

Medicolegal Aspects

Disclaimers

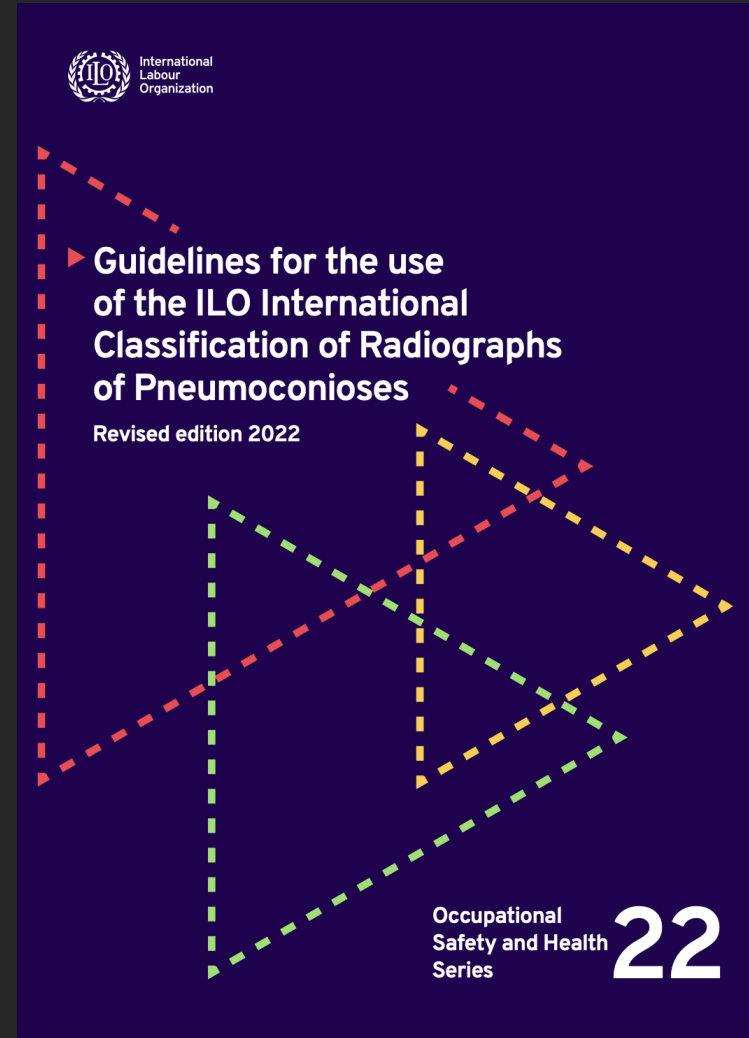
- I am not a lawyer
- The information contained herein is for informational purposes only and not to be misconstrued as legal advice.
- Confirm this information with your legal counsel as federal regulations differ from state regulations. Each state has its own regulations.

Federal Regulatory Agencies

- Department of Health and Human Services
 - Center for Disease Control (CDC)
 - National Institute of Occupational Safety and Health (NIOSH)
 - Coal Workers Health Surveillance Program (CWHSP)
 - Agency for Toxic Substances and Disease Registry (ATSDR)
- Department of Labor
 - Occupational Safety and Health Administration (OSHA)
 - Silica
 - Asbestos
 - Beryllium

2022 ILO Classification Guidelines

“does not imply legal definitions of pneumoconiosis for compensation purposes and does not set or imply a level at which compensation is payable”



Contested Proceedings

- Chest radiograph findings alone are insufficient for the diagnosis of pneumoconiosis
- Medical and occupational history
- Physical exam
- Additional types of chest imaging
- Laboratory tests
- Biopsy results

Impairment

“The presence
of a diagnosis
does not
necessarily
imply functional
impairment”

SIXTH EDITION

Guides to the Evaluation of Permanent Impairment

Medical Editor

Robert D. Rondinelli, MD, PhD
Medical Director of Rehabilitation Services
Iowa Health Des Moines
Des Moines, Iowa

Section Editors

Elizabeth Genovese MD, MBA, FACOEM, FAADEP
IMX Medical Management Services
Bala Cynwyd, Pennsylvania

Richard T. Katz, MD
Physical Medicine & Rehabilitation
St. Louis, Missouri

Tom G. Mayer, MD
Productive Rehabilitation Institute of Dallas for Ergonomics (PRIDE)
Dallas, Texas

Kathryn L. Mueller, MD, MPH
University of Colorado Health Sciences Center
Denver, Colorado

Mohammed I. Ranavava, MD, JD, MS, FFOM, FRCPI, CIME
Professor and Chief, Division of Occupational and Disability Medicine
Marshall University, Joan C. Edwards School of Medicine
Huntington, West Virginia

Senior Contributing Editor

Christopher R. Brigham, MD, MMS
Brigham and Associates, Inc.
San Diego, California

AMA
AMERICAN
MEDICAL
ASSOCIATION

Imaging

- ILO B reading interpretations of the CXR's are introduced as evidence
- CT scans are considered “ancillary” and attempts may be made by counsel to minimize the contribution of CT/HRCT to the classification of pneumoconiosis/ILD.
- Per the AMA, “...standard CT and/or HRCT can provide greater accuracy as part of a thorough assessment of the pulmonary parenchyma.”
- There is not a current ILO classification for HRCT. There is a “proposed” standard that closely mirrors the form for chest radiography*

*Suganuma N et al. J Occup Health 2009; 51: 210-222.

Review of Imaging

- Adhere to ILO Guidelines
- Strategies to avoid bias:
 - Interpret CXR blinded to the exposure history
 - Avoid payment-based outcome
 - Use the ILO classification for standardized reporting
 - Quality assurance program

Review of Imaging

- Comply with 20 C.F.R. § 718.102 as amended. This applies to the Coal Workers Health Surveillance Program (CWHSP).

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21615

(12) Radiographs must not be made when the environmental temperatures and humidity in the facility are outside the manufacturer's recommended range of the CR and DR equipment to be used.

(13) All interpreters, whenever classifying digitally acquired chest radiographs, must have immediately available for reference a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (2011 Revision) (incorporated by reference, see § 718.5). Modification of the appearance of the standard images using software tools is not permitted.

(14) Viewing systems should enable

6 months, or more frequently, to check for defects that automatic systems may not detect.

(16) Classification of CR and DR digitally-acquired chest radiographs under this Part must be performed based on the viewing images displayed as soft copies using the viewing workstations specified in this section. Classification of radiographs must not be based on the viewing of hard copy printed transparencies of images that were digitally-acquired.

(17) The classification of chest radiographs based on digitized copies of chest radiographs that were originally acquired using film-screen techniques is not permissible.

(c) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director must schedule the miner for further examination and testing. Where the deficiencies in the report are the result of a lack of effort on the part of the miner, the miner will be afforded one additional opportunity to produce a

No printed digital images.

No “digitized” chest radiographs that were originally analog/film-screen technique.

Review of Imaging

- Comply with 20 C.F.R. § 718.102 as amended.
- Flat panel monitors at least 3 MP at 10 bit depth
- Image displays/graphics cards DICOM standard PS 3.14-2011
- Must not deviate by more than 10% from the grayscale standard display function (GSDF). Display system luminance, relative noise, linearity, MTF, frequency and glare should meet or exceed recommendations in AAPM On-Line Report no. 03 pages 1-146. (Don't use your laptop!)
- Permit side by side display of individual CXR and ILO Standard

Section 4: Clinical Surveillance

- B-readings may be provided outside of your state licensure. In this scenario, a licensed provider in that state should supply a clinical reading.
- In clinical screening programs, it is necessary to inform the requesting provider or patient of medical important/actionable findings identified on the chest radiograph
- Documentation of notification is strongly recommended

Section 4: Expert Medical Witness

- As an expert medical witness, there is no patient-physician relationship
- Nevertheless, if medical findings are pertinent to maintaining and protecting health, it is ethical to ensure that the individual is informed of the findings from their chest radiograph
- Documentation of efforts to notify is advisable

Section 4d

4D. Should worker see personal physician because of findings?

YES



NO



Date Physician or Worker notified? (mm-dd-yyyy)

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4E. OTHER COMMENTS

[illegible]

Coal Workers' Pneumoconiosis Federal Claims

- **“Clinical pneumoconiosis”**: consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.
- **“Legal pneumoconiosis”**: includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. “arising out of coal mine employment” is defined as significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

Expert Witness Guidelines

- NIOSH Ethical guidelines:
 - <https://www.cdc.gov/niosh/topics/chestradiography/breeder-ethics.html>
- American College of Radiology
 - Practice Guideline on the Expert Witness in Radiology. Revised 2007 (Res. 40). Effective 10/1/07
- American Medical Association
 - American Medical Association. H-265.994, Expert Witness Testimony. (Sub. Res. 223, A-92; Appended: Sub. Res. 211, I-97; Reaffirmation A-99)

B-reading Misadventures

- Plaintiff

- Asbestos/Silicosis:

- <https://www.nytimes.com/2005/11/29/business/reading-xrays-in-asbestos-suits-enriched-doctor.html>

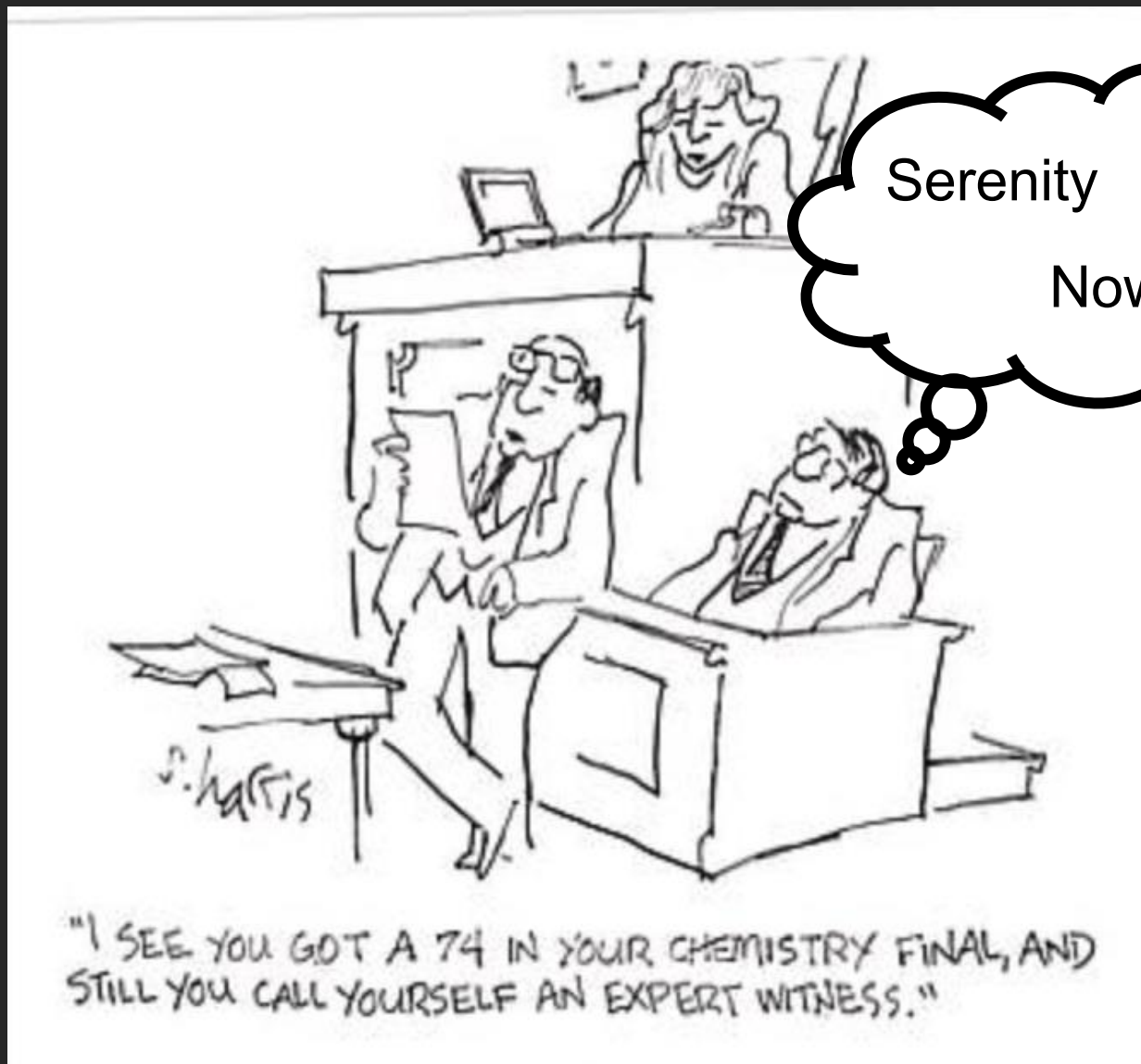
- Defense

- Coal Workers' Pneumoconiosis

- <https://publicintegrity.org/environment/johns-hopkins-medical-unit-rarely-finds-black-lung-helping-coal-industry-defeat-miners-claims/>

A Few Pointers:

- Keep records of your depositions: dates, docket number, federal or state claim, plaintiff, defendant
- Know your topic. State the facts
- Keep a file of relevant references
- Don't speculate
- If you don't know, say you don't know
- Don't let an attorney put words in your mouth with "Isn't it true doctor that..."
- What you say is public record



Be Calm and Be Prepared