

# Injury Management

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OF THE NORTHWEST – A DIVISION OF  
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# Cost Related to Worker Compensation Injuries



- **NIOSH estimates \$200 Billion annually.**
- **Dollars spent on injury, fraud, indemnity, cost management, lost time, and rehabilitation.**
- **Average cost of back injury requiring surgery is \$78,000.**
- **Average cost of same back injury under Jones Act is \$750,000.**
- **Cumulative Trauma for one upper extremity can cost \$55,000.**

# What Are Ways of Reducing This Cost



- **Drug Screen**
- **Post-Offer Pre-Placement Physical Exam**
- **Work Screen - Job specific FCE**
- **Case Management Once Injury Occurs**
- **Early Diagnosis**
- **First Aid vs. OSHA Recordable**
- **Treatment of Injury**
- **Physical Therapy**
- **MMI and Close Claim**

# POST-OFFER PRE-PLACEMENT PHYSICAL EXAM



- Title 1 of the Americans with Disabilities Act (ADA) of 1990 limits the employer's ability to conduct a disability-related inquiry or medical examination prior to an offer of employment.
- The ADA does not prohibit an employer from establishing job-related qualification standards post-offer including:
  - 1. Physical requirements necessary for performing the job.
  - 2. No established history of a medical problem that could pose an imminent threat to the employee or others.

# Post Offer Pre-Placement Physical Exam



- The employer cannot use qualification standards to screen out individuals unless the standards are shown to be job-related and consistent with business necessity.**
- The Employer may exclude an individual with disabilities if that individual poses a direct threat (significant risk of substantial harm) that cannot be reduced or eliminated through reasonable accommodation. (29 CFR Part 1630, App. 1630.15(b))**

# Post Offer Pre-Placement Physical Exam



- **The employer must then consider whether there is a reasonable accommodation that will enable an otherwise qualified individual with a disability to work.**
- **29 CFR 1630.2p.2ii,iii refers to reasons one cannot accommodate a disability**

# Post Offer Pre-Placement Physical Exam



- Undue hardship because of financial strain usually will be contested; average cost of accommodation is \$660
- More solid reason is that accommodation will fundamentally alter Employer's operation (29 CFR 1630.15(d))

# ADA



- Title one prohibits discrimination against qualified individuals with a disability. However, one is not in violation of the act if an individual with a disability cannot perform the essentials of the job function**
- If individual fails the Post-Offer Pre-Placement Physical Exam, the failure is not due to his/her disability but simply to the fact that he/she cannot perform the essential functions of the job consistent with business necessity.**

# The Examination Process



- **History**
- **Physical Exam**
- **Laboratory**
- **Imaging Studies**
- **Work Screens – Job Specific FCE**
- **Summary of Findings**

# Medical History



- **49 CFR 391.45**
- **Safety Sensitive Positions**
- **Can screen out individuals who pose a safety threat in the work environment.**
- **IDDM, Seizures, Cardiovascular Abnormalities, Cerebral Vascular Accidents, Uncontrolled Hypertension, Mental Disorders, Vision Problems, Medications, Significant Hearing Loss.**

# Physical Exam



- **General Appearance**
- **Mental Status**
- **Head, Ears, Eyes, Nose, and Throat**
- **Neck**
- **Chest**
- **Heart**
- **Abdomen**
- **Genitourinary System**
- **Spine**
- **Extremity**
- **Neurological**

# Laboratory



- **Urine Dipstick to evaluate for blood, glucose, kidney problems, infections**
- **Drug Screen. An individual who currently uses illegal drugs is NOT a qualified individual with a disability and does not fall under the protection of the ADA.**

# Imaging Studies



- **Chest x-ray**
- **Cervical (Neck) x-ray**
- **Lumbar (Back)x-ray**
- **Screening MRI / CT**

# Work Screen



- **Evaluates strength, endurance, and flexibility**
- **Based on Job Analysis**
- **Treadmill endurance**
- **Lifting requirements**
- **Kneeling, crawling, bending, stooping**
- **Grip strength**
- **Ladder climbing**

# Summary of Findings



## **Examinee has:**

- No limitations noted.**
- Limitations with Recommendations.**
- Limitations until Defect(s) Corrected.**
- Passes or Fails Work Screen Test.**

# OSHA Recordable



- **The Federal Occupational Safety and Health Act of 1970, states that records regarding injuries, illnesses, and deaths have to be recorded at the work place. (29CFR part 1904)**
- **Employers may rely on Physicians or Licensed Health Care Professionals for input, but ultimately it is the Employer's responsibility and accountability for OSHA Recordkeeping decisions**

# OSHA Recordable



- **OSHA performs around 250 audits per year.**
- **Most of the audits are triggered by employee complaints.**
- **There is a Recordkeeping National Emphasis Program (NEP) underway that will be completed by September 30,2010 to assess employer underreporting.**
- **OSHA will target employers who report low injury rates in industries that historically have high injury rates.**

# OSHA Recordable



- **Several hundred sites will be included in NEP.**
- **2007,2008 records will be reviewed.**
- **Though the data collected is ostensibly for analysis, this is an ENFORCEMENT ACTION.**

# Recording a Case on the Log



- Is there a Case?**
- Is the Case work related?**
- Is the Case a new case?**
- Does the Case meet one of the specific severity criteria?**

# What is a Case?



- **A case is defined by OSHA as an abnormal condition or disorder experienced by the worker.**
- **Abnormal conditions are physical (swelling, ecchymosis, decreased range of motion, redness) or subjective (pain, headache).**
- **Further investigation and analysis required to determine if condition is a recordable.**

# Is the case work related?



- 1. Geographic presumption: occurred in the work environment.**
- 2. Work contribution: if an event or exposure in the work environment contributed to the Case, pre-existing condition(s) are work related only if the condition is significantly aggravated by an event or exposure at work.**

# Work Relationship Exceptions



- 1. Worker is present in the work environment as a member of the general public.**
- 2. Symptoms surface at work due to non work related event or exposure.**
- 3. Due to voluntary participation in a wellness program, fitness, or recreational activity.**
- 4. Due to eating, drinking, or preparing food for personal consumption.**

# Work Relationship Exceptions



- 5. Due to personal tasks on company premises performed outside assigned working hours.**
- 6. Due to personal grooming, self-medication for a non work related condition or intentionally self-inflicted injury or illness.**
- 7. Motor vehicle accident in the company parking lot or access road during commute to or from work.**

# Work Relationship Exception



- 8. Common cold or flu.**
- 9. Mental illness, unless the employee volunteers a written opinion issued by a Psychiatrist, Psychologist, or Psychiatric Nurse Practitioner that states the condition is work related.**

## Is the Case a new Case?



- **There is no recorded injury or illness of the same type that affects the same part of the body**
- **The employee had a previously recorded injury or illness of the same type that affects the same body part but had recovered completely; and then an event or exposure in the work environment caused the signs or symptoms to reappear.**

# Does the Case Meet One of the Specific Severity Criteria?



- **Death**
- **Days away from work**
- **Days of restricted work activity**
- **Job Transfer/Re-classification**
- **Medical Treatment**
- **Loss of consciousness**
- **Significant diagnosed work related injury or illness**

# First Aid Exemptions



- 14 treatments are considered FIRST AID and exempt (all other treatments are recordable):**
  - 1. Nonprescription medication at nonprescription strength**
  - 2. Tetanus immunization**
  - 3. Cleaning, flushing, soaking, surface wounds**
  - 4. Wound coverings, butterfly bandages, Steri-strips**

# First Aid



- 5. Hot or cold therapy**
- 6. Non-rigid means of support**
- 7. Temporary immobilization device used to transport accident victims**
- 8. Drilling finger nail or toe nail, draining fluid from blister**
- 9. Eye patches**

# First Aid



- 10. Removing foreign bodies from eye with only irrigation or cotton swab**
- 11. Removing splinters/foreign material from areas other than eyes by irrigation, tweezers, cotton swabs or simple means**
- 12. Finger Guard**
- 13. Massage Therapy**
- 14. Drinking fluids to relieve heat stress**

# Case Management

## Focus on Return to Work



- **1911- State of Washington enacted Industrial Insurance law to protect workers and employers.**
- **1937-Worker Compensation law made work place injury “no fault” insurance program that covered occupational diseases as well.**
- **1971-Legislature expanded coverage to all classifications of employment in the state, not just the most hazardous.**

# Worker Compensation Insurance



- **Washington’s Department of Labor and Industry covers 151,000 Employers and 1.7 million workers.**
- **There are 400 large Employers that are self-insured that account for the remaining third of the state’s workforce.**
- **Small percentage of workers are covered under Longshore and Harbor Workers Act.**

# Costs of Claims



- National average of one back injury that leads to surgery is \$78,000.
- Jones Act- Same back injury that occurs over federal water will cost up to \$750,000.
- Cumulative Trauma of the upper extremity can cost up to \$55,000.
- Amputation of little finger at the DIP joint, the injured worker shall receive compensation of \$972 (Medical Examiner Handbook, Department of Labor and Industry).

# Case Management



- **Injury/illness evaluated and treated.**
- **Aggressive utilization of diagnostic tests to evaluate for red flags.**
- **Advise if injury/illness is OSHA recordable for self insured employers.**
- **Initiate an L&I claim if employer is covered by State Fund; unless the injured worker specifically directs the physician not to report it under title 51.**
- **If the injury is not catastrophic and is stable, can patient return to work with or without restrictions?**

# Case Management



- **Identify risk factors to prevent long term disability.**
- **Patients who have been off work for 3 month will have a 50% probability that they will be off work for 1 year.**
- **It's imperative to obtain the right diagnosis and address the return to work needs as quickly as possible (within the first month of injury).**

# Claim Management



- The best treatment for an injured worker is return to work in either a modified format or full duty. This fosters less dependency on treatment and allows the worker to feel valued and self-confident.**
- Have appropriate follow up care from 2-14 days post injury.**
- Has there been significant improvement in weeks 2-4?**

# Claim Management



- High risk of disability should be addressed at weeks 8-12 if no significant improvement. (though red flags can be detected before this time period). This includes any other diagnostic tests, specialist referrals, full FCE, Vocational Rehabilitation, Independent Medical Examiner, etc.**
- When patient is deemed stable and no further medical care can improve the condition, he/she is determined to be at Maximum Medical Improvement (MMI).**

# Treatment Endpoints



- **Employee able to work, though his/her subjective complaints and objective findings may wax and wane over time.**
- **By law, cases are closed when MMI is reached and the patient's condition is fixed and stable.**
- **Palliative and maintenance care is not paid for once the patient reaches MMI.**
- **Some cases may be awarded permanent partial disability otherwise known as settlements based on impairment ratings when MMI is reached.**
- **Re-opening claim is based on proof that the condition has worsened or been aggravated since the claim has been closed.**

## Case Example as reported by Ann Kensy



- **A nurse in her mid thirties presents with complaint of neck pain after transferring a patient.**
- **Initial evaluation in the emergency room. Employee then had Chiropractic treatment 3x week for 2 months, x-rays, prescription medication.**

# Case Example



- **Medical Reserve for treatments and diagnosis equaled \$3,000.**
- **Indemnity Reserve was \$3,200.**
- **Employee has not been back to work because physician has not released the patient to full duty. Now has complaints of upper back pain.**
- **MRI done after 2 months which was negative for disc herniation .**

# Case Example



- Independent Medical Exam was scheduled which resulted in advising Employee to not lift more than 5 pounds. Employee advised to start Physical Therapy, and have a Neurologist consultation.**

# Case Example



- **Neurologist allows Employee to return to work but with the restrictions of no lifting greater than 25 pounds.**
- **On the third day of modified duty after more than 3 months off, Employee claims to have aggravated her injury while transferring a client. Employee was not supervised.**
- **New MRI shows a herniated disc.**

# Case Example



- **Neurosurgeon evaluates case and is granted surgery where a discectomy was recommended.**
- **Employee declines surgery and elects to have conservative treatment for another 2 years.**
- **Costs at this point:**
  - Medical: \$49,354**
  - Indemnity: \$104,000**

# Case Example



**Case Settled for \$320,000**

# Case Example



- **Nurse who is 42 years old has complaint of lower back pain after transferring a client.**
- **Employee treated by physician with appropriate therapy and diagnostic test.**
- **Employee returned to modified duty and was supervised by head nurse.**
- **Employee returned to full duty after 1 month.**

# Case Example



**– Cost of claim:**

**Medical: \$4,092**

**Indemnity: \$2,500**

**File closed with return to full duty.**

# SUMMARY



- **Post-Offer: Drug Test + Physical + Work Screen**
- **Prevention**
- **Pro-Active + Communicate**
- **Establish with Occupational Medicine Center**
- **Aggressive Diagnosis + Treatment/Rehab**
- **Modified Work – Avoid Time Loss**
- **Manage and Close Claim**

Keep your eye on the ball...



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# Don't freak out...



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and Keep Smiling... because



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# We're in this together!



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