

### The Oregon Legal Definition of Arthritis and Pre-Existing Degenerative Spinal Conditions: A Medical/Legal Perspective

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### Combined Conditions

- If an otherwise compensable injury combines with a pre-existing condition, the combined condition is compensable only "for so long as and to the extent" the injury is the major cause.
- For a combined condition to exist two conditions must merge or exist harmoniously.
- A combined condition cannot exist without a pre-existing condition defined by ORS 656.005(24)(a)(A)

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### Why is this Important?

- If at outset of the initial injury the pre-existing condition is the major cause of a combined condition the claim may be completely denied.
- If an injury is initially accepted evidence is later developed of a combined condition the employer/carrier may deny the claim once the otherwise compensable condition ceases to be the major cause.
- Allows for employer/carrier to deny outright or at a later point and close the claim per ORS 656.268(1)(b) and apportion disability.

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**Pre-existing Conditions-Injury Claims**  
ORS 656.005(24)(a)

To legally qualify the pre-existing condition must:

1. Been diagnosed prior to the injury; or
2. Symptoms of the pre-existing condition were treated prior to injury regardless of diagnosis; or
3. The condition was arthritis or an arthritic condition.

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**Common Scenario**

- Back or neck injury is accepted as a sprain or strain but claimant does not quickly heal.
- Imaging studies are obtained that show long standing degenerative disease in the spine which was not previously diagnosed or treated.
- The degenerative condition is not legally pre-existing unless employer can establish it is arthritis or an arthritic condition.

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*Hopkins v. SAIF*  
**Legal Definition of Arthritis**  
ELEMENTS

1. Inflammation of one or more joints;
2. Due to infectious, metabolic or constitutional causes; and,
3. Resulting in breakdown, degeneration or structural change.

*Hopkins v. SAIF*, 349 OR 348 (2010)

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### Law and Facts

- *Hopkins* defined arthritis as a matter of law.
- Each element of that definition is a question of fact. The Board requires proof of each element.

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### Burden of Proof – ORS 656.266

- Burden is on claimant to establish injury occurred, i.e. an “otherwise compensable injury” – material contributing cause standard.
- Combined conditions – burden shifts to employer to establish a combined condition exists and that the injury is not major cause
- Therefore, burden is on employer to prove a pre-existing condition or arthritis.

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### Expert Evidence

- Proof of arthritis is usually considered a complex medical question that requires expert medical evidence.
- The doctor needs to address each element of establishing the definition of arthritis and that it combined with the injury.
- Where experts conflict the Board will give more weight to those opinions that are well reasoned and based on complete information.
- Also the Board looks favorably on those expert opinions that effectively rebut other doctor's contrary points.
- Opinions of attending physician or surgeon often given more weight.

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### Elements - Joint

- *Hopkins* did not define joint.
- On that subject concerning the spine the Court said arthritis is not confined “to inflammation of mobile joints or to certain joints in the back and not to others...”
- Dr. Fuller will elaborate but the debate continues on which structures of the spine constitute “joints.”

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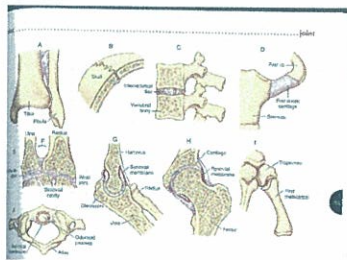
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### Dorland's Illustrated Medical Dictionary, 30<sup>th</sup> Ed, page 965.



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### Elements - Inflammation

- *Hopkins* did not define inflammation but did call it a core element.
- Element most likely to be contested in degenerative spinal disease cases
- Inflammation must be due to infectious, metabolic or constitutional causes.
- The Court observed that acute traumatically inflicted inflammation is not included, e.g. a sprained ankle.

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**Elements – Causes**  
Infectious, Metabolic or Constitutional

- Infectious or metabolic not usually involved.  
Possibilities:
- Viral or bacterial
- Rheumatoid arthritis
- Gout
- Dr. Fuller can elaborate.

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**Elements – Constitutional Causes**

- *Hopkins* defined “constitutional” as “pertaining to the structure of the body.”  
The Court referred to Webster’s which defined it as “having to do with, inherent in, or affecting the constitution or structure of body or mind.”

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**Elements - Results**

- Breakdown, Degeneration or Structural Change.
- The arthritic condition – inflammation of a joint – must result in some destruction.
- *Hopkins* did not define but the terms imply some level of change or progression.

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Karjalainen v. Curtis Johnson & Pennywise, Inc.,  
208 Or App 674 (2006)

- Prior to *Hopkins*
- In the *Karjalainen* case the Court of Appeals promulgated a similar definition of arthritis that involved inflammation of a joint.
- On remand the Board agreed that based on the evidence the spinal structures were joints. However, the medical evidence was insufficient to establish inflammation.

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### Case by Case Analysis

- *Karjalainen* and *Hopkins* both require the Board to engage in case by case analysis whether the definition of arthritis has been satisfied.
- In other words the Board will not decide that in all cases degenerative spinal disease constitutes arthritis.
- Simply referring to a condition as arthritis or arthritic is not sufficient.
- Each case is unique and must establish each element of the definition.

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### Failure to Explain

- Numerous Board decisions have reversed denials where the medical evidence – sometimes un-rebutted – referred to degenerative spinal disease as arthritis but did not adequately address or explain one or more of the elements – usually inflammation.
- Remember: ORS 656.266(2)(a) gives employer the burden of proof on the pre-existing/combined condition question.
- Therefore, the Board requires the employer's proof be "persuasive." Conclusory medical reports that do not explain are not persuasive.

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*Desi Mesa,*  
63 Van Natta 67 (1/12/11)

- Denial reversed based on lack of proof of arthritis.
- IME doctors' reports were conclusory and did not explain how DDD involved inflammation of a joint in that case. One IME doctor admitted at deposition that he was not an expert on the issue of joint inflammation.
- Claimant's surgeon disputed preexisting inflammation based on lack of prior symptoms. His opinion was that preexisting DDD only rendered claimant more susceptible to injury.

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*David N. McElwee,*  
63 Van Natta 2402 (2011)

- The IME doctor did not provide persuasive argument that preexisting cervical degenerative disc disease satisfied all the elements of the definition of arthritis.
- Without a legally recognizable preexisting condition, there was no combined condition and claimant prevailed by merely showing the injury was a material cause of the need for treatment of herniated disc.

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*Marshall A. Beachell,*  
64 Van Natta 1602 (2012)

- The Board relied on Dr. Puziss to find that prior treatment was for strains not the pre-existing spondylosis.
- The Board did not find arthritis was proven based on opinion that "studies" showed that DDD produces inflammatory enzymes within the disc because:
  - Studies were not identified;
  - No explanation of how enzymes caused inflammation;
  - No actual inflammation identified.

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*Beachell - Continued*

- Attending neurosurgeon said films did not show inflammation of the discs and the degenerative spine condition was not an arthritic condition.
- Board also rejected IME opinion that the degenerative condition encompassed the facet joints which demonstrated synovial inflammation based on opinions of AP and Dr. Puziss that the facets did not show signs of inflammation.
- Therefore the degenerative condition was found to not be arthritis or an arthritic condition.

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*Abdou F. Mohamed,  
64 Van Natta 1707 (2012)*

- Majority of Board affirmed, without opinion, Opinion and Order that overturned denial.
- Dissent pointed out that majority accepted Dr. Puziss' opinion that pre-existing spondylosis and degenerative spinal condition were not inflammatory in nature.
- This was apparently over multiple competing opinions.

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*Michael Kelson  
65 Van Natta 32 (2013)*

- Board affirmed Opinion and Order that set aside denial but for different reasons.
- ALJ found no arthritis because attending surgeon said inflammation of a joint was not a significant factor.
- Board found the pre-existing spondylosis did involve joint inflammation of constitutional or metabolic origin, resulting in degeneration.
- But still Employer failed to prove injury was not the major cause.

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### Thank you

- Handouts of sample definitions and IME questions are attached. Please note these are generic in nature and need to be tailored to the particular facts of each individual case.

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## OSIA WINTER CONFERENCE January 24, 2013 John Klor

### SAMPLE IME DEFINITIONS AND QUESTIONS

#### DEFINITIONS

#### PRE-EXISTING CONDITION

To legally qualify the preexisting condition must have:

1. Been diagnosed prior to the injury; or
2. Symptoms of the pre-existing condition were treated prior to injury regardless of diagnosis; or,
3. The condition was arthritis or an arthritic condition

#### ARTHRITIS OR ARTHRITIC CONDITION

1. Inflammation of one or more joints;
2. Due to infectious, metabolic or constitutional causes; and,
3. Resulting in breakdown, degeneration or structural change.

Note: Constitutional causes have been interpreted to mean as "pertaining to the structure of the body" or "having to do with, inherent in, or affecting the constitution or structure of body or mind."

#### COMBINED CONDITION

A combined condition has been interpreted to exist where two conditions merge or exist harmoniously.

#### MAJOR CONTRIBUTING CAUSE

The cause, or combination of causes, that contributes more than all other causes combined - also known as the 51% rule.

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## MATERIAL CONTRIBUTING CAUSE

A substantial cause, but not necessarily the sole cause or even the most significant cause.

## QUESTIONS

In formulating your answers to the following questions, please bear in mind that Workers' Compensation adjudicators give more weight to those opinions that are well reasoned and based on complete information. So please explain your opinions and reasoning with this thought in mind. If appropriate, please refer to commonly accepted medical references and if you refer to medical studies, please identify them.

All of your opinions should be based on reasonable medical probability not possibility. If you are not able to meet this standard, please identify that point and discuss what factors are limiting your opinion.

1. Please take a complete medical and injury history from claimant concerning the nature and extent of his/her injury occurring on \_\_\_\_\_ and any relevant pre-existing conditions or prior injuries. Please ask claimant to describe in detail the incident or work activity he/she believes caused his/her current complaints.
  2. Please set forth your diagnoses for any medical condition[s] for which the injury was the material contributing cause. For each diagnosis, please identify objective findings on exam or in the records that support the diagnosis. Please determine if claimant's subject complaints are consistent with the objective findings. Please specify which diagnoses are by history only.
  3. Please identify and describe the nature and extent of all relevant pre-existing conditions.
  4. Please identify any pre-existing condition that was diagnosed prior to the injury. If not previously diagnosed please determine whether medical services were provided prior to the injury for the symptoms of the pre-existing condition regardless of the diagnosis at the time services were rendered. In this regard please cite the evidence that supports your opinion.
  5. Please identify any pre-existing condition that satisfies the definition of arthritis or an arthritic condition. In this regard please specifically detail your reasoning for each of the following elements:
    - a. A description of the joint(s) involved and whether it is commonly accepted as a joint within the medical profession.
    - b. The nature and extent of the inflammation that is occurring within the affected joint(s).
    - c. Whether the joint inflammation was due to infectious, metabolic or constitutional causes.
    - d. The nature and extent to which the joint inflammation has resulted in breakdown, degeneration or structural changes.
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6. At any time did any pre-existing condition combine with the injury related condition(s) to cause or prolong disability or a need for treatment? If so, please identify when the combined condition occurred.
7. If the combined condition occurred at the time of the injury, please determine whether the injury or the pre-existing condition was the major cause of the combined condition and resulting disability or need for treatment.
8. If the injury was initially the major contributing cause of the combined condition or if the combined condition occurred some time after the initial injury, please determine whether the injury has ceased to be the major contributing cause.
9. If the injury has ceased to be the major contributing cause, please identify, in your medical opinion, the point in time when that occurred and cite that evidence in the records and/or based on your examination and medical knowledge that supports that judgment.
10. For each injury related diagnosis please determine if claimant is medically stationary. In your opinion when did claimant become medically stationary. If claimant is not medically stationary please advise what additional curative medical treatment is reasonable and necessary in your opinion.
11. If claimant is medically stationary, please evaluate permanent impairment and loss of use or function and job restrictions for each injury related condition. If appropriate, please apportion work related conditions from non-work related conditions.
12. If the injury related condition is not medically stationary, but has ceased being the major contributing cause of the combined condition please estimate, to the best of your medical ability, the permanent impairment and job restrictions that should be attributed to the accepted condition.

**Optional**

13. Dr. Smith has offered the opinion (describe the opinion you want to have concurred with or rebutted) please address this opinion and advise if you agree or disagree. Please discuss your reasoning and cite to commonly accepted medical literature and/or medical records or your examination findings that support your opinion.
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