



Effective Oregon IME Communication - Part Two: After *Brown*

By Michael H. Jones • March 5, 2015

The Oregon Court of Appeals' decision in *Brown v. SAIF* has far-reaching implications for claim processing.¹ Most prominent is the effect on how you develop evidence to support a major cause denial of a combined condition. *Brown* requires an analysis of whether the compensable work-related injury incident (rather than accepted condition) ceased to be the major contributing cause of disability and the need for medical treatment of the combined condition.



In the months since the *Brown* decision, the Oregon Workers' Compensation Board has issued several decisions illustrating the analysis required to support a major cause denial under *Brown*.² The Board also has shown it will set aside a major cause denial in which the medical experts have conflated the new *Brown* standard with the prior standard, or simply have not addressed the proper analysis.³ Accordingly, IME questions regarding combined conditions must be carefully tailored to the *Brown* analysis.

The *Brown* analysis

Brown and its progeny dictate a weighing of the "overall contribution" of the "work-related injury incident" versus any "legally cognizable" preexisting condition to determine whether the work injury was initially, or remains, the major contributing cause of a combined condition. An opinion that merely provides that the accepted condition ceased to be the major contributing cause of the combined condition will not support a major cause denial. Likewise, an opinion that does not address the injury incident itself (e.g., mechanism of injury, etc.) will not support a denial of the claim in the first instance,⁴ or a major cause "ceases" denial.

In addition, when a major cause denial of a combined condition is at issue, medical evidence must demonstrate a change in the worker's condition or circumstances between the effective date of the combined condition acceptance and the effective date of the major cause denial such that the work-related injury incident is no longer the major cause of disability and the need for medical treatment of the combined condition.⁵

IME questions regarding combined conditions must be carefully tailored to the Brown analysis

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Oregon IME communication - Part 2 (continued)

The following is an example of an IME question aimed toward developing a medical opinion in line with *Brown*.⁶

With respect to combined condition claims, recent Oregon Court of Appeals case law compels a determination of whether the work-related “injury incident” remains the major contributing cause of disability or a need for treatment of the combined condition.

Please discuss whether the work-related injury incident remains the major contributing cause of disability or a need for treatment. In your answer, please carefully weigh the overall contribution of the work-related injury incident versus the contribution of any preexisting condition diagnosed as relates to this worker’s present disability and need for treatment.

Please also identify any change in the worker’s condition or circumstances that supports your answer.

Fortunately, the Oregon Supreme Court has announced it has accepted review of the *Brown* case, with oral arguments set for May 2015; it is possible we will see a modification or reversal of the Appeal Court’s opinion. However, unless and until *Brown* is modified or reversed, evidence must be developed in line with the *Brown* standard.

The attorneys at Reinisch Wilson Weier PC can provide assistance in developing IME inquiries to obtain the necessary information for successful combined condition processing. ■

¹ See generally *Brown v. SAIF Corp.*, 262 Or App 640 (2014). The Oregon Supreme Court recently accepted review of the matter. Oral arguments are expected to take place in spring, 2015.

² See, e.g., *Karlynn Akins*, 66 Van Natta 1969, 1974 (Dec. 4, 2014) (opinion persuasive where the physician considered: (1) the severity of the preexisting condition; (2) the preexisting symptoms and treatment; (3) the mechanism of the work incident; (4) the nature of an exacerbation or temporary flare of symptoms; and (5) the complaints, findings, and course of treatment, which were more consistent with a chronic condition than an acute injury); *Cassandra Stockwell*, 67 Van Natta 94, 96 - 97 (Jan. 13, 2015) (opinion addressing the “work episode” and “work injury” sufficient to meet *Brown* standard).

³ See, e.g., *Roxie Bartell-Fudge*, 66 Van Natta 1009, 1012 - 13 (May 30, 2014); *Rebecca Littlefield*, 66 Van Natta 1048, 1050 (June 3, 2014).

⁴ See ORS 656.266(2)(a).

⁵ *Shawn Smith*, 66 Van Natta 1381, 1382 (Aug. 15, 2014); *Stockwell*, 67 Van Natta at 96- 97; *Littlefield*, 66 Van Natta at 1049.

⁶ Please note that this question is provided as illustration. IME questions should always be tailored to the particular facts and circumstances of each case.

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