**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**MARIO RAMIREZ, *Applicant***

**vs.**

**ESG PERSONNEL LEASING, INC., LSC LARSEN'S OXNARD GRILL; SECURITY NATIONAL INSURANCE COMPANY, administered by AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ15193432**
**Santa Barbara District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the September 2, 2025 Expedited Finding and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a cook/restaurant worker on June 30, 2021, sustained industrial injury. The WCJ found that the May 7, 2025 utilization review (UR) denial of a spinal cord stimulator (SCS) trial was invalid, and that the treatment as requested by the primary treating physician (PTP) was medically reasonable and necessary.

Defendant contends that the UR denial was timely because there was no material change in fact necessitating a "re-review" by UR; that the reporting of the PTP misapplies relevant medical guidelines and does not constitute substantial evidence to support an SCS trial; and that if there is a basis to develop the record, that an independent, impartial physician be designated per Labor Code[1] section 5701.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

[1] All further references are to the Labor Code unless otherwise noted.

We have considered the Petition, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

## FACTS

Applicant sustained injury to his low back while employed as a cook/restaurant worker by defendant Larsen's Oxnard Grill on June 30, 2021. The parties have selected Steven Brourman, M.D., as the orthopedic Qualified Medical Evaluator (QME). Applicant's PTP is Michael Kenly, M.D.

On April 11, 2025, Dr. Kenly submitted an RFA for SCS trial under fluoroscopic guidance. (Ex. Y2, UR Determination, dated April 17, 2025, at p. 2.)

On April 17, 2025, defendant's Utilization Review provider non-certified the request. The UR physician observed, in relevant part:

> A prior review was non-certified due to previously completed psychiatric evaluation were not in the available history to support this request and as such, the medical necessity of this request is not established on 03/26/2025 under review 6865858. Although, they recently completed psychological evaluation and support psychological readiness for the procedure. In this case, the claimant does have radicular symptoms and has undergone extensive conservative and surgical treatments, including multiple spine surgeries, physical therapy, acupuncture, chiropractic care, and epidural steroid injections with >50% relief which they expressed interest in repeating the epidural injection, which previously provided significant relief, suggesting a potentially viable ongoing treatment path without proceeding to an invasive procedure. Given that the claimant has not exhausted all conservative treatment options, including a repeat epidural injection that previously provided significant relief. The request is not medically necessary at this time and there are no extenuating circumstances or compelling reasons to deviate from the guidelines.

(*Id.* at p. 4.)

On April 29, 2025, Dr. Kenly issued an interim PR-2 Report describing applicant as suffering from "severe discogenic disease with modic endplate changes, type 2." (Ex. 2, Report of Michael Kenly, M.D., dated April 29, 2025 at p. 1.) Applicant's medical history was positive for a microlumbar discectomy at L3-4 in October, 2022, with a recovery complicated by a dural leak, two subsequent surgeries to remediate the condition and the development of L4-L5 discitis. (*Id.* at p. 2.) Applicant subsequently underwent a fourth surgical intervention involving microlumbar discectomy in February, 2024. Diagnoses included lumbar intervertebral disc displacement

without myelopathy; lumbar intervertebral disc degeneration; lumbar radiculopathy; and infection of intervertebral disc, pyogenic. (*Id.* at p. 3.) The stated treatment plan observes that applicant has obtained "[i]nadequate relief with conservative care including NSAIDs and physical therapy," and that applicant is a "candidate for spinal cord stimulator trial given ongoing severe back and leg pain status post multiple surgeries." The report discusses the medical necessity of an SCS trial and cites the MTUS/ACOEM guidelines. (*Id.* at p. 4.) The report observes that applicant has "completed the psych clearance for spinal cord stimulator trial [and] would like to proceed." (*Ibid*.) The report further states, "NEW INFORMATION, SCS trial has been denied stating that he needs to try another ESI [epidural steroid injection]. For clarity, he just had the repeat ESI on 4/7/25. No long lasting relief." (*Ibid*.) The treatment plan indicates the provider will seek authorization for continued medication management and "spinal cord stimulator trial – NEW INFORMATION." (*Id.* at p. 5.)

On May 5, 2025, physician assistant Victoria Lindsey from Dr. Kenly's office submitted a DWC Form RFA to defendant, indicating "Resubmission – Change in Material Fact." (Ex. 1, RFA by Victoria Lindsey, PA-C, May 5, 2025.) The RFA requested, in relevant part, "spinal cord stimulator trial NEW INFORMATION with flouroscopic (sic) guidance." (*Ibid*.)

On May 7, 2025, defendant sent a letter to Dr. Kenly entitled, "NOTICE: Repeat Request for Authorization." (Ex. Y1, Amtrust UR Decision, dated May 7, 2025, at p. 2.) The letter acknowledges receipt of the May 5, 2025 RFA, stating, "[t]his is a courtesy letter to inform you that pursuant to §9792.9.l(h) the above stated treatment(s) will not be reviewed for medical necessity at this time because 1) there has been a prior review with a determination to deny or modify which shall remain in effect for 12 months from the date of the prior decision 2) the recommended treatment is from the same physician or another physician within the same practice group and 3) there has been no documented change in the fact's (sic) material to the original review decision." (*Ibid*.)

On June 19, 2025, the parties proceeded to expedited trial and framed for decision in relevant part the issue of "whether the UR denial, dated May 7, 2025, is invalid or untimely," and the reasonableness and necessity of the requested treatment. (Minutes of Hearing (Minutes), dated June 19, 2025, at p. 2:20.) The parties submitted the issue for decision on the documentary record the same day.

On July 25, 2025, the WCJ issued Findings and Orders, determining in relevant part that the UR denial of May 7, 2025 was invalid, and that the record required development as to the medical necessity of the underlying treatment. (Findings and Orders, dated July 25, 2025, Findings of Fact Nos. 2 & 5.)

On August 19, 2025, applicant filed a petition seeking reconsideration of the July 25, 2025 decision.

On September 2, 2025, the WCJ issued an order setting aside the July 25, 2025 decision, and resubmitting the matter for decision.

On the same day the WCJ issued the instant F&O, determining in relevant part that the May 7, 2025 UR denial was untimely. (Finding of Fact No. 3.) The WCJ further determined that although "the Primary Treating Physician (PTP) reports contained a procedural deficiency by not attaching a cited study as required by Title 8, California Code of Regulations (CCR), §9792.21.1 …. this deficiency is found to be de minimis." (Finding of Fact No. 4.) The WCJ "found the medical reasonableness and necessity of the spinal cord stimulator (SCS) trial, as requested by Dr. Michael Kenly, M.D., is established based on the complete medical record." (Finding of Fact No. 6.) Accordingly, the WCJ ordered defendant to provide authorize the requested SCS treatment. (Order No. 1.)

Defendant's Petition first contends that the April 29, 2025 reporting of Dr. Kenly cited incomplete sections of the Medical Treatment Utilization Schedule (MTUS) guidelines and failed to comply with Administrative Director (AD) Rule 9792.21.1(b)(1)(B) (Cal. Code Regs., tit. 8, § 9792.21.1(b)(1)(B)), which requires the attachment of relevant studies when attempting to rebut the MTUS. (Petition, at p. 3:16.) Defendant further contends that the April 29, 2025 report of Dr. Kenly does not describe a "material change in fact necessitating a re-review by UR." (*Id.* at p. 6:1.)

The WCJ's Report first addresses defendant's contentions regarding the substantiality of Dr. Kenly's reporting, acknowledging defendant's argument that the PTP "failed to provide a copy of a Canadian study he referenced to rebut the MTUS, and he selectively quoted the guidelines, omitting language that the SCS is not recommended and lacks evidence of efficacy." (Report, at p. 3.) The WCJ observes, however, that the reporting of Dr. Kenly substantively complies with the MTUS requirements for SCS trial. (*Ibid*.) With respect to the validity of defendant's May 7, 2025 denial of authorization letter, the WCJ observes:

> Defendant contends the May 7, 2025, UR denial was timely because there was no material change in fact presented in the PTP's April 29, 2025 report (Defendant's Petition for Reconsideration, p. 3). Defendant argues the report is a "mirror" of the prior report of April 11, 2025, and that the new EMG/NCV studies were not factors in the PTP's recommendation (Defendant's Petition for Reconsideration, pp. 5-7). However, the May 5, 2025, RFA explicitly checked the box for "Resubmission – Change in Material Facts" and was supported by the April 29, 2025, PTP report which noted, "NEW INFORMATION" as a reason for the visit (Exhibit A-1, RFA, p. 2; Exhibit A-2, PTP Report 4/29/2025, p. 5). The UR response on May 7, 2025, improperly invoked the 12-month rule and failed to address the new medical information, rendering the denial invalid and untimely.

(*Ibid*.)

Accordingly, the WCJ recommends we deny reconsideration. (*Id.* at p. 4.)

## DISCUSSION

### I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> > (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
> >
> > (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on October 1, 2025, and 60 days from the date of transmission is Sunday, November 30, 2025. The next business day that is 60 days from the date of transmission is Monday, December 1, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 1, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 1, 2025, and the case was transmitted to the Appeals Board on October 1, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 1, 2025.

**II.**

Defendant contends its April 17, 2025 UR decision non-certifying the request for a SCS trial was valid and precludes additional requests for the same treatment for a period of 12 months absent a change in the facts material to the original UR decision denying or modifying a treatment request.

Section 4610 provides for the resolution of medical treatment disputes through Utilization Review. Section 4610 requires that "[e]ach employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services," defining utilization review as "functions that

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians..." (Lab. Code, § 4610(a), (g); *State Compensation Insurance Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981].)

However, section 4604 continues to vest with the WCAB the authority to resolve non-medical disputes arising out of the utilization review process. Section 4604 provides that: "[c]ontroversies between employer and employee arising under this chapter shall be determined by the appeals board, upon the request of either party, except as otherwise provided by Section 4610.5." (*Dubon v. World Restoration* (2014) (79 Cal.Comp.Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131] (Appeals Bd. en banc).)

Additionally, section 4610(k) provides:

> A utilization review decision to modify or deny a treatment recommendation shall remain effective for 12 months from the date of the decision without further action by the employer with regard to a further recommendation by the same physician, or another physician within the requesting physician's practice group, for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision.

(Lab. Code, § 4610(k).)

Thus, while a timely utilization review determination is generally valid for one year, a treatment request submitted by a physician indicating documented change in facts material to the basis of the original review requires further action by the claims administrator. (Lab. Code, § 4610(k); see also Cal. Code Regs., tit. 8, § 9792.9.1(h).)

Here, a March 26, 2025 UR determination denied the SCS trial because applicant had not completed a psychiatric evaluation relevant to the proposed course of treatment. (Ex. Y2, UR Determination, dated April 17, 2025, at p. 4.) However, the April 17, 2025 UR determination acknowledged that applicant had completed the necessary evaluation which supported "psychological readiness" for the procedure. (*Ibid*.) It was further noted that applicant had "radicular symptoms and has undergone extensive conservative and surgical treatments, including multiple spine surgeries, physical therapy, acupuncture, chiropractic care, and epidural steroid injections…" (*Ibid*.) The reviewing physician noted, however, that exhaustion of conservative measures was required, and that applicant had previously experienced significant relief from

epidural steroid injections, "suggesting a potentially viable ongoing treatment path without proceeding to an invasive procedure." (*Ibid*.) Accordingly, the "claimant has not exhausted all conservative treatment options, including a repeat epidural injection that previously provided significant relief," and "[t]he request is not medically necessary at this time." In addition, the UR physician determined "there are no extenuating circumstances or compelling reasons to deviate from the guidelines." (*Ibid*.)

PTP Dr. Kenly's April 29, 2025 report responded to the adverse UR determination, observing that applicant had successfully completed the psychiatric screening necessary to verify psychological readiness for the SCS procedure. (Ex. 2, Report of Michael Kenly, M.D., dated April 29, 2025 at p. 3.) Dr. Kenly's report further states, "NEW INFORMATION, SCS trial has been denied stating that [applicant] needs to try another ESI [epidural steroid injection]. For clarity, he just had the repeat ESI on 4/7/25. No long lasting relief." (*Ibid*.) The clarification that applicant's April 7, 2025 repeat ESI provided "no long lasting relief" directly addressed the facts material to the April 17, 2025 UR decision. (Ex. Y2, Utilization Review Determination, dated April 17, 2025, at p. 4.)

Defendant declined to submit Dr. Kenly's May 5, 2025 RFA for UR, citing the April 17, 2025 non-certification, and stating that the May 5, 2025 RFA contained no change in the facts material to the prior UR decision. However, in our view the April 29, 2025 report clearly sets forth a change in the facts material to the prior UR decision, by demonstrating that the epidural injections which had previously provided long lasting relief were no longer efficacious and that applicant had effectively exhausted conservative treatment modalities. Moreover, Dr. Kenly's May 5, 2025 RFA clearly states that the resubmission is based on a "Change in Material Fact." (Ex. 1, RFA by Victoria Lindsey, PA-C, May 5, 2025.)

On this record, we concur with the WCJ's determination that the May 5, 2025 RFA and April 29, 2025 interim reporting substantiated a change in the facts material to the April 17, 2025 UR decision. The documented change in the facts material to the basis of the April 17, 2025 UR decision obviated the 12-month period otherwise applicable under section 4610(k) and AD Rule 9792.9.1(h). (See *Smith v. Marin General Hospital* (January 31, 2020, ADJ7148358, ADJ7148195) [2020 Cal. Wrk. Comp. P.D. LEXIS 20] [worsening in applicant's condition was change in fact material to previously denied UR decision warranting new UR]; *Wyant v. American Med. Response* (December 22, 2017, ADJ10034122) [2017 Cal. Wrk. Comp. P.D. LEXIS 587]

[resubmission of RFA with additional information warranted new UR notwithstanding prior UR non-certification]; *Servin v. Cerritos Lexus* (September 12, 2022, ADJ11423609) [2022 Cal. Wrk. Comp. P.D. LEXIS 261] [MRI submission constituted change in circumstance sufficient to trigger UR notwithstanding prior UR non-certification]; *cf. Shelven v. Ralphs Grocery Co.* (October 29, 2020, ADJ11017618) [2020 Cal. Wrk. Comp. P.D. LEXIS 343] [defendant not required to resubmit RFA to UR when RFA requests same treatment denied less than 12 months earlier]; *Holguin v. First United Methodist* (May 31, 2022, ADJ2529637 (AHM 0145051)) [2022 Cal. Wrk. Comp. P.D. LEXIS 154] [treating physician RFA did not demonstrate change in facts material to prior UR noncertification which remained in effect for 12 months].)

Accordingly, defendant's May 7, 2025 decision declining to authorize the requested treatment under the aegis of section 4610(k) and AD Rule 9792.9.1(h) was invalid. Defendant's failure to authorize the requested treatment or to refer the question of medical necessity to UR under section 4610 resulted in conferral of WCAB jurisdiction over the dispute. (Lab. Code, §§ 4604; 4610; (*Dubon, supra,* 79 Cal.Comp.Cases 1298.)

And in this respect, we agree with the WCJ's analysis that the record substantiates the medical necessity of the requested treatment. The WCJ's Report observes:

> The September 2, 2025, Opinion on Decision found that while the PTP did not attach the cited study, this procedural deficiency was de minimus, and did not negate the substantive weight of the medical evidence. The PTP's report was deemed substantial medical evidence based on Applicant's extensive history of four failed lumbar surgeries, failed conservative care (Exhibit A-2, PR-2, 4/29/2025, p. 4), psychological clearance for the procedure (Exhibit A-3, Psych Consult by Cindy Tafoya, p. 3), and new objective findings from the authorized April 25, 2025, EMG/NCV study, which demonstrated radiculopathy (Exhibit A-7, RFA 2/27/2025, p. 8). This finding of radiculopathy satisfies a key selection criterion for an SCS under the MTUS guidelines (Exhibit B, DIR-MTUS-Low Back Disorder, p. 181). Given this comprehensive record, Applicant met his burden of proof for the medical necessity of the SCS trial.

(Report, at p. 3.)

We also observe that the applicant has met the specified criteria under the MTUS cited in each of defendant's prior UR decisions, to wit, the psychological screening cited in the March 26, 2025 UR determination, as well as the exhaustion of conservative remedies cited in the April 17, 2025 UR determination. (Ex. Y2, UR Determination, dated April 17, 2025, at p. 4.) The April 29, 2025 report of Dr. Kenly notes that applicant had undergone psychological screening which

supported the requested SCS trial, and that the interim April 7, 2025 epidural steroid injections were no longer efficacious, as cited in the April 17, 2025 UR determination. (Ex. 2, Report of Michael Kenly, M.D., dated April 29, 2025 at p. 1.) Based on the successful psychiatric screening and exhaustion of conservative modalities described in the PTP's April 29, 2025 report and May 5, 2025 RFA, we agree with the WCJ that the reporting establishes the medical necessity of the requested treatment.

Defendant further contends the reporting of Dr. Kenly does not append the information required under AD Rule 9792.21.1(b)(1)(B) (Cal Code Regs., tit. 8, § 9792.21.1(b)(1)(B)) necessary to rebut the presumptively correct MTUS. (Petition, at p. 3:16.) The rule provides in relevant part the Medical Evidence Search Sequence for treating physicians requesting treatment for a condition that is addressed by the MTUS where the physician seeks to *rebut* the MTUS (subd. (b)(1)(B)), or in the alternative, the search sequence relevant to medical conditions *not addressed* by the MTUS (subd. (b)(1)(A)). Here, we note in the first instance that the requested treatment modality, i.e. the SCS trial, is addressed in the MTUS (see Ex. B, MTUS, Low Back Disorder, pp. 180-182). In our view, however, the PTP is not seeking to rebut the MTUS' presumption of correctness. Rather, the RFA and reporting of Dr. Kenly seek to establish that the facts of applicant's condition meet the MTUS requirements necessary to a determination of medical necessity for SCS trial, e.g., as indicated in patients with "predominant radicular pain, unamenable to surgery, with inadequate function after complying with functional restoration program components for at least 6 months who wishes to seek potential approval from a worker's compensation insurer." (*Id.* at p. 181.) We therefore decline to disturb the WCJ's determination that the reporting of Dr. Kenly constitutes substantial evidence. (Finding of Fact No. 5.)

In summary and following our review of the entire record occasioned by defendant's Petition, we conclude that the record substantiates a change in the facts material to the April 17, 2025 UR decision, such that defendant was obligated to authorize applicant's May 5, 2025 request or submit the RFA for UR. Because defendant declined to do so, the WCJ properly determined that the requested medical treatment was both reasonable and medically necessary under appropriate medical treatment guidelines. We will deny defendant's Petition, accordingly.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

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

**November 26, 2025**

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

**MARIO RAMIREZ**
**WOLFF-WALKER LAW**
**LAW OFFICE OF NATALIE KAPLAN**

**SAR/abs**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*