

# The Legal Perspective on Pre-Existing Conditions

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*Work Related Injuries Workshop  
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## Hypothetical Case: Construction Worker

- Low back pain developed while lifting pipes
- 3 weeks later: sciatic pain
- 10 year history of recurrent back pain not related to work; also treated in past for anxiety and depression
- Treatment by pain specialist and primary care
- After surgery, developed chronic pain and severe depression
- Medical providers indicate that combined conditions are work-related
- IME: Employer only responsible for closed period for back pain and not responsible for depression

# Pre-Existing Conditions: What Does the Statute Say?

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# The Legal Perspective on Pre-Existing Medical Conditions

When is it a New Claim ?



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# **Massachusetts General Law (M.G.L.)**

## **Chapter 152 Section 1 (7A)**

If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease remains a major but not necessarily predominant cause of disability or need for treatment.

# Aggravation Vs. Exasperation

## Aggravation

- 1. an increase in intensity, seriousness, or severity; act of making worse.
- 2. the state of being aggravated.
- 3. something that causes an increase in intensity, degree, or severity.
- 4. annoyance; exasperation.
- 5. a source or cause of annoyance or exasperation.



# Exasperation

- noun: **exasperation**; plural noun: **exasperations**
- a feeling of intense irritation or annoyance.

# So What is it ?

- An Aggravation of a Pre-Existing, Compensable Condition is considered a New Injury.
- (Hint) Look for a specific event that caused the Aggravation
- A general worsening of medical condition (Exasperation) with no specific event, normally goes back to the original injury





# The Successive Insurer Rule

- The last Insurer on the Risk “Buys the Farm”
- 1 % Aggravation of a Pre-Existing Condition is considered a compensable claim

# Defending The Claim Using Pre-Existing Conditions

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# Establish a Pre-Existing Injury or Disease

- Section 1(7A) of the Massachusetts Workers' Compensation Statute defines a personal injury and addresses how pre-existing injuries affect compensability
- The insurer must prove the existence of a pre-existing injury or disease
- Cannot be work-related in Massachusetts





# Insurer Must Prove Combination

- The burden of proof is on the insurer to prove that the pre-existing injury or disease combined with the industrial accident to cause or prolong incapacity and a need for treatment.

# The Defense is in the Degree of Causation

- The insurer must prove that the work injury is no more than a minor or marginal cause of the incapacity and need for treatment
- The proof is offered through expert medical testimony
- We use IME's to challenge the claim by asking physicians to specifically identify the pre-existing non-work related injury, opine that the pre-existing injury combined with the work accident and state that the work injury is no more than a minor or marginal cause of the incapacity and need for treatment

# What is an Attorney or Judge Looking for in the Record about Pre-Existing Conditions?

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# Q and A