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**STATE OF CALIFORNIA**

**Department of Industrial Relations**

**Division of Workers' Compensation**

**PUBLIC HEARING**

Monday, August 11, 2008  
Ronald Reagan State Office Building  
300 South Spring Street  
Los Angeles, California

**P A N E L**

**Carrie Nevans**

Division of Workers' Compensation  
Administrative Director

**Dr. Anne Searcy**

Division of Workers' Compensation Medical Unit  
Medical Director

**Destie Overpeck**

Division of Workers' Compensation  
Chief Counsel

Reported by: Sonia E. Garcia

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1 PUBLIC HEARING

2 LOS ANGELES, CALIFORNIA

3 MONDAY, AUGUST 11, 2008, 10:03 A.M.

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5 MS. OVERPECK: Good morning, everyone. My name is Destie  
6 Overpeck. Is this on? Do you all hear me?

7 UNIDENTIFIED VOICE: Yes.

8 MS. OVERPECK: Okay. We are here today for a hearing on  
9 the Division of Workers' Compensation's Proposed Regulations  
10 for the Medical Treatment Utilization Schedule. They are at  
11 Title 8, California Code of Regulations, Sections 9792.20  
12 through 9792.26.

13 The proposed regulations would update the elbow  
14 disorders chapter by adopting the American College of  
15 Occupational and Environmental Medicine's Occupational Medicine  
16 Practice Guidelines of their elbow chapter. The regulations  
17 would also add two new sections to the MTUS chronic pain  
18 guidelines and postsurgical treatment guidelines.

19 The regulations also are going to restructure the MTUS  
20 into a clinical topics format, which will allow easier updates  
21 in the future.

22 Today we have on the panel Carrie Nevans, our  
23 administrative director; Anne Searcy, directly next to me, our  
24 medical director; we have the court reporters who will be  
25 taking down everything that we say; and our regulation

1 coordinator Maureen Gray.

2           When you come up to speak, please give your business  
3 card, or if you don't have one, something written down with  
4 your name and of the entity that you are speaking on behalf of  
5 and give it to Maureen. If you have any written comments,  
6 please also give those to Maureen Gray and then come to the  
7 podium. We will call you based on the sign-in sheet that we  
8 have. If you haven't signed in and wish to speak, please go to  
9 the back of the room and sign in so that we don't miss anyone,  
10 but we'll also call at the end if anybody else would like to  
11 have any comments.

12           The hearing will go on as long as everyone is here and  
13 has something to say, although I don't anticipate that it's  
14 going to go on beyond lunchtime.

15           If you have any written comments that you do not have  
16 with you today, you can e-mail them to our office, you can fax  
17 them, but you need to have them in by 5:00 p.m. today.

18           All the --

19                   (Sotto voce comment by panel member.)

20           MS. OVERPECK: Oh. 5:00 p.m. tomorrow. Thank you.

21           All the comments that are given to us, either orally  
22 or written, will be reviewed. They have equal weight and we  
23 will use them in considering whether to make any changes to the  
24 proposed regulations.

25           All right. So I am going to call the first person

1 that we have listed here who is Francis Riegler.

2 DR. RIEGLER: Someone want to take this piece of paper  
3 with my name on it?

4 MS. OVERPECK: Right behind you.

5 If I can just remind you, when you start speaking, say  
6 your name and who you represent.

7 **FRANCIS RIEGLER, M.D.**

8 DR. RIEGLER: Yes. Thank you.

9 Can everyone hear me? Okay.

10 Good morning. I'm Dr. Francis Riegler. I'm an  
11 interventional pain physician based in Palmdale, California,  
12 and I'm here testifying on behalf of myself, my practice and  
13 patients, as well as in my role as the current president of the  
14 California Society of Interventional Pain Physicians. Thank  
15 you.

16 First and foremost, on behalf of CSIPP and myself, I'd  
17 like to commend the entire Division, and specifically Dr. Anne  
18 Searcy for her outstanding leadership in implementing the 2000  
19 reform laws, and in the development of the Medical Treatment  
20 Utilization Schedule, and specifically the recent -- recently  
21 proposed chronic pain chapter.

22 I've watched from afar and I've also heard from CSIPP  
23 immediate past president Dr. Stan Helm, who I'm sure most of  
24 you know, as well as from Dr. Joshua Prager, who both have been  
25 involved with DWC discussions in these past few years. They've

1 been telling me that Dr. Searcy has been outstanding and she  
2 continues to -- to be so in her duties.

3 I'm also hearing that, while she has a strong  
4 knowledge base, she continues to be more than open to new  
5 information and others' expert opinions, both traits that make  
6 her outstanding in her job. And I'd just like to add that I  
7 observed some of this directly myself at the California Society  
8 of Industrial Medicine and Surgery meeting.

9 THE REPORTER: I'm sorry, can you slow down.

10 MS. OVERPECK: Try to slow down, please.

11 DR. RIEGLER: I'm sorry.

12 Would you like me to start from -- from now?

13 THE REPORTER: Yes, please.

14 DR. RIEGLER: Okay.

15 Well, in any case, I observed Dr. Searcy at the  
16 California Society of Industrial Medicine and Surgery meeting  
17 in Berkley, California, and -- and clearly, this talent is  
18 coming through in conjunction with that of other DWC  
19 leadership, including that from Carrie Nevans, the  
20 administrative director, in the development of the Medical  
21 Evidence Evaluation Advisory Committee, also known as MEEAC, as  
22 well as the development of the entire schedule.

23 Further, the structure and functioning and balance of  
24 the MEEAC committee and its work has been remarkable. A  
25 special thank you to all of the physicians who took time from

1 their clinical schedules to participate in this important work.  
2 The dedication, participation, and input from all relevant  
3 types of medical specialties who are representing various  
4 specialty societies in a fair and balanced manner has been  
5 truly amazing. Again, only this type of fair and balanced  
6 process could yield a directionally fair approach and proposal.

7           As my national society, the American Society of  
8 Interventional Pain Physicians, has informed me, this MEEAC  
9 process and the MTUS product stands in stark contrast to the  
10 recently updated ACOEM low back and draft chronic pain chapters  
11 and related ACOEM processes which neither included formal  
12 representation of any of the national medical societies known  
13 for being involved in many of the interventions being reviewed,  
14 nor do they reflect any relevant substantive evidence-based and  
15 expert medical consensus-based comments and conclusions which  
16 have subsequently been made by these various relevant expert  
17 societies to ACOEM.

18           Upon request, I can have my national society chapter  
19 share with you the latest volley of evidence-based comment  
20 letters back and forth between national expert societies and  
21 ACOEM, all with the upshot that ACOEM has refused to change any  
22 of their recommendations. The contrast at DWC and MEEAC in  
23 process and subsequent products is really dramatic.

24           Again, thank you for steering clear of these  
25 unbalanced, overly conservative, updated ACOEM guidelines.



1 My name is Jessica Holmes, and I'm a regional manager  
2 in the Health, Economics and Reimbursement Department of Boston  
3 Scientific's Neuromodulation Division.

4 Boston Scientific is a worldwide developer and  
5 manufacturer of medical devices and has advanced the -- the  
6 practice of less invasive medicine across a wide range of  
7 medical specialties. The Neuromodulation Division of Boston  
8 Scientific is dedicated to the treatment of patients suffering  
9 from chronic intractable pain through spinal cord stimulation  
10 and established minimally invasive treatment covered by  
11 virtually all government and commercial health plans and most  
12 workers' compensation programs throughout the United States.

13 On behalf of Boston Scientific, I appreciate the  
14 opportunity to comment at these hearings on the recently  
15 published California Division of Workers' Compensation proposed  
16 regulations to update the Medical Treatment Utilization  
17 Schedule.

18 We applaud Ms. Nevans, Dr. Searcy, the DWC staff and  
19 the physician advisory board in the action taken in proposing  
20 new chronic pain guidelines based largely on the work law state  
21 institute's Official Disability Guidelines. We understand that  
22 current California DWC guidelines rely primarily on the  
23 *American College of Occupational Environmental Medicine*  
24 *Practice Guidelines 2nd Edition 2004*, and we have substantial  
25 concerns with the recent updates to the low back chapter and

1 draft chronic pain chapter. Of particular concern are updated  
2 ACOEM recommendations against coverage of more than 50 percent  
3 of tests, treatments and therapies considered standard practice  
4 in the medical community, including spinal cord stimulation.

5 The DWC's decision to update the proposed MTUS based  
6 on ODG versus ACOEM guidelines is a positive development for  
7 chronic pain patients and providers. Additionally, we strongly  
8 believe that the newly proposed MTUS will provide greater  
9 clarity than existing ACOEM guidelines in establishing  
10 appropriate treatment modalities for patients suffering from  
11 work-related injury or illness.

12 Thank you for your consideration of these comments and  
13 for your work on behalf of workers' compensation patients and  
14 providers in the state of California.

15 MS. OVERPECK: Thank you, Ms. Holmes.

16 Richard Katz.

17 **RICHARD S. KATZ**

18 MR. KATZ: Good morning. My name is Richard Katz. I'm  
19 the finance officer for the California Physical Therapy  
20 Association.

21 We provided comments previously in their written  
22 format, so this is just a highlight of a couple questions we  
23 have.

24 Specifically, under item 9792.24.3(b)(1) --

25 You got all that?



1 pleased to present brief comments this morning on behalf of my  
2 colleague William Farenblack, Medtronic Neuromodulation State  
3 Government Affairs Director who, unfortunately, could not fly  
4 in today to testify.

5           First and foremost, Medtronic wants to thank the  
6 entire Division, and specifically Carrie Nevans and Dr. Anne  
7 Searcy, for their outstanding leadership during the past few  
8 years as DWC sought (phonetic) -- sought to strike a fair and  
9 balanced approach to the Medical Treatment Utilization Schedule  
10 in general and specifically, most recently, on the chronic pain  
11 chapter.

12           Ms. Nevans and Dr. Searcy have had an open-door policy  
13 whenever we, or any of the implanting physicians with whom we  
14 work, had questions or wanted to provide information. While  
15 our state government affairs staff has had strong relationships  
16 and works closely with workers' compensation officials  
17 throughout the country on a regular basis, we regularly cite  
18 California DWC as truly remarkable, both in their knowledge  
19 base and open-door policy. California citizens are very lucky  
20 to have such a strong leadership and staff at DWC.

21           Second, we'd like to thank the members of the Medical  
22 Evidence Evaluation and Advisory Committee for their strong  
23 work for the past 1.5 years on the development of this chronic  
24 pain chapter. Their dedication and knowledge, combined with  
25 the DWC staff, and their leadership expertise, has resulted in

1 directionally -- has resulted directionally in a very strong  
2 and fair and balanced approach both overall as well as for this  
3 chronic pain chapter.

4           We have analyzed it regarding therapies in which we  
5 are involved and have also spoken extensively with  
6 interventional pain physicians with whom we work. And all that  
7 had reviewed the proposal, generally believe that, while not  
8 perfect, it is directionally strong. We have identified a few  
9 areas that could use additional clarification and others that  
10 we suggest be changed. But, again, overall we believe  
11 directionally this is a strong, balanced product and are  
12 appreciative of the work of staff and the MEEAC committee.

13           Third, it deserves note that this strong, balanced  
14 work and the balanced MEEAC committee involves work,  
15 participation, and input from all relevant types of medical  
16 specialties who are representing various specialty societies.  
17 The active inclusion of various medical professionals and  
18 societies no doubt has been key to helping to ensure that the  
19 end product is balanced. This balance process and product  
20 stands in stark contrast to the recently updated ACOEM low back  
21 and draft chronic pain chapters and related ACOEM processes,  
22 which neither included formal representation of any of the  
23 national medical societies known for being involved in many of  
24 the interventions being reviewed, nor do they reflect any  
25 relevant, substantive, evidence-based and expert medical





1 Orthopaedic Association stating that that organization is  
2 basically in support of the postoperative treatment guides as  
3 written; however, we have some concerns.

4           One concern is, we are worried about the language such  
5 that they not -- that the interpretation not be that these are  
6 caps but guidelines for the utilization of various diagnoses.  
7 We are concerned that consideration be made for co-morbidities  
8 such as diabetes or age which might require greater  
9 utilization. We would encourage the language such that the  
10 tendency of the utilization review physicians not be the  
11 selection of a lowest available guide which goes on but rather  
12 demonstrates the greatest needs of the patient.

13           Personally, I have noticed that, in review of the --  
14 Amendments C and E, that, basically, the level of evidence  
15 noted was at Level 1, a low level of evidence. And I would  
16 suggest that there should be an ongoing effort of the Division  
17 to continue research efforts in the true needs for specific  
18 diagnoses.

19           There is a host of data available among the  
20 practitioners of California, which I'm sure we would make  
21 available to the Division, that demonstrate what the true needs  
22 in any given specific diagnosis is. Just for an example, in  
23 tennis elbow, the guide mentions six visits, and it's my  
24 clinical impression that many of those patients take -- have  
25 greater needs. It be a -- I'm sure it is possible, using some

1 of the survey methods presently available on -- on the web to  
2 research that data less -- inexpensively, and I would encourage  
3 the Division to do so.

4 Thank you very much.

5 MS. OVERPECK: Thank you.

6 Now I don't have the most recent few people who walked  
7 in sign-in, but if you would like to speak, could you please  
8 just walk up to the podium and state your name.

9 All right. It looks like -- oh, here comes someone.

10 **ROBERT R. THAUER**

11 MR. THAUER: Morning. I represent a nonprofit industry  
12 group called the Alliance of Physical Therapy, Rehabilitation &  
13 Medical Technology.

14 MS. OVERPECK: Could you state your name?

15 MR. THAUER: The members and endorsing organizations of  
16 this alliance are primarily manufacturers and providers of  
17 physical therapy devices, home medical equipment, and  
18 orthotics.

19 We have also submitted written comments but would like  
20 to take a few moments and comment on the proposed changes to  
21 the Medical Treatment Utilization Schedule.

22 MS. OVERPECK: Can I interrupt you for just a second.

23 MR. THAUER: Sure.

24 MS. OVERPECK: Could you state your name, please?

25 MR. THAUER: Robert Thauer.

1 MS. OVERPECK: Thank you.

2 MR. THAUER: Our organization joins with many others from  
3 the California workers' compensation medical community in  
4 support of the adoption of the official disability guidelines  
5 from Work Loss Data Institute as presumptively correct for the  
6 treatment of chronic pain conditions and its addition to the  
7 Medical Treatment Utilization Schedule.

8 The DWC has proposed adoption of the October 2007  
9 version of the ODG chronic pain chapter.

10 We support using the most current version of ODG as it  
11 has been updated in a number of areas since the October 2007  
12 version and will be nearly a year old when this rule-making  
13 process is finalized.

14 Understanding that there will be a need for the  
15 Medical Evidence Evaluation Advisory Committee -- I wish I  
16 could pronounce the acronym -- to quickly review the changes  
17 and that the proposed regulations may need some changes, we  
18 still believe that the executive medical director, Dr. Searcy,  
19 and her advisory committee could conduct this review  
20 expeditiously. Any revisions to proposed regulations should  
21 only require another 15-day comment period, and that 15-day  
22 period may well be necessary for other changes that may be  
23 proposed from public comments.

24 Optimally, the Division could quickly review any  
25 changes and keep the rule-making timetable consistent with your

1 original goal to finalize these changes.

2 We would also encourage that a system be put in place  
3 so that, as the underlying guidelines that have been adopted  
4 are updated, that the State of California can periodically  
5 update their guidelines so that everybody is using the most  
6 current guideline, whether it be the State, the provider, or  
7 utilization review.

8 In addition to our request to adopt the current ODG  
9 guidelines, our membership has commented on one section of the  
10 electrotherapy draft guidelines. We all know the physicians  
11 are looking for effective, non-pharmacologic, non-invasive  
12 options to treat the complex subject of pain management.  
13 Electrical stimulation is one of several viable options that a  
14 physician may find to be an appropriate treatment for pain.  
15 This is a well-accepted clinical treatment modality for pain.

16 With the legislative mandate limiting physical therapy  
17 visits, the chronic pain patient often doesn't have access to  
18 clinical physical therapy, therefore, we would like to propose  
19 that accommodations be made in the -- in one section of the  
20 draft guidelines where a particular modality ICS,  
21 interferential current stimulation, has a limitation by ODG not  
22 necessarily by the State, but the State is adopting this  
23 language. And in this section, it says that this modality is  
24 possibly appropriate for the following conditions if it has  
25 documented and proven to be effected -- effective as applied by

1 a licensed physical therapist. Pain is ineffectively  
2 controlled due to diminished effectiveness of medications or  
3 pain is ineffectively controlled with medications due to side  
4 effects or history of substance abuse or significant pain from  
5 postoperative or acute conditions, limits the ability to  
6 perform exercise programs or physical therapy treatment, or the  
7 pain is unresponsive to conservative measures, for example,  
8 repositioning, heat, ice, et cetera.

9           The guidelines suggest that this electrotherapy  
10 modality could be beneficial, could reduce pain, could help  
11 reduce medication complications, and promote exercise and  
12 improve function.

13           Unfortunately, the guideline assumes that the patient  
14 can be treated or is being treated regularly in a physical  
15 therapy clinic or that the physician may not be the appropriate  
16 treater or decision-maker. We ask the Division to change the  
17 language of this sentence to read "possibly appropriate for the  
18 following conditions if it has documented and proven to be  
19 effective as directed or applied by the physician or by a  
20 licensed physical therapist." The physician is ultimately  
21 responsible for the treatment. He determines the use and  
22 efficacy of modalities. The physician should have the option  
23 to utilize this modality without the current restriction.

24           In conclusion, we support -- we applaud, actually, the  
25 Division's efforts to review and update the Medical Treatment

1 Utilization Schedule. We encourage you to adopt the most  
2 current version of ODG, and we request that you address the  
3 clarification and change that I just detailed.

4 Thank you very much.

5 MS. OVERPECK: Thank you, Mr. Thauer.

6 Is there anybody else in the audience who would like  
7 to make an oral comment? In that case, we will conclude our  
8 public hearing today.

9 I'd like to remind you that you have until tomorrow at  
10 5:00 o'clock to submit any written comments to the Division of  
11 Workers' Compensation.

12 Thank you for your attendance and your input today.  
13 And the hearing is now closed.

14 (Whereupon, the hearing was concluded at 10:30 a.m.)

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C E R T I F I C A T I O N

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I hereby certify that the foregoing is a full,  
true and correct transcript of the proceedings taken by me in  
shorthand on the date and in the matter described on the first  
page hereof.

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Sonia E. Garcia  
Official Reporter  
Workers' Compensation Appeals Board

Date: [date]