



A MEDICAL-LEGAL NEWSLETTER FOR PERSONAL INJURY ATTORNEYS BY DR. STEVEN W.SHAW

Where's My Impairment Rating?

In the shadow of the numerous Connecticut convictions from the recent FBI undercover probe termed “Operation Running Man” I thought the time was right to write about inappropriate impairment ratings requests. This year is my 30th year in practice and I am still amazed at some of the requests our doctors receive regarding impairment ratings. In this month’s newsletter, I will share some of the faux pas that, for some reason, are thought to be perfectly reasonable by some. In fairness, I will note up front that it’s not the majority of attorneys or even just plaintiff attorneys that are making the requests. Generally, it’s a small percentage and the requests come from both sides of the fence. Regardless of the source, the requests, or the manner in which they are requested, are fundamentally inappropriate.

Let’s first acknowledge that the entire concept surrounding the assignment of impairment ratings is one of a monetary nature. There is no reason to consider impairment or permanency ratings on a person that is not involved in litigation, work related event or a social security claim. Impairments are a way to take an often abstract and frequently subjective problem and quantitate it so that a decision regarding monetary compensability can be determined. In States like Connecticut, impairment ratings, rather than the more important concepts of permanency and functional limitation, are built in to the WC system and have rolled over into the third party personal injury valuations. Doctors should be fluent in the process and be able to defend their opinion. They should also be unaffected by external influences and assign impairment based upon their experience and expertise.

The first, and likely the most unintentional faux pas, is the method by which attorneys will request impairment. Some attorneys assume that impairments come from doctors like Pez from a Pez dispenser. You request one and suddenly they are there! The truth is that it is always inappropriate to request impairment. It is only appropriate to request an impairment evaluation or impairment determination. Only upon performing the evaluation can the doctor determine if an impairment rating is assignable or not. In other words, don’t assume that merely by requesting an impairment your client will suddenly be given one. Many of your clients will fully recover and others have complaints and findings that do not satisfy the criteria of an impairment percentage. The written request is a discoverable document and should be written in a manner that protects the doctor and attorney. Requests for impairment determination should not presume impairment exists.

That brings up the opposite side of the coin. Doctors should not request payment up front for an impairment rating. I have seen doctor’s testimony completely discredited for “selling” impairments. Were they actually selling impairment ratings? Of course not! However, the written request by the doctor for a fee for impairment suggests otherwise. The doctors should request a fee for an impairment evaluation NOT an impairment rating.

Some attorneys may believe that their client is impaired because of the non-clinical factors. I have had attorneys reference the reported pain level, the property damage, the drunkenness of the tort feasor, the large insurance policy, and other non-clinical factors as to why they believe an impairment rating is appropriate. Information about property damage is helpful to determine injury dynamics. Pain level is helpful to assess tissue damage, policy limits are helpful to establish outside parameters of treatment affordability. While these considerations may be important factors for the case value determination, they have absolutely nothing to do with the outcome of treatment or the assignment of impairment.

My practices are nearly 100% trauma related and the majority of patients have personal injury litigation. That is our area of training and expertise. For that reason, I request that my doctors, as part of our standard operating procedures, to assess patients for permanency once they have reached maximum medical improvement, unless specifically asked not to do so by the patients attorney. We have found that this addresses a common concern and avoids inappropriate requests.

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