



BRYCE DOWNEY & LENKOV
LLC

Workers' Compensation Newsletter December 2017



THE TOP 5 LIST

Top 5 Questions To Ask A Potential IME Doctor

By: [Rich Lenkov](#)

Chair, Bryce Downey & Lenkov Workers' Compensation Department

1/ Are you board certified?

Board certification is not mandatory to practice medicine. However, it is almost a necessity when choosing an expert, as it connotes a certain level of expertise that you need in a retained physician.

2/ What percentage of your practice is devoted to litigation?

The best experts are ones that spend most of their time treating patients, more credible than professional litigants. There is no magic number, but stay away from doctors who spend more than 15% of their time on litigation.

3/ Any disciplinary actions?

This is easily searchable on various web sites. It is important to know if your expert has had any disciplinary actions or medical malpractice cases that may adversely affect their credibility.

4/ Are you an expert in the specific subspecialty?

Hire an expert with a long and credible track record with the specific body part he or she is examining. A doctor who has treated thousands of patients with a similar condition is more credible than a generalist.

5/ How much work do you do for employees?

You want a doctor who works for both Petitioners and Respondents. One who exclusively represents employers could be perceived as a hired gun by the Commission.

Upcoming Webinar!

1/19/18

The Other Side: 5 IL WC
Issues From A Petitioner's
Attorney's POV

[Register Here](#)

Happy Holidays

In lieu of sending holiday cards this year, Bryce Downey & Lenkov made a donation to the Greater Chicago Food Depository.



This year, BDL donated to the [Greater Chicago Food Depository](#) in lieu of sending holiday cards. This non-profit organization provides training and food to those in need in an effort to end hunger by ensuring healthy food options are available for people in need. **Each day they distribute an average of 200,000 pounds of food to people in need across Chicago and Cook County** through their network of partner agencies and programs, including mobile distributions and responses for children, older adults and veterans.

[Click here](#) to learn more about the Greater Chicago Food Depository.



SOUND BITE: Former Alderman [Robert Fioretti](#) joins the show to discuss his candidacy for Cook County Board President.

Rich Lenkov: Cook County is the largest county in Illinois; it's the second largest county in the entire country. Obviously very populated, very diverse, you are dealing with some of the richest folks in the country and with neighborhoods that are most in need of help. How would you, as Cook County Board President, deal with the different interests that this county involves?

Robert Fioretti: First of all, I think we need to listen to the people of the county, instead of dictating to them. I've been in all parts of this county in the last six weeks and I've heard their voices. The people want to change. We submitted change in the form of the number of signatures, 38,405 signatures for a single candidate. It was more than any other candidate for any office throughout the state of Illinois last week. Despite the fact that Toni Preckwinkle of the Democratic Party said that they were going to challenge my petition, they never did. I think people do want change here.



[Click Here To Listen To The Full Episode:](#)

Recent Topics:

- Trump
- Me Too
- Roy Moore
- Gun control legislation
- Supreme Court decisions

Past Guests:

- Alan Dershowitz
- Gloria Allred
- Jesse Jackson
- F. Lee Bailey
- Sheriff David Clarke

[Can Trump obstruct justice?, Bob Fioretti on his run for Cook County Board President, Blago](#)

[Jeffrey Cramer on Mueller indictments, Amanda Vinicky on Rauner's re-election campaign, Jesse Ruiz on running for IL attorney general](#)

[Colin Kaepernick, baseball injury liability, gun control legislation after Vegas](#)

[Upcoming Supreme Court term, OJ/Blago/Weiner's time @ Club Fed, Inside Out & much more](#)

[Blago, Right To Yelp law, hazing liability and the monkey selfie](#)

[Constitutionality of hate speech, \\$417 baby powder verdict, legal issues surrounding the eclipse and more](#)

[Supreme Court panel, Cook County soda tax, Charlie Gard, Venus Williams, and more](#)

[Gloria Allred on Cosby mistrial, texting teen conviction, Johnny Depp, Rebel Wilson and more breaking legal news](#)

[Alan Dershowitz on Trump/Comey, feds investigate Fox News, Fyre Festival, Penn State hazing liability and much more](#)

Please like us on [Facebook](#) and [subscribe on iTunes](#). Send us your questions and we will answer them on air—nothing is off limits.

IME: The Earlier The Better

By: [Julia Alcaraz](#)



In *James v. Chicago Transit Authority*, 17 WC 186, the Commission affirmed the arbitrator's award of prospective medical treatment based on causation.

Petitioner, a bus driver, tripped and fell while working. Petitioner had a history of knee arthrosis. An MRI revealed that Petitioner sustained a partial PCL tear and had meniscal defects. Petitioner's treating physician diagnosed right knee end-stage osteoarthritis and recommended a total knee replacement. Respondent's IME physician opined that Petitioner sustained a temporary aggravation of the pre-existing right knee condition. However, the arbitrator found that Petitioner's condition was causally related to her work injury.

On appeal, the Commission affirmed the arbitrator's causation decision. The Commission found it significant that Petitioner consistently complained and treated for right knee pain since the work injury and that Petitioner's treating physician opined that the work injury caused or accelerated her condition. The Commission determined that there was sufficient evidence to award prospective medical benefits as Petitioner sustained more than a temporary aggravation of her pre-existing left knee arthrosis.

In a dissenting opinion, Commissioner Simpson opined that there was enough evidence to deny Petitioner's prospective medical benefits as 4 months after the work injury, Petitioner's treating physician had opined that Petitioner's knee had resolved "nicely."

Practice Tip:

If a claimant has a pre-existing condition, get an IME early on to fight causation.

Concurrent Wages?

By: [Emily Schlecte](#)



In *Bagwell v. IWCC*, 2017 IL App (4th) 160407 WC, the Appellate Court affirmed the arbitrator's denial of concurrent wages based on lack of notice.

Petitioner worked for Respondent for 27 years and also earned wages as a pastor for another employer. During that time, Respondent was aware that Petitioner served as a pastor as members of Respondent's management attended weddings and funerals that Petitioner officiated.

On appeal, the Court found that Petitioner's wages as a pastor were properly excluded as Petitioner did not meet his burden of proving that Respondent was aware of his concurrent employment. The Court found it significant that Petitioner never offered any substantive evidence or disclosed wages he earned as a pastor to Respondent. The Court ruled that Sec. 10's concurrent wage requirements applied only if Respondent knew that Petitioner had other paid work at the time of the work injury.

Practice Tip:

If a claimant has concurrent employment, ask whether the insured was aware of not only the concurrent activity, but whether they were aware of concurrent wages.

Firm News

Jeff Kehl Presents At IADC



On 12/13/17, [Jeff Kehl](#) presented “Punitive Damages in Illinois” at the Illinois Association of Defense Trial Council seminar. The program covered the facts and requirements state and federal courts consider when Illinois plaintiffs seek punitive damages, pleading practice tips, discovery, trial strategies for minimizing the likelihood or amount of punitive damages awards and recent trends in jury verdicts.

For more informative about The Illinois Association of Defense Trial Council, [click here](#)

AGC Award

At the [2017 Builders Connect](#), Bryce Downey & Lenkov was honored by the Builders Association for 10 years of active involvement in the Chicago construction industry.



BDL Is Growing!



[Jesse Lanshe](#) has significant litigation experience and concentrates in Workers’ Compensation and Entertainment Law. Prior to joining the firm, Jesse operated a successful solo practice for several years.

Jesse graduated cum laude and was in the top 15% of his class from Valparaiso University School of Law. Jesse was a member of Law Review, Moot Court and he received the highest grade in legal writing. Also, he clerked for the Honorable Christopher A. Nuechterlein (Ret.) in the Northern District of Indiana federal court and was captain of his championship law school soccer team.

Upcoming Seminars

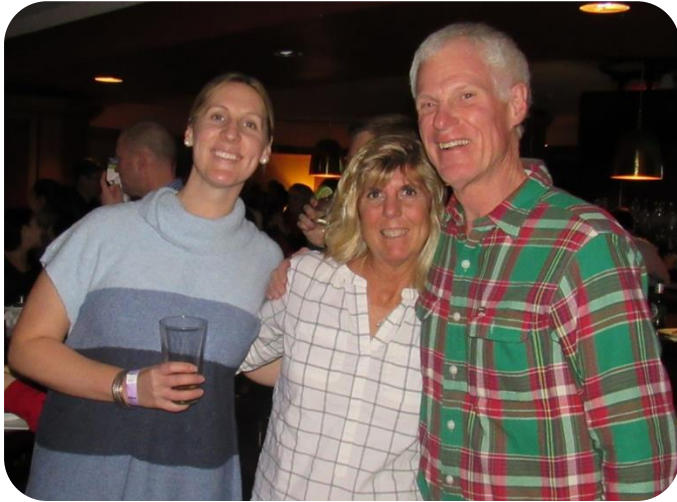
- On 12/28/17, [Cary Schwimmer](#) will present “Firing Employees Who Take the Employer's Stuff to Build a Case” at the Memphis Bar Association. CLE is available for this event. For more information or to register, [click here](#).
- On 1/24/18, Bryce Downey & Lenkov will co-host “Forecast For 2018” with Willis Towers Watson. Topics presented will include a bankers’ roundtable, design risks and solutions for construction project owners and hot topics in construction law. For more information or to RSVP, [click here](#).
- On 1/30/18, [Storrs Downey](#) will present “Avoiding Claims of Race, Religion or National Origin Discrimination in the Current Political Climate” at the American Conference Institute: 26th National Conference on Employment Practices Liability Insurance. For more information or to register, [click here](#).
- On 2/23/18-2/24/18, [Jeanne Hoffmann](#) and [Geoff Bryce](#) will attend the 36th Annual CAI Illinois Condo-HOA Conference & Expo at the Donald E. Stephens Convention Center in Rosemont, IL. Be sure to stop by our booth! For more information or to register, [click here](#).

Did You Know?

In addition to workers’ compensation, we also handle:

- [Business Litigation](#)
- [Business Transactions & Counseling](#)
- [Corporate/LLC/Partnership Organization & Governance](#)
- [Construction](#)
- [Employment & Labor](#)
- [Entertainment Law](#)
- [Insurance Coverage & Litigation](#)
- [Intellectual Property](#)
- [Medical Malpractice](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Transportation](#)

BDL Holiday Party



 Happy
Holidays 



Free Monthly Webinars

What you said about our 12/19/17 webinar,
"Ask Us ANYTHING"

"I liked the ability to fire off questions that came to mind. I look forward to a part 2"

"Clear concise answers"

"I liked asking questions - it addressed more complex issues which I deal with"

"Good variety of questions and it was interactive"



Upcoming Webinar

1/19/18

The Other Side: 5 IL WC Issues From A Petitioner's Attorney's POV

[Rich Lenkov](#)

[David Menchetti](#)

[Register Here](#)



Recent Webinars

- The Ups & Downs Of Upper & Lower Extremity Claims
- Illinois Workers' Compensation Reform
- New OSHA Regulations
- 1st Annual Great American BDL WC Quiz
- Common Workers' Compensation Issues Defined
- Indiana Forms: Taking A Claim From Start To Finish

If you would like a copy of any of our other prior webinars, please email us at mkt@bdlfirm.com

Cutting Edge Legal Education

If you would like us to come to you for a free seminar,
[Click here](#) or email [Rich Lenkov](#).

Our attorneys regularly provide free seminars on a wide range of workers' compensation topics. We speak to a few people or dozens, to companies of all sizes and large national organizations. Among the national conferences at which we've presented:

- Claims and Litigation Management Alliance Annual Conference
- CLM Retail, Restaurant & Hospitality Committee Mini-conference
- National Workers' Compensation and Disability Conference® & Expo
- SEAK Annual National Workers' Compensation and Occupational Medicine Conference
- National Workers' Compensation & Disability Conference
- RIMS Annual Conference

Some of our previous seminars include:

- Turning The Tables: Using An Employee's Own Actions As A Defense To Their Workers' Compensation Claim
- Closing The Nightmare Case
- Workers' Compensation 101
- Mandatory CMS Reporting Requirements: What You Need To Know
- Managing & Closing WC Claims In A Cost-Effective Manner
- Top 10 Ways To Reduce Legal Expenses NOW
- The Mediation Process
- Balancing Aggressive Pursuit Of Lien Recovery With Associated Litigation Expenses
- Dealing With Difficult Claimants
- Health-Related Leave: Workers' Compensation, ADA and FMLA

Illinois Rates At A Glance

Effective Dates	Maximum TTD	Minimum PTD & Death	State Average Weekly Wage
1/15/11 - 7/14/11	1,243.00	466.13	930.39
7/15/11 - 1/14/12	1,261.41	473.03	946.06
1/15/12 - 7/14/12	1,288.96	483.36	966.72
7/15/12 - 1/14/13	1,295.47	485.80	971.60
1/15/13 - 7/14/13	1,320.03	495.01	990.02
7/15/13 - 1/14/14	1,331.20	499.20	998.40
1/15/14 - 7/14/14	1,336.91	501.34	1,002.68
7/15/14 - 1/14/15	1,341.07	502.90	1,005.80
1/15/15 - 7/14/15	1,361.79	510.67	1,021.34
7/15/15 - 1/14/16	1,379.73	517.40	1,034.80
1/15/16 - 7/14/16	1,398.23	524.34	1,048.67
7/15/16 - 1/14/17	1,428.74	535.79	1,071.58
1/15/17 - 7/14/17	1,435.17	538.19	1,076.38
7/17/17 - 1/14/18	1,440.60	540.23	1,080.45

Effective Dates	Maximum PPD	Minimum Rate Death & Total Permanent Disability: 50% of the Statewide Average Weekly Wage
7/1/05 - 6/30/06	591.77	
7/1/06 - 6/30/07	619.97	
7/1/07 - 6/30/08	636.15	
7/1/09 - 6/30/10	664.72	
7/1/10 - 6/30/11	669.64	
7/1/11 - 6/30/12	695.78	
7/1/12 - 6/30/13	712.55	
7/1/13 - 6/30/14	721.66	
7/1/14 - 6/30/15	735.37	
7/1/15 - 6/30/16	755.22	
7/1/16 - 6/30/17	775.18	

Maximum Rate Death Benefit:
The greater of \$250,000 or 20 years
Effective 2/1/06 – the greater of
\$500,000 or 25 years

Temporary Total Disability (TTD) Rate:
66-2/3% (.667) x AWW

Permanent Partial Disability (PPD) Rate:
60% (.6) x AWW

*Number if children and/or spouse = number of dependents.

Minimum TTD & PPD	Single	Married	1 DEP.	2 Dep.	3 Dep.	4+ Dep.
TTD & PPD 7/15/10 - 7/14/17	\$220.00	*	\$253.00	\$286.00	\$319.00	\$330.00

CHICAGO, IL:
200 N. LaSalle Street
Suite 2700
Chicago, IL 60601
Tel: 312.377.1501
Fax: 312.377.1502

SCHERERVILLE, IN:
833 West Lincoln Highway
Suite 210
Schererville, IN 46375
Tel: 219.488.2590
Fax: 219.213.2259



BRYCE DOWNEY & LENKOV
LLC

www.BDLFIRM.com

PPD Benefits Schedule Of Body Parts

For Injuries Occurring	Before 7/20/05	7/20/05 - 11/15/05	11/16/05 - 1/31/06	2/1/06 - 6/27/11	On or after 6/28/11
Disfigurement	150	162	150	162	162
Thumb	70	76	70	76	76
First (Index) Finger	40	43	40	43	43
Second (Middle) Finger	35	38	35	38	38
Third (Ring) Finger	25	27	25	27	27
Fourth (Little) Finger	20	22	20	22	22
Great Toe	35	38	35	38	38
Each Other Toe	12	13	12	13	13
Hand	190	205	190	205	205
Carpal Tunnel Due To Repetitive Trauma					28.5 - 57
Arm	235	253	235	253	253
Amputation Above Elbow	250	270	250	270	270
Amputation At Shoulder Joint	300	323	300	323	323
Foot	155	167	155	167	167
Leg	200	215	200	215	215
Amputation Above Knee	225	242	225	242	242
Amputation At Hip Joint	275	296	275	296	296
Eye	150	162	150	162	162
Enucleation Of Eye	160	173	160	173	173
Hearing Loss Of One Ear (Under WC Act)	50	54	50	54	54
Hearing Loss Of Both Ears (Under WC Act)	200	215	200	215	215
Testicle--1	50	54	50	54	54
Testicle--2	150	162	150	162	162

The law places a value on certain body parts, expressed as a number of weeks of compensation for each part.

Disclaimer:

The content of this document has been prepared by Bryce Downey & Lenkov LLC for informational purposes. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. You should not act upon this information without seeking advice from a lawyer licensed in your own state. In considering prior results, please be aware that: (1) each matter is unique and (2) you should not rely on prior results related to past performance to predict success or results in future matters, which will differ from other cases on the facts and in some cases on the law. Please do not send or disclose to our firm confidential information or sensitive materials without our consent. If you would like more information on any of the topics discussed above, or have any questions regarding these issues or any aspect of Illinois Workers' Compensation law, please contact Rich Lenkov at 312-327-0038 or rlenkov@bdlfirm.com or any member of our workers' compensation team.

Advertising Material