AdMIRable REVIEW

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2018

21st Workers' Compensation EDUCATIONAL CONFERENCE

MIR PHYSICIAN SPOTLIGHT GREG KYSER, MD

IMPAIRMENTS OF THE SKIN

PHYSICIANS' CONFERENCE 2018

MIR REPORT ADMISSIBILITY

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This Saturday, March 24, 2018

Music City Sheraton, Nashville

7:00AM to 5:00PM

It's not too late to register!

This year's annual physicians' conference will be a one-day event at the Music City Sheraton, Nashville. Continuing Medical Education (CME) and Continuing Legal Education (CLE) credits are available.

Please see pages 7-9 for itinerary and registration form.

The 21st Tennessee Workers' Compensation Educational Conference

June 6-8, 2018

Embassy Suites Hotel, Nashville Southeast

For more information, click here.

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MIR PHYSICIAN SPOTLIGHT
JAMES GREGORY KYSER, MD

"Membership on the MIRR has significantly increased my visibility in the workers' compensation system," says Nashville psychiatrist Greg Kyser. "Recent reforms in the program's rules have made the process much more amenable to psychiatric reviews. I've been associated with the MIRR since its initiation and feel that it has been a significant addition to the workers' compensation process."

As an active member of the Bureau's Medical Advisory Committee since 2014, Dr. Kyser is one of the most visible physicians practicing within the Tennessee workers' compensation system. Speaking of Dr. Kyser, Dr. Robert B Snyder, the Bureau's Medical Director, recollects: "I had known Margaret and Greg for years before my participation in Workers' Compensation. For the last four years, Greg has been a valuable member of the Medical Advisory Committee as well as the MIRR. He is a rare and special talent as a psychiatrist treating injured workers. His participation in improving the system is very much appreciated. We are very fortunate to have him."

Among Dr. Kyser's many professional accomplishments is the establishment of a successful private practice, where he specializes in adult and adolescent outpatient treatment, workers' compensation treatment, and forensic psychiatry. He is a recipient of the American Psychiatric Associations Warren Williams Assembly Speaker's Award, which "recognizes recent or current outstanding activities or contributions to the field of psychiatry and mental health."

Dr. Kyser receives the Warren Williams Assembly Speaker's Award

JAMES GREGORY KYSER, MD

Dr. Kyser served as the Clinical Director of Adult Psychiatric Services at Parthenon Pavilion for nearly twenty years. As the Legislative Chairman of the Tennessee Psychiatric Association, he worked tirelessly with the American Psychiatric Association and various patient advocacy groups at both the state and federal level, advocating and then passing legislation mandating insurance parity for mental health treatment. Dr. Kyser is a past-president of the Tennessee Psychiatric Association.

Dr. Kyser and his wife, Margaret Kyser, vacationing in Jackson Hole, Wyoming.

He graduated from the University of Arkansas College of Medicine and then completed his residency at Vanderbilt University Medical Center. After becoming certified by the American Board of Psychiatry and Neurology, he served as a consultant for the Tennessee State Prison System. The following three years he served as the Director for Catholic Medical Center's Behavioral Management Program for Chronic Pain.

In his spare time, Dr. Kyser enjoys live music, reading, raising Bull Terriers, college football, travel, cooking, and frequenting local restaurants. "Our favorite restaurant is Lockeland Table in East Nashville. We love just about everything there: fried shrimp dumplings, empanadas, the weekend special ribeye and, of course, the fried pig ears."

"At home, I cook a wide variety of dishes other than fried. I just don't want to deal with the grease. My passion is cooking on an open flame—-steaks, burgers, chicken, fish, etc. I have a YouTube video on grilled red snapper that has over 250,000 views. Also, I have an Oklahoma Joe smoker, and we have gotten pretty good with BBQ. Musically, I have wide interests, but mostly blues-based music. We love going to the Ryman and City Winery. Football—I'm a Razorback. We try to make several games per year and have seen football game in every SEC venue except LSU. Wooo Pig Sooieee!"

SKIN IMPAIRMENTS, AMA *Guides,* 6th Edition

Jay Blaisdell and James B. Talmage, MD

The skin is the largest organ in the body and accounts for nearly 15% of total body weight. As a barrier against trauma, microorganisms, allergens, and ultraviolet injuries, it protects internal organs from damage and infection while regulating body temperature, fluid loss, and electrolyte balance, storing fat, vitamin D, and glucose, and providing hot/cold, sharp/dull sensory perceptions. Impairments of the skin are based on the pathology's ability to limit activities of daily living, including self-imposed limitations such as withdrawal from social interactions as a result of changes in self-image due to disfigurement.

The most common source of occupational skin disease is contact dermatitis, an inflammation caused by exposure to an allergen. Whenever possible, the MIR Physician should rely on objective evidence such as lichenification, excoriation and hyperpigmentation rather than subjective complains such as itching and pain. Patch testing, biopsy, and sensory discrimination tests are all reliable tools at the MIR Physician's disposal.

DEFINITIONS:

BOTC: Burden of Treatment Compliance. For skin disorders, this is considered when taking the patient's history and assigning and impairment class. It may include sun-exposure avoidance, regular phototherapy or application of topical medicines, and any other significant, ongoing treatment requirements.

RPPTR: Relevant positive patch test reaction. For AMA *Guides*, 6th Edition, rating purpose, "patch test reactions graded as having definite probable, possible, or past relevance should be considered to be RPPTRs." (6th Edition, 167)

SCOPE

Disfigurements of the face are rated in Chapter 11, Ear, Nose, Throat, and Related Structures, of the AMA Guides, 6th Edition, while all other skin impairments are rated in Chapter 8, The Skin. This article is limited to methodology expressed in Chapter 8, which is used in workers' compensation cases typically only for major burns and occupational skin disease (a.k.a allergic contact dermatitis).

OVERVIEW

To rate impairments of the skin, the MIR Physician records the history of the injury, evaluates the patient, and notes any objective clinical studies to diagnose the pathology in consultation with Table 8-3 on page 179. The Functional History, Physical Exam Findings, and Diagnostic Test Findings values are then assigned using Table 8-2 on page 166, with the Functional History acting as the key factor, which assigns the patient's Impairment Class, and Physical Exam and Diagnostic Test Findings each acting as non-key factors, or modifiers. Finally, the MIR Physician uses the non-key factors to modify the impairment rating from its default value within its impairment class, and the result is the final skin impairment rating, expressed as whole person impairment.

SKIN IMPAIRMENT RATING PROCESS

STEP 1: DIAGNOSE THE PATIENT'S SKIN PATHOLOGY USING THE EVALUATION SUMMARY FOUND IN TABLE 8-3.

STEP 2: USE THE PATIENT'S FUNCTIONAL HISTORY IN CONJUNCTION WITH TABLE 8-2 TO ASSIGN THE IMPAIRMENT CLASS.

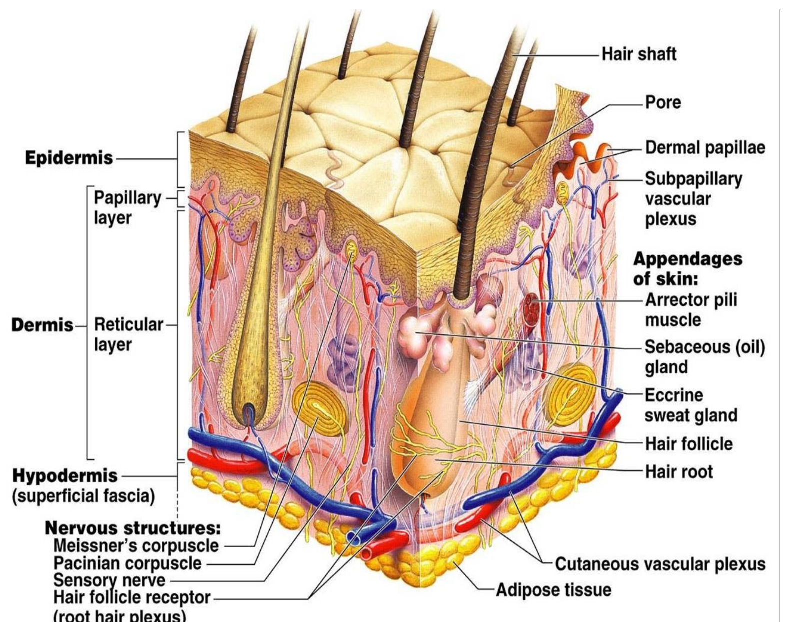
STEP 3. ASSIGN THE VALUE FOR PHYSICAL EXAMINATION AND DIAGNOSTIC TEST FINDINGS IN ACCORDANCE WITH TABLE 8-2.

STEP 4. MODIFY THE IMPAIRMENT RATING WITHIN ITS ASSIGNED IMPAIRMENTCLASS WITH THE RESULTS OF STEP 3.

STEP 1: DIAGNOSE THE PATIENT'S SKIN DISORDER

The MIR Physician takes the patient's history, notes diagnostic test results, and conducts a physical examination, using Table Table 8-3 (page 179) as a guide, to make a diagnosis. This diagnosis is not used to directly orient skin injuries within the left column of a grid, as it is for the diagnosis-based impairment method (DBI) for musculoskeletal injuries. An accurate diagnosis is still necessary to appreciate the injury's effect on ADLs (activities of daily living), severity, persistence, and prognosis, all of which help the MIR Physician choose the correct impairment class and modifiers in subsequent steps of the rating process.

The first instruction in Section 8.7 emphasizes that the diagnosis should be established using objective physical exam findings and lab tests (which would logically include biopsy reports, cultures, color photographs by a physician included in the medical record, and the results of skin patch testing).



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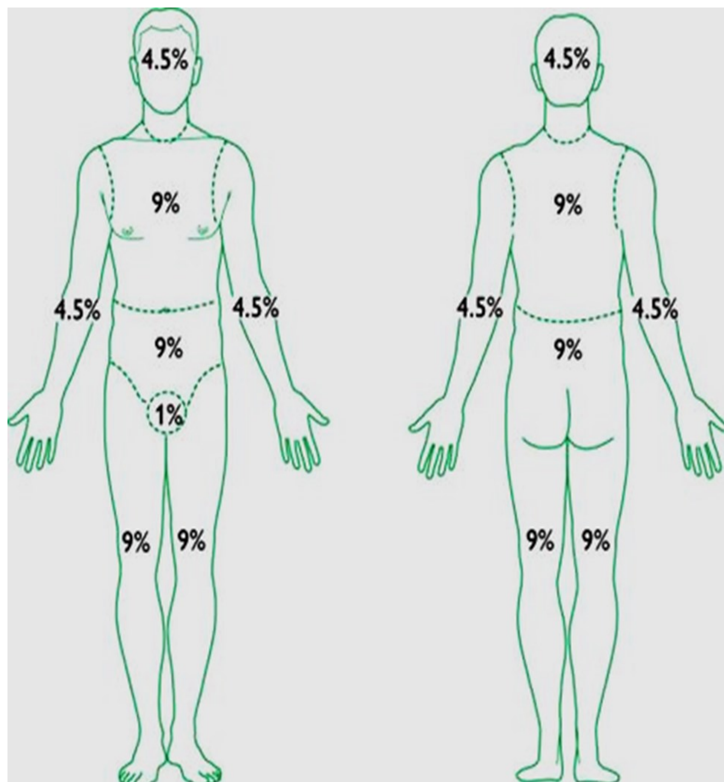
STEP 2: USE THE PATIENT'S FUNCTIONAL HISTORY IN CONJUNCTION WIH TABLE 8-2 TO ASSIGN THE IMPAIRMENT CLASS.

Of the three variables found in Table 8-2 on page 166—"History," "Physical Exam Findings" and "Diagnostic Test findings"—the patient's "History" is used to assign the skin disorder's impairment class from the 5 impairment classes provided. The center value of the impairment class, Grade C, otherwise known as the default value, is the starting point for the impairment rating before any modifications are made based on non-key factors. On the MIR Report form, "History" should be noted as the "key factor" since it is used to assign the skin disorder's impairment class.

The non-key factors, which will later be used to modify the rating within its impairment class, are Physical Exam Findings and Diagnostic Test Findings.

Of special relevance in the patient's History is the percent of time that symptoms of the disorder occur, as specified in Table 8-3. A greater percentage of time correlates with a greater impairment class. A typical week or month in the patient's life may be used to calculate this percentage of time. When using a typical week, the physician divides the total hours per week that symptoms, on average, present by 168 (total hours in a week) and then multiplies the quotient by 100. When using a typical month, the physician divides the number of days per month that symptoms present by 30 (average days in a month) and then multiplies the resulting quotient by 100. Since scars present permanently, the time percentage consideration is not used for scars

Surgery leaves scars, and the typical scars from common surgeries are not given additional ratings from the Skin chapter, as the effect of disease or injury on ADLs after recovery from surgery is typically already factored in the rating in other chapters.



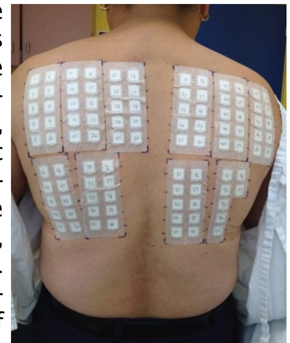
Typical burn management/treatment diagram

In addition to the percent of time that symptoms present, the frequency of treatment with topical medications and the disorder's interference with ADLs are also considered when determining the injury's impairment class.

STEP 3: ASSIGN THE VALUE FOR PHYSICAL EXAMINATION AND DIAGNOSTIC TEST FINDINGS IN ACCORDANCE WITH TABLE 8-2.

Unlike the DBI methodology found in the musculoskeletal chapters, which presents four distinct tables for determining an injury's impairment class and its three modifiers, only one table, 8-2, is used to assign a skin disorder's impairment class and its two modifiers: Physical Exam Findings and Diagnostic Test Findings.

The percentage of the body that the skin disorder affects is a special consideration in determining the value of the Physical Exam Findings modifier. A higher percentage of skin affected correlates with a higher value for the modifier. For example, a disorder that covers between 10% and 20% of the body falls in the column for Class 2, giving the Physical Exam Results modifier a value of 2. Similarly, a disorder that covers between 20% and 40% of the body falls in the column for Class 3, giving the Physical Exam results modifier a value of 3. To approximate the percentage of the body that is affected, consult a typical burn management/treatment diagram that divides the body into anatomic regions by multiples of 9.



Of consideration for determining the Diagnostic Test Findings modifier is whether a given test finding is positive or negative, and if positive, the severity of the finding. Patch test reactions, for example, the preferred diagnostic tool for assessing allergic contact dermatitis, are graded according to five different types of relevancy: unknown, past, possible, probable and definite. For 6th Edition impairment rating purposes, reactions with a grade of "unknown" are not relevant, or negative, while reactions classified as "past," "possible," "probable," and "definite" are all considered Relevant Positive Patch Test Reactions (RPPTRs). Per Table 8-2, a higher number of RPPTRs correlates with a more severe reaction and, consequently, a higher value for the Diagnostic Test Findings modifier.

STEP 4: MODIFY THE IMPAIRMENT RATING WITHIN ITS ASSIGNED IMPAIRMENT CLASS WITH THE RESULTS OF STEP 3.

While Chapter 8, The Skin, does not use the phrase "net adjustment formula" like the musculoskeletal chapters do, the same mathematical principle applies. That is, the impairment class integer is subtracted from each modifier (a.k.a. non-key factor) integer and the results are summated for the net adjustment from the default value, Grade C, at the center of the selected impairment class (see step 2). A positive net adjustment moves the impairment rating to the right of the default

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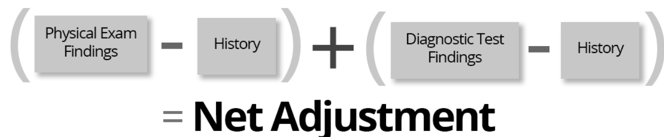
value, making the impairment higher, for a final Grade of D or E. A negative net adjustment moves the impairment rating to the left of the default value, making the impairment rating lower, for a final Grade of B or A.



Modifiers cannot move a rating into another impairment class, even if the net adjustment is more than two grades. Thus, a net adjustment of +3 or -3 will not change the impairment class, but rather move the rating to the value found for Grade E or Grade A, respectively. Since it is mathematically impossible to modify the default value in Impairment Class 4 to a higher value (Modifier 4 minus Impairment Class 4 equals 0 adjustment), +1 is added to each modifier integer before applying the net adjustment formula (subtracting the impairment class integer from each modifier integer and summating their differences). The result after modification is the final impairment rating. Since it is already expressed as whole person impairment, no conversion is necessary.

SKIN CANCER

Workers who are outdoors most of their work life can develop skin cancer from ultraviolet exposure. Squamous cell and basal cell carcinoma that have been completely excised are usually rated as Class 0. If range of motion of a joint is affected by scarring following surgical removal of one of these skin cancers, this would be rated by range of motion loss from the appropriate extremity chapter.

Melanoma may similarly be totally excised, and with no residual cancer present, like other skin cancers, this would be either Class 0 or Class 1, if restrictions on sun exposure caused ADL interference (mowing the lawn in the evening, not fishing, etc.). If melanoma is metastatic and residual tumor is present at MMI, the rating per Table 8-2 would be 58% WPI from Class 4, regardless of ADL ability.

Unfortunately, in the examples, only example 8-16 discusses skin cancer, and this example is for a congenital syndrome with more than 50 persisting cancers at the time of rating, so the examples do not help rate the occupationally occurring skin cancers.

CONCLUSION

For the individual with occupational allergic contact dermatitis, the examiner should read section 8.7 on the methodology, Section 8.1b on patch testing interpretation (including the definitions of “definite”, “probable”, “possible”, and unknown”), and the three “special situations” in Section 8.4 on page 163. Since Chapter 8 is rarely used in impairment rating in workers’ compensation cases, examiners should heed the maxim “When all else fails, read the instructions.” This means read the chapter before using the chapter.

[1]Rondinelli R, Genovese E, Katz R, et al. *Guides to the Evaluation of Permanent Impairment*. 6th ed. Chicago, IL: AMA, 2008.

LEGAL CORNER: Admissibility of MIR Reports
“Do I need to file an MIR Report and a C-30A, Final Medical Report Form, or C-32, Standard Medical Report?”

Some lawyers request that MIR physicians complete a Form C-30A or C-32 in addition to filing an MIR report. Some physicians are wary of the request. Typically, they’re very busy; plus, the forms address matters beyond an employee’s impairment rating, such as causation and maximum medical improvement.

Attorneys might seek to obtain both the completed state forms and the MIR report for trial in an abundance of caution. While diligence in protecting a client’s interests is generally laudatory, submitting the C-30A or C-32, in addition to the state MIR Report, is *probably* an extra, unnecessary step.

An appellate court has yet to address the issue since passage of the Reform Act. Among the changes is that now the Appeals Board and/or the Tennessee Supreme Court are the two adjudicative bodies that may give a definitive answer regarding the necessity of forms along with a MIR report.

That said, the Reform Act did not erase almost 100 years of workers’ compensation case law in Tennessee. *Williams v. United Parcel Service, et al.*, 328 S.W.3d 497 (Tenn. 2008) —a case pre-dating the reforms from the Tennessee Supreme Court Special Workers’ Compensation Appeals Panel—appears to squarely address the admissibility of MIR reports at trial.

Defense counsel in *Williams* filed a MIR report the day before trial. When he attempted to introduce it into evidence, the employee’s counsel objected on hearsay grounds and because the “unfairness and timeliness of the report was bothersome.” Chancellor C.K. Smith of Wilson County agreed.

On appeal, the Panel held that excluding the MIR report was error. Justice William Koch, Jr. wrote for the Panel that MIR reports “are admissible as a matter of law in the same way that reports of court-appointed neutral physicians and statements of a physician’s opinion on Form C-32 are admissible.”

The Panel reasoned that lawmakers wanted to provide an efficient method of obtaining “neutral, objective” opinions on an employee’s impairment rating to assist courts when the parties disagreed. The report qualifies as a self-authenticating official document, so that “properly prepared and certified MIR reports should not be excluded as hearsay because their admissibility is otherwise provided by law.” (The panel didn’t address the timeliness argument.)

Williams gave a fairly straightforward answer that attorneys can likely rely on presently.

Tennessee Bureau of Workers' Compensation Physician Program 2018

Special Program for Physicians and Attorneys

Saturday, March 24, 2018

The Tennessee Bureau of Workers' Compensation and the International Workers' Compensation Foundation are jointly sponsoring a special educational conference for physicians and attorneys focusing on medical topics of particular importance to physicians, attorneys, nurse practitioners, physician assistants, and medical and administrative staff.

Who Should Attend?

The conference is directed to physicians, attorneys, medical and administrative staff and other professionals who are interested in medical determinations involving Tennessee Workers' Compensation claims.

Registration Fee

Registration Fee
Before February 15, 2018: $300

Registration Fee
On or After February 15, 2018 $350

Location

Sheraton Music City Hotel
777 McGavock Pike • Nashville, TN 37214 • Telephone: (615) 885-2200

A block of rooms has been reserved at the conference hotel at the rate of $162, available 3 days prior and post based on availability. Rooms will be held through February 23, 2018, unless this block becomes fully reserved prior to this date. Call (888) 627-7060. Indicate you are attending the Tennessee Workers' Compensation Physicians Conference and give the group name Bureau Workers' Compensation when making your reservations.

Continuing Education

The Tennessee Bureau of Workers' Compensation Physician Education Program is jointly sponsored by the International Academy of Independent Medical Evaluators (IAIME) and the Tennessee Bureau of Workers' Compensation (BWC). The IAIME is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. Application is pending for continuing medical education (CME) credit for physicians and continuing legal education (CLE) credit for attorneys.

Exhibitor and Sponsorship Opportunity

Exhibitors and sponsors are invited to register for the Physician Program. For more information, contact the International Workers' Compensation Foundation at IWCF@bellsouth.net or (386) 677-0041.

21st Tennessee Educational Conference June 6-8, 2018

In addition to the special physicians program, the 21st Tennessee Workers' Compensation Educational Conference is scheduled for Wednesday - Friday, June 6-8, 2018, at the Embassy Suites Nashville Southeast in Murfreesboro. For the Conference Agenda and registration information, including attendees, exhibitors and sponsors, go to https://www.tn.gov/workforce/injuries-at-work/bureau-announcements.html or contact the International Workers' Compensation Foundation at iwcf@bellsouth.net.

Tennessee Bureau of Workers' Compensation
Physician Education Program 2018

Medical Services in Workers' Compensation Present and Future

Agenda & Topics

Saturday, March 24, 2018

7:00 am - 7:30 am	**Continental Breakfast & Registration**
7:30 am - 7:45 am	**Welcome & Introduction** *Dr. Robert B. Snyder, Medical Director, Bureau of Workers' Compensation*
7:45 am - 8:45 am	**Causation: Medical** *Dr. James Talmage, Assistant Medical Director, Bureau of Workers' Compensation*
8:45 am - 9:30 am	**Causation Report Writing for the Treating and IME Physician** *Dr. James Talmage, Assistant Medical Director, Bureau of Workers' Compensation* *Honorable Kenneth Switzer, Chief Judge, Court of Workers' Compensation Claims*
9:30 am - 9:45 am	**Break**
9:45 am - 10:30 am	**Advocacy Challenges for the Injured Worker in 2018** *Jason Denton, Member Attorney, Rochelle, McCulloch & Aulds, PLLC*
10:30 am - 11:15 am	**New Aspects of Return to Work** *Dr. James Talmage, Assistant Medical Director, Bureau of Workers' Compensation*
11:15 am - 12:30 pm	**Special Considerations for the Treating Physician in Workers' Compensation, the Colorado Program** *Dan H. Sung, Manager of Medical Policy, Colorado Division of Workers' Compensation*
12:30 pm - 12:45 pm	**Lunch Provided**
12:45 pm - 2:00 pm	**Colorado Initiatives for Quality Improvement for Treating Providers** *Dan H. Sung, Manager of Medical Policy, Colorado Division of Workers' Compensation*
2:00 pm - 3:15 pm	**The Present and Future of Pain Management in Workers' Compensation, Including Medical Marijuana** *Dr. Jeffrey Hazlewood, Board Certified in Physical Medicine and Rehabilitation, subspecialty Board Certification in Pain Medicine*
3:15 pm - 3:45 pm	**Treatment Guidelines and the Drug Formulary: How to Use ODG to Avoid Delays and Denials** *Dr. Robert B. Snyder, Medical Director, Bureau of Workers' Compensation*
3:45 pm - 4:00 pm	**Break**
4:00 pm - 4:30 pm	**Medical Impairment Rating Registry (MIRR), Present and Future** *Jay Blaisdell, MIRR Program Coordinator* *Dr. James Talmage, Assistant Medical Director, Bureau of Workers' Compensation*
4:30 pm - 5:00 pm	**Three Case Presentations, System Friction Points and Discussion** *Panel*

Registration Form
Tennessee Bureau of Workers' Compensation
Physician Education Program 2018
March 24, 2018 • Registration Fees:

Registration fee includes conference admission, materials, break & lunch and CME or CLE credits.

Registration Fee Before February 15th:

_______ $300

Registration Fee On or After February 15th:

_______ $350

Please Specify

☐ Payment by credit card. Fax this form to (386) 677-0155.

☐ Check enclosed. Make payable to IWCF and mail to IWCF, 570 Memorial Circle, Suite 320, Ormond Beach, FL 32174.

Name: ____

(Please PRINT name as you wish it to appear on your name tag)

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City: ______________________________ State: __________ Zip: ____________

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Amount ________________ Name on Credit Card ______________________________

Credit Card Billing Address *(must match billing address at issuing bank)*

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City ______________________________ State ____________ Zip ____________________

Credit Card Number ______________________________ Expiration Date (MMYY) ____________________

Credit Card CVV2 *(3 digit number on back of Visa/MC, 4 digits on front of AMEX)* ____________________

Date ______________________________

LODGING - The Sheraton Music City Hotel is located at 777 McGavock Pike,Nashville, TN 37214. A block of rooms has been reserved at the rate of $162.00 plus applicable taxes. This rate will be available through February 23, 2018, unless this block becomes fully reserved prior to this date. Call the hotel's direct number, (888) 627-7060 and give group name Bureau Workers' Compensation. Hotel reservations alone do not guarantee admission to the conference.

CANCELLATION REFUND POLICY - Cancellation of pre-registration must be made before 5:00 pm on March 16, 2018. Substitution of personnel is recommended in lieu of cancellation after that date. The full registration fee will be forfeited if you fail to attend or cancel timely.

SPECIAL NEEDS - Individuals attending the conference who may need auxiliary aids or special services are requested to provide notice of their needs in writing no later than 10 working days before the conference so that appropriate arrangements can be made.

DRESS CODE - Casual clothing is appropriate for all events.

For additional information contact the IWCF at
(386) 677-0041, Fax (386) 677-0155, or Email IWCF@bellsouth.net

The Tennessee Department of Labor and Workforce Development is committed to principles of equal opportunity, equal access, and affirmative action.
Auxiliary aids and services are available upon request to individuals with disabilities.
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