

MEDICOLEGAL NEWS

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“PATIENT HAS SUBJECTIVE COMPLAINTS WITH NO OBJECTIVE FINDINGS”

It is commonplace for some medical experts to conclude that a patient has subjective complaints with no objective findings, and therefore has no permanent impairment and requires no future care. There is an alarming trend, however, to narrow the definition of “objective” to the point where few traditional positive findings qualify.

In a recent Maricopa County Superior Court case, an orthopedic surgeon stated that “objective findings” are those which can be verified without any cooperation or verbal input from the patient. Examples of such objective findings are positive x-ray findings such as spinal degenerative changes, and pathology revealed on gross examination such as an amputated leg.

By this definition, the following would not be considered objective signs: (1) range of motion measurements; (2) orthopedic tests such as the straight leg raise test; (3) neurological tests such as sensation testing with a pinwheel and muscle testing with manual resistance. Some medical experts claim that these tests should not be used when evaluating a patient for permanent impairment because they are “subjective.”

This position differs sharply from that of the *AMA Guides to the Evaluation of Permanent Impairment*, 5th Edition. The *AMA Guides* state that all of the above-listed tests may be reliably used to rate permanent impairment. In the spine, permanent impairment is rated by using either the Injury Model or the Range of Motion Model. Both models rely upon tests which certain medical experts reject as “subjective” and, therefore, unreliable.

According to the *AMA Guides*, an “impairment is a deviation from normal in a body part or organ system and its function.” A “permanent impairment” is one that “has become static or stabilized during a period of time sufficient to allow optimal tissue repair, and one that is unlikely to change in spite of further medical or surgical therapy.” “Impairment” is a “condition that interferes with an individual’s activities of daily living.”

The Injury Model for evaluating permanent impairment sets forth a number of categories with a list of differentiating factors to determine which category is appropriate for a particular patient. For example, to be categorized in “Diagnostic-Related Estimates (DRE) Cervicothoracic Category II: Minor Impairment,” a patient must have history and findings compatible with a specific injury, plus intermittent or continuous muscle guarding observed by a physician, nonuniform loss of range of motion, or nonverifiable radicular complaints.

In plain English, this means that if a patient has intermittent or continuous physician-observed muscle spasms, limited spinal motion, or symptoms in the lower extremities that cannot

be verified by testing, the patient fits into DRE II. According to the *AMA Guides*, a DRE II confers a whole body permanent impairment rating of 5-8%.

If the patient does not fit into one of the DRE categories, then the Range of Motion Model may be used. This model requires measurement of spinal range of motion using two inclinometers, simple instruments that cost as little as \$80 each. In the cervical spine an examiner must measure motion in the six planes of motion (flexion, extension, right and left lateral flexion and right and left rotation) three different times. If the results of each of the three tests fall within a specific number of degrees of one another, the measurement is considered accurate and objective.

In a recent litigated case, the Injury Model did not apply and so the Range of Motion Model was used. The final whole body impairment rating was judged to be 15%. Nonetheless, the defense orthopedic surgeon opined that there was no permanent impairment because there were no “objective findings” according to his definition,.

In making this claim, the orthopedist rewrote medical science. The typical aspects of a lumbar spine examination according to Hoppenfeld, a classic medical textbook, include bony palpation for alignment, soft tissue palpation for muscle spasm, range of motion, muscle testing, sensation testing, reflex testing, special tests such as Straight Leg Raising Test, Well Leg Straight Leg Raising Test, Hoover Test, Kernig Test, Milgram Test and six other tests. There is no reason to accept any doctor’s opinion that objective findings are only limited to x-ray and gross examination findings when the remainder of the medical world adheres to the belief that the other procedures and tests listed above are highly reliable in determining an accurate diagnosis. (See: *Physical Examination of the Spine and Extremities*, Stanley Hoppenfeld, M.D.)

The *AMA Guides* are considered the “bible” on the subject. The Industrial Commission of Arizona mandates the use of the *AMA Guides* when rating permanent impairment for injured workers. The *AMA Guides* rely upon the above-listed tests to rate permanent impairment. There is no reason to accept the narrow definition of “objective findings” offered by some experts.

The time has come to bring the perspective of the *AMA Guides* into this community, rather than the narrow and artificial definition of “objective findings” offered by some experts.

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