

# Medical Treatment Utilization Schedule (MTUS)

California State Bar Webinar

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# DISCLAIMER



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# OUTLINE

- 1) The development of the MTUS.
- 2) The MTUS.
- 3) Things to consider.
- 4) What you can do.



# The Development of the MTUS

- Senate Bill 228 (2003)
  - Labor Code §5307.27 states:
    - “On or before December 1, 2004, the administrative director, in consultation with the Commission on Health and Safety and Workers’ Compensation, **shall adopt**, after public hearing, **a medical treatment schedule that shall incorporate the evidence-based, peer reviewed, nationally recognized standards of care** recommended by the commission pursuant to Section 77.5, and that shall address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers’ compensation cases.”

# The Development of the MTUS

- Labor Code Section 77.5(a) states:
  - “On or before July 1, 2004, the commission shall conduct a survey and evaluation of evidence-based, peer-reviewed, nationally recognized standards of care, including existing medical treatment utilization standards, including independent review, as used in other states, at the national level, and in other medical benefit systems. The survey shall be updated periodically.”

# The Development of the MTUS

- Labor Code Section 77.5(b) states:
  - “On or before October 1, 2004, the commission shall issue a report of its findings and recommendations to the administrative director for purposes of the adoption of a medical treatment utilization schedule.”

# The Development of the MTUS

- In the meantime....
  - Labor Code Section 4600(b) stated:
    - “As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, *prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines.*”

# The Development of the MTUS

- CHSWC issued their recommendations on November 15, 2004
  - [http://www.dir.ca.gov/chswc/CHSWC\\_Med%20Treat\\_Nov2004.pdf](http://www.dir.ca.gov/chswc/CHSWC_Med%20Treat_Nov2004.pdf)



# The Development of the MTUS

## CHSWC's 2004 Recommendations

- 1) CHSWC recommended that the AD adopt the ACOEM guidelines as the MTUS that will be statutorily presumed to be correct. However, CHSWC recommended that the spinal surgery guidelines from ACOEM be replaced with the American Academy of Orthopedic Surgeons (“AAOS”) guidelines.
- 2) CHSWC recommended that the AD establish interim guidelines for specific therapies that will require the prescribing physician to establish meaningful measures of objective improvement in a patient’s level of function.
- 3) CHSWC recommends that the AD specify that where the applicable guidelines do not contain a recommendation either for or against a particular treatment purportedly applicable to the injured employee’s condition, the correct treatment shall be determined by a physician according to the general definition of appropriate treatment in light of the best available scientific evidence.

# The Development of the MTUS

## CHSWC Analysis/Discussion on Guidelines

### ACOEM Guidelines

- The ACOEM guidelines are presented in a narrative format with more generalizations, making them inherently more flexible for clinical practice.
- This distinction appears to be reflected in the preference for the ACOEM guidelines that was reported by the RAND clinical panelists.

### McKesson Guidelines

- The McKesson guidelines are better as a utilization review tool because of presentation of criteria for approval or disapproval of requests for authorization.
- The McKesson guidelines allow for an automated, step-by-step process that can quickly and efficiently generate authorization for treatment or identify the criteria that have not been satisfied in a particular case.
- Adoption of the McKesson guidelines would likely result in greater efficiency in the UR process.

# The Development of the MTUS

## CHSWC Rational for using ACOEM

- CHSWC recommends consideration of the ACOEM guidelines as the primary basis for the MTUS because their flexibility allows medical decisions to take into consideration the full range of valid considerations and thus to provide optimal care for individual patients.
- The effectiveness of care to mitigate disability should prevail over administrative efficiency of the UR tool, although efficiency of administration is an undeniable asset to effectiveness of care.
- **It is contemplated that the ACOEM criteria may be translated into a step-by-step automated process.** Once that is done, it will ameliorate the drawbacks of the ACOEM guidelines.

# The Development of the MTUS

- In 2005, RAND published a study entitled: “Evaluation Medical Treatment Guideline Sets for Injured Workers in California.”
  - [http://www.dir.ca.gov/chswc/reports/evaluating\\_med\\_tx\\_guideline.pdf](http://www.dir.ca.gov/chswc/reports/evaluating_med_tx_guideline.pdf)



# The Development of the MTUS

- RAND study:
  - Developing Research Objectives
    - The phrase “evidence-based, peer-reviewed, nationally recognized standards of care” refers to the science of evidence-based medicine, which means using the best available research evidence to support medical professionals’ decision making (Sackett et al., 1996).
    - The objective of evidence-based medicine has been defined as “minimizing the effects of bias in determining an optimal course of care” (Cohen, Stavri, and Hersh, 2004).
    - Medical treatment guidelines are important tools for implementing evidence-based guidelines. Guidelines are systematically developed statements to assist practitioners, patients and payors regarding appropriate health care for specific clinical circumstances (Field and Lohr, 1990).

# The Development of the MTUS

- RAND study:
  - Developing Research Objectives:
    - Techniques used by or on behalf of third-party payers to reduce health care costs by assessing the appropriateness of care provided to individual patients are collectively called *utilization management* (Gray and Field, 1989). There can be substantial variety in utilization management practices, particularly in the criteria used for assessing whether care is appropriate (Gray and Field, 1989).
      - **Lack of standardization may affect access to and quality of care for patients.**
    - For this study, RAND defined appropriate medical care as **care for which the potential benefits to the patient outweigh the potential risks, irrespective of costs**. Inappropriate care is defined as care for which risks outweigh the potential benefits.

# The Development of the MTUS

- RAND study:
  - Developing Research Objectives:
    - RAND's analysis concentrated on diagnostic tests and therapies that are performed frequently and that contribute substantially to costs within the California workers' compensation system:
      - MRI of the spine, spinal injections, spinal surgeries, physical therapy, chiropractic manipulation, surgery for carpal tunnel and other nerve-compression syndromes, shoulder surgery, and knee surgery.

# The Development of the MTUS

- RAND study:
  - Guideline Evaluation Methods and Findings
    - RAND identified 72 relevant guidelines.
      - RAND search the National Library of Medicine’s MEDLINE and the National Guidelines Clearinghouse for practice guidelines published during the three years prior to June 2004. Used Google to identify chiropractic and physical therapy guidelines as well as contacted 49 states to inquire about W/C guidelines.
        - » Appendix A lists the guidelines that address work-related injuries.

# The Development of the MTUS

- RAND study:
  - Guideline Evaluation Methods and Findings
    - RAND's Screening criteria for Guidelines
      - Evidence-based, peer-reviewed
      - Nationally recognized
      - Address common and costly test and therapies for injuries of the spine, arm, and leg.
      - Reviewed or updated at least every three years
        - » RAND's prior research demonstrated that new research evidence renders about 50 percent of guidelines out of date after 5.8 years and at least 10 percent out of date after 3.6 years (Shekeele et al., 2001).
      - Developed by a multidisciplinary clinical team
      - Cost less than \$500 per individual user in California
        - » Potential users would include providers, attorneys, judges and many other types of users.

# The Development of the MTUS

- RAND study:
  - Guidelines that met the screening criteria
    - **AAOS** – Clinical Guidelines by the American Academy of Orthopedic Surgeons.
    - **ACOEM** – American College of Occupational and Environmental Medicine Occupational Medicine Practice Guidelines.
    - **Intracorp** – Optimal Treatment Guidelines, part of Intracorp Clinical Guidelines Tool®.
    - **McKesson** – McKesson/InterQual Care Management Criteria and Clinical Evidence Summaries.
    - **ODG** – Official Disability Guidelines: Treatment in Workers' Comp, by Work-Loss Data Institute.

# The Development of the MTUS

- RAND study:
  - RAND Panelists rated guideline comprehensiveness and validity for each various topics.
    - Topics included:
      - Physical therapy, chiropractic manipulation, surgical decompression procedures, and surgical fusion procedures for lumbar spine problems;
      - Physical therapy, chiropractic manipulation, and surgery for carpal tunnel syndrome;
      - Physical therapy, chiropractic manipulation, and surgery for shoulder injuries.
    - Topics not included because guidelines were similar recommendations:
      - Spinal MRI
      - Knee surgery

# The Development of the MTUS

- RAND study:
  - RAND Panelists rated guideline comprehensiveness and validity for each various topics.
    - Results where panelists agreed the content of guidelines were both comprehensive and valid concerning the ***appropriateness of the surgical procedures***:
      - Lumbar spinal decompression: AAOS, ACOEM and McKesson
      - Lumbar spinal fusion: AAOS
      - Carpal tunnel surgery: ACOEM, McKesson and ODG
      - Shoulder surgery: ACOEM, Intracorp, McKesson and ODG

# The Development of the MTUS

- RAND study:
  - RAND Panelists rated guideline comprehensiveness and validity for each various topics.
    - Results where panelists agreed the content of guidelines were both comprehensive and valid concerning the ***appropriateness of the physical modalities:***
      - Lumbar spine physical therapy: none of the five guidelines.
      - Lumbar spine chiropractic: none of the five guidelines.
      - Carpal tunnel physical therapy: ODG.
      - Carpal tunnel chiropractic: McKesson and ODG.
      - Shoulder physical therapy: ACOEM and McKesson
      - Shoulder chiropractic: none of the five guidelines.

# The Development of the MTUS

- RAND study:
  - RAND Panelists rated guideline comprehensiveness and validity for each various topics.
    - Results where panelists agreed the content of guidelines were both comprehensive and valid concerning the **QUANTITY** of the *physical modalities*:
      - Lumbar spine physical therapy: none of the five guidelines.
      - Lumbar spine chiropractic: none of the five guidelines.
      - Carpal tunnel physical therapy: none of the five guidelines.
      - Carpal tunnel chiropractic: ACOEM and McKesson.
      - Shoulder physical therapy: ODG. ACOEM was valid but comprehensiveness uncertain.
      - Shoulder chiropractic: none of the five guidelines.

# The Development of the MTUS

- RAND study:
  - RAND Panelists elaborated upon their ratings and preferences:
    - Several panelists voiced the opinion that all five guidelines require substantial improvement. Seven of the eleven panelists felt that:
      - The five selected guidelines “*are not as valid as everyone would want in a perfect world*”
      - “*They do not meet or exceed standards; they barely meet standards.*”
      - “*California could do a lot better by starting from scratch.*”

# The Development of the MTUS

- RAND study:
  - Despite limitations, the clinical content evaluations lead to the following research conclusions:
    - All five guidelines sets appear far less than ideal – in the words of the panelists, they barely meet standards.
    - The clinical panel preferred the ACOEM guidelines to the alternatives and considered it valid but not comprehensive in the entire-content rating.
    - The ACOEM guidelines address cost-driver surgical topics and addresses them well for three of the four therapies the panel rated.
    - A surgical weakness in the ACOEM guideline set, lumbar spinal fusion, is well addressed by the AAOS guideline set.
    - The ACOEM guideline does not appear to address physical modalities in a comprehensive and valid fashion, but the other four guidelines do a little better.

# The Development of the MTUS

- RAND study:
  - Stakeholder experiences and insights
    - Payors appear to be interpreting and applying the ACOEM guideline inconsistently.
    - Payors are uncertain about which topics ACOEM covers in enough detail to determine appropriateness of care.
    - Sometimes the guideline has been applied to topics that it addresses minimally or not at all; including chronic conditions, acupuncture, medical devices, home health care, durable medical equipment, and toxicology.
    - Commonly shared viewpoint was that the long term goal should be to take the best guideline available for each topic and patch these guidelines together into a single coherent set.

# The Development of the MTUS

- RAND study:
  - RAND recommendations:
    - Short Term
      - No reason to switch to a different comprehensive guideline set at this time.
      - California can confidently implement the ACOEM Guidelines for carpal tunnel surgery, shoulder surgery, and lumbar spinal decompression surgery.
      - California can confidently implement the AAOS guidelines for lumbar spine fusion surgery and if convenient for lumbar decompression surgery.
      - California could implement the ACOEM guideline for other surgical topics.
      - RAND was not confident that the ACOEM guideline is valid for nonsurgical topics.
      - Recommend the state issue regulations clarifying the topics for which the adopted guidelines should apply.

# The Development of the MTUS

- RAND Study:
  - Short Term Recommendations (cont.):
    - Recommend the state issue regulations clarifying the topics for which the adopted guidelines should apply.
    - For topics to which the adopted guideline does not apply, the state should clarify who bears the burden of proof for establishing appropriateness of care.
    - For topics that are not covered by the adopted guidelines and throughout the claims adjudication process, the state should consider testing the use of a defined hierarchy to weight relative strengths of evidence.
    - The state should clarify whether expert opinion constitutes an acceptable form of evidence.
    - The state should consider specifically authorizing payors to use medical judgment in deciding whether care at variance with the adopted guidelines should be allowed.

# The Development of the MTUS

- RAND Study:
  - Intermediate Term Recommendations:
    - Recommend development of a patchwork of guidelines addressing work-related for the following priority topic area: Physical therapy of the spine and extremities, chiropractic manipulation of the spine and extremities, spinal and paraspinal injection procedures, MRI of the spine, chronic pain, occupational therapy, devices and new technologies and acupuncture.
    - Recommend that future evaluations of existing medical treatment guidelines include a clinical evaluation component.
    - RAND suggests that at least one analysis should involve an attempt to confirm the validity of the clinical evaluation method.
    - Future evaluations addressing the physical modalities should include a comprehensive literature review.

# The Development of the MTUS

- RAND Study:
  - Long Term Recommendations:
    - Recommend that the state develop a consistent set of utilization criteria to be used by all payors.
    - Developing the overuse and underuse criteria at the same time would be resource-efficient.
    - The criteria could be developed from existing guidelines.
    - The criteria could be developed from the literature and expert opinion.

# The Development of the MTUS

- On April 6, 2006, CHSWC issued their Updated and Revised Recommendations to DWC on Workers' Compensation Medical Treatment Guidelines.
  - [http://www.dir.ca.gov/CHSWC/Reports/Medical Treatment Recommendations Final 040606.pdf](http://www.dir.ca.gov/CHSWC/Reports/Medical_Treatment_Recommendations_Final_040606.pdf)
  - CHSWC noted that since their prior recommendations, the AAOS guidelines had been withdrawn.
    - AAOS indicated that after 5 years they either retire the guidelines or updated them. The person I spoke with was not sure what happened with their spine surgery guidelines. Could have retired them or shifted them over to North American Spine Society.
      - <https://www.spine.org/Pages/ResearchClinicalCare/QualityImprovement/ClinicalGuidelines.aspx>
  - Recommendations:
    - CHSWC recommends that the AD adopt the ACOEM guidelines as the medical treatment utilization schedule that will be statutorily presumed to be correct.
    - CHSWC recommends that the AD establish interim guidelines for specified therapies that will require the prescribing physician to establish meaningful measures of objective improvement in a patient's level of function.
    - CHSWC recommends that the AD specify that where the applicable guidelines do not contain a recommendation either for or against a particular treatment purportedly applicable to the injured employee's condition, the correct treatment shall be determined by a physician according to the general definition of appropriate treatment in light of the best available scientific evidence.

# The Development of the MTUS

- June 15, 2007 is the date that the MTUS became effective.
  - Regs. 9792.20 through 9792.23
    - Reg. 9792.20 provides definitions.
    - Reg. 9792.21(a)(1) is where the A.D. adopts ACOEM Practice Guides 2<sup>nd</sup> Edition 2004.
    - Reg. 9792.21(a)(2) is the Acupuncture Medical Treatment Guidelines.
    - Reg. 9792.21(b) indicates that the MTUS is intended to assist in the provision of medical care by providing an analytic framework for the evaluation and treatment of injured workers.
    - Reg. 9792.21(c) reminds the parties that treatment shall not be denied on the sole basis that the condition or injury is not addressed by the MTUS.

# The Development of the MTUS

- July 18, 2009 - is the date that the MTUS was updated to its current version.
  - Regs. 9792.20 through 9792.26.
  - The MTUS added new guidelines for:
    - Reg. 9792.24.2 - Chronic Pain Medical Treatment Guidelines.
    - Reg. 9792.24.3 – Postsurgical Treatment Guidelines.
  - The MTUS was also restructured into clinical topics format.
- MTUS Update Priorities:
  - In progress: Hierarchy of Evidence, Opioid Treatment and Chronic Pain.
  - Next in line: Clinical Topics and Special Topics.



# Medical Treatment Utilization Schedule

- Overview
  - Reg. 9792.20: provides definitions.
  - Reg. 9792.21: basically the same as before, except the acupuncture guidelines were extracted and moved to Reg. 9792.24.1.
  - Reg. 9792.22: where the AD adopts into the MTUS Chapters 1, 2, 3 and 5 of the ACOEM Guidelines.
    - These Chapters discuss prevention, general approach to initial assessment and documentation, initial approaches to treatment and cornerstones of disability prevention and management.
  - Reg. 9792.23: starts the clinical topics separated by part of body

# Medical Treatment Utilization Schedule

Reg. 9792.23(a) - states that the AD adopts and incorporates into the MTUS the specific clinical topics and that these topics are to apply to the initial management and subsequent treatment of presenting complaints.

Reg. 9792.23(b) – states for all conditions or injuries not addressed in the MTUS, the authorized treatments and diagnostic services in the initial management and subsequent treatment **shall** be in accordance with scientifically and evidence-based medical treatment guidelines that are nationally recognized by the medical community pursuant to Reg. 9792.25(b).

Reg. 9792.23(b)(1) – in the absence of any cure for the patient who continues to have pain that persists beyond the anticipated time of healing, the chronic pain guidelines (Reg. 9792.24.2) shall apply over other applicable chronic pain guidelines.

Reg. 9792.23(b)(2) – if surgery is performed, the postsurgical guidelines shall apply, together with other applicable treatments found in the MTUS, over other applicable postsurgical treatment guidelines.

# Medical Treatment Utilization Schedule

- **Reg. 9792.23.1 (a)**– adopts Chapter 8 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (2004) for **neck and upper back** complaints.
  - Reg. 9792.23.1(b) – if the treatment is for acupuncture or acupuncture with electrical stimulation, Reg. 9792.24.1 supersedes the ACOEM chapter.
  - Reg. 9792.23.1(c) – if recovery has not taken place with respect to pain by the end of the algorithm 8-5, the chronic pain medical treatment guidelines in section 9792.24.2 **shall** apply.
  - Reg. 9792.23.1(d) – if surgery is performed, then the postsurgical treatment guidelines in Reg. 9792.24.3 for postsurgical physical medicine **shall** apply *together with* other applicable treatment guidelines found in the MTUS. In absence of any cure for patients who continue to have pain that persists beyond the anticipated time of healing, the chronic pain guidelines in Reg. 9792.24.2 **shall** apply.



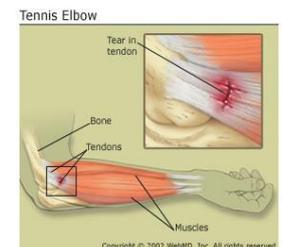
# Medical Treatment Utilization Schedule

- Reg.9792.23.2(a) – adopts Chapter 9 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (2004) for **shoulder complaints**.
  - Reg. 9792.23.2(b) – if recovery has not taken place with respect to pain by the end of algorithm 9-5, the chronic pain treatment guidelines in Reg. 9792.24.2 **shall** apply.
  - Reg. 9792.23.2(c) – if surgery is performed, the post surgical guidelines in Reg. 9792.24.3 shall apply for postsurgical physical medicine together with any other applicable treatment guidelines found in the MTUS. In the absence of any cure, patients with continued pain that persists beyond the anticipated time of healing, th chronic pain medical treatment guidelines in Reg. 9792.24.2 **shall** apply.



# Medical Treatment Utilization Schedule

- Reg.9792.23.3(a) – adopts Chapter 10 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (Revised 2007) for **elbow disorders**.
  - Reg. 9792.23.3(b) – if treatment includes acupuncture or acupuncture with electrical stimulation, the acupuncture medical treatment guidelines in Reg. 9792.24.1 shall apply and supersede the text in this ACOEM chapter.
  - Reg. 9792.23.3(c) – if recovery has not taken place with respect to pain by the end of the Elbow Algorithm 10-5, the chronic pain guidelines shall apply and supersede the ACOEM chapter.
  - Reg. 9792.23.3(d) - if surgery is performed, the post surgical guidelines in Reg. 9792.24.3 **shall** apply for postsurgical physical medicine together with any other applicable treatment guidelines found in the MTUS. In the absence of any cure, patients with continued pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in Reg. 9792.24.2 **shall** apply.





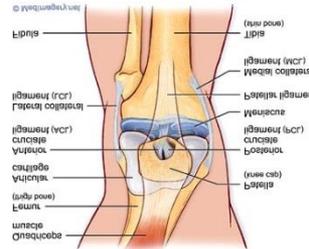
# Medical Treatment Utilization Schedule

- Reg.9792.23.5(a) – adopts Chapter 12 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (2004) for **low back complaints**.
  - Reg. 9792.23.5(b) – if treatment includes acupuncture or acupuncture with electrical stimulation, the acupuncture medical treatment guidelines in Reg. 9792.24.1 shall apply and supersede the text in this ACOEM chapter.
  - Reg. 9792.23.5(c) – if recovery has not taken place with respect to pain by the end of the algorithm 12-5, the chronic pain guidelines **shall** apply.
  - Reg. 9792.23.5(d) - if surgery is performed, the post surgical guidelines in Reg. 9792.24.3 **shall** apply for postsurgical physical medicine together with any other applicable treatment guidelines found in the MTUS. In the absence of any cure, patients with continued pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in Reg. 9792.24.2 **shall** apply.



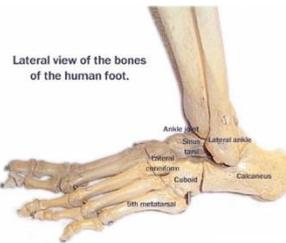
# Medical Treatment Utilization Schedule

- Reg.9792.23.6(a) – adopts Chapter 13 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (2004) for **knee complaints**.
  - Reg. 9792.23.6(b) – if treatment includes acupuncture or acupuncture with electrical stimulation, the acupuncture medical treatment guidelines in Reg. 9792.24.1 shall apply and supersede the text in this ACOEM chapter.
  - Reg. 9792.23.6(c) – if recovery has not taken place with respect to pain by the end of the algorithm 13-5, the chronic pain guidelines **shall** apply.
  - Reg. 9792.23.6(d) - if surgery is performed, the post surgical guidelines in Reg. 9792.24.3 **shall** apply for postsurgical physical medicine together with any other applicable treatment guidelines found in the MTUS. In the absence of any cure, patients with continued pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in Reg. 9792.24.2 **shall** apply.



# Medical Treatment Utilization Schedule

- Reg.9792.23.7(a) – adopts Chapter 14 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (2004) for **ankle and foot complaints**.
  - Reg. 9792.23.7(b) – if treatment includes acupuncture or acupuncture with electrical stimulation, the acupuncture medical treatment guidelines in Reg. 9792.24.1 shall apply and supersede the text in this ACOEM chapter.
  - Reg. 9792.23.7(c) – if recovery has not taken place with respect to pain by the end of the algorithm 14-5, the chronic pain guidelines **shall** apply.
  - Reg. 9792.23.7(d) - if surgery is performed, the post surgical guidelines in Reg. 9792.24.3 **shall** apply for postsurgical physical medicine together with any other applicable treatment guidelines found in the MTUS. In the absence of any cure, patients with continued pain that persists beyond the anticipated time of healing, the chronic pain medical treatment guidelines in Reg. 9792.24.2 **shall** apply.

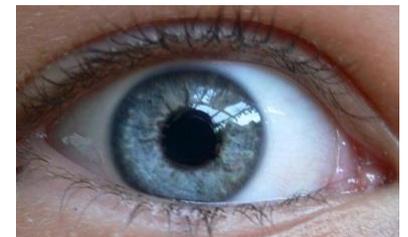


# Medical Treatment Utilization Schedule

- Reg. 9792.23.8(a) – adopts Chapter 15 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition(2004) for **stress related conditions.**



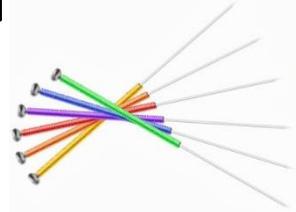
- Reg. 9792.23.9(a) – adopts Chapter 16 from ACOEM Practice Guidelines, 2<sup>nd</sup> Edition (2004) for treating the **eye.**
  - Reg.9792.23.9(b) – if recovery has not taken place with respect to pain by the end of the algorithm 16-6, the chronic pain guidelines shall apply.



# Medical Treatment Utilization Schedule

- Reg. 9792.24(a) – is entitled “**Special Topics**” and refers to clinical topics areas where the A.D. has determined that the clinical topic sections of the MTUS require further supplementation.
- Special Topics included:
  - Reg. 9792.24.1 – **Acupuncture** Medical Treatment Guidelines.
  - Reg. 9792.24.2 – **Chronic Pain** Medical Treatment Guidelines.
  - Reg. 9792.24.3 – **Postsurgical** Treatment Guidelines.

# Medical Treatment Utilization Schedule



- Reg. 9792.24.1 – **Acupuncture** Medical Treatment Guidelines.
  - Reg. 9792.24.1(a)(1) – acupuncture is used as an option when pain medication is reduced or not tolerated, it maybe used as an adjunct to physical rehabilitation and/or surgical intervention to hasten functional recovery.... Acupuncture can be used to: *reduce pain, reduce inflammation, increase blood flow, increase range of motion, decrease the side effects of medication induced nausea, promote relaxation in an anxious patient, and reduce muscle spasms.*
  - Reg. 9792.24.1(a)(2) – describes acupuncture with electrical stimulation. It is indicated for: *chronic pain conditions, radiating pain along a nerve pathway, muscle spasm, inflammation, scar tissue pain, and pain located in multiple sites.*
- The entire guideline is in Reg. 9792.24.1 and is straight forward.

# Medical Treatment Utilization Schedule

- Reg. 9792.24.2 – **Chronic Pain Medical Treatment Guidelines.**
  - [https://www.dir.ca.gov/dwc/DWCPropRegs/MTUS\\_Regulations/MTUS\\_ChronicPainMedicalTreatmentGuidelines.pdf](https://www.dir.ca.gov/dwc/DWCPropRegs/MTUS_Regulations/MTUS_ChronicPainMedicalTreatmentGuidelines.pdf)
  - The Chronic Pain Guidelines consists of two parts: 1) Introduction, and 2) Pain Interventions and Treatments.
  - Reg. 9792.24.2(b) – this guideline applies when the patient has chronic pain as determined by the clinical topics.
  - Reg. 9792.24.2(c) – if patient diagnosed with chronic pain and the treatment for that condition is covered under the clinical topics sections, but not in the Chronic Pain Guidelines, the clinical topics apply to that treatment.
  - Reg. 9792.24.2(d) – if the treatment is addressed by both the chronic pain guidelines and clinical topic guidelines, the chronic pain guidelines **shall** apply.
  - Reg. 9792.24.2(e) – incorporates Appendix D as part of the Chronic pain guidelines.



# Medical Treatment Utilization Schedule

- **Reg. 9792.24.3 – Postsurgical Treatment Guidelines.**
  - Reg. 9792.24.3(b)(1) – states that these guidelines apply to visits during the postsurgical physical medicine period only, at the conclusion of the postsurgical period, treatment reverts back to the applicable 24-visit limitations pursuant to Labor Code section 4604.5(d)(1) (cap applies to injuries on or after January 1, 2004).
  - Reg. 9792.24.3(c)(1) – states that only the surgeon, a nurse practitioner or physician assistant working with the surgeon, or a physician designated by that surgeon, can make the determination of medical necessity and prescribe postsurgical treatment under this guideline.



# Medical Treatment Utilization Schedule

## Presumption of Correctness, Burden of Proof and Strength of Evidence.

- **Reg. 9792.25(a)** – states that the MTUS is presumptively correct on the issue of extent and scope of medical treatment and diagnostic services addressed in the MTUS for the duration of the medical condition. The presumption is rebuttable and may be controverted by a preponderance of scientific medical evidence establishing that a variance from the schedule is reasonably required to cure or relieve the injured worker from the effects of the injury. Also see Labor Code sec. 4604.5(a).
- **Reg. 9792.25(b)** – for all conditions or injuries not addressed by the MTUS, authorized treatment and diagnostic services **shall** be in accordance with other scientifically and evidence-based medical treatment guidelines that are nationally recognized.
- **Reg. 9792.25(c)(1)** – for conditions or injuries not addressed by MTUS or other medical treatment guidelines, or is at a variance with other treatment guidelines, the following ACOEM's strength of evidence rating method is adopted and incorporated....



# Medical Treatment Utilization Schedule



- **Reg. 9792.26(a)** – states that the Medical Director shall create a **medical evidence evaluation advisory committee** to provide recommendations to the Medical Director on matters concerning the MTUS.
- Reg. 9792.26(c) – states that to evaluate evidence when making recommendations to revise, update or supplement the MTUS, the members of the committee shall meet certain criteria.
- **Reg. 9792.26(e)** – states that the A.D., in consultation with the Medical Director, may revise, update, and supplement the MTUS as necessary.



A close-up photograph of Grumpy Cat, a Siamese cat with a grumpy expression. The cat has a white face with dark brown patches around its eyes and on its ears. It is looking directly at the camera with a slightly downturned mouth. The background is a plain, light-colored wall.

**I HAD FUN ONCE**

**IT WAS HORRIBLE**

# Things to consider



## The intended audience for the MTUS:

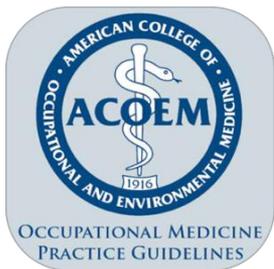
- Practicing clinicians
- Utilization review and management
- Independent Medical Review (IMR)
  - <http://www.dir.ca.gov/dwc/EduConf21/MTUS/MTUS.pdf>

However, it is also important that injured workers, claims adjusters, attorneys and judges are familiar with the MTUS as well as other evidence-based treatment guidelines.

# Things to consider



- Understanding the limitations of the presumptively correct MTUS:
  - The current regulations adopt the 2004 version of the ACOEM Guidelines for all of the clinical topics other than the elbow which currently uses the chapter as revised in 2007.
    - Recall that RAND’s prior research demonstrated that new research evidence renders about 50 percent of guidelines out of date after 5.8 years and at least 10 percent out of date after 3.6 years (Shekeele et al., 2001).
  - The presumption only applies if the treatment is specifically covered under the MTUS.
  - RAND’s clinical panelists felt that ACOEM barely met standards, that ACOEM overall was valid but not comprehensive, ACOEM was not comprehensive and valid for lumbar spine fusions, and that ACOEM does not address physical modalities in a comprehensive and valid fashion. Payors appeared to interpret and apply ACOEM inconsistently
- Also read the Appendix at page 491 (2<sup>nd</sup> Edition):
  - ***“Evidence-based Medicine: What Does It Mean? Why Do We Care?”***
    - “...To the extent that the literature has adequate high-quality studies of a given topic, it is possible to develop guidelines or conclusions regarding treatment and causation that are truly based on scientific evidence. Unfortunately many, if not most, of the treatments and tests we provide, and many of the hypotheses on which we base concerns regarding risk and exposure, have not been rigorously evaluated. Budget constraints and the absence of sponsors who would benefit from study results are only two of the reasons that there is a lack of funding for research in this area. Interventions that as yet have not been satisfactorily proven (or disproven) to be of value or relevance are continuously being introduced, and often integrated into clinical practice....”



# Things to consider



- How to make sure injured workers are get medical treatment that is consistent with the most current evidence-based treatment guidelines?
  - From a recent judges training, the Executive Medical Director stated that because the legislation grants the A.D. the authority to adopt regulations, allowing automatic updates by other organizations is an unlawful transfer of regulatory power.
- Should the A.D. plan on revising the MTUS regulations every three years to keep pace with current research?
  - For example, Colorado, New York, and Washington update their treatment guidelines periodically:
    - <https://www.colorado.gov/pacific/cdle/node/20291>
    - <http://www.wcb.ny.gov/content/main/hcpp/MedicalTreatmentGuidelines/MTGOverview.jsp>
    - <http://www.lni.wa.gov/claimsins/providers/treatingpatients/treatguide/>
    - These guidelines are also much easier to read than ACOEM or ODG.

# Things to consider



- Should all MPN doctors be provided access to online evidence based medical treatment guidelines?
  - DWC's Newsline announced reduced cost to CA providers for access to ODG
    - <https://www.dir.ca.gov/DIRNews/2014/2014-62.pdf>
- What if there is a trend to move evidence-based medical treatment guidelines to an online format, where treatment recommendations are constantly updated?
  - ACOEM – Occupational Medicine Practice Guidelines, 3<sup>rd</sup> Edition was published in 2010. ACOEM is no longer going to publish the guidelines in book form and have focused on the online content which will be continuously updated. One year subscription is about \$389.00 for one user in California. Includes opioid guidelines, asthma guidelines and chronic pain guidelines to name a few.
  - ODG stopped printing guidelines in 2013 and have moved to online access.

**Lawyer Cat**

**Objects to  
everything**

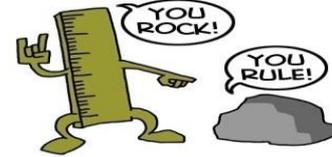


# What you can do



- Encourage treating physicians to cite to evidence-based treatment guidelines when requesting authorization (if at all possible).
  - If you are a treating physician in workers comp, have templates and checklists (derived from evidence-based guidelines) for the most common treatments you perform and provide these with the request for authorization.
    - RAND (2005) identified these items as substantially contributing to costs and frequently see in workers' compensation: MRI of the spine, spinal injections, spinal surgeries, physical therapy, chiropractic manipulation, surgery for carpal tunnel and other nerve-compression syndromes, shoulder surgery, and knee surgery.
    - For example: Washington state has evidence-based checklists for certain high-cost, high-use imaging studies.  
<http://www.lni.wa.gov/ClaimsIns/Providers/TreatingPatients/TreatGuide/imaging.asp>

# What you can do



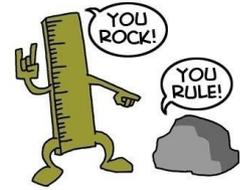
- Thoroughly review the utilization review determination for compliance with MTUS or other evidence based guidelines.
  - What was the rationale for the denial, delay or modification?
  - What evidence-based guideline were cited in the decision? Is there a presumption?
  - What do the actual guidelines say about the requested treatment?
    - **Reg. 9792.8(a)(3)** states that the relevant portion of the criteria or guidelines used **shall** be disclosed in written form to the requesting physician, the injured worker and applicant's attorney, if used as the basis to modify, delay or deny treatment. The claims administrator may not charge the parties for a copy.
  - Were relevant documents not reviewed?
  - Defendants should make sure the UR non-certification is consistent with the MTUS or other evidence-based guidelines. If it appears defective, maybe consider putting the request back through UR.
    - Labor Code sec. 4600(a) states that "...medical, surgical, chiropractic, acupuncture, and hospital treatment..., that is reasonably required to cure or relieve the injured worker from the effects of his or her injury **SHALL** be provided by the employer."
    - Labor Code sec. 4600(b) states that "...medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon guidelines adopted by the administrative director pursuant to sec. 5307.27."

# What you can do



- Thoroughly review the utilization review determination for compliance with MTUS or other evidence based guidelines (cont.)
  - Did the decision to modify, delay or deny comply with Reg. 9792.9.1(e)(5)(F)?
    - Reg. 9792.9.1(e)(5) - states that the written decision modifying, delaying, or denying treatment authorization shall be provided to the requesting physician, the injured worker, the injured worker's representative, and if represented by counsel, to the injured worker's attorney and shall only contain the following information...
      - (F) A **clear, concise, and appropriate explanation of the reasons** for the reviewing physician's decision, including the clinical reasons regarding medical necessity and a description of the relevant medical criteria or guidelines used to reach the decision pursuant to section 9792.8.
    - Remember that Reg. 9792.8(a)(2) states that treatment not addressed by the MTUS, shall be in accordance with other evidence-based medical treatment guidelines.
  - If additional documentation is need to meet guidelines, make sure the treating physician requests them.
    - Once the additional tests or documentation is obtained: 1) resubmit to UR and/or 2) forward to Maximus/IMR pursuant to Reg. 9792.10.5(b)(3) which requires that any newly developed or discovered relevant medical records shall be immediately forwarded to the review organization.
  - Reg. 9792.9.1(K) – requires the UR non-certification notice (to the physician) to provide a phone number and times (minimum 4 hours per week) when the physician can discuss the decision with the reviewer.

# What you can do



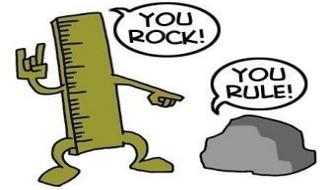
- Use the claims administrator’s internal utilization review appeal process as indicated in Reg. 9792.9.1(J).
  - Reg. 9792.9.1(J) – requires the non-certification notice to include details about the claim administrator’s internal UR appeals process “for the requesting physician, if any...”.
  - Reg. 9792.10.1(d)(1) – states that “Nothing in this section precludes the **parties** from participating in an internal UR appeal process on a voluntary basis provided the employee, and if the employee is represented by counsel, the employee’s attorney,...” have been advised of the 30 days to request IMR. Any request by the ***injured worker or the treating physician*** for an internal UR appeal under this section must be submitted to the claims administrator within 10 days after receipt of the UR decision.
  - Reg. 9792.9.1(d)(2) – states that a request for an internal UR appeal must be completed, and a determination issued, by the claims administrator within 30 days after receipt of the request under this section. An internal UR appeal shall be considered complete upon issuance of a final IMR determination under Reg. 9792.10.6(e).
  - Using the internal UR appeal process does not stop/toll the time to request IMR. Make sure you read the notices carefully.
  - Use those templets again and provide additional documents if necessary. Point out any deficiencies in the UR non-certification analysis. Are there any evidence-based guidelines that recommend this treatment?
  - Any decision from the internal UR review appeal process is likely not reviewable through IMR. Only the original UR non-certification.

# What you can do.



- Have the physician re-request the treatment with additional documentation.
  - Labor Code sec. 4610(g)(6) and Reg. 9792.9.1(h) state that the UR decision shall remain effective for 12 months with regard to any further recommendation by the same physician **UNLESS** “the further recommendation is support by a documented change in the facts material to the basis of the utilization review decision.”
    - » Could this be as simple as providing/identifying medical records that the UR reviewer did not see or was unaware of?
    - » Could this be as simple as pointing out the UR review did not follow/apply the correct guidelines?
    - » If the physician documents a *“change in the facts material to the basis of the utilization review decision”* and defendant does not put back through UR relying on Labor Code sec. 4610(g)(6)...is it untimely under *Dubon II*?

# What you can do.



- Appealing the UR non-certification to IMR.
  - When sending the records also include a discussion as to why the requested treatment is consistent with the MTUS or other evidence-based guidelines.
    - Help the IMR doctor use the correct guidelines.
    - Identify the criteria used by the guidelines and the corresponding medical records.
    - Make it as easy on the reviewer as possible.
    - If new medical records are developed make sure they are forwarded to the reviewer.
- Preplan the treatment request.
  - If an injured worker is contemplating a possible surgery or treatment, figure out if it is addressed by the MTUS or other treatment guidelines and get that information ready to submit with the request for authorization.
    - Ex. For the new hepatitis C medications (\$85,000 for the treatment), the drug makers are providing templet letters for medical necessity.

*The End*