

## 31<sup>st</sup> Annual DWC Educational Conference

### Topic Summaries and Learning Objectives

#### **DWC Update**

*Parisotto & Richards*

**Topic Summary:** Administrative Director George Parisotto and Chief Counsel Ted Richards will provide an update as to the activities and programs of the Division of Workers' Compensation. Topics addressed may include California COVID-19 workers' compensation statistics, new legislation, updates to the Medical Treatment Utilization Schedule and Drug Formulary, Independent Medical Review and Independent Bill Review statistics, anti-fraud activities, and updates to the Medical-Legal Evaluation program. Further, Mr. Parisotto and Mr. Richards will discuss upcoming regulations and DWC initiatives, such as EAMS modernization, the implementation of electronic medical reports, and system studies.

**Learning Objective:** The DWC Update will familiarize conference attendees with the operation of the various units and programs within the Division of Workers' Compensation. Attendees will be provided with information regarding new workers' compensation legislation for 2023, the Division's upcoming regulations, form and processes, as well as the status of recently adopted rules and regulations.

#### **QME: The Medical Legal Process and Update to the Regulations\***

*West & Richardson*

**Topic Summary:** Come learn about the QME process, report quality monitoring and new regulatory changes. This session will cover what the DWC is doing about report quality and how we monitor QME performance and what the DWC is doing to recruit physicians into the system. We will go in-depth into the updated regulations related to the QME program. The speakers will provide an analysis of how the recently adopted rulemaking is anticipated to affect the Workers' Compensation Community.

**Learning Objectives:** Understand the Qualified Medical Evaluator process and what the DWC is doing related to improving the system. Learn about updates being made to the QME regulations including increased educational requirements and subject matters to be covered in educational trainings. Updates to QME discipline.

#### **Case Law Update I**

*Kahn & Levy*

**Topic Summary:** DWC's Chief Judge and Former Chief Judge will update the workers' compensation community on recently decided cases impacting California's Workers' Compensation Law. The panel will further discuss how new case law applies to the California workers' compensation practice.

**Learning Objectives:** To provide participants with an overview of the most recent and applicable California Workers' Compensation case law.

#### **Understanding and Navigating Key Apportionment Issues and Cases**

*Correio & Feinberg*

**Topic Summary:** Over the course of two apportionment break-out sessions the presenters, based on a combination of a PowerPoint as well as a comprehensive updated Apportionment Case Law Outline and Summary, will discuss a variety of topics case law including cutting edge and evolving apportionment issues and related case law. All the topics are designed to provide claims professionals, attorneys, and medical-legal evaluators with an in-depth understanding of apportionment pursuant to Labor Code sections 4663 and 4664.

## 31<sup>st</sup> Annual DWC Educational Conference

1. Controlling Legal Principles and Standards: A comprehensive overview of key controlling legal principles related to determining valid apportionment under Labor Code sections 4663 and 4664.
2. Substantial Medical Evidence: What Workers' Compensation Judges and the WCAB are looking for in determining whether a medical-legal evaluator's opinion on apportionment constitutes substantial medical evidence based on correct legal standards.
3. Obtaining a Quality QME/AME Report: Discussion of a variety of factors and pointers to take into account in order to assist the parties in their effort to obtain a quality QME/AME report.
4. Causation of Injury and Causation of Permanent Disability: An in-depth discussion of apportionment related to alleged "risk factors" and the distinction between risk factors i.e., underlying pathology as it relates to causation of injury and causation of permanent disability.
5. Vocational Evidence and Medical Evidence of Apportionment: Rebutting a Scheduled Rating after *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741; 2023 Cal.Wrk.Comp. LEXIS 30 (Nunes) (Appeals Board en banc: Nunes I and II): Strategies and related issues related to rebutting a schedule rating in the aftermath of the WCAB's en banc decisions in Nunes. The interaction of medical evidence of apportionment and vocational evidence. This topic will also deal with the role of medical-legal evaluators with respect to vocational evidence and medical evidence of non-industrial apportionment as one of the causative factors of an applicant's inability to participate in vocational rehabilitation and to compete in the open labor market.
6. Benson: Apportioning Permanent Disability Among Separate and Successive Injuries: The challenge of apportioning permanent disability related to separate and successive multiple injuries under the WCAB's en banc decision in Benson. How are judges and the WCAB applying Benson apportionment of permanent disability which requires that permanent disability be apportioned among and between separate and successive injuries except in limited circumstances?
7. Medical Treatment and Apportionment: How has case law evolved since the Court of Appeal's decision in *Hikida* related to medical treatment and apportionment? In what situations will an applicant's permanent disability that is caused in part or entirely from medical treatment related to the industrial injury or injuries prevent a defendant from obtaining any valid apportionment?
8. Prior Awards: Labor Code section 4664(b) and situations where an applicant has received a prior award of permanent disability and whether or not a defendant can prove the applicability of the conclusive presumption that the prior permanent disability reflected in the prior award exists at the time of the subsequent injury and whether it can be subtracted from the applicant's current level of permanent disability. This complex area involves the necessity of a defendant proving the existence of the prior award but also the added burden for the defendant to prove that the prior and current permanent disability overlap.

### Learning Objectives:

1. To provide claims professionals, attorneys, medical-legal evaluators and others with a working understanding of the applicable and controlling legal standards and principles related to apportionment of permanent disability under Labor Code sections 4663 and 4664. Examples from cases of how apportionment of permanent disability in California has been determined historically so they can better analyze apportionment issues correctly with respect to determining whether a medical-legal report constitutes substantial medical evidence on apportionment.
2. How to determine whether a medical-legal report constitutes substantial medical evidence which comports with correct legal standards and principles and what claims professionals and attorneys can do to help facilitate and enhance medical-legal evaluators being able to provide opinions on apportionment that constitute substantial medical evidence and are in accord with correct legal principles and standards.

## 31<sup>st</sup> Annual DWC Educational Conference

3. The role of discovery in terms of medical records and prior reports, depositions of doctors, and letters to medical-legal evaluators that will enhance a proper determination of all the contributing industrial and non-industrial contributing causal factors of an applicant's permanent disability.
4. To facilitate a better understanding of the almost "limitless" non-industrial contributing causal factors that valid apportionment can be based on.
5. How to distinguish between a "risk factor" related only to injury AOE/COE as opposed to preexisting pathology being a contributing causal factor of both injury AOE/COE and the resultant permanent disability but in different percentages.
6. To provide the attendees with both a medical and legal perspective and analysis of key apportionment issues and what to expect over the next few years.
7. Help the attendees identify and understand which apportionment issues consistently lead to the most litigation.
8. Based on case examples, how valid legal apportionment or the lack thereof can have a dramatic impact on the value of an applicant's case in terms of the value of permanent disability.

### **Permanent Disability Rating Fundamentals\***

*Hampton & Ali*

**Topic Summary:** The DEU presentation will focus on permanent disability rating fundamentals.

**Learning Objectives:** How to understand the rating string and basic rules of rating.

### **How Wearable Tech and Virtual Care are Transforming Claims, From Engagement to Outcomes**

*Bloom & Sundaram*

**Topic Summary:** Board Member of California's State Compensation Insurance Fund will draw upon his experience as the former Risk Manager at Safeway to detail the critical role of injured worker's own engagement in their care, and the critical need for the right care at the right time.

**Learning Objectives:** In this session, attendees will discover how wearable technology and data empower injured individuals, fostering engagement in their recovery process at home and supporting quality recovery through personalization. The data also delivers value via insights to smart insights for self-insured and carriers to engage early and support quicker claims closure.

The wearable and collected data support the episode-of-care management at home, collecting "hard to find" home recovery, patient behavior, and psycho-social data. This data is used to power a predictive analytics engine.

### **Case law Update II**

*Kahn & Levy*

**Presentation Summary:** DWC's Chief Judge and Former Chief Judge will update the workers' compensation community on recently decided cases impacting California's Workers' Compensation Law. The panel will further discuss how new case law applies to the California workers' compensation practice.

**Learning Objectives:** To provide participants with an overview of the most recent and applicable California Workers' Compensation case law.

## 31<sup>st</sup> Annual DWC Educational Conference

### **Medical Legal Terminology Explained & Obtaining Quality QME Report Writing Part I\***

*Richardson, Feinberg & Meyer*

This course will provide a clear and comprehensive outline of essential components for a Workers' Compensation Medical-Legal Report. Review key concepts and terminology, and identify statutes and regulations governing medical-legal report writing. Emphasis will be placed on real-world examples. Learn to identify common mistakes, such as insufficient documentation or inadequate analysis, that can compromise the integrity of reporting.

#### Learning Objectives

- Define and understand key concepts and terminology
- Identify the components of a complete California Workers' Compensation Medical Legal Report
- Discuss characteristics of an objectionable report, including potential pitfalls
- Summarize statutory and regulatory requirements, and apply these standards to medical-legal reports

### **Current Research Findings in the California Workers' Compensation System**

*Swedlow & Cooper*

2024 is delivering on its promise to be an active year for potential reform activity. WCIRB's Executive VP and Chief Actuary Sean Cooper and CWCI's President Alex Swedlow will deliver a lightning round of the latest research about the performance of our California Workers' Compensation System. Topics will include claim frequency, medical and indemnity benefit delivery, the impact of inflation, access to care, regional differences, and more.

#### Learning Objectives

- Detailed research outcomes and discussion on key aspects of potential reform activity
- The changing nature of benefit delivery, regional differences, cost drivers, access to care, and Long Covid

### **Audit Procedure and Trending Topics**

*Fenimore, Howard & Skarakis*

**Topic Summary:** This presentation will briefly reacquaint the audience with the DWC Audit procedures and processes as outlined Labor section 129 and 129(e). We will be discussing the three phases of the audit process, PAR, FCA 1 and FCA 2. In addition, we will cover Target and Civil Penalty audits and our Civil Penalty unit. We will discuss our revised complaint process and provide our current audit statistics. We will review the Average Weekly Wage (AWW) calculation, and the Benefit Notice requirements. The Audit Unit Managers will be discussing current audit trends for 2022 and 2023.

**Learning Objectives:** The presentation will provide information on current audit trends and ways to have a smooth audit and our availability for virtual training workshops.

## 31<sup>st</sup> Annual DWC Educational Conference

### Top Litigation Tips

*Gogerman & Broussard*

**Topic Summary:** Are you correctly drafting, filing, and serving your case-opening documents and responses? How many days do you have to wait before requesting a QME panel if one of the law firms receives its mail in Malaysia? What does lack of prosecution look like? Are you tired of getting OSAs? Can you e-sign a verification? Do you have to meet and confer before setting a case for trial? Can a workers' compensation judge have someone arrested for disregarding your subpoena? Will you win at trial if you have more exhibits than the other side? Do you need to authenticate *sub rosa* videos at trial? These and other burning questions may be answered during this session aimed at helping you hone your litigation skills and avoid common mistakes.

**Learning objectives:**

- How to identify and avoid common drafting and filing mistakes.
- How to get settlement documents acted on without delay.
- When and how to request judicial action on discovery disputes.
- How to prepare your case for trial.

### Medical Legal Terminology Explained & Obtaining Quality QME Report Writing Part II\*

*Richardson, Feinberg & Meyer*

**Topic Summary:** This course will provide a clear and comprehensive outline of essential components for a Workers' Compensation Medical-Legal Report. Review key concepts and terminology and identify statutes and regulations governing medical-legal report writing. Emphasis will be placed on real-world examples. Learn to identify common mistakes, such as insufficient documentation or inadequate analysis, that can compromise the integrity of reporting.

**Learning Objectives:**

- Define and understand key concepts and terminology
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### Medical and Legal Ethics and Professional Responsibility

*Pandya & Spitzer*

**Topic Summary:** The presenters will discuss relevant ethical issues that Qualified Medical Evaluators (QMEs) and Attorneys may encounter handling workers' compensation matters. We will focus on ethical requirements under the Labor Code, Regulations and Rules of Professional Conduct.

**Learning objectives:** At the completion of this activity, the learner will be able to:

- Review and understand the ethical requirements for QMEs under Title 8 of the California Code of Regulations sections 35-38; 41-41.7 and case law. Legal ethics for attorneys and compliance with the California Rules of Professional Conduct, Business and Professions Code and common behavior to avoid to comply with your ethical obligations.
- Review and discuss the general principles of medical ethics and professionalism and as it applies to QME practice. This will include discussions and strategies to help mitigate/eliminate potential

## 31<sup>st</sup> Annual DWC Educational Conference

implicit biases (such as gender bias and racial bias), avoiding stereotyping and discrimination and conflicts of interest while performing medical legal evaluations and in medical report writing as a QME.

- Review newer applications of ethical principles to evolving areas such as AI and its' potential use in the workers compensation system.

### **Workers' Compensation 101: A claim's journey through time!**

*Dulich & Canavan*

**Topic Summary:** Today's workers' compensation system has become a maze of deadlines, dead ends, and limited options for all parties as we attempt to provide benefits appropriately to injured employees. How do we navigate that? Participants will explore today's workers' compensation system through the lens of where we were and where we are to learn how to more efficiently shepherd a claim to successful resolution.

The speakers will focus on "best practices" for three key stages of a claim:

- **Intake** and Evaluation,
- Medical Treatment, and
- Permanent Disability.

Each stage will be illuminated by a review of the data and concerns that drove the major policy changes in these areas to bring us to the present. Understanding how we got to where we are today, the presenters will use their vast experience as workers' compensation executives to discuss ways to overcome the challenges in handling today's workers' compensation claims for claims professionals from beginners to executives, attorneys, and medical providers.

**Learning Objectives:** To provide a view of California's workers' compensation system to more deeply understand the legislative and regulatory changes over the past years, the problems those changes policy makers sought to address, and the best practices that have emerged to more efficiently manage a claim to successful resolution in today's system.

### **Integrate AI Into Your Claims Organization**

*Phillips*

**Topic Summary:** The AI race is on as business leaders are sprinting to embrace cutting-edge AI technologies however questions remain on how to integrate with day-to-day claim handling. Come hear how carriers use AI to tackle the latest industry challenges, including rising litigation, the widening talent gap, and enhancing TPA visibility. Join us to discuss the incredible potential of AI as it reshapes the future of claims management.

**Learning Objectives:**

- Identify need for analytics in workers compensation claims
- Implement analytics in a claims organization
- Define successful use of analytics and how it impacts outcomes

### **Driving Quality Care Through MPNs and UR**

*Das, Nguyen & Das (Dr. Nguyen will not be presenting in Los Angeles)*

**Topic summary:** In this session, a panel of three physicians with extensive experience in workers' compensation will discuss some of the most challenging issues that impact the quality of medical care in the workers' compensation system: Medical Provider Networks (MPNs) and Utilization Review (UR).

## 31<sup>st</sup> Annual DWC Educational Conference

Issues to be addressed include how to assess and maximize MPN quality, why good UR decisions matter, and strategies to facilitate medical care through high quality UR. The session will reflect the perspectives of both carriers as well as practicing physicians.

*Learning Objectives:*

1. Review factors that influence the delivery of quality medical care in workers' compensation.
2. Understand how to assess and maximize MPN quality.
3. Learn about methods to enhance high quality UR decisions.

### **Accepted Claim, I Presume?**

*Spitzer & Tempkin*

**Topic Summary:** An overall presentation of several presumptions that affect AOE/COE. Subject such as the heart, cancer and low back presumption for safety personnel in addition to the COVID presumptions. The presentation will focus on what elements are needed to invoke the presumptions as well as how to rebut the presumptions. An analysis of the general 90-day rule will also be included.

**Learning Objectives:** Develop knowledge about the presumptions affecting the burden of proof regarding AOE/COE.

### **WC 101: The Life of a Claim. "The Trial" - Part II**

*Boriolo, Llamas, Litvack & Chun (OAK) Wintersteen (LAO)*

**Topic Summary:** This presentation will consist of a mock trial including the most common trial mistakes by the parties and a judicial perspective on how to 'fix' them. I will also share my top ten trial tips. We want this to be an entertaining yet informative presentation on how to be a more effective and persuasive trial attorney.

**Learning Objectives:** This will include how to prepare, how to present exhibits and what to include (and omit) from your examination of witnesses.

### **Issues and Best Practices to Bring Injured Workers Back to Work**

*Parisotto, Spears, Hassett (OAK only) & Le (LA Only)*

**Topic Summary:** Administrative Director George Parisotto will provide an overview of the laws affecting injured workers who cannot return to their jobs. Topics addressed may include the requirements for obtaining a Supplemental Job Displacement Benefit, acceptable uses for a training voucher, and applying for the Return-to-Work Supplemental Program. Further, there will be a discussion of strategies that employers may utilize to increase the successful return-to-work of employees who have sustained disabilities as a result of workplace injuries or illness. Focus will be given to early contact with the injured worker, proper communication with treating physicians, the completion of work status reports, the payment of temporarily disability indemnity payments, and working with employers to tailor modified work positions for injured workers.

**Learning Objective:** The Return-to-Work session will familiarize conference attendee with the legal obligations for employers and insurers regarding the provision of training opportunities and indemnity payments for disabled injured workers. Attendees will also understand the benefits of open communication between claims adjusters and physicians regarding an injured worker's job duties and available work options with the employer, and the resources that can be utilized to return the injured worker to their job as soon as practicable.

## 31<sup>st</sup> Annual DWC Educational Conference

### **Medical Legal Terminology Explained & Obtaining Quality QME Report Writing Part I\***

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### **UR & IMR: Suggestions for a Smoother IMR Process**

*Parisotto, Sung, Lauger, Payne & Welker*

**Topic Summary:** This presentation will focus on upcoming changes to UR and IMR regulations and highlight trends and/or pain points concerning UR and IMR.

**Learning Objectives:** Audience members can expect to leave with a better understanding of the direction of UR and IMR regulations, including UR investigatory changes, and learn about IMR issues encountered from a process and regulatory standpoint.

### **The Great California Workers' Compensation Game Show!**

*Widener-Brightwell & Baum*

**Topic Summary:** Answer: It's the state that's no longer the most expensive and most litigious.

Question: What is California?

Sara Widener-Brightwell and Gideon Baum of CWCI will offer a detailed primer on current data and issues that drive the California workers' compensation system. The presentation will be followed by an audience participation round of "Jeopardy". No cash prizes but knowledge gained makes a lovely parting gift of continuing education credits.

**Learning Objectives:** At the completion of this session, the attendee will:

- Learn the key emerging claims trends in California Workers' Compensation and how those trends may affect both current and future accident years.
- Acquire skills in how to answer with a question.

### **Women in Law and Business**

*Lang, Levy & Mehrpoo*

**Presentation Summary:** This year, the women's panel will address the current state of gender equality, both nationally and globally, providing current statistics on women in the workplace addressing pay equity since this program started to the present. The presenters will discuss the current state of communication in the workplace, the generational gaps found in those communication methods, and



## 31<sup>st</sup> Annual DWC Educational Conference

how participants can use communication methods to better their own work lives. The panel will provide tools, resources, and a detailed discussion about how women can manage the level of communication in their workplaces to create better opportunities and equity for themselves and others while combating burnout and building better teams in both the public and private sectors. This panel will empower all participants by focusing on the importance of communication to build equity and equality in our communities.

**Learning Objectives:** 1) To educate on issues of gender equality both nationally and globally 2) provide tools and knowledge to improve access and equity and equality for women 3) discuss current challenges facing women due to global events in economics, politics, health and changing gender norms 4) provide methods of communication to recognize and combat bias while building equity and diversity in the workplace.

### **Medical Legal Terminology Explained & Obtaining Quality QME Report Writing Part II\***

*Richardson, Feinberg & Meyer*

**Topic Summary:** This course will provide a clear and comprehensive outline of essential components for a Workers' Compensation Medical-Legal Report. Review key concepts and terminology and identify statutes and regulations governing medical-legal report writing. Emphasis will be placed on real-world examples. Learn to identify common mistakes, such as insufficient documentation or inadequate analysis, that can compromise the integrity of reporting.

#### **Learning Objectives:**

- Define and understand key concepts and terminology
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### **Permanent Disability Rating Fundamentals\***

*Hampton, Ha & Ali*

**Topic Summary:** The DEU presentation will be Permanent Disability Rating Fundamentals.

**Learning Objectives:** How to understand the rating string and basic rules of rating.

### **Falls, Slips and Trips: Expensive Common Injuries**

*Huang, Daba & Jin*

**Topic Summary:** The presentation will examine the characteristics, volume, and systemic costs of slip, trip, and fall injuries in the California Workers' Compensation system using data from the DWC's Workers' Compensation Information System (WCIS). It will look at data from 2017 to 2022.

**Learning Objectives:** Attendees will understand and recognize how falls, slips, and trips are one of the most severe and common injuries experienced by workers in the workers' compensation system. Participants will understand the triggers that contribute to the high costs of these injuries along with the work experience and other characteristics of these injured workers.

## 31<sup>st</sup> Annual DWC Educational Conference

### **WC/ Labor Law Crossover: CDI & DLSE Panel**

*Hauscarriague & Cheng (Oakland) / Park (Los Angeles)*

**Topic summary:** This presentation will be a workers' compensation and labor law crossover with panel members from the California Department of Insurance (CDI) and the Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE). Each representative will discuss what their program responsibilities are towards workers' compensation.

**Learning Objectives:** To understand CDI and DLSE's roles and responsibilities towards workers' compensation.

### **QME: The Medical Legal Process and Update to the Regulations\***

*West & Richardson*

**Topic Summary:** Come learn about the QME process, report quality monitoring and new regulatory changes. This session will cover what the DWC is doing about report quality and how we monitor QME performance and what the DWC is doing to recruit physicians into the system. We will go in-depth into the updated regulations related to the QME program. The speakers will provide an analysis of how the recently adopted rulemaking is anticipated to affect the Workers' Compensation Community.

**Learning Objectives:** Understand the Qualified Medical Evaluator process and what the DWC is doing related to improving the system. Learn about updates being made to the QME regulations including increased educational requirements and subject matters to be covered in educational trainings. Updates to QME discipline.

### **OSIP**

*Asio Booz*

**Topic summary:** This session will provide information about workers' compensation self-insurance in California.

**Learning objectives:**

- 1) Requirements to be self-insured (from application process to ongoing requirements)
- 2) Requirements to be able to administer self-insured claim (from application process to ongoing requirements, including claims administration)
- 3) Regulations on reserving and the actuarial process

### **Trends in WC Fraud**

*Murphy, Pew & Cloney*

**Topic summary:** This portion of the presentation will cover how the Anti-Fraud Unit (AFU) works closely with law enforcement to fight medical billing fraud that is being committed by organized crime rings. The presentation will cover how these crime rings are expanding into the Subsequent Injuries Benefit Trust Fund, the Uninsured Employer's Benefit Trust Fund, and the Vocational Return to Work Counselor system.

**Learning objectives:** The learning objective for this presentation is to inform the audience about the role the Anti-Fraud Unit plays in fighting workers' compensation fraud, to share what fraud trends the AFU is seeing, and to provide them with places to report suspected fraud.

## 31<sup>st</sup> Annual DWC Educational Conference

### **MTUS Guidelines & Formulary**

*Meister & Shannon*

**Topic Summary:** The MTUS presentation will be of interest to anyone involved in the care of injured workers. Topics covered will include up to date reports on the status of the MTUS, the MTUS/ACOEM guidelines, MTUS formulary, and MTUS drug list. We will review the educational programs offered by the DWC and discuss new educational certifications available to a wide variety of stakeholders in the workers' comp system. The session will also include an update from the publishers of the ACOEM treatment guidelines covering the new ACOEM Navigator, Guideline content changes, how to use the Formulary tool and a discussion of what a "no recommendation" means.

**Learning Objectives:**

1. Know what the MTUS is and its component parts.
2. Learn about the DWC's online educational offerings.
3. Learn about the MTUS/ACOEM website.
4. Understand how to find content in the Clinical Practice Guideline using ACOEM Navigator
5. Know what content has been updated in the Clinical Practice Guidelines over the past year.
6. Understand how best to use the Formulary tool in conjunction with the MTUS Formulary
7. Understand how to use "no recommendation" information.