Causation from the Physician’s Perspective

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Topics for Discussion

- Legal Burdens of Proof
  - Medical Causation
  - Disability Causation

- Question and Answer Session with Dr. Moore
  - Challenges for Physicians in Determining Causation
  - What is Helpful and What is Not?
  - What Can We Do Better?
    - Claims Representatives?
    - Rehabilitation Professionals?
    - Attorneys?
Legal Burdens of Proof - Medical Causation

- **Denied Claim**
  - Claimant’s burden to prove a causal connection with the accident/OD

- **Accepted Claim**
  - For all conditions listed on the Form 60 or 63(1), treatment is presumed to be causally related
  - For all other conditions, the burden of proof remains with the claimant
    - N.C.G.S. § 97-82(b) (as amended)
Legal Burdens of Proof - Medical Causation - Claimant

- What is required? - Claimant must prove:
  - By a preponderance of the evidence;
  - The accident/OD either caused the condition, or it aggravated, exacerbated or accelerated a pre-existing condition;
  - Expert medical opinion evidence is required in most cases;
  - The medical opinion must be reasonably based in medicine/science and not based solely on post hoc ergo propter hoc reasoning
Legal Burdens of Proof - Medical Causation - Defendants

- When dealing with an accepted medical condition on a Form 60/63(1) - Defendants must prove:
  - By a preponderance of the evidence;
  - Plaintiff’s current need for medical treatment is wholly unrelated to the original compensable accident; and
  - Expert medical opinion evidence will be needed in most cases
Legal Burdens of Proof - Medical Causation - Particular Issues

- “Thin-Skull Rule” - Take the claimant as you find them
  - All medical conditions that flow as a “direct and natural consequence” from the compensable injury are covered

- Extension beyond the two-year time limit of G.S. 97-25.1
  - Form 18M
    - Standard for physicians and Commission = “substantial risk of the necessity of future medical compensation”

- Form 28U Signing by Physician
  - Requirement of causal connection for removal from work
Legal Burdens of Proof - Disability Causation

- The claimant bears the burden of proving both the existence and extent of disability.

- Absent a Form 21, 26 or an award of disability by the Commission, the burden is an ongoing one.

- The fact that defendants may be paying indemnity compensation pursuant to a Form 60 or 63(1), does not relieve the claimant of this burden

Disability is defined as the “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.”

N.C.G.S. § 97-2(9)
Legal Burdens of Proof - Disability Causation - Standards:

- The claimant must show:
  1) Inability to earn the same or similar wages
     - *Russell v. Lowes* - Four Factor Test
     - *Wilkes v. Greenville* - Any other evidence sufficient to support a finding of disability
  2) Because of the injury
     - *Hilliard v. Apex Cabinet Co.*
The Physician’s Perspective
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  - Medical & Disability
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THANK YOU!
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