



*Spin the Wheel-  
Permanent Disability  
Edition!!!*

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Presented by

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## VOCATIONAL EXPERTS

- Differences between LC§4660 and §4660.1
- Historical definitions/interpretations of permanent disability; ability to compete/earn in Labor Market
- Permanent Disability Rating Schedule is “Rebuttable”:
  - a. Three ways to rebut schedule (Ogilvie vs. City and County of San Francisco (2009) 74 CCC 1127 (WCAB en banc))
- Legislative intent of SB 863
- LC§5703 – admissibility of vocational expert reports

## ALMARAZ/GUZMAN

- “Pure” *AMA Guide* rating versus “more accurate”;
- Four corners of the *Guides*;
- Statutorily allowed under LC§4660.1(h)
- Requirement of “substantial medical evidence”;
- **Why** is the A/G rating more accurate?
- “Fishing expedition” to create a higher result not allowed

## **PSYCH, SEX, AND SLEEP DISORDERS (LC§4660.1(c))**

- Post 1/1/13 dates of injury;
- No permanent disability if **compensable consequence** of industrial injury;
- Exceptions for psychiatric injuries – PD is recoverable if:
  - a. Direct psychiatric injury;
  - b. “Victim of a violent act or direct exposure to a significant violent act”;  
or
  - c. The physical injury is “catastrophic”.
- LC§4660.1(c) does not preclude entitlement to medical treatment or temporary disability, if industrial.

## **ADD/COMBINE RATINGS (ATHENS vs. KITE (2013) 78 CCC 213)**

- Schedule for rating disabilities pages 1-5 and 1-10;
- *AMA Guide* provisions, page 9;
- “Synergistic effect” justifying adding impairments instead of combining (Kite and progeny);
- “Non-overlap” of impairment justifying adding instead of combining.
- Mathematically absurd?
- Lower-level case law only.

## APPORTIONMENT

- Three areas to cover:
  - a. “Inextricably intertwined”;
  - b. Apportionment of new conditions arising from failed surgery (Hikida vs. WCAB (2017) 12 Cal. App. 5<sup>th</sup> 1249), and
  - c. Apportionment to genetic factors.
- Statutory background: LC§4663 provisions –
  - a. A physician “shall address the issue of causation of PD,
  - b. The report “must include an apportionment determination”, and
  - c. If the physician is unable to include an apportionment determination, the physician shall state why, and
  - d. “The physician shall then consult with other physicians or refer the employee to another physician...in order to make the final determination.”
- “Inextricably intertwined”:
  - Benson vs. WCAB (2009) 70 Cal. App. 4<sup>th</sup> 1535; Lindh (City of Petaluma vs. Lindh) 29 Cal. App. 5<sup>th</sup> 1175.
- Hikida – cannot apportion PD of a new medical condition caused by failed surgery; scope of application?
- Apportionment to hereditary and genetic factors – Escobedo vs. Marshalls (2005) 70 CCC 604, City of Jackson vs. WCAB (Rice) (2107) 11 Cal. App. 5<sup>th</sup> 109, Lindh.