Dr. B. Baydock, MD, CCFP(SEM), FCFP, Dip Sport Medicine (CASEM)

# DETERMINING DISABILITY

# Objectives:

1. To discuss the affects of disability on the individual.
2. To review the issues associated with determining disability.
3. To provide a framework to define disability.
4. To use the framework to help guide practitioners, employers and other stakeholders in limiting disability.

# Disclosures:

- Provide consulting services to insurance companies.
- Have been provided speaker's remuneration by Pfizer.

- No medications will be discussed in this presentation. The views on disability are based on published guidelines and are not specific to any company or group.

# General Information

"It is the working man who is the happy man. It is the idle man who is the miserable man."

Benjamin Franklin

" A good job is more than just a paycheck. A good job fosters independence and discipline, and contributes to the health of the community. A good job is a means to provide for the health and welfare of your family."

James H. Douglas Jr.

# What is disability?

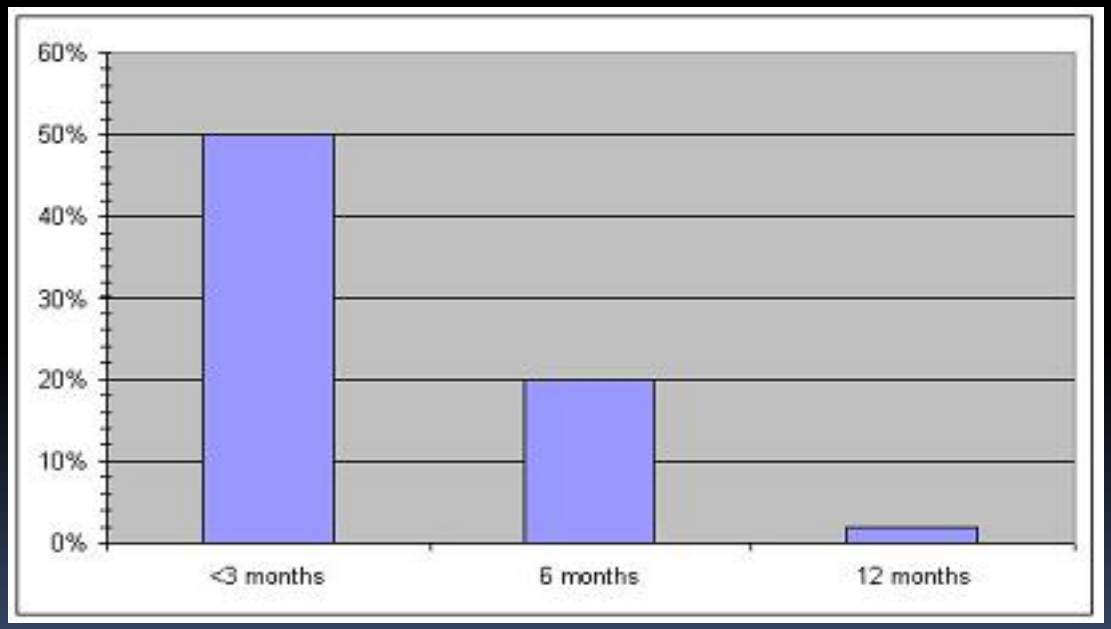
- A disability is always task / job specific
- Think of disability as the gap between what a person can do and what that person needs or wants to do.

# Why should we care about disability?

The United States has been experiencing a disability epidemic. From 1978 to 2006, the US population had grown by 35%, yet the number of Americans on government funded disability had increased by 236%.

# Why should we care about disability?

According to the Canadian Government, the probability to return to work decreases the longer a patient is off work. After 12 months, only 2% return to work.



# Why should we care about Disability?

- Despite the financial costs of disability, there are human costs to those who are disabled.
- Disability is harmful to a person.

Vocational work is good for health, and should be a central part of the treatment plan.

Scientific findings have strongly supported the principle that vocational work is good for health. (Page xv)

- "Simply stated: it is usually in the patient's best interest to remain in the workforce". (page 2)
- "…remaining at work has clear health benefit for the individual and thus is in his or her long-term best interest." (Page 17)

*Reference:*

**The AMA Guides to the Evaluation of Work Ability and Return to Work**

Talmage JB, Melhorn JM, & Hyman MH. The AMA Guides to the Evaluation of Work Ability and Return to Work, Second Edition. American Medical Association, 2011

- Therefore, the physician's role is to encourage participation in vocational work (staying at work in spite of health problems, returning to work quickly if one has withdrawn from work, etc.). (Page xv).
  - Clinicians "should encourage early and ultimate return to work whenever possible". (page 2)
  - Vocational work should be a considered a core part of a treatment plan. (Page xv).

"Consensus statements"…"strongly recommend that physicians return patents to their usual work roles as soon as possible": (pages 2-3).

- American Medical Association
- Canadian Medical Association
- American College of Occupational and Environmental Medicine
- American Academy of Orthopedic Surgeons

*Reference:*

**The AMA Guides to the Evaluation of Work Ability and Return to Work**

Talmage JB, Melhorn JM, & Hyman MH. The AMA Guides to the Evaluation of Work Ability and Return to Work, Second Edition. American Medical Association, 2011

# Scientific findings – being away from work is associated with: (pages 4-5)

- "Many adverse health outcomes"
- Increase overall mortality (even when controlled for potential social, behavioral, work, and health-related confounders; despite a reduction in mortality from motor vehicle accidents; being away from work increased the risk of death by nearly 50%)
- Mortality from cardiovascular disease
- Suicide
- More symptoms
- "More…objectively validated illnesses"
- More medication consumption
- Higher rate of hospitalization
- Decreased physical and mental health
- Greater use of health services

*Reference:*

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# Is Work Good for Your Health and Well being:

**Executive summary:**

There is strong evidence showing work is generally good for physical and mental health and well being. Worklessness is associated with poorer physical and mental health and well being.

# Is Work Good for Your Health and Well being:

Overall, the beneficial effects of work out weigh the risks of work, and are greater than the harmful effects of long-term unemployment or prolonged sickness absence. Work is generally good for health and well being.

Per:

- Gordon Waddell and A Kim Burton. Is Work Good for Your Health and Well-Being? The (UK) Stationary Office, London, 2006.

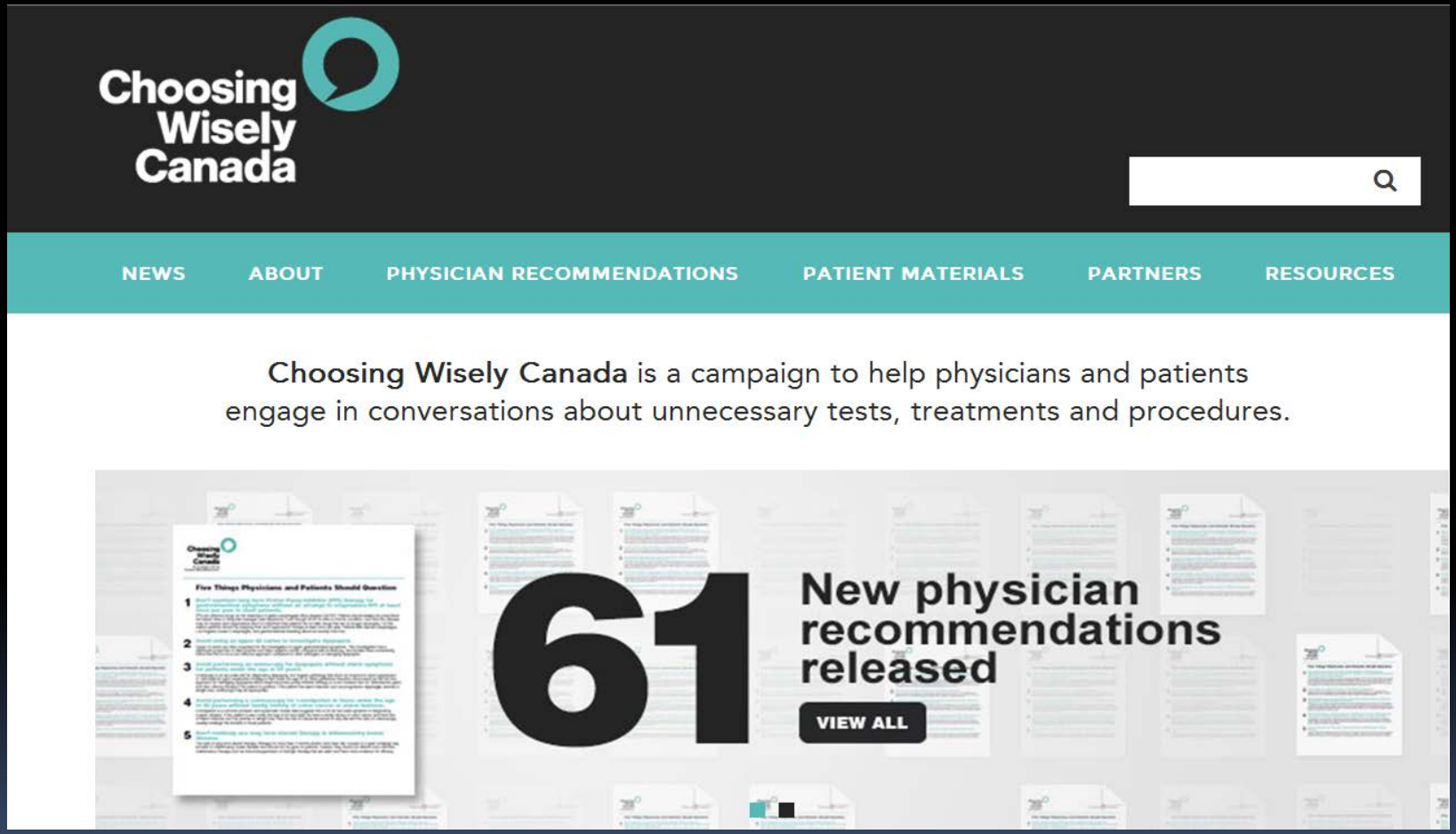
# Independent Literature Review:

A review of the scientific literature indicated that work increases the probability of a good outcome for:

- Pain
- Mental illness
- Brain injury

- Reference: Barth, RJ, and Roth, VS. Health Benefits of Returning to Work. Occupational and Environmental Medicine Report, 17, 3, March, 2003, p13-17.

# http://www.choosingwiselycanada.org



- Canadian Association of Medical Oncologists (NEW!)
- Canadian Association of Pathologists (NEW!)
- Canadian Association of Radiation Oncology (NEW!)
- Canadian Association of Radiologists
- Canadian Cardiovascular Society
- Canadian Geriatrics Society
- Canadian Hematology Society (NEW!)
- Canadian Orthopaedic Association
- Canadian Partnership Against Cancer (NEW!)
- Canadian Rheumatology Association
- Canadian Society for Surgical Oncology (NEW!)
- Canadian Society for Transfusion Medicine (NEW!)
- Canadian Society of Endocrinology and Metabolism (NEW!)
- Canadian Society of Internal Medicine
- Canadian Society of Nephrology (NEW!)
- Canadian Society of Palliative Care Physicians (NEW!)
- Canadian Urological Association (NEW!)
- CMA's Forum on General and Family Practice Issues and College of Family Physicians of Canada (NEW!)
- Occupational Medicine Specialists of Canada (NEW!)

# Occupational Medicine Specialists of Canada (NEW!)

## Five Things Physicians and Patients Should Question

OMSOC
Occupational Medicine Specialists of Canada

### 1 Don't endorse clinically unnecessary absence from work.

There is substantial evidence to support the positive link between work and health (physical, mental and social health). Both employment and income are separate determinants of health and are used as health status indicators. Absence from work contributes to declining health, slower recovery times, and longer duration of disability. Maintaining and restoring working capacity is an important function of health services which improves function and can also impact upon recovery and prognosis. Supporting unnecessary restrictions or total disability (absence from work) creates disability which in turn negatively impacts upon health. When asked to provide an opinion on functional abilities to employers or insurers, the focus should be on abilities; restrictions should be objective, specific, and listed only when absolutely medically indicated.

# Summary statement:

There is sound medical evidence indicating that unemployment is a hazard to a person's physical, mental, and social well being. As advocates for our patients, we should be strongly encouraging our patients to stay at work where able and/or return to work as soon as possible. We should decline to certify disability unless it is very obvious to us that return to work risks outweigh the risks of not returning to work.

# Summary statement:

Medical organizations recommend RTW as soon as possible.  It is recognized that work absence has detrimental effects on people.

Barriers to return to work exist and must be overcome to get people back to work post injury.

# Barriers to Return to Work

- Practitioners may be reluctant to recommend RTW for their patients. Reasons include:
  - It is outside the realm of their training
  - Standards for RTW are limited.
  - Physicians are not aware of harmful effect of worklessness.
  - Patient's expectations may not be in keeping with the physicians opinions on RTW.
  - Negotiations about RTW are difficult and may affect the physician/patient relationship
  - Physicians may fear recourse from their patients if they go against their wishes.

# Patient's Barriers to RTW

- Patients may not like their job.
- Issues with RTW in the workplace.
- Expectations – cultural, familial, etc about the injury and ability to RTW with that injury.
- Feeling mal-treated by Insurance company, caregivers, process.
- Fear

# How can we Help with RTW?

- Need to provide a framework for RTW decisions that is fair and supported by medical standards.
- Need to help physicians understand the benefit of RTW and how to negotiate a RTW.
- Provide a clear message about what is acceptable disability and how to determine acceptable disability.
- Supporting injured patients in RTW processes.

# Can you identify the disability?

# The Disability/RTW Evaluation

The process by which disability is determined begins by identifying issues related to:

- Risk
- Capacity
- Tolerance

*Reference:*

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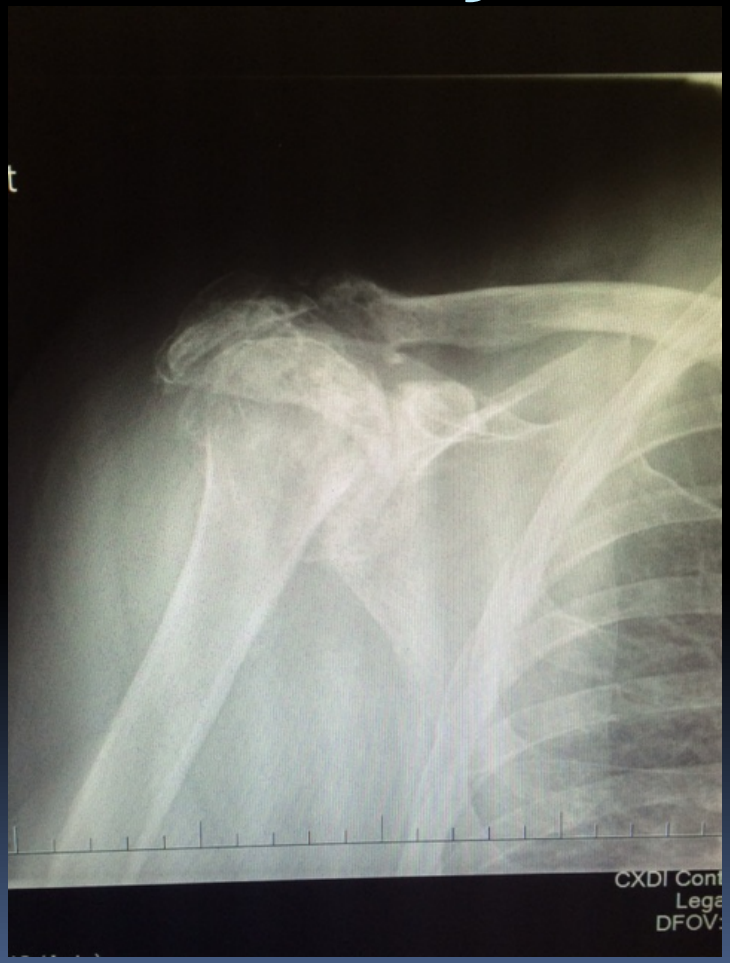
Talmage JB, Melhorn JM, & Hyman MH. The AMA Guides to the Evaluation of Work Ability and Return to Work, Second Edition. American Medical Association, 2011

# RTW Process

1. Define diagnosis (and where applicable – causation).
2. Identify the job to which the patient is to return.
3. Define risk and impose restrictions
4. Define capacity and describe limitations
5. Determine if present risk and capacity makes patient appropriate for RTW.
6. Adjust work environment to account for issues.
7. If determined able to return to work, define tolerance issues that may prevent patient from doing so.

# Diagnosis does not determine disability



- Diagnosis in this case is severe osteoarthritis of the shoulder and rotator cuff tear.
- Despite the diagnosis this patient is still working in a medium duties job.
- Continues to golf weekly.

# RISK

- Risk is defined as the chance of harm to the patient, co-workers or general population, if the patient engages in work related activities.
- Where a risk of injury exists – *Restrictions* are put in place.
- A restriction is something a person can do but should not do as it will lead to increased risk of substantial harm
- Note:  increased pain or fatigue is not harm.

# Capacity

- Capacity deals with current functional ability. This can be objectively measured such as in ROM, strength, flexibility and endurance.
- Capacity is based on the assessment of medical impairment. Impairment indicates that as a result of an injury, there has been a change in normal function.
- In cases where there are functional impairments present, the caregiver should describe *limitations*. Limitations are what the patient is not physically able to do.

- Note: Pain and fatigue are not objective impairments.

# How do we Establish Impairment?

The US Social Security Administration states that physical or mental impairment:

Must be established by medical evidence consisting of signs, symptoms and lab findings – not only by the individual's statement of symptoms.

# Tolerance

- Tolerance is the most difficult of the three factors to determine.
- This is because tolerance is a psychophysiological concept. It is the ability for sustained work or activity at a given level.

# Tolerance

- Tolerance is dependent on the rewards available to the patient for doing the activity in question.

- Multiple factors that do not relate to the injury can play a role in a person's tolerance for work. Many of these factors are defined as psycho-social in nature. This explains how two persons with the same condition can function very differently in the work environment.

# Tolerance:

- Tolerance is not measurable scientifically. This explains why different physicians seeing the same individual will often find it difficult to agree on issues relating to work tolerance.

- Tolerance is usually defined by limitations due to pain and fatigue.

# How to deal with tolerance:

- "If seeking work despite symptoms is the patient's decision (and not the physician's decision) when the patient is a willing job applicant (according to the Americans With Disabilities Act), logically the decision is still the patient's when the patient is requesting disability certification." (page 11)

*Reference:*

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Talmage JB, Melhorn JM, & Hyman MH. The AMA Guides to the Evaluation of Work Ability and Return to Work, Second Edition. American Medical Association, 2011

# How to deal with tolerance:

If there is no risk/low risk and intact capacity, but a reported intolerance, the medical evaluation of the reported intolerance should include whether there is objectively verifiable pathology present that accounts for the reported intolerance (e.g.. Severe hip OA)

- If yes then certify that work "problems" are present "on the basis of believable symptoms and severe objective pathology," but certify that the patient may work despite the symptoms , “if he or she wishes”.

# How to Deal with Tolerance:

- If "no," (the objective pathology not verifiably present or is only mild or moderate) certify that the patient may work at the job in question, but that he or she describes symptoms at a certain level of work activity. This scenario represents a "medically unanswerable question" and should be labeled as such by physicians.

The decision whether or not to work despite symptoms is ultimately the patient's, and not the physician's.

# How to limit Disability.

1. Where able, the patient should not be provided with periods of total disability. The physician should define restrictions and limitations and the employer should make all attempts to keep the worker in the workplace within those parameters.
2. Where there are periods of disability required, maintaining as short as possible periods of disability are paramount to return to work.

# How to limit Disability.

3. Periods of disability should not be used as "time off." The goal is to return the patient to work and as such, treatments need to be provided during this time to treat those issues that are causing the need for disability.
4. If the issues deal with risk, then treatment to limit the risk should be undertaken and any needed adjustments to work environment should be considered and implemented as soon as possible.

# How to limit Disability.

5. If the issues are in capacity, then focused treatment to improve capacity should be implemented (e.g. functional exercise programming).
6. If the issues are tolerance issues, then a concerted effort to modify pain and reintroduce work environment stresses need to be undertaken (e.g. a graded RTW program implemented with MD guided pain management).

# How to limit Disability.

7. In those cases where attempts at return to prior work prove unsuccessful, serious consideration should be given to vocational retraining. Getting the patient to return to some work is much better for them than not returning to work altogether.

# Beware the Nocebo!

- Nocebo (Latin for "I shall harm") is a treatment or therapy that creates harmful effects in a patient.
- Communication is paramount in defining outcomes. Positive language and support can have positive effects in framing recovery. Negative language has a nocebo effect on recovery.

- Per Colloca and Finniss, JAMA, Feb 8, 2012, Vol 307, No 6, Pp 567-8.

# Objectives Revisited:

1. To discuss the affects of disability on the individual.
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# Questions?


THE DIAGNOSIS? THE CHASIS'S BENT AND THE BUMPER'S DENTED!
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