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## QMEs, Division In Telemedicine Dispute

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The group of qualified medical evaluators (QMEs) pressing the Division of Workers' Compensation to authorize remote med-legal evaluations were less than impressed with the Department's non-committal response to the request. The Division says it is encouraging "creative delivery methods" during the current state of emergency but is "not authorizing any particular course of action."

"It's like a lawyer reserving their right to sue you," says attorney Nick Roxborough of the Division's response, and he should know. "Do what you think is best, but we're still reserving the right to sue you." Roxborough, of the firm Roxborough Pomerance Nye & Adreani, wrote the letter requesting Division approval for conducting med-legal evaluations remotely. He is representing over 100 QMEs, as well as the California Society for Industrial Medicine and Surgery (CSIMS) and several medical management companies active in the QME system.

The dispute is more evidence of the bad blood between the QME community and the Division. QMEs have been waging a multi-year campaign to get an increase in the med-legal fee schedule (MLFS) while the Division has cracked down on what it sees as irresponsible billing practices. The issues are on-going.

DWC issued a Newslines providing guidance on medical evaluations during the state of emergency caused by the COVID-19 pandemic. Gov. Gavin Newsom issued a statewide shelter in place order that calls on Californians to stay home and avoid any unnecessary excursions.

Roxborough's letter asked the Division to issue an emergency regulation specifically allowing QMEs to perform evaluations via telemedicine during the current COVID-19 outbreak not only to keep the cases moving but also to protect the health and safety of injured workers and the QMEs alike. "As you may be aware, a large portion of the QME industry is over 65 years of age. Consistent with their safety as well as the safety of injured workers, utilizing telemedicine during this outbreak, for evaluations, is sensible for several reasons," he wrote.

The Division's response: "DWC is currently evaluating the feasibility of telemedicine for QME evaluations and will continue to do so. The use of telemedicine for a QME evaluation may be appropriate where all parties agree that there is a medical issue in dispute which involves whether or not the injury is AOE/COE (Arising Out of Employment / Course of Employment), and all parties to the action, including the physician, agree to a telemedicine evaluation in order to resolve this dispute," the Division wrote.

"Although DWC is not authorizing any particular course of action, the division recognizes that in this time of medical emergency, creative delivery methods of essential medical treatment and evaluation services may be needed."

## Clarity Sought

Gabor Vari, CEO of California Medical Evaluators, called the Division's response a step in the right direction but still deficient and inadequate. "It is not definitive and provides no clear direction to the QME community," he tells Workers' Comp Executive. "These are the elements the policy clearly needs to state in order for it to be effective:

- All remote QME evaluations should be clearly and unconditionally allowed. There should not be qualifying language such as 'may be appropriate' and a remote evaluation should not be subject to approval by both parties. Requiring both parties to consent to a remote evaluation is counterproductive because 1) it unnecessarily increases the administrative burden on the QME to request and obtain such consents and 2) it provides a clear path for either party to delay the evaluation if they wish to do so. Granting the parties a path to delay evaluations is contrary to the intent of a remote evaluation policy.
- Additionally, the DWC's requirement to have an issue of AOE/COE be in dispute in order for the evaluation to be performed remotely makes no sense. Many QME evaluations do not have an AOE/COE issue disputed. Does the DWC honestly intend to delay these evaluations? This appears to be an arbitrary requirement with no rationale provided.
- Insurance carriers should have no right to withhold payment or object to an evaluation on the basis that it was conducted remotely. The Newslines does not comment on this and, absent such clear language from the DWC, we anticipate more litigation and friction from QMEs needing to go to court over denied payments for this reason. Bad actors in the insurance industry will capitalize on DWC's lack of a definitive policy to delay and withhold payments to QMEs."

DWC officials did not respond to questions about when its evaluation would be completed and would not elaborate on its reasons for not issuing a definitive answer on the telemedicine question.

## Appointment Cancellations

The Division's Newslines also addressed appointment cancellations due to the current public health crisis. DWC regulations require QMEs to give at least six business days' notice if they need to cancel an appointment or potentially face sanctions.

"Given the current COVID-19 emergency, QMEs that cancel appointments fewer than six business days before an appointment may assert that they had good cause to do so," the Division wrote. In an earlier communication between DWC medical director Dr. Ray Meister and Dr. Jacob Rosenberg of CSIMS, Meister explained that the Division is unable to suspend the regulations governing appointments and cancellations. However, he explained that "we anticipate that following applicable public health guidance and the appropriate practice of medicine will not be a reason to issue a violation."

The Division recommends that when an appointment is canceled or rescheduled that QMEs inform all parties as soon as possible and that they document the reason for the change. "The current state of emergency regarding the COVID-19 pandemic presents serious public health concerns, and parties and evaluators are encouraged to work together to take any action that may be necessary to protect the health of doctors, their staff and injured workers," the Division says, noting that it will reschedule a planned QME examination that was set to be held in late April.