The Medical Impairment Rating Registry

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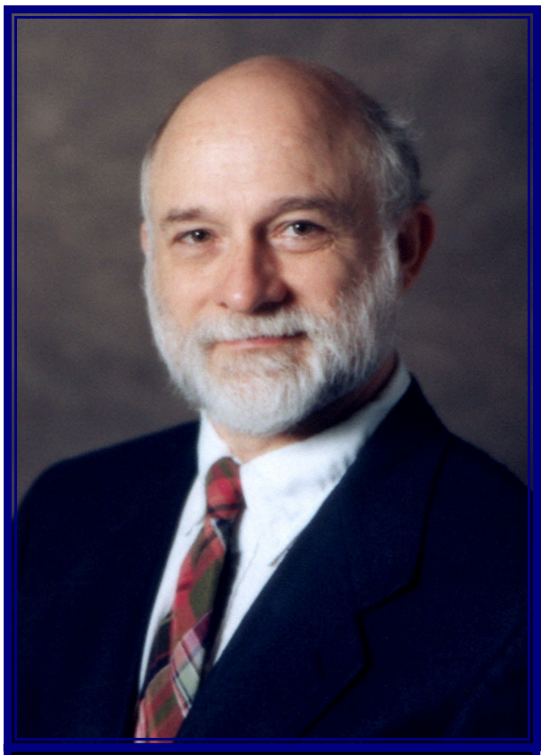
MIRR PHYSICIAN SPOTLIGHT
McKinley S. Lundy, D.O., M.P.H.

Dr. McKinley S. Lundy has been an advisor, member, and instructor for the Medical Impairment Rating Registry since the program's inception. He has practiced Occupational and Environmental Medicine since completing his residency in 1991.

Although his first training in performing impairment ratings was in 1984, he did not begin performing IMEs on a regular basis as part of his practice until 1994. Since then he has performed more than 2000 IMEs. He has also instructed physicians on performing IMEs and the IME Physical Exam.

Dr. Lundy is board certified in Occupational Medicine by the American Board of Preventive Medicine. He is past President of the Tennessee College of Occupational and Environmental Medicine and a Fellow of the American College of Occupational and Environmental Medicine. He is



McKinley S. Lundy, D.O., M.P.H.

also a Fellow of the American Academy of Disability Evaluating Physicians and recently completed serving six years on their Board of Directors. Dr. Lundy is certified in performing IMEs by the

MIRR PHYSICIAN SPOTLIGHT
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"Dr. Lundy is certified in performing IMEs by the American Board of Independent Medical Examiners (CIME) and is also Certified in Evaluation of Disability and Impairment Ratings (CEDIR) by the American Academy of Disability Evaluating Physicians."

American Board of Independent Medical Examiners (CIME) and is also Certified in Evaluation of Disability and Impairment Ratings (CEDIR) by the American Academy of Disability Evaluating Physicians. He is a member of the American Medical Association, Tennessee Medical Association, and the Chattanooga – Hamilton County Medical Association. He currently is employed by Erlanger Medical Center in Chattanooga, Tennessee, as Medical Director for Workforce Corporate Health.

Dr. Lundy was born in Montgomery, Alabama, but soon thereafter moved to Mississippi. He spent his adolescence and most of his childhood in the Mississippi Delta. After attending Rhodes College in Memphis, Tennessee, he transferred to the University of Mississippi College of Pharmacy where he received a BS in Pharmacy and won the Pharmacognosy Award.

After graduation he became a registered pharmacist and became a member of the teaching faculty of the University of Mississippi College of Pharmacy as a community pharmacy preceptor. After working for two years as a pharmacist, both as a community pharmacist and a hospital pharmacist, he attended the University of Medicine and Biosciences in Kansas City, Missouri and received his degree in 1979. He continued his training there completing a flexible internship at the Center For Health Sciences. Dr. Lundy then came to Tennessee and completed three years residency in Internal Medicine with the University of Tennessee at Erlanger Hospital in Chattanooga.

After completing his residency Dr. Lundy practiced as a general internist in a rural setting for six years. Dr. Lundy had a very active hospital, office, and nursing home practice. While practicing in the Texas panhandle, he grew weary of late nights and early mornings in the intensive care unit and emergency department. He was the only physician on staff with training in temporary pacemaker placement, ventilator management and Swan Gantz catheterization. He left his internal medicine practice pursuing a residency in Occupational and Environmental Medicine with the University of Oklahoma Health Sciences Center. While at the University of Oklahoma he also earned his Master of Public Health in Environmental Health with emphasis in Occupational Medicine and served as Chief Resident in Occupational Medicine in his last year of residency.

The TDLWD is an equal opportunity employer/ program; auxiliary aids and services are available upon request.

Nonverifiable Back Pain:

A Real Pain in the Back.

By J. Edward Blaisdell

> **"There is a category of patients who present with persistent pain and 'nonverifiable' radicular complaints [. . .] that are documented repeatedly after an identifiable injury. These patients have no objective findings and, therefore, are often given a diagnosis of 'chronic sprain/strain' or 'non-specific' back or neck pain. The current methodology allows these patients to be rated in impairment class 1, with a range of impairment ratings from 1 to 3% whole person impairment (WPI). The percentage impairment within that range depends on functional assessment, since there are no reliable physical examination or imaging findings in this group."**
>
> ***AMA Guides, 6th Edition,* Page 563**

A source of some confusion in the *AMA Guides, 6th Edition* is the diagnosis of "Non-specific chronic, or chronic recurrent low back pain (also known as chronic sprain/strain, symptomatic degenerative disc disease, facet joint pain, SI joint dysfunction, etc.)," which is on the Lumbar Regional Grid (Table 17-4) on page 570. A version of this diagnosis is also offered on the Thoracic and Cervical Regional Grids. Please see the text on page 563 under "General Considerations" (Framed in blue here above).

The evaluator should make this diagnosis only when other diagnoses in table 17-4 do no apply and yet the patient has significant ongoing pain. The Physical Examination (GMPE) and Clinical Studies modifiers (GMCS) are considered unreliable because they are unremarkable and yet the patient presents repeatedly, consistently, believably, over a period of time, with pain. Since the unremarkable GMPE and GMCS Grade Modifiers do not apply, they should be totally excluded from the grading process, and any net adjustment, according to the above text, must come solely from the Functional History Grade Modifier (GMFH).

The evaluator might choose to use the Pain Disability Questionnaire (PDQ) and Table 17-6 on page 575 to determine the Functional History Grade Modifier (GMFH). To determine the reliability of this Functional History, evaluators often cite page 572: "If the grade for Functional History differs by two or more grades from that described by Physical Examination or Clinical Studies, the Functional History should be assumed to be unreliable." However, with a non-specific chronic back pain diagnosis, since, by definition, there are no applicable Physical Evaluation (GMPE) or Clinical Studies (GMCS) Grade Modifiers, this rule on page 572 would not be applicable. Rather, the evaluator would rely exclusively on professional judgment to deter-

"The Physical Examination (GMPE) and Clinical Studies modifiers (GMCS) are considered unreliable because they are unremarkable and yet the patient presents repeatedly, consistently, believably, over a period of time, with pain."

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mine the reliability of any Functional History (GMFH) formulated with the PDQ or any other valid functional assessment scale tool. Alternatively, using table 17-6, the evaluator can use professional judgment to choose a GMFH without using the PDQ.

Please note that whenever you use the diagnosis of "Non-specific chronic, or chronic recurrent low back pain," you will never have an impairment rating of 1% Whole Person Impairment (WPI). The only possible impairments are 0% , 2%, and 3% WPI. If the evaluator chooses "0" for the Functional History Grade Modifier (GMFH) based on table 17-4 on page 570, indicating no pain, then the appropriate impairment class must be "Class 0," and the impairment rating must be 0% WPI. On table 17-4, you will notice that the only impairment classes available for this diagnosis are "Class 0" and "Class 1." When using Impairment Class 1, the Function History Grade Modifier (GMFH) must be a 1,2,3 or 4 (otherwise, choose "Class 0"). Therefore, the impairment rating itself, when using "Class 1," must be either 2% or 3% WPI, after the application of the net adjustment formula. On table 17-4, the default value (Grade C, indicating no net adjustment) is 2% WPI. A net adjustment of plus one (+1) or higher yields an impairment rating of 3% WPI.

Please take special care to totally exclude the GMPE and GMCS from the net adjustment formula rather than entering the value of zero (0) for each of them. On your MIR Report, the most appropriate value is "N/A" or "not applicable for this diagnosis per page 563." If you enter a zero (0) for the GMPE or GMCS, then your impairment rating will be incorrect.

Also, when entering the value of the Functional History (GMFH) under "STEP 3 DISCUSSION" of your MIR Report template on page 10, please make sure you enter the modifier itself and not the adjustment made by the modifier. You will have the opportunity to list the adjustment caused by the GMFH in the section "NET ADJUSTMENT FORMULA, IF APPLICABLE."

Finally, please be aware of apparent inconsistencies of the *AMA Guides* concerning this diagnosis. While the text on page 563 states that this diagnosis should be used when there are "no reliable physical examination or imaging findings," the example on page 589, "17-12 Recurrent Low Back Pain Without

"Whenever you use the diagnosis of 'Non-specific chronic, or chronic recurrent low back pain,' you will never have an impairment rating of 1% Whole Person Impairment (WPI)."

Medical Impairment Rating Registry

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Objective Findings," assigns a GMPE of 1 and a GMCS modifier of 0, as if the physical evaluation and clinical studies were reliable. Please do not make this mistake. By definition, and according to the text on page 563, you select this diagnosis only when, due to the marked discrepancy between repeatedly documented pain and no objective findings (a.k.a. unremarkable findings), the physical examination and clinical studies are deemed unreliable. Therefore, as with all unreliable modifiers, they should be totally excluded from the grading process and the evaluator should "depend on functional assessment."

Since the evaluator must depend on a reliable Functional History (GMFH) to assert that unremarkable physical examination (GMPE) findings and clinical studies (GMCS) are unreliable, rarely if ever should you find yourself in a situation where all three modifiers are deemed unreliable. If you feel the PDQ score is unreliably high, please consider simply choosing a value for the GMFH based on table 17-6 instead of excluding the modifier from the grading process altogether. Otherwise, if the patient's claims concerning pain are totally unreliable, then the evaluator should consider either another diagnosis or assigning an impairment class of zero (0) and therefore 0% WPI.

The Workers' Compensation Division is well aware that "Example 17-12" on page 589 includes the GMPE and GMCS in the grading process for this particular diagnosis, and while this example might create enough ambiguity in the *Guides* to legally defend this practice of inclusion, the Division and its affiliated instructors unanimously refer to page 563 and exclude these modifiers from the grading process when choosing the diagnosis of "Non-specific chronic, or chronic recurrent low back pain." If you feel you have reliable physical examination or clinical studies findings, then please choose another diagnosis.

In short, the diagnosis of "Non-specific chronic, or chronic recurrent low back pain" will yield a positive impairment only when you feel the patient's pain, as quantified by the GMFH, is reliable, while unremarkable objective findings, as quantified by the GMPE and GMCS, are felt to be unreliable. If you have any questions, please feel free to contact me at Jay.Blaisdell@tn.gov or 615-253-5616, and I will either try to help you or refer you to a physician who can.

"Please take special care to totally exclude the GMPE and GMCS from the net adjustment formula rather than entering the value of zero (0) for each of them."

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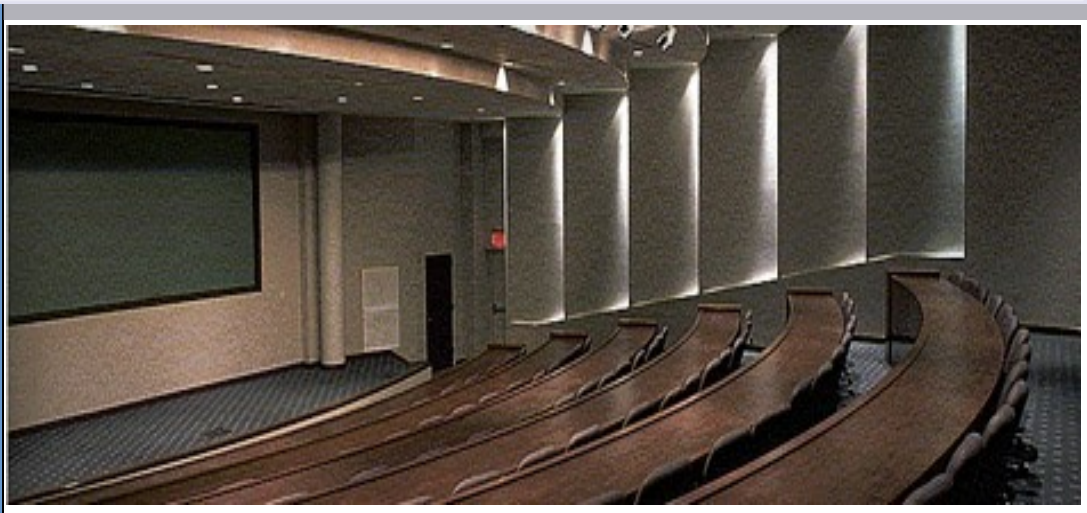
Impairment Evaluation Seminar *AMA Guides, 6th Edition*, April 6-7

By J. Edward Blaisdell



The Medical Impairment Rating Registry (MIRR), along with Nashville Orthopedist David W. Gaw, M.D., will be sponsoring a Medical Impairment training seminar on April 6-7, 2013 (Saturday and Sunday) at the Gladys S. Owen Education Center at Baptist Hospital in Nashville. This seminar meets the training requirements for those physicians who wish to be eligible to join the MIRR Program's 6th Edition Registry. If you are a member of the 5th Edition Registry, but not the 6th, or if you would like to simply hone your knowledge of the *AMA Guides, 6th Edition*, please see the brochure attached to the e-mail that delivered this newsletter or call us at 615-253-1613 if you have any questions. I hope to see you all there. Please note that the attached brochure itself is incorrect in one important respect: This seminar, while meeting training requirements to join the MIRR and offering CLE credit, will not offer CME credit.

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GOVERNOR'S REFORM BILL LEAVES MIR PROGRAM INTACT.

By Josh Baker

Tennessee Governor Bill Haslam has made workers' compensation reform a priority for this legislative session. Under the Governor's bill, which is entitled "The Workers' Compensation Reform Act of 2013," the Medical Impairment Rating (MIR) Program will continue to offer impairment ratings in claims where the degree of the employee's permanent medical impairment is disputed by the parties.

Also, the opinion provided by the MIR Registry physician through the MIR Program will continue to carry the same presumption of accuracy. Accordingly, the MIR Program will not change if the bill is passed.

While the Governor's bill will not affect the MIR Program, some areas of the workers' compensation law related to medical care will change. These changes will affect all physicians providing care for patients who have suffered workers' compensation injuries. For example, the bill will alter the current physician panel provision process by eliminating the requirement of providing panels containing additional physicians in cases where the employee's injury requires the need for treatment from an orthopedist, chiropractor or neurosurgeon. Under the reform bill, all physician panels will include only three physicians, chiropractors or specialty practice groups in all cases.

Also, the reform bill will allow the treating physician to make referrals to a specific specialist when surgery is necessary. The treating physician's referral will stand unless the employer provides an alternate panel of surgical specialists within three business days of being notified of the referral. Under the current law, the employer has the right to provide a panel whenever there is a referral for surgery.

Under the Governor's bill, the authorized treating physician will continue to provide an impairment rating for the injured worker. However, the treating physician's opinion on impairment will carry a presumption of accuracy that can be overcome by the presentation of contrary evidence that satisfies a preponderance standard. Under current law, there is no presumption attached to an impairment rating provided by the treating physician.

The Governor's bill will also make changes to how impairment ratings are determined. Current Tennessee workers' compensation law provides for the assignment of an impairment rating based on a specific number of weeks when the injury suffered by the employee is to a scheduled member such as an arm or leg. After the reform, all impairment ratings will be based on a percentage of impairment to the body as whole; scheduled member injuries will no longer be rated separately.

The Tennessee Workers' Compensation Reform Act of 2013 will provide needed changes to the workers' compensation law that should result in greater efficiency and an improved workers' compensation system for all participants. For additional information about the Governor's reform bill including a complete copy of the text, please visit the Tennessee General Assembly's website, located at http://www.capitol.tn.gov/, and enter "SB0200" or "HB0194" under the "Find Legislation" portion of the webpage.