Occupational Health Physical Therapists
Special Interest Group
Orthopaedic Section, APTA, Inc.

# Newsletter

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## THE IMPACT OF TRANSITIONAL WORK OPPORTUNITIES IN THE MANAGEMENT OF INJURED WORKERS

Early return-to-work (RTW) programs are becoming accepted in industry as a necessary component of corporate disability cost containment programs. Recent studies have identified structured transitional work as one important reason for reduction in worker's compensation (WC) and disability costs when comparing similar sized industries doing business within the same state WC system. Early RTW programs are gaining popularity as a management tool to combat the financial burdens of worker's compensation insurance. Recent insurance industry statistics suggest that injured employees involved in structured, goal-oriented transitional work programs return to the job in approximately 50% of the time as compared to those who, under similar circumstances, were not provided with this opportunity. The net result is that both medical and indemnity costs may be reduced by as much as two thirds with a reduction of 50-60% in total case costs.

Transitional work is any job duties or combination of tasks that may be performed safely by the returning employee whose physical abilities to perform all essential physical job functions, at a full-time work schedule, has been compromised by illness or injury. Two assumptions must be made regarding safe return of the injured worker to the workplace:

1. Individuals recover and increase safe function incrementally and at varying rates.
2. Most work tasks and/or schedules can be modified for short time periods without creating "no work tasks" or reducing overall productivity.

Transitional work needs to be time limited wherein the functional demands and work tolerance levels can be progressed while performing productive work for wages. In a union environment, a joint labor-management effort is essential to draft policies and procedures for transitional work programming.

Placing a returning employee in a transitional work program is driven by medical recommendation and reasonable expectation that the employee has the physical and emotional capacity to regain all or most of the physical ability required to safely return to full duty employment. Transitional work programs should implement work return strategies that are effective in placing workers in their pre-injury work departments doing as much and as many of their original work tasks as possible. The returning worker should be closely monitored and progression of transitional work duties facilitated on a timeline schedule clearly outlined to all parties prior to return to the work-site. This rather innovative approach is designed to keep workers at work and close to their regular job and work environment. This will maximize steady progression through the work return program and greatly enhance the chance for return to full, unrestricted competitive employment.

Employers should involve consultative and clinical work-site rehabilitation services to provide monitored programming that involves real work tasks at the work station, allowing workers with limitations to incrementally resume his or her duties under the supervision of a licensed therapist with adequate knowledge and training in occupational health. Parameters to be addressed are:

1. Rehabilitation to return to optimal, safe physical function through an individualized transitional work plan,
2. Identification and elimination of ergonomic risk factors,
3. Modification of the administrative environment to promote transitional work,
4. Labor relations to promote a sense of collaboration and accommodation, and
5. Data collection and interpretation to identify potential permanent changes.

The successful development and implementation of an individualized transitional work plan requires:

1. Accurate job analysis with emphasis on essential physical work functions,
2. Quantified functional capacity data,
3. Goals for rehabilitation during the transitional work timeframe, and
4. Clear identification of plan details such as program length, realistic return to work goals, specific work task progression, and amount/intensity of therapeutic supervision estimated to achieve goals and/or make program modifications if necessary.

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Work-site rehabilitation intervention provides the rehabilitation team and employer with direct input on variable factors such as labor relations, supervisory attitudes, co-worker relationships, and physical tolerance levels. Although there are many benefits, the transitional return to work effort maintains regular work attendance, increases employer participation in the work return process, allows the injured worker to resume regular contact with co-workers and supervisors, ensures productive work while promoting positive work behaviors, and minimizes lost time with associated direct and indirect costs.

An effective transitional work return program requires data collection and interpretation to evaluate success, determine change, and identify potential problems to be addressed. The following criterion may be used as outcome indicators:

1. Cost effectiveness through reduction in medical, indemnity, and indirect costs,
2. Reduction of lost time days,
3. Worker satisfaction,
4. Supervisor and union satisfaction,
5. Number of employees successfully returning to full duty work,
6. Length of successful return,
7. Recidivism rate relative to same vs different diagnosis, and
8. Number of workers requiring permanent job accommodations.

Transitional return to work programs provide employers with an organized system for expediting safe and timely return to work for employees with physical disabilities. The impact of rising medical and indemnity costs which reduce profits and ADA, employers are now demonstrating openness and a willingness to explore creative solutions in disability management. Through development of transitional work programming, employers are finding that they can significantly reduce the intangibles and variability that often surround injured employees' recovery and ultimate success and longevity in safe return to productive employment. Transitional work programs result in markedly lower overall costs for the employer and protect the employability of the worker. These programs are effective in preventing many instances of chronic occupational injury that can rapidly develop during a period of separation from the work environment.

Excerpted from R.E. Breslin and J.A. Olsheski, *The Impact of a Transitional Work Return Program on List Time*, NARPPS Journal, Volume 11, Number 2, Spring, 1996.

## POSITIVE ATTITUDE AND KNOWLEDGE ARE KEY ELEMENTS TO QUICK RECOVERY FROM WORK INJURY AND ILLNESS

Thinking about impairment or refusal to feel victimized may have a greater impact on postinjury or illness return to work than factors such as getting along with the boss, according to a new Gallup study in collaboration with Fortis Benefits Insurance Co. In this innovative study, researchers conducted focus groups, interviewing 275 Fortis disability claimants to explore personal ethics and values of workers coping with an illness or injury that resulted in time off work.

The following is a synopsis of study results:

- 70% of persons who return to work quickly postinjury or illness never think about impairment; 34% of persons who return relatively slowly almost never think about their impairment.
- 76% of those returning quickly refuse to feel victimized by the condition that took them off of the job; 43% of those returning slowly refuse to feel this way.
- 90% of those returning to work in a timely manner reported a positive relationship with their employer (boss) as compared with 83% of those whose return rate was slower.
- Individuals who return to work soon post-injury or illness onset are more likely to report a strong overall work ethic.
- Those who return to work quickly are more likely to participate fully in the rehabilitation effort and become actively involved with treatment decisions.
- Those who rapidly reintegrated most effectively into the work environment tend to be more innately resilient, proactive, conscientious, and demonstrate more than average willpower.

Stevens OSHA Reporter OSHA WEEK, January 8, 1996, Volume 7, Number 2

## LEGAL BEAGLE

*By Kathy Lewis, JD, MAPT*

**How does the ADA affect physical therapy employers?**

Physical therapy managers are not immune from ADA claims. When assessing performance of students, physical therapists or support personnel, you may encounter a learning disability claim. When the department manager decides to dismiss an employee because of poor performance history, the manager should assess whether poor performance is related to a qualified disability and be willing to provide reasonable accommodations. In contrast, managers are not expected to tolerate poor performance if they can show compliance with the ADA or that the employee does not have a qualified disability. Employees do not have an absolute right to refuse reasonable accommodations.

The following recent cases from health care settings represent the above points. Primary questions found in these cases are:

1. *Is there a disability?*
2. *Does the individual meet essential job functions to meet the test for a "qualified individual with a disability?"*
3. *If essential job functions can not be met, can the employer provide reasonable accommodations to allow meeting this test?*
4. *If reasonable accommodations are available, did the individual refuse to accept those accommodation(s), thus, waiving employee protective rights under the ADA?*

After poor performance during the first year of medical school, a student claimed that he was dyslexic. He was allowed to participate in a decelerated program during the subsequent 2 years, but was dismissed during his fourth year. Although the parties agreed that the student was dyslexic, the court concluded that the student's poor performance was based on his inability to process information promptly and accurately. (A clinical psychologist concluded that the student's IQ was 78). The school could not be expected to fundamentally alter the nature of its program nor give him extra time for clinical decisions while practicing in the clinic. According to this case, you do not need to make accommondations that fundamentally alter the practice of physical therapy.

In another recent case, a radiology aide who was suffering from sickle cell anemia had missed eighty-two days of

work and was often late. After progressive disciplinary actions and counseling, the hospital terminated the aide's employment. Subsequently, the aide filed a claim alleging violation of his rights under the ADA (termination because of his disability and failure to make reasonable accommodations.) The court ruled that even though the aide had a disability (sickle cell anemia), he was not otherwise qualified because he could NOT meet essential job function (regular and stable attendance). Since he was unable to perform his job while absent and was not willing to transfer to another department, his rights under the ADA had not been violated. Johnson v. Children's Hosp. of Philadelphia, No. 95-1554 (3d Cir. Feb. 23, 1996)

A nurse with eleven years experience was working in a cardiac catheterization lab. During the latter part of her employment, she sustained cervical injuries from a car accident. After her return to work, she was wearing a lead apron for an extended period of time, then experienced motor function impairment in her right hand. After this five-and-a-half hour procedure, she was unable to perform a task as requested by her supervisor. She was offered other nursing positions in the hospital but refused them because none were day positions. After her termination, she filed suit against the hospital alleging that her ADA rights had been violated. The court concluded that she was not disabled because she could perform other nursing duties and she was not perceived as disabled because the hospital offered her other positions. The court stated that not being able to work in a position of one's choice does not constitute a disability. Mowat-Chesney v. Children's Hosp., No. 94-D- 1552 (D. Colo. Mar. 5, 1996)

An Administrative Review Board permanently restricted a psychiatrist from direct patient contact and direct patient care. The Board's decision was based on findings that he had epilepsy and an emotional disorder which affected his ability to safely and competently practice medicine. The record included complaints from twelve patients with instances of inappropriate behavior. The appellate court confirmed ARB's decision and denied the psychiatrist's ADA claim. He was unable to perform the job functions without accommodations. The accommodations suggested by medical specialists were found to be unreasonable, placing undue burden on co-workers and supervisors. In re Moran v. Chassin, No. 72598 (N.Y. App Div., 3d Jud. Dept Mar. 7, 1996)

In the above cases, the courts concluded that the medical student with dyslexia, the radiology aide with sickle cell anemia, and the psychiatrist with epilepsy and an emotional disorder had disabilities. However, the nurse who experienced motor impairment after wearing a lead apron for long periods of time did not have an actual nor a perceived disability.

According to the decisions of these cases, managers do not need to make accommodations that fundamentally change the practice of physical therapy nor place an undue burden on others to assure a safe work environment. When alternate positions are available to meet reasonable accommodations, the employee can not refuse to accept the accommodation and simultaneously claim that ADA rights have been violated.

ADA case law will continue to evolve for an unpredictable time frame. Jurisdictions other than those represented in the above cases may reach similar conclusions through different rationale or conclusions may differ. One consistent trend of the courts seems to be decisions that protect safety of others. Arguably, the United States Supreme Court's recent refusal to review a decision by the Fifth Circuit court supports the importance of safety. In this case, an insulin dependent diabetic bus driver was found not to be a "qualified individual with a disability" because the significant risk to the health and safety of others could not be eliminated by reasonable accommodation. Daugherty v. El Paso, Tex., No. 95-1083, cert. Denied, 64 U.S.L.W. 3623 (U.S. Mar. 18, 1996)

## SECRETARY'S CORNER

The occupational health physical therapist special interest group has worked very diligently to draft a definition of occupational health physical therapy. This is a great step toward being able to quantify our practice specialty and develop clinical competencies on which to base our clinical effectiveness. The OHPTSIG Practice and Research Committees should be commended for it's efforts in writing the draft definition, distributing it to the membership and Executive Board for field review, and preparing the final draft for presentation to the Orthopaedic Section Executive Board.

The completion of the occupational health physical therapy definition project is only one of many accomplishments of the OHPTSIG year to date. Occupational rehabilitation and industrial consultation by physical therapists has become a rapidly growing subspecialty. Our special interest group continues to be proactive in its mission to develop a strong presence for physical therapists in the industrial arena. If we are to continue to progress toward the ultimate goal of becoming accepted as occupational health physical therapy professionals in the industrial marketplace, we need membership assistance through participation. There are many ways to participate more actively in our OHPTSIG. You may volunteer for committee membership, write and submit newsletter articles, attend annual meetings at CSM, and /or contact the President with other ideas and suggestions to input into existing projects or to recommend areas or concerns you wish the SIG to address.

To volunteer for OHPTSIG participation, contact:

Dennis Isernhagen, President
(212) 722-1399 or
DDIIWIN@AOL.COM

*Submitted for the Summer edition of the OHPTSIG newsletter by Bobbie Kayser, PT Secretary Occupational Health Physical Therapist Special Interest Group*

## CALL FOR NOMINATIONS

The Nominating Committee of the Orthopaedic Section's Occupational Health Physical Therapists SIG is soliciting candidates for the offices of President, Treasurer and Member of the Nominating Committee. The election will be held via mail ballot. Watch for your ballot in December!

If you wish to be more involved and contribute to the growth and development of the Occupational Health Physical Therapy, please contact the Chair of the Nominating Committee or Tara Fredrickson at the Orthopaedic Section office, 1-800-444-3982.

## NEWS BRIEFS:

## WORKERS' COMPENSATION REFORM ON THE WAY?

The nation's workers' compensation (WC) system requires considerable change, according to a survey of state insurance commissioners and legislators conducted by AIG Managed Care, Inc. In fact, 63% of those surveyed say the WC system needs a "fundamental change" or "complete overhaul." Only 29% say the system "works pretty well." In all, 25 state insurance commissioners and 175 state legislators were contacted for their opinions. The majority, or 84%, did not anticipate uniform WC standards within five years. The respondents cited the following legislative reforms as priorities:

1. 44% Prevent fraudulent claims
2. 40% Change the definition of compensable injury/illness
3. 39% Reinstate requirements for reasonable accommodation for injured employees

Of reforms expected to be enacted within three years, respondents cited the following:

1. 63% Use of managed care organizations
2. 62% Establish a competitive state WC fund
3. 60% Tighten limits on the length of temporary benefits
4. 59% Restrict benefit packages

For detailed survey information, contact Lois Levey, AIG Managed Care, Inc., 70 Pine Street, New York, NY 10270; (212)770-7447.

Excerpted from Professional Safety, page 21, January, 1996.

## STUDY TO RESEARCH PHYSICIANS' DECISIONS ON BACK INJURY RETURN TO WORK RELEASE

The California Department of Industrial Relations Division of Workers' Compensation has embarked on a new study to determine how physicians judge when to release employees with disabling low back injuries back to work. This study is funded by a research grant from the National Institute of Occupational Health and Safety (NIOSH). The information gained should facilitate improved management of the injured worker in the return to work effort which continues to be a critical element gained should facilitate improved management of the injured worker in the return to work effort which continues to be a critical element in state workers' compensation systems. This study will also provide new insight into the injured worker's experience in returning to the work environment following a disabling back injury. Although physicians play a key role in the return to work process, little is known about rationale for return recommendations. The study will involve a sample of 300 physicians from varying health care delivery systems.

For additional information about this study, contact Richard Stephens (415)975-0721 or Rick Rice, DIR, (714)935-2812.

Stevens' OSHA Reporter OSHA WEEK, February 19, 1996, Volume 7, Number 8.

Membership in the Occupational Health SIG is open to any member of the Orthopaedic Section. To join, simply contact Tara Fredrickson at the Section office, 1-800-444-3982.

President:
Dennis Isernhagen, PT
ph: 218/722-1399
FAX: 218/722-1395
E-mail: DDIIWIN@AOL.COM

Vice President:
Mark Anderson, PT
ph: 612/368-9214
FAX: 612/368-9249
E-mail: 76524.1134@compuserve.com

Secretary:
Roberta Kayser, PT
ph: 502/897-0100
FAX: 502/897-0042

Treasurer:
Ed Barnard, PT
ph: 702/856-5555
FAX: 702/856-3708
E-mail: ebarnard@aspen.reno.nv.us.

By-laws Committee Chair:
Kathy Lewis, PT, JD
ph: 806/354-5595
FAX: 806/354-5591
E-mail: klewis@cortex.ttuhsc.ama.edu

Education Committee Chair:
Gwen Parrott, PT
ph: 502/493-0031
FAX: 502/493-8182

Practice & Reimbursement Committee Chair:
Bonnie Sussman, PT, Med
ph: 603/448-6551

Research Committee Chair:
Scott Minor, PT, PhD
ph: 314/286-1432
FAX: 314/286-1410
E-mail: minors@medicine.wustl.edu

Nominating Committee Chair:
Helene Fearon, PT
ph: 602/997-7844
FAX: 602/997-8020

Advisory Group on Ergonomics:
Mark Anderson, PT
ph: 612/368-9214
FAX: 612/368-9249
E-mail: 76524.1134@compuserve.com

## MORE COMPANIES, AGENCIES SEEK CONSULTANTS FOR HEALTH, SAFETY COMPLIANCE

With the changes in government and downsizing of programs, agencies and industries are recognizing how important safety is as a part of the overall work operation. Businesses using specialized safety consultants (such as occupational health physical therapists, ergonomists, etc.) have increased 150 percent in the past seven years - from 8 percent in 1988 to 20 percent today according to American Industrial Hygiene Association data. The move toward outside safety and health contractors appears to be getting support from the highest levels of government. Vice President Al Gore has encouraged federal agencies to work more closely with consultants to accomplish mutual goals. This presents an excellent opportunity for qualified physical therapist consultants in industry.

Stevens OSHA Reporter, OSHA WEEK, May 1995