STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

INITIAL STATEMENT OF REASONS

Subject Matter of Regulations: Workers' Compensation
Medical Treatment Utilization Schedule

TITLE 8, CALIFORNIA CODE OF REGULATIONS
SECTIONS 9792.20 – 9792.26

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BACKGROUND TO REGULATORY PROCEEDING

In 2003, the Legislature enacted Labor Code section 77.5 (SB 228, Stats. 2003, Ch. 639), which required the Commission on Health and Safety and Workers' Compensation (CHSWC) to conduct a survey and evaluation, on or before July 1, 2004, of evidence-based, peer-reviewed, nationally recognized standards of care. The statute required the CHSWC to report its findings and recommendations to the Administrative Director on or before October 1, 2004, for purposes of the adoption of a medical treatment utilization schedule. This survey was conducted by the RAND Institute for Civil Justice and Rand Health (RAND), and published in 2005. (*Evaluating Medical Treatment Guideline Sets for Injured Workers in California, RAND Institute for Civil Justice and RAND Health*, Nuckols, Wynn, et al., 2005 (2005 RAND Report).)

Labor Code section 5307.27 requires the Administrative Director to adopt a medical treatment utilization schedule (MTUS) that is "scientific and evidence-based, peer-reviewed, and nationally recognized." (See, also Lab. Code, § 4604.5(b).) The MTUS must address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases. (Lab. Code, § 5307.27.) The Administrative Director conducted formal rulemaking and the MTUS was adopted effective June 15, 2007.

The MTUS is designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and constitutes care in accordance with Labor Code section 4600 for all injured workers diagnosed with industrial conditions (Lab. Code, §4604.5(b)). Pursuant to Labor Code section 4600(a), employers are responsible to provide medical treatment to injured workers that is reasonably required to cure or relieve the effects of the industrial injuries. Medical treatment that is reasonably required to cure or relieve an injured worker from the effects of his or her injury means treatment that is based upon the MTUS adopted by the Administrative Director pursuant to Labor Code section 5307.27 (Lab. Code, § 4600(b)).

The MTUS is presumed to be correct on the issue of extent and scope of medical treatment (Lab. Code, § 4604.5(a)). The presumption is rebuttable and may be controverted by a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury (Lab. Code, § 4604.5(a)). Treatment for injuries not covered by the MTUS shall be authorized in accordance with other evidence-based medical treatment guidelines generally recognized by the national medical community and that are scientifically based (Lab. Code, § 4604.5).

In addition to the treatment guidelines of the MTUS, existing statutes provide utilization policies. For injuries occurring on and after January 1, 2004, an injured worker shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury. (Lab. Code, § 4604.5) However, Labor Code section 4604.5, as amended by Assembly Bill 1073 (Statute 2007, Chapter 621), now provides that the 24-visit limitation does "not apply to visits for postsurgical physical medicine and postsurgical rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to section 5307.27."

As previously stated, the Administrative Director conducted formal rulemaking and the MTUS was adopted effective June 15, 2007. Among other things, the Administrative Director adopted into the MTUS the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, 2nd Edition (ACOEM Practice Guidelines), and the Acupuncture Medical Treatment Guidelines.

Presently, the American College of Occupational and Environmental Medicine (ACOEM) is revising the ACOEM Practice Guidelines, 2nd Edition on a chapter by

chapter basis. (*APG Insights—Now and in the Future*, ACOEM Practice Guidelines, APG Insights, Spring 2007, p. 1.) The update on the chapter on elbow conditions was recently published in 2007. (*Elbow Disorders* (ACOEM Practice Guidelines, 2nd Edition (Revised 2007).) Simultaneously, the Medical Evidence Evaluation Advisory Committee (MEEAC), created pursuant to California Code of Regulations, title 8, section 9792.23 (now as amended section 9792.26), is actively evaluating the MTUS and making recommendations to the Medical Director of the Division of Workers' Compensation (DWC) on matters concerning the MTUS. These events require the reorganization of the MTUS in order to adopt future updates without affecting other parts of the adopted MTUS.

An examination of the ACOEM Practice Guidelines, 2nd Edition, reveals that the guidelines are divided into two fundamental parts. The first part deals with general approaches and/or foundations of occupational medicine practice. The second part deals directly with the treatment of presenting complaints. To better apply the practice guidelines in a regulatory structure, the general approaches part of the guidelines should be separated from the treatment of presenting complaints part of the guidelines because general approaches apply to all the presenting complaints chapters. To accomplish this, the second part of the ACOEM Practice Guidelines dealing with the treatment of presenting complaints was reorganized separately under the subject of clinical topics. This reorganization allows the DWC to adopt the updates relating to specific clinical topics into the MTUS through formal rulemaking without affecting other parts of the MTUS. Further, while conducting the formal rulemaking to adopt the MTUS, the Administrative Director determined that there are areas in the clinical topic sections of the MTUS which will undergo further supplementation. In this regard, the MEEAC continues to actively evaluate the MTUS and make specific recommendations to the Administrative Director via the Medical Director. The proposed reorganization of the MTUS creates a specific section for the special topics to address issues that will apply to all the clinical topics. The adoption and incorporation of individual special topics allows the Administrative Director to revise and/or replace each special topic independently from other topics through formal rulemaking without affecting other parts of the MTUS.

Section 9792.20 is amended to add the term "chronic pain" and its definition, and to amend the definition of the term "functional improvement." Amended section 9792.21 sets forth the adoption of the schedule, the purpose of the schedule, and the limitations of the schedule. Amended section 9792.22 sets forth the general approaches to the schedule by adopting and incorporating by reference specific guidelines set forth in the ACOEM Practice Guidelines, 2nd Edition, relating to general approaches. New section 9792.23 adopts and incorporates the clinical topics medical treatment guidelines set forth in the series of sections commencing with section 9792.23.1 by adopting and incorporating by reference specific clinical topic medical treatment guidelines set forth in the ACOEM Practice Guidelines, 2nd Edition, relating to specific body parts. New section 9792.23.1 sets forth the Neck and Upper Back Complaints guideline. New section 9792.23.2 sets forth the Shoulder Complaints guideline. New section 9792.23.3 adopts and incorporates by reference the Elbow Disorders Chapter (ACOEM Practice Guidelines, 2nd Edition (Revised 2007, Chapter 10), by reference into the MTUS from the ACOEM Practice

Guidelines. The 2007 revised chapter supersedes the 2004 Elbow Complaints Chapter 10 contained in the 2nd Edition, which was adopted into the MTUS on June 15, 2007. New section 9792.23.4 sets forth the Forearm, Wrist and Hand Complaints guideline. New section 9792.23.5 sets forth the Low Back Complaints guideline. New section 9792.23.6 sets forth the Knee Complaints guideline. New section 9792.23.7 sets forth the Ankle and Foot Complaints guideline. New section 9792.23.8 sets forth the Stress Related Conditions guideline. New section 9792.23.9 sets forth the Eye guideline.

Section 9792.24 sets forth the Special Topics of the MTUS, those clinical topics of the MTUS that the Administrative Director has determined that will require further supplementation. The Acupuncture Medical Treatment Guidelines, which were formerly adopted on June 15, 2007 and were contained in section 9792.21(a)(2), are now listed as amended under section 9792.24.1. New section 9792.24.2 contains the newly adopted Chronic Pain Medical Treatment Guidelines (DWC 2008). New section 9792.24.3 contains the newly adopted Postsurgical Treatment Guidelines (DWC 2008). Section 9792.22, Presumption of Correctness, Burden of and Strength of Evidence was amended for clerical errors and moved to new section 9792.25. Section 9792.23, Medical Evidence Evaluation Advisory Committee was amended for clerical errors and moved to new section 9792.26.

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SPECIFIC TECHNOLOGIES OR EQUIPMENT

None of the proposed regulations mandates the use of specific technologies or equipment.

FACTS AGENCY RELIES ON IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS

The Administrative Director has determined that the proposed regulations will not have a significant adverse effect on business. All California employers are required pursuant to Labor Code section 4600 to provide medical treatment to injured workers that is reasonably required to cure or relieve the effects of the industrial injury. This treatment must currently be based upon the medical treatment utilization schedule (MTUS) adopted by formal rulemaking on June 15, 2007 pursuant to Labor Code section 5307.27. The MTUS is now comprised of the ACOEM Practice Guidelines, 2nd Edition, and the acupuncture medical treatment guidelines. The regulations propose to update the MTUS by adding the chronic pain medical treatment guidelines and the postsurgical treatment guidelines (the latter being mandated by Assembly Bill 1073 (Statute 2007, Chapter 621)). Both these guidelines were adapted from the Official Disability Guidelines (ODG), and will be made available to the public at no cost. The proposed regulations also replace the elbow complaints chapter as contained in the ACOEM Practice Guidelines, 2nd Edition, with the ACOEM revised elbow disorders chapter (Revised 2007). This guideline will also be made available to the public at no cost. There will be minimal costs due to training and updating of computer systems to insurers, self-insured self-administered employers, third party administrators, utilization review organizations and providers of workers' compensation medical care in order to use the updated sections of the MTUS.

The regulations are expected to impact medical treatment decisions and may increase costs for some treatments for a subset of surgery, chronic pain, and elbow disorder cases. The regulations will assist the employer in determining proper medically necessary care for these cases which will reduce the instances where medically inappropriate care is provided. The increased specificity and clarity of the guidance on the treatment of these types of injuries and illnesses that the updated sections of the MTUS afford by defining standardized treatment protocols are expected to streamline the mandatory utilization review process (Lab. Code, §4610), reduce medically unnecessary care, reduce delays in treatment and denials of medically necessary treatment (thereby facilitating faster rates of recovery and return to work), and reduce medical disputes for these cases. These

secondary effects are in turn expected to lead to cost offsets to insurers and employers in other areas, namely, utilization review, medical disputes, temporary disability indemnity payments, and permanent disability indemnity payments. Given the complex nature of the interaction of these components and the lack of a credible and reliable statistical basis for producing an estimate of the financial impact of the updated regulations, the overall statewide financial impact cannot be calculated or estimated. However, the claims that will be affected by the updated sections of the MTUS represent a small portion of workers' compensation claims overall. Elbow disorders are approximately 1.8 percent of all claims and claims that involve surgery are approximately 4.3 percent of all claims. The percentage of claims that are chronic pain cases is unknown, but is expected to be relatively uncommon. However, as these claims by definition consist of cases that persist beyond the time of expected tissue healing, their treatment is inherently more complicated and thus the costs associated with these cases will represent a disproportionately larger share of all medical treatment costs. Cost increases, if any, and cost offsets would be distributed among workers' compensation insurers (80% of costs and cost offsets) and self-insured employers (20% of costs and cost offsets).[1] The financial impact on any individual business, if any, would therefore be minimal. (Based on DWC staff analysis of Worker's Compensation Information System (WCIS) data on first reports of injury with a date of injury in 2007, collected by DWC pursuant to Labor Code § 138.6 and Title 8, CCR, §§ 9701-9702; Fox, S.E., Victor, R. A., & Liu, T.C. *Comparing Outcomes for Injured Workers in Seven Large States*, WC-06-01, Cambridge, MA: Workers' Compensation Research Institute, January 2006; Ireland, J., & Swedlow, A. *Analysis of California Workers' Compensation Reforms, Part 4: Postsurgical Physical Medicine and Chiropractic Manipulation—Preliminary Results,* CWCI Research Update, September 2007).

It is important to note that employers are already providing medical treatment for elbow, chronic pain and postsurgical injuries, but are doing so without the guidance of presumptively correct treatment guidelines for chronic pain and postsurgical therapy. The costs, if any, are due to the legal requirement that the MTUS incorporate evidence-based, peer-reviewed, nationally recognized medical guidelines that address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases (Lab. Code, § 5307.27). Additional costs would occur only if employers are currently providing less treatment, or less costly treatment, than is recommended in the presumptively correct treatment guidelines.

Section 9792.20 Medical Treatment Utilization Schedule—Definitions

Specific Purpose of Section 9792.20:

[1] The 80% and 20% are based on the well-accepted rubric (used by the Workers' Compensation Insurance Rating Bureau) that total WC costs can be calculated by multiplying insurer costs by 1.25; which is the same as saying that insurer costs are 80% of all costs and self-insured employer costs are 20% of all costs in the WC system.

Section 9792.20 lists and defines the terms used in the proposed regulations to ensure that the meanings of the terms are clearly understood by the workers' compensation community.

Necessity:

Section 9792.20(c)—Definition of the term "chronic pain."

The term "chronic pain" has been defined as "any pain that persists beyond the anticipated time of tissue healing." The definition was crafted from *Bonica's Management of Pain*. In Chapter 2, entitled "Pain Terms and Taxonomies of Pain," authored by Dennis C. Turk and Akiko Okifuji, chronic pain is discussed at page 17, in part, as follows:

> Discussions of pain involve many terms. The meaning and connotation of these different terms may vary widely….
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> ***
>
> *Pain, acute/pain, chronic:* Definitions of acute, chronic, recurrent, and cancer pain are not included in the IASP list of pain terms. We believe, however, that it is important to clarify these as they are commonly used in the literature.
>
> "Traditionally, the distinction between acute and chronic pain has relied on a single continuum of time with some interval since the onset of pain used to designate the onset of acute pain or the transition point when acute pain becomes chronic. The two most commonly used chronological markers used to denote chronic pain have been 3 months and 6 months since the initiation of pain: however, these distinctions are arbitrary.
>
> Another criterion for chronic pain is 'pain that extends beyond the expected period of healing.' This is relatively independent of time because it considers pain as chronic even when it has persisted for a relatively brief duration. Unfortunately, how long the process of healing will (should) take is ambiguous." Turk, D and Okifuji A. Pain Terms and Taxonomies in Bonica's Management of Pain, 3rd edition. Philadelphia, PA, Lippincott Williams and Wilkins:17.

Thus, the term "chronic pain" has been defined as "any pain that persists beyond the anticipated time of tissue healing." This definition corresponds with the MTUS framework in that it allows us utilize the ACOEM's clinical algorithms to define the transition point between acute and chronic.

Section 9792.20(c)—Definition of the term "claims administrator."
Section 9792.20(d)—Definition of the term "evidence-based."

These sections have been re-lettered section 9792.20(d) and section 9792.20(e) respectively.

Section 9792.20(e)—Definition of the term "functional improvement."

This definition has been amended to substitute the phrase "clinically significant" with the word "quantifiable." The change to "quantifiable" improvement in activities of daily living or a reduction in work restrictions is intended to give more precision and specificity in documenting functional improvement. Thus, the definition now states: "functional improvement means either a quantifiable improvement in activities of daily living or a reduction in work restrictions as measured during the history and physical exam, performed and documented as part of the evaluation and management visit billed under the Official Medical Fee Schedule (OMFS) pursuant to sections 9789.10-9789.111; and a reduction in the dependency on continued medical treatment." This section was further amended to re-letter section 9792.20(e) to section 9792.20(f).

Section 9792.20(f)—Definition of the term "medical treatment."
Section 9792.20(g)—Definition of the term "medical treatment guidelines."
Section 9792.20(h)—Definition of the term "MEDLINE."
Section 9792.20(i)—Definition of the term "nationally recognized."
Section 9792.20(j)—Definition of the term "peer reviewed."
Section 9792.20(k)—Definition of the term "scientifically based."
Section 9792.20(l)—Definition of the term "strength of evidence."

These sections have been re-lettered to section 9792.20(g) through section 9792.20(m) respectively.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.21 Medical Treatment Utilization Schedule

Specific Purpose of Section 9792.21(a)

The purpose of this section is to set forth the medical treatment utilization schedule (MTUS). This section informs the public that the MTUS is comprised of section 9792.20 through section 9792.26.

Necessity

Section 9792.21(a) has been amended to delete the sentence "The Administrative Director adopts and incorporates by reference the following medical treatment guidelines into the Medical Treatment Utilization Schedule." The sentence is no longer necessary in this particular section because the MTUS has been reorganized. The reorganization of the

MTUS is explained below in connection with the various sections and guidelines adopted into the MTUS.

[Section 9792.21(a)(1) was moved to Section 9792.22 for reorganization purposes and amended.]

[Section 9792.21(a)(2) was moved to new Section 9792.24.1 for reorganization purposes and amended.]

Specific Purpose of Section 9792.21(b)

The section informs the public that the MTUS is intended to assist in the provision of medical treatment by offering an analytical framework for the evaluation and treatment of injured workers and to help those who make decisions regarding the medical treatment of injured workers understand what treatment has been proven effective in providing the best medical outcomes to those workers, in accordance with section 4600 of the Labor Code.

Necessity

Section 9792.21(b) has been corrected for consistency purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS." This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the "Medical Treatment Utilization Schedule," and at other times as the "MTUS."

Specific Purpose of Section 9792.21(c)

The purpose of this section is to address treatment not discussed in the MTUS. The section informs the public that treatment shall not be denied on the sole basis that the condition or injury is not addressed by the MTUS. The section clarifies that under these circumstances, the claims administrator is required to authorize treatment that is in accordance with other scientifically and evidence-based, peer-reviewed medical treatment guidelines that are nationally recognized by the medical community, in accordance with subdivisions (b) and (c) of section 9792.25, and pursuant to the Utilization Review Standards found in section 9792.6 through 9792.10.

Necessity:

Section 9792.21(c) has been corrected for consistency purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS." This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the "Medical Treatment Utilization Schedule," and at other times as the "MTUS." Further, section 9792.22 has been changed to section 9792.25 to reflect the revision that section 9792.22 has been moved to section 9792.25.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

[Section 9792.22.Presumption of Correctness, Burden of Proof and Hierarchy of Scientific Based Evidence was moved to Section 9792.25 for reorganization purposes.]

Section 9792.22 General Approaches

Specific Purpose of Section 9792.22(a):

The purpose of this section is to inform the public that the Administrative Director adopts and incorporates by reference into the MTUS specific guidelines from the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines) for general approaches. These general approaches are listed in the section 9792.22(a)(1) through 9792.22(a)(4). The section further informs the public where a copy of the ACOEM Practice Guidelines may be obtained.

Necessity:

ACOEM is revising the ACOEM Practice Guidelines, 2nd Edition, on a chapter by chapter basis. (*APG Insights—Now and in the Future*, ACOEM Practice Guidelines, APG Insights, Spring 2007, p. 1.) The update on the chapter on elbow conditions was recently published in 2007. (*Elbow Disorders* [Revised 2007].) Moreover, the Medical Evidence Evaluation Advisory Committee (MEEAC), created pursuant to section 9792.23 (now as amended section 9792.26), is actively evaluating the MTUS and making recommendations to the Medical Director on matters concerning the MTUS. This requires a reorganization of the MTUS in order to adopt the updates without affecting other parts of the MTUS.

An examination of the ACOEM Practice Guidelines, 2nd Edition reveals that the guidelines are divided into two fundamental parts. The first part deals with general approaches and/or foundations of occupational medicine practice chapters. The second part deals directly with the treatment of presenting complaints chapters. It was determined that the general approaches part of the guidelines should be separated from the treatment of presenting complaints part because general approaches chapters apply to all the presenting complaints chapters. Thus, Chapter 1, Prevention (ACOEM Practice Guidelines, 2nd Edition (2004); Chapter 2, General Approach to Initial Assessment and Documentation (ACOEM Practice Guidelines, 2nd Edition (2004); Chapter 3, Initial Approaches to Treatment (ACOEM Practice Guidelines, 2nd Edition (2004); and Chapter 5, Cornerstones of Disability Prevention and Management (ACOEM Practice Guidelines, 2nd Edition (2004); are referenced in section 9792.22(a) as chapters relating to general approaches, and are adopted and incorporated separately from the presenting complaints chapters.

Moreover, the reference to the specific edition of the ACOEM Practice Guidelines was stricken from the regulations in section 9792.22(a) (i.e., Second Edition (2004)). The reason for this action is necessitated by the fact that although the ACOEM Practice Guidelines continues to be the framework for the MTUS, the MTUS will continuously be updated based on ACOEM's revisions of its 2nd Edition on a chapter by chapter basis. In order to be able to upgrade the MTUS to keep it current with the ACOEM Practice Guidelines, it is more practical to keep the reference to the ACOEM edition together with the specific guideline being adopted. For example, the guidelines for the shoulder complaints adopted are the ACOEM Practice Guidelines, 2nd Edition (2004) while the guidelines for the elbow complaints adopted are the ACOEM Practice Guidelines, 2nd Edition (Revised 2007).

Specific Purpose of Section 9792.22(a)(1)

Section 9792.22(a)(1) informs the public that the ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 1, entitled *Prevention* has been adopted into the MTUS.

Necessity:

This chapter addresses the prevention of work related health complaints. It introduces general principles in identifying risk factors that lead to injury and how to prevent further injury. *Prevention* applies to all work injuries and the physician should be mindful of the principles in this chapter when utilizing the presenting complaints chapters.

Specific Purpose of Section 9792.22(a)(2)

Section 9792.22(a)(2) informs the public that the ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 2, entitled *General Approach to Initial Assessment and Documentation*, has been adopted into the MTUS.

Necessity:

This chapter outlines general principles applicable to the initial clinical assessment of work injuries. Only after the initial evaluation has been performed can the specific condition be addressed by other chapters found in the clinical topics section. Recording information from the initial assessment is critical in documenting the injury, communicating with others, and facilitating the administration of the work injury claim. The initial assessment identifies the nature and extent of injuries which will guide the physician to utilize the appropriate clinical topic section of the MTUS.

Specific Purpose of Section 9792.22(a)(3)

Section 9792.22(a)(3) informs the public that the ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 3, entitled *Initial Approaches to Treatment*, has been adopted into the MTUS.

Necessity:

Even though the clinical topics sections of the MTUS provide detailed treatment guidelines for the specific body parts injured, this chapter presents initial approaches to treatment that are generally applicable to all injuries. Physician should be cognizant of the principles in this chapter as it forms a common basis for the initial treatment found in all the clinical topics sections.

Specific Purpose of Section 9792.22(a)(4)

Section 9792.22(a)(4) informs the public that the ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 5, entitled *Cornerstones of Disability Prevention and Management* has been adopted into the MTUS.

Necessity:

A common factor in work place injuries is that often the injured worker is unable to perform their work functions. The purpose of this chapter is to identify factors that prevent the injured worker from resuming work activities and to facilitate successful return to work. The principles found in this chapter apply to all injuries as addressed in the clinical and special topics sections of the MTUS.

At this time, it is noted that there are three chapters from the ACOEM Practices Guidelines, 2nd Edition (2004) which are now stricken from the MTUS and will not be incorporated into the updated MTUS. Chapter 4, *Work-Relatedness*, is not adopted and incorporated into the MTUS as the chapter is not applicable to California law. Chapter 6, *Pain, Suffering, and the Restoration of Function*, is not incorporated into the MTUS because it will be replaced with the proposed chronic pain medical treatment guidelines which will be added to the MTUS. Chapter 7, *Independent Medical Examinations and Consultations*, is not incorporated into the MTUS because the State of California has its own system for medical-legal evaluations.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

[Section 9792.23. Medical Evidence Evaluation Advisory Committee was moved to new Section 9792.26.]

Section 9792.23 Clinical Topics

Specific Purpose of Section 9792.23(a):

The purpose of this section is to inform the public the Administrative Director adopts and incorporates by reference into the MTUS specific clinical topic medical treatment

guidelines set forth in the series of sections commencing with 9792.23.1 et seq. This section further informs the public that the clinical topics refer to the authorized treatment and diagnostic services in the initial management and subsequent treatment of presenting complaints specific to the body part.

Necessity:

The second part of the ACOEM Practice Guidelines deals directly with the treatment of presenting complaints. Because ACOEM is revising the ACOEM Practice Guidelines on a chapter by chapter basis, and insofar as the MEEAC continues to actively evaluate the MTUS and make specific recommendations to the Medical Director, reorganization of the MTUS is necessary in order to adopt future updates relating to specific clinical topics. The adoption of the updates through formal rulemaking will be related to the specific topics being updated and will not affect other parts of the MTUS. The clinical topic sections serves as a starting point for treatment of specific body part complaints pursuant to the MTUS. The clinical topics sections address the authorized treatment and diagnostic services in the initial management and subsequent treatment of presenting complaints specific to the body part. When the treating physician reaches the last algorithm contained in the specific body part chapters, and determines that recovery has not taken place with respect to pain, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply. The clinical topics section addresses subsequent treatment of presenting complaints specific to the body part because if subsequent treatment is later necessitated, this treatment would fall beyond the scope of the chronic pain medical treatment guideline.

Specific Purpose of Section 9792.23(b):

Section 9792.23(b) informs the public that for all treatment not addressed in the MTUS, the authorized treatment and diagnostic services in the 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 9792.25(b).

Necessity:

There are cases where the treatment that is medically necessary is not addressed in the MTUS. This section provides that the treatment may be provided pursuant to other guidelines that meet the requirements of the statute. (Lab. Code, § 4604.5(e).) This is also consistent with the language of the regulations as set forth in section 9792.25(b).

Specific Purpose of Section 9792.23(b)(1):

Section 9792.23(b)(1) informs the public that in providing treatment using other guidelines when the treatment is not addressed by the MTUS and in the absence of any surgical options for the complaint in the patient with chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

There are cases where the initial and subsequent treatment that is medically necessary is not addressed in the MTUS and it is being provided pursuant to a guideline not in the MTUS that meets the requirements of the statute. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Specific Purpose of Section 9792.23(b)(2):

Section 9792.23(b)(2) informs the public that in providing treatment using other guidelines when the treatment is not addressed by the MTUS and if surgery is performed, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply.

Necessity:

There are cases where the initial and subsequent treatment that is medically necessary is not addressed in the MTUS and it is being provided pursuant to a guideline not in the MTUS that meets the requirements of the statute. If surgery is performed and the patient is determined to be in need of physical medicine treatment, the postsurgical treatment guidelines apply. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.1 Neck and Upper Back Complaints

Specific Purpose of Section 9792.23.1(a):

Section 9792.23.1(a) informs that the public the Administrative Director adopts and incorporates by reference the Neck and Upper Back Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 8) into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Neck and Upper Back Complaints Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the neck and upper back. Moreover, the adoption and

incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition textbook allows the DWC to revise and/or replace the neck and upper back complaints guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.1(b):

Section 9792.23.1(b) informs the public that in the course of treatment for neck and upper back complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines set forth in section 9792.24.1 apply.

Necessity:

In the original rulemaking to adopt the MTUS effective June 15, 2007, the Administrative Director determined there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2). Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved to section 9792.24.1 under the "Special Topics" section of the proposed regulations. This section refers the treating physician to the acupuncture medical treatment guidelines when indicated. This process facilitates proper treatment that serves to improve the patient's function.

Specific Purpose of Section 9792.23.1(c):

Section 9792.23.1(c) informs the public that the course of treatment for neck and upper back complaints shall follow the algorithms set forth in Chapter 8. It further clarifies that if recovery has not taken place with respect to pain by the end of algorithm 8-5, *ACOEM Practices Guidelines*, 2nd Edition, page 188, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply.

Necessity:

The Neck and Upper Back Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the neck and upper back. Algorithm 8-5, *ACOEM Practices Guidelines*, 2nd Edition, page 188, delineates steps to be taken by treating physicians in the further management of neck and upper back complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 8-5, this provides an exit to the clinical topics section and the chronic pain medical treatment guidelines set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.1(d):

Section 9792.23.1(d) informs the public that if surgery is performed in the course of treatment for neck and upper back complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. It further informs the public that in the absence of any surgical options for the complaint, and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for neck and upper back complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.2 Shoulder Complaints

Specific Purpose of Section 9792.23.2(a):

Section 9792.23.2 informs the public that the Administrative Director adopts and incorporates by reference the Shoulder Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 9) by reference into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Shoulder Complaints Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the shoulder. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition textbook allows the DWC to revise and/or replace the shoulder complaints guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.2(b):

Section 9792.23.2(b) informs the public the course of treatment for shoulder complaints shall follow the algorithms set forth in Chapter 9 of the ACOEM Practice Guidelines. It clarifies that if recovery has not taken place at the end of algorithm 9-5, *ACOEM Practices Guidelines*, 2nd Edition, page 219, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply.

Necessity:

The Shoulder Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the shoulder. Algorithm 9-5, *ACOEM Practices Guidelines*, 2nd Edition, page 219, delineates steps to be taken by treating physicians in the further management of shoulder complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 9-5, this provides an exit to the clinical topics section and refers the physician to the chronic pain medical treatment guidelines set forth in section 9792.24.2. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.2(c):

Section 9792.23.2(c) informs the public that if surgery is performed in the course of treatment for shoulder complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. It further informs the public that in the absence of any surgical options for the complaint, and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for shoulder complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.3 Elbow Complaints

Specific Purpose of Section 9792.23.3(a):

Section 9792.23.3(a) informs the public that the Administrative Director adopts and incorporates by reference the Elbow Disorders (Revised 2007) Chapter (ACOEM Practice Guidelines, 2nd Edition, Elbow Disorders (Revised 2007), Chapter 10) by reference into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Elbow Disorders Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the elbow. ACOEM has revised its Elbow Complaints Chapter to replace its original Chapter 10 as contained in the ACOEM Practice Guidelines, 2nd Edition textbook. The title of the chapter is now Elbow Disorders (Revised 2007) Chapter. It is necessary to update the MTUS by adopting and incorporating the most recent guideline relating to the elbow, which is now the revised 2007 version (Elbow Disorders (Revised 2007)). As reflected in this specific section, the adoption and incorporation of this chapter as a separate guideline allows the DWC to revise and/or replace the elbow disorder guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.3(b):

Section 9792.23.3(b) informs the public that in the course of treatment for elbow complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines set forth in section 9792.24.1 apply.

Necessity:

In the original rulemaking to adopt the MTUS effective June 15, 2007, the Administrative Director determined there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2), effective June 15, 2007. Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved to section 9792.24.1 under the "Special Topics" section of the proposed regulations. This section refers the treating physician to the acupuncture medical treatment guidelines when indicated. This process facilitates proper treatment that serves to improve the patient's function.

Specific Purpose of Section 9792.23.3(c):

Section 9792.23.3(c) informs the public that the course of treatment for elbow complaints shall follow the algorithms set forth in Chapter 10 of the ACOEM Practice Guidelines. It clarifies if recovery has not taken place at the end of the Elbow Algorithm 10-5, *ACOEM Practices Guidelines* (Elbow Disorders, Revised 2007), page 52, the chronic pain medical treatment guidelines set forth in section § 9792.24. 2 apply.

Necessity:

The Elbow Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the elbow. Algorithm 10-5, *ACOEM Practices Guidelines* (Elbow Disorders, Revised 2007), page 52, delineates steps to be taken by treating physicians in the further management of elbow complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 10-5, this provides an exit to the clinical topics section and the chronic pain medical treatment guideline set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.3(d):

Section 9792.23.3(d) informs the public that if surgery is performed in the course of treatment for elbow complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. The section additionally informs the public that in the absence of any surgical options for the complaint, and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for elbow complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.4 Forearm, Wrist, and Hand Complaints

Specific Purpose of Section 9792.23.4(a):

Section 9792.23.4(a) informs the public that the Administrative Director adopts and incorporates by reference the Forearm, Wrist, and Hand Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 11) by reference into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Forearm, Wrist, and Hand Complaints Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the forearm, wrist, and hand. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition, textbook allows the DWC to revise and/or replace the forearm, wrist, and hand complaints guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.4(b):

Section 9792.23.4(b) informs that public that where acupuncture or acupuncture with electrical stimulation is being considered in the course of treatment for forearm, wrist, and hand complaints, the acupuncture medical treatment guidelines set forth in section 9792.24.1 apply.

Necessity:

In the original rulemaking, the Administrative Director determined in adopting the MTUS there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2), effective June 15, 2007. Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved to section 9792.24.1 under the "Special Topics" section of the proposed regulations. This section refers the treating physician to the acupuncture medical treatment guidelines when indicated. This process facilitates proper treatment that serves to improve the patient's function.

Specific Purpose of Section 9792.23.4(c):

Section 9792.23.4(c) informs the public that the course of treatment for forearm, wrist and hand complaints shall follow the algorithms set forth in Chapter 11 of the ACOEM Practice Guidelines. It clarifies if recovery has not taken place at the end of algorithm 11-5, *ACOEM Practices Guidelines*, 2nd Edition, page 278, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply.

Necessity:

The Forearm, Wrist, and Hand Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the forearm, wrist, and hand. Algorithm 11-5, *ACOEM Practices Guidelines*, 2nd Edition, page 278, delineates steps to be taken by treating physicians in the further management of forearm, wrist and hand complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 11-5, this provides an exit to the clinical topics section and the chronic pain medical treatment guideline set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.4(d):

Section 9792.23.3(d) informs the public that if surgery is performed in the course of treatment for forearm, wrist, and hand complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. It further informs the public that in the absence of any surgical options for the complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for forearm, wrist, and hand complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.5 Low Back Complaints

Specific Purpose of Section 9792.23.5(a):

Section 9792.23.5(a) informs the public that the Administrative Director adopts and incorporates by reference the Low Back Complaints (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 12) by reference into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Low Back Complaints Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the low back. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition, textbook allows the DWC to revise and/or replace the low back complaints guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.5(b):

Section 9792.23.5(b) informs the public that in the course of treatment for low back complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines set forth in section 9792.24.1 apply.

Necessity:

In the original rulemaking to adopt the MTUS effective June 15, 2007, the Administrative Director determined there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2). Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved to section 9792.24.1 under the "Special Topics" section of the proposed regulations. This section refers the treating physician to the acupuncture medical treatment guidelines when indicated. This process facilitates proper treatment that serves to improve the patient's function.

Specific Purpose of Section 9792.23.5(c):

Section 9792.23.5(c) informs the that public the course of treatment for low back complaints must follow the algorithms set forth in Chapter 12 of the ACOEM Practices Guidelines. It clarifies if recovery has not taken place at the end of algorithm 12-5, the chronic pain medical treatment guidelines set forth in section 9792.24.2 apply.

Necessity:

The Low Back Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the low back. Algorithm 12-5, *ACOEM Practices Guidelines*, 2nd Edition, page 315,

delineates steps to be taken by treating physicians in the further management of forearm, wrist, and hand complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 12-5, this provides an exit to the clinical topics section and the chronic pain medical treatment guideline set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.5(d):

Section 9792.23.5(c) informs the public that if surgery is performed in the course of treatment for low back complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. It further informs the public that in the absence of any surgical options for the complaint, and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for low back complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.6 Knee Complaints

Specific Purpose of Section 9792.23.6(a):

Section 9792.23.6(a) informs the public that the Administrative Director adopts and incorporates by reference the Knee Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 13) by reference into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Knee Complaints Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the knee. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition, textbook allows the DWC to revise and/or replace the knee complaints guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.6(b):

Section 9792.23.6(b) informs the public that when in the course of treatment for knee complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines set forth in section 9792.24.1 apply.

Necessity:

In the original rulemaking to adopt the MTUS effective June 15, 2007, the Administrative Director determined there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2). Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved to section 9792.24.1 under the "Special Topics" section of the proposed regulations. This section refers the treating physician to the acupuncture medical treatment guidelines when indicated. This process facilitates proper treatment that serves to improve the patient's function.

Specific Purpose of Section 9792.23.6(c):

Section 9792.23.6(c) informs the public that the course of treatment for knee complaints shall follow the algorithms set forth in Chapter 13 of the ACOEM Practice Guidelines. It clarifies if recovery has not taken place at the end of algorithm 13-5, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply.

Necessity:

The Knee Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the knee. Algorithm 13-5, *ACOEM Practices Guidelines*, 2nd Edition, page 352, delineates steps to be taken by treating physicians in the further management of forearm, wrist and hand complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 13-5, this provides an exit to the clinical topics section and the chronic pain medical treatment guideline set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue

healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.6(d):

Section 9792.23.6(d) informs the public that if surgery is performed in the course of treatment for knee complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. The section additionally informs the public that in the absence of any surgical options for the complaint, and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for knee complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.7 Ankle and Foot Complaints

Specific Purpose of Section 9792.23.7(a):

Section 9792.23.7(a) informs the public that the Administrative Director adopts and incorporates by reference the Ankle and Foot Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 14) by reference into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Ankle and Foot Complaints Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the ankle and foot. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd

Edition, textbook allows the DWC to revise and/or replace the ankle and foot complaints guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.7(b):

Section 9792.23.7(b) informs the public that when in the course of treatment for ankle and foot complaints where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines set forth in section 9792.24.1 apply.

Necessity:

In the original rulemaking to adopt the MTUS effective June 15, 2007, the Administrative Director determined there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2). Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved to section 9792.24.1 under the "Special Topics" section of the proposed regulations. This section refers the treating physician to the acupuncture medical treatment guidelines when indicated. This process facilitates proper treatment that serves to improve the patient's function.

Specific Purpose of Section 9792.23.7(c):

Section 9792.23.7(c) informs the public that the course of treatment for ankle and foot complaints shall follow the algorithms as set forth in Chapter 14 of the ACOEM Practice Guidelines. It clarifies if recovery has not taken place at the end of algorithm 14-5, *ACOEM Practices Guidelines*, 2nd Edition, page 382, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply.

Necessity:

The Ankle and Foot Complaints Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the knee. Algorithm 14-5, *ACOEM Practices Guidelines*, 2nd Edition, page 382, delineates steps to be taken by treating physicians in the further management of forearm, wrist and hand complaints. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 14-5, this provides an exit to the clinical topics section and the chronic pain medical treatment guideline set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Specific Purpose of Section 9792.23.7(d):

Section 9792.23.7(d) informs the public that if surgery is performed in the course of treatment for ankle and foot complaints, the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine apply. The section additionally informs the public that in the absence of any surgical options for the complaint, and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Necessity:

In cases where surgery is performed in the course of treatment for ankle and foot complaints, the treating physician is referred to the postsurgical treatment guidelines set forth in section 9792.24.3 for postsurgical physical medicine. This section allows the treating physician to utilize the postsurgical medical treatment guidelines when indicated for the surgery performed. This process facilitates proper treatment that serves to speed optimal recovery after surgery thus preventing needless disability. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. This section allows for the chronic pain medical treatment guidelines to apply under these circumstances. This section provides guidance to the public in the use of other guidelines which are not part of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.8 Stress Related Conditions

Specific Purpose of Section 9792.23.8(a):

Section 9792.23.8(a) informs the public that the Administrative Director adopts and incorporates by reference the Stress Related Conditions Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 15) into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Stress Related Conditions Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to stress related conditions. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition, textbook allows the DWC to revise and/or replace the stress related conditions guideline independently from other sections of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.23.9 Eye

Specific Purpose of Section 9792.23.9(a):

Section 9792.23.9(a) informs the public that the Administrative Director adopts and incorporates by reference the Eye Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 16) into the MTUS from the ACOEM Practice Guidelines.

Necessity:

The adoption and incorporation of the Eye Chapter of the ACOEM Practice Guidelines into the MTUS provides for a medical treatment guideline to treat conditions relating to the eye. Moreover, the adoption and incorporation of this chapter separately from the ACOEM Practice Guidelines, 2nd Edition textbook allows the DWC to revise and/or replace the eye guideline independently from other sections of the MTUS.

Specific Purpose of Section 9792.23.9(b):

Section 9792.23.9(b) informs the public that the course of treatment for eye shall follow the algorithms set forth in Chapter 16 of the ACOEM Practice Guidelines. It clarifies if recovery has not taken place with respect to pain by the end of algorithm 16-6, *ACOEM Practices Guidelines*, 2nd Edition, page 470, the chronic pain medical treatment guidelines set forth in section 9792.24. 2 apply.

Necessity:

The Eye Chapter of the ACOEM Practice Guidelines, as adopted into the MTUS, provides for a medical treatment guideline to treat conditions relating to the eye. Algorithm 16-6, *ACOEM Practices Guidelines*, 2nd Edition, page 470, delineates steps to be taken by treating physicians in the treatment management of the eye. When the treating physician determines that recovery has not taken place with respect to pain at the end of algorithm 16-6, this provides an exit to the clinical topics section and the chronic pain medical treatment guideline set forth in section 9792.24.2 apply. It is clear that at this juncture the condition of the patient meets the definition of chronic pain "as any pain that persists beyond the anticipated time of tissue healing." This process helps identify patients not responding to conservative therapy or thought to be at risk for delayed recovery in a timely manner thus avoiding ineffective therapeutic efforts and needless disability.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.24 Special Topics

Specific Purpose of Section 9792.24:

Section 9792.24 informs the public that the special topics section of the MTUS refers to clinical topic areas where the Administrative Director has determined that the clinical topic sections of the MTUS require further supplementation.

Necessity:

In the original rulemaking, the Administrative Director determined there were areas which required further supplementation. The MEEAC continues to actively evaluate the latest medical evidence in relation to the MTUS, and advise the Medical Director about specific updates. To ensure that California's workers have access to effective and appropriate treatments, it is necessary to reorganize the MTUS to create a specific section for the special topics. The special topics section of the MTUS addresses issues in common across the clinical topics. The adoption and incorporation of individual special topics allows the Administrative Director to revise and/or replace each special topic independently from other topics through formal rulemaking without affecting other parts of the MTUS.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.24.1 Acupuncture Medical Treatment Guidelines

Specific Purpose of Section 9792.24.1:

Section 9792.24.1 contains the acupuncture medical treatment guidelines which are listed in these proposed regulations under the "special topics" section of the MTUS.

Necessity:

In the original rulemaking adopting the MTUS, the Administrative Director determined there were areas which required further supplementation. Acupuncture treatment was identified as one of the areas which required further supplementation, and the acupuncture medical treatment guidelines were adopted as originally contained in section 9792.21(a)(2). Based on the present reorganization of the MTUS, the acupuncture medical treatment guidelines were moved and renumbered as section 9792.24.1 under the "Special Topics" section of the proposed regulations. Originally, section 9792.21(a)(2) stated that the acupuncture medical treatment guidelines "supersede the text in the

ACOEM Practice Guidelines, Second Edition, relating to acupuncture, except for shoulder complaints, and shall address acupuncture treatment where not discussed in the ACOEM Practices Guidelines." The deletion of this sentence is consistent with the proposed internal reorganization of the MTUS to adopt the specific clinical topics contained in the ACOEM Practice Guidelines on a chapter by chapter basis, and to list the acupuncture medical treatment guidelines separately under the special topics section of the MTUS.

Specific Purpose of Section 9792.24.1(a):

Section 9792.24.1(a) introduces the specific definitions of terms applicable to the acupuncture medical treatment guidelines.

Necessity:

This section was amended for clarification purposes. The sentence was amended to state "For the purposes of this section, the following definitions apply:"

Specific Purpose of Section 9792.24.1(a)(1):

Section 9792.24.1(a)(1) contains the definition of the term "acupuncture." The definition of this term has not changed.

Necessity:

Section 9792.24.1(a)(1) was formerly contained in section 9792.21(a)(2)(i). It has been renumbered for organizational purposes to section 9792.24.1(a)(1). This section originally contained the definition of "acupuncture" which remains the same. The only change in this section is the renumbering of the section.

Specific Purpose of Section 9792.24.1(a)(2):

Section 9792.24.1(a)(2) contains the definition of the term "acupuncture with electrical stimulation." The definition of this term has not changed.

Necessity:

Section 9792.24.1(a)(2) was formerly contained in section 9792.21(a)(2)(ii). It has been renumbered for reorganization purposes to section 9792.24.1(a)(2). This section originally contained the definition of "acupuncture with electrical stimulation" which remains the same. The only change in this section is the renumbering of the section.

[Former Section 9792.21(a)(2)(iii)]

Former section 9792.21(a)(2)(iii) containing the definition of the term "chronic pain for purposes of acupuncture" was modified. The text of the section has been changed to state

that “chronic pain for purposes of acupuncture” means chronic pain as defined in section 9792.20(c).”

Necessity:

The definition of the term “chronic pain for purposes of acupuncture” has been modified to be consistent with the definition of the term “chronic pain” as set forth in proposed section 9792.20(c). This section defines “chronic pain” as “any pain that persists beyond the anticipated time of tissue healing.” It is necessary to modify the definition of “chronic pain for purposes of acupuncture” to be consistent with the proposed definition of “chronic pain” as contained in the MTUS. This modification clarifies that one definition of “chronic pain” is applicable throughout the MTUS thus avoiding confusion and/or application of different standards.

[Former Sections 9792.21(a)(2)(B)(i)- 9792.21(a)(2)(B)(vii)]

Former section 9792.21(a)(2)(B)(i) through section 9792.21(a)(2)(B)(vii) were deleted. These sections referred to the ACOEM chapters. Because the chapters have now been adopted and incorporated individually it is no longer necessary to list these chapters in the acupuncture medical treatment guidelines.

Specific Purpose of Section 9792.24.1(b)(1):

Section 9792.24.1(b)(1) informs the public that the guidelines apply to acupuncture or acupuncture with electrical stimulation when indicated in the clinical topic medical treatment guidelines in the series of sections commencing with 9792.23.1 et seq., or in the chronic pain medical treatment guidelines (DWC 2008) contained in section 9792.24.2.

Necessity:

Following the reorganization of the MTUS, indications for acupuncture are now found in the clinical topics sections and chronic pain guidelines of the MTUS. This clarifies that the treating physician is now able to look at the clinical topics and chronic pain sections for the indications for acupuncture or acupuncture with electrical stimulation.

Specific Purpose of Sections 9792.24.1(c), 9792.24.1(c)(1), 9792.24.1(c)(2), 9792.24.1(c)(3):

These sections as contained in the original regulations inform the public of the frequency and duration of acupuncture or acupuncture with electrical stimulation which may be performed. The substance of these sections was not changed.

Necessity:

Sections 9792.24.1(c), 9792.24.1(c)(1), 9792.24.1(c)(2), 9792.24.1(c)(3) were formerly contained in section 9792.21(a)(2)(C) through section 9792.21(a)(2)(C)(iii). These sections have been renumbered for organizational purposes to sections 9792.24.1(c), 9792.24.1(c)(1), 9792.24.1(c)(2), 9792.24.1(c)(3). The sections originally contained the frequency and duration of acupuncture or acupuncture with electrical stimulation which may be performed which were not changed. The only change in these sections is the renumbering of the sections. The substance of the sections remains the same.

Specific Purpose of Section 9792.24.1(d)

Section 9792.24.1(d) informs the public that the acupuncture treatments may be extended if functional improvement is documented as defined in 9792.20(f). The substance of this section was not changed.

Necessity:

Section 9792.24.1(d) was formerly contained in section 9792.21(a)(2)(C). It has been renumbered for reorganization purposes to section 9792.24.1(d). This section originally stated that acupuncture treatments may be extended if functional improvement is documented as defined in section 9792.20(e). The section has been amended for reorganization purposes to renumber the section to section 9792.24.1(d), and to correct the reference to section 9792.20(e), which has now been re-lettered 9792.20(f). The substance of the section remains the same.

Specific Purpose of Section 9792.24.1(e)

Section 9792.24.1(e) informs the public that is beyond the scope of the Acupuncture Medical Treatment Guidelines to state the precautions, limitations, contraindications, or adverse events resulting from acupuncture or acupuncture with electrical stimulations. These decisions are left up to the acupuncturist.

Necessity:

This section was formerly contained in section 9792.21(a)(2)(E). It has been renumbered for organizational purposes to section 9792.24.1(e). The text of this section was not changed.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.24.2 Chronic Pain Medical Treatment Guidelines (DWC 2008)

Specific Purpose of Section 9792.24.2(a)

Section 9792.24.2(a) informs the public that the Chronic Pain Medical Treatment Guidelines (DWC 2008), consisting of two parts, is adopted and incorporated by reference into the MTUS. Part 1 is entitled Introduction, and Part 2 is entitled Pain Interventions and Treatments. The section further informs the public that these guidelines replace Chapter 6 of the ACOEM Practice Guidelines, 2nd Edition (2004). It clarifies that where the clinical topic sections of the MTUS makes reference to Chapter 6 or when there is a reference to the "pain chapter," or "pain assessment," the Chronic Pain Medical Treatment guidelines will apply instead of Chapter 6. The section also informs the public that a copy of the Chronic Pain Medical Treatment Guidelines (DWC 2008) may be obtained from the Medical Unit, Division of Workers' Compensation, P.O. Box 71010, Oakland, CA 94612, or from the DWC web site at http://www.dwc.ca.gov.

Necessity:

I. Section 9792.24.2(a) informs the public that the Chronic Pain Medical Treatment Guidelines (DWC 2008), consisting of two parts, is adopted and incorporated into the MTUS.

A. The Chronic Pain Medical Treatment Guidelines Satisfies the Need for Further Supplementation of the MTUS

The ACOEM's Practice Guidelines' Chapter 6—*Pain, Suffering, and the Restoration of Function* (Chapter 6) relating to chronic pain, was originally adopted as part of the MTUS when the ACOEM Practice Guidelines, 2nd Edition, was adopted into the MTUS by regulations, effective June 15, 2007. In the proposed regulations, the DWC is replacing Chapter 6 with the Chronic Pain Medical Treatment Guidelines (DWC 2008). Chapter 6 is being replaced because upon re-examination it has been determined that the chapter does not provide enough specificity for chronic pain and does not serve as an appropriate introduction to the specific chronic pain treatments which are being adapted from the Work Loss Data Institute, Official Disability Guidelines, Treatment in Workers' Comp-Chapter on Pain (Chronic), version dated October 31, 2007.

The determination that Chapter 6 does not provide for specific treatment guidelines for chronic pain is based on a re-evaluation of the 2005 RAND Report prepared under the direction of the CHSWC. In its 2005 Report, RAND discussed the areas where the ACOEM Practice Guidelines, 2nd Edition, required further supplementation. At page 56, the report states, in pertinent part, that:

> Concern was … expressed [by the multidisciplinary clinical panel] that [the ACOEM] guidelines are directed to the primary-care physician caring for a worker at the acute state of an injury, and they do not adequately

address chronic conditions, particularly pain management. (2005 RAND Report, at p. 56.)

In its 2005 Report, RAND further found that "[s]takeholders interviews suggest that payors in the California workers' compensation system are applying ACOEM guidelines … for topics the guidelines do not address or address only minimally." (*2005 RAND Report*, at p. 85.) This reflects the need to supplement the ACOEM Practice Guidelines by some mechanism.

RAND further stated in its report that if the state wished to develop a patchwork of existing guidelines addressing work related injuries, its research suggested that *chronic pain*, among others, is a priority topic. RAND recommended that "[w]hen guidelines within a patchwork have overlapping content, the state may want to identify and resolve conflicting recommendations." (*2005 RAND Report*, at p. 86.)

Pursuant to RAND's findings and recommendations, the MEEAC was created to provide advice concerning the review of new evidence and other guidelines that could be used as the basis for supplementing the ACOEM Practice Guidelines in the identified high priority areas. Chronic pain was identified as a high priority area. In light of these findings, the Administrative Director proposes to add the Chronic Pain Medical Treatment Guidelines to the MTUS.

B. The Work Loss Data Institute's Official Disability Guidelines (ODG) Satisfies the Requirements of the Statute that the Guidelines Adopted be "Scientific and Evidence-Based, Peer-Reviewed, and Nationally Recognized."

Labor Code section 5307.27 requires the Administrative Director to adopt a medical treatment utilization schedule (MTUS) that is "scientific and evidence-based, peer-reviewed, and nationally recognized." (See, also Lab. Code, § 4604.5(b).) The 2005 RAND Report identified the Work Loss Data Institute's Official Disability Guidelines (ODG) as meeting these requirements in its 2005 RAND Report. (See, Table 4., p. 21; Table 4.2, p. 27.)

The Chronic Pain Medical Treatment Guidelines are adapted from the ODG's Treatment in Workers' Comp – Chapter on Pain (Chronic). The version being adapted is dated October 31, 2007, and is being adapted with the permission of the ODG's publisher. The Work Loss Data Institute has provided its ODG pain chapter to the DWC at no cost.

Although ODG's pain chapter meets the requirements of the statute, it is necessary for the DWC to adapt its pain chapter to fit into the MTUS framework. To this end, the treatments provided for in the chronic pain guidelines are focused on the goal of functional restoration rather than merely the elimination of pain. The assessment of treatment efficacy is accomplished by reporting functional improvement. Typically, with increased function comes a perceived reduction in pain and increased perception of its

control. This ultimately leads to an improvement in the patient's quality of life and a reduction of pain's impact on society.

Because ODG continuously revises its chapter on pain, it is important for the DWC to utilize the last available version of ODG's pain chapter as a basis for the DWC's Chronic Pain Medical Treatment Guidelines since DWC is precluded from automatically adopting future updates of the chapter without formal rulemaking. If future updates are automatically incorporated by reference into the MTUS regulations, which have the full force and effect of law, then the Administrative Director has delegated her power to make regulatory law in California to a private association with no limitation whatsoever and with no rational basis for determining what policy will be implemented. If the Chronic Pain Medical Treatment Guidelines updates automatically go into effect upon ODG's revisions, this proposed regulation can be viewed as a violation of both article IV, section 1, of the California Constitution and of the common law doctrine prohibiting the delegation of legislative power. Thus, it was necessary for the Administrative Director to utilize the latest available version of ODG's pain chapter, when the rulemaking process commenced, as a basis for the DWC's Chronic Pain Medical Treatment Guidelines. Future updates will be integrated into the MTUS utilizing the formal rulemaking process.

Further, it is noted that ACOEM has a new pain chapter that is in progress. The drafting of the ACOEM's new pain chapter commenced after DWC formulated its own Chronic Pain Medical Treatment Guidelines. Due to the importance and necessity of the chronic pain guidelines, and for the reasons set forth in this document for adopting these guidelines, the Administrative Director has decided to proceed with the adoption of the Chronic Pain Medical Treatment Guidelines as set forth in section 9792.24.2.

II. Section 9792.24.2(a) Informs the Public that Part 1 of the Chronic Pain Medical Treatment Guidelines (DWC 2008) is an Introduction to general terms and principles relating to the guidelines, and Part 2 sets forth the Guidelines for Pain Interventions and Treatments.

A. Part 1: Introduction

Part 1 of the Chronic Pain Medical Treatment Guidelines (DWC 2008) serves as an introduction to general terms and principles of the guidelines. It introduces the guidelines by indicating that the guidelines consist of two parts. Part 1 is the introduction. Part 2 consists of pain interventions and treatments.

The ACOEM Practice Guidelines chapters are the framework of the MTUS now reorganized into the general approaches and clinical topics sections of the MTUS. DWC replaced the introduction of ODG's pain chapter with its own introduction to fit the Chronic Pain Medical Treatment Guidelines into the MTUS framework. The Chronic Pain Medical Treatment Guidelines are applied after the clinical topics sections of the MTUS. The goal of the MTUS is to provide evidence-based treatment which is directed to functional improvement and return to work. The introduction explains that the

guidelines focus primarily on chronic pain. The introduction further explains that, with a few exceptions, Part 2 is primarily an adaptation of evidence-based treatment guidelines from ODG's chapter on chronic pain, version dated October 31, 2007. Because ODG continuously revises its chapter on pain, it was necessary to obtain a stationary version of the guidelines, which is dated October 31, 2007. The introduction further indicates that any section not adapted directly from ODG is labeled "[DWC]."

The introduction further provides discussion for the clinician regarding pain definitions, an overview regarding pain, pain mechanisms, clinical models useful in the management of pain, stratification of different types of pain problems, approaches to the assessment of pain, pain outcomes, and a conclusion. It also references other California specific considerations, such as Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides), clinical topics approaches, the functional improvement concept, and the Medical Board of California pain guidelines for controlled substances. (For further discussion and explanation of the necessity for Part I: Introduction, see Initial Statement of Reasons, Appendix A—Chronic Pain Medical Treatment Guidelines.)

B. Part 2: Pain Interventions and Treatments

Part 2 of the Chronic Pain Medical Treatment Guidelines (DWC 2008) provides guidelines for pain interventions and treatments. The ODG pain chapter was thoroughly evaluated by DWC staff and subject matter experts in the MEEAC. Upon evaluation, it was determined by the evaluators that most individual treatment recommendations in the ODG pain chapter are appropriate for inclusion in the MTUS pursuant to Labor Code section 5307.27. These areas are adapted into the MTUS without changes, with the exception of removing references to other ODG chapters as not applicable. Part 2 is, therefore, primarily an adaptation of evidence-based treatment guidelines from the ODG's chronic pain chapter, version dated October 31, 2007.

The reviewers disagreed, however, on some individual treatment recommendations in the ODG pain chapter. It was determined that evidence-based reviews (EBRs) should be performed to determine the most appropriate treatment on various conditions and make new individual treatment recommendations based on the EBRs. Further, upon review of the ODG pain chapter it was determined there are several topic areas that ODG does not cover. EBRs were conducted on these topic areas and individual treatment recommendations are included in the guidelines. These pain interventions and treatments not adapted directly from ODG but recommended by the DWC are labeled "[DWC]." (For further discussion of the necessity and justification for Part 2: Pain Interventions and Treatments see Initial Statement of Reasons, Appendix A.)

Moreover, certain individual treatment sections from the ODG pain chapter were expressly determined by ODG to be "under study." When an individual treatment is under study, the treatment is neither recommended nor not recommended. Because Labor Code section 5307.27 requires the Administrative Director to adopt a medical treatment utilization schedule (MTUS) that is "evidence-based" (see, also Lab. Code, § 4604.5(b)), it was necessary for the DWC to conduct an independent EBR for these treatment

sections in order to include them in the Chronic Pain Medical Treatment Guidelines. (For further discussion of necessity and justification on this subject, see Initial Statement of Reasons, Appendix A—Chronic Pain Medical Treatment Guidelines.)

Specific Purpose of Section 9792.24.2(b)

Section 9792.24.2(b) informs the public that the Chronic Pain Medical Treatment Guidelines apply when the patient has chronic pain as determined by following the clinical topics.

Necessity:

The clinical topics section of the MTUS provides guidance for the initial and subsequent treatment for an injury. If the patients fails to recover and continues to have persistent complaints without definitive treatment or surgical options, the patient is determined to have chronic pain. At this juncture, the Chronic Pain Medical Treatment Guidelines apply to provide treatment to the injured worker. This section informs the public when the Chronic Pain Medical Treatment Guidelines apply.

Specific Purpose of Section 9792.24.2(c)

Section 9792.24.2(b) informs the public that when a patient is diagnosed with chronic pain and the treatment for the condition is addressed in the clinical topics sections but is not addressed in the Chronic Pain Medical Treatment Guidelines, the clinical topics section applies to that treatment.

Necessity:

There are circumstances when an injured worker is diagnosed with a chronic condition the treatment for which is not addressed in the Chronic Pain Medical Treatment Guidelines but it is addressed in the clinical topics section of the MTUS. In those situations, the clinical topics section guidelines apply to provide the treatment to the injured worker. For example, a patient with chronic pain after carpal tunnel surgery might require nerve connection studies. However, nerve connection studies are not addressed in the Chronic Pain Medical Treatment Guidelines but are addressed in the clinical topics section 9792.23.4—Forearm, Wrist, and Hand Complaints.

Specific Purpose of Section 9792.24.2(c)

Section 9792.24.2(c) informs the public that when the treatment is addressed in both the chronic pain guideline and the specific guideline found in the clinical topic section of the MTUS, the Chronic Pain Medical Treatment Guidelines shall prevail.

Necessity:

There are circumstances when an injured worker is diagnosed with a chronic condition the treatment for which is addressed in both the Chronic Pain Medical Treatment Guidelines and the clinical topics section of the MTUS. In those situations, the Chronic Pain Medical Treatment Guidelines apply to provide the treatment to the injured worker. For example, a patient with chronic pain after carpal tunnel surgery might require transcutaneous electrical nerve stimulation. This treatment is addressed in both the Chronic Pain Medical Treatment Guidelines and the clinical topics section 9792.23.4—Forearm, Wrist, and Hand Complaints. Under these circumstances, the Chronic Pain Medical Treatment Guidelines apply.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.24.3 Postsurgical Treatment Guidelines (DWC 2008)

Labor Code section 4604.5(d)(1) provides that for injuries occurring on and after January 1, 2004, an injured worker shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury. Labor Code section 4604.5(d)(3), as amended by Assembly Bill 1073 (Statute 2007, Chapter 621), creates an exception to the 24 visit cap by providing that the 24 visit limitation does "not apply to visits for postsurgical physical medicine and postsurgical physical medicine services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to section 5307.27." Pursuant to AB 1073 and in order to implement, interpret, and make specific and carry out the provisions of Labor Code section 4604.5(d)(3), the Administrative Director proposes to adopt the proposed guidelines for postsurgical physical medicine which supersedes the limit of 24 visits for physical therapy, occupational therapy, and chiropractic treatment found in Labor Code section 4604.5(d)(1).

The proposed Postsurgical Treatment Guidelines, section 9792.24.3, et al., are adapted from the Work Loss Data Institute's Official Disability Guidelines (ODG) Treatment in Workers' Comp, with the permission of the Work Loss Data Institute. (See, letter from Work Loss Data Institute, dated March 13, 2008.) The Work Loss Data Institute has authorized DWC to use a hardcopy excerpt from the chapter procedure summaries (Work Loss Data Institute, Official Disability Guidelines, Treatment in Workers' Comp-Excerpt from the Chapter Procedures Summaries (ODG Physical Medicine Guidelines), version dated November 12, 2007) to identify all surgeries and adapt their individual postsurgical physical medicine treatment guidelines into the DWC's postsurgical treatment guidelines (DWC 2008) in compliance with the requirements of Labor Code section 4604.5(d)(3). The ODG has authorized the adaptation of their physical medicine guidelines to the DWC at no cost. Because ODG continuously revises its guidelines, the DWC utilized the last available version while conducting its rulemaking as a basis for the DWC's postsurgical treatment guidelines (DWC 2008). The ODG Physical Medicine Guidelines version being adapted is dated November 12, 2007. Future updates will be integrated into

the MTUS utilizing the formal rulemaking process. The selection of the ODG Physical Medicine Guidelines was based not only on the fact that the ODG guidelines were determined to meet the requirements of the statute (Lab. Code, § 5307.27) by RAND in its publication entitled, *Evaluating Medical Treatment Guideline Sets for Injured Workers in California,* RAND Institute for Civil Justice and RAND Health, 2005 (2005 RAND Report; see, Table 4, p. 21; Table 4.2, p. 27), but primarily upon a thorough review of their entire Physical Medicine Guidelines by the Division of Workers Compensation (DWC), the Medical Evidence Evaluation Advisory Committee (MEEAC), and designated subject matter experts.

In applying the requirements of this section, the MEEAC and designated subject matter experts conducted a thorough review of ODG's Physical Medicine Guidelines. The MEEAC noted that ODG's Physical Medicine Guidelines needed supplementation to include additional surgeries. Evidence-based reviews (EBRs) were conducted on these surgical areas to determine the most appropriate treatments. The EBRs reflected insufficient evidence for or against postsurgical physical medicine in many cases. Nevertheless, evidence-based medicine includes making recommendations even when there is insufficient evidence.

> "Guidelines built on synthesis of the evidence, but go one step further to provide formal conclusions or recommendations about appropriate and necessary care for specific types of patients." *Crossing the Quality Chasm: A New Health System for the 21st Century/Committee on Quality of Health Care in America,* Institute of Medicine, National Academy Press, Washington, D.C., Fifth Printing, June 2004, p. 151.

Therefore, the first step of developing a clinical practice guideline is to do the evidence-based reviews. The second step involves "…reli[ance] on expert panels to arrive at specific clinical conclusions. Judgment must be exercised in this process because the evidence base is sometimes weak or conflicting, or lacking in the specificity needed to develop recommendations useful for making decisions about individual patients in particular settings (Lohr et al., 1998)." *Crossing the Quality Chasm*, Institute of Medicine, (2001), p. 151.

Thus, the MEEAC made recommendations to develop the guidelines, and the recommendations are included in DWC's postsurgical treatment guidelines. The postsurgical physical medicine treatment guidelines adapted directly from ODG are labeled "**[ODG].**" The postsurgical physical medicine treatment guidelines not adapted directly from ODG but recommended by the DWC are labeled "**[DWC].**" (See, Appendix C—Postsurgical Treatment Guidelines (DWC 2008), Evidence-Based Reviews)

Further, in making recommendations to the Administrative Director via the Medical Director to supplement the MTUS, the MEEAC is responsible for evaluating the developed guidelines to insure that the guidelines conform to the framework of the MTUS. The MEEAC must further take into consideration Labor Code 4604.5(a), which

provides that the MTUS is presumed to be "correct on the issue of extent and scope of medical treatment" provided to injured employees. Clarity in guidelines facilitates appropriate treatment which is presumed to be correct pursuant to the Labor Code and avoids delayed treatment, thus encouraging prompt recovery and reduced disability.

Moreover, because the postsurgical treatment guidelines constitute an exception to the 24 physical therapy visits per industrial injury pursuant to Labor Code section 4604.5(d)(1), it was necessary for DWC, in order to implement, interpret and make specific and carry out the provisions of Labor Code section 4604.5(d)(3), to define a postsurgical physical medicine period. In order to comply with the requirement of the statute, the MEEAC and designated subject matter experts defined the postsurgical physical medicine period for the specified surgeries. The postsurgical physical medicine period frames the time interval that is needed for an injured worker to recover from the effects of the specific surgery that he or she experienced. This time is exempt from the 24-visit cap. Upon reaching the end of the time interval, the postsurgical treatment guidelines cease to apply thereby reverting back to the 24-visit cap.

Specific Purpose of Section 9792.24.3(a)(1):

Section 9792.24.3(a)(1) defines the term "general course of therapy" as the number of visits and/or time interval indicated for postsurgical treatment for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d) of this section.

Necessity:

The postsurgical physical medicine treatment recommendations set forth in subdivision (d) of this section define the frequency and duration of postsurgical treatment for specified surgeries. It is necessary to define the term to state the number of visits and time interval justified to provide physical medicine to an injured worker following the particular procedure performed. The term "in general" is used because there are circumstances when treating a specific patient after surgery that the medical necessity for physical medicine visits may be more or less than what it is stated in the general course of therapy.

Specific Purpose of Section 9792.24.3(a)(2):

Section 9792.24.3(a)(2) defines the term "initial course of therapy" as one half of the number of visits specified in the general course of therapy for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section.

Necessity:

It is necessary to define the "initial course of therapy" as one half of the number of visits specified in the general course of therapy. The initial course of therapy allows for the

initiation of treatment immediately upon determination of medical necessity. The requirement that the initial course of therapy constitute half of the number of visits specified in the general course of therapy is intended to allow for immediate treatment without disruption to insure recovery. As there are patients who may need more or less than what it is stated in the general course of therapy, provision of half of the visits specified in the general course of therapy will allow for adequate treatment without both delay and the need for documenting further treatment based on reporting functional improvement.

Specific Purpose of Section 9792.24.3(a)(3):

Section 9792.24.3(a)(3) defines the term "postsurgical physical medicine period." The term "postsurgical physical medicine period" means the time frame that is needed for postsurgical treatment and rehabilitation services beginning with the date of the procedure and ending at the time specified for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section. This section further informs the public that for all surgeries not covered by these guidelines the postsurgical physical medicine period is six (6) months.

Necessity:

It is necessary to define the postsurgical physical medicine period as it is not provided for in the Current Procedural Terminology 2008 (CPT 2008). The CPT 2008 sets forth surgery guidelines, and refers to a "CPT Surgical Package Definition." (CPT 2008, p. 47.) The CPT surgical package definition encompasses all care directly provided as part of any surgery. It involves "[t]ypical postoperative follow-up care" (CPT 2008, p. 47) however, it does not discuss postoperative physical medicine or the period of time needed to achieve postsurgical physical medicine goals. "The services provided by a physician to any patient by their very nature are variable." (CPT 2008, p. 47) The postsurgical package concept contains items that occur with every surgery. It is important to note that physical medicine is not needed following every surgery. For this reason, physical medicine is not included in the postsurgical package concept. These guidelines define the "postsurgical physical medicine period" as the time frame that is needed for postsurgical treatment, beginning with the date of the procedure and ending at the time specified for the specific surgery, in the postsurgical physical medicine treatment recommendations set forth in subdivision (d) of this section. Proposed section 9792.24.3(d) sets forth the postsurgical physical medicine recommendations, which indicates the expected frequency and duration of therapy specific to the type of surgery performed. During the healing process, there is also variability such that some patients require no physical medicine and other patients require intensive efforts to restore function with physical medicine. Following each surgery there is a time interval where physical medicine can be provided to restore optimal form and function. The time intervals will depend on the nature of the surgery and the patient.

Moreover, because the postsurgical treatment guidelines constitute an exception to the 24 physical therapy, occupational therapy and chiropractic visits per industrial injury

pursuant to Labor Code section 4604.5(d)(1), it was necessary for DWC in order to implement, interpret, and make specific and carry out the provisions of Labor Code section 4604.5(d)(3) to define a postsurgical physical medicine period. The postsurgical physical medicine period defines the time interval that is needed for postsurgical treatment that would allow for the 24-visit cap exception to apply within that period. Upon reaching the end of the time interval, the postsurgical treatment guidelines cease to apply and continued treatment reverts back to the 24-visit cap. In reviewing the ODG's Physical Medicine Guidelines, the Medical Director and her research staff noted that ODG's Physical Medicine Guidelines did not set forth a postsurgical physical medicine period. In order to comply with the requirement of the statute, the Medical Director sought the advice of MEEAC and designated subject matter experts in defining the postsurgical physical medicine period for specified surgeries. Based on their recommendations, the duration of the postsurgical physical medicine period will be defined for each surgery as specified in the postsurgical physical medicine treatment recommendations, set forth in section 9792.24.3(d).

The concept of postsurgical physical medicine does not exist outside of the MTUS as it is created to meet the requirements of the statute, and therefore it will not be addressed in other medical treatment guidelines that are scientific and evidence-based, and nationally recognized. (Lab. Code, § 4604.5(e).) There will be instances where a surgery may be performed which are not covered by these guidelines. In these situations, the postsurgical physical medicine period applicable for all surgeries not covered by these guidelines is defined to be six months following the surgery.

Specific Purpose of Section 9792.24.3(a)(4):

Section 9792.24.3(a)(4) informs the public of the definition of the term "surgery." Surgery is defined as a procedure listed in the surgery chapter of the Official Medical Fee Schedule with follow-up days of 90 days.

Necessity:

It is necessary to define the term "surgery" for purposes of the postsurgical treatment guidelines. The Official Medical Fee Schedule (Official Medical Fee Schedule, State of California Workers' Compensation, April 1, 1999.) contains a chapter on surgery. The chapter contains a comprehensive list of surgical procedures identifying, in pertinent part, the code for the procedure, the descriptor and follow-up days. The number of follow days is 90 days for most surgeries and minor procedures have a range of follow-up days from none to 10 days. The minor procedures do not require postsurgical physical medicine treatment. An example of a minor procedure is phlebotomy or blood drawing, which does not require postsurgical physical medicine.

Specific Purpose of Section 9792.24.3(a)(5):

Section 9792.24.3(a)(5) defines the term "visit" to mean a date of service to provide postsurgical physical medicine treatment billed using the physical medicine section of the Official Medical Fee Schedule (OMFS).

Necessity:

Labor Code section 4604.5(d)(1) provides that for injuries occurring on and after January 1, 2004, an injured worker shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury. Labor Code section 4604.5(d)(3), as amended by Assembly Bill 1073 (Statute 2007, Chapter 621), now provides that the 24-visit limitation does "not apply to visits for postsurgical physical medicine and postsurgical physical medicine services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to section 5307.27." The postsurgical treatment guidelines, in compliance with Labor Code section 4604.5(d)(3), provide for postsurgery physical medicine treatment, and specify the number of visits that are expected following each type of surgery. It is necessary to define the term "visit" to mean a date of service to provide postsurgical physical medicine treatment billed using the physical medicine section of the OMFS. (8 CCR §§ 9789.10-9789.111, 9791.1.) For any given session occurring on any given date, one or more physical medicine procedures may be performed, which are variable depending on the treatment plan. By explicitly defining a visit as a date of service, as opposed to the number of procedures, allows dates of service to be used as measurable units of service that meets the requirements of the statute. Moreover, it is noted that ODG also uses the concept of "visit" in describing the general course of therapy following surgery. Thus, "visit" is a universal agreed-upon measurable unit for the provision of physical medicine services.

Specific Purpose of Section 9792.24.3(b)(1):

Section 9792.24.3(b)(1) informs the public that the postsurgical treatment guidelines apply to visits during the postsurgical physical medicine period only and to surgeries as defined in these guidelines. It further states that at the conclusion of the postsurgical physical medicine period, treatment reverts back to the applicable 24-visit limitation for chiropractic, occupational and physical therapy pursuant to Labor Code section 4604.5(d)(1).

Necessity:

Pursuant to Labor Code section 4604.5(d)(1) the 24-visit cap applies to all chiropractic, occupational therapy, and physical therapy visits per industrial injury provided in connection with surgeries as defined in the postsurgical treatment guidelines. The postsurgical treatment guidelines create an exception to the 24-visit cap as defined by the postsurgical physical medicine period provided in section 9792.24.3(d). This section is necessary to define the application of the postsurgical treatment guidelines pursuant to the requirements of the statute (Lab. Code, § 4604.5(d)(3)), and to clarify that at the end of the postsurgical physical medicine period, treatment reverts back to the applicable 24-

visit limitation for chiropractic, occupational and physical therapy pursuant to Labor Code section 4604.5(d)(1).

Specific Purpose of Section 9792.24.3(c):

Section 9792.24.3(c) sets forth the postsurgical patient management.

Necessity:

In managing the treatment during the postsurgical physical medicine period, the surgeon makes patient management decisions based on the nature of the surgical procedure and the medical necessity. A surgeon decides whether physical medicine is necessary, when physical medicine should commence, and when physical medicine should be discontinued. This section outlines the postsurgical patient management.

Specific Purpose of Section 9792.24.3(c)(1):

Section 9792.24.3(c)(1) informs the public that only the surgeon who performed the operation, a nurse practitioner, a physician assistant working with the surgeon, or a physician designated by that surgeon can make a determination of medical necessity and prescribe postsurgical treatment under the postsurgical treatment guidelines.

Necessity:

This section clarifies that the role of the surgeon extends beyond the surgical procedure, and involves medical management of patient after the procedure. This medical management includes, in pertinent part, the management of the appropriate postsurgical treatment. The surgeon is well-versed in the complications and expected outcomes following the procedure and has intimate knowledge of the intraoperative findings in the particular injured employee that may affect postsurgical management. Therefore, the surgeon plays a critical role in determining medical necessity and managing the patient's clinical course following the procedure.

There are instances where the surgeon works with a postsurgical team which may consist of a nurse practitioner or a physician assistant. The surgeon may also designate another physician to provide postsurgical treatment. By allowing the surgical team and/or the designated physician to determine medical necessity and prescribe postsurgical treatment under these guidelines, the nurse practitioner, physician assistant, and/or the designated physician can prescribe or request postsurgical physical medicine from the claims administrator, thus avoiding unreasonable delays in the provision of treatment.

Specific Purpose of Section 9792.24.3(c)(2):

Section 9792.24.3(c)(2) informs the public that the medical necessity for postsurgical physical medicine treatment for any given patient is dependent on, but not limited to, such factors as the comorbid medical conditions; prior pathology and/or surgery involving same body part; nature, number, and complexities of surgical procedure(s)

undertaken; presence of surgical complications; and the patient's essential work functions.

Necessity:

It is necessary to inform the public that the postsurgical physical medicine treatment is variable and is dependent on factors which must be taken into consideration during the course of treatment. The surgeon must take into consideration complicating factors (e.g., comorbid medical conditions; prior pathology and/or surgery involving same body part; nature, number, and complexities of surgical procedure(s) undertaken; and presence of surgical complications) and the effect of these factors on the frequency and duration of postsurgical physical medicine treatment. The surgeon must also take into consideration the patient's essential work functions. The physical demands of the job may or may not affect the frequency and duration of the postsurgical medicine treatment. The expected course of therapy will be driven by these various complicating factors, considering the recovery time of the less complicated conditions within the specified course of treatment. For example, in a case of Achilles tendon repair it is expected that postsurgical physical medicine treatment will be completed within the specified course of treatment of 48 visits over 4 months. However, in a patient with complicating factors such as diabetes and postoperative infection, the postsurgical physical medicine treatment may be extended beyond the general course of treatment but limited by the postsurgical physical medicine period.

Specific Purpose of Section 9792.24.3(c)(3):

Section 9792.24.3(c)(3)(A) informs the public that if postsurgical physical medicine is medically necessary, an initial course of therapy shall be prescribed. The section further informs the public that with documentation of functional improvement, as defined in section 9792.20(f), a subsequent course of therapy shall be prescribed within the parameters of the general course of therapy applicable to the specific surgery. The section also informs the public that if it is determined that additional functional improvement can be accomplished after completion of the general course of therapy, physical medicine treatment may be continued up to the end of the postsurgical physical medicine period.

Necessity:

Labor Code section 4604.5(d)(3) provides for an exception to the 24-visit cap. It is necessary to inform the public that following surgery, the surgeon may decide to prescribe an initial course of therapy to the injured employee outside the 24-visit cap. Upon initiation of treatment, the prescribed course of therapy must be consistent with the parameters specified by the initial course of therapy for the specified surgery. Section 9792.20(f) defines the term "functional improvement" as either a quantifiable improvement in activities of daily living or a reduction in work restrictions as measured during the history and physical exam, performed and documented as part of the evaluation and management visit billed under the Official Medical Fee Schedule (OMFS) pursuant to sections 9789.10-9789.111; and a reduction in the dependency on continued medical treatment. This section is necessary to provide for further postsurgical physical

medicine in those cases where a determination of further medical need has been made, and where there is evidence of functional improvement. Some patients, although showing functional improvement, may need treatment beyond the general course of therapy parameter set forth in the postsurgical physical medicine recommendations. In these situations, the surgeon may extend postsurgical treatment beyond the general course of therapy parameter but not to exceed the postsurgical physical medicine period. The patient, however, must demonstrate functional improvement throughout the course of therapy.

Specific Purpose of Section 9792.24.3(c)(4):

Section 9792.24.3(c)(4) informs the public that patients shall be reevaluated during the continued course of therapy, when necessary, or no later than every forty-five days from the last evaluation to document functional improvement, as defined in section 9792.20(f), to continue physical medicine treatment. It further informs the public that frequency of visits shall be gradually reduced or discontinued as the patient gains independence in management of symptoms and with achievement of functional goals.

Necessity:

It is necessary to provide a timeframe for evaluation to document functional improvement during the course of therapy after the initial course of therapy. The reevaluation may take place when necessary, such as when the patient sustains an exacerbation. However, the reevaluation must be conducted no later than every forty-five days from the last evaluation to document functional improvement. This timeframe is consistent with the reporting requirements of the primary treating physician pursuant to California Code of Regulations, title 8, section 9785. Moreover, it is necessary to clarify that frequency of visits shall be gradually reduced or discontinued as the patient gains independence in management of symptoms and with achievement of functional goals. The functional goals are to improve activities of daily living, reduce work restrictions, and reduce dependency on continued medical care.

Specific Purpose of Section 9792.24.3(c)(4)(A):

Section 9792.24.3(c)(4)(A) informs the public that in the event the patient sustains an exacerbation related to the procedure performed after treatment has been discontinued, and it is determined that more visits are necessary, physical medicine treatment shall be provided within the postsurgical physical medicine period.

Necessity:

There will be situations where a patient may sustain an exacerbation related to the procedure performed after the prescribed postsurgical treatment has been completed. In those situations, and if medical necessity is determined, the patient may be prescribed further physical medicine treatment. The treatment, however, must be within the postsurgical physical medicine period.

Specific Purpose of Section 9792.24.3(c)(4)(B):

Section 9792.24.3(c)(4)(B) informs the public that in cases where no functional improvement is demonstrated, postsurgical treatment may be discontinued at any time during the postsurgical physical medicine period.

Necessity:

The goal of postsurgical physical medicine treatment is functional improvement. If functional improvement is not demonstrated during the course of therapy, there is no reason to continue additional courses of therapy. Thus, postsurgical treatment may be discontinued at any time during the postsurgical physical medicine period when no functional improvement is demonstrated.

Specific Purpose of Section 9792.24.3(c)(5):

Section 9792.24.3(c)(5) informs the public that treatment is provided to patients to facilitate postsurgical functional improvement.

Necessity:

The treatment provided after surgery is directed to improve activities of daily living, reduce work restrictions, and reduce dependency on continued medical care. When these goals are met, postsurgical functional improvement is accomplished.

Specific Purpose of Section 9792.24.3(c)(5)(A):

Section 9792.24.3(c)(5)(A) informs the public that the surgeon who performed the operation, a nurse practitioner, a physician assistant working with the surgeon, a physician designated by that surgeon, the therapist, and the patient should establish quantifiable, functional goals achievable within a specified timeframe.

Necessity:

It is necessary to clarify that in providing postsurgical physical medicine treatment, the postsurgical team is responsible to establish quantifiable functional goals as discussed with the patient, such as specific improvements of activities of daily living or reduced work restrictions. The establishment of quantifiable goals requires clear description of improvement. Moreover, these functional goals should be achievable within a specified timeframe which should be clear to the postsurgical team as well as to the patient.

Specific Purpose of Section 9792.24.3(c)(5)(B):

Section 9792.24.3(c)(5)(B) informs the public that patient education regarding postsurgical precautions, home exercises, and self-management of symptoms should be

ongoing components of treatment starting with the first visit. Intervention should include a home exercise program to supplement therapy visits.

Necessity:

Successful postsurgical functional improvement requires the patient to continue rehabilitation efforts at home and independently. The purpose of physical medicine is to teach the patient how to continue treatment at home with an understanding of what precautions to take immediately after the surgery, exercises they can do at home to improve their condition, and what they can do if they encounter symptoms such as pain in the postsurgical interval. "Home programs should be initiated with the first therapy session and must include ongoing assessments of compliance as well as upgrades to the program." (ODG's Physical Medicine Guidelines, p. 2.) This is standard practices in physical medicine.

Specific Purpose of Section 9792.24.3(c)(5)(C):

Section 9792.24.3(c)(4)(C) informs the public that the modalities (CPT codes 97010 through 97039) should only be performed in conjunction with other active treatments. It further informs the public that although these modalities are occasionally useful in the post surgical physical medicine period, their use should be minimized in favor of active physical rehabilitation and independent self-management.

Necessity:

Modalities are passive treatments that do not involve the patient's participation. "The exclusive use of 'passive care' (e.g., palliative modalities) is not recommended." (Work Loss Data Institute, Official Disability Guidelines, Treatment in Workers' Comp-Excerpt from the Chapter Procedures Summaries (ODG Physical Medicine Guidelines), version dated November 12, 2007, p. 2.) Although modalities may provide temporary symptom relief, they should not be the main treatment as these isolated treatments do not foster functional improvement. Rather, modalities, in combination with active treatments such as exercise and strengthening, will lead to successful rehabilitation.

Specific Purpose of Section 9792.24.3(d), and Section 9792.24.3(d)(1):

Section 9792.24.3(d) sets forth the postsurgical physical medicine treatment recommendations. Section 9792.24.3(d)(1) informs the public that the postsurgical physical medicine treatment recommendations indicate frequency and duration of postsurgical treatment for specific surgeries. It further informs the public that the specified surgeries in these guidelines are not all inclusive and requests for postsurgical physical medicine treatment not included in these guidelines shall be considered pursuant to section 9792.21(c). This section further informs the public that the physical medicine treatment recommendations (listed alphabetically) are adapted from ODG except where developed by the Division of Workers' Compensation and indicated as "[DWC]" Moreover, the section informs the public that the postsurgical physical medicine period identified by an asterisk [*] are also developed by DWC. A copy of citations listed in the postsurgical treatment guidelines may be obtained from the Medical Unit, Division of

Workers' Compensation, P.O. Box 71010, Oakland, CA 94612, or from the DWC web site at http://www.dwc.ca.gov.

Necessity:

It is necessary to set forth the postsurgical physical medicine treatment recommendations as contained in the Postsurgical Medical Treatment Guidelines (DWC 2008). The guidelines consist by and large of specific postsurgical physical medicine recommendations contained in the ODG Physical Medicine Guidelines. ODG provided DWC physical medicine guidelines from appropriate chapters in their treatment guidelines. The physical medicine guidelines as extracted were compiled into one document, dated November 12, 2007. The document is organized by having a table of contents, preface and procedure summaries. The procedure summaries are organized anatomically. As previously indicated, DWC determined that the ODG Guidelines meet the requirements of the statue. (See, Lab. Code §§ 5307.27, 4604.5(b); 2005 RAND Report, Table 4., p. 21; Table 4.2, p. 27.)

Although the ODG Physical Medicine Guidelines meet the requirements of the statute, it is necessary for the DWC to adapt these guidelines to fit into the MTUS framework. Because ODG continuously revises its Physical Medicine Guidelines, it is important for the DWC to utilize the last available version of ODG's Physical Medicine Guidelines as a basis for the DWC's postsurgical treatment guidelines. Changes to the guidelines, as they occur, will be made through formal rulemaking without adopting future updates automatically. If future updates are automatically incorporated by reference into the MTUS regulations, which have the full force and effect of law, then the Administrative Director has improperly delegated her power to make regulatory law in California to a private association with no limitation whatsoever and with no rational basis for determining what policy will be implemented. If the postsurgical medical treatment guidelines updates automatically go into effect upon ODG's revisions, this proposed regulation can be viewed as a violation of both article IV, section 1, of the California Constitution, and of the common law doctrine prohibiting the delegation of legislative power. Thus, it was necessary for the Administrative Director to utilize the last available version of ODG's Physical Medicine Guidelines as a basis for the DWC's postsurgical treatment guidelines. Future updates will be integrated into the MTUS utilizing the formal rulemaking process.

The following changes were made to the November 12, 2007 version being adapted from the ODG's Physical Medicine Guidelines:

(1) The table of contents and preface from the ODG's Physical Medicine Guidelines was removed. The contents and preface were removed in order to adapt the guidelines to fit into the MTUS framework, as the guidelines contained in the MTUS do not contain an index or a preface. Moreover, the text of the postsurgical treatment guidelines reflect, in relevant part, the principles set forth in the preface as contained in the ODG's Physical Medicine Guidelines.

(2) Organized the anatomical areas as contained in the ODG's Physical Medicine Guidelines and identified corresponding physical medicine guidelines.

(3) After identifying corresponding physical medicine guidelines for the appropriate anatomy, DWC examined the text of the specific ODG physical medicine guideline to determine the relevant physical medicine postsurgical treatments.

(4) After the relevant physical medicine postsurgical treatments were identified, DWC created its own adaptation for the postsugical treatment guidelines as follows:

> (a) DWC's own adaptation was reformatted in alphabetical order according to anatomical area, introductory text, and postsurgical recommendation.
>
> (b) Introductory text not related to postsurgical treatments was removed. Citations were reviewed to determine relevancy. The November 12, 2007 document received from ODG did not contain the citations. The citations were available in the web version of ODG Treatment Guidelines. ODG's Physical Medicine Guidelines' references are available in a separate document entitled: Appendix E—Postsurgical Treatment Guidelines (2008) Official Disability Guidelines' References.
>
> (c) In all the anatomic sections ODG recommends an initial and subsequent course of treatment, plus home program. These recommendations were removed in all the anatomic sections of the postsurgical treatment guidelines because they conflict with the proposed regulations allowing for up to half of the general course of therapy for the initial course of therapy. The requirement that the initial course of therapy constitute half of the number of visits specified in the general course of therapy is intended to allow for immediate treatment without disruption to insure recovery.
>
> (d) In some of the anatomic sections ODG recommends treatments based on terminology which conflict with the definition of functional improvement as set forth in the proposed regulations. These recommendations were removed for consistency purposes.
>
> (e) In some of the anatomic sections ODG inconsistently uses the term "recommended" in the introductory text below the anatomic topic heading. The term "recommended" was removed to avoid confusion, with the exception of hernia which was not recommended.
>
> (f) Removed links and/or references to other ODG chapters not part of the MTUS.

(g) Under the "Forearm, Wrist, & Hand" topic heading, changed a portion of the instructions "stating see separate chapter" to "see separate postsurgical guideline."

(5) The MEEAC, and designated subject matter experts, conducted a thorough review of preliminary adapted version of the ODG's Physical Medicine Guidelines.

(6) The reviewers noted that the preliminary adapted version of the ODG's Physical Medicine Guidelines needed supplementation to include additional surgeries.

(a) The anatomic topic heading "Hip" in the ODG Physical Medicine Guidelines was modified in the postsurgical treatment guidelines to state: "Hip, Pelvis, and Thigh (femur)." The modification was made because it was determined that the ODG topic heading was not sufficiently broad to include surgeries related to pelvis and thigh (femur).

(b) The anatomic topic heading "Elbow" in the ODG Physical Medicine Guidelines was modified in the postsurgical treatment guidelines to state: "Elbow and Upper Arm." The modification was made because it was determined that the ODG topic heading was not sufficiently broad to include surgeries related to upper arm.

(c) Inserted the word "treatment" in the specific postsurgical treatment recommendations (e.g., postsurgical treatment) in the postsurgical treatment guidelines under the anatomic topic heading "Knee."

(d) Added the new anatomic category, "cardiopulmonary," in the postsurgical treatment guidelines which is not included in the ODG Physical Medicine Guidelines.

(7) Evidence-based reviews (EBRs) were conducted on identified surgeries to determine the most appropriate treatments. The EBRs reflected insufficient evidence for or against postsurgical physical medicine in many cases. The MEEAC made recommendations and the postsurgical treatment guidelines were developed. (See, Appendix C—Postsurgical Treatment Guidelines (DWC 2008), Evidence-Based Reviews.) The postsurgical physical medicine treatment guidelines not adapted directly from ODG but recommended by the DWC are labeled "**[DWC].**"

(8) In order to comply with the requirement of the statute, the Medical Director sought the advice of the MEEAC and designated subject matter experts to define the postsurgical physical medicine period. Based on their advice, the postsurgical period is defined for the specified surgeries. The postsurgical physical medicine period is identified by an asterisk (*) in each anatomic section to reflect that the physical medicine period provided is a DWC requirement. (See, Appendix C—Postsurgical Treatment Guidelines (DWC 2008), Evidence-Based Reviews, for explanation of the process used to develop the postsurgical physical medicine period.)

Further, section 9792.21(c) provides that treatment shall not be denied on the sole basis that the condition or injury is not addressed by the MTUS. It further provides, in pertinent part, that in this situation the claims administrator shall authorize treatment if such treatment is in accordance with other scientifically and evidence-based, peer-reviewed, medical treatment guidelines that are nationally recognized by the medical community. It is necessary to inform the public that the specified surgeries in the postsurgical treatment guidelines are not all-inclusive and requests for postsurgical physical medicine treatment not included in these guidelines must be considered pursuant to section 9792.21(c).

Moreover, it is necessary to provide the public with a complete guideline. This requires a copy of the guidelines themselves but also a copy of the citations used to support the document. Thus, a copy of the citations listed in the postsurgical treatment guidelines will be made available to the public via the mail or the internet.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.25 Presumption of Correctness, Burden of Proof and Strength of Evidence

Specific Purpose of Section 9792.25(a):

Section 9792.25(a) informs the public that the MTUS is presumptively correct on the issue of extent and scope of medical treatment and diagnostic services addressed in the schedule for the duration of the medical condition. The section further informs the public that 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 his or her injury. The presumption created is one affecting the burden of proof. The substance of this section was not changed.

Necessity:

This section was formerly contained in section 9792.22(a). The section has been renumbered section 9792.25(a). The first sentence of this section has been corrected for consistency purposes to substitute the phrase “Medical Treatment Utilization Schedule” with the acronym “MTUS.” This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the “Medical Treatment Utilization Schedule,” and at other times as the “MTUS.” The substance of the section remains the same.

Specific Purpose of Section 9792.25(b):

Section 9792.25(b) informs the public that 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 by the medical community. The substance of this section was not changed.

Necessity:

This section was formerly contained in section 9792.22(b). The section has been renumbered section 9792.25(b). The first sentence of this section has been corrected for consistency purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS." This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the "Medical Treatment Utilization Schedule," and at other times as the "MTUS." The substance of this section was not changed.

Specific Purpose of Sections 9792.25(c)(1); 9792.25(c)(1)(A); 9792.25(c)(1)(B); and 9792.25(c)(2):

Section 9792.25(c)(1) informs the public of when the ACOEM's strength of evidence rating methodology is applied to evaluate scientifically based evidence used to recommend medical treatment or diagnostic services.

Section 9792.25(c)(1)(A) sets forth Table A—Criteria Used to Rate Randomized Controlled Trials

Section 9792.25(c)(1)(B) sets forth Table B—Strength of Evidence Ratings

Section 9792.25(c)(2) informs the public that the evidence shall be given the highest weight in order of strength of evidence.

Necessity:

The substance of these sections has not been changed. They have been, however, renumbered consistent with the internal reorganization of the MTUS. The sections were formerly contained in sections 9792.22(c)(1), 9792.22(c)(1)(A), 9792.22(c)(1)(B), and 9792.22(c)(2). The sections have now been renumbered sections 9792.25(c)(1); 9792.25(c)(1)(A); 9792.25(c)(1)(B); and 9792.25(c)(2).

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.

Section 9792.26 Medical Evidence Evaluation Committee

Specific Purpose of Section 9792.26(a)(1):

This section informs the public that the Medical Director shall create a Medical Evidence Evaluation Advisory Committee (MEEAC) to provide recommendations to the Administrative Director on matters concerning the MTUS. The section further informs the public that the recommendations of the MEEAC are advisory in nature only and shall not constitute scientifically based evidence. The substance of this section was not changed.

Necessity:

This section was formerly contained in section 9792.23(a)(1). The section has been renumbered section 9792.26(a)(1). The first sentence of this section has been corrected for consistency purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS." This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the "Medical Treatment Utilization Schedule," and at other times as the "MTUS." The substance of the section remains the same.

Specific Purpose of Sections 9792.26(a)(1)(A); 9792.26(a)(2); 9792.26(a)(2)(A)-(P); 9792.26(a)(3); and 9792.26(b):

These sections entail the creation, membership, and duties of the MEEAC.

Necessity

The substance of these sections has not changed. The sections were formerly contained in sections 9792.23(a)(1)(A); 9792.23(a)(2); 9792.23(a)(2)(A)-(P); 9792.23(a)(3); and 9792.23(b). Because of the internal reorganization of the MTUS, these sections have been renumbered sections 9792.26(a)(1)(A); 9792.26(a)(2); 9792.26(a)(2)(A)-(P); 9792.26(a)(3); and 9792.26(b). The substance of the sections remains the same.

Specific Purpose of Section 9792.26(c):

Section 9792.26(c) introduces the responsibilities of the members of the MEEAC (which are listed in the following subdivisions) in evaluating evidence when making recommendations to revise, update or supplement the MTUS. The substance of the section has not been changed.

Necessity:

This section was formerly contained in section 9792.23(c). The section has been renumbered section 9792.26(c). The section has been corrected for consistency purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS." This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the "Medical Treatment Utilization Schedule," and at other times as the "MTUS." The substance of the section remains the same.

Specific Purpose of Sections 9792.26(c)(1); 9792.26(c)(2); and 9792.26(c)(3):

These sections set forth the responsibilities of the members of the MEEAC in evaluating evidence when making recommendations to revise, update or supplement the MTUS. The substance of these sections has not changed.

Necessity:

The sections were formerly contained in sections 9792.23(c)(1); 9792.23(c)(2); and 9792.23(c)(3), but due to the internal reorganization of the MTUS have been renumbered sections 9792.26(c)(1); 9792.26(c)(2); and 9792.26(c)(3). These sections have been further amended to substitute the references to section 9792.22 with the amended section number 9792.25. The substance of the section remains the same.

Specific Purpose of Section 9792.26(d):

This section informs the public of the extent of the term service of various members of the MEEAC. The substance of this section has not changed.

Necessity:

The section was formerly contained in section 9792.23(d), but due to the internal reorganization of the MTUS has been renumbered section 9792.26(d). The substance of the section remains the same.

Specific Purpose of Section 9792.26(e):

This section informs the public the Administrative Director, in consultation with the Medical Director, may revise, update, and supplement the MTUS as necessary. The substance of this section has not changed.

Necessity:

The section was formerly contained in section 9792.23(f). The section also contains a clerical error in that the proper lettering is “e” not “f.” Due to the internal reorganization of the MTUS and to correct the clerical error the section has been renumbered section 9792.26(e). Further, the section has been corrected for consistency purposes to substitute the phrase “Medical Treatment Utilization Schedule” with the acronym “MTUS.” This corrects the internal inconsistency throughout the regulations referring to the schedule at times as the “Medical Treatment Utilization Schedule,” and at other times as the “MTUS.” The substance of the section remains the same.

Consideration of Alternatives:

No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified by the Administrative Director at this time.