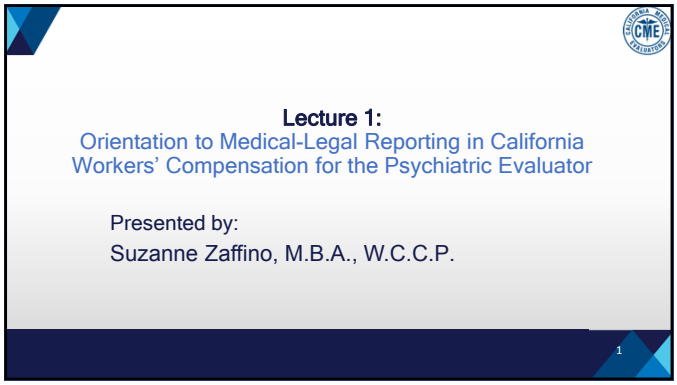
Lecture 1:
Orientation to Medical-Legal Reporting in California Workers' Compensation for the Psychiatric Evaluator
Presented by:
Suzanne Zaffino, M.B.A., W.C.C.P.
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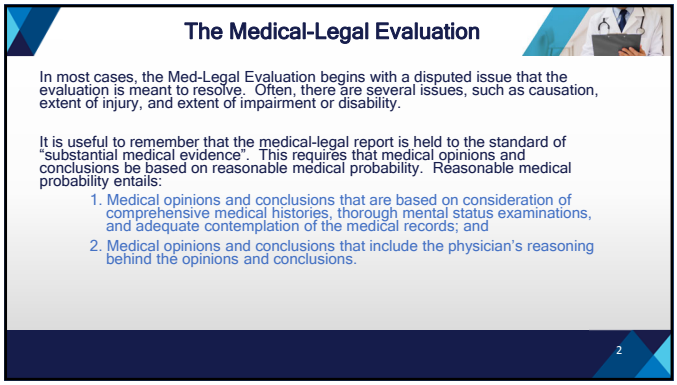
The Medical-Legal Evaluation
In most cases, the Med-Legal Evaluation begins with a disputed issue that the evaluation is meant to resolve. Often, there are several issues, such as causation, extent of injury, and extent of impairment or disability.
It is useful to remember that the medical-legal report is held to the standard of "substantial medical evidence". This requires that medical opinions and conclusions be based on reasonable medical probability. Reasonable medical probability entails:
1. Medical opinions and conclusions that are based on consideration of comprehensive medical histories, thorough mental status examinations, and adequate contemplation of the medical records; and
2. Medical opinions and conclusions that include the physician's reasoning behind the opinions and conclusions.
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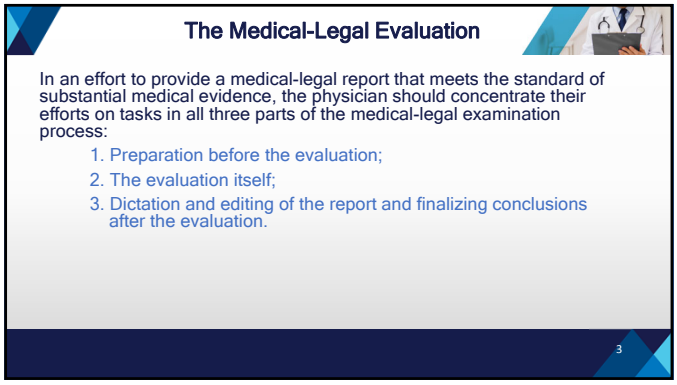
The Medical-Legal Evaluation
In an effort to provide a medical-legal report that meets the standard of substantial medical evidence, the physician should concentrate their efforts on tasks in all three parts of the medical-legal examination process:
1. Preparation before the evaluation;
2. The evaluation itself;
3. Dictation and editing of the report and finalizing conclusions after the evaluation.
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The Medical-Legal Evaluation

The psychiatric medical-legal evaluator will encounter three main types of psychiatric injuries:

- Primary injury - where the psychiatric injury is the only injury. Examples are exposure to verbal or sexual harassment in the workplace, exposure to a stressful or discriminatory work environment, or post-traumatic stress disorder. Primary injuries can be:
  - Specific injuries - injuries resulting from a single event;
  - Or, continuous trauma injuries - injuries resulting from a series of events over a period of time.
- Mixed Factor injuries - where the psychiatric injury results both as the result of a primary, psychiatrically injurious event such as harassment, as well as on the basis of reaction to other factors, such as a physical injury.
- Secondary, Derivative or Consequence injuries - where the psychiatric injury is an additional injury that is claimed solely as the result of another injury but did not occur concurrently with that injury. The most common example of this type of psychiatric injury is the development of depression and/or anxiety as the result of chronic pain from a physical injury.

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Physician Preparation Before the Evaluation

For the psychiatric medical-legal evaluator, thorough preparation before the evaluation, including comprehensive review of the cover letter and medical records, is one of the most critical components of the evaluation process.

There are several reasons for this:

- Many psychiatric injuries develop as a result of varying factors both within and external to the purview of the work environment. For the medical-legal evaluator, going into the evaluation with a basic understanding of those factors is essential.
- The evaluation and discussion of credibility of the claimant is an integral part of the psychiatric medical-legal evaluation. Discrepancies between the applicant's account of events and the accounts contained in the medical records can only be identified and investigated if they are recognized at the time of the evaluation.

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Physician Preparation Before the Evaluation

- Oftentimes, the focus of the psychiatric medical-legal evaluation will be complaints that may develop in people without any work injury; such as complaint of depression as a result of financial strain, experience of anxiety dealing with a serious illness, or feeling nervous in social situations due to difficulty with interpersonal relationships. These experiences can also be very similar to what might be claimed by an injured worker.
- Therefore, the psychiatric medical-legal evaluator must be ready to recognize pertinent factors from the medical records and understand how these factors affected the applicant as they experienced the injury and may continue to affect the applicant at the time of the medical-legal evaluation. This process begins during the preparation.

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What To Do Before the Evaluation

1. Review the Cover Letter – while many are generic form letters, some will have at least basic identifying information and comments that will allow you to frame the dispute in your mind.

Hopefully, the cover letter will, at the very least define the injury to the extent that:

- You will know if the psychiatric injury is the primary injury, or
- If there is additional claimed physical injury.
- Focus on the date of injury.
- Psyche may be pled for one, multiple, or all of the dates of injury.

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What To Do Before the Evaluation

2. Review the medical records that have been received.

- Look for consistency in the claimant's report over time with regard to the development of the psychiatric complaints.
- Look at any treatment records to understand what type of treatment the claimant may have received for their psychiatric injury prior to the time of your medical-legal evaluation.
- Look for medical records pre-dating the injury to see if there is any history of psychiatric diagnoses or treatment.

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What To Do Before the Evaluation

It is helpful to know beforehand if there are missing records. Sometimes this will become known only by reviewing the records that you do have.

For example: the claimant returns to the primary treating physician every month and talks about benefit from therapy sessions and you have not received those records.

You can request additional medical records from the carrier or the parties at any time during the evaluation process.

Your opinion on the credibility of the applicant will come into question if your opinions and conclusions do not demonstrate a sufficient familiarity with the information contained in the medical records.

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What To Do Before the Evaluation

3. Consider making an outline after review of the medical records, with such pertinent facts as:

- Date of injury or onset of psychiatric symptoms
- Nature of the physical injury if the psychiatric injury is secondary
- Date of initial treatment
- Nature of the treatment received for both physical and psychiatric injury
- Work status
- Pertinent past medical history
- Pertinent opinions of any other medical-legal evaluators in other specialties

With this outline, when the applicant presents for evaluation, there is a conceptual framework to guide the interview. Also, potential issues that have not been gleaned from the cover letter and the medical records are easier to identify. Missing information is brought to light in the crafting of the outline.

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What to do Before the Evaluation

4. Start to think about the complexity level of the evaluation. While most psychiatric Qualified or Agreed Medical Evaluations reach the ML104 complexity level, you should still understand the complexity levels and how they affect your evaluation:

- The causation complexity factor very often applies in the psychiatric medical-legal evaluation.
- You get one complexity factor for the fact that you are conducting a psychiatric medical-legal evaluation.
- Additional complexity comes from the time you spend face to face with the applicant, with one complexity factor for spending two or more hours; and from the time you spend reviewing the medical records, with one complexity factor for spending two or more hours in this. Combinations of these two factors totaling four or more hours counts as two complexity factors; totaling six more hours counts as three complexity factors.

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Important from the Cover Letter

- Is the patient represented? If the applicant is not represented by an attorney, then additional Disability Evaluation Unit forms need to be completed. Your onsite CME assistant will provide these forms to you. Please complete them and return them to the assistant before you leave the evaluation site.
- Referral Source - Has the patient been referred through identification of a possible psychiatric injury by a medical-legal evaluator in another specialty? This can be a clue to check the reports and records of this physician in more detail.
- Date of Injury - Is this a specific identifiable psychiatric injury? Is this a work-related continuous trauma psychiatric injury? Or, does the cover letter describe the psychiatric injury as a consequence of another injury or the result of multiple factors?

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Important from the Cover Letter

- Is the injury disputed?
  - The cover letter should identify if the psychiatric injury is accepted or denied.
  - If the injury is denied or disputed, does the cover letter define the nature of the dispute? Is the dispute based on:
    - Whether the psychiatric injury occurred as described by the applicant?
    - Whether the psychiatric injury caused permanent residuals?
    - Whether other factors or prior injuries are considered to be more responsible for the claimed psychiatric injury?
- These are some examples of disputed issues that may be identified in the cover letter.

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Important from the Medical Records

Medical records should be organized in chronological order, and grouped by type; non-medical records, those within the psychiatric arena, specialty records such as orthopaedic records, and primary care records.

Medical records serve as the medical-legal evaluator's source for information in support of their opinions and conclusions, particularly with regard to causation and apportionment. Historical information obtained from the applicant during the interview is critical and cannot be supplanted by the medical records. However, because psychiatric injuries can affect a claimant's memory, concentration, and even their motivation to fully and freely participate in the evaluation process, the history can only be relied upon to the extent that it is deemed to be credible and consistent with other accounts of the injury as found in the medical records.

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Important from the Medical Records

In fact, the medical records are considered so important to the psychiatric medical-legal evaluation that regulations permit the psychiatric medical-legal evaluator to cancel or reschedule an evaluation if relevant medical records have not been received prior to the evaluation date.

(California Code of Regulations, Title 8, Division 1, Chapter 1, Article 3, Section 34 (g): Failure to receive relevant medical records, as provided in section 35 of Title 8 of the California Code of Regulations and section 4062.3 of the Labor Code, prior to a scheduled appointment shall not constitute good cause under this section for the evaluator to cancel the appointment, unless the evaluator is a psychiatrist or psychologist performing an evaluation regarding a disputed injury to the psyche who states in the evaluation report that receipt of relevant medical records prior to the evaluation was necessary to conduct a full and fair evaluation.)

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Non-Medical Records

- Application for the injury being evaluated: - note the applicant's date of birth, claimed areas of injury, and job title at the time of the injury. Is the claim limited to psychiatric injury, or are other injuries claimed along with psychiatric injury?
- Application(s) for prior injuries: Note prior injury dates and areas of injury. Also note prior employers and job titles if different.
- Compromise and Release (C&R) for prior injury(ies): Usually do not include statements about permanent disability but should identify diagnosed areas of injury and can be useful in seeing if psychiatric injuries have occurred in the past. Look at dollar value, which is a compromise on the expected future medical costs and potential loss of income from any residuals of the injury; therefore, that dollar value of the C&R indicates, to some degree, the severity of a prior injury.
- Stipulated Awards for prior injuries - Again, was a psychiatric injury identified? Permanent disability from these awards is subject to apportionment under Labor Code §4664.

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Non-Medical Records (continued)

- Petition to Reopen claiming new and further disability? Is there any identification that the presence or worsening of a psychiatric condition or conditions is behind the filing of the petition?
- RU-91/Job Descriptions: The RU-91 or other job description is useful to understand if there are job duties in the usual and customary job that may aggravate the psychiatric injury or any primary injury that is fueling the psychiatric injury, such as chronic pain from an orthopedic injury. Note if the document was signed by the applicant, and if the applicant made any comments.

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Medical Records - Prior Injuries

We will now move to discussion of the medical records, beginning with records pertaining to any prior injuries. When reviewing medical records pertaining to prior injuries, think about apportionment.

- Note any prior psychiatric complaints, along with:
  - Date of onset of the complaints
  - Duration of the complaints
  - Any treatment for these complaints?
  - Any prescribed medications for the complaints?
  - Did the complaints occur as the result of an injury? With the same employer?
  - Did the complaints resolve or continue?
- Was there a permanent and stationary/MMI report issued?
- Was there a psychiatry medical-legal evaluation?
- Were there any settlement documents in the non-medical records that you reviewed?

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Medical Records - Primary Care or Kaiser Records

When reviewing primary care or Kaiser records:

- Note any psychiatric complaints or diagnosis in the past:
  - Date of onset of any prior complaints
  - Diagnosis
  - Any Axis II diagnosis
  - Treatment for these complaints, including any medication
  - Effect of the condition on the patient going forward
  - Did the patient relate the complaints to their job?
- Note anything that may be pertinent to the development of the condition or conditions you are evaluating:
  - Prior chronic pain; significant diagnosis of illness; prior trauma
  - Is the patient overall compliant with physician recommendations?
  - Is there any significant family history demonstrated in the medical records?

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Medical Records - Records of the Subject Injury for Mixed Factor or Secondary Psychiatric Injuries

- Early treatment records - Look for any clues regarding the development of the psychiatric injury. Is the patient compliant with treatment? Is treatment beneficial? Do any psychiatric complaints arise early on in the treatment?
- Is treatment being allowed for the primary injury? Delay in treatment can be a factor in the development of secondary psychiatric injuries.
- Is the applicant allowed to return to work, with or without restrictions? Look to the medical records for signs of any psychiatric sequelae from absence of the work environment, difficulty with returning to work, employer not honoring work restrictions, pressure to work beyond restrictions, and/or harassment in the workplace as a result of the filing of a claim injury.

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Medical Records - Records of the Subject Injury for Mixed Factor or Secondary Psychiatric Injuries

- Did the claimant undergo any surgery for the primary injury? What is the outcome? Was appropriate post-operative care allowed, or did the claimant experience delay and/or denial of post-operative care? This can be a precursor to or a basis for development of psychiatric injury.
- Has any treating physician requested psychiatric evaluation at any point in time during the applicant's course of treatment? Carefully review the supporting information provided in conjunction with that request for evaluation.
- Are there any psychiatric records contained in the medical records of the injury you are evaluating? Is the described development of the psychiatric injury consistent throughout the records? Consistent with the history reported to you? Note results of psychiatric testing over time. Note Axis I diagnosis over time. Progression of the GAF. Does any evaluator find an Axis II diagnosis?

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Medical Records - Depositions

- Review the applicant's deposition for overall consistency with the medical records.
- Read the entire deposition for insight into the applicant's demeanor:
  - Was the applicant forthcoming with information?
  - Was the applicant compliant? Argumentative? Defensive?
  - Did the applicant claim to not recall significant information?
- Check for any questioning that may be specifically related to, or otherwise pertinent to, the psychiatric evaluation.
- Psychiatric history and symptoms are frequently explored in detail in the deposition.
- Question the patient about any discrepancies between the deposition testimony, the medical records, and the history they provide to you during the evaluation.

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Making the Outline

Example Outline for a Primary Psychiatric Injury

- 40-year-old male bus driver. No past psychiatric history. Married for 18 years. Two high-school aged children.
- Began job in 2001.
- Claims psychiatric injury from stressful work environment due to pressure to meet unrealistic goals, harassment over compliance, and stress of his occupation.
- Applicant first reports complaints related to stressful work environment causing sleep difficulty to his primary physician in 9/2014 at yearly physical examination. Prescribed Xanax.
- No other complaints until 7/2015, when applicant was involved in an on-duty motor vehicle accident with injury to passengers. Applicant experienced acute stress reaction when employer's investigators came to the scene of the accident. Applicant placed on administrative leave by employer.
- Records of company clinic from the date of the accident show the applicant to be extremely anxious, No physical injuries reported. He was placed on temporary total disability for two weeks. No treatment was afforded. No referrals made. Records reflect follow-up at the company clinic scheduled, but there are no further reports. (Missing records?)

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Making the Outline

Example Outline for a Primary Psychiatric Injury

- Treating psychologist records show after this two weeks, applicant returned to work, but his employer would not accept him back, stating he had not yet been adequately cleared to return to work by their investigators. *(Personnel action? Termination? No employer level records provided. No indication of current employment status.)*
- Came under care of applicant-attorney referred psychiatrist in 10/2015 with significant complaints secondary to the vehicle accident since several passengers were injured, one seriously. Diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood. Medications prescribed. Referred for therapy. TTD status continued.
- Records of the psychiatrist through 5/2016 show some benefit from medications and therapy. No mention of attempt to return to work. *(No records of treating therapist.)*
- Records of applicant's primary care physician dated 8/2015 and beyond also reflect the psychiatric complaints.
- No MMI evaluation in the records.
- No med-legal evaluation in the records.

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Making the Outline

Example Outline for a Derivative Psychiatric Injury

- 53-year-old female accounting clerk.
- Divorced 2014. No children. Began job 1990.
- Injured her bilateral upper extremities as a result of cumulative trauma of her job with repetitive typing and writing. Injury reported 3/2008.
- Conservative treatment course with no benefit. Remained working.
- Husband leaves marriage in 12/2011, reportedly as a result of applicant's chronic pain.
- Surgery - right wrist in 9/2012. Taken off work. Some improvement but never allowed to return to work even modified duty.
- Surgery - left wrist in 9/2013. No benefit and right upper extremity complaints increase.
- Continued with treating physician. No relief and complaints worsened and began to involve both shoulders and cervical spine.
- Pain management treatment initiated 10/2014 after significant treatment delays due to applicant no-shows and non-compliance and lack of authorization.

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Making the Outline

Example Outline for a Derivative Psychiatric Injury

- Applicant complaint of depression first appears in primary treating physician follow-up note in 4/2013. Three months later, referral is made to psychiatrist. Applicant begins psychiatric care in 7/2013 and is referred for weekly therapy. *(No therapist records are provided.)*
- Psychiatric complaints worsen despite treatment. Records of the psychiatrist reflect applicant misses scheduled appointments with her orthopedist due to depression and misses scheduled weekly appointments with therapist on several occasions in 2014.
- Records of the treating psychiatrist also chronicle applicant's pending divorce, which is finalized in 10/2014. *(Causation and apportionment)*
- Records of treating psychiatrist document applicant hospitalization in 12/2014, after presenting to emergency room with significant pain and depression. Hospitalization is characterized as a 72-hour hold. *(No hospital records provided.)*
- Applicant continues to be non-compliant with treatment and misses pain management and therapist appointments in 1/2015 and 2/2015.

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Making the Outline

Example Outline for a Derivative Psychiatric Injury

- In 4/2015, applicant retains new attorney. Shortly thereafter she begins treatment with a new psychiatrist at the referral of her new attorney. Only one report is received from that new treating psychiatrist. *(Missing records)*
- Orthopedic records reflect some improvement in the psychiatric complaints.
- No records at all of applicant's treatment after 11/2015. *(Missing records)*
- Never returned to work. Seeking Social Security Disability as of the last report of the orthopedist and is scheduled to see their evaluator. *(Need that report and any others related to SSDI)*
- No MMI evaluation for the orthopedic or psychiatric injuries in the records.
- No psychiatric medical-legal report in the records. Orthopedic PQME report is received, dated 3/2016.

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Complexity Level of the Evaluation

After reviewing the cover letter and the medical records, you should have a feel for the case. Start to think about the complexity level that best suits the case. The ML-102, Basic Comprehensive Medical-Legal Evaluation is the default, and includes all comprehensive medical-legal evaluations other than those included under ML 103 or ML 104.

For the ML103, you need three complexity factors; for the ML104, you need at least four complexity factors.

- Addressing causation is usually requested in the vast majority of medical-legal evaluations, particularly with psychiatric injuries. This give you one complexity factor.
- Evaluation of psychiatric injuries provides a second complexity factor.
- Other than that, complexity factors for the psychiatric medical-legal evaluators will come from face to face time with the applicant, and time spent in reviewing the submitted medical records.
- ***Document the time you spend reviewing submitted materials in preparation for the evaluation, as that time can be included in the total time spent reviewing medical records.***

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Complexity Factors

Pertinent Complexity Factors for the Psychiatric Medical-Legal Evaluator

1. Two or more hours of face-to-face time by the physician with the injured worker (counts as one complexity factor);
2. Two or more hours of record review by the physician (counts as one complexity factor);
3. Two or more hours of medical research by the physician. The report must also include a list of citations to the sources reviewed, as well as excerpts from the material or copies of medical evidence relied upon (counts as one complexity factor); Involves reading medical and scientific journals and texts. Does not include reading the AMA Guides; MTUS or other treatment guidelines, or the Labor Code, regulations or DWC publications

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Complexity Factors

4. Four or more hours spent on any combination of two of the first three complexity factors listed above (counts as two complexity factors);

5. Six or more hours spent on any combination of the first three complexity factors listed above (counts as three complexity factors) *(Note: there is disagreement as to whether **all** of the first three complexity factors must be included with this combination to use this as a complexity factor);*

6. Addressing the issue of medical causation, upon written request of the party or parties requesting the report (counts as one complexity factor);

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Complexity Factors

7. Addressing the issue of apportionment in the presence of (counts as one complexity factor):
   - Employment by three or more employers;
     - OR -
   - Three or more injuries to the same body system or body region as defined by the Table of Contents of The AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition);
     - OR -
   - Two or more or more injuries involving two or more body systems or body regions as defined by the Table of Contents of The AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition).

   (Note: it is unusual for this complexity factor to apply to psychiatric medical-legal evaluations. The criteria that gives the evaluator this complexity factor would be a psychiatric injury spanning employment with three or more employers, or three or more psychiatric dates of injury.)

8. A psychiatric or psychological evaluation which is the primary focus of the medical-legal evaluation (counts as one factor).

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Points to Remember at Every Evaluation

1. Psychiatric medical-legal evaluators are **required** to spend at least one hour face to face with the applicant when conducting the Qualified Medical Evaluation.

(California Code of Regulations, Title 8, Division 1, Chapter 1, Article 4.5, Section 49.8: A medical evaluation concerning a claim for psychiatric injury (whether specific or cumulative in nature) shall not be completed by a QME in less than one hour of face to face time. One hour is considered the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of face to face time actually spent with the injured worker and explain in detail any variance below the minimum amount of face to face time stated in this regulation.)

Because most psychiatric injuries involve a complex interplay of factors, and because the medical-legal evaluator is tasked with responding to specific questions and formulating conclusions with regard to causation, apportionment, and GAF, the reality is that the time spent face to face with the applicant will almost certainly exceed the two hours necessary to achieve an additional complexity factor.

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Points to Remember at Every Evaluation

2. Looking at the medical records again following the evaluation is still considered part of your time reviewing the medical records, and it should be recorded as such. Presenting a discussion that demonstrates a thorough understanding of the information contained in the medical records helps your report rise to the threshold of substantial medical evidence. Histories from the applicant alone will not suffice, particularly with the psychiatric injury which may affect the applicant's ability and/or desire to impart a comprehensive and accurate history.

3. Is medical research needed to investigate and discuss any of the issues presented in the cover letter, or any issue deemed pertinent to the evaluation by the physician?
   - Keep in mind that this needs to be greater than 2 hours of such research;
   - The evaluator needs to provide a bibliography and excerpts from the materials.

This can be used when additional material from the medical and scientific literature will bolster the basis for the opinions and conclusions presented by the physician.

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Things to Remember During the Evaluation

1. It is necessary to have a complete history from the patient, including:
   - the mechanism of the primary injury; or
   - the description of the onset of complaints and what precipitated the onset;
   - treatment course for the primary injury as well as any treatment for the psychiatric complaints;
   - detailed past medical, psychiatric, developmental, educational, family and social history

2. You should have a complete and thorough understanding of the duties of the job that the applicant was performing at the time of the injury.

3. Relevant psychiatric diagnostic testing should be administered in conjunction with your evaluation as a necessary component of a comprehensive and complete clinical evaluation.

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Things to Remember During the Evaluation

4. Be familiar with Regulation 40 of the California Code of Regulations, which states that the evaluator must advise the applicant prior to, or at the time of the evaluation, that they are entitled to ask, and have answered, questions about the evaluation process; and that the applicant may discontinue the evaluation based on good cause, which includes but is not limited to discriminatory or hostile conduct by the evaluator toward the applicant.

(California Code of Regulations, Title 8, Division 1, Chapter 1, Article 4, Section 40:

(a) An evaluator selected from a QME panel shall advise an injured worker prior to or at the time of the actual evaluation of the following:

(1) That he or she is entitled to ask and the evaluator shall promptly answer questions about any matter concerning the evaluation process in which the QME and the injured worker are involved;

(2) That subject to section 41(g), the injured worker may discontinue the evaluation based on good cause, Good cause includes: (A) discriminatory conduct by the evaluator towards the worker based on race, sex, national origin, religion, or sexual preference, (B) abusive, hostile or rude behavior including behavior that clearly demonstrates a bias against injured workers, and (C) instances where the evaluator requests the worker to submit to an unnecessary exam or procedure.)

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The Patient History - Essentials

Job Description

While it is true that many psychiatric injuries are caused by some factor other than the actual performance of the job duties, it is necessary for the medical-legal evaluator to have a good understanding of the job duties performed by the applicant.

- If there is an RU-91 in the records, verify the information and review Section 3, which contains information about exposure to excessive noise, temperature extremes, humidity or wetness, dust, gas, fumes, chemicals, and bio-hazards such as: blood borne pathogens, sewage and hospital waste. This may be a source of information pertinent to the claimed psychiatric injury.
- If there is no RU-91, discuss with the applicant what their job involved including the actual physical demands as well as the exposure information noted above.
- Understand the number of hours worked, days per week worked, and any overtime.
- Concurrent employment for another employer at the time of the injury? If so, obtain a description of that job as well, including the specific information described herein.
- Subsequent employment? If so, obtain a description of that job as well, including the specific information described herein.

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The Patient History - Essentials

Current Work Status

- Is the patient still working for the subject employer?
  - In usual and customary capacity? or,
  - In a modified capacity? If so, what are the specific modifications/restrictions?
  - If still working, does the patient self-modify their job?
  - Or, were they terminated? If so, what was the reason given?
  - Get a specific description of any difficulty encountered during work that is a result of the psychiatric medicine complaints, such as adequate break time.
  - During this employment, were there any personnel actions, write-ups, suspensions, discipline, etc.? How were their annual evaluations?
  - What is their rate of pay?

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The Patient History - Essentials

Current Work Status

- Is the applicant now working for a different employer?
  - In the same capacity?
  - In a different capacity? If so, a job description needs to be obtained for that job.
  - Is the applicant working with restrictions at the new job? If so, what are the specific modifications/restrictions?
  - Does the applicant self-modify their job?
  - Again, ask the applicant to give a specific description of any difficulty they encounter during work that is a result of their psychiatric complaints.
  - For this new employment, have there been any personnel actions, write-ups, suspensions, discipline, etc.? Have there been any annual evaluations, and if so, what has been reported to the applicant about their performance?
  - What is their rate of pay?

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The Patient History - Essentials

Current Work Status

- If the applicant is not presently working:
  - What is their current source(s) of income and amount?
  - Any unemployment?
  - Social Security Disability?
  - Retirement income?
  - Workers' compensation payments received?

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The Patient History - Essentials

Prior Employment and Jobs

- Ideally you should obtain an occupational history that spans the past 20 years. Question the applicant about prior employment, including:
  - Employer name
  - Job title
  - Dates of employment
  - Reason for leaving
  - Rate of pay
  - Have they ever been fired from a job?
  - Any previous injuries or claims, psychiatric or other?

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The Patient History - Essentials

History of the Injury and Treatment

- History of the injury should be the applicant's own words about the mechanism of injury.
- The applicant should be able to describe the treatment they received for the injury.
  - They may not remember specific doctors, names, dates, exact chronological order, and/or testing results, particularly if they are experiencing any significant psychiatric symptoms at the time of the evaluation.
  - However, the applicant must be able to demonstrate a sufficient amount of knowledge to participate in the evaluation, and this should include an acceptable knowledge of the treatment course provided to them for their injury.
- The history should progress in chronological order commensurate with the treatment course.

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The Patient History - Essentials

Primary Psychiatric Injuries - Important Notations

- The specific description of how the injury occurred or what caused the symptoms to develop - similar to what is provided on a Doctors' First Report of Occupational Injury or Illness.
- If this is a specific injury, a statement about any immediate symptoms.
- If the specific psychiatric injury is the result of personnel actions, be sure to understand the events around that personnel action and the applicant's immediate response to the action.
- Did the applicant require any outside assistance, such as coworkers, ambulance, police?
- Was the injury witnessed and if so, by whom?
- Did the applicant report the injury and if so, when and to whom? If not, why?
- Did the applicant seek care, and/or was he or she transported to immediate medical care? Or, did they continue to work and subsequently seek care at some later date?
- Name of Primary Treating Physician and specialty.
- Was the applicant prescribed any medications to treat the injury and were these of any benefit? Describe any side effects of the medications.

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The Patient History - Essentials

Derivative or Consequence Psychiatric Injuries - Important Notations

- The applicant should be able to describe the primary injury.
- The applicant should be able to provide the approximate date of onset of psychiatric symptoms and relationship to the primary injury.
- The applicant should be able to describe how their psychiatric complaints and symptoms evolved over the time period of their treatment for the primary injury.
- Did the applicant receive any treatment referral for the psychiatric complaints by the treating physician for the original injury?
- Was the applicant prescribed any medications to treat the psychiatric complaints? Were these of any benefit? Were there any side effects?

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The Patient History - Essentials

Mixed Factor Psychiatric Injuries - Important Notations

- The specific description of how the psychiatric injury occurred or what caused the symptoms to develop, as well as a description of how psychiatric symptoms also developed or were worsened as a result of some other injury or work-related factor.
- The applicant should be able to provide the approximate date of onset of psychiatric symptoms, and of any worsening as a result of additional factors.
- The applicant should be able to describe the treatment they received, both for any non-psychiatric complaints related to a contributing injury and for any psychiatric complaints that developed specifically as a result of direct psychiatric injury.
- The applicant should be able to describe how their psychiatric complaints and symptoms evolved over the time period of their treatment for the primary injury.
- Was the applicant prescribed any medications to treat the psychiatric complaints? Were these of any benefit? Were there any side effects?

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The Patient History - Essentials

For all Injuries:

Ask the applicant about any current treatment they are having for the injury, physical and/or psychiatric.

It is useful to know if the applicant was deemed permanent and stationary by the last, and/or any of the evaluating physicians.

It is useful to know if the applicant was seen by a Qualified or Agreed Medical Evaluators for any areas of complaint related to compensatory or mixed factor injuries.

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The Patient History - Essentials

Presenting Complaints

Discuss all current complaints with the applicant.

Physical symptoms - You should provide a separate paragraph for each body system or complaint, such as low back pain, shoulder pain and gastrointestinal upset. Include:

- Nature of any symptomatology experienced by the applicant.
- Frequency of any symptomatology that may be experienced by the applicant.
- Severity of symptomatology using a number rating scale.
- Describe any aggravating factors for the symptoms or the condition overall.
- Describe any alleviating factors for the symptoms or the condition overall and include whether the measures provide partial relief or full relief.

For physical complaints and conditions that may have occurred related to the injury being evaluated, but are no longer symptomatic, include an approximate date when those symptoms or the condition subsided. Was the resolution related to treatment, or did the symptoms resolve on their own?

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The Patient History - Essentials

Psychiatric symptoms:

- Depression, including:
  - Isolation from family and friends
  - Feeling hopeless, useless,
  - Change in appetite with or without weight gain or loss
  - Change in sleep habits and/or difficulty initiating or maintaining sleep
  - Anger or irritability and any resulting conflict with family and friends
  - Decreased desire to engage in sexual activities
  - Decreased desire to participate in previously enjoyable activities
  - Suicidal thoughts, attempts
- Anxiety, including:
  - Excessive worrying or inability to control worrying
  - Change in sleep due to worry or agitation
  - Anger/irritability
  - Panic
- Post-Traumatic Stress Disorder, including:
  - Re-experiencing the trauma
  - Avoidance of associated places, people
  - Hypervigilance
  - Nightmares

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The Patient History - Essentials

Presenting Complaints

To be complete, include any complaints that the applicant may present to you that are not on the Application or introduced in the cover letter or the medical records. The medical-legal evaluation is intended to be comprehensive and should include all areas of complaint presented by the applicant at the time of the evaluation. Defer those outside your area of specialty to the appropriate evaluators.

- For new complaints since the Application and/or medical records, the applicant should be asked why they believe these complaints are related to the injury being evaluated.
- If this has not been covered in the history, the evaluator should take a moment to go back to the applicant's history, and review with them when these new complaints or condition presented and what was happening during that time. This will help to establish causation.

Also, question the applicant about other potential sources of psychiatric symptoms, such as financial difficulties including bankruptcy, foreclosure or loss of home, debt, etc.; family problems such as divorce, estrangement from children and/or other family; death of a loved one; victim of violence; pre-existing conditions; legal issues; drug or alcohol use.

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The Patient History - Essentials

Activities of Daily Living

Have the applicant describe a current 24-hour day including all activities of daily living including hygiene, grooming, dressing, toileting, hair, make-up, feeding, cooking, driving, etc. Ask the applicant about difficulty with ADL's and the reason for any impairment in ADL's (physical vs. mental, or both).

For any impaired ADL, question the applicant about their capacity for that activity prior to the injury being evaluated.

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The Patient History - Essentials

Past Medical/Psychiatric History

Discuss any relevant past psychiatric history.

- Past therapy and/or hospitalization:
  - Related to an injury?
  - Diagnosis?
  - Duration of treatment
  - Recovered? Continues with symptoms?

Discuss any other prior physical injuries:
- Include the date of injury or best approximation.
- Include body system involved.
- Include whether or not work-related.
- Include a brief discussion of treatment that was necessary as a result of the injury, including any medications, injections, and/or surgery.
- Include approximately how long the applicant treated for the injury.
- Did the applicant experience any psychiatric complaints as a result of this injury?

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The Patient History - Essentials

Past Medical/Psychiatric History

Discuss each prior injury, chronologically, with the same information as noted above.

Motor Vehicle Accidents - Should be covered chronologically, with the same information as outlined above for the prior injuries.

Surgeries: List any surgeries including cesarean sections and include the date and name of the hospital or surgery center. Were there any complications?

Hospitalizations: List all hospitalizations including date, name of hospital, and reason for admission.

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The Patient History - Essentials

Past Medical History

- Illnesses:
  - Childhood and past illnesses: list all and include sequelae or complications.
  - Other past illnesses: list any past major illnesses and any sequelae or complications.
  - Currently diagnosed illnesses: list any currently diagnosed illnesses not covered in the history portion (i.e., not the subject of the evaluation) as well as any current treatment measures.
- Listing of current medications – all medications, not just those prescribed for the injury. Include vitamins, dietary and herbal supplements.
- Allergies: List any allergies to environmental factors, food, and/or medications as well as a description of the reaction created by exposure to the allergen.

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The Patient History - Essentials

Family and Social History

- Date and place of birth.
- Adopted?
- Raised by biological parents?
- Raised by a step-parent?
- Mother alive and well, versus diagnosed illnesses? Good relationship?
- Father alive and well, versus diagnosed illnesses? Good relationship?
- Siblings - list and include if they are alive and well, any diagnosed illnesses or conditions, and date and cause of death if deceased. Good relationship?
- Children – list ages or dates or birth, and any diagnosed illnesses or conditions. If deceased, include date and cause of death. Good relationship?

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The Patient History - Essentials

Family and Social History

- Childhood: Happy? Marked by divorce, death of a family member, abuse (physical, sexual, mental), violence? Comment on appropriate milestones.
- Education: Did they complete high school, or highest grade completed? College? Did they enjoy school? Describe any pertinent details of school years such as difficulty making friends, bullying, etc.
- Military Service: List any military service including branch and dates. Does the applicant recall any injuries, illnesses or conditions diagnosed during military service? Any exposure to trauma or traumatic events?

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The Patient History - Essentials

Family and Social History

- Alcohol Use: Does the applicant drink alcoholic beverages? If so, note how often, as well as type and quantity. If no, describe any past history of alcohol use.
- Tobacco Use: Does the applicant currently use tobacco? If yes, note what type (chewing/cigarettes/cigars), the quantity and the frequency. If no, describe any past history of tobacco use.
- Recreational Drugs: Current or past use. Ask about medical marijuana use. If used, ask for what condition and what doctor is providing the medical marijuana card.
- Hobbies/Sports: Does the applicant participate in any hobbies or sports? Describe the hobbies/sports/outside activities and any effect the injury and/or psychiatric symptoms have had on their participation in the hobby/sport/activity.

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The Patient History - Essentials

Finalizing the History

- If there are any notations you made based on your earlier review of medical records that have not been covered in the patient's history, this would be the time to delve into those matters.
- If the medical records reflect treatment of an illness or condition that the patient has not reported in their medical history, this should be discussed with the patient and then added to the history.

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The Mental Status Examination

The evaluator should report on the mental status examination based on their observations and direct questioning, including:

- Appearance (Observed): Grooming, attire, gait, attention to detail.
- Behavior (Observed): Mannerisms, gestures, eye contact.
- Attitude (Observed): Cooperative, guarded, agitated, hostile, evasive.
- Level of consciousness (as observed): Alert, drowsy, lethargic, confused.
- Orientation (Inquired): Person, place, time, event.
- Speech (Observed): Spontaneous? Rate, volume, fluency & rhythm.
- Mood (Inquired): How the applicant states they feel, such as happy, sad, depressed, angry, anxious, etc.
- Affect (Observed): How the applicant appears to the evaluator during the interview. Flat, excitable, appropriate? Consistent with mood?
- Thought Process (Inquired/Observed): Is the applicant's thinking organized? Logical and linear, or do they stray to related topics?

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The Mental Status Examination

- Thought Content (Inquired/Observed): What is the applicant thinking about? Do they appear paranoid? Delusional? Phobic? Do they experience hallucinations? Is their thought content consistent with their affect? Do they have a thought/thoughts that are difficult to get out of their head? Do they feel detached? Any suicidal or homicidal thought or ideation?
- Insight and Judgment (Inquired/Observed): Do they understand the purpose of the evaluation? Can they effectively participate in the evaluation? What would they do if they encountered a common scenario such as a letter on the ground in front of a mailbox?
- Attention (Inquired/Observed): Concentration and distractibility, such as serial 7's, spelling backwards, simple addition and multiplication calculations. Are the responses appropriate for their level of education?
- Memory (Inquired): Recent memory such as medications taken that day. Remote memory such as when they graduated from high school.
- Intellect (Inquired/Observed): Knowledge of information, such as past five presidents, or current senators. Vocabulary - grade school level, high school level - consistent with education? Abstract - describe similarities between items or describe the meaning of a phrase such as "two heads are better than one."

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Psychiatric Diagnostic Testing

The comprehensive psychiatric medical-legal evaluation will include appropriate diagnostic testing including some form of standardized assessment of personality traits and psychopathology, well as other tests deemed suitable by the evaluator. Commonly used diagnostic tests in the medical-legal arena include:

- MMPI-2: Minnesota Multiphasic Personality Inventory: standardized test of adult personality and psychopathology
- MCMI -III: Millon Clinical Multiaxial Inventory: assessment tool for personality traits and psychopathology
- Hamilton clinician-rated inventories for depression and anxiety
- Beck applicant-driven inventories for depression and anxiety

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After the Evaluation - Preparing Your Report

At the conclusion of the clinical interview, review of the submitted medical records, mental status examination and administration of any psychiatric diagnostic testing, the evaluator will prepare the comprehensive medical-legal report. It is useful to think of everything up to this point in the process as "inputs" to the medical-legal evaluation. What comes now can be considered the "outputs" of the process, and includes the following:

1. Diagnostic Impression
2. Discussion of the case
3. Discussion of causation
4. Discussion of disability status
5. Discussion of apportionment or preliminary apportionment
6. Discussion of factors of disability if MMI has been reached
7. Discussion of whole person impairment if MMI has been reached
8. Discussion of reasonable future medical care
9. Discussion of the applicant's loss of capacity and ability to return to work

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After the Evaluation

Remember:

EVERYTHING in the discussion has to be based on information and facts contained and presented elsewhere in the report. If the evaluator presents opinions and conclusions in the discussion that are not supported by information contained elsewhere in the report, the medical-legal report fails the test of substantial medical evidence.

A MEDICAL REPORT IS NOT SUBSTANTIAL EVIDENCE UNLESS IT SETS FORTH THE REASONING BEHIND THE PHYSICIAN'S OPINION, NOT MERELY HIS OR HER CONCLUSIONS. GRANADO vs. WCAB (1968) 69 Cal.2d 399, 33 Cal. Comp. Cases 647. 4.

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Diagnostic Impression

Diagnostic Impressions for medical-legal evaluations should be consistent with the Diagnostic & Statistic Manual of Mental Disorders, Fourth Edition, Text Revision, or more commonly referred to as the DSM-IV. This edition of the DSM is still used, despite a more current Fifth Edition, due to its consistency with ICD codes and applicability to healthcare assessments. In California workers' compensation, it also includes the GAF, or Global Assessment of Functioning, which is the statutorily designated methodology for describing impairment, and therefore permanent disability, for work-related injuries.

The DSM-IV-TR utilizes a five-axis structure.

- Axis I Clinical Psychiatric Syndrome and Other Conditions
- Axis II Personality and Specific Developmental Disorders
- Axis III Description of Physical Disorders
- Axis IV Severity of Psychosocial Stressors
- Axis V CURRENT GAF

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Discussion

- The evaluator will provide specific opinions and conclusions in various subsections to follow; however, at the beginning, they should provide a synopsis of the case including the applicant's historical data, pertinent entries from the medical records, and any other pertinent information.
- The discussion should not be a cut and paste from the earlier sections of the report, but rather a paraphrasing in the evaluator's own words to begin to reflect the evaluator's particular position on the specifics of the case.
- This is the place for the evaluator to identify and discuss any discrepancies and/or red flags that may have been discovered in the course of the preparation and evaluation.
- This is also the appropriate place to request additional information such as medical records from the applicant's private physician, therapist, etc.
- If you believe that the applicant needs an evaluation in another area of expertise, this is the place to note that as well.
- This is the appropriate place to discuss any areas of complaint that were not included on the Application or in the cover letter, but that have been determined to be pertinent to the evaluation.

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What to Discuss in Every Case: Causation of the Injury

The discussion of causation of the injury involves whether or not the claimed injury or injuries arose out of employment and occurred in the course of employment (AOE/COE).

Discussion of causation in the psychiatric medical-legal evaluation is governed by Labor Code Section 3208.3, which states, in pertinent part, that:

- In order to establish industrial causation for the psychiatric injury, it must be demonstrated that the actual events of employment were predominant (greater than 50%) as to all causes combined of the psychiatric injury
- In the case of employees who are the victim of a violent act or suffer injury as a result of direct exposure to a significant violent act, causation is established if it is demonstrated by a preponderance of the evidence that actual events of employment were a substantial cause (greater than 35%-40%) of the injury.
- Employment must have been at least six months, not continuous, unless injury is caused by a sudden and extraordinary employment condition
- Claims filed after termination of employment are generally not compensable, except in clearly defined circumstances
- Claims filed in response to lawful and nondiscriminatory, good faith personnel actions are not generally compensable

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Causation of the Injury (continued)

Discussion of causation in the psychiatric medical-legal evaluation is also governed by case law from the following two cases:

- Rolda v. Pitney Bowes (2001): The Court in this case described a four-step analysis to be used when personnel actions are determined to be a factor in causation of the psychiatric injury. The evaluator must determine if events of employment are the predominant cause of the psychiatric injury, and whether any personnel actions were a "substantial cause" (35%-40%) of the psychiatric injury. The Trier of fact is to determine whether the described events of employment constitute "actual events of employment", and whether any of these actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith.
- Verga v. WCAB (2008): The Court in this case took up the question of whether the applicant's perception of mistreatment by her supervisor and co-workers constituted "actual events of employment" when the alleged mistreatment was found to be the reaction of the supervisor and coworkers to the applicant's own mistreatment of, and inappropriate conduct toward them. The Court found that because the claimed harassment or persecution was brought about by the claimant's own actions, "That disdain is not an actual event of employment" within the meaning of the statute.

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Causation of the Injury (continued)

When considering causation for primary psychiatric injuries, consider:

- What is the mechanism of injury?
- Was the injury a single event or a repeated exposure over time?
- Has appropriate history and review of medical records been undertaken to demonstrate predominant cause by a preponderance of the evidence?

For mixed factor, or derivative/consequence psychiatric injuries, consider:

- Define the mechanism of the primary injury that caused or concurred with the psychiatric derivative injury.
- Describe the path that takes the reader from that primary injury to the development of the psychiatric complaints or diagnosed condition(s).
- If an applicant has, in their history, described the same or similar psychiatric complaints and the industrial injury is considered to have caused worsening of that prior condition, describe how the primary industrial injury led to the aggravation of the condition.

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What to Discuss in Every Case: Disability Status

The evaluator will make a determination of the applicant's disability status as it pertains to the psychiatric injury:

- Permanent and Stationary(P&S)/Maximal Medical Improvement(MMI) - the diagnosed psychiatric condition or conditions related to the claimed injury or injuries have plateaued and are not expected to change substantially over a reasonable period of time, usually considered to be six to twelve months. When this occurs, the applicant is said to be permanent and stationary and at maximal medical improvement for the injury.
- Temporarily Partially Disabled - the applicant has not yet reached a permanent and stationary status, but the evaluator feels that the applicant has some capacity to work despite their injury. In this case, work restrictions should be discussed even though they may not be permanent restrictions. These might include more frequent breaks or a job that does not require exposure to a particular manager or supervisor.
- Temporarily Totally Disabled - the applicant has not yet reached a permanent and stationary status, and the evaluator feels that the applicant does not have the capacity to work due to the scope and/or severity of the ongoing complaints.

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What to Discuss in Every Case: Disability Status

- If the evaluator feels that the applicant has not yet reached a P&S/MMI status, they should give some discussion of what should occur to bring the applicant to that status and define a reasonable time period for this to occur.
- If the evaluator feels that the applicant has not yet reached a P&S/MMI status, they still need to discuss the reasonableness of periods of temporary partial and/or temporary total disability that have occurred prior to the evaluation.

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What to Discuss in Every Case: Apportionment

- Once causation of the injury has been established as industrial, the right to medical treatment is triggered. Medical treatment is not subject to apportionment. Only permanent disability arising from the injury is subject to apportionment.
- Even if the medical-legal evaluator does not find the applicant to be permanent and stationary or at maximal medical improvement and therefore, the nature and extent of any permanent disability has not yet been established, the evaluator should provide a preliminary opinion on apportionment. In California workers' compensation, the burden of proof for apportionment lies on the defense. Therefore, by providing a preliminary opinion on apportionment, you are allowing the parties to prepare any additional information they may deem necessary with regard to apportionment.

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Apportionment (continued)

- LC4664 - Requires apportionment of any permanent disability represented in any prior Awards.
  - This is primarily a legal determination.
  - This does not require apportionment on the basis of prior Compromise and Release.
- LC 4663 - Requires the physician to state what percentage of the permanent disability is the "direct result" of the subject injury, and what percentage, if any, is the result of other factors both before and subsequent to the subject injury.
  - This is a medical determination, and should be based on a careful consideration of all of the facts of the case and the submitted information.
  - The opinion must be based on reasonable medical probability and cite factors from the evaluation as support of the opinion, and must not be based on speculation.

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Apportionment (continued)

The Escobedo Decision

- Sets forth the requirements for an apportionment discussion that meets the burden of substantial medical evidence.
- For psychiatric injuries in particular, the apportionment opinion must demonstrate thorough knowledge of all presented information including information from the medical records and demonstrate full consideration of all concurrent and non-industrial stressors.

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Apportionment (continued)

The Benson Decision

- This decision applies in cases where the physician is asked to evaluate multiple injuries to the same body system or region.
- The decision in this case makes it necessary for the medical-legal evaluator to determine what percentage of the permanent disability was caused by each injury; or,
- To make a determination that the permanent disability or impairment from the injuries in the aggregate is inextricably intertwined for purposes of apportionment and cannot be parceled out to the separate injuries with any reasonable medical probability or certainty.

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Labor Code §4660.1(c)

This section of the Labor Code is the product of SB 863, the Senate Bill passed in an attempt to curb some perceived abuses of the workers' compensation system, including the psychiatric compensable consequence injury (primarily filed as an "add-on" to orthopedic claims of injury).

- The legislation affects all injuries occurring on or after January 1, 2013;
- It severely limits the injured worker's ability to receive permanent disability compensation for psychiatric injuries that develop as a "compensable consequence" of physical injuries;
- In these compensable consequence cases, the award of psychiatric permanent disability is allowed only:
  - When there is catastrophic physical injury;
  - When the injured worker was the victim of, or had direct exposure to, a violent act.

This section does not affect the injured worker's ability to receive the other benefits for their psychiatric injury that were unlocked by a finding of industrial causation, including treatment, temporary disability, death benefits, and the Supplemental Job Displacement Benefit.

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What to Discuss When the Applicant Reaches a P&S/MMI Status

If the evaluator feels that the applicant has reached a permanent and stationary/MMI status, this triggers the necessity to discuss the following:

1. Levels of Permanent Mental Impairment

The American Medical Association Guides to the Evaluation of Permanent Impairment, (5th Edition), in Chapter 14, discusses the process of determining mental impairment. The Guides recognizes that four main categories exist that assess many areas of function. The examiner is instructed to assess and record the extent of function in all these categories.

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What to Discuss When the Applicant Reaches a P&S/MMI Status

Activities of Daily Living: *(Limitations in these activities should be related to the mental disorder rather than any other factors such as physical or monetary)*

- Self-care and personal hygiene
- Sexual functioning
- Sleep
- Eating, preparing food, shopping
- Communication, speaking and writing
- Maintaining one's posture standing and sitting
- Caring for the home and personal finances
- Walking, travelling and moving about (using public transport)
- Recreational and social activities
- Work activities

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What to Discuss When the Applicant Reaches a P&S/MMI Status

Social Functioning:

- Ability to get along with family/ friends/neighbors/general public
- Ability to respond appropriately to people in authority
- Ability to cooperate with co-workers
- Ability to initiate social contact
- Ability to participate in group activities.

The overall degree of interference with any of these factors is as significant as the number of factors that have impairment.

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What to Discuss When the Applicant Reaches a P&S/MMI Status

Concentration, Persistence, and Pace:

Relates to the person's ability to complete tasks. This includes the ability to maintain focused attention long enough to complete everyday household/work tasks.

Problems with concentration, persistence or pace may be seen to affect the person's ability to complete the task.

Deterioration or Decompensation in Complex or Worklike Settings: Relates to the person's failure to adapt to 'normal' stressful circumstances, such as:

- show a negative response to stress
- decompensate in work situations
- fail to understand and follow instructions over extended periods
- be unable to regularly attend work or maintain consistent standard of work
- be unable to ask necessary questions
- be unable to adapt to changes
- be aware of hazards
- or make plans independently

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What to Discuss When the Applicant Reaches a P&S/MMI Status

Each of these four areas of functioning can then be rated individually on a five point scale:

1. No Impairment
2. Mild Impairment- the person can carry out most useful functioning
3. Moderate Impairment- the person can carry out some, but not all useful functioning
4. Marked Impairment- the person is significantly impeded with his or her useful functioning
5. Extreme Impairment- the person cannot carry out any useful functioning

The ratings are then considered in the aggregate, and the evaluator determines a final level of impairment due to mental disorders. The final levels of impairment are identified in Table 14-1 of the AMA Guides, page 363:

Class 1. No Impairment
Class 2. Mild Permanent Impairment
Class 3. Moderate Permanent Impairment
Class 4. Marked Permanent Impairment
Class 5. Extreme Permanent Impairment

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What to Discuss When the Applicant Reaches a P&S/MMI Status

If the evaluator feels that the applicant has reached a permanent and stationary/MMI status, this triggers the necessity to discuss the following:

2. Whole Person Impairment – Per GAF and corresponding WPI
   - The AMA Guides, 5th Edition does not provide percentages of impairment for mental impairment, with the authors believing that "The use of percentages implies a certainty that does not exist". That said, our system of workers' compensation requires a final impairment percentage, and therefore, an alternative method was sought.
   - The GAF, or Global Assessment of Function, originated as Axis V in the Diagnostic and Statistical Manual of Mental Disorders (DSM III-R) and has been maintained through the DSM-IV-TR, which is the version currently used in medical-legal evaluations despite availability of the more recent DSM – 5.

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What to Discuss When the Applicant Reaches a P&S/MMI Status

- The GAF considers psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness.
- There are 10 levels capturing different symptom severity and impairment in social, occupational or school functioning, with higher scores signaling better functioning and lower scores indicative of substantial impairment.
- The evaluator considers the applicant's placement in a particular level by beginning at the top and questioning whether the applicant's symptom severity OR current functioning is worse than what is indicated in the description for that level. The evaluator continues moving down the scale until the level that best matches the applicant's symptom severity or current functioning is reached.
- Once the appropriate level is determined, the evaluator chooses a single numerical score within that level, which corresponds to a whole person impairment percentage.

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What to Discuss When the Applicant Reaches a P&S/MMI Status

If the evaluator feels that the applicant has reached a permanent and stationary/MMI status, this triggers the necessity to discuss the following:

3. Reasonable Future Medical Care

- The evaluator should provide a summary of expected reasonable medical care that the applicant will require going forward; understanding that the objective of recommended treatment is the maintenance or slow improvement of the current level of symptoms and preservation of the maximal medical improvement status.
  - Include whether the applicant requires ongoing therapy, individual and/or group.
  - Does the applicant require continued use of medications?
  - Discuss the reasonable frequency and duration of any recommended treatment.

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What to Discuss When the Applicant Reaches a P&S/MMI Status

If the evaluator feels that the applicant has reached a permanent and stationary/MMI status, this triggers the necessity to discuss the following:

4. Need for permanent work restrictions and eligibility for Supplemental Job Displacement Benefits (formerly, Vocational Rehabilitation)

- Discuss any necessary permanent work restrictions that are indicated for the applicant on the basis of the psychiatric injury.
- Based on the restrictions and limitations stemming from the psychiatric injury, does the applicant retain the residual functional capacity to perform their usual and customary occupation?
  - Consider if they are presently working in that capacity.
  - Consider if the recommended work restrictions apply to their usual and customary job.
  - Can they perform a modified job for the subject employer?

If not, then they qualify for the supplemental job displacement voucher based on their psychiatric injury.

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Last Thoughts

- It is OK to disagree with the cover letter. Just articulate your opinion and provide supporting information from the evaluation.
- Don't limit yourself to the defined dispute. You may find others during your review of the medical records and/or the patient's statements. As the parties' medical-legal evaluator, you are acting as their investigator, and are obligated to bring these issues to the attention of the parties.
- The process to obtain panels for Qualified Medical Examinations, and/or the "dance" whereby applicant and defense attorneys try to select an Agreed Medical Examiner, are long and tedious. Often during these processes, the patient is simply waiting. So, when chosen to be a medical-legal evaluator, remember that it's never about being applicant oriented, or defense oriented; it's about being thorough and being objective. Evaluate each and every case on its own merits. Consider all of the information submitted to you. Question the patient about any discrepancies and generate an opinion about the patient's honesty and credibility. Support your opinions and conclusions and your report will be one upon which the attorneys and the WCAB may rely as substantial medical evidence. Otherwise, it is only the patient who suffers in the form of further delays in both treatment and settlement.

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Take-Away Points Psychiatric Medical-Legal Evaluations

All conclusions and opinions must be based on information first presented elsewhere in the report and must be supported by the physician's reasoning.

To achieve this, know the important factors from all three parts of the medical-legal examination process:

- Your preparation before the evaluation;
- Your actual evaluation; and
- Your discussion and presentation of conclusions in your report.

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Take-Away Points
Psychiatric Medical-Legal Evaluations

Before the evaluation

- Understand the claimed injury, be it a primary psychiatric injury, a derivative/consequence psychiatric injury, or a mixed factor injury;
- Familiarize yourself with the medical records and know what information is missing and/or needs further development;
- Begin to understand the complexity level of the particular case;

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Take-Away Points (continued)

During the evaluation

- Obtain a thorough history of the injury, the applicant's educational, developmental, social, family, and past medical history;
- Obtain a complete description of the applicant's presenting complaints;
- Perform a mental status evaluation;
- Administer appropriate psychiatric diagnostic testing to develop the clinical impressions leading to the diagnostic impression and conclusions.

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Take-Away Points (continued)

After the evaluation

- Discuss the case in your own words;
  - identify and discuss any discrepancies;
  - request additional information;
  - recommend any other necessary evaluations;
- Discuss causation thoroughly in compliance with LC §3208.3 and support your opinion, including using the Rolda analysis when appropriate.
- Discuss the disability status, including either what treatment needs to occur to get to a permanent and stationary/MMI status, or all factors of permanent disability if already at a permanent and stationary/MMI status.
- For apportionment, make sure you demonstrate understanding of LC §§4663 and 4664 and the decisions in the Escobedo and Benson cases.

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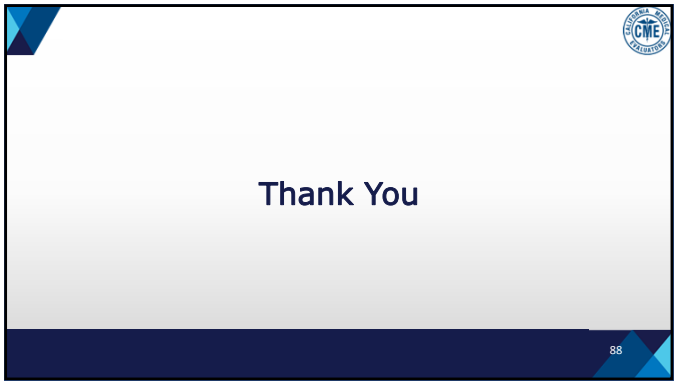

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