KEGEL, TOBIN & TRUCE

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS

FROM: JOE TRUCE

DATE: March 18, 2004

RE: **MEDICAL TREATMENT ABUSE AND THE AMERICAN COLLEGE OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE PRACTICE GUIDELINES (ACOEM)**

The California Workers' Compensation Institute (CWCI) has recently issued a new study "examining the development and history of evidence-based medicine as a tool for assuring appropriate, quality medical care..."[1]

This study compared physical medicine and chiropractic treatment as practiced today in workers' compensation in comparison to the ACOEM guidelines.

Sadly, the study reached the following conclusion with regards to low back/soft tissue complaints and low back/nerve root involvement:

> **"Taken together these two health problems make up almost 18% of all claims and 22% of total benefits in the workers' compensation system. According to the comparative data in the study, approximately 4%-8% of actual physical medicine and chiropractic visits are supported by the ACOEM evidence-base for the treatment of low back strain injuries, while eight of nine back surgeries performed were not supported by the ACOEM guidelines..."**

I view the above as a very tragic statistic.

The CWCI study goes on to note that the average number of chiropractic visits for low back strains was 29.9 and for low back injuries with nerve root involvement the average was 40.5.

The study concluded as follows:

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[1]A summary of the CWCI study appears in the February 20, 2004 issue of the Appeals Board Reporter and is attached.

> **"There were more than 448,000 chiropractic visits for low back pain and 121,000 for low back injury with nerve involvement. The expected level recommended by ACOEM guidelines, approximately 23,772 of those visits, or 4.1% for low back soft tissue, and zero percent for low back with nerve involvement would have been recommended..." (emphasis added)**

Sadder still, the CWCI study goes on to analyze back surgeries (laminectomies and spinal fusions) and concludes that: **"In the study sample, 9.5% of claimants diagnosed with low back conditions with nerve involvement and 1.4% of those diagnosed with low back pain or strain underwent surgery..."**

The study goes on to note that:

> **"Under the ACOEM guidelines, fusions or laminectomies would not have been recommended in any of the soft tissue cases, or in any cases in which sciatica and neuritis were diagnosed. According to the data, 88% (2,939 out of 3,342) of the fusions and laminectomies performed on the low back claim sample would not have been recommended under the ACOEM guidelines..."**

As the ACOEM medical protocols may now be introduced into evidence pursuant to Labor Code §5703 as amended, and since the ACOEM protocols now have the presumption of correctness with respect to medical treatment, all recommended treatment modalities should be evaluated with respect to the ACOEM guidelines, whether we are dealing with an admitted or denied claim.

Even if a denied claim is eventually held to be industrial, medical treatment must still be reasonable and/or necessary to cure or relieve from the effects of the industrial injury pursuant to Labor Code §4600 and thus the ACOEM guidelines are certainly an important weapon in our defense arsenal.

What can we do? According to this distressing study, the medical profession, certainly with exceptions, is practicing something in the system but it is certainly not good medicine or at least medicine that is approved by the ACOEM protocols. Three of our clients now have medical directors and have established procedures in which the outpouring of requests for performance of ill-advised medical procedures are transmitted to the medical director within the required five business days (not to exceed 14 days from the date of the request) and these unnecessary medical procedures are being denied. Unfortunately, unless our clients adopt a strict utilization procedure which allows their medical director to receive, evaluate, and deny these unnecessary procedures

within five working days as mandated by the new law, then it is going to be **"business as usual"** for the medical community.

We must emphasize to our clients that from the moment the request for authorization for medical treatment is made on the claims administrator our five working day period begins to run and during that very limited window period, the request for medical authorization must be communicated to the medical director, evaluated and, if appropriate, a written denial must be issued to the treating physician.

To put this in **monetary terms,** the CWCI study in a best case scenario would indicate that only 8% of the medical procedures performed are appropriate and good medicine under the ACOEM guidelines, so for every $100,000 our clients are now paying for medical treatment $92,000 is spent for unnecessary treatment and treatment that is inappropriate under the ACOEM guidelines.

WJT:dab
Enclosure - CWCI study