

MHS22

MEDICAL & HEALTH SYMPOSIUM • APRIL 7-9



What Does That Mean? Legal Terms in a Medical World

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Learning Objectives:

1. Identify the legal definition, meaning, and practical implications of various terms of art in the Ohio workers' compensation system.
2. Describe "maximum medical improvement" and "supportive care" as those terms are set forth in Ohio Administrative Code 4121-3-32 and clarified by subsequent case law.
3. Recognize the legal issues regarding such terms as "injury," "occupational disease," and "causality," and their relationship to the allowance of specific medical conditions in an Ohio workers' compensation claim.

Ohio Workers' Compensation Applicability

Ohio Revised Code § 4123.54(A)

- “(A) . . . every employee, who is injured or who contracts an occupational disease in the course of [and arising out of] employment . . . is entitled to receive . . . compensation for loss sustained on account of the injury [or] occupational disease . . . and . . . medical, nurse, and hospital services and medicines . . . ”

Injury

Ohio Revised Code § 4123.01(C)

- “(C) ‘Injury’ includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment...”
- The work related-injury may be sudden or gradual.

Injury

Sudden

- **Physical Injury:** Any traumatic damage or attack on the physical structure of the body, which results in a wound, tear, or abnormal condition.

Gradual

- **Cumulative Injury:** An injury developing gradually over time as a result of the performance of an injured worker's job-related duties.
- **Repetitive Motion Injury:** A family of muscular conditions resulting from repeated movements performed in the course of normal work activities, usually the result of unnatural or awkward motions such as twisting the arm or wrist, overexertion, incorrect posture, or muscle fatigue.

Injury

Ohio Revised Code § 4123.01(C)

- “(C) . . . ‘Injury’ does not include:
 - (1) Psychiatric conditions except where the claimant's psychiatric conditions have arisen from an injury or occupational disease sustained by that claimant or where the claimant's psychiatric conditions have arisen from sexual conduct in which the claimant was forced by threat of physical harm to engage or participate;
 - (2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;

 - (4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. . .”

Occupational Disease

Ohio Revised Code § 4123.68

- “Every employee who is disabled because of the contraction of an occupational disease or the dependent of an employee whose death is caused by an occupational disease, is entitled to . . . compensation [and medical benefits] . . . ”
- Occupational disease claims may be scheduled or non-scheduled.

Occupational Disease

Scheduled

- **Ohio Revised Code § 4123.68 lists 28 specific occupational diseases**
 - “The following diseases are occupational diseases and [are] compensable as such when contracted by an employee in the course of the employment in which such employee was engaged and due to the nature of any process described in this section.”

Non-scheduled

- **Ohio Revised Code § 4123.68 provides:**
 - “A disease which meets the definition of an occupational disease is compensable pursuant to this chapter though it is not specifically listed in this section.”

Occupational Disease

Ohio Revised Code § 4123.01(F)

- (F) "Occupational disease" means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general.

Ohio Workers' Compensation Claim Allowance

Workers' Compensation Claim = Body Part or Parts

Ohio Revised Code § 4123.84(A), (C)

(A)(1) Written or facsimile notice of the specific part or parts of the body claimed to have been injured [must be] made to the industrial commission or the bureau of workers' compensation [within one year after the injury] . . .

(C) . . . compensation or benefits for loss or impairment of bodily functions developing in a part or parts of the body not specified [in the initial notice may be awarded] if . . . the loss or impairment of bodily functions was due to and a result of or a residual of the injury to one of the parts of the body set forth in the [initial] written notice . . .

Ohio Workers' Compensation Claim Allowance

Allowed Body Parts = ICD-10 Diagnoses

- Body Parts = ICD-10 specific diagnoses, including site and location

Ohio Administrative Code § 4123-6-25(C)(2)

- "[C](2) Diagnosis codes.
Providers must use the appropriate "International Classification of Diseases, clinical modification" codes for the condition(s) treated to indicate diagnoses."

Causality (Causal Relationship)

Diagnosed conditions must be causally related to the work-related injury to be allowed in the claim.

- Causality (causal relationship) is a medical determination that the condition(s) the injured worker is requesting, to a reasonable degree of medical probability (more likely than not):
 - Resulted from the mechanism of injury, or
 - Resulted from, or from treatment for, a previously allowed condition in the claim.

Direct Causation

Direct Causation

- The requested condition is directly and proximately caused by the work-related injury.
- **Proximate cause:** That which, in a natural and continuous sequence, unbroken by any intervening cause, produced the injury, and without which the injury would not have occurred.

Causation by Substantial Aggravation

Causation by Substantial Aggravation

- **Substantial Aggravation:** A medical finding that a condition that pre-existed an injury or occupational disease is worsened considerably in amount, value, or extent solely because of the injury or occupational disease.

Only applies to dates of injury **on or after August 25, 2006.**

Causation by Substantial Aggravation

Ohio Revised Code § 4123.01(C)(4)

- “[((C))(4) . . . [S]ubstantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.”

Causation by Aggravation

Causation by Aggravation

- **Aggravation:** A medical finding that a condition that pre-existed an injury or occupational disease is worsened by the injury or occupational disease and has an adverse impact, no matter how slight.

Only applies to dates of injury **before August 25, 2006.**

Causation by Flow-Through

Causation by Flow-Through

- **Flow-Through Injury**: A subsequent loss or impairment of bodily functions developing in a part or parts of the body not originally alleged, but due to the original injury.

Causation by Flow-Through

- Psychological conditions (unless directly caused by sexual conduct in which the worker was forced by threat of physical harm to engage or participate) must “have arisen from an injury or occupational disease sustained by” the worker.
- Psychological conditions not arising from forced sexual conduct must be causally related to the worker’s allowed physical conditions and not the mechanism of injury.

Dual Causation

Adjudications Before the Ohio Industrial Commission

Memo S9 | Dual Causation

- “. . . dual causation [applies] to the allowance of claims in both injury and occupational disease situations, as well as the allowance of additional conditions in those claims. The standard for these issues is whether the work-related hazard is a proximate cause of the condition(s). If so, it does not matter that other hazards might also be proximate causes of the condition(s). . . .”

Temporary Total Compensation

Ohio Revised Code § 4123.56(A)

- “(A) . . . in the case of temporary disability, an employee shall receive sixty-six and two-thirds per cent of the employee's average weekly wage so long as such disability is total, not to exceed a maximum amount of weekly compensation which is equal to the statewide average weekly wage”

Temporary Total Compensation

- **Total does not mean TOTAL!**
- **What does it mean then?**

Temporary Total Compensation

State, ex rel. Ramirez v. Indus. Comm., 69 Ohio St. 2d 630, 433 N.E.2d 586 (1982)

- “. . . [T]emporary total disability as used in R. C. 4123.56 [is] a disability which prevents a worker from returning to his former position of employment. . . .”
- “R. C. 4123.56 . . .specifically refers to the capability of an employee ‘to return to his former position of employment.’ ‘Position’ is defined by Webster's Third New International Dictionary as ‘the group of tasks and responsibilities making up the duties of an employee.’”

Temporary Total Compensation

Ohio Revised Code § 4123.56(A)

- “(A) . . . [P]ayment shall not be made for the period when any employee has returned to work, when an employee's treating physician has made a written statement that the employee is capable of returning to the employee's former position of employment, when work within the physical capabilities of the employee is made available by the employer or another employer, or when the employee has reached the maximum medical improvement.”

Temporary Total Compensation

Ohio Administrative Code § 4121-3-32(A)(1)

- “[A](1) ‘Maximum medical improvement’ is a treatment plateau (static or well-stabilized) at which no fundamental functional or physiological change can be expected within reasonable medical probability in spite of continuing medical or rehabilitative procedures. An injured worker may need supportive treatment to maintain this level of function.”

Temporary Total Compensation

- **Maximum Medical Improvement DOES NOT MEAN no more treatment!**
- **What does it mean then? What is “supportive treatment” or “supportive care?”**

Temporary Total Compensation

State ex rel. Brown v. Indus. Comm., 10th Dist. Franklin No. 02AP-108, 2002-Ohio-4313

- *“In many cases, treatment is needed to ease pain or maintain function but may or may not provide fundamental functional or physiological improvement . . . Thus, when medical treatments can provide no further functional or physiological improvement, the claimant has reached MMI and cannot receive further TTD compensation, regardless of whether further medical care is necessary and payable in the claim. . . .”*

Temporary Total Compensation

State ex rel. Brown v. Indus. Comm., 10th Dist. Franklin No. 02AP-108, 2002-Ohio-4313

- “. . . the standard for authorizing treatment is not the same as the standard for awarding TTD compensation. *Treatment may be authorized as "necessary" regardless of whether it is expected to result in fundamental improvement.* In contrast, TTD may be awarded only where "fundamental functional or physiological change" is expected from the continuing treatment.”

The Miller Criteria

***State, ex rel. Miller v. Indus. Comm.*, 71 Ohio St. 3d 229, 643 NE 2d 113 (1994)**

- The Ohio Supreme Court adopted a three-part test, now known as the *Miller* criteria, which must be applied in determining authorization of reimbursement for medical services in Ohio workers' compensation claims.
- To authorize reimbursement of medical services, the requested treatment must meet all three criteria.

The Miller Criteria

- Are the medical services reasonably related to the allowed conditions?
- Are the services reasonably necessary for the treatment of the allowed conditions?
- Is the cost of these services medically reasonable?

See Ohio Administrative Code § 4123-6-16.2(B)(1) through (B)(3)

Permanent Total Disability

Ohio Revised Code § 4123.58(A)

- “(A) In cases of permanent total disability, the employee shall receive an award to continue until the employee's death in the amount of sixty-six and two-thirds per cent of the employee's average weekly wage, but . . . not more than a maximum amount of weekly compensation which is equal to sixty-six and two-thirds per cent of the statewide average weekly wage . . .”

Permanent Total Disability

Ohio Administrative Code § 4121-3-34(B)(1)

- “[((B))(1) ‘Permanent total disability’ means the inability to perform sustained remunerative employment due to the allowed condition(s) in the claim(s).”
- “The term ‘permanent’ as applied to disability under the workers' compensation law does not mean that such disability must necessarily continue for the life of the injured worker but that it will, within reasonable probability, continue for an indefinite period of time without any present indication of recovery therefrom.”

Permanent Total Disability

Ohio Administrative Code § 4121-3-34(C)(1)

- “[((C))(1) . . . The medical evidence used to support an application for compensation for permanent total disability is to provide an opinion that addresses the injured worker's physical and/or mental limitations resulting from the allowed conditions in the claim(s). Medical evidence which provides an opinion addressing such limitations, but which also contains a conclusion as to whether an injured worker is permanently and totally disabled, may be considered by a hearing officer. . . .”

Dual Causation

Adjudications Before the Ohio Industrial Commission

Memo S9 | Dual Causation

- “The concept of dual causation does not apply to disability determinations. When adjudicating issues of temporary total disability, permanent total disability, or wage loss, the allowed conditions in the claim must be the disabling condition(s). Other non-allowed condition(s) may be present, but if those conditions contribute to the disability in a way that the allowed conditions are not independently disabling, then disability or wage loss compensation is not proper.”

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Questions?

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