Functional Capacity Evaluation FCE in Swiss Insurance Medicine (SIM)
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Dr. iur. Iris Herzog-Zwitter
Scientific legal assistant asim Basel/
Responsible officer for education Swiss Insurance Medicine
Functional Capacity Evaluation

- However, the medical assessment of the insured person's ability to work is an important basis for the subsequent legal assessment of the question, whichever other work performance the insured person can be expected to perform.

BGE 140 V 193 E. 3.2 S. 195
Interface between medicine and law

Patient is the focus
Claims Compensation System

- We have two systems, which play together.

- Social insurance law is not liability law. These are two different areas of law.

- We have the *Bundesgericht for Social Insurance Law* and the other is the *Bundesgericht for Liability Law*.

- They judge independently in their areas of expertise.
agenda

1. Social Insurance System
2. Private Insurance System
3. Case Law
agenda

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1. Social Insurance System

- The total of all social insurances has an annual turnover of around CHF 159 Mrd.

Sozialversicherungen 2017, 7.
1. Social Insurance System


«Wer in Not gerät und nicht in der Lage ist, für sich zu sorgen, hat Anspruch auf Hilfe und Betreuung und auf die Mittel, die für ein menschenwürdiges Dasein unerlässlich sind».

«Those who get into difficulties and are not able to take care of themselves are entitled to help and care and to the means which are indispensable for a humane existence».
1. Social Insurance System

- Art. 41 Absatz 2 Bundesverfassung vom 1. Januar 2000

«Bund und Kantone setzen sich dafür ein, dass jede Person gegen die wirtschaftlichen Folgen von Alter, Invalidität, Krankheit, Unfall, Arbeitslosigkeit, Mutterschaft, Verwaisung und Verwitwung gesichert ist».

«The Confederation and the Cantons are committed to ensure that every person is protected against the economic consequences of old age, disability, illness, accident, unemployment, maternity, orphanage and widowhood». 
1. Social Insurance System

- The social insurance system covers the economic consequences of risks that have occurred.

- All social security benefits are paid regardless of the financial situation of the insured persons.

- Payment of a premium entitles the holder to receive benefits upon occurrence of the insured event.
1. Social Insurance System

- The question of whether disability is the result of an illness or an accident is of great importance in practice.

- In the case of accidents, insurance cover is much better than in the case of illness.
1. Social Insurance System

- Social insurances were founded in Switzerland by way of legislation.

- A separate law has been enacted for each branch of social security.
1. Social Insurance System

- Invalidenversicherung = Disability Insurance
- Unfallversicherung = Accident Insurance
- Krankenversicherung = Health Insurance
1. Social Insurance System

- **Invalidenversicherung** (Disability Insurance)
  - **Tasks:** Early detection, early intervention, integration measures, vocational integration measures, daily allowance, pensions
  - The concept of illness when pensions are awarded is clarified by case law.
  - **BGE 141 V 281** – this judgment, for example, is the most important judgment for practice.
1. Social Insurance System

- Unfallversicherung (Accident Insurance)
  - All employees are compulsorily insured.
  - Insured risks: Occupational and non-occupational accidents, personal injuries similar to accidents, occupational diseases
  - Only gainful employment in an occupational system is insured.
1. Social Insurance System

- **Unfallversicherung (Accident insurance)**

  Mandatory insurance for all employees working in Switzerland and people seeking work as long as covered by the unemployment insurance. Insured are occupational and **non occupational accidents**.

  Optional state insurance possible for: employers, freelancers

  Not insured: Scholars, students, housewives, pensioners, workers without job
1. Social Insurance System

- **Unfallversicherung (Accident Insurance)**

  Als Unfall gilt die plötzliche, nicht beabsichtigte, schädigende Einwirkung eines ungewöhnlichen äusseren Faktors auf den menschlichen Körper.

  Art. 4 ATSG

  Accident
  Est réputé accident toute atteinte dommageable, soudaine et involontaire, portée au corps humain par une cause extérieure extraordinaire qui compromet la santé physique, mentale ou psychique ou qui entraîne la mort.

An accident is the sudden, unintended, damaging effect of an unusual external factor on the human body.
1. Social Insurance System

- Krankenversicherung (Sickness Insurance)
  - The Sickness Insurance Act (KVG) distinguishes between compulsory basic insurance, supplementary insurance and voluntary daily allowance insurance.
  - The basic insurance is compulsory for persons who are resident in Switzerland.
1. Social Insurance System

- Krankenversicherung (Sickness Insurance)

- Insured Risks:
  - Diseases/Motherhood
  - Accidents, if no accident insurer is responsible
  - Birth defects unless the disability insurance is responsible
agenda

1. Social Insurance System
2. Private Insurance System
3. Case Law
2. Private Insurance System

- Private Insurance is governed by the Insurance Contract Act (Versicherungsvertragsgesetz).

- The contractual basis is governed by the General Insurance Conditions (AVB's).
2. Private Insurance System

- Private insurance is voluntary.
- The private insurances are financed by the insured persons.
- The insured persons have to pay risk-commensurate premiums.
agenda

1. Social Insurance System
2. Private Insurance System
3. Case Law
3. Case Law

- Law, Case law and medicine play together in each case.

- Case law to the Topic:
  Evaluation der arbeitsbezogenen funktionellen Leistungsfähigkeit (EFL) = Evaluation of work-related functional performance
3. Case Law

- BGE 8C_547/2008 vom 16.01.2009

«For a valid assessment of work ability and reasonability, in some cases a work-oriented evaluation of functional performance is desirable or even necessary in addition to medical findings and diagnoses». 
3. Case Law


«In addition, the EFL performed, which provides reliable results on performance, particularly in the case of musculoskeletal disorders and when the experts have expressly confirmed the willingness to perform and the lack of inconsistencies, also produced reliable results». 
3. Case Law

- BGE 9C_168/2018 vom 08.05.2018

The Court based its assessment of workability on the results of the evaluation of work-related functional capacity (EFL).
3. Case Law

- BGE 9C_168/2018 vom 08.05.2018

According to this, from a rheumatological point of view (status after spondylodesis and after OSG arthrodesis in the area of the right ankle joint) there is an unrestricted ability to work in an activity adapted to suffering.

Evaluation der arbeitsbezogenen funktionellen Leistungsfähigkeit (EFL)
3. Case Law

- BGE 9C_168/2018 vom 08.05.2018

«In an EFL, such an ergonomic assessment, work simulation tests (such as lifting and carrying, work above head height or climbing ladders) can be used to assess the workrelated performance in general and with a view to the traditional occupational activity, whereby relevant statements can also be made about the performance and consistency of the insured person». 

Evaluation der arbeitsbezogenen funktionellen Leistungsfähigkeit (EFL)
THANK YOU VERY MUCH FOR YOUR ATTENTION!