



## Gastric bypass to ensure success of 2nd surgery compensable: Oregon Court Rules

Just recently a court case in Indiana ruled a company must pay for the gastric bypass surgery of an injured worker in order to ensure a successful low back surgical procedure (the compensable injury). Now the Oregon Supreme Court ruled in a similar way for a compensable knee injury.

**"Doctors said weight loss necessary before worker's knee surgery."**

Written by Roberto Cenicerros

*Employers and their insurers lost two recent court decisions on whether they are obligated to pay for weight-reduction surgeries that workers compensation claimants argued were necessary before undergoing operations to treat work-related injuries.*

*In the most recent decision, the Oregon Supreme Court ruled last week in SAIF Corp. vs. Edward G. Sprague that SAIF must pay for gastric bypass surgery Mr. Sprague underwent in 2000 when he weighed 350 pounds. Mr. Sprague had suffered a work-related left knee injury in 1976, and nearly 25 years later he again injured the knee, which had deteriorated since the initial injury. Doctors concluded he needed surgery to treat his obesity in order for knee surgery to succeed, court records show.*

*But Salem, Ore.-based SAIF, the insurer in the case, opposed paying for the weight-loss surgery. SAIF argued it should not compensate for the procedure because the claimant had not proved his obesity was caused by his compensable knee injury. But the Supreme Court disagreed and upheld an appeals court ruling. It said the bypass surgery was related to the claimant's knee condition, which was caused in part by the 1976 injury.*

*Oregon law "does not limit the compensability of medical services simply because those services also provide incidental benefits or help to treat other medical conditions that were not caused by the compensable injury," the court said. "The fact that the gastric bypass*

*also treated claimant's morbid obesity as a necessary incident of effectively treating his knee condition does not affect the resolution of the compensability of his medical services claim." While workers comp claims to treat obesity remain relatively few in Oregon, the Supreme Court's wording is broad and could apply to medical treatments needed to address other types of health issues, a spokesman for SAIF said. "Anytime benefits are expanded, there will be costs to the system," the spokesman said.*

*In a somewhat similar ruling, the Court of Appeals of Indiana ruled Aug. 6 that an employer must pay for weight-reduction surgery so a 340-pound employee can increase the chances that a back operation to treat a work injury will be safe and successful. The claimant, Adam Childers, was injured in 2007 when a freezer door struck his back while he was working as a cook.*

*Ruling on Boston's Gourmet Pizza vs. Adam Childers, the Indiana court also ruled that the employer must pay the employee temporary total disability benefits while he prepares for, and recovers from, the weight loss surgery.*

This is a very disturbing trend. Paying for disability claims while a person prepares for and recovers from the gastric bypass surgery in addition to the worker's comp claim can be cost prohibited.

- The is especially disturbing when the IPCS Body Mass Index data shows nearly 18% and 15% of female and male industrial workers, respectively, were either severe or morbidly obese in 2008.
- Morbid obesity more than doubled across all age groups from 2002-2008 (including 20-29 years).
- Bottom line the obese are becoming even more obese, which could easily increase the number gastric bypass surgeries required to care for worker's compensation injuries.
- Morbidly obese workers have twice as many compensable claims compared to normal weight workers.

"Is Body Weight a Safety Issue?" As obesity continues to become more severe, excess body weight will be more than just a health concern. It will also be a serious safety issue since it does put the morbidly obese worker more at risk for injury.

IPCS feels strongly that it is just a matter of time that body weight management programs will be mandated by government agencies.