

## **CA DEU: Use 'Best Judgment' re 4660(d) Issues: 05/26/05**

1. California disability evaluation unit raters have been directed by the Administrative Director's office to apply the 2005 permanent rating schedule to cases having examinations done in 2004 but a report date of 2005.

In a memorandum from Disability Evaluation Unit Manager Blair McGowan to "DWC DEU Rater," McGowan advises, "Ms. Hoch has made a determination that if a medical exam occurs in 2004 which determines that the employee is P&S and indicates the existence of PD but the report is not issued until 2005, the 2005 PDRS will apply."

In a Monday teleconference hosted by the California Coalition on Workers' Compensation, Hoch said that it was her opinion that the plain language of Labor Code section 4660(d) was clear that it does not matter, based on the plain language of the statute, that the medical exam was before the effective date of the statute and the report issued after, she said. The new PDRS is controlled by the date of the report, not the date of the examination, she said.

LC 4660(d) says the new schedule, "shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker."

However, McGowan's memorandum indicates that the Division anticipates many diverse factual situations that cannot easily be lumped in to the general directive.

"I am seeking clarification of the administration's position on the other scenarios that we discussed at our meetings," McGowan's memo states. "In the meantime, you should assume we have no official policy or recommended approach on those matters and just apply LC 4660(d) using your best judgment."