. Number of Weeks Payable for delineated scheduled members

Member	Weeks	Member	Weeks	Member	Weeks
Thumb	62	Big Toe	32	Eye & Hand	325
1st Finger	43	Other Toes	11	Eye & Foot	300
2nd Finger	31	Foot	139	2 Arms	400
3rd Finger	22	Leg	200	2 Hands	400
4th Finger	16	Eye	124	2 Legs	400
Hand	170	Eye & Leg	350	2 Feet	400
Arm	222	Eye & Arm	350	Hearing 1 ear	53
				Hearing 2 ears	163

Serious Disfigurement: If materially affects employability of injured person, 66 2/3 of average weekly earnings, but not exceeding 100 weeks. (Note: Most other "combined" scheduled member losses are 400 weeks.)

Contact us for more information: 205.822.2006

PERMANENT TOTAL DISABILITYBENEFITS (PTD) (§ 25-5-57(a)(4))

- May last for lifetime of employee (so long as employee remains totally disabled).
- Employer may file petition to set aside permanent total order upon changed conditions.
- Attorney's fees (but not compensation award) may be awarded in lump sum based upon employee's life expectancy and 6% present value discount.

DEATH BENEFITS (§ 25-5-60; § 25-5-67) Payable to Dependents or Estate

- Burial Benefits for Injuries after 8/1/92 - $3,000.00
- Burial Expenses for deceased employee as of 7/1/14 - $6,500.00
- One Time Payment to Estate if no Dependents - $7,500.00
- One Dependent) - 50% of AWW (500 weeks Max)
- Two or More Dependents - 66 2/3 of AWW Subject to

(Note: Benefits should be court approved and will ultimately be payable to the dependent or surviving parent for use and benefit of dependent. Wife is dependent until remarries. Child is dependent until marriage or age 18.)

MEDICAL BENEFITS (§ 25-5-77)

- Payable for life if authorized treating physician relates to work injury.
- Employer may designate first physician; Employee entitled to Panel of Four if dissatisfied with initial treating physician and further treatment required.
- Employer must pay for treatment and use facility recommended by authorized treating physician except for treatment determined "not medically necessary" through utilization review.

NOTICE (§ 25-5-78) STATUTE OF LIMITATIONS (§ 25-5-80)

- Actual Notice is sufficient although Code appears to require written notice. If no notice given within 90 days, claim is BARRED.
- STATUTE OF LIMITATIONS is TWO YEARS from the accident or two years from the date of last payment of COMPENSATION (not medical).
- OCCUPATIONAL DISEASE s/o/l runs from date of last exposure. This includes repetitive motion injuries, even if it is not the last date of employment.

MISCELLANEOUS

- MILEAGE REIMBURSEMENT is 56¢ per mile effective January 1, 2021; 57.5¢ per mile effective January 1, 2020; 58¢ per mile effective January 1, 2019; 54.5¢ per mile effective January 1, 2018
- AWW is calculated based on a 52 week wage history. If unavailable, consider wages of similarly situated employee. Fringe benefits (only employer paid portion of health, life and disability premiums) are added to AWW if no longer being pro vided by employer.
- SUSPENSION of TTD Benefits permissible when employee reaches Maximum Medical Improvement (MMI).
- SUBROGATION available for compensation and medical. Intervention in third-party lawsuit may be required.
- TRIALS/ADJUDICATION are through Court system not administrative law judges. Venue is in county where accident occurred or where Plaintiff resides if employer does business there.

What is a Life Care Plan?

Steven B. Barnett, DC, CBIS, CLCP

According to the agreed-upon definition referenced by The International Association of Rehabilitation Professionals (IARP), "The life care plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis, and research, which provides an organized, concise plan for current and future needs with the associated costs for individuals who have experienced catastrophic injury or have chronic health care needs."

Or, more simply put, it is a way to plan for the lifetime needs of an individual with a disability.

The life care plan is described as a dynamic document because the plan may change as the patient's needs change. The sequela of an injury is difficult to predict, especially when it comes to traumatic brain and/or spinal cord injuries. Patients may progress or regress depending on both their physical and psychological needs. Family support (or, sadly, the lack thereof) may also play a major role in a patient's ability to recover from a catastrophic injury.

According to life care planning methodology role and function studies, topics which are considered for inclusion are:

- routine medical care
- basic and advanced diagnostic testing
- basic, medication/medication management
- surgical intervention
- complications
- pain management
- adaptive and durable medical equipment
- transportation
- vocational training
- architectural modifications

Role and function studies recognize there is a standard procedure for gathering patient information in order to properly construct a life care plan. It begins with a patient assessment, including an interview with the client/patient and their family members to review the primary diagnosis and the details of the injury.

Next, a careful review of the medical records, as well as any preexisting conditions, must be completed. Supporting documents are also reviewed, such as employment information, school records, depositions, tax returns, student report cards, and transcripts. Evidence-based information, such as research papers, clinical trials, expert opinions, and observational studies, are also carefully considered and may create a much more well-rounded life care plan. A "day in the life" video of the patient may be included in the life care plan. It also may be necessary to bring in experts to understand the costs of specialty items. as well advise on the loss of the possibilities of competitive employment.

Life care planners may be a diverse group of individuals, such as physiatrists, chiropractors, nurses, nurse practitioners, physicians' assistants, occupational therapists, physical therapists, and social workers.

Life care plans are used in workers' compensation claims, mediation, federal vaccine injury cases, civil litigation, reserve setting for insurance companies, and Medicare set asides.

Life care planning is an established and highly-regulated field. Those who qualify for it may earn a national certification. These are awarded by professional organizations such as the International Commission on Healthcare Certification (ICHCC) who regulate the educational and professional requirements, consumer complaints, and administer the testing in order to become a Certified Life Care Planner (CLCP).

Dr. Stephen Barnett received a Bachelor of Science from Brooklyn College and then graduated from Palmer College of Chiropractic in Davenport, Iowa. With a stellar forty-one-year career in personal injury, he currently serves as Director of Chiropractic Relations for Polaris Spine and Neurosurgery in Atlanta, Georgia. He completed the First-Year Interest Group ("FIG") course to become a personal injury Life Care Planner. For additional information, please reach out to intake@lcppro.com.

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Rotator Cuff

By: Logan Fields, MD

The rotator cuff is comprised of four muscle-tendon units that help rotate and lift the shoulder above the head. Issues that arise in the rotator cuff cover a large spectrum ranging from strains/tendonitis to tears. Acute injuries can result in a strain of the rotator cuff that can be painful and limiting but also responds to conservative care. Generally, anti-inflammatories and physical therapy are the course of treatment for acute strains, because they control the symptoms and allow for rehabilitation of the shoulder function.

Tendonitis refers to inflammation in a tendon and can result from repetitive use of the shoulder with tasks that require lifting or movement above the shoulder level. The integrity of the tendon itself is preserved, and thus again can be treated with the aforementioned regiment.

Rotator cuff tears have subcategories that include partial, full thickness, and traumatic versus degenerative. MRI scans are useful in the diagnosis and description of rotator cuff tears and may be obtained depending on the patient's history. Partial thickness tears may either be low or high grade based on MRI findings. Many partial thickness tears will see successful clinical results with conservative care.

Acute full thickness or high grade partial tears (that do not respond to conservative care) may need to be addressed surgically with repair. The surgery is performed as an outpatient surgery and is a minimally invasive arthroscopic procedure. Several small incisions are made around the shoulder to visualize and perform the necessary work to repair the torn tendon to the bone with devices called suture anchors. At the same time, any other pathology such as bone spurs, torn labral, or biceps pathology are also addressed. Physical therapy is required after surgery.

The rotator cuff plays a vital role in normal shoulder function, and injuries can cover a vast spectrum. Many injuries respond favorably to conservative care, reserving surgery for the few that fail to improve or have significant traumatic tearing.

DR. LOGAN FIELDS' BIOGRAPHY

Dr. Logan Fields is an orthopedic surgeon who specializes in arthroscopic surgery and sports medicine. A native of Albany in southwest Georgia, he spent the vast majority of his childhood participating in sports and adventuring in the great outdoors. His love for sports continues on with coaching his children and providing orthopedic care to the community's athletes of all ages.

If you have questions about any of the services we offer or would like to schedule an appointment, please contact Alexis Hill, Director of Workers' Compensation, at (706)286-7666 or ahill@AthensOrthopedicClinic.com.

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