



CALIFORNIA CUMULATIVE TRAUMA DEFENSE

A Workers' Compensation Hierarchy of Needs

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THE WORKERS' COMPENSATION "CUMULATIVE TRAUMA" DEFENSE HIERARCHY OF NEEDS.



KNOW YOUR LEGAL DEFENSES AND OBLIGATIONS

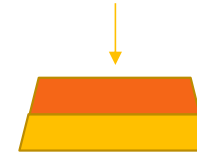
The "Base" Of Your Defense.



Cumulative Trauma	Labor Code § 5402	California Code of Regulations § 10109
<p>Labor Code § 3201.1: "An injury may be either:</p> <p>(a) 'specific,' occurring as the result of one incident or exposure which causes disability or need for medical treatment; or</p> <p>(b) 'cumulative,' occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412."</p>	<p>Knowledge of injury from any source = notice of injury.</p>	<p>Duty to conduct good faith investigations.</p>
<p>Labor Code § 5412: The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.</p>	<p>Injury presumed compensable if not denied within 90 days of knowledge.</p>	<p>Must be "reasonable and timely...upon receiving notice or knowledge of an injury or claim..."</p>
<p>Labor Code § 5500.5: Liability is "...limited to those employers who employed the employee...during a period of one year...immediately preceding either the date of injury, as determined pursuant to Section 5412," or "the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury,...whichever occurs first."</p>	<p>1 working day after filing of DWC-1 claim form treatment must be authorized and paid up to \$10,000 or until claim accepted or rejected.</p>	<p>Reasonable attempt must be made "to obtain the information needed to determine and timely provide each benefit...which may be due to the employee..."</p>
	<p>See <i>Honeywell v. Workers' Compensation Appeals Board</i> 70 Cal. Comp. Cases 97, 98. [90 days runs from date of filing of claim form].</p>	<p>May not "restrict" investigation to "objections or defenses" but must "fully and fairly gather the pertinent information."</p>
	<p>Both "investigation" deadlines run from "the date of filling" of claim form.</p>	<p>Investigation "must supply the information needed to provide benefits and to document for audit the...basis for...claims decisions."</p>
	<p>However, see California Code of Regulations § 10109. Investigation appears to require "reasonable and timely" investigation upon receiving notice of an injury or claim.</p>	<p>Claims administrator "must document...the investigatory acts...documentation shall be retained in claims file...administrators shall deal fairly and in good faith..."</p>
	<p>Immediate investigations are recommended. "When in doubt, check it out!"</p>	<p>See California Code of Regulations § 10111.1. Schedule of Administrative Penalties for Injuries On or After January 1, 1994.</p>

KNOW YOUR MEDICINE

The "Second Building Block" Of Your Defense.



Disease: A particular distinctive process in the body with a specific cause and characteristic symptoms.
Disorder: Irregularity, disturbance, or interruption of normal functions.
Syndrome: A number of symptoms occurring together and characterizing a specific **disease**.

Health Condition?	Body Function or Structure?	Activities and Participation Therein – Causative?	Environmental Factors. Causative?
Disorder(s)?	Think "Anatomy."	What "Execution of Tasks" Are Causative?	Physical.
Disease(s)?	Body Part(s).	What Participatory "Life Situation(s)" Involved Applicant(s)?	Social.
Diagnostics?	Physiological Function(s).		Anything In The Scope of The Individual Applicant's Life Functioning and ADLs may be relevant.

Credit: ICF Framework Of Health and Disability, World Health Organization "WHO" 2011

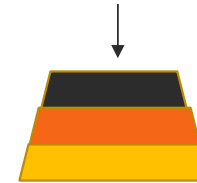
PRACTICE TIP FOR THE EXAMINER: HOW TO LEARN MEDICINE QUICKLY.

<https://www.innerbody.com/>

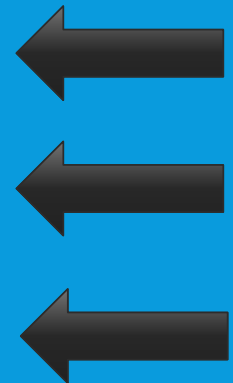
The screenshot shows the InnerBody website interface. At the top, a red arrow points to the 'Anatomy' tab with the text 'Go To "Anatomy" Tab.'. Below this, a red arrow points to the 'Anatomy Home Learning' and 'Read & Learn' sections with the text 'Select "Anatomy Home Learning" Or "Read and Learn."'. A second red arrow points to the list of anatomical systems with the text 'Read, See and Learn.'. The website content includes a navigation menu with 'Anatomy Home Learning' and 'Read & Learn' tabs, and a list of anatomical systems such as 'The Heart', 'The Brain', 'The Lungs', 'The Liver', 'The Stomach', 'The Intestines', 'The Pancreas', 'Health Careers', 'Nutrition Guide', 'Food Sensitivity', 'Reproductive System (female)', 'Reproductive System (male)', and 'Integumentary System'. At the bottom of the page, the text 'WE HAVE DONE OUR HOMEWORK' is visible.

KNOW YOUR GAME PLAN

Know Your Game Plan
(And Game Plan To Adjust).



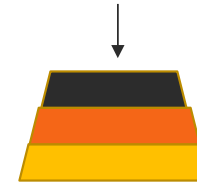
Documents	Depositions	Doctors	Typical Discovery Checklist
Medical Records [Most Important?]	Employee	Claim Related Treaters	Business records
Job Descriptions/Analyses [all jobs?]	Doctor	Personal Primary Doctors	Medical Records
Social Media Litigation History	Witnesses	Evaluators	Witness Depositions



KNOW YOUR GAME PLAN

The Medical-Legal
Process

Know Your Game Plan
(And Game Plan To Adjust).



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Labor Code § 4060	Labor Code § 4061	Labor Code § 4062	Labor Code §§ 4062.1/4061.2
Must issue denial letter.	Must issue objection to a medical determination by primary treating physician.	Must issue objection to a medical determination by primary treating physician <i>within 20 days of receipt of the report.</i>	The panel request is made on-line only: https://www.dir.ca.gov/dwc/medicalunit/OnlineQMEForm106/OnlineQMEForm106PanelRequest.html
Language must include need for medical-legal report.	Language must include objectionable issue. Existence of P.D. or need for future medical only.	Language must include objectionable issue. "Any medical issues not covered by Labor Code §§4060/2.	Timing is everything. Request can be made after 5:00 p.m. on 15 th day. It is confusing. One can request a panel after the 15 th day ends, which is 5:00 p.m. on the 15 th day in my experience(s).
Must be included in request for panel.	Must be included in request for panel.	Must be included in request for panel.	© Copyright 2022 PKNW All Rights Reserved

KNOW YOUR GAME PLAN

Trial or Settle.



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Take Nothing
Or
Take Your
Lumps

“How To” do both are the subject of completely different seminars on 1. settlement of California workers’ compensation cases and claims and 2. trials of California workers’ compensation cases and claims.

**Questions, Comments, Critiques,
Suggestions, Input, Cheers?**

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