

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

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5 **ESTHER SANDOVAL,**

6 *Applicant,*

7 vs.

8 **SAN DIEGO UNIFIED SCHOOL DISTRICT,**  
9 **Permissibly Self-Insured and Administered by**  
10 **YORK RISK SERVICES GROUP, INC.,**

11 *Defendants.*

**Case No. ADJ9694948**  
**(San Diego District Office)**

**OPINION AND ORDER**  
**DENYING PETITION FOR**  
**RECONSIDERATION**

12 By timely and verified petition, San Diego Unified School District (defendant) seeks  
13 reconsideration of the Findings, Award and Order (F&A) issued by a workers' compensation  
14 administrative law judge (WCJ) on November 9, 2015. In relevant part, the F&A found that applicant's  
15 April 9, 2014 industrial injury has resulted in a need for further medical treatment in the form of right  
16 shoulder surgery.

17 Defendant contends that the WCJ erred in finding applicant entitled to right shoulder surgery  
18 because the opinions on which he relied in reaching the finding are not substantial evidence.  
19 Specifically, it is defendant's position that in order to constitute substantial medical evidence, a  
20 physician's opinion must either cite to the Medical Treatment Utilization Schedule (MTUS)/ACOEM  
21 guidelines, or explain why such guidelines should not be followed.

22 The WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report),  
23 recommending that the Petition for Reconsideration (Petition) be denied. Applicant has filed an Answer  
24 to the Petition. We have considered the allegations of the Petition, the WCJ's Report, the Answer, and  
25 we have reviewed the record in this matter. For the reasons set forth in the WCJ's Report, which we  
26 adopt and incorporate as if fully set forth herein, as well as the reason stated below, we will deny  
27 defendant's Petition.

1 We agree with the WCJ that a requesting physician's report need not cite to the MTUS in order to  
2 comply with Labor Code section 4604.5.<sup>1</sup> Here, the medical evidence supporting applicant's need for  
3 right shoulder surgery was not only consistent with the MTUS, but also compelling.

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<sup>1</sup> All statutory references hereinafter are to the Labor Code unless otherwise indicated.

1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's Petition for Reconsideration of the November 9, 2015  
3 Findings, Award and Order is **DENIED**.

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5 **WORKERS' COMPENSATION APPEALS BOARD**

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7 *F. M. Brass*

8 **FRANK M. BRASS**

9 **I CONCUR,**

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12 **MARGUERITE SWEENEY**

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14 **I CONCUR. (See Separate Concurring Opinion.)**

15  
16 *Jose H. Razo*

17 **JOSE H. RAZO**



18  
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **FEB 01 2016**

21 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
22 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

23 **COHN LAW GROUP**  
24 **ESTHER SANDOVAL**  
25 **MICHAEL SULLIVAN & ASSOCIATES**  
26 **SAN DIEGO UNIFIED SCHOOL DISTRICT**  
27 **YORK RISK SERVICES GROUP**

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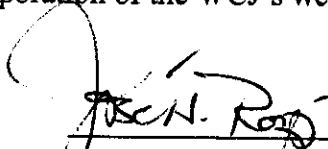
**SVH:ara**

**SANDOVAL, Esther**

1 CONCURRING OPINION OF COMMISSIONER RAZO

2 I concur with the majority that the WCJ's Report and Recommendation on Petition for  
3 Reconsideration (Report) in this case provides an accurate, well-reasoned explanation of the basis for the  
4 decision he reached that applicant is in need of further medical treatment in the form of right shoulder  
5 surgery, and I join them in denying reconsideration by incorporating the WCJ's Report. I write  
6 separately, however, because I do not agree with the majority's statement that a requesting physician's  
7 medical report need not cite to the MTUS in order to comply with section 4604.5.

8 For the foregoing reasons, I would simply deny defendant's Petition for Reconsideration and  
9 affirm the WCJ's F&A by incorporation of the WCJ's well-reasoned Report.

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12 JOSE H. RAZO, COMMISSIONER

13  
14 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

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STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

Case No. ADJ 9694948

ESTHER SANDOVAL

*Applicant,*

v.

SAN DIEGO UNIFIED SCHOOL  
DISTRICT;  
permissibly self-insured

*Defendants.*

REPORT AND  
RECOMMENDATION ON PETITION  
FOR RECONSIDERATION

Workers' Compensation Administrative Law Judge: **Andrew J Shoreinstein**

**INTRODUCTION**

<u>Date of Injury:</u>	April 9, 2014
<u>Age on DOI:</u>	55
<u>Occupation:</u>	Health Assistant/Nurse Assistant
<u>Identity of Petitioner:</u>	Defendant
<u>Timeliness:</u>	The petition was timely filed on December 3, 2015
<u>Verification:</u>	The petition was verified
<u>Date of Decision:</u>	November 9, 2015

**Petitioner's Contentions**

1. That the Worker's Compensation Judge acted in excess of his powers;

2. That the evidence does not justify the Findings of Fact;
3. That the Findings of Fact do not support the Order or Decision or Award

### FACTS

Applicant sustained an admitted industrial injury to numerous body parts, which included the shoulders. As part of her treatment, applicant came under the care of Dr. Steven Tradonsky. The physician provided treatment to the shoulders, which included an MR/arthrogram of the right shoulder. The arthrogram revealed a partial thickness tear of the rotator cuff.

A request for authorization was made for right shoulder surgery in the form of a rotator cuff repair. The request was submitted for utilization review. Both parties have stipulated that the utilization review was not performed in a timely manner. Therefore, pursuant to the opinion in *Dubon v. World Restoration, Inc. (2014) 79 Cal. Comp. Cases 1298*, where there is no timely UR decision subject to IMR, the issue of medical necessity for the surgery was determined by the WCJ.

Subsequent to a hearing on the merits, the WCJ determined that the medical/legal opinions of the treating physician, Dr. Tradonsky, and the consultative report of Dr. John W Miles constitutes substantial evidence in favor of applicant's present need for a right shoulder surgery. Defendant has filed a timely petition for reconsideration, which alleges that the opinions of Dr. Miles and Dr. Tradonsky do not comply with the requirements of labor code section 4604.5(a), as they failed to specifically cite the guidelines set forth in the medical treatment utilization

schedule (MTUS) adopted by the administrative director pursuant to labor code section 5307.27.

### DISCUSSION

Petitioner has presented the argument that a treating physician's report must specifically state how the requested treatment is compliant with the MTUS in order for it to be considered by the WCAB when utilization review has been untimely and the issue medical necessity is presented to the WCAB for decision.

This WCJ disagrees with petitioner's interpretation of labor code section 4604.5. In the present case, the issue presented is whether applicant should be provided with surgery in the form of a rotator cuff repair. The task of the WCJ is to review the provided medical reports, as well as the MTUS, and determine whether the treatment requested in the medical reports complies with the requirements of the MTUS. If the answer is in the affirmative, the treatment will be awarded to applicant.

In the present case, the WCJ reviewed the medical reporting of the treating physicians, Dr. Tradonsky and Dr. Miles. (Applicant exhibits 1 through 13). Applicant complained of severe right shoulder pain, and a diagnostic MR/arthrogram was performed. This diagnostic MRI revealed a high grade partial thickness tear of the supraspinatus tendon, partial thickness tear of the infraspinatus tendon, and a partial thickness tear of the biceps tendon. (Applicant Exhibit 8).

After approximately 10 months had passed subsequent to applicant's injury, and with no improvement in her symptoms, applicant was referred to Dr. John Miles for a surgical consultation (applicant Exhibit 13). Dr. Miles provided the following extremely relevant information, which bears repeating in full:

"The patient has had three subacromial injections, physical therapy, and tincture of time, and the patient remains quite symptomatic. When I reviewed the MR scan this afternoon that the patient was kind enough to bring, this is nearly a full thickness tear of the supraspinatus; it is clearly greater than 50%, probably greater than 75% on the articular. For someone who is symptomatic, the current treatment algorithm is a surgical repair. Probably, the best treatment algorithm that I would consider standard of care is from the Journal of the American Academy of Orthopedic Surgeons. This is basically a review Journal, which establishes standard of care for the orthopedic community, whether that be the treatment of carpal syndrome, treatment of tibial fractures, treatment of bunions, or treatment of partial thickness rotator cuff tears. The article was written by Joe Ianotti, M.D., PhD, certainly one of the world's most famous shoulder surgeons. Basically the article went through the pathology, diagnosis and management, in terms of conservative management. They recommend a "judicial" use of corticosteroid injections, rest, nonsteroidal anti-inflammatory medications, and scapular rehabilitation. The patient has had all of this done. The author of this article felt that if the patient still had symptoms after six months, then surgical intervention would be recommended if the patient was symptomatic. Again, based upon this article that establishes standard of care at least for the orthopedic community, the patient is now a surgical candidate. My recommendations would be for right shoulder rotator cuff repair, conversion from a partial thickness tear to a full thickness tear."

The WCJ finds that the above opinion of Dr. Miles would be sufficient to rebut the MTUS even if the MTUS stated that surgery was not required under the circumstances of this case. However, a review of the MTUS clearly indicates that surgery is in fact appropriate. The California code of regulations section 9792.23.2(a) contains the appropriate language regarding the MTUS for shoulder treatment: "The administrative director adopts and incorporates by reference the



shoulder complaints chapter (ACOEM practice guidelines, second edition (2004), chapter 9) into the MTUS from the ACOEM practice guidelines.”

In reviewing chapter 9 of the 2004 ACOEM practice guidelines, the following language appears under the heading Rotator Cuff Tear:

"For partial thickness rotator cuff tears and small full-thickness tears presenting primarily as impingement, surgery is reserved for cases failing conservative therapy for three months. The preferred procedure is usually arthroscopic decompression.....”

In the present case, 10 months have passed from the date of injury. Applicant has not improved after three injections, and therefore it is clear that conservative therapy has failed. Therefore, the WCJ finds that the proposed treatment falls within the MTUS.

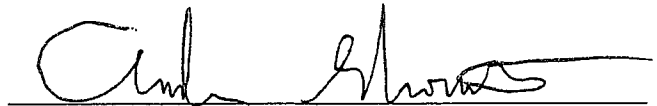
The WCJ additionally finds that the opinions of Dr. Tradonsky and Dr. Miles are more persuasive regarding the need for surgery, and constitute better evidence than the opinions expressed in the reporting of Dr. Christopher Behr (defendant exhibit A), which is skeletal and conclusory.

The WCJ additionally finds that where the treating physician has provided care within the treatment protocols as stated in the MTUS, and the additional treatment being requested also complies with the requirements of the MTUS, the treating physician's report need not specifically cite the MTUS in order for the requested treatment to be found in compliance with the provisions of labor code section 4604.5.

RECOMMENDATION

It is recommended that reconsideration be denied.

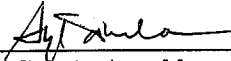
DATED: 12/14/15



ANDREW J SHORENSTEIN  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Served by mail on all persons shown  
on the Official Address Record.

Dated: 12/14/15

By:   
Sylvia Arnold