



New Case Brief  
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**Amputation Definition blurred to bypass 104 Week TD limitation**  
**Court of Appeal, Third District (not certified for publication).**

Two Northern California WCJ's have determined that surgeries which remove bone and disk material meet the legal definition of an amputation, thus extending temporary disability beyond the 104-week cap.

Presiding Judge Thomas E. Clarke of the Salinas Workers' Compensation Appeals Board delivered a 1/19/07 opinion awarding temporary disability beyond the 104-week limit because he felt that removal of portions a C7 disk, as part of the C6-C7 vertebrae and a graft taken from her hip, would meet the strict definition of amputation, which Clarke defined as either cutting off a body part, or removal of part or all of a body part "enclosed by skin", in The case is *Molly Kirkpatrick v. Dominican Santa Cruz Hospital*, SAL 107786, 01/19/2007.

WCAB Judge Jacqueline Duncan at the San Francisco board came to similar conclusion on 4/4/07, when the applicant's surgeon performed a bilateral laminotomy and decompression of L5 nerve roots. The surgeon removed portions of Cruz's vertebrae and a bone graft from the man's left hip bone.

WCAB Judge Jeffrey Ward of Los Angeles issued 1/31/07 ruling, which clashes with opinions issued out from the WCABs in Salinas and San Francisco. Citing legislative history of the statute and the legislatures ability to provide for an exception for certain types of severe spinal injuries if they intended to extend the 104-week period, Ward declined to extend the applicant's temporary disability beyond the 104-week limit. The LA case has been granted consideration.

Labor Code Section 4656(c)(2) outlines the exceptions to the 104-week cap on temporary disability benefits, and amputation is on the list. The other injuries triggering an exception are: acute and chronic hepatitis B and C; severe burns, HIV, high-velocity eye injuries, chemical burns to eyes, pulmonary fibrosis and chronic lung disease.