

STATE MEDICAL SOCIETY • OCCUPATIONAL MEDICINE SEMINAR

THE “WC-16-B” DEPARTMENT MEDICAL FORM

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It is of course possible to raise the objection that, while extending the chain of causality into an ever more complex network may be logically valid, it has no practical significance. To talk of planetary influences on a game of tennis is obviously far-fetched. In one sense this objection is true, but the analysis does show what can be expected when causality is pushed to its limit. Moreover, when more complex and subtle systems than tennis games are investigated then the very fine-tuned effects may turn out to be more and more important and quite novel forms of behavior may begin to emerge. . . . Physicist F. David Peat

I. The Department's Three WC-16-B Causation Questions:

A. Direct Accident Injury Theory (Question 11)

11. In your opinion, is it probable that the event in Item 4 directly caused the disability?

Yes No

(Emphasis added.)

B. Aggravation Accident Injury Theory (Question 12)

12. If not directly, is it probable that the event described in Item 4 caused the disability by precipitation, aggravation and acceleration of a pre-existing progressively deteriorating or degenerative condition beyond normal progression?

Yes No

(Emphasis added.)

C. Occupational “Disease” Repetitive or Gradual Injury Theory (Question 13)

13. If the patient suffers from a condition caused by an appreciable period of work place exposure (from Item 4), was the exposure either the sole cause of the condition, or at least a material contributory causative factor in the condition's onset or progression?

Yes No

If yes, give date disability from work began:

(Emphasis added.)

II. Doctors & Lawyers Understandably Speak a Different Language

- A. An Example of Miscommunication Between Lawyers & Doctors: Lawyer Gilbert H. Stewart in Legal Medicine (Indianapolis: The Bobbs-Merrill Co., 1910) stated as follows in his section on insanity at page 408: “Lawyers and physicians mean two different things by the word ‘madness.’ A lawyer means conduct of a certain character. A physician means a certain disease, one of the effects of which is to produce such conduct.” Mr. Stewart’s book is 506 pages in length and 80 pages is devoted to the topic of insanity (pages 349 to 429). Please note that this naughty lawyer on page 408 got tired of the word “insanity” and changed to the word “madness” apparently because he became tired of using the word “insanity” repeatedly. However, unfortunately, it gives the impression to the reader that the two words have different meanings in this context when they do not.
- B. Naughty Modern Lawyers Don’t Speak the Same Language With Each Other: In Wisconsin USA in 2003 lawyers licensed as Badger Barristers use different words regarding Questions 11 & 12 to mean exactly the same thing. The Wisconsin Legislature and Wisconsin Supreme Court use the word “accident” to mean an occurrence that happens at one time. The only other and second injury theory is the gradual injury theory found in Question 13. Anyway, lawyers practicing Wisconsin worker’s compensation refer to an “accident” as an “event” and also as an “accidental event” and also as a “trauma” and also as a “traumatic event” and also as an “incident” as well as the word “accident” itself. All these words and phrases mean exactly the same thing but create the impression of a different meaning just like Mr. Stewart did with his unfortunate change from “insanity” to “madness.” Obviously naughtiness has been with us for decades.
- C. Now the Really Bad News: Badger Barristers for some unknown reason refer to the gradual injury process (called work exposure) by the term occupational disease. Please now remember what Mr. Stewart said about the different understandings of lawyers and doctors of the word “madness” and in particular the doctors thought of it as a disease. Well, in all probability almost every non-lawyer on earth (including doctors) don’t think of the word disease when discussing a gradual, cumulative or progressive injury process. By the way, the words repetitive, gradual, cumulative and progressive mean exactly the same thing in this context. Also, some courts around the nation use the language “mini-traumas” in describing this so-called “disease” process. This is why I strongly oppose the use of the word “trauma” to describe an “accident.”
- D. Words or Phrases Such as “Accident” Are Legal Terms of Art: This means they have been assigned a specific meaning by the Legislature or Supreme Court that is often different from how a word or phrase is used at your average American bus stop. For example, the Wisconsin Court of Appeals in Mudrovich v. Soto, 238 Wis. 2d 162, 169 (Ct. App. 2000) stated in part: “Consistent with Jensen [Wisconsin Supreme Court decision], we determine that Martin’s and Soto’s [verbal] remarks may be deemed an ‘accident’ under the [Wisconsin Worker’s Compensation] Act.” Your average non-lawyer does not consider a verbal insult at a bus stop to be an “accident.” Of course another example is the meaning the law gives to the word “disease” as just described. Most people think of “germ theory” when they hear the word “disease.” See wawca.org for further developments on the above subject and many others.