

Independent Medical Validation

NOTICE OF MEMORANDUM OF POINTS

STATEMENTS OF UNDISPUTED FACTS

DECLARATIONS AND

AUTHORITIES

FOR SETTLEMENT /DISCOVERY PURPOSES: NOT E-FILED IN COURT FILE

FILED CONCURRENTLY WITH: The Insurance Company, Adjuster, Supervisor, IME, Administrators

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that such process of Independent Medical Validation and Medical Determination, Memorandum Of Points, Statements of Undisputed Facts, Declarations, Exhibits and Authorities are intended to present evidentiary burdens of proof in admissible format to establish preponderance, eliminate varying medical opinions and show the Greater Weight of the evidence. One of its purpose's is to produce enough evidence based data by one side to create a belief that its version is more likely true than not. If such evidence based data comes under dispute, such dispute must show that the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Additional data from Depositions, Motions to Compel Discovery and/or upon such other and further oral and documentary evidence, may be presented at hearing on this claim.

**STATEMENT OF UNDISPUTED FACTS:
Evidentiary Burdens Of Proof Of Regulatory Requirements**

The process of independent medical validation and medical determination is to present documents, witnesses, and/or expert testimony, for administrative, legal & medical purposes to meet court accepted evidentiary burdens of proof of regulatory requirements for process controls, to assure with the highest probability that medical services and/or determinations meet specifications, have uniform quality, establish preponderance of evidence to eliminate “Greater Weight” Challenges and show that each of these elements existed.

When the words “validation” or “verification” are preceded with “independent” (or “IV”), it indicates that the validation is to be performed by a disinterested medical third-party who adheres to the “Gold Standards” of medically accepted criteria and protocol of AMA Guides, Abbreviated Injury Severity Scale (AIS) and The Quality System (QS) of regulation which defines the medical validation process as;

...”establishing by objective evidence that a medical process consistently produces a result or end product, meeting its predetermined specifications, stating how validation will be conducted, including evaluation parameters and what constitutes acceptable test results”.

**DECLARATIONS:
Courts Of Law Have Stipulated:**

...”the impairment report of a designated doctor shall have presumptive weight (“Great Weight”) and the impairment report will be based on that report unless the preponderance of the other medical evidence is to the contrary”.

The A.M.A. Guides States:

...’The evaluator who more closely follows the guides will be the evaluator whose opinion is accepted as choice’;

...’If the preponderance of the medical evidence contradicts the Impairment rating contained in the report, another doctor can be called upon to dispute according to the A.M.A. Guides”.

...“When medically validating a case, the doctor shall minimally provide the following 4 points of validation for the current compensable injury”:

1. **Identify** the objective clinical or laboratory findings of permanent impairment’;
2. **Document** the specific laboratory or clinical findings of permanent impairment’;
3. **Analyze** the specific clinical and laboratory findings of permanent impairment’;
4. **Compare** the results of the analysis with the impairment criteria and provide the following:
 - ‘A description and explanation of the specific clinical findings related to each

impairment, including percentage (%) impairment rating of the whole person’;

- ‘A description of how the specific clinical findings relate to and compare with the criteria described in the applicable chapter and table of the “Guides to the Evaluation of Permanent Impairment”.

Establishing The Preponderance As:

- a). ‘Evidence that has greater weight or is more convincing in comparison to the evidence introduced by the defendant’;
- b). ‘The majority of the evidence favors one side or the other as described by other courts and authorities’;
- c). ‘Enough evidence has been produced by one side to create a belief that its version is more likely true than not’.

MEMORANDUM OF POINTS:

Eliminating Varying Medical Opinions And Winning The “Greater Weight” Of The Medical Evidence Challenges As Necessary In The Presence Of:

- Varying and/or opposing medical opinions
- Disputes among medical evaluators who cannot reach agreement about injury types
- Physicians who cannot differentiate one type of impairment from another
- Clinical findings that are not obvious to the naked eye
- Pre-existing conditions or prior accidents which require apportionment of aggravating effects
- Crash speeds which were not deemed sufficient to produce visible property damage and which defendant argues that “no damage = no injury”

The Gold Standards / Quality System (QS) For Establishing The “Greater Weight” Of Evidence In The Medical Profession Consists Of the:

1. Process of IR (Impairment Rating)
3. Process of IV (Independent Medical Validation)
4. Process of ID (Independent Medical Determination)

AUTHORITIES:

Great Weight Determinations

CAIN V. BAIN, 709 S.W.2D 175 (TEX. 1986):

“In reviewing a “greater weight” challenge among varying medical opinions, one may examine the entire record by process of Medical Validation to determine:

1. ‘If the finding under medical validation is conclusive of the “greater weight,” and preponderance of the evidence is clearly medically validated and just’;
2. ‘If the greater weight and preponderance of the evidence are shown to be medically

- validated and support its existence’;
3. ‘If there is only “slight” evidence to support the finding’;
 4. ‘If the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust’; or
 5. ‘If the great weight and preponderance of the evidence supports its nonexistence’.

The medical process underlying the establishment of the preponderance of evidence overcoming the “greater weight” challenges is determined according to the evaluator who more closely adheres to the gold standards and quality system (QS) established procedures of the:

- A.M.A. Guides – (5th Edition listing the; chapter and table the citing Impairment Rating Formula)
- DRE Categories: “Diagnostic Related Estimates”
- DBI’s: “Diagnostic Based Injuries”
- Injury Model of the A.M.A.
- Specific Disorders Of The Spine
- Spine Impairment Summary
- Comprehensive Injury Index
- Abbreviated Injury Severity Scale (AIS)
- Whole Person Impairment Rating

The goal of a quality system (QS) is to consistently produce services, products and end results that are fit for their intended use. The trier of fact, either a jury or the judge, is then supposed to fairly and impartially weigh the evidence and find in favor of one side or the other based on which presented a preponderance of the evidence.

...Independent medical process validation is a key element in assuring that the medical evidence based data is met for validating medical principles, their determinations and goals, to establish preponderance, eliminate varying opinions and win the Great Weight challenges.

The medical process validation requirements performed have general applicability to the following 26 medical validation and medical determination points of a personal (bodily) injury claim using “Gold Standards” and “Quality Systems of Compliance;

1. Injury types [according to: body parts, functions, systems, organs]
2. Physical examination findings
3. Clinical evaluation objective tools
4. Evaluation of injury mechanisms resulting in injury types
5. Evaluation of loss of function (International Classification Of Functioning – ICF)
6. Diagnoses (ICD - International Classification of Diagnoses) Codes)
7. Symptoms & Complaints according to: intensity, frequency, duration, type, radiation, effects
8. Duties Under Duress
9. Loss Of Enjoyment
10. Documentation of treatment with respect to diagnoses & costs
11. Prescriptions with respect to treatment, diagnoses & costs
12. Referrals with respect to injury types

13. Diagnostics, labs and specialty evaluations with respect to injury types
14. Immobility devices with respect to injury types
15. Stability of the medical condition(s)
16. Static V. Stable injured body parts
17. Medical determinations overall
18. Prognosis of each individual body part involved
19. Prognosis overall
20. Future treatment plan
21. Future treatment costs
22. MMI (maximum medical improvement) per each involved body part
23. Spine Impairment Summary
24. Specific Disorders Of The Spine
25. Regional impairments
26. Whole Person Impairment rating

Case Audit Settlement Evaluation, LLC., logical database requirement and software system attributes:

HIPAA compliant; accuracy; precision; repeatability; reproducibility; reliability; availability; high level security; maintainability; portability; system interface; user interface and communications interface.

Respectfully submitted,

By: Case Audit Settlement Evaluation, LLC

By: Independent 3rd Party Medical Evaluator

By: All Plaintiff's

By: Attorneys for PLAINTIFF Accident Injured

TABLE OF AUTHORITIES:

Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Ashby v. Farmers Ins. Co. of Oregon, 592 F. Supp. 2d 1307 (2008)

Lowery v. Alabama Power Co., 483 F. 3d 1184 (2007)

Smith v. Sneadon [1952] 2 SCR 312