



California Workers' Compensation Institute  
1333 Broadway, Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763-1592

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VIA E-MAIL to [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation, Legal Unit  
Post Office Box 420603  
San Francisco, CA 94142-0603

**RE: 1st 15-Day Comment – MTUS Guidelines on Chronic Pain Treatment and on Opioids Treatment – Sections 9792.24.2 and 9792.24.4**

Dear Ms. Gray:

This 1<sup>st</sup> 15-day comment on modifications to proposed regulations concerning Guidelines on Chronic Pain Treatment and on Opioids Treatment is presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 71% of California's workers' compensation premium, and self-insured employers with \$46B of annual payroll (26% of the state's total annual self-insured payroll).

Insurer members of the Institute include ACE, AIG, Alaska National Insurance Company, Allianz/Fireman's Fund Insurance Company, AmTrust North America, Chubb Group, CNA, CompWest Insurance Company, Crum & Forster, Employers, Everest National Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, Pacific Compensation Insurance Company, Preferred Employers Group, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, State Farm Insurance Companies, Travelers, XL America, Zenith Insurance Company, and Zurich North America.

Self-insured employer members include Adventist Health, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Santa Ana, City of Torrance, Contra Costa County Schools Insurance Group, Costco Wholesale, County of Alameda, County of San Bernardino Risk Management, County of Santa Clara, Dignity Health, Foster Farms, Grimmway Enterprises Inc., Kaiser Permanente, Marriott International, Inc., Pacific Gas & Electric Company, Safeway, Inc., Schools Insurance Authority, Sempra Energy, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group; Southern California Edison, Special District Risk Management Authority, Sutter Health, University of California, and The Walt Disney Company.

## Introduction

The Legislature requires the treatment guidelines adopted by the Administrative Director be used by injured employees and their physicians, claims examiners, utilization review physicians, IMR, employers, applicants' attorneys, defense attorneys, judges at the WCAB and the reviewing courts. The workers' compensation community must therefore, have treatment guidelines that are as straightforward and clear as modern medical science can make them.

Under Labor Code Section 4610, utilization review physicians must determine the appropriateness of requested treatment within very tight time frames. Treatment guidelines that provide clear direction, are well supported by up-to-date scientific medical evidence, and are based on graded peer reviews are essential for the utilization review system to function as intended. Conversely, a treatment guideline that is indefinite and overly conditional is in conflict with the statutory requirements and fosters confusion and disputes.

Specific recommended revisions to the regulatory language are indicated by highlighted **underscore** and **strikeout**. Comments and discussion are indented and identified by *italicized text*.

## Clinical Topics

### § 9792.23. Clinical Topics

#### Recommendation

*Adopt the highlighted modification to the definition of chronic pain in (b)(1) and elsewhere in these regulations.*

(b) For all conditions or injuries not addressed in the MTUS, the authorized treatment and diagnostic services in the initial management and subsequent treatment for presenting complaints shall be in accordance with other scientifically and evidence-based medical treatment guidelines that are nationally recognized by the medical community pursuant to section 9792.21(d)(1).

(1) In providing treatment using other guidelines pursuant to subdivision (b) above and in the absence of any cure for the patient who continues to have pain **lasting three or more months from the initial onset of pain**, the chronic pain medical treatment guidelines in section 9792.24.2 shall apply **to treatment for chronic pain** and supersede any applicable chronic pain guideline in accordance with section 9792.23(b).

#### Discussion

*The Institute supports the modification the Administrative Director has made here and elsewhere in these regulations, including in the Guidelines, which replaces "that persists beyond the anticipated time of healing" with "lasting three or more months from the initial onset of pain." Without this modification, the language will be inconsistent with the definition of chronic pain in Section 9792.20(b), and will result in confusion and disputes.*

*The addition of "to treatment for chronic pain" is necessary to clarify that the Chronic Pain Medical Treatment Guidelines are meant to address the treatment for chronic pain.*

## Chronic Pain Medical Treatment Guidelines

### § 9792.24.2. Chronic Pain Medical Treatment Guidelines

#### Recommendation

(b) The Chronic Pain Medical Treatment Guidelines apply to treatment for chronic pain when the patient has chronic pain as defined in section 9792.20.

(c) When a patient has chronic pain and the treatment for the injury or condition is covered in the Clinical Topics sections of the MTUS but is not addressed in the Chronic Pain Medical Treatment Guidelines, the Clinical Topics section applies to that treatment.

(d) When a patient has chronic pain and the treatment injury or condition is addressed in both the Chronic Pain Medical Treatment Guidelines and the specific guideline found in the Clinical Topics section of the MTUS or if the treatment injury or condition is only addressed in the Chronic Pain Medical Treatment Guidelines, then the Chronic Pain Medical Treatment Guidelines shall apply to treatment for chronic pain.

#### Discussion

*Whether or not the injury or condition is covered in a set of guidelines is the controlling factor, and not merely whether a treatment is covered within the set of guidelines. A treatment may appear in a guideline, but there may be no recommendation regarding that treatment for the given injury or condition. This recommended language is also consistent with the terms used in Labor Code section 4604.5(d) ...” For all injuries not covered by the official utilization schedule ...”*

*The addition of “to treatment for chronic pain” is necessary to clarify that the Chronic Pain Medical Treatment Guidelines are used to address treatment for chronic pain.*

### Medical Treatment Utilization Schedule (MTUS) Chronic Pain Medical Treatment Guidelines

In written testimony submitted on September 1, 2015, the Institute recommended modifications to improve the MTUS Chronic Pain Medical Treatment Guidelines. CWCI appreciates the modifications that were made to conform to the definition of chronic pain in Section 9792.20.

It is, however, not always clear in the Guidelines what (if anything) is being recommended, and/or under what conditions a recommendation applies. Multiple medical studies pertaining to a treatment for an injury or condition are described, but study recommendations are sometimes at odds with one another; and often there is nothing or little to indicate an MTUS Chronic Pain Medical Treatment Guidelines recommendation. This generates unnecessary confusion and dispute. It is important that the MTUS guidelines are as clear as possible because if they are not, injured employees will not be protected from harmful and unnecessary care and will not be assured of effective care. The Institute urges the Administrative Director to reconsider its other recommendations (summarized below) that will clarify which is the most effective and safe treatment for injured employees.

## Summary of General Recommendations

- Remove terms such as “should” and instead ensure each procedure, modality and good it addresses has a clear recommendation (e.g., “recommended” or “not recommended”)
- Insert between the two columns of the Part 2 table a Recommendations column where each procedure, modality or topic is identified as “recommended” or “not recommended” and where conditions, frequency, duration, intensity and appropriateness may be addressed
- Retitle the last column “Supporting Medical Evidence,” and in that column provide a link to each supporting study and its strength of evidence determined per section 9792.25.1, and remove irrelevant citations from the column
- Improve the formatting of the Part 2 table by providing clearer subsection headings, spacing between subsections, and by removing duplicate subheadings
- Delete from this MTUS chapter recommendations for treatment of non-chronic pain, including recommendations for acute pain, sub-acute pain and initial treatment
- Retitle part 2 of the MTUS Chronic Pain Medical Treatment Guidelines “Chronic Pain Medical Treatment Guidelines” to avoid confusion with ODG’s own guidelines

## Opioids Treatment Guidelines

### § 9792.24.4. Opioids Treatment Guidelines

#### Recommendation

(b) The Opioids Treatment Guidelines describe the appropriate use of opioid medications **during treatment, including** treatment as part of an overall multidisciplinary treatment regimen for acute, sub-acute, post-operative, and chronic non-cancer pain. These guidelines apply when **alternative therapies do not provide adequate pain relief and** the use of opioid medications is being considered as part of the treatment regimen.

#### Discussion

*As previously mentioned, some will argue that this wording restricts the application of Opioids Treatment Guidelines to only “treatment that is part of an overall multidisciplinary treatment regime.” We don’t believe that this is the Administrative Director’s intention. The modification recommended will clarify that the Opioid Treatment Guidelines are applicable to all treatment regimens, including when treatment is provided by a single physician in a single discipline.*

*Since opioids are necessary only when “alternative therapies do not provide adequate pain relief,” we recommend retaining the phrase which will serve to remind physicians to use alternative therapies for pain relief instead of opioids whenever possible.*

## Medical Treatment Utilization Schedule (MTUS) Opioids Treatment Guidelines

The Institute recognizes that the Division has invested many hours and resources drafting its Opioids Treatment Guideline. The Administrative Director made only a few modifications, all of which were minor corrections. The Institute's recommended improvements have not been assimilated. We urge the Administrative Director to reconsider the two (summarized below) that we believe would result in the most improvements:

### Summary of General Recommendations

- Remove terms such as "should" and instead ensure that each service or good that the Guidelines addresses has a clear recommendation (e.g., "recommended" or "not recommended")
- Consider prohibiting opioid dispensing from physician offices and clinics.<sup>1</sup>

Thank you for considering these recommendations and comments. Please contact me if additional clarification would be helpful.

Sincerely,

Brenda Ramirez  
Claims & Medical Director

BR/pm

cc: Christine Baker, DIR Director  
Destie Overpeck, DWC Administrative Director  
Dr. Rupali Das, DWC Executive Medical Director  
John Cortes, DWC Attorney  
CWCI Claims Committee  
CWCI Legal Committee  
CWCI Medical Care Committee  
CWCI Regular Members  
CWCI Associate Members

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<sup>1</sup> Thumula, V. Impact of Banning Physician Dispensing of Opioids in Florida. WCRI, July 2013.