

WORKERS' COMPENSATION
MEDICAL ADVISORY COMMITTEE

May 21, 2021
9 a.m. – 11:00 a.m.

MAC Committee Members Present: Ronald Bowman, MD; Brad Lorber, MD; Julio Ordonez, MD; Lon Holston (Worker Representative); Timothy Craven, MD (MCO Representative); Constantine Gean, MD (Insurer Representative), Halley Moore, DC; Ryan Weeks (Employer Representative)

DCBS Staff Present: Summer Tucker, Juerg Kunz, Jeffrey Roddy-Warburton

MAC Committee Members Absent: Gary Rischitelli, MD; Tom Williams, PT

Agenda Item	Discussion
Welcome, Introductions (0:00:00)*	Dr. Bowman called the meeting to order at 9:00 a.m.
Administrative discussion (0:00:30)*	Review and approve minutes for August 21, 2020 MAC Meeting Dr. Lorber motions to approve, Dr. Bowman seconds. The minutes were approved.
On-Site Injury Assessments (0:01:50)	Dr. Bowman moves to the review of on-site injury assessments. Juerg Kunz gives an overview of the topic and the details of ORS 656.260 (21)(b)(B). The statute allows employers to use an on-site facility for the assessment of the nature and extent of the work injury. The division has seen some examples where workers are directed towards an on-site facility for multiple visits. In one case, when a worker later went to a physician, the physician stated that the worker was negatively impacted by the delay in getting appropriate treatment. WCD is interested in hearing from the MAC members what they think the extent of assessing a work injury entail.
(0:03:50)	Dr. Bowman states he would like to know the qualifications of the provider that gave the on-site assessment in the example Juerg described. Juerg Kunz states he didn't know what the provider's qualification was, but he knows they were not a medical doctor. Juerg Kunz noted this is just one example the division is aware of. Dr. Gean noted a lot of companies have on-site nurse evaluators. Juerg notes often times it is an on-site nurse or a physical therapist. Dr. Gean asks if there anything in this statute about the licensure level of the on-site evaluator. Juerg Kunz states that the employer is not allowed to direct the worker to a specific healthcare provider and this statute is the exception to that. Dr. Gean states that a licensed health care professional should be the person doing the evaluation, but it brings up a question about the motivation of

the employer. Dr. Gean states that he is opposed to this without further clarification.

- (0:07:25) Summer Tucker reads an email response from Dr. Rischitelli on this topic because he is absent from the meeting. Dr. Rischitelli's email states he would interpret this provision to mean initial triage and first aid. This would be initial assessment (history and physical), and necessary first aid only. Dr. Bowman states that he thinks having someone on-site to provide first aid is a good idea, but anything beyond that would need to be with a health care provider.
- (0:08:30) Dr. Craven states that he was unaware that there was an administrative rule that does not allow employers to have an on-site medical facility evaluate their workers. Juerg Kunz clarifies that the statute allows them to assess the nature and extent of a work injury, but it doesn't say much more than that, and employers are not allowed to direct care. Dr. Craven notes he supervises an on-site facility nurse who provides first aid and evaluates workers to see if they need further care. Dr. Craven asks if the question is whether employers are allowed to do that. Juerg Kunz responds that employers are allowed to do that. The worker has the right to choose their health care provider, and if an on-site provider is pressuring a worker to not seek medical care, that could be problematic. Dr. Craven comments that the worker shouldn't be pressured.
- (0:13:00) Juerg Kunz asks if the on-site visits should be limited to one visit, or could there be follow ups. Dr. Craven responds that in his experience they are doing that now in the clinic he works with. For example, the nurse will tell the worker to follow up with them the next day. He adds that the on-site nurses also provide other medical treatment for non-work-related injuries.
- (0:15:25) Dr. Gean comments that the motivation of doing this early triage is to discourage workers from reporting injuries. Dr. Gean feels that if the person doing the triage is held responsible for the decision they make, then it would make sense. But he has concern about financial motivations impacting the situation.
- (0:17:00) Lon Holston responds that he agrees with Dr. Gean. Lon Holston also noted that the on-site facility will not have diagnostics to determine the extent of the injury, and that he does not think we should be doing these kinds of assessments on the job site. Lon describes how an injured worker may experience pressure from the employer. Dr. Craven asks if Lon Holston is saying that assessments should not be done by the on-site nurse. Lon Holston confirms that he thinks the on-site nurse could do first aid, but that the assessment of extent should be done by a physician. Dr. Bowman notes he agrees, you can't determine the extent of the injury without diagnostics, and there are no diagnostics available at a first aid station.

- (0:19:50) Dr. Craven comments that he disagrees, that he thinks the nurse can assess it. Dr. Craven states that first aid is not recordable to his understanding, but if the injured worker is sent to the doctor at an urgent care clinic that is recordable. Dr. Gean states that there are some cases where the worker can see a physician and it is not recordable. Dr. Craven states that he is supervising physician for an on-site clinic and works with the nurse at the clinic. He has only had one problem where the on-site nurse told the employee to seek further care, and the employee didn't go based on an emergency medical technician's advice.
- (0:24:00) Ryan Weeks states that from an employer stand point, he understands what people are saying in regards to the on-site clinic, but noted that the worker still has the right to seek further medical care if they want it. Ryan Weeks adds that the on-site triage and first aid does seem beneficial. Dr. Gean responds that his concern relates to informal pressure for the worker to minimize the injury and that allowing on-site assessment of extent could impair worker safety. Ryan Weeks noted he agrees with Dr. Gean, but he noted that in some situations there is a worker advocate or safety representative present. Ryan understands the situation Lon described, and that he wouldn't want to see that happen. Dr. Craven notes that he agrees.
- (0:26:30) Dr. Bowman asks Juerg Kunz what would he like MAC to do. Juerg Kunz responds that this conversation has been helpful, and one thing WCD is considering is making a rule that better defines what it means to assess the nature and extent of an injury. This was just the first step to gather information. Dr. Bowman states that most of MAC believes that on-site first aid is good, but determining the extent of an injury is problematic. Dr. Bowman asks if there is a requirement to notify an injured worker that they can go wherever they want to seek medical care. Juerg Kunz states that WCD does have brochures that the employer is required to give to the worker. Dr. Craven notes that employers aren't medically trained to evaluate injuries, so on-site clinics are helpful for getting evaluated. He's in favor of an on-site assessment.
- (0:31:24) Lon Holston comments that employers want injuries reported to make sure the workplace is safe. However, he has seen employees disciplined for injuries due to violating company rules, which can be problematic. This can contribute to a culture where workers say they are ok to work. Lon also mentions that workers do not get WCD brochures unless they file a claim.
- Sheri Sundstrom, Hoffman Construction, gives her input on on-site assessments and states that if anyone has questions about on-site clinics she will be happy to help because her employer has one. Sheri Sundstrom adds that they do give workers the information (choice of provider form) on filing a claim immediately. She adds that she believes the on-site clinics are critical. Dr. Gean responds that it is the evaluating the extent of an injury that is the issue, because then the on-site clinic has control of the referral.

**Time-Loss
Authorizations
(0:37:30)**

Summer Tucker begins the discussion on time-loss authorizations. Elaine Schooler, SAIF Corporation, summarizes stakeholder discussion on the topic and states that they are looking for MAC's feedback. Specifically, they are discussing time-loss authorizations that are open ended, or have an extended date beyond 30 days. One issue is whether the authorization should be limited to a specific time period to ensure workers are following up with their medical provider on a regular basis. A challenge of open-ended releases is when a worker stops treating and communicating with their medical provider. This creates a barrier for employers who would like bring the worker back through accommodated work restrictions, or when the worker would be released back to regular work, but there was a breakdown in treatment with their medical provider. A possible solution to that is revisiting work restrictions every 30 days. Keith Semple, Oregon Trial Lawyers Association, summarizes concerns they have on this proposal, which include taking the pace of examination out of the medical provider's hands, workers not being able to see their provider by day 30, and creating stress for the worker and medical provider. Keith comments that the current model for restrictions works and allows the insurer mechanisms to address the pace of treatment. There is concern that the 30-day proposal is too rigid and could harm the workers relying on wage loss benefits.

- (0:44:45) Dr. Bowman states that he was under the impression that there already was a 30-day requirement, unless they are on full work release, and he was surprised to find out you can have open-ended light duty work releases. He doesn't think this will change his work practices, just tighten them up.
- (0:45:15) Dr. Craven states that there should be a start date and an end date, and for Providence MCO, they need to be seen every 1-2 weeks, there are rules on that.
- (0:47:12) Jenni Walsh, Providence MCO, states that there is an administrative rule that states patients need to be seen every 2 weeks if they are off work and every 30 days on modified work restrictions. Jenni Walsh adds that there needs to be clear communications about when the patient can go back to work, and the biggest risk is the possible overpayment at the end.
- (0:48:30) Lon Holston states he does not believe there is a compelling need for this change and this would just add stress on the medical community.
- (0:50:00) Jovanna Patrick states that she agrees with both Lon Holston and Keith Semple's statements, and adds that they want patients to get in and see their medical providers, but there are many reasons why they can not get in to see the doctor on that 30th day, so if there is a strict rule about the 30 days, the only person losing out would be the worker. Jovanna Patrick goes over some possible reasons why patients are not seen within the 30 days.

- (0:53:15) Dr. Gean states that Keith Semple and Jovanna Patrick made some good points about the pressure workers would be under when facing benefits being cut off if they don't get in on time. Dr. Gean concurs that the 30-day cut off is somewhat rigid given the realities of getting appointments to see a doctor. He adds that California requires a reassessment every 45 days, many of which are now through telemedicine. Dr. Gean states that there is a problem when the worker is fully off work, for both the employer and worker. If this is about reforming that issue, he would urge getting doctors to provide work restrictions. With respect to the 30-day proposal, Dr. Gean notes that follow-up visits to surgeons are often 6 weeks out or even longer. He isn't sure this would be a practical change.
- (0:56:48) Summer Tucker reads an email response from Dr. Rischitelli on this topic. Dr. Rischitelli stated a well accepted and best practice in occupational medicine requires workers that are off work to be evaluated every two weeks, there is a position statement from the AMA that says the same thing. Dr. Rischitelli believes time loss should be re-evaluated every 14 days and work restrictions every 30 days.
- (1:00:00) Thais Lomax, Sedgwick states that from her perspective the open-ended off work slip without an end date makes things very difficult. Dr. Craven states that it shouldn't be open-ended, that he agrees with changing that, and employers should refuse to accept an off work slip with no end date. Dr. Lorber states that he agrees that there should be end date for the time loss, but also there needs to be some sort of grace period. Dr. Bowman agrees with that.
- (1:01:30) Dr. Craven states that if the doctor has released the worker for modified work, the employer has a job for them, and then the worker chooses not to show up for the modified work, the employer should be able to say that worker is now not eligible for time-loss benefits.
- (1:06:00) Jody Phillips Polich, injured worker representative, discussed bug letters and how, if they are not responded to within 14 days, the claim can be closed. She also adds that doctors not making a note of there being time loss is a big problem. Jody Philips Polich adds that there does need to be some flexibility on the time frames.
- Dr. Bowman states if we want to expand this topic more we should do it at a later meeting. Juerg Kunz responds that a work committee was formed on this topic by MLAC and today's meeting was just to get MAC's opinion on the topic.
- Low-Dose Irradiation**
(1:09:00) Juerg Kunz begins the discussion on low-dose irradiation, which is a reoccurring topic for the committee from a few years ago. Previously, MAC did not have a recommendation on compensability of low-dose irradiation. Juerg Kunz asks if MAC wants to revisit the low-dose irradiation discussion.

Dr. Craven states that he does not use this treatment, does not refer people to use it, and does not know other doctors that use it. Dr. Gean states that he has not done research on it and does not have a recommendation. Dr. Craven states that it should be on the non-compensable treatments list for workers' compensation. Juerg Kunz states currently it is compensable, and he adds this is not a treatment used very often, he only knows of one case. Dr. Craven states that if there is only one case of it being used then it isn't worthwhile looking into. Dr. Bowman asks how big of an issue this is, Juerg Kunz states it is minute. Dr. Bowman states we should not do anything with this unless there is a request to do so. All MAC members present voted yes to remove this topic from the list.

(1:15:30) Juerg Kunz states the next topic up for discussion is platelet-rich plasma injections and at this point, there are no other treatment topics to look at.

(1:17:00) Dr. Bowman adjourned the meeting.

*The audio files for the meeting minutes and public testimony (both written and audio) can be found here: <http://wcd.oregon.gov/medical/mac/Pages/mac-meetings.aspx>