On behalf of the New York state Society of Orthopaedic Surgeons (NYSSOS) and over 800 physicians, fellows, and residents we represent, thank you for providing an opportunity to present our views on the workers compensation system. NYSSOS advocates for policies that foster optimal practice environments that yield high quality and efficacious orthopaedic care. Our priorities focus on improving patient's access to care, promoting public health, and facilitating the improvement of patient safety and quality of care.

By way of background, orthopaedics is the medical specialty that focuses on injuries and diseases of the body's musculoskeletal system. This complex system, which includes the bones, joints, ligaments, tendons, muscles, and nerves, allows individuals to move, learn, work, and be active. Care of the musculoskeletal system includes diagnosis of injury or disorder, treatment including surgery, rehabilitation as well as a focus on prevention. Orthopaedists can specialize in certain areas including: foot and ankle, hand and wrist, hip replacement and reconstruction, knee replacement and reconstruction, orthopaedic oncology, orthopaedic trauma, pediatric orthopaedic surgery, shoulder and elbow, spine and sports medicine. NYSSOS members are embedded in communities across New York State working in a variety of practice settings including in hospital/institutional, large and small group practices, as well as in private practice. There are over 3,000 orthopaedic surgeons providing care in the workers compensation system and NYSSOS members provide care not only to the state's youngest residents, to its workers but to its growing elderly population.

NYSSOS' mission is premised on a belief that all those in need should have access to timely, quality musculoskeletal care and treatment. Daily routines such as bathing, grooming, preparing meals, getting dressed, exercising, learning, and working become extremely limited when a person is impacted by musculoskeletal disorders (MSK) such as trauma, back and neck pain, deformity, or arthritis.

Musculoskeletal conditions are a leading cause of disability in the U.S. and one of top reasons individuals see their physician, according to the American Public Health Association. Working with orthopaedic specialists, patients who experience MSK disorders or injuries must decide the treatment option(s) that will work best for them –taking into consideration quality of life and financial implications. Early diagnosis and intervention by an orthopaedic surgeon can impact the overall direct and indirect cost of care by allowing the MSK physician to develop a treatment plan that may or may not involve surgery.

NYS Society of Orthopaedic Surgeons

150 State St. Fl. 4, Albany, NY 12207 | www.nyssos.org | Phone: 518-439-0000 | Fax: 518-207-0080

We appreciate the work on behalf of the Workers' Compensation Board (WCB) to streamline its processes. For instance, our society applauds the recent announcement that a physician's proxy may sign off on prior authorization requests that have already been medically documented. However, as you assess the current state of the worker's compensation system, we would like to highlight several issues our members continue to encounter as they strive to provide the right care at the right time for the patient. These include delays in treatment approval, denials in post-operative medications or conservative treatments, and care coordination challenges. There is a disconnect between the perception by the WCB of the improvements to the workers' compensation system, and the experience of the patient-physician encounter in the office which is resulting in increased reporting of patient frustration with clinical point-of-care delivery and delays in care.

Delays in Treatment Approval

The WCB recently announced it has been working to reduce the backlog of Level 3 prior authorization reviews (PARs). This is an important initiative as approval processes have traditionally been time-consuming, leading to delays in orthopedic surgeons obtaining authorization for necessary treatments or surgeries. These delays can significantly affect the recovery of injured workers, lead to a delayed return to work, and potentially exacerbate their conditions and prolong the overall rehabilitation process. While we applaud their efforts, our community reports this news may be a misrepresentation of how practices are working with the WCB to resolve these pending reviews.

The prior authorization review process has well-defined timeframes when it comes to Level 1 or Level 2 reviews, however, when escalated to a Level 3, it is our understanding there is no time certain for a review to take place leaving the patients and the practice in limbo. It has been reported to our Society that patients have waited 60 or more days for a response from the WCB regarding the next steps they can expect to receive in their care plan. Patients who have been assigned a Level 3 PAR have been counseled to inquire with the WCB about the current status of their review, however, the patients and care team become duly frustrated with the lack of information provided and the inability to facilitate treatment or care during this period, elongating their recovery process.

It cannot be understated that timely orthopedic care is essential for minimizing functional impairments caused by work-related injuries. Early diagnosis and appropriate treatment can prevent or reduce limitations in movement, allowing individuals to regain their normal activities sooner. Prompt intervention by orthopedic surgeons can alleviate pain and discomfort experienced by injured workers. Improving their quality of life and facilitating a more positive mindset for the rehabilitation process.

Recommendation - We strongly recommend that the Workers Compensation Board institute a time certain for Level 3 Prior Authorization Reviews allowing physicians and their care teams to provide timely access to care for their patients and prevent long-term disability caused by untreated or improperly managed musculoskeletal injuries.

Denial of Post Operative Medication and Conservative Treatments

The Society is concerned about trends from across the state regarding an uptick in denials of postoperative pain medications despite not needing prior authorization within the workers' compensation system. Additionally, medications and injections that are critical in conservative treatment to prevent joint replacement surgery have unveiled inconsistencies between policies and practices between the workers' compensation system and commercial and public payors.

For commercial insurers, Medicare, and Medicaid, one prior authorization is submitted in which the procedure and the medication are bundled. The WCB requires separate PAR submissions and approvals. This often leads to inconsistent WCB decisions (e.g., the procedure is approved but the medication denied) and significant delays in the care being delivered to the patient. The WCB process places an undue burden on the patient to acquire the medication at the pharmacy, rather than allowing the practitioner to administer the same medication that they have available, which is done for all other payors. This is because the WCB requires injections must be processed through the pharmacy benefit manager. As a result, injections are administered at the office by the health care practitioner after the patient picks up the medication from the pharmacy. Other insurers' PAR policies and decision-making criteria are clear and are uniformly followed by the insurer which makes it easy for the practice to submit appropriate PAR's and leads to efficient insurer review and approval. For example, although there is some debate about the appropriateness of injection use, individual insurers have standard policies about when its use is appropriate and consistently follow their policy in making PAR decisions.

As more details are provided by practices on the denial post-operative medication, I will be happy to share them with the committee and make recommendations.

Recommendation: Our Society recommends the Board work to provide greater consistency among itself and commercial and public payors around post-operative and injectable medications.

Coordination of Care Challenges

Coordinating care among multiple stakeholders, including employers, insurers, rehabilitation specialists, and other healthcare providers, can be complex. Communication breakdowns or lack of collaboration may hinder the seamless provision of care, potentially leading to suboptimal outcomes for injured workers. In 2020, the Expanded Provider Law (EPL) went into effect in New York State which allowed for licensed clinical social workers, acupuncturists, nurse practitioners, physician assistants, occupational therapists and physical therapists to become Board-authorized to treat injured workers, and bill in their own name. However, this expanded provider law does not extend to the coverage of services provided by the physical therapist assistant under the supervision of the physical therapist.

The relationship between orthopedic surgeons (orthopedists) and physical therapists and their assistants are a crucial collaboration within the healthcare continuum, particularly in the management and rehabilitation of musculoskeletal conditions and injuries. Orthopedic surgeons diagnose and treat musculoskeletal conditions. After an orthopedic assessment, the physician may recommend surgery, non-surgical interventions, or a combination of both.

Physical therapists work closely with orthopedic surgeons to implement the treatment plan. They focus on non-surgical approaches, including therapeutic exercises, manual therapy, and modalities, to optimize function and promote healing. After orthopedic surgery, such as joint replacement or ligament repair, physical therapists play a pivotal role in post-operative rehabilitation. They collaborate with orthopedic surgeons to ensure a smooth transition from surgery to rehabilitation, helping patients regain strength, flexibility, and function. Physical therapy assistants work under the supervision of a physical therapist and assist in performing these services except for the evaluation and modification of treatment plans. New York is the only state where PTAs cannot provide treatment to the injured worker and PTAs are allowed to treat and bill under private, Medicare and Medicaid insurances, creating a bifurcation in the delivery system. For example, if a patient slips and falls at their home and begins rehabilitation with a PT and PTA, they would not be able to be treated by the same PTA if they subsequently slip and fell at work.

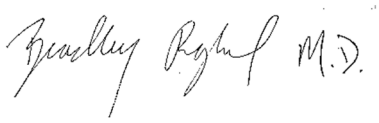
Recommendation: It is our recommendation that the New York State Legislature and the Workers Compensation Board revisit the policies for allowing the PTAs to be recognized professionals in the system.

Conclusion

Thank you for the opportunity to provide our perspective. In conclusion, we strongly recommend the Workers Compensation Board institute a time certain for Level 3 Prior Authorization Reviews, the Board work to provide greater consistency among itself and commercial and public payors around post-operative and injectable medications, and for the New York State Legislature and the Workers Compensation Board to revisit the policies allowing the PTAs to be recognized professionals in the system. The Society looks forward to working with the Workers Compensation Board and the Legislature to advance policies that prioritize care for the injured worker.

Respectfully,

A. Samuel Flemister, MD
President
NYSSOS



Bradley Raphael, MD
Chair
NYSSOS Workers' Compensation Task Force