

# SUMMARY OF THE 2009 REGULATIONS



**ANNE E. HERNANDEZ, SENIOR PARTNER  
EDWARD L. HUMMER, ASSOCIATE ATTORNEY**

**MULLEN & FILIPPI, LLP  
3700 OLD REDWOOD HIGHWAY, SUITE 108  
SANTA ROSA, CA 95403**

# Panel QME Regulations (Revised Effective February 2009)

## **§ 30 QME Panel Requests:**

Requires new forms; different form depending on whether the applicant is represented or unrepresented.

- (a) Unrepresented cases use new Form 105.
- (b) Represented cases use new Form 106.
- (c) Incomplete forms will be returned to the requesting party and result in delay in issuing the Panel.
- (d) The employer/claim administrator may request a Panel pursuant to Labor Code § 4060 only during the 90 day period for rejecting liability. Once a claim is accepted, a request for a QME panel may only be made based on a dispute arising under §§ 4061 or 4062.

## QME Panel Selection

Any physician who has served as a primary treating physician and/or who has provided treatment to the applicant is ineligible to be a QME.

In order to issue a Panel in any specialty, there must be at least 5 active QMES in that specialty.

## **§ 31 Panel Selection Disputes – Represented Applicants**

Submission of Form 106 is a “horserace” – the first to arrive at the medical director is the one used to fill the request.

If the requests arrive on the same date, the following method is used to make the selection:

- If the requested specialty is the same as the treating physician, the Panel will issue in that specialty;
- If no party requests a Panel in the specialty of the treating physician, the medical director will select the appropriate specialty;
- If the medical director is unable to issue a Panel within 30 days, any party may seek an order from the Workers' Compensation Judge that a Panel issue and the specialty of the QME.

For Unrepresented Applicants, the procedure in Labor Code § 139.2(h)(1) applies – if the QME Panel does not issue within 15 working days the employee may select a QME of his/her choice.

**§ 31.3 Scheduling Appointment With QME - Unrepresented applicants:**

Within 10 days of receipt of the QME list, the employee must choose a QME, schedule an appointment and inform the employer/claim administrator of the selection.

If the unrepresented applicant fails to make the selection or schedule the appointment within 10 days, the employer/claim administrator may schedule the appointment per Labor Code § 4062.1(c).

**§ 31.5 Replacement Requests**

The medical director may replace a name on a QME Panel, or the entire Panel under the following circumstances;

1. A QME named on the Panel does not practice in the specialty requested
2. A QME is unable to schedule the employee’s appointment within 60 days (90 days if time is waived per 8 CCR 333(e) )
3. The employee changes residence outside the Panel’s geographic area.
4. A QME who reported previously is no longer available.
5. A QME named on the Panel list is/was the applicant’s treating physician.
6. The QME fails to issue a report within 30 days as required by Labor Code §4062.5 and 8 CCR 38 (the party requesting the new QME must have timely objected to the delay).

**§ 32 QME Obtaining Consulting Reports**

When the QME determines that a consultation with another specialist is necessary, the QME must arrange the referral and appointment.

The parties may not communicate directly with the consulting physician; all communication (including any reports, records, etcetera) must be in writing directed to the QME who “may” forward such communication to the consultant “as appropriate” (emphasis applied).

### **§ 34 Appointment Notification and Cancellation**

The QME must schedule an appointment within 60 days of the parties' requests; the appointment may be cancelled and rescheduled to a date not more than 90 days from the original request if the parties waive the delay.

Failure to receive medical records is not good cause for a QME to cancel an appointment; the QME should complete the evaluation and issue a report citing the lack of records.

### **§ 35 Communication With QME**

A party wishing to provide documents and/or correspondence to the QME must serve the documents on the opposing party at least 20 days before the information is to be provided to the QME. The material served on the opposing party must include a log attached to the front of the records itemizing each item served.

The following language must be included in a cover letter to the employee: *"Please look carefully at the enclosed information. It may be used by the doctor who is evaluating your medical condition as it relates to your workers' compensation claim. If you do not want the doctor to see this information, you must let me know within 10 days"*.

If the opposing party objects within 10 days to any non-medical records or information, those records shall not be sent to the QME without an order from a Workers' Compensation Judge.

If the unrepresented employee schedules the appointment with the QME within 20 days of receipt of the Panel, the defendant need not comply with the 20 day time frame for sending medical information in Sub Section C. However, the defendant still must serve the non-medical information to the employee 20 days before sending to the QME.

### **§ 35.5 Reports**

If the employee's injury involves the same body part(s) and the parties are the same as a previous industrial injury claim, the parties shall utilize, to the extent possible, the same evaluator who reported previously. (See the detailed information requested on Form 105 and 106.)

The QME must make himself/herself available for deposition within 120 days of the notice of deposition.

In the case of an unrepresented applicant, once a QME issues a report finding the applicant maximum medical improved, describes impairment or apportionment, the QME shall not issue a supplemental report until after the DEU has issued an initial summary rating or unless the QME is directed to do so by the DEU, the Administrator Director or a Workers' Compensation Judge.

A party wanting a supplemental report pursuant to 8 CCR Section 10160(f) may do so only by sending the request for a supplemental report, within the time limit of 8 CCR 10160(f) directly to the DEU office where the report was served and not to the evaluator until after the summary rating has been issued.

### **§ 36.5 Injury to the Psyche**

Provides the QME 2 options for serving the report on the injured worker, but requires that in all situations, the report must also be served on the treating physician.

If the QME determines that the contents of the report should not be seen directly by the injured worker, the report is to be served only on a physician designated by the employee (does not need to be the treating physician). If the employee does not designate a physician for service, the QME may serve the report on the treating physician.

If the QME does not determine that the contents of the report are detrimental to the employee, the QME may ask the employee if he or she wishes to voluntarily use an alternate method of service.

A defendant is required to pay for a single visit with the physician designated to review the report with the employee.

### **§ 38 Time Frames**

The time frame for issuing both initial and follow up with QME evaluation reports is 30 days from the commencement of the evaluation, unless the QME requests an extension.

If the QME fails to issue a timely report, either party may request a replacement QME and neither is responsible for the cost of the late report.

The party requesting a new QME because of a late report must timely raise the objection. Failure to object before receipt of the report is a waiver of the objection and no new QME panel will issue.

The time frame for a supplemental report is no more than 60 days from the date of the request. The parties may stipulate to a 30 day extension of time without the need for approval of the medical director.