



# Welcome to Work Disability Prevention Rounds

with host Dr. Jennifer Christian

**Today's Topic:    Difficult Situations II:**

***When You Are Told the Employer Has No Light Duty or Reasonable Accommodation***

**Call-in number: 218-862-7200    Conf code: 513651**

October 12, 2011

# Today's Guests

- **Karen Haas, MD**  
Raytheon Corporation, Tucson
- **Dennis Thrasher, MD, MBA, MPH**  
Sunnyside Medicenter, Tucson
- **Sandy Goldstein, PT, CDMS**  
Measurabilities.com, Phoenix
- **Susan Webb, JD**  
ABIL Employment Services, Phoenix

# Today's Discussion Topics

- When the patient tells you the employer has no light duty or reasonable accommodation.
- When the employer tells you they have no light duty or ability to accommodate.



- When there REALLY is no light duty for a patient with a temporary impairment.
- When the employer REALLY will not/cannot make a reasonable accommodation for a patient with a long-term alteration in ability.

# Today's Case Vignettes

- Mary, the customer service rep c/o pain in her entire upper extremity. She wants to be put off work.
- Ned, the warehouse worker with low back pain & radicular signs. He wants to be released to work full duty – he needs money.
- Sharon, the high school teacher who suffered a head injury in a MVA. She wants to go back to work despite residual impairment.

# Virtual Technology

- Email sent yesterday has:
  - phone number for audio portion
  - web address (url) for visual portion.
- Visual portion is optional.
- For help with audio or visual connection, call 508-397-1204 or 508-358-5218.
- Press 4\* on your phone to mute / un-mute your line.

# Design of Session

- Talk Show Format
- Introductions / Instructions / Orientation
- Review Foundational Concepts
- Discuss Case Vignettes and Related Topics
- Conclude formal session
- 1:15 – 1:30 Open microphone / Q&A session
  - Your Examples, Comments, Cases, or Questions

# Educational Objectives

As a result of participating in this series you will:

- Feel more prepared to respond appropriately to difficult issues that frequently arise in the SAW-RTW.
- Be able to identify and tease apart the medical and non-medical issues at play in a difficult SAW-RTW situation and handle them separately.
- Select an approach that will leave the patient feeling heard and satisfied while preventing needless work disability.

# Financial Disclosures

The faculty for this session, the program planners, and the University of Arizona Health Sciences Center CME committee made no financial disclosures that could be a conflict of interest.

See project website for more details.

## 3 Ways You Can Participate

1. Push 5\* on phone to raise your “Hand”
2. Just speak up during Q&A session
3. Write in the “chat” box on WebEx screen

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**When You Are Told  
The Employer Has No Light Duty  
or Reasonable Accommodations**

**Setting the Context**

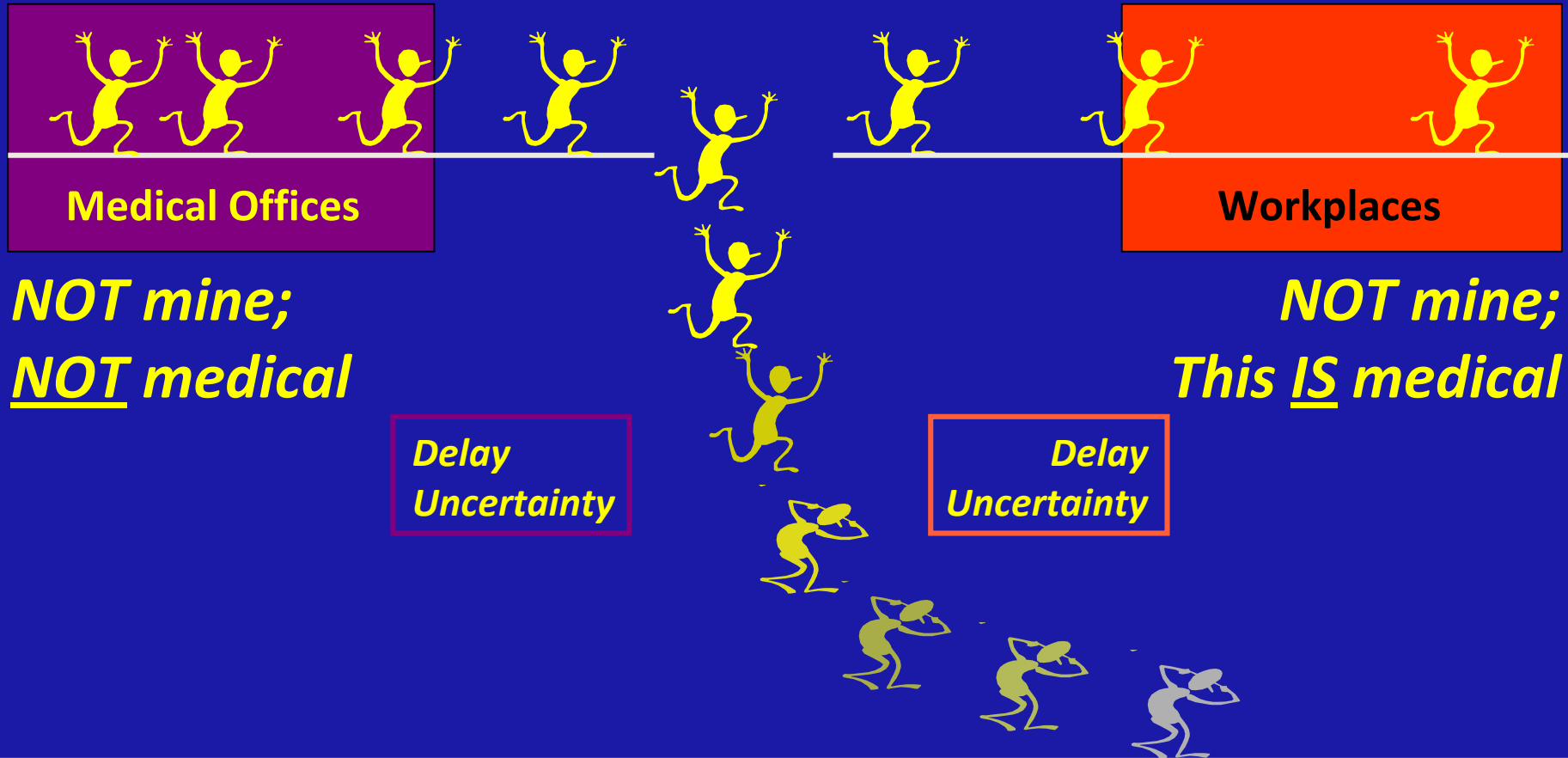
## Foundation for This Rounds Series

# **“Preventing Needless Work Disability by Helping People Stay Employed”**

A report with 16 recommendations to improve the SAW/RTW process from the American College of Occupational & Environmental Medicine (ACOEM) –

[www.acoem.org](http://www.acoem.org)

# The Gap: Whose Responsibility IS it?



***Result: Needless Work Absence, Job Loss,  
Withdrawal from Workforce***

# Needless Work Disability

## Employee

- **IS HARMFUL.** Disrupts daily life, threatens career and self-esteem, leads to worklessness & “iatrogenic invalidism”.

## Employer

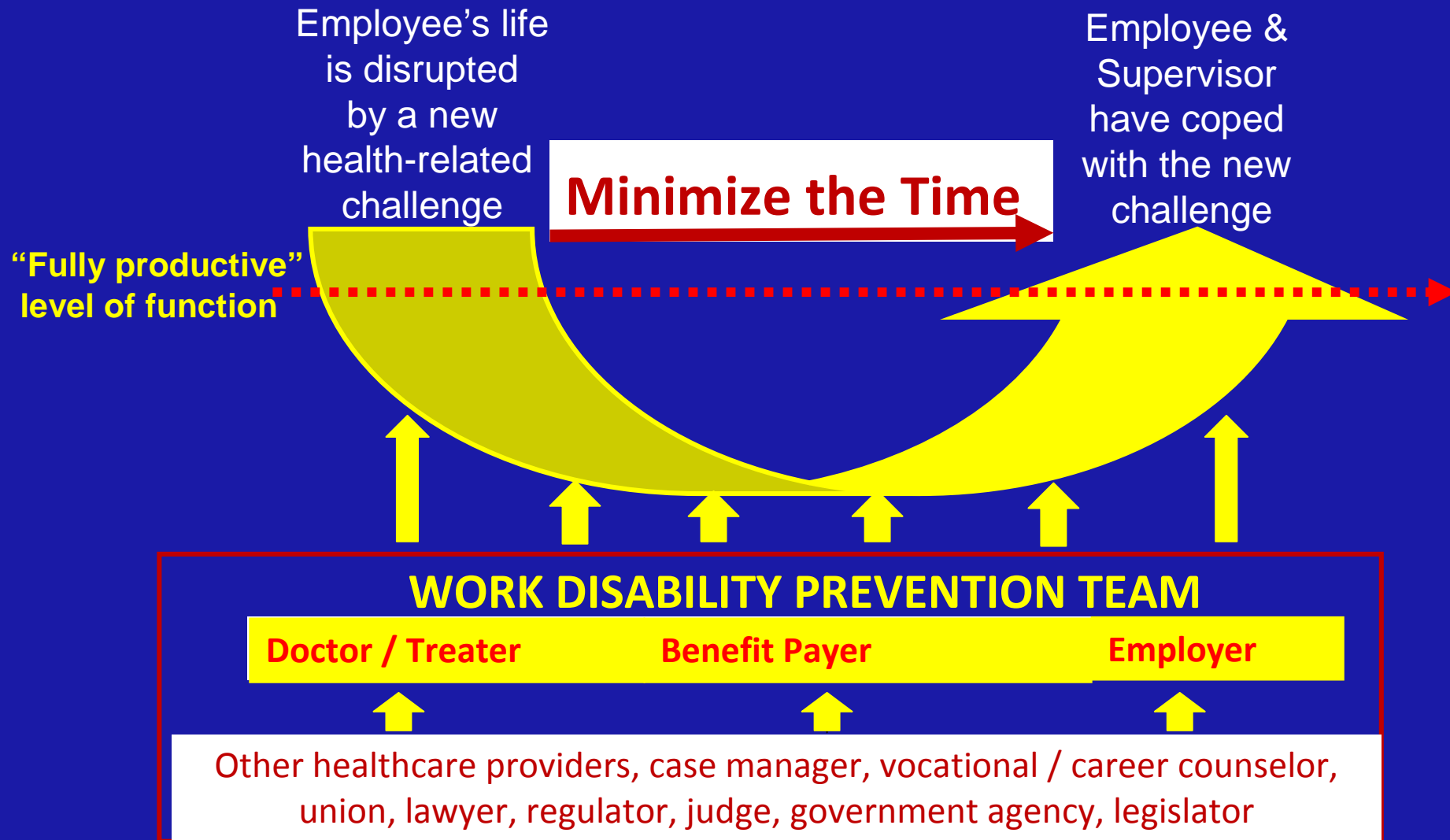
- **IS DISRUPTIVE & COSTLY.** Reduces productivity, creates unnecessary hassle and expense.

## Economy

- **IS WASTEFUL.** Diverts dollars from productive use, invites petty fraud and corruption, loss of taxpayers, gain of net dependents.

Disability Corporation – reprinted with permission

# Work Disability Prevention Vision



# ACOEM's 4 General and 16 Specific Recommendations

1. Adopt a disability prevention model.
2. Address behavioral and circumstantial realities that create or prolong disability.
3. Acknowledge the powerful contribution that motivation makes to outcomes, and make changes to improve incentive alignment.
4. Invest in system and infrastructure improvements.

# Today's Relevant Recommendations

## I. Adopt a Work Disability Prevention Model

- Increase awareness of how rarely work disability is medically-REQUIRED.
- *[Instill a sense of urgency.]* Urgency is required because prolonged time away from work is harmful.

## II. Address Behavioral & Circumstantial Realities that Create or Prolong Work Disability

- Acknowledge and deal with normal human reactions
- Investigate and address social and workplace realities

### **III. Acknowledge Motivation and Align Incentives**

- Increase “Real-Time” Availability of On-the-job Recovery, Transitional Work Programs, and Permanent Job Modifications

### **IV. Invest in System and Infrastructure Improvements**

- Disseminate Medical Evidence Regarding Recovery Benefits of Staying at Work and Being Active
- Simplify/Standardize Information Exchange Methods between Employers / Payers and Medical Offices
- Improve and standardize the methods and tools that provide 13. data for SAW/RTW decision-making.

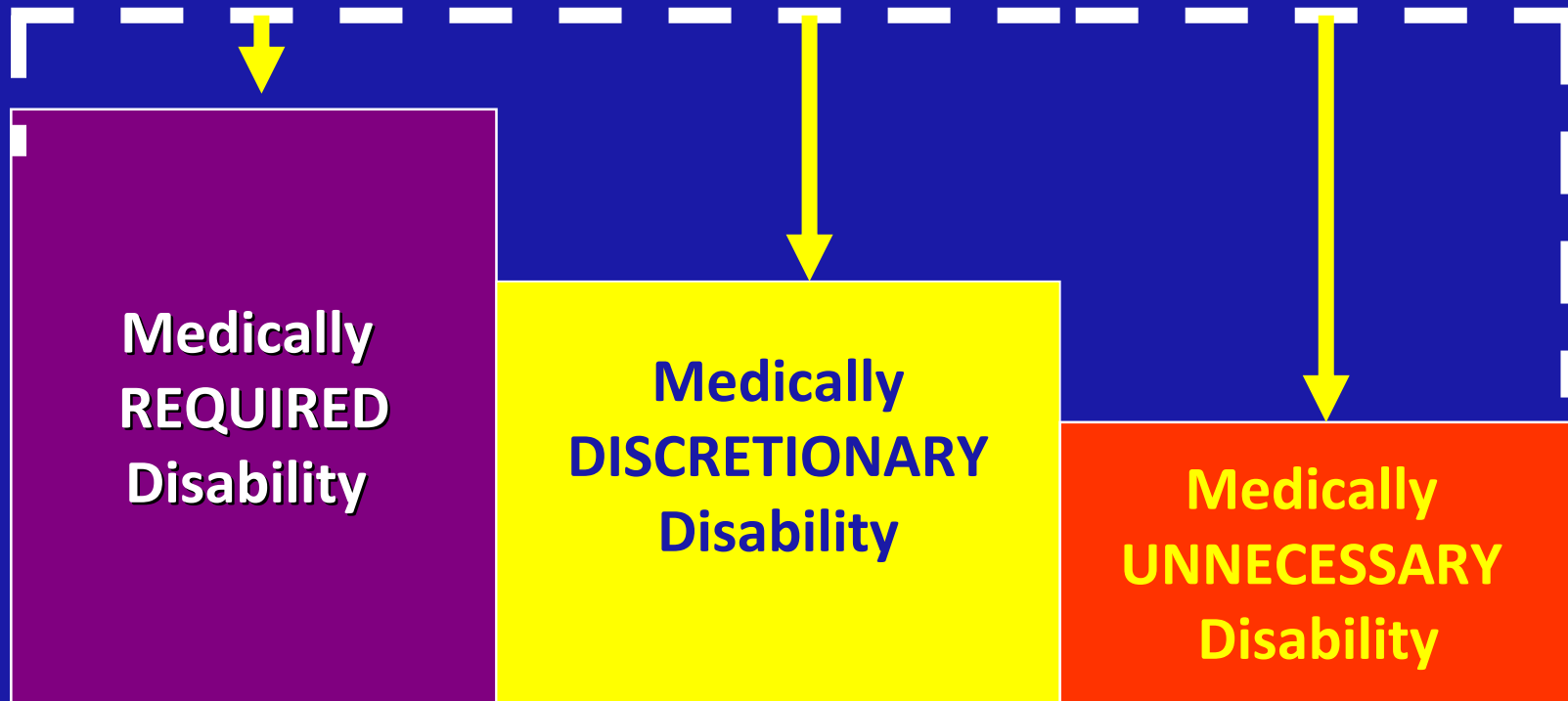
# The SAW / RTW Process

- Stay At Work / Return To Work Process
- A sequence of questions, actions, and decisions made separately by several parties that, taken together as a whole, determines the outcome of a health-related employment situation: whether a worker stays at work despite a medical condition or whether, when, and how a worker returns to work during or after recovery.
- The SAW/RTW process creates outcomes ....  
**BUT often stalls or becomes sidetracked because what is lacking is a problem-solving approach.**

# Important Uses of Your Guidance

- Educate the patient!
- Clarify what is medical – and what is not.
- Set expectations for all stakeholders:
  - Short term activities
  - Recovery & timeframe
  - Forecast evolving changes over time
- Enable employers / benefits payers to:
  - Schedule their workforce / Get work done
  - Administer absence / attendance programs
  - Make benefit eligibility & payment decisions

# Work Disability Prevention = Reduce Needless Absence



# **Work Disability Is Medically- DISCRETIONARY When . . .**

**Patient could safely do something useful but . .**

- “No way to get worker to work”**
- “Worker is incapable of any substantial work”**
- “Effort required to support the worker is more than makes sense”**
- “Can’t figure out how to provide work within these limitations”**
- “Company policy / labor contract prohibits light duty”**

# **Work Disability is Medically- UNNECESSARY When . . .**

- Medical care is inadequate or delayed
- “Medical” time lost from work is really due to:
  - Communications delay / poor information flow
  - Anyone’s ignorance or resistance
  - Administrative / procedural delay
  - Other problems masquerading as medical
  - Flabby management, poor accountability

**When You Are Told  
The Employer Has No Light Duty  
or Reasonable Accommodations**

**Today's Topics**

# Today's Discussion Topics

- When the patient tells you the employer has no light duty or reasonable accommodation.
- When the employer tells you they have no light duty or ability to accommodate.



- When there REALLY is no light duty for a patient with a temporary impairment.
- When the employer REALLY will not/cannot make a reasonable accommodation for a patient with a long-term alteration in ability.

When the patient tells you the employer has no light duty or reasonable accommodation.

- Listen with a grain of salt
  - Patient may not know
  - Patient may not want you to know

# Mary, the Customer Service Rep

- Mary, age 31, answers phones all day in a call center, single mother. You take care of her and her two pre-school kids.
- Current cc: hand, arm, shoulder and neck pain. She says she has to keyboard all day long, her headset doesn't work, and her chair is too low – and that her employer has refused to do anything to fix it.
- You started to write work restrictions, but Mary says her employer has no light duty and if you release her to work she won't get any benefits. You know nothing about her employer.

- Your RTW slip should ALWAYS describe the kind of productive activity that is OK, EVEN IF ER cannot provide suitable tasks. This educates the patient.
- NOTE: DO NOT TAKE A PATIENT WHO HAS ANY WORK CAPABILITY OFF WORK.
- Patient will receive benefits (if covered) when released to work with limitations but employer does not provide work.
- Make it clear that the reason for any work absence is the lack of suitable tasks.
  - To the patient
  - To the employer

When the employer says they have  
no light duty.....

# Ned, the Warehouse Worker

- Ned, an otherwise healthy 29 year-old male warehouse worker, injured his lower back while doing yard work at home.
- PE revealed spasm and guarding with some radiation of pain into the calf upon straight leg raising. You diagnosed a lumbar strain with radicular signs.
- You prescribed ibuprofen, Vicodin, and Flexeril. You sent him back to work at “light duty.”
- Two days later, he returned to your office requesting a release for regular work. He feels no better, but his company has a “no light duty” policy and he has no sick leave. His wife is pregnant with their second child. She does not work.

# Helping Ned Out

## **The Medical End of the SAW/RTW Gap**

- Is it safe for him to do his regular job?
- Need definitive diagnosis
- Alternative pharmacotherapies available?
- Non-pharmacologic therapies available?
- Legal remedies?

## **The Employer End of the SAW/RTW Gap**

- Employer is a small company, no HR department – naïve?
- Why the no light duty policy?
- Maybe they need more specific guidance
- Maybe they just need education and reassurance

# Our Suggestions

- Assume resistance may be ignorance or fear, disguised.
- Don't be overly specific, but do provide useful guidance re: medical risks / functional capability / ergonomic guidance.
- Be willing to answer employer questions or concerns about specific tasks or RTW plans.

# Specific vs. General Guidance

- Specific Numbers
  - Those one page forms
  - Example: “Lift up to 15 lbs 5-8 times / hr”
  - What employers say they want / need
  - Not accurate (if you just guessed)
  - Not predictive (FCE and other tests often inaccurate)
  - May unwittingly foreclose RTW (overly restrictive)
- General Advice
  - Example: “As tolerated”; “Avoid heavy lifting”
  - Shades of grey and ranges are what you feel comfortable with
  - Employer may give up in despair – too vague
  - Invites dialogue and questions
  - Creates phone calls and bother

# Quick Fix: A Phone Call from You

Call the patient's supervisor or HR department while patient is in exam room. Leave a voicemail if necessary.

- “Staying at work or returning to work is an important part of the treatment plan for this patient.”
- “I've directed him/her to try to work out a plan with you that makes him/her feel safe and reasonably comfortable. If you need my assistance, please send me a list of options and I will approve medically-suitable tasks.”
- “She/he needs to protect his/her [body part or system] for [estimated duration]”

OR

- “She/he needs to reduce the demands being placed on her/his [body part or system] for [duration]”

# Get Paid for the 3-Way Conversation

1. Make the call while the patient is in your office so you are educating the patient at the same time. If they hear you leave a voicemail that's good too.
2. Increase the level of the E&M code for the effort/time spent in communication re: SAW/RTW issues with the employer or insurer.
3. DOCUMENT the call carefully – in order to clarify that you were doing cognitive medical work during the discussion.

# Employers REALLY Need to Hear This

- “Temporary” adjustments to patient’s work
  - During recuperation --- and full recovery of function is likely.
  - Part of therapy; will advance progressively back to normal
  - May waive essential functions and productivity during this period as an aid to recovery.
- “Permanent” changes to patient’s job
  - > 3 mo change in functional ability or “permanent restrictions”
  - Often trigger requirement under ADA for “reasonable accommodation”
  - Essential functions must be met AND productivity expectations should not be reduced.
  - Ergonomic issues due to job design also trigger this. AND if employer sees risk of “OSHA recordable” (blot on safety record), they may be willing to pay for modifications.

When a patient's employer claims  
they cannot accommodate a  
permanent functional impairment.....

# CHAPTER ONE:

## Sharon, the High School Teacher

- Sharon, age 37, is a high school French teacher who has made a fair recovery following a MVA and head injury 18 months ago. She has some left sided hemiparesis / spasticity which limits her mobility.
- She wants to go back to work but the language classrooms are on the second floor, accessible only by stairs, and all teachers have to take a turn as lunch monitor in the cafeteria. The school says she can't come back if she can't do those things.

# Call in the Marines? Which ones?

- An occ doc?
- An OT / PT, other healthcare professional?
- The insurance company's case manager?
- The employer's medical department or their medical consultant?
- A vocational rehabilitation professional?
- ABIL or another disability employment advocate?
- AWDPA? Arizona Work Disability Prevention Assn.

# Bigger Solution for Bigger Problems

- Three way conversation on site in workplace
  - Patient, employer, and the professional as expert assessor and process facilitator.
  - MD, PT, OT, or voc rehab can all do this.
  - Objectively inspect and evaluate tangible and intangible work environment; interview stakeholders, conduct problem-solving session to look for solutions, agree on plan.

# Get Them Paid for the Effort

1. The 3-way conversation at the worksite
  - You order the service (codes require a physician order).
  - Tell the people who visit the worksite to use these CPT codes
    - **97537 Physical Medicine code – Community Work & Reintegration.** Can bill for worksite visit or for services in clinic. Requires a doctor's order. Billed in 15 min units.  
MD, OT, PT, or voc rehab can use code.
    - **97750 Physical Performance Assessment – MD, OT, PT** can bill using this code.
  - Or, find someone to do it who is volunteer, paid by a non-profit or supported by state or federal grants!

# Choose Your Battles

Sometimes You Just Gotta Say “Uncle”:

## **Have Fall-Back Plans**

# When temporary adjustment of work is REALLY NOT available

- Make sure your restrictions / limitations are medically required and accurate.
- Focus your treatment on rapid recovery of function
- Tell the patient what they can safely do now, and that it will get progressively better. Let them choose.
- Inform patient that their job might disappear at 12 weeks under FMLA, so they need to
  - Talk to their employer about this issue / their policies
  - Start planning their next job if need be
- Make sure they know they COULD work. AVOID suggesting they are “too disabled” to work – EVER – UNLESS it is medically unwise for them to do ANYTHING PRODUCTIVE.

# When there REALLY is no light duty ...

- NOTE: DO NOT TAKE THE PATIENT OFF WORK.
- Describe what they can do, and what they shouldn't or can't do NOW. This educates the patient.
- Patient will receive benefits (if covered) when released to work with limitations but employer does not provide work.
- Make it clear that the reason for any work absence is the lack of suitable tasks.
  - With the patient
  - With the employer

# CRITICAL MOMENT: Opportunity to Influence

- Patient presents form for disability benefits, and asks you to sign.
- **WRONG WAY:** OK. You can't work.
- **RIGHT WAY:** OK, I'll do sign this for now. But here's how I see your situation: I agree that you are unable to work right now, but I believe you will be able to do more in the future. A future on disability benefits is not going to be the best thing for you or your family. You need to find a way to get back to some kind of work.

# When there really is no reasonable accommodation

- Inform patient that their job might disappear at 12 weeks under FMLA, so they need to
  - Talk to their employer about this issue / their policies
  - Start planning their next job -- or next career -- if need be
- Patient needs to think more flexibly, focus on what they CAN still do.
- Going on disability is neither the only option, nor the best one, but may be a short-term necessity.

## CHAPTER TWO:

### Sharon the High School Teacher

- Sharon, age 37, is a high school teacher who has made a fair recovery following a MVA and head injury 18 months ago. She has some left sided hemiparesis / spasticity which limits her mobility.
- She returned to work with a reasonable accommodation of a first floor classroom that reduced her need to walk and avoided stairs.
- One month later, the school put her on disability leave pending medical evaluation of her fitness for duty due to cognitive / speech impairments. Sharon still insists she can work as a teacher.



# Handy Hand-Outs



Give BOTH handouts to the patient and tell them to give the employer's version to their boss.

## For Patients:

- How to Minimize Life & Work Disruption Due to Injury or Illness

## For Employers:

- 12 Quick Tips for Managing Your Employee's Health-Related Employment Disruption

# Other Resources

- Refer to [www.awdpa.org](http://www.awdpa.org) for personal help /suggestions.
- Consult these websites for ideas: [www.askjan.org](http://www.askjan.org) or [www.onetonline.org](http://www.onetonline.org)
- For workers' comp, you can recommend private vocational rehabilitation.
- For personal health conditions, recommend career counseling (preferred) or government vocational rehabilitation (limited availability).  
<https://www.azdes.gov/rsa/VR/>
- Recommend a chronic illness coach (e.g., [www.cicoach.com](http://www.cicoach.com))

# Summary

- Worklessness is a poor medical outcome – for the patient, the family, the employer & society.
- Patients are often unaware of employer SAW/RTW programs -- or don't want to tell.
- Employers often resist “light duty” or reasonable accommodations out of ignorance.
- It is hard to match up your guidance on “restrictions and limitations” with the tasks, tools & equipment in the workplace.
- A quick phone call or voice mail from you can make a huge difference.
- When a lot is at stake, get experts involved.

#	WORK DISABILITY PREVENTION ROUNDS TOPICS	DATE
1	Patient Management I: Doctors, Work & Cultural Beliefs	April 13 (Wed)
2	Difficult Situations I: Patient Advocate or Patsy?	May 10 (Tues)
3	Patient Management II: How to Set Early Expectations That Improve Outcomes	May 24 (Tues)
4	Therapeutic Approaches That Produce Better Treatment Results & Less Work Disability	June 8 (Wed)
5	Your Role as Designated Guesser: What Can This Patient Do at Work Now?	July 12 (Tues)
6	Patient Management III: Dealing with Psychiatric Overlay	Aug 10 (Wed)
7	When More is Needed: Referral Resources and Reimbursement for Services That Prevent Needless Work Disability and Help People Get Benefits and Keep or Get a Job	Sep 13 (Tues)
8	Difficult Situations II: When You Are Told the Employer Has No Light Duty or Reasonable Accommodations	Oct 12 (Wed)
<b>9</b>	<b>Difficult Situations III: The Rescuer Doctor: Power Imbalance and Social Justice Issues</b>	<b>Nov 8 (Tues)</b>
10	Make Your Job Easier: Get Everyone On the Same Page From the Start	Dec 14 (Wed)

# Thank You to Our Guests

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# Today's Session Recording, Slides, Evaluations & CME Certificates

1. Go to Webility's project website  
[www.webility.md/az-cme](http://www.webility.md/az-cme)
2. Download audio recording and slides if desired.
3. Enter **invitation code for 10/12 session:**

**az-cme-employer**

1. Fill out and return evaluation & CME request.
2. Certificate will be mailed to you.

# Open Mike Discussion Time: Your Comments & Cases

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