

**SPECIAL MEETING OF THE  
OKLAHOMA WORKERS' COMPENSATION COMMISSION**

Thursday, February 13, 2020  
3:00 p.m.  
Commission Chambers  
1915 N. Stiles Ave.  
Oklahoma City, Oklahoma  
[www.wcc.ok.gov](http://www.wcc.ok.gov)

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**AGENDA**

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**CALL TO ORDER..... Commissioner Liotta**

**ROLL CALL..... Commissioner Liotta**

**Open Meeting Act Statement**

**THE FOLLOWING MATTERS ARE PRESENTED FOR CONSIDERATION AND ACTION, IF ANY, DEEMED APPROPRIATE BY THE COMMISSION.**

**1. Discussion and Possible Action on Minutes**

- a. The drafted minutes of the January 16, 2020 Regular Meeting of the Commission will be considered for approval.
- b. The drafted minutes of the January 27, 2020 Special Meeting of the Commission will be considered for approval.

**Possible Action**

Possible action may include: taking no action; approving the minutes as drafted; approving the minutes as amended; or continuing the matters.

**2. Discussion and possible action regarding the Physician Advisory Committee's specific recommendations for deviation from the AMA's guides to the evaluation of permanent impairment for shoulder injuries and general use of the Sixth Edition.**

Title 85A O.S. § 17(B)(3) authorizes the Physician Advisory Committee ("PAC") to, after public hearing, review and make recommendations for acceptable deviations from the American Medical Association's Guides to the Evaluation of Permanent Impairment.

Such recommendations shall be made to the Workers' Compensation Commission ("WCC"), which may adopt, in whole or in part, the recommendation of a method or system to evaluate permanent disability that shall deviate from, or be used in place of or in combination with the Guides. 85A O.S. § 60.

Section 60 of Title 85A also provides that if the WCC adopts a method or system to evaluate permanent disability, such method shall be submitted by the Commission's Executive Director to the Governor, Speaker of the House of Representatives, and the President Pro Tempore of the Senate within the first ten legislative days of a regular session of the Legislature. Such method shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session. If the Legislature does not take action on the method or system submitted, it shall become operative thirty days following the adjournment of the Legislature.

The PAC submitted two recommendations for consideration by the WCC. (The PAC's recommendations letter, in full, is attached to this agenda):

- a. *"The Guides to the Evaluation of Permanent Impairment, 6th edition, states that impairment is a medical decision determined by physicians. However, previously noted, frequently the impairment rating does not adequately capture the true disability of the claimant. As previously alluded, the shoulder seems to be a point in particular.*

*The subcommittee determined that the most pressing issue was the impairment rating for the shoulder and most of their work was directed at this condition.*

*The subcommittee recommended and the PAC concurred that the most expedient solution would be for the legislature to disconnect impairment and disability as one and the same.*

*We recommend that impairment be determined by the physician and that disability be determined by the ALJ after consideration of other extenuating circumstances in addition to impairment (such as age, education, training, experience, and the claimant's ability to return to his previous or similar profession or occupation at the same or similar salary)."*

- b. *"On page 418 of the Guides to the Evaluation of Permanent Impairment, 6th edition, the following is provided as an instruction:*

*If there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated because it is probable this will incorporate the functional losses of the less impairing diagnoses. In rare cases, the examiner may combine multiple impairments within a single region if the most impairing diagnosis does not adequately reflect the losses."*

*We recommend changing the phrase 'In rare cases' to 'At the examiner's discretion'. This change would allow the impairment rating to better reflect the degree of impairment rather than relying on one ratable diagnosis to encompass the entire range of impairments."*

### **Possible Action**

Possible action may include: taking no action; approving the recommendations in whole or in part; not approving the recommendations; or continuing the matter.

3. **Announcements**

The Commission's next regular business meeting is on Thursday, February 20, 2020, at 1:30 p.m.  
The Commission's next special business meeting is on Thursday, February 27, 2020, at 9:00 a.m.

**ADJOURNMENT**.....**Chairman Mark Liotta**

*Attachment 1*

February 1, 2020

Chairman Mark Liotta  
Commissioner Jordan Russell  
Commissioner Megan Tilly

***Re: Alternative methods of evaluating PPI to Shoulders and Hips***

Dear Commissioners:

We were requested by Representative Chris Kannady, chairman of the House Judiciary Committee, to review certain sections of the *AMA Guides to the Evaluation of Permanent Impairment, 6th Edition*, to determine alternative methods for evaluating impairment to the shoulders and hips.

The PAC formed a subcommittee consisting of Dr. Remondino, Dr. Young, Ms. Heather Fagan (the respondent attorney representative), Mr. Brandon Burton (the claimant attorney representative), and Ms. Kinsey Westwood (the Chamber representative).

We make the following recommendations to the Workers' Compensation Commission:

The *Guides to the Evaluation of Permanent Impairment, 6th edition*, states that impairment is a medical decision determined by physicians. However, previously noted, frequently the impairment rating does not adequately capture the true disability of the claimant. As previously alluded, the shoulder seems to be a point in particular.

The subcommittee determined that the most pressing issue was the impairment rating for the shoulder and most of their work was directed at this condition.

## *Attachment 1*

The subcommittee recommended and the PAC concurred that the most expedient solution would be for the legislature to disconnect impairment and disability as one and the same.

We recommend that impairment be determined by the physician and that disability be determined by the ALJ after consideration of other extenuating circumstances in addition to impairment (such as age, education, training, experience, and the claimant's ability to return to his previous or similar profession or occupation at the same or similar salary).

This concept is, in fact, in line with the recommendations of the *Guides*.

The *Guides to the Evaluation of Permanent Impairment, 6th edition*, makes this distinction between impairment and disability as follows:

“In disability evaluation, the impairment rating is one of several determinants of disablement. Impairment rating is the determinant most amenable to physician assessment; it must be further integrated with contextual information typically provided by nonphysician sources regarding psychological, social, vocational, and avocational issues.” (page 6)

We also recommend one more change concerning the rating of the shoulder.

On page 418 of the *Guides to the Evaluation of Permanent Impairment, 6th edition*, the following is provided as an instruction:

“If there are multiple diagnoses within a specific region, then the most impairing diagnosis is rated because it is probable this will incorporate the functional losses of the less impairing diagnoses. *In rare cases*, the examiner may combine multiple impairments within a single region if the most impairing diagnosis does not adequately reflect the losses.”

We recommend changing the phrase “In rare cases” to “At the examiner’s discretion”. This change would allow the impairment rating to better reflect the degree of impairment rather than relying on one ratable diagnosis to encompass the entire range of impairments.

*Attachment 1*

I should point out that four of the five subcommittee members approved of the recommendations. The Chamber representative stated that the current method was satisfactory and no alteration was necessary.

Thank you for the opportunity to provide our recommendations to you. If the Workers' Compensation Commission needs any additional assistance, we will be happy to oblige.

Sincerely,

A handwritten signature in cursive script that reads "William R. Gillock".

William R. Gillock, M.D.  
Chairman, Physician Advisory Committee

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