

COURT CASE UPDATES, MAC 1/9/2014:
Schleiss, Brown, and Spurger

***Schleiss v. SAIF* – Preexisting conditions and permanent partial disability**

- Applies to standards for the rating of disability.
- Pre-*Schleiss* standards:
- At claim closure, we currently ask providers to identify the amount of permanent disability that is caused by the accepted conditions and the amount of disability caused by something other than the accepted conditions. *[This standard may change on 2/1/2014.]*
- Before *Schleiss*, we would only provide an award for the amount of permanent disability caused by the accepted conditions, and we would exclude any disability caused by anything other than the accepted conditions.
- *Schleiss* states that when determining an award for permanent disability, you may only exclude the amount of disability caused by a preexisting condition when the preexisting condition meets the statutory definition.
 - o Under the statute, a preexisting condition must be (1) diagnosed or treated before the injury or (2) arthritis or an arthritic condition
- This means that insurers and WCD may not reduce a PPD award for disability caused by a condition that preexisted the injury but which was not (1) diagnosed or treated before the injury or (2) arthritis or an arthritic condition
- ***Examples:*** Obesity; Undiagnosed and untreated knee injury
- ***Impact on providers:***
 - o Insurers are likely to seek additional information regarding the diagnosis of preexisting conditions.
 - o Insurers may seek a more detailed diagnosis and medical record before claim acceptance.

***Brown v. SAIF* – The “compensable injury” and permanent partial disability**

- Broadly, *Brown* states the “compensable injury” does not equate to the “accepted conditions”.
- WCD has determined that it may apply to claim closure standards—the statute states a worker must receive compensation for permanent disability due to the “compensable injury”.
- At claim closure, we currently ask providers to identify the amount of permanent disability that is caused by the accepted conditions and the amount of disability caused by something other than the accepted conditions. *[This standard may change on 2/1/2014.]*
- In other words, the physician’s diagnosis is restricted to a determination of the extent of permanent disability caused by the conditions accepted by the insurer.
- WCD’s implementation of *Brown* would remove that restriction and ask for a determination of the extent of permanent disability caused by conditions resulting from the work injury.
- ***Example:*** Worker has an accepted cervical strain. The attending physician believes there is no permanent impairment due to the cervical strain, but believes the worker has a herniated disc that results from the work injury and that the herniated disc has caused permanent impairment.
- ***Impact on providers:***
 - o When completing a closing report in *an initial injury claim*, the physician should describe the extent of permanent disability caused by conditions resulting from the work injury.

- This applies to both impairment and work restrictions.
- Exceptions:
 - Direct medical sequela must stem from an accepted condition
 - Combined and consequential conditions must be accepted
- Just as under the current standard, the physician also should identify the extent to which any impairment is caused by a superimposed or preexisting condition (conditions unrelated to the work injury).
- Closing reports relating to occupational disease, new/omitted, or aggravation claims are unaffected.

***Spurger v. SAIF* – Determination of whether a worker is “significantly limited in the repetitive use” of a body part**

- Applies to determination of whether a worker should receive an award for impairment due to a chronic condition.
- A worker receives an award for impairment due to a chronic condition when the worker is “significantly limited in the repetitive use” of a body part.
- *Spurger* said that, when evaluating whether a worker is “significantly limited in the repetitive use” of a body part, the relevant inquiry is whether the limitations described in the medical-opinion evidence show that the worker is significantly limited, and not whether a physician described the limitations as “significant” according to the physician’s understanding of the term.
- Before *Spurger*, insurers and WCD simply asked physicians if the worker is “significantly limited” in the repetitive use of a body part.
- *Spurger* says that is not permissible.
- WCD’s implementation of *Spurger* has interpreted “significantly limited” in a manner such that the limitations described by the physician will show whether the worker is significantly limited.
- Specifically: *Because of a permanent and chronic condition caused by the compensable injury, is the worker unable to repetitively use the body part for more than two-thirds of a period of time?*
 - Any frequency is permissible as long as usage is repeated.
 - Any duration is permissible and any intensity is permissible.
 - However, the confinement or restriction must be caused in part by a permanent and chronic condition resulting from the compensable injury.
 - *Example:* If a worker is unable to repetitively use a body part for more than two-thirds of a 24-hour period, but the inability is not caused by the compensable injury, the worker does not qualify for a chronic condition impairment value.
- ***Impact on providers:*** Rather than answering whether is “significantly limited” in the repetitive use of a body part, the physician should answer whether the worker is unable to repetitively use the body part for more than two-thirds of a period of time.