

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

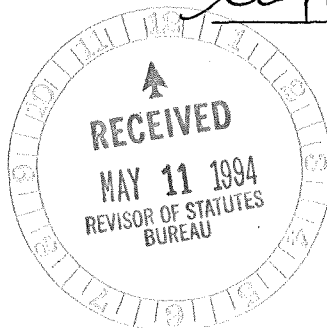
I, Carol Skornicka, Secretary of the Department of Industry,
Labor and Human Relations, and custodian of the official records of said department, do hereby certify that
the annexed rule(s) relating to Minimum Ratings for Permanent Disabilities
(Subject)
were duly approved and adopted by this department on May 11, 1994.
(Date)

I further certify that said copy has been compared by me with the original on file in the department
and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set
my hand and affixed the official seal of the
department at 9:00 a.m.
in the city of Madison, this 11th
day of May A.D. 19 94.

Carol Skornicka

Secretary



ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s)

102.44(3), 102.52 and 102.55

Stats., the Department of Industry, Labor and Human Relations creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind 80.32

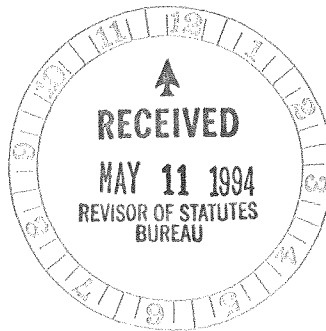
Minimum Ratings for Permanent Disabilities

(Number)

(Title)

The attached rules shall take effect on July 1, 1994

_____ pursuant to section 227.22, Stats.



Adopted at Madison, Wisconsin this

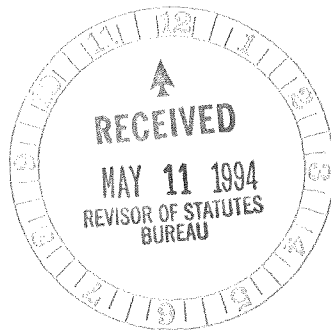
date: May 11, 1994

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN
RELATIONS

Carol J. Baum
Secretary



RULES in FINAL DRAFT FORM



Rule No.: Ind 80.32

Relating to: Minimum Ratings for Permanent Disabilities

Clearinghouse Rule No.: 94-3

The Wisconsin Department of Industry, Labor and Human Relations proposes an order to amend Ind. 80.32(intro), (1), (3) to (5), (7), (9), (11), and (12) (a) and (b) relating to minimum ratings for permanent disabilities..

Analysis of Proposed Rules

Statutory Authority: ss. 102.44(3), 102.52 and 102.55, Stats.

Ind. 80.32 establishes the minimal permanent disability ratings for certain described disabilities. No major changes are recommended. However, some sections are clarified and some additional standards for minimal disability ratings are included to eliminate potential areas of dispute. Some ratings are amended and others added to reflect advances in medical technology.

The disability ratings specified in the rule are all intended to be minimal ratings for the conditions described. The minimal disability ratings must be upgraded for any additional elements of disability or unsatisfactory results from surgical procedures.

The following is a summary of the provisions which are being changed in Ind. 80.32:

1. The introduction to the rule is expanded to more clearly describe the losses covered. These include permanent disability ratings for sensory losses, surgical procedures, and amputation levels in addition to losses of motion.
2. The minimum permanent disability rating for a total prosthesis of the hip is reduced from 50% to 40%. The minimal permanent disability rating for a partial prosthesis of the hip is set at 35%.
3. The minimal permanent disability rating for a total prosthesis of the knee is increased from 40% to 50%. The minimal disability rating for a partial prosthesis of the knee is set at 45%. A minimal permanent disability rating of 5% is set for either a total or partial meniscectomy due to either an open or closed procedure. A minimum 10% disability rating is added for surgical repair of the anterior cruciate ligament.
4. Definitions of the various types of ankylosis at the ankle are added to the rule.
5. A minimal 50% disability rating for a prosthesis of the shoulder is created.

6. Minimal permanent disability ratings for the wrist are expanded to include 12 1/2% for total loss of dorsiflexion, 7 1/2% for total loss of palmarflexion, 5% for total loss of inversion and 5% for total loss of eversion.

7. For each surgical procedure to the back where disc material is removed there is a minimal permanent disability rating of 5%. This minimum 5% rating is to be given for every surgical procedure (open or closed, radical or partial) performed to relieve from the effects of a disc lesion or spinal cord pressure. A minimal rating of 10% will apply when two surgical procedures are performed at the same time such as a laminectomy or discectomy and a fusion procedure at the same level. There is no minimal permanent disability rating applicable for a chymopapain injection with any permanent disability resulting from this procedure to be rated by a physician.

8. For complete ankylosis of the thumb at the carpometacarpal joint only in mid-position or complete extension there is a minimal permanent disability due of 20% added to the rule. Loss of flexion and extension at the distal joint of the thumb result in the same permanent disability as for the fingers. At the proximal joint the permanent disability due for loss of flexion and extension of the thumb is 40% of the loss of use specified for the fingers.

In proposing these changes, the Department considered the following policy and administrative factors:

1. The conditions described in the rule cause permanent disability. By creating standards for evaluation the rule assures uniform payments for the same disabling conditions. Insurers and employers also have an established minimum benefit to concede in permanency cases. This allows them to make timely payments and helps reduce litigation because the injured person receives conceded benefits.

2. There was significant support from the physicians participating in the Worker's Compensation Advisory Council's survey that the allowances for hip and knee joint replacements should be reversed with the new ratings of 50% at the knee and 40% at the hip for total replacements. The physicians also recommended that the allowance for a partial replacement of a hip or knee should be reduced by 5%. When the original allowances were adopted in 1975 surgical procedures for the hip and knee were relatively new and the long-term disabilities from these were unknown. Experience has shown that hip replacements are less disabling but knee replacements have not had such successful long-term outcomes.

3. A minimum 5% permanent disability rating for removal of semi-lunar cartilage in the knee shall apply to all procedures. Physicians responding to the survey indicated that regardless of the type of surgical procedure performed there is a change in the anatomical structure of the knee

justifying a 5% permanent disability rating for any procedure used. There have been frequent disputes with insurance carriers and employers regarding this interpretation which has resulted in an increase in the number of litigated cases. A clearer more well defined rule will result in fewer litigated cases.

4. The rule pertaining to the knee is amended to include a minimum permanent disability rating for surgical repair to the anterior cruciate ligament. The physicians responding to the survey felt that a 10% disability rating is appropriate because there has been an interference with the anatomical structure of the knee following the surgical repair. This promotes standardized payments for permanent disability which will help to reduce litigation.

5. The rule pertaining to the minimal disability rating for total ankylosis of the ankle was amended to include more specifically the different elements of disability for each of the minimum permanent disability ratings. These various minimal percentages for ankylosis at the ankle created a great deal of confusion for the worker's compensation community in the past. The Department by amending the rule to include an explanation of the range of motion lost covered by each of the percentages for ankylosis will clarify the minimal permanent disability ratings.

6. As a result of advancements made in the state of the art in medicine more shoulder arthroplasty procedures are being performed. The rule pertaining to minimum permanent disabilities to the shoulder is amended to provide a minimal permanent disability rating of 50% for a shoulder joint replacement.

7. The rule pertaining to the minimal permanent disability rating for ankylosis of the wrist is amended to reflect the manner in which the Department attributes permanent disability to the various losses of ranges of motion. This is a codification of a long-standing department practice. It will be helpful to the worker's compensation community to be aware of this practice and to apply this on their own.

8. The rule pertaining to minimal permanent disability for the back is amended to clarify the permanent disability due for surgical procedures. A minimum 5% allowance will be given for every surgical procedure which is performed to relieve an individual from the effects of a disc lesion or spinal cord pressure. Surgery covered by this rule includes open and closed as well as radical and partial procedures. Each disc on which a surgical procedure is performed will qualify for a 5% rating. The 10% minimum rating currently in use for a fusion will still apply, 5% of this will result from removal of disc material and the other 5% for the fusion procedure. General wording is used in the rule to describe the surgical procedures rather than naming specific procedures so that increased litigation will not be generated over eligibility for the minimum disability rating when new procedures are

developed or unnamed procedures are used. Recent medical development of less radical procedures has created litigation over their applicability. Regardless of the procedure used there is interference with the anatomical structures of the back. This will result in uniform benefits to individuals with the same functional disability. No minimum permanent disability rating is set by rule for chymopapain injections.

9. The rule on ankylosis of the finger joints is amended to include a rating at the carpometacarpal joint of the thumb. This was the only joint not previously included in the rule.

10. The rule previously included standards for loss of motion in the thumb. This rule was inadvertently dropped during a prior rule revision. The Department continuously used the prior standards and is now formally readopting this rule.

SECTION 1. Ind 80.32(intro) is amended to read:

Ind 80.32 PERMANENT DISABILITIES. Percentages Minimum percentages of loss of use for amputation levels, losses of motion as compared with amputations at the involved joints, sensory losses and surgical prodedures.

SECTION 2. Ind 80.32(1) Note is amended to read:

Note: An example would be where in addition to a described loss of motion, pain and circulatory disturbance further limits the use of an arm or a leg. The removal of a semi-lunar cartilage A meniscectomy in a knee with less than a good result would call for an estimate higher than 5% loss of use of the leg at the knee. The same principle would apply to laminectomies or spinal fusions surgical procedures on the back. The schedule of minimum disabilities contained in this section was adopted upon the advice of the orthopedic advisory committee, a Worker's Compensation Advisory Council Subcommittee after a survey of doctors experienced in treating industrial injuries.

SECTION 3. Ind 80.32(3) to (5), (7), (9), (11) and (12) (a) and (b) are amended to read:

Ind 80.32 (3)HIP.

Ankylosis, optimum position, generally 15° to 30° flexion	50%
Mal position	Grade upward
To compute disabilities for loss of motion relate % of motion lost to average range	
Shortening of leg (no posterior or lateral angulation)	
No disability for shortening less than 3/4 inch	

3/4 inch	5%
1 inch	7%
1-1/2 inches	14%
2 inches	22%

Greater than 2 inches of shortening results in greater proportionate rating than above

Prosthesis	<u>Total</u>	Minimum of 50%
	<u>Partial</u>	40%
		35%

Ind 80.32 (4)KNEE.

Ankylosis, optimum position, 170° 40%

Remaining range, 180° - 135° 25%

Remaining range, 180° - 90° 10%

Prosthesis	<u>Total</u>	40%
	<u>Partial</u>	50%
		45%

Removal of patella To be based on functional impairment

~~Semi-lunar cartilage removal~~
Total or partial meniscectomy (open or closed procedure)

Excellent to good result 5%

Anterior cruciate ligament repair Minimum of 10%

Ind 80.32 (5)ANKLE.

Total ankylosis optimum position, total loss of motion 40%

Ankylosis ankle joint 30%

Loss of dorsi and plantar flexion

Subtalar ankylosis 15%
Loss of inversion and eversion

Ind 80.32 (7) SHOULDER.

Ankylosis, optimum position,
scapula free 55%
In mal position Grade upward
Limitation of active elevation
in flexion and abduction to 45°
but otherwise normal 30%
Limitation of active elevation
in flexion and abduction to 90°
but otherwise normal 20%
Limitation of active elevation in
flexion and abduction to 135°
but otherwise normal 5%

Prosthesis 50%

Ind 80.32 (9) WRIST.

Ankylosis, optimum position
30° dorsiflexion 30%
Mal position Grade upward
Total loss dorsiflexion 12%
Total loss palmarflexion 7%
Total loss inversion 5%
Total loss eversion 5%

Ind 80.32 (11) BACK.

Removal of disc material
Laminectomy, no undue

symptomatic complaints or any
 objective findings 5%
Chymopapain injection To be rated by doctor

 Spinal fusion L5-S1, good results 10%5% minimum per level
~~Spinal fusion L4-S1, good results 10%10% per level~~
Removal of disc material and fusion

 Cervical fusion, successful 5%

Compression fractures of vertebrae
 of such degree to cause permanent
 disability may be rated 5% and graded
 upward

Note: It is the subcommittee's intention that a separate minimum 5 percent allowance be given for every surgical procedure (open or closed, radical or partial) that is done to relieve from the effects of a disc lesion or spinal cord pressure. Each disc treated or surgical procedure performed will qualify for a 5 percent rating. Due to the fact a fusion involves 2 procedures a 1) laminectomy (discectomy) and a 2) fusion procedure, 10 percent permanent total disability will apply when the 2 surgical procedures are done at the same time or separately.

Examples:

<u>Patient A</u>	<u>12/01/1990</u>	<u>Laminectomy</u>	<u>5% PTD</u>
	<u>05/01/1992</u>	<u>Fusion</u>	<u>increases to 10% PTD</u>
<u>Patient B</u>	<u>12/01/1990</u>	<u>Laminectomy & Fusion</u>	<u>10% PTD</u>
	<u>05/01/1992</u>	<u>Re-fusion</u>	<u>increases to 15% PTD</u>
	<u>12/01/1992</u>	<u>Laminectomy at New Level</u>	<u>increases to 20% PTD</u>
	<u>05/01/1993</u>	<u>Fusion at 12/1/92 Level</u>	<u>increases to 25% PTD</u>
	<u>12/01/1993</u>	<u>Re-fusion at 5/1/93 Level</u>	<u>increases to 30% PTD</u>

Ind 80.32 (12) FINGERS.

(a) Complete ankylosis

Thumb	Mid-position	Complete Extension
Distal joint only	25%	35%
Proximal joint only	15%	20%
Distal and proximal joints.....	35%	65%
<u>Carpometacarpal joint only</u>	<u>20%</u>	<u>20%</u>
Distal, proximal and carpometacarpal joints..	85%	100%

Fingers

Distal joint only..	25%	35%
Middle joint only	75%	85%
Proximal joint only	40%	50%
Distal and middle joints..	85%	100%
Distal, middle and proximal joints.....	100%	100%

(b) Loss of Motion

Fingers	Loss of Flexion	Loss of Use	Loss of Extension	Loss of Use
Distal joint only..	10%-	1%	10%-	2%
	20%-	2%	20%-	4%
	30%-	3%	30%-	6%
	40%-	5%	40%-	8%
	50%-	10%	50%-	15%
	60%-	15%	60%-	20%
	70%-	20%	70%-	30%
	80%-	25%	80%-	40%
		100%-	60%	
Middle joint only	10%-	5%	10%-	2½%
	20%-	10%	20%-	5%
	30%-	15%	30%-	10%
	40%-	25%	40%-	15%
	50%-	40%	50%-	30%
	60%-	50%	60%-	50%
	70%-	60%	70%-	70%
	80%-	70%	80%-	90%
		100%	100%	
Proximal joint	10%-	5%	10%-	2½%
	20%-	10%	20%-	5%
	30%-	15%	30%-	15%
	40%-	20%	40%-	20%
	50%-	25%	50%-	25%

60%	30%	60%	40%
70%	35%	70%	75%
80%	40%	80%	85%
		90%	100%

Thumb

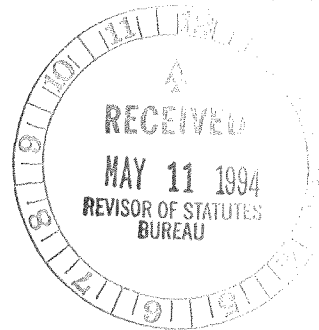
Distal joint same as fingers

Proximal joint 40% of the loss of use indicated for fingers

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.



Tommy G. Thompson
Governor
Carol Skornicka
Secretary



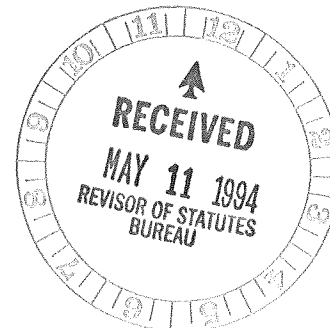
*Revisor of
Statutes*

**State of Wisconsin
Department of Industry, Labor and Human Relations**

May 11, 1994

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703



Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 94-3

RULE NO. Ind 80.32

RELATING TO: Minimum Ratings for Permanent Disabilities

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,


Carol Skornicka
Secretary