

# 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
  - ▶ See, e.g., *Clark v. Wal-Mart*, 360 N.C. 41, 44, 619 S.E.2d 491, 493 (2005).

# Legal Burdens of Proof - Disability Causation

- ▶ 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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- ▶ Challenges for Physicians in Determining Causation
  - ▶ Medical & Disability
- ▶ What is Helpful and What is Not?
- ▶ What Can We Do Better?
  - ▶ Claims Representatives?
  - ▶ Rehabilitation Professionals?
  - ▶ Attorneys?

# THANK YOU!

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