# Medical Treatment and Causation Issues
# Kid's Chance Workers Compensation Seminar

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June 3rd, 2022


**Presented By:**

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Daniel Schmitz

Danny Schmitz has been practicing law since 2012. He focuses entirely on representing employers and insurance carriers on workers' compensation cases in Missouri and Illinois. Danny has spoken at numerous conferences and seminars on various issues including safety penalties, drug penalties, legislative and case law updates, occupational diseases, the last exposure rule and its exception, the equal exposure analysis, and other issues relating to the practice of workers' compensation law. When he's not working, Danny spends the vast majority of time with his two kids, Anna and Sam.

David Plufka

Graduated from Ripon College (B.A.) in 1984. Graduated from Mitchell/Hamline School of Law (J.D.) in 1987. Began practicing law as an attorney with Evans & Dixon in 1987. He joined Keefe & Griffiths, PC in 1991, and was named a partner in that firm in 2000. He published an article with the St Louis Bar Journal in 1998 concerning the causation issues surrounding carpal tunnel syndrome. And he has spoken at more than a dozen seminars regarding workers compensation issues. David focuses his practice on representing injured workers. David and Marie have been married for 37 years. They have two children, three grandchildren, and two rescue dogs; Sofia and Prudence.

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## CASE LAW SUMARIES

***Tillotson v St. Joseph Medical Center,*** *347 SW3d511 (Mo. App. 2011)*

A nurse, while helping another nurse move a patient, lost her balance and struck her knee against a chair. All doctors agreed that this accident caused the employee to suffer an 'acute lateral meniscus injury'. The doctors also agreed that the employee suffered arthritis and degenerative changes in her knee prior to the work accident. The consensus was that both the tear and pre-existing changes were contributing to the employee's knee pain and symptoms. The doctors were asked to provide a treatment plan for the injured nurse. They each opined that only a total knee replacement (TKR) would provide lasting relief.

The employer/insurer refused to provide medical treatment beyond that which was designed to treat the acute tear. They argued the "prevailing factor" causing the need for a more comprehensive TKR was the pre-existing arthritis and degenerative changes in the knee.

The Court disagreed. They explained that the prevailing factor causation test is used to determine whether the employee has suffered a compensable injury. And once that question is answered in the affirmative, "the inquiry turns to the calculation of compensation or benefits to be awarded". Concerning medical care, §287.140.1 states that the employer's obligation is to furnish treatment "reasonably required to cure and relieve from the effects of the injury". It is immaterial that the treatment may have been required because of the complication of pre-existing conditions, or that the treatment will benefit both the compensable injury and a pre-existing condition. Rather, once a compensable accident has been determined, the employee need only prove that the need for treatment and medication "flow from the work injury".

***Hornbeck v Spectra Painting, Inc.,*** *370 SW3d 624 (Mo. 2012)*

Claimant was a painter and drywall taper. He suffered a work-related fall from a ladder onto a concrete surface. The doctors who provided initial treatment authorized by the employer did not diagnose a specific injury and the employee was soon released. Thereafter the employee sought treatment on his own. At hearing he sought payment for the unauthorized medical care, TTD benefits, attorney's fees and costs.

Among the issues decided by the Supreme Court was whether employee's unauthorized medical care was the employer/insurer's responsibility. The Commission held it was not, stating that employee's compensable work injury was not the "prevailing factor" for the medical treatments occurring after employee was first released. On appeal, the employee pointed out that the Commission improperly used the standard for determining whether an injury was work-related,

rather than the test for whether treatment can be awarded. The Court conceded that the Commission's reasoning did appear to confuse the two tests, but ultimately ruled the Commission's decision, considering the whole of the record, properly held that the employee did not prove the later treatments were reasonably required to cure or relieve him from the effects of the work injury.

***Armstrong v Tetra Pak, Inc.,*** 391 SW3d 466 (Mo. App. 2012)

Employee was feeding cardboard into a processing machine when he felt pain in his right shoulder while reaching overhead for the cardboard. A doctor authorized by the employer/insurer diagnosed employee with subacromial bursitis and mild rotator cuff tendinitis. Later, however, the doctor wrote that employee was not actually injured but likely 'perceived some limitation in his shoulder motion' while performing his work task. While the work activity of lifting was the "precipitating event" aggravating bursitis and causing mild tendinitis, the doctor opined it was not really possible for the work lifting incident to create "clinical damage". An orthopedist for the employer/insurer later diagnosed the employee with degenerative and pre-existing arthritis and impingement syndrome rather than an acute injury. A third doctor also agreed employee's complaints were related to degenerative changes rather than an acute injury.

Employee filed a claim and hired a fourth doctor, who opined that the work accident caused injury to employee's right arm, and that injury required treatment. The Commission denied the claim holding that the employee failed to prove a compensable injury.

On appeal, employee argued the employer had a legal obligation to provide medical treatment because the Commission determined that Armstrong sustained an 'accident' at work. From that point forward, the employee argued, employer was responsible for all injuries and disabilities that flow from the accident. The court disagreed.

They pointed out that while the Commission found an "accident" to have occurred, they did not find that the employee suffered a compensable "injury". They went on to hold that there is a "material distinction between determining whether a compensable injury has occurred and determining what medical treatment is required to treat a compensable injury". The employer/insurer's obligation to provide medical care does not exist until a compensable injury has been decided.

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***Noel v ABB Combustion Engineering,*** 383 SW3d 480 (Mo. App. 2012)

Employee suffered a work-related low back injury. She was awarded PTD and future medical care for depression and pain management. About five years after the award, employer required employee to submit to a medical exam (§287.210.1). That doctor recommended several changes to employee's medications and employer/insurer thereafter refused to continue paying for certain meds which the doctor opined should be discontinued. Employee made a motion to reopen her case asking the Commission to prevent these changes arguing that the contemplated changes would endanger her life, health, or recovery.

At the re-hearing, Commission concluded the employee did not meet her initial burden to show that the meds were necessary to cure or relieve her from the effects of her work-related injuries. The Commission therefore did not reach the issue of whether the modification of the prescription regimen was endangering the employee's life, health, or recovery. The employee appealed.

The court split the question up considering the pain management and psychiatric issues separately. On the question of pain management, the court quickly concluded that all of the doctors agreed that employee's low back work injury caused her pain that required prescription management. That several disagreed as to which drug regimen was best, was not relevant to employee's initial burden. Holding that she clearly met that burden, the court remanded the remaining question of whether the employer/insurer's changes endangered her health back to the Commission. On the psychiatric injuries, the employee argued that even though her depression was multi-factorial, the employer/insurer is still obligated to provide medications even if the treatment impacts conditions not caused by the work injury. The court agreed with this argument and only affirmed the Commission's decision as it pertained to meds the examining doctor opined were unrelated to the work injury. Where the examining doctor was silent, the court found the employee met her burden and remanded consideration of those meds to the Commission. This case reinforces the notion that the employee's burden is simply to show there is a NEED for treatment that flows from the work injury, and any inquiry as to the propriety and effectiveness of that care is a different issue altogether (§287.140.2)

***Harris v Ralls County,*** 588 SW3d 579 (Mo. App. 2019)

Employee claimed to have injured his low back while changing a tire. Extensive medical care left the employee with a number of symptoms. And although he testified he never suffered low back or radiating pain prior to the work accident, the doctor's consensus was that employee's injury was an aggravation of a previously asymptomatic condition. On the issue of future medical care, the Commission denied future medical treatment holding that the need for the care derived from non-work-related conditions. (Even though those conditions did not require

medical care prior to the work accident). This case points out the difficulty in distinguishing between the "prevailing factor" causation burden to prove injury, and "flows as a natural consequence of" burden to prove entitlement to medical care.

***Jefferson City CC v Pace,*** 500 SW3d 305 (Mo. App. 2016)

Employee injured her neck and right shoulder while breaking down tables at the country club's banquet hall. She underwent neck surgery and was provided TTD by the employer/insurer. She was released by the doctor and declared to be at "MMI" (maximum medical improvement) roughly three years after the injury. Because of persistent pains in her neck, the employee sought additional care after the date of MMI. The employer/insurer denied responsibility for the additional care saying that once MMI has been determined, they have satisfied their obligation under §287.140.1 to provide medical treatment.

The court disagreed. They explained that the employer/insurer is responsible to provide medical treatment including nursing, custodial, ambulance, and medicines, as may reasonably be required after a compensable injury, to cure or relieve from the effects of that injury. Further, they held that the employee need not provide conclusive evidence as to what future medical care is needed. Rather, the employee must demonstrate a "reasonable probability that additional medical care is needed and, to a reasonable degree of medical certainty, that the need arose from the work injury". On this issue, it does not matter that the employee had previously reached MMI. "Future medical care should not be denied simply because an employee may have achieved maximum medical improvement."

***Ritchie v Silgan Containers Mfg. Corp.,*** 625 SW3d 787 (Mo. App. 2021)

Employee suffered a fracture to her left wrist while gardening at home. During treatment for that injury, the doctors identified other injuries to the left arm, caused by the repetitive nature of her job. Surgeries and post-op complications caused her to develop complex regional pain syndrome. Eventually she was awarded PTD by both the ALJ and Commission.

One of the issues raised by the employer/insurer on appeal was whether the employee was entitled to an award of future medical care, and to be reimbursed for past medical expense. The employer/insurer argued in part that because some of the medical care was *ineffective* in treating employee's injury, the expenses were therefore *unrelated* to the occupational disease. The court dismissed this argument, stating simply that the treatment in question was necessitated by the

repetitive work injury and flowed as a natural consequence from it. They affirmed the commission's decision that employee met her burden for both future medical care and bill reimbursement.

***Gordon v City of Ellisville,*** 268 SW3d 454 (Mo. App. 2008)

Employee slipped and fell while climbing out of a tub grinder at work. He fell with his right arm extended. Employer/insurer provided treatment including surgery provided by Dr Lehman. Pre-op MRI suggested a massive rotator cuff tear. However, Dr Lehman testified that he saw no evidence of acute injury during the surgery; only chronic changes. He opined the work injury was a strain that had no effect on the employee's rotator cuff.

Applying the then new 2005 language concerning the definitions of accident and injury, the court affirmed the commission's decision that the work accident "was not the prevailing factor in causing the need for rotator cuff surgery and post-surgery recovery." While this language seems to conflate the burden of proving "injury" and entitlement to medical care, the court ultimately settled on the notion that Dr Lehman did not find evidence of "injury" occurring as a result of the work accident.

***Halsey v Townsend Tree Service Company,*** 626 SW3d 788 (Mo. App. 2021)

Employee died from heat stroke and hyperthermia after working for several days in very hot weather. The employee was 23 years old and weighed over 300 pounds. His parents filed a wrongful death lawsuit in United States District Court. The court dismissed the case without prejudice on jurisdictional grounds finding that the issue of whether a compensable work injury occurred must be litigated first by the Missouri LIRC.

The parents argued that the death was not compensable under the Worker's Compensation Act because their son's obesity (an idiopathic condition) directly or indirectly contributed to his demise. The court disagreed. They opined that for the "idiopathic exception" to apply, the employee's death must have been *caused* (either directly or indirectly) by his obesity. (§287.020.3(3)). Since the parent's evidence only went so far as to demonstrate that obesity *contributed* to the injury, the court ruled the boy's death was compensable under the Act.

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**SCENARIOS FOR DISCUSSION**

Scenario #1

Employee twists his right knee in a hole at work. An MRI a week later shows a medial meniscus tear, superimposed on bone-on-bone arthritis in the right knee. The authorized treating doctor acknowledges the twisting injury at work is the prevailing factor in causing the meniscus tear, but says a meniscus repair would be of no benefit to Employee because his preexisting generative arthritis is too severe. The authorized treating doctor says Employee would be a candidate for a total knee replacement, but that the work injury isn't the prevailing factor in causing the need for the total knee replacement.

What is wrong with this doctor's opinion regarding the total knee replacement?

What if we add more facts? What if Employee testified that he was suffering from significant right knee pain just before the injury at work? How does this affect the analysis?

What if Employer/Insurer obtained medical records showing Employee was treating for his significant right knee pain just before the work injury? How does this affect the analysis?

What if Employer/Insurer obtained medical records showing Employee's primary care physician had directed him to an orthopedist for consideration of a total knee replacement just before the work injury?

Scenario #2

Employee suffers a compensable injury to his left shoulder at work. An MRI two weeks after the injury reveals a chronic rotator cuff tear. The MRI also shows some inflammation around the rotator cuff, and the authorized treating doctor acknowledges that there's probably at least some acute-on-chronic component to Employee's left shoulder injury. The authorized treating doctor doesn't believe a rotator cuff repair is necessary, and Employee is eventually placed at MMI after undergoing some physical therapy. However, the authorized treating doctor acknowledges that Employee very well may require a rotator cuff repair down the road, especially if his left shoulder condition worsens.

What are Employer/Insurer's obligations in this scenario? If the case proceeds to a Final Hearing, should future medical be awarded?

What if Employer/Insurer obtained medical records showing Employee was complaining to his primary care physician of left shoulder pain prior to the work-related injury?

Scenario #3

Employee suffers a work-related low back injury. The doctors find extensive evidence of degenerative change in the spine including spondylolysis, and even slippage of several lumbar vertebrae. They agree that the work accident has made these conditions painful, but they do not believe the injury has caused damage to the discs or spine. There are no prior records of medical treatment and employee steadfastly denies his low back was ever painful prior to the work injury. The authorized treating doctor recommends a lumbar fusion saying that the instability in the low back is the cause for the ongoing pain.

What is the Employer/Insurer's obligation in this situation?

Additional fact. The doctor discovers a cardiac abnormality while examining the employee. The condition is congenital, and requires testing before the doctor will operate.

Do Employer/Insurer have to address Employee's preexisting cardiac condition to put him in a position to be able to undergo the lumbar fusion?

Additional fact. The work injury caused a weakened and desiccated disc to herniate. Doctors agree employee suffered this injury to the disc in the work accident. The employer finds a doctor who will replace the disc with an artificial one, obviating the need for a more extensive fusion. Employee would rather undergo the fusion because the disc replacement is new technology (although AMA approved) and he doesn't trust the surgeon.

Can the employer/insurer fulfill their obligations under §287.140.1 by offering only the disc replacement surgery?