

Treatment Guidelines At the Board of Industrial Insurance Appeals

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This opinion represents my own considered analysis as an Assistant Attorney General assigned to represent L&I of Labor & Industries. However, it is not an official opinion of the Attorney General's Office.

Medical Treatment Guidelines are developed by the Office of the Medical Director (OMD) and IIMAC – the Industrial Insurance Medical Advisory Committee.

This is a statutory committee – RCW

51.36.140:

“The department shall establish an industrial insurance medical advisory committee. The industrial insurance medical advisory committee shall advise the department on matters related to the provision of safe, effective, and cost-effective treatments for injured workers, including but not limited to the development of practice guidelines and coverage criteria, review of coverage decisions and technology assessments, review of medical programs, and review of rules pertaining to health care issues. . . .

The industrial insurance medical advisory committee must consider the best available scientific evidence and expert opinion of committee members. The department may hire any expert or service or create an ad hoc committee, group, or subcommittee it deems necessary to fulfill the purposes of the industrial insurance medical advisory committee. In addition, the industrial insurance medical advisory committee may consult nationally recognized experts in evidence-based health care on particularly controversial issues.”

Current IIMAC Membership

Dianna Chamblin, MD
(Chair)

Andrew Friedman, MD
(Vice-chair)

Greg Carter, MD

Gregory Gutke, MD

Monica Haines, DO

Kirk Harmon, MD

Chris Howe, MD

Robert G.R. Lang, MD

JC Leveque, MD

Linda Seaman, MD

David Tauben, MD

Stephen Thielke, MD

G. Robert Waring, MD

The Medical Treatment Guidelines are found on the L&I website.

<http://www.lni.wa.gov/ClaimsIns/Providers/TreatingPatients/TreatGuide/default.asp>

Many of our guidelines are published by the National Guideline Clearinghouse.

The National Guideline Clearinghouse is a public resource for evidence-based clinical practice guidelines; it's "an initiative of the Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services."

The rigorous inclusion criteria is extensively detailed on the NGC website; one requirement is a systemic review of evidence in a way that can be verified by reviewers.

The screenshot shows the homepage of the National Guideline Clearinghouse. At the top, it features the U.S. Department of Health & Human Services logo and the Agency for Healthcare Research and Quality (AHRQ) logo with the tagline "Advancing Excellence in Health Care". The main navigation bar includes links for Home, Guidelines, Expert Commentaries, Guideline Syntheses, Guideline Matrix, Guideline Resources, Compare Guidelines, FAQ, Submit Guidelines, About, and My NGC. The "Guidelines by Topic" section is highlighted, showing a list of topics and their corresponding number of guidelines:

- Disease/Condition**
 - Anatomy (18)
 - Organisms (36)
 - Diseases (2245)
 - Chemicals and Drugs (23)
 - Analytical, Diagnostic and Therapeutic Techniques and Equipment (139)
 - Psychiatry and Psychology (403)
 - Phenomena and Processes (538)
 - Anthropology, Education, Sociology and Social (353)
- Treatment/Intervention**
 - Anatomy (79)
 - Organisms (48)
 - Diseases (155)
 - Chemicals and Drugs (1678)
 - Analytical, Diagnostic and Therapeutic Techniques and Equipment (2305)
 - Psychiatry and Psychology (765)
 - Phenomena and Processes (857)
 - Disciplines and Occupations (353)
- Health Services Administration**
 - Chemicals and Drugs (4)
 - Analytical, Diagnostic and Therapeutic Techniques and Equipment (133)
 - Psychiatry and Psychology (83)
 - Phenomena and Processes (46)
 - Disciplines and Occupations (143)
 - Anthropology, Education, Sociology and Social Phenomena (206)
 - Technology, Industry, (353)

The Medical Treatment Guidelines are *Kind of a Big Deal*, they even get archived.

Making guidelines is part of the Department's job description.

RCW 51.04.020,
Powers and duties

The director shall:

(1) Establish and adopt rules governing the administration of this title

(4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery

RCW 51.04.030,
Medical Aid

“The director shall supervise the providing of prompt and efficient care and treatment. . . at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment.”

A legislative mandate makes it the attending provider's job to follow the guidelines.

RCW 51.36.010:

“Network providers must be required to follow the department's evidence-based coverage decisions and treatment guidelines, policies, and must be expected to follow other national treatment guidelines appropriate for their patient.”

Failing to follow the guidelines is a reason for denial or removal from the network:

WAC 296-20-01050(j): “The provider has been materially noncompliant with the department's rules, administrative and billing policies, evidence-based coverage decisions and treatment guidelines, and policies and other national treatment guidelines appropriate for their patient (based on severity, recency, frequency, repetition, or any mitigating circumstances).”

See also WAC 296-20-015, Who May treat

WAC 296-20-01002, Proper and necessary

(2)(a): Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification

(2)(b): Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes.

(4): In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

The Board's View

- The Treatment Guidelines are not rules. Rather they are analogous to policies and are not binding on the Board.
- RCW 51.36.010, which entitles an injured worker to proper and necessary treatment, supersedes the Department's Treatment Guidelines.
- Therefore, if a worker can show by a preponderance of the medical evidence that the requested treatment is proper and necessary, then the Board will authorize treatment despite Department guidelines to the contrary. This is because "proper and necessary" is defined by rule whereas the guidelines are considered a Department policy.

Board Decisions

In re Paul Fish, BIIA Dec., 10 18494 (2010): Department guidelines do not provide the basis for determining whether surgical treatment of nTOS was proper and necessary, rather, the Board must consider the medical evidence presented to it.

Note, the denial of treatment was upheld here.

Paul Fish is a Board Significant Decision

In re Nena Boyer, Dckt. No. 13 19364 (December 2, 2014):
Reversed a PD&O that had relied on the guideline's
requirement for objective findings to verify nTOS
diagnosis.

What happened: Turning from the guidelines, the Board emphasized reliance on the medical evidence before it. It determined that the experts were discussing two different conditions, an acute form of TOS and a "nonspecific" version. They cited to the numerous medical professionals that supported Dr. Johansen's version. They reasoned that the two testifying medical experts who supported the unspecified version were both properly qualified and credentialed.

What did not happen: no treatment was authorized by this decision, it was only about acceptance and we know that is a low bar. This is not a significant decision.

Before you get to the Board

Make sure you are familiar with the applicable guidelines.

Send the guideline to the AP.

Send the guideline to the IME physician and ask them to use the guideline in their analysis and report.

At the Board:

- Remind the Board of the legislative directives regarding the Department's authority to establish guidelines and the requirement that treatment for any condition must be by a network physician (where applicable) who must adhere to the Department's guidelines.
- Emphasize the role of the IIMAC and the large the number of physicians who signed off on the particular guideline.
- Have your medical witness testify about the guidelines.

Thank you for your time and attention.