

ADVISORY NO. 358
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TOPIC: TWCC ADVISORY 2003-10
MEDICAL ADVISOR'S OPINION

TWCC Advisory 2003-10 states a prospective medical opinion from the TWCC Medical Advisor. It does not purport to state an interpretation of the Workers' Compensation Act or TWCC rules.

The advisory states that "health care providers may wish to consider the following input from the Commission's Medical Advisor." Accordingly, the advisory states a medical opinion, and, like any other medical opinion, it should be considered at the time of determining benefit payments. Like other medical opinions, this opinion is not necessary controlling. This advisory would not preclude a carrier's reliance upon the credible opinion of a licensed physician otherwise qualified and permitted to certify impairment ratings in the workers' compensation system.

The TWCC Medical Advisor has concluded that a DRE Category IV rating may be appropriate for a multiple level fusion *if preoperative x-rays are not performed*. Note, however, that in Example 2, on page 105 (Section 3.3h) of the *AMA Guides* a claimant with a three-level cervical posterior fusion was to be rated in cervicothoracic category III for the fused segment. Therefore, the Medical Advisor's opinion is subject to debate, and in the proper case, a carrier would be well served to obtain a review by a peer review for a possible dispute of an impairment rating certified consistent with this interpretation of the *Guides*.

The advisory also states: "In the Texas workers' compensation system, the injured employee's impairment rating is based on the employee's condition on the date of maximum medical improvement or the date of statutory maximum medical improvement, whichever is earlier." This is consistent with recent Appeals Panel authority, such as Appeal No. 030091-S, where the Appeals Panel has indicated that an impairment has to be "permanent," and "that a claimant's IR may not be based on impairment that the claimant no longer has at the time of the designated doctor's IR examination" where treatment such as surgery has caused the condition to resolve. The Appeals Panel noted that this is mandated by statute, even if inconsistent with the *Guides* themselves; that is "the *AMA Guides* do not control over our applicable rules and the 1989 Act and only permanent impairment may be rated."

A full copy of Advisory 2003-10 is attached.

FLAHIVE, OGDEN & LATSON