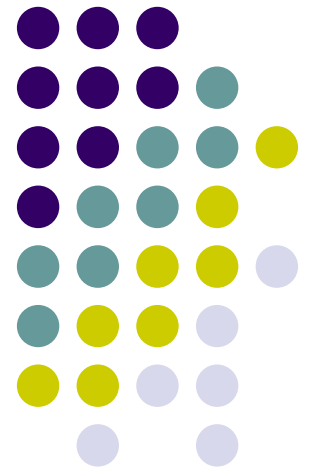


Medical Provider Networks

*What a difference
2 years makes!*





What is an MPN - A primer

- Remember that effective January 1, 2005, in California:
 - A Medical Provider Network (MPN) is an entity or group of health care providers that agree to treat the workers of a California employer who are injured on the job.
 - The employer, third party administrator or insurer can develop or purchase an MPN.

What is an MPN - A primer



- Each MPN must include a mix of physicians specializing in work-related injuries and doctors with expertise in general areas of medicine.
- MPNs must meet access to care standards for common occupational injuries and work-related illnesses.

What is an MPN - A primer



- Regulations require MPNs to follow treatment guidelines established by the DWC, currently ACOEM, and must allow employees a choice of provider(s) in the network after their first visit.
- The Administrative Director's office has decided that they will not approve an MPN unless an injured employee is entitled to *unlimited* changes within the network...no permission required.

What is an MPN - A primer



- It is **VERY** important to remember that...
Within the MPN, the injured worker is limited only by the number of providers that are geographically accessible to them.
- MPN's also need to offer an opportunity for second and third opinions if the injured worker disagrees with the diagnosis or treatment offered by the treating physician.
- If a disagreement still exists after the third opinion, a covered employee in the MPN may request an independent medical review (IMR).

To MPN or not to MPN...that is the question??



- There are a lot of reasons to establish a Medical Provider Network:
 - Maintain medical control over the life of a claim;
 - Provide high quality care to your injured workers;
 - Establish lasting relationships with the best providers in the occupational medicine field;
 - Improve outcomes that will have an impact on the costs of the claim;
 - Better understanding by the providers of the nuances of your company and industry in return to work programs;
 - Track provider performance in a standardized manner

When does the MPN not apply?



- Employees are allowed to “pre-designate” a personal physician:
 - The employer must provide non-occupational group health coverage.
 - It must be an MD or DO, have treated the patient within the previous 12 months, maintains the patients records and agrees to treat under workers’ compensation.*
 - The employees cannot pre-designate a medical group, chiropractor or acupuncturist.
 - Only 7% of all eligible employees in California may pre-designate at any point in time...**HOW DO IT KNOW??**

* Adjusters cannot ask these questions to confirm this information!!!

When does the MPN not apply?



- When you need to maintain continuity of care and the treating doctor is no longer in the MPN, in some cases you will have to allow the injured worker to continue treatment with that doctor.
- If you need an unusual or specific specialist that is not in the MPN you may need to go with out of network providers.

Transfer of Care



- Transfer of care into your MPN is allowed on existing cases but is not mandatory and exceptions include:
 - Acute conditions with limited duration (less than 90 days)
 - Serious chronic condition that persists over 90 days and requires ongoing treatment (completion of treatment up to 1 year from the date the employee received notification of the condition)
 - Terminal illness
 - Authorized surgery within 180 days of the MPN coverage effective date

Transfer of Care



- Under 8CCR §9767.9(b) an employee's physician is allowed to make referrals to providers either inside or outside the MPN before the employee's transfer into the MPN;
- Under 9767.9(f) you are required to give notice to the employee of the decision to transfer their care into the MPN. It must be in layperson's terms and written in both English and Spanish;

Transfer of Care



- Under §9767.9(g) if an employee disputes the employer's transfer determination, the treating physician is required to provide a report to the employee within 20 calendar days of the request or the employer's determination applies.

2nd and 3rd Opinions



- 8CCR §9767.7 (a), (b), (d) states that employees are allowed to request a 2nd or 3rd opinion from within the MPN:
 - Orally or in writing;
 - When they dispute either the diagnosis or the treatment prescribed by the primary treating physician or the treating physician

2nd and 3rd Opinions



- It is the **employee's** responsibility to:
 - Inform the person designated by the employer or insurer that he or she disputes the treating physician's opinion and requests a second or third opinion
 - Select a physician or specialist from a list of available MPN providers
 - Make an appointment with the second or third opinion physician within 60 days and
 - Inform the person designated by the employer or insurer of the appointment date.

2nd and 3rd Opinions



- It is the **employer's** responsibility to:
 - Provide a regional area listing of the MPN providers or specialists to the employee for their selection based on the specialty or recognized expertise in treating the injury or condition in question
 - Inform the employee of their right to request a copy of the medical records that will be sent to the second or third opinion physician
 - Contact the treating physician, provide a copy of the medical records prior to the appointment date, provide a copy of the records to the employee on request and
 - Notify the 2nd or 3rd opinion physician in writing that they have been selected to provide an opinion and define the nature of the dispute (this must be copied to the employee)

2nd and 3rd Opinions



- **IF** the appointment is not made within 60 days of receipt of the list of the available MPN providers, the employee shall be deemed to have waived the second or third opinion process with regard to this disputed diagnosis or treatment.

2nd and 3rd Opinions



- If, after reviewing the employee's medical records, either the 2nd or 3rd opinion physician determines that the employee's injury is outside the scope of their practice, the employee selects another physician from the MPN.
- The 2nd and 3rd opinion physicians shall each render their opinion of the disputed diagnosis or treatment in writing and offer alternative diagnosis or treatment recommendations, if applicable
- Any recommended treatment must be in accordance with Labor Code § 4616(e) [Treatment Guidelines]

2nd and 3rd Opinions



- The 2nd and 3rd opinion physicians may order diagnostic testing if medically necessary
- A copy of the written report shall be served on all parties within 20 days of the date of the appointment or receipt of the results of diagnostic tests, whichever is later.
- The employer/insurer must permit the employee to obtain the recommended treatment within the MPN.
- The employee may obtain the treatment by changing physicians to the 2nd or 3rd opinion physician or other MPN physician.

2nd and 3rd Opinions



- If the injured employee disagrees with the diagnosis or treatment of the third opinion physician, they may file a request for Independent Medical Review with the AD.

Challenges particular to California

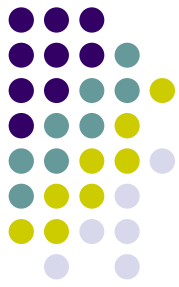


- Unlimited change of providers is allowed;
- Time consuming second and third opinion process prior to IMR;
- Training and re-training of claims staff, nurses and property management staff;
- Developing working partnership between claims staff/nurses and network providers;

Challenges particular to California



- Due to difficulty contracting with individual hospitals, you may be required to contract with hospital network;
- Initial reluctance of providers to participate in MPNs due to the “rumor mill”;
- Difficulty contracting with required number of providers for all service areas requiring use of consultants and related costs of this additional service;
- 30 day notification to all employees prior to implementation
 - Absorption of new operations
 - Providing information to newly hired employees



Apportionment in California

The good, the bad and the UGLY...
Not necessarily in that order!



Apportionment in WC



- Apportionment exists in nearly every jurisdiction in one form or another;
- Some states allow apportionment only to ppd;
- Others allow you to apportion to a prior condition regarding payment of ttd and medical care (temporary aggravation);
- California has had apportionment...BUT largely in name only !

Apportionment



- The Bad
 - Pre SB-899 there were 3 statutes that dealt with apportionment;
 - Labor Code §§ 4663, 4750 and 4950.5;
 - Apportionment was only to disability;
 - Actually getting apportionment granted was very difficult due to case law that made the burden of proof nearly impossible to overcome.

Apportionment



- The Bad
 - The biggest frustration was the concept of “self rehabilitation”;
 - Prior industrial injury that resulted in 15% ppd awarded;
 - Works for another employer with injury some years later to the same body part;
 - You would assume that previous 15% would be apportioned...but NO...
 - The doctors state that the claimant was completely physically rehabilitated during that time...
 - But, no need to reimburse the prior employer now that the disability no longer exists!

Apportionment



- The Bad
 - For all intents and purposes apportionment was not a viable concept in California prior to the passage of SB-899;
 - Even if you had the criteria that allowed apportionment under the law, the doctors and judges never really understood the concept of apportionment to disability!

Apportionment



- The Good
 - Effective April 19, 2004, the three previously mentioned Labor Code sections were repealed and Labor Code §4663 was enacted;
 - The section has changed the definition of apportionment from one of disability to one of causation...note that this is not causation of *the injury* but causation of *the disability*;
 - This section also imposes a duty on the injured worker to disclose any prior permanent disabilities or impairments, upon request of the claims staff.

Apportionment



- The Good
 - In addition to the change in definition, there was an additional section added that allows for credit for prior WCAB awards of permanent disability;
 - A conclusive presumption was enacted [L.C. §4664(b)] that provides that any prior percentage of disability awarded is still in effect and will be deducted from any subsequent award to the same body region...no more “self rehabilitation”;
 - Also, they eliminated the possibility that ppd cannot exceed an aggregate of 100% for any region of the body over the life of the claimant.

Apportionment



- The Good
 - The regions of the body were divided into 7 areas:
 - Hearing
 - Vision
 - Mental behavior disorders
 - The spine
 - The upper extremities, including shoulders
 - The lower extremities, including hip joints
 - The head, face, cardiovascular system, respiratory system and all other systems or regions not listed above, inclusive

Apportionment



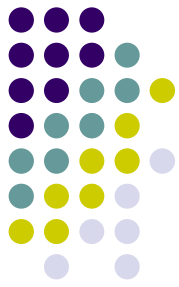
- The Good
 - Some early case law reinforced the statutory changes on apportionment
 - Key vs. WCAB – first ppd award of 42¾ % was subtracted from subsequent 100% award; applicants request for Writ of Review denied;
 - Nabors vs. Piedmont Lumber & Mill Co. – clarified the issue in Key and determined that the amount of ppd due is calculated by determining the overall *percentage* of disability and subtracting the *percentage* of disability caused by other factors, including prior awards (more discussion in a moment);

Apportionment



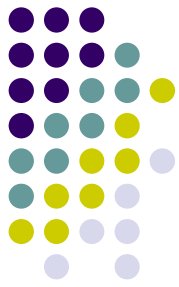
- The Good
 - Several other cases upheld the intent of §4663:
 - Diggle vs. Sierra Sands Unified School District – panel decision that Nabors decision was controlling;
 - Sanchez vs. County of Los Angeles – en banc decision that states that prior disability percentages are subtracted from current disability and there can be no more than a cumulative 100% ppd of any body region.

Apportionment



- The UGLY
 - The Dykes case (E&J Gallo vs. WCAB) –
 - This case is a Fifth District Court of Appeal case that effectively overruled the WCAB's en banc decision in Nabors by changing the method for compensating an injured worker with a prior established percentage of ppd and a subsequent new injury!
 - In this case the WC judge subtracted the amount of money the claimant had received for his prior award rather than subtracting the percentage of disability as in Nabors, Strong and Sanchez;
 - The employer made the argument that the percentage should have been deducted;
 - Even though in the Nabors case the WCAB held that subtraction of the percentage was correct, in this case they affirmed the decision of the judge!

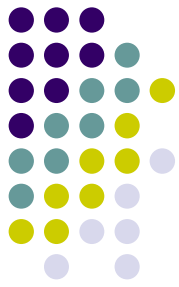
Apportionment



- The UGLY

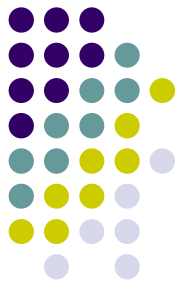
- The DCA discussed 3 formulas that could be applied based on the Fuentes case:
 - A. Subtraction of the *percentage* of the prior disability;
 - B. Determine the percentage of the overall disability that was caused by the most recent injury and multiply that against the full disability figure to determine the number of weeks payable for that percent of disability after application of that formula;
 - C. Subtraction of the *monetary* value of the prior percentage of disability (industrial or non-industrial) from the total *monetary* value of the aggregate disability.

Apportionment



- The UGLY
 - The DCA concluded that:
 - “Only formula C ensures both that an employee is adequately compensated and that the employer is directly liable for the percentage of disability directly caused by the injury arising out of the employment.”

Apportionment



- The UGLY
 - The case was appealed to the California Supreme Court;
 - The Supreme Court denied a petition to review the Dykes case thus affirming that it is correct to allow the monetary amount from a previous disability as opposed to the percentage to be subtracted from the new disability.
 - This was supposed to be very specific regarding a prior injury with the same self-insured employer but, many judges are applying this to prior injuries with a different employer!

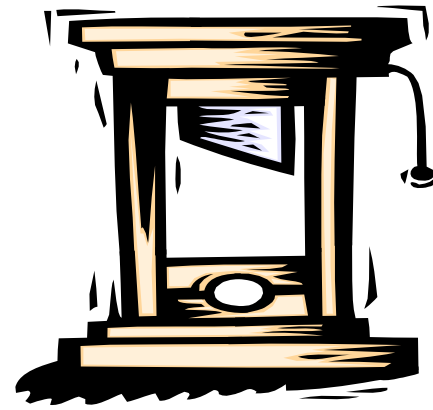
Apportionment



- **The UGLIEST!!!**

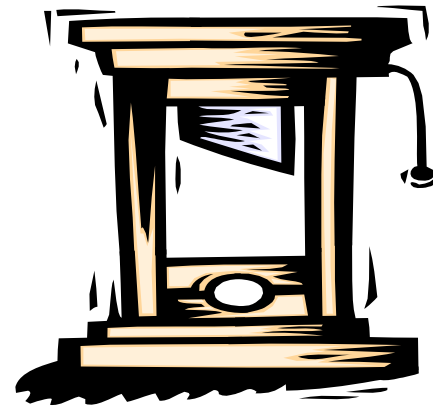
- On June 8, the First Appellate District reversed the Nabors decision and remanded it back to the trial level!!!
- The court found that the formula used in Dykes also applies to Nabors;
- Employers were hoping the DCA would uphold the original decision to force a showdown in the Supreme Court;
- This is a tragic loss for employers who will likely see rate increases as a result;

Apportionment



- **The UGLIEST!!!**
 - Nabors attorneys argued that the WCAB was incorrect and that subtracting percentages as opposed to dollars shortchanged ppd awards;
 - The decision, in a pertinent part, says:
 - “The Dykes court focused its inquiry on which formula best reflects the Legislature’s intent, not...on its own notion of ‘fairness’, a word that does not even appear on the cited page of the opinion”, the court says.
 - They held that “formula C” was the correct method of calculating Nabors permanent disability benefits!

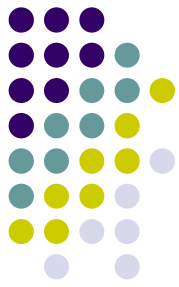
Apportionment



- **The UGLIEST!!!**

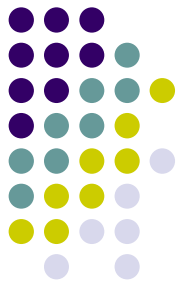
- How does this impact the costs?
 - 10-1-97 injury with an award of 17% = \$9,320
 - 2-4-05 injury to same body region with PPD of 46% = \$53,460
 - Under Nabors (pre-June 8, 2006) we would owe the difference of 46% - 17% = 31% = **\$30,360**
 - Under Dykes and current Nabors we now owe the difference of \$53,460 - \$9,320 = **\$44,140 !!!**
 - ***A difference of \$13,780...***
- While we are still getting something of an offset, the question remains...is this really what the legislature intended?

Apportionment



- **BUT WAIT...Brodie vs. WCAB !!!!!**
 - On August 30 the 1st Appellate District (same district as Nabors but different division) provided a different spin on how to calculate apportionment!
 - Reversed the WCAB and issued an award consistent with the Appellate decisions in Nabors & Dykes, but with a different spin!
 - In this case the DCA determined that the subtraction method using dollar values was the correct methodology but...

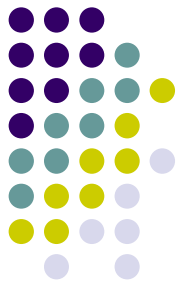
Apportionment



- **Brodie vs. WCAB**

- This court deducted the value of the prior award of ppd based on the current rates in effect rather than the rate that was in effect at the time of the prior ppd award.
- This is a more employer friendly interpretation but still leaves the combined value intact that will increase benefits for injured workers to include life pension.
- There are still several more cases that are pending at the court of Appeals so the games will certainly continue!

Apportionment



- What is next?
 - Questions still exist
 - What about a C&R that notes the region of the body but not the percentage...can apportionment be taken off of the medical reports or must an “award” define the percentage?
 - What about a CT that lists several regions, will the medical evidence dictate what percentage of disability exists for each body region?
 - What about permanent disability awards from other jurisdictions or venues...will a VA award or a ppd award from another state meet the criteria for a prior disability?
 - Time will tell how our slightly schizophrenic WCAB and DCA’s will continue to deal with these challenges.

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