

Dr. Arthur Ameis - Physical Medicine and Rehabilitation

Augello and Economical Mutual - Appeal 2 Appeal, 2009-11-17

By way of context, it is no secret that there is a profound disagreement between many medical experts in the field of disability assessment as to the exact role that the AMA Guides play in determining catastrophic impairments under the *Schedule*. The prime dissident group rallying against the interpretation taken by the courts and arbitrators to date (the *Desbiens* approach) is centred around the position taken by Dr. Brigham, a prominent American advisor on disability issues.

Dr. Ameis, whose article on *Impairment Evaluation* is cited by Economical clearly falls into the Brigham camp. Indeed, Dr. Brigham is listed as a co-author of the article.

One of Dr. Brigham's claims to fame is that he participated in the development of the original guidelines, and claims to have a special insight into what was intended by the committee which draughted the original guidelines. Dr. Ameis and Dr. Brigham have posited that the intention or original meaning of the provision was that no numeric rating could be given to psychological disorders, with the result that such disorders could not directly be added to the numerical physical rating to push the whole person impairment over the necessary threshold for catastrophic impairment...

...Spiegel J. in *Desbiens v. Mordini* provided the pioneering analysis of the interaction of the AMA Guides with the balance of the *Schedule* to which it is incorporated by reference. It is this interpretation which Dr. Brigham, Dr. Ameis, and their acolytes now challenge.

Augello and Economical Mutual Arbitration, 2007-12-04

The reference to the AMA Guides Newsletter is not persuasive. The article is co-authored by Dr. Arthur Ameis, whose approach was rejected in *Desbiens* and some of the FSCO cases. The fact that he has written an article criticizing the decisions is not surprising and does not raise a substantial basis for doubting the correctness of the decisions.

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L.F. and State Farm Arbitration, 2002-08-21

Regarding this Applicant, Dr. Ameis stated that L.F. "did not persuasively demonstrate the complete inability to engage in suitably selected employment." He was of the view that "[m]aximum effort must be consistently exerted in order for test results to be both valid and reliable" and that "[w]hen a patient chooses to provide less than consistently full effort in a test, the results pertaining to the quantification of either impairment or residual capacity are invalidated and deemed unreliable."

Applicants do not "prove" a medical condition to a medical examiner, be it AIDs, cancer, strain or sprain. Medical examinations are not judicial proceedings. Medical practitioners are not adjudicators. Medical practitioners may be qualified as experts. Experts can give opinion evidence. If a medical expert is unable to provide an opinion within one's area of expertise, based on the history provided, the examination and testing conducted and the present level of scientific knowledge, one should say so and why, rather than render judgment based on a presumed medical onus of proof.

Dr. Ameis speaks of a patient "choosing" to "provide less than consistently full effort in a test."

I take it that Dr. Ameis is speaking of L.F. It is noteworthy that Dr. Ameis has never examined or even met L.F. He appears to rely on the disability DAC assessment. Dr. Salmon, however, who saw L.F. first hand and, as a psychologist, one might think would have greater expertise in this area, was of the view, as were other experts, that L.F. had a medically recognized Pain Disorder, which is distinct from intentionally producing or feigning pain, and by extension, disability.

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[Desbiens v. Mordini](#), 2004 CanLII 41166 (ON SC) — 2004-11-17

[Cross-examination of Dr. Ameis On Prior Negative Judicial Comments](#)

[265] In cross examination, plaintiffs' counsel sought to impeach Dr. Ameis' credibility by referring to a number of cases before this court and the Financial Services Commission of Ontario (FSCO) in which negative comments had been made by the judge or arbitrator concerning Dr. Ameis lack of objectivity and impartiality in his role as an expert.

[266] Defendants' counsel objected to this line of questioning on the grounds that the credibility of Dr. Ameis should be determined based on the testimony and demeanor of Dr. Ameis in the case before the court and that the comments made by a judicial officer in another case concerning the nature and quality of Dr. Ameis' evidence is totally irrelevant.

[274] I do not wish to be understood to say that this line of questioning is impermissible under any circumstances. If a satisfactory evidentiary basis is laid it may become relevant. Plaintiffs' counsel submitted that an adequate evidentiary foundation has been established. He noted that Dr. Ameis, in his examination in chief during the qualification process, stated that he testified in court before. On cross-examination Dr. Ameis agreed that he may have testified in court on hundreds of occasion prior to this trial and had given expert evidence in arbitrations on perhaps 50 or 60 occasions. He agreed on cross-examination that an expert medical witness who is not testifying with respect to his or her own patient ought not to act as an advocate and should be as objective or impartial as possible. When asked whether he had testified as an expert on previous occasions he had done so objectively and impartially and not as an advocate, his answer quite fairly was "I've tried". In my opinion this is not a sufficient evidentiary basis to support the introduction of the line of cross-examination sought by the plaintiffs.

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[Gouliaeff and Commercial Union -3](#) Arbitration, 1995-07-24

Dr. Ameis reported a number of inconsistencies between the Applicant's complaints and his objective examination. He felt that the Applicant's complaints were best explained by "behavioural" and "motivational" issues, a "passive/aggressive" personality, or "conversion

disorder". I place little weight on Dr. Ameis' psychiatric diagnoses, which fall outside his expertise as a psychiatrist.

McMichael and Belair Insurance Arbitration, 2005-03-02

Note 4: The only expert opinion filed by Belair that questioned this conclusion was the May 6, 2002 report of Dr. L. Freedman who, while acknowledging some measurable cognitive and emotional difficulties, strongly questioned whether Mr. McMichael had suffered anything more than a benign Grade I concussion. In this expert's opinion, that level of trauma does not lead to ongoing neuro-cognitive or emotional/behavioural sequelae. This opinion was not referred to in argument and, while it is strongly worded, is outside of the broad consensus of opinions offered by others who have actually met with David McMichael. I have not disregarded it but prefer the consensus opinion that differs with it. I also note that Dr. Ameis questioned the extent of Mr. McMichael's brain injury as well, however Dr. Ameis is a psychiatrist with no particular expertise in this area. I also note (see note 17 below) that his opinion in this regard is supported in large part by an error in his reading of one other DAC report.

Note 14: Dr. Ameis, informed by Dr. Reznick's views, also supported Belair's theory of the case. However, his view is based on a misreading of a report of Dr. Rosenblat, and a too easy acceptance of Dr. Reznick's suppositions. See Note 17 below.

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Fournie and Coachman Insurance Arbitration, 2010-02-12

I have two concerns with MDAC's assessment of Mr. Fournie. Firstly, there was no evidence presented at the hearing to indicate that the MDAC assessors had consulted on the final opinion, had seen the executive summary or, in fact, agreed with the final opinion. The executive summary and final report did not indicate that the individual assessors had signed off on it. Dr. Ameis, who is the controlling mind behind MDAC, stated that before completing the executive summary he did not consult with the psychiatrist or occupational therapist who assessed Mr. Fournie for MDAC. He gave evidence that he had consulted with Dr. MacCallum, but could not remember where or when and would not be able to provide proof of a consensus meeting with him. He gave evidence on cross-examination that he did not consult with the psychiatrist or occupational therapist when determining Mr. Fournie's final WPI percentage. Demetrios Kostadopoulos, the occupational therapist who gave evidence for Coachman, stated that he did not know if his assessment was provided to subsequent assessors. Furthermore, he was not provided with other assessors' reports, nor did he have any recollection of MDAC's executive summary being provided to him.

Secondly, Dr. Ameis' evidence on assigning a WPI of 26% to Mr. Fournie also causes me concern. Dr. MacCallum, in his report, clearly states that he leaves the determination of the final WPI to the consensus process. Dr. MacCallum does not give his opinion on Mr. Fournie's final WPI and Dr. Ameis provided no evidence that he ever got an opinion from Dr. MacCallum on Mr. Fournie's final WPI. Dr. Ameis stated that he did consult with Dr. MacCallum, but cannot remember when. For an issue as important as the determination of an individual's impairments and that individual's access to future benefits, one would think MDAC would have taken more

care in keeping records of its assessments. I find that Dr. MacCallum did not give a final opinion on Mr. Fournie's WPI. Instead, I find that the final WPI percentage score is Dr. Ameis' opinion.

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Ritorto and Allstate Arbitration, 2006-03-03

In mid-November 2003, a Designated Assessment Centre reviewed Dr. Simone's proposal to continue Mrs. Ritorto's therapy. Dr. Ameis relied on the recommended time periods for treatment in the *Guideline* protocols for his opinion that the plan expense was not reasonable or necessary. In his testimony, he agreed with the underlying theory that no further healing or pain control results from treating soft tissue injuries of this nature beyond six weeks.

Dr. Ameis did not examine Mrs. Ritorto and therefore did not have the opportunity to assess her pre-existing condition or the possibility that her symptoms might fall outside usual norms that would take her out of the *Guideline's* treatment protocols. The undisputed evidence is that Mrs. Ritorto's poor posture aggravated her accident-related symptoms, and Dr. Ameis' failure to address her poor posture is my reason not to rely on his opinion about Gateway's treatment.

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Ahmadi-Nadoushan and Allstate Arbitration, 1995-05-23

In terminating benefits on December 5, 1993, the Insurer relied on the January 17, 1994 report of Dr. Ameis (examination of November 29, 1993, Exhibit 3, Tab 38). Dr. Ameis found that the Applicant showed no objective signs in the neck or back. He felt that she displayed inappropriate pain behaviours. He did not think she was anxious or depressed. He did not accept that she has fibromyalgia.

In his testimony at the hearing, Dr. Ameis made some observations about the Applicant's movements after she left his office. These comments were not included in his report, but were passed on to the Insurer in a separate letter, which was not copied to the Applicant. In addition, Dr. Ameis' report includes several unfavourable comments about the Applicant's character. I find that Dr. Ameis was not acting as an impartial medical expert in this case, and this has affected the weight I have given his evidence.

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Kotey and State Farm Arbitration, 1999-10-04

Summons to Produce Financial Records of a Medical Practitioner:

Mr. Kotey's counsel served a summons on Dr. Arthur Ameis the morning he was scheduled to testify on behalf of the Insurer, requiring him to bring his financial records relating to his medical practice. Counsel argued that he intended to demonstrate that Dr. Ameis was biased against insureds. He argued that production of Dr. Ameis' financial records was required in order

to establish that a substantial portion of Dr. Ameis' income is derived from medico-legal opinions requested by insurance companies. I ruled that counsel would be permitted to cross examine

Dr. Ameis with respect to these matters, but that he was not entitled to production of Dr. Ameis' financial records. I quashed the summons for the following reasons. The primary issue in this proceeding is Mr. Kotey's entitlement to weekly benefits. He has been examined by many medical practitioners, at the request of his own doctors and at the request of State Farm. These proceedings would become unduly prolonged if every medical practitioner were required to produce detailed financial information of the kind requested here. These allegations of general bias, as opposed to a specific bias against Mr. Kotey, are remote from the entitlement issues before me. I concluded that the probative value of the documents did not justify the requested production.

Levey and Traders General Insurance Arbitration, 1998-06-30

The question of neck spasm and indeed Ms. Levey's pre-accident condition in general was taken up by Dr. Arthur Ameis in a report he wrote for Traders dated February 20, 1997. Dr. Ameis had some of the same materials that I had before me. For instance, he writes that the summary of the April 1995 report by Dr. Killian indicates habitual pre-morbid positioning and posturing. Having examined the report and the summary, I can find only a reference to "habitual positioning/posturing" but no reference to its being pre-morbid. He also states a strong position on the possible development of torticollis: "One can be certain that if the claimant was to develop torticollis acutely from the accident...it would have developed very rapidly...and definitely presenting at the time of the first medical visit." Regarding that first medical visit, Dr. Ameis finds it of interest that "a 9-day latency occurs prior to the first post-trauma family doctor visit" (his emphasis — he does not refer to the fact that the emergency department suggested Ms. Levey follow up in seven days with her family doctor, nor that the accident happened on a Saturday evening and that Ms. Levey saw Dr. Liang on Monday, April 18 (1994)). He refers to the mild nature of the accident, noting that the damage was \$175 (the insurance appraisal sets out parts of \$175, but it also shows that straightening of the automobile's unibody structure required six hours of labour, and the total estimate before taxes comes to over \$1,100) and that important secondary gains can be derived from such an "unexpected opportunity" to displace personal distress through misattribution onto the accident. He writes that, to Dr. Punthakee in March 1996, Ms. Levey was "exhibiting *behaviours* suggesting a spasmodic torticollis which apparently is related in time to the accident" (again, his emphasis). Turning to the issue of the neck spasm, Dr. Ameis closely examines the October 11, 1994, report by Dr.

Mascarenhas, in which Dr. Mascarenhas found left upper trapezius muscle spasm but a full range of cervical motion. Noting that spasm blocks range of motion, Dr. Ameis concludes that Dr. Mascarenhas was likely observing voluntary tensing of muscles, also known as protective guarding. I can find no reference in Dr. Ameis's report to Dr. Paulseth's report of February 12, 1996, in which he found that Ms. Levey's left sternomastoid was firm and mildly hypertrophied; as noted above, Dr. Paulseth testified that guarding would tend to atrophy the muscle and that hypertrophy is gradual. Dr. Ameis concluded that the underlying pre-existing psychological and physical problems were pre-eminent in the perpetuation of symptoms beyond the soft tissue healing period of 12 weeks...

...I have found that Ms. Levey suffered a qualitative change in her condition after the accident. Although Dr. Ameis insists that the torticollis should have manifested itself by April 18, 1994, both Dr. Paulseth and Dr. Oczkowski provided evidence that onset can be delayed after trauma. I find that Dr. Ameis's report, in its constant suspicion of Ms. Levey, to be less than helpful. Furthermore, Dr. Paulseth and Dr. Oczkowski are both experts in the area of spasmodic torticollis. Accordingly, I prefer their evidence and find that the onset of spasmodic torticollis may be delayed after trauma. In this case, Dr. Cruise suspected the condition less than a year after the trauma. I find that the diagnosis occurred within a reasonable period after the accident to suggest a link between the accident and the condition.

Worku and Co-operators Arbitration, 1996-08-29

With the exception of Dr. Arthur Ameis, a physiatrist consulted by the Insurer in 1995, the various specialists who assessed Ms. Worku at the request of her family doctor, the W.C.B, and the Insurer, generally expressed the view that *both* the car accident and the assault, in close succession, contributed to Ms. Worku's ongoing complaints of back pain, headache, excessive fatigue, and cognitive difficulties. Dr. Veidlinger, Dr. Hajek, Dr. Lipowski, Dr. Macartney-Filgate, Dr. Bacal, Dr. Sadavoy However the specialists differed in their opinions concerning the *extent* to which each of these events contributed to her current problems.

Dr. Ameis, concluded that the car accident did not contribute in any significant way to Ms. Worku's state of disability and work absence. In his opinion, the assault, consequent post-traumatic stress disorder including phobia, and then Ms. Worku's withdrawal from the business, created a circumstance in which a very lengthy delay in return to work was inevitable. He was not convinced that Ms. Worku suffered any important degree of physical impairment or disability and did not find convincing evidence of myofascial pain syndrome. However, I approach Dr. Ameis' view with caution. I find that he relied upon several assumptions

concerning Ms. Worku's motivation and life circumstances which were not borne out by the evidence.

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[Whyte and Metropolitan](#) Arbitration, 1996-04-30

In August 1993 Mr. Whyte was examined on behalf of the Insurer by Dr. Arthur Ameis. It is difficult to reconcile the different parts of Dr. Ameis report of November 2, 1993. In one paragraph he states that there is a degree of magnification of pain experience and perhaps some degree of exaggeration, but later he acknowledges that the patient demonstrated no guile nor did he feign illness. He concluded that Mr. Whytes complaints were psycho-emotional and that it was appropriate that he enter a pain clinic, but later suggests that he was fit to return to work. His conclusion regarding Mr. Whytes capacity for full-time work is carefully worded and avoids any reference to his psychological health, and suggests only that he shows no incapacity based upon his fitness level and general health. On the whole, Dr. Ameis report was of little assistance to me in my deliberations...

...Mr. Whytes weekly benefits were terminated by the Insurer in November 1993 after the receipt of Dr. Ameis report.