Case Law Focus: QME Panels

REQUESTING A QME PANEL

- May request a QME panel pursuant to LC sections 4060, 4061 or 4062
- Unrepresented employee – governed by LC section 4062.1
- Represented employee – governed by LC section 4062.2

- What is the triggering event for requesting a panel under section 4060?
  - *Bahena v. Charles Virzi Construction* (December 17, 2014, ADJ9417754) [2014 Cal. Wrk. Comp. P.D. LEXIS 638]
    - "Once a denial letter is issued, if a medical evaluation is required to determine compensability, no purpose is served by holding up that process until one party sends a letter to the other to initiate the process. The same applies to cases where the employee is represented."
    - Party must wait requisite ten days from the denial notice before submitting QME panel request. (See *Reyes v. His Life Woodworks* (November 1, 2017, ADJ10542261, ADJ10738226) [2017 Cal. Wrk. Comp. P.D. LEXIS 512].)

- Can a party obtain a new panel if a panel issued when the employee was unrepresented, but the employee has not received a comprehensive medical-legal evaluation from that panel?
  - *Romero v. Costco Wholesale* (2007) 72 Cal.Comp.Cases 824
    - A "comprehensive medical-legal evaluation is 'received' when the employee attends and participates in the medical evaluator's examination."
    - If the employee has not attended and participated in the examination by the panel QME while unrepresented and then becomes represented, may request a new QME panel.

- Is the new panel required to be in the same specialty as the original panel?
  - *City of Tracy v. WCAB* (*Luckhardt*) (2019) 84 Cal.Comp.Cases 838 (writ den.)
    - Employee's panel request upon becoming represented is for a "new" panel, which means the employee may designate the panel specialty as the requesting party.

- No requirement the new panel be in the same specialty as the original panel.

WAYS TO OBTAIN A REPLACEMENT QME PANEL

- Replacement panel request per Administrative Director (AD) Rule 31.5(a)
  - Enumerates 16 circumstances under which a party may request a replacement QME panel.
- Ex parte communication per LC section 4062.3
  - Aggrieved party elects to terminate the evaluation due to the opposing party's ex parte communication with the AME/QME and does so within a reasonable time following discovery of the prohibited communication.

APPOINTMENT SCHEDULING

AD Rule 31.5(a)(2): "A QME on the panel issued cannot schedule an examination for the employee within sixty (60) days of the initial request for an appointment, or if the 60 day scheduling limit has been waived pursuant to section 33(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within ninety (90) days of the date of the initial request for an appointment."

- LC section 4062.2(d): Employee is responsible for arranging the examination appointment, but employer may arrange the appointment upon the employee's failure to inform the employer of the appointment within 10 days after the QME has been selected.
- AD Rule 31.3(d)-(e): Outlines procedures for scheduling an appointment with the QME and the right to waive a replacement panel if the scheduling party is unable to obtain an appointment within 60 days.

- Which party can request a replacement panel per AD Rule 31.5(a)(2)?
  - *Brown v. Charter Communications, LLC* (September 10, 2019, ADJ11114995) [2019 Cal. Wrk. Comp. P.D. LEXIS 372]
    - Represented employee has the exclusive legal right to schedule the appointment with the QME during the first ten business days after the QME is selected.

        - Employee may relinquish this exclusive right by consenting or requesting that the employer schedule the appointment.
    - Once those ten days expire, either party may schedule the appointment with the QME, i.e., the parties concurrently hold the legal right to schedule the appointment.
    - The scheduling party has a unilateral right to waive the 60-day requirement and accept an appointment within 90 days of the initial appointment request.
        - The non-scheduling party may not request a replacement panel based on the QME's inability to set an appointment within 60 days if the appointment is set within 90 days.
    - If an appointment with the QME cannot be set within 90 days, either party may request a replacement panel.

- What is the starting point for measuring the requisite appointment timeframes and can a QME's original inability to schedule within the timeframes be cured?
    - *Adney v. Americold Logistics, LLC* (September 13, 2019, ADJ8627591) [2019 Cal. Wrk. Comp. P.D. LEXIS 431]
        - Starting point for measuring the 60/90-day timeframe is the date when the initial appointment request is made by a party.
        - Party may cure the QME's inability to schedule within 90 days by later securing an appointment within that timeframe as measured from the date of the initial appointment request.

- Can a party request a replacement panel per AD Rule 31.5(a)(2) based on the QME's inability to schedule a re-evaluation within 90 days?
    - *Short answer – NO.*
    - *Cienfuegos v. Fountain Valley Sch. Dist.* (May 12, 2011, ADJ6640151) [2011 Cal. Wrk. Comp. P.D. LEXIS 206]
        - AD Rule 31.5(a)(2) only applies to initial requests for examination, not to requests for re-examination.

SPECIALTY

AD Rule 31.5(a)(10): "The Medical Director, upon written request, filed with a copy of the Doctor's First Report of Occupational Injury or Illness (Form DLSR 5021 [see 8 Cal. Code Regs. §§14006 and 14007) and the most recent DWC Form

PR-2 ("Primary Treating Physician's Progress Report" [See 8 Cal. Code Regs. §9785.2) or narrative report filed in lieu of the PR-2, determines after a review of all appropriate records that the specialty chosen by the party holding the legal right to designate a specialty is medically or otherwise inappropriate for the disputed medical issue(s). The Medical Director may request either party to provide additional information or records necessary for the determination."

- LC section 4062.2(b): Party submitting the panel request "shall designate the specialty" of the QME.
- See also AD Rule 30.5: Medical Director must use specialty chosen by requestor.
- AD Rule 31.1(b): "Disputes regarding the appropriateness of the specialty designated shall be resolved pursuant to section 31.5(a)(10) of Title 8 of the California Code of Regulations. Either party may appeal the Medical Director's decision as to the appropriateness of the specialty to a Workers' Compensation Administrative Law Judge."

Ramirez v. Jaguar Farm Labor Contracting, Inc. (2018) 84 Cal.Comp.Cases 56 [2018 Cal. Wrk. Comp. P.D. LEXIS 442]

- Employee claimed injury to the upper extremities and her attorney requested a chiropractic QME panel.
- Defendant objected to the panel specialty and requested a replacement panel in orthopedics per AD Rule 31.5(a)(10).
- The Medical Unit issued a response letter to defendant's request stating: "The contested claim involves surgery and the use of prescription medication that is outside the scope of practice of a Chiropractor. A medical specialty change to Orthopedic has been approved."
- The Appeals Board held that although a chiropractor may not perform surgery or prescribe medications, a chiropractor may act as a QME.
  - QMES are prohibited from treating or soliciting to provide treatment per AD Rule 41(a)(4) and therefore, the employee's specific treatment needs are irrelevant to whether chiropractic is a medically appropriate specialty.
  - QMEs are also restricted from commenting on current medical treatment disputes per AD Rule 35.5(g)(2).
- QMEs must complete a course of instruction in disability evaluation report writing and chiropractic QMEs are required to be certified.
- The parties were ordered to utilize the chiropractic QME panel.

- See also *Tallent v. Infinite Resources, Inc.* (March 19, 2014, ADJ7756026) [2014 Cal. Wrk. Comp. P.D. LEXIS 141]

Summary rejection by the Medical Unit of a chiropractic QME panel in lieu of an orthopedic QME panel has not withstood scrutiny following *Ramirez*.

- *Lemus v. Motel 6/G6 Hospitality* (June 27, 2019, ADJ11595561, ADJ11602485) [2019 Cal. Wrk. Comp. P.D. LEXIS 262]
  - The Appeals Board upheld WCJ's decision rejecting Medical Director's determination regarding the appropriate specialty, where a replacement panel in orthopedics was issued based solely on the employee's use of prescription medication.

- *Resendiz v. Tambro, Inc.* (August 16, 2019, ADJ11426145) [2019 Cal. Wrk. Comp. P.D. LEXIS 325]
  - Medical Director issued a replacement panel in orthopedics based on the employee's use of prescription medication as outside the scope of practice of a chiropractor.
  - The Appeals Board overturned the WCJ's decision that the QME panel in orthopedics is the correct panel and found that the chiropractic panel is the correct one.
  - Decision noted that the QME must advise the parties at the "earliest opportunity…of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency" per AD Rule 35.5(d).
    - If issues arise that a chiropractic QME is unable to address, the parties may seek an additional panel in another specialty.

Barroso v. Hartnell College (September 12, 2019, ADJ11211443) [2019 Cal. Wrk. Comp. P.D. LEXIS 426]

- Employee claimed injury to multiple body parts and obtained a chiropractic QME panel.
- Defendant sent the Medical Unit a request for a replacement panel in internal medicine or orthopedic surgery.
- The matter went to an expedited hearing on several issues including whether the specialty of chiropractic was medically or otherwise inappropriate for the disputed medical issues.

- Medical Unit issued a response letter to defendant's request (after the hearing) saying:
  - "[T]here is no evidence of a work related injury on or near the date of November 21, 2014." Therefore, there was "no credible medical reason to have issued any panel to Ms. Barroso, in which case [a WCJ] can be asked to withdraw the chiropractic panel (the Medical Unit does not have the authority to withdraw a panel that has been issued)."
- The Appeals Board affirmed the WCJ's decision that the parties must use the chiropractic panel.
  - Footnote noted that the Appeals Board, and "not the Medical Unit, 'is vested with full power, authority, and jurisdiction to try and determine' all workers' compensation claims" per LC section 5301.

Porcello v. State of California Department of Corrections and Rehabilitation (January 21, 2020, ADJ11998601, ADJ12389163)

- Employee obtained two chiropractic QME panels to evaluate two of his three claims.
- Defendant objected to the Medical Unit that the specialty of both chiropractic panels was medically or otherwise inappropriate, and argued that the parties had agreed to utilize the QME from the first claim as the medical-legal evaluator for all three claims.
- The matter went to an expedited hearing on several issues including whether the two chiropractic panels were medically or otherwise inappropriate.
  - The Medical Unit had not issued a response to defendant's request for a replacement panel by the time of the hearing.
- The WCJ found that the first QME is not the panel QME for the two other claims. The WCJ also found that defendant's dispute regarding the panel specialty was premature for determination and ordered the parties to await determination by the Medical Unit regarding the specialty.
- The Appeals Board granted defendant's Petition for Reconsideration and held that the parties are not required to await determination from the Medical Unit regarding the panel specialty before a WCJ can address this issue.

- The panel expressly disagreed with the analysis in *Portner v. Costco* (October 6, 2016, ADJ10333370, ADJ10333371) [2016 Cal. Wrk. Comp. P.D. LEXIS 499]).

Gloria Lopez Contreras v. Randstad North America (January 22, 2020, ADJ12431303)

- While in pro per, applicant obtained a chiropractic QME panel.
- Defendant objected to the specialty of the panel to the Medical Unit and requested a panel in orthopedics.
- Medical Unit issued a response letter to defendant's request saying:
  - "In short, there is no consistent description of symptoms and corroborative findings that pointed to the presence of an objective injury or other medical cause in Ms Lopez for the symptoms described, or lingering of the symptoms, or that caused impairment."
  - The Medical Unit's letter concluded that "to give Ms Lopez the opportunity for an occult condition to be recognized, and in light of 8 CCR §§ 31.5(a)(9) and 31.5 (a)(10), an orthopedic QME, educated and experienced with a range of musculoskeletal injuries, their treatment, and expected outcome, is appropriate, and a chiropractor is not appropriate to evaluate Ms Lopez."
- The Appeals Board upheld the WCJ's determination that chiropractic is not a medically or otherwise inappropriate QME panel specialty for this matter.
  - In its decision, the panel held that determination of causation is within the Appeals Board's exclusive jurisdiction and not with the Medical Director.
  - The panel also held that a determination from the Medical Director regarding the specialty will be considered in determining the appropriate panel specialty if it is part of the record, but "is not dispositive and may be disregarded if it is not substantial evidence."

<u>TIMELINESS OF REPORTING</u>

AD Rule 31.5(a)(12): "The evaluator failed to meet the deadlines specified in Labor Code section 4062.5 and section 38 (Medical Evaluation Time Frames) of Title 8 of the California Code of Regulations and the party requesting the replacement objected to the report on the grounds of lateness prior to the date the

evaluator served the report. A party requesting a replacement on this ground shall attach to the request for a replacement a copy of the party's objection to the untimely report."

- LC section 4062.5: "If a qualified medical evaluator selected from a panel fails to complete the formal medical evaluation within the timeframes established by the administrative director pursuant to paragraph (1) of subdivision (j) of Section 139.2, a new evaluation may be obtained upon the request of either party, as provided in Sections 4062.1 or 4062.2."
- AD Rule 38: QME has 30 days from the evaluation to issue an initial medical-legal report.

When does a party need to object to a report as untimely in order to request a replacement panel per AD Rule 31.5(a)(12)?

- *Fajardo v. WCAB* (2007) 72 Cal.Comp.Cases 1158 (writ den.)
  - A party cannot wait until after receipt of an untimely report to make an objection based on timeliness and request a replacement QME panel.
  - Party must object to the report as untimely prior to the date the evaluator served the report.

What if a party objects to a report as untimely after service of the QME's report, but before its receipt?

- *Charkchyan v. WCAB* (2010) 75 Cal.Comp.Cases 1183 (writ den.)
  - QME served his report on 4/24/2009, one day after the 30-day timeframe.
  - Applicant objected to the report as untimely on 4/28/2009 before receipt of the report.
  - The Appeals Board affirmed the WCJ's decision that applicant's objection was untimely.
  - An objection issued after service is not "prior to the date the evaluator served the report."

Is a party entitled to a replacement panel per AD Rule 31.5(a)(12) if the QME does not timely issue a supplemental report?

- AD Rule 38(i)
  - Timeframe for supplemental reports is 60 days from the request.

- *Corrado v. Aquafine Corp.* (June 24, 2016, ADJ9150447, ADJ9150446) [2016 Cal. Wrk. Comp. P.D. LEXIS 318]
  - AD Rule 31.5(a)(12) only mandates a replacement panel if a QME violates section 4062.5 and AD Rule 38.
  - LC section 139.2(j), referenced in section 4062.5, only provides a timeframe for the initial formal medical evaluation (30 days with limited exceptions).
  - No required timeframe for supplemental reports in sections 4062.5 or 139.2.
  - The WCJ has the discretion to order a replacement QME panel for good cause where a supplemental report is not timely issued.
  - Factors to consider in determining whether to order a replacement panel for a late supplemental report:
    - The length of delay caused by the late report.
    - The amount of prejudice caused by the delay in issuing the supplemental report versus the amount of prejudice caused by restarting the QME process.
    - What efforts, if any, have been made to remedy the late reporting.
    - Case specific factual reasons that justify replacing or keeping the current QME, including whether a party may have waived its objection.
    - The constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.)

DEPOSITION WITHIN 120 DAYS

AD Rule 35.5(f): "Unless the Appeals Board or a Workers Compensation Administrative Law Judge orders otherwise or the parties agree otherwise, whenever a party is legally entitled to depose the evaluator, the evaluator shall make himself or herself available for deposition within at least one hundred twenty (120) days of the notice of deposition…"

Is a party entitled to a replacement panel based on the QME's unavailability for a deposition within 120 days of the notice of deposition?

- *Short answer – NO.*

- *Sanchez v. Employ Bridge aka Select Staffing* (July 17, 2019, ADJ10250786) [2019 Cal. Wrk. Comp. P.D. LEXIS 254]
  - The WCJ ordered a replacement QME panel based on the QME's lack of preparedness at deposition – deemed "unavailable" under AD Rule 35.5(f).
  - The Appeals Board granted removal and rescinded the decision. Decision stated that failure to be available for deposition within 120 days of the notice of deposition is not one of the enumerated reasons for a replacement panel in AD Rule 31.5(a).
- See also *Yonge v. Los Angeles Community College Dist.* (September 4, 2019, ADJ11230683, ADJ11233335) [2019 Cal. Wrk. Comp. P.D. LEXIS 326].

REPORTING NOT SUBSTANTIAL EVIDENCE

Is a party entitled to a replacement QME panel if the QME's opinions are not substantial evidence?

- *Short answer – NO.*
- *De Petro v. Napacabs/Italiente, Inc.* (May 29, 2018, ADJ9854681) [2018 Cal. Wrk. Comp. P.D. LEXIS 281]
  - Orthopedic QME refused to issue a P&S report until defendant authorized spinal surgery. Surgery had been non-certified by UR, which was upheld by IMR.
  - The WCJ found the QME's reports were not substantial evidence and ordered a replacement QME panel.
  - The Appeals Board opined that although decisions must be supported by substantial evidence, AD Rule 31.5(a) does not provide for a replacement panel due to a QME's opinions not constituting substantial evidence.
    - Parties must develop the record with the existing QME. Noted that the QME's refusal to address permanent impairment until specific treatment is provided is an "incorrect legal theory."

EX PARTE COMMUNICATION WITH AN AME/QME PER LC SECTION 4062.3

LC section 4062.3(g): "Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected from a panel is prohibited. If a party

communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to Section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation."

- See also AD Rule 35(k).

- *Alvarez v. WCAB* (2010) 187 Cal.App.4th 575 [75 Cal.Comp.Cases 817]
  - The Court of Appeal held that section 4062.3(g) expressly prohibits ex parte communications with a panel QME.
  - Does not matter who initiated the ex parte communication.
  - The Court noted that an ex parte communication "may be so insignificant and inconsequential that any resulting repercussion would be unreasonable."

- *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (en banc)
  - Section 4062.3(g) specifies that the aggrieved party "may elect to terminate" the QME if there is an ex parte communication by the other party.
  - "If the aggrieved party wishes to elect to terminate the evaluation due to an ex parte communication, the aggrieved party must exercise its right to seek a new evaluation within a reasonable time following discovery of the prohibited communication. Conduct by the aggrieved party that is inconsistent with an election to terminate the evaluation may be construed as forgoing its right to terminate the evaluation and seek a new QME."
  - "Inaction by the aggrieved party following discovery of the ex parte communication is in effect an election to proceed with the QME."

- The *Alvarez* decision noted the statutory exception to ex parte communications for "oral or written communications by the employee or, if the employee is deceased, the employee's dependent, in the course of the examination or at the request of the evaluator in connection with the examination" in section 4062.3(i).

Is a collateral interview by the QME with the employee's spouse a prohibited ex parte communication?

- *Phipps v. Frito-Lay* (March 20, 2019, ADJ9323388, ADJ9392268) [2019 Cal. Wrk. Comp. P.D. LEXIS 108]
  - Employee claimed two specific injuries to multiple parts including to the head and psyche.
  - The neuropsychological QME interviewed the employee‘s wife during the evaluation about changes in his behavior and memory since the injuries. The wife also gave the QME her personal notes about these issues.
  - The WCJ found that the employee’s wife engaged in ex parte communication with the QME.
  - The Appeals Board opined that “in certain circumstances, it may be appropriate for the medical-legal evaluator to interview the person most knowledgeable about the employee to supplement the employee’s history and symptoms as reported by the employee during the examination.”
  - The WCJ’s decision was rescinded and the matter returned to clarify whether the QME believed an interview with the wife was necessary to properly evaluate the employee.
    - Also returned to address whether the wife’s disclosure of her notes violated section 4062.3(b) and if so, the appropriate remedy per *Suon*.

- *Trujillo v. TIC-The Industrial Co.* (March 11, 2019, ADJ8531754) [2019 Cal. Wrk. Comp. P.D. LEXIS 90]
  - Employee claimed injury to multiple parts including to the head and psyche.
  - The neuropsychological AME interviewed the employee‘s wife by phone during the employee‘s evaluation about changes in his behavior since the injury.
  - The WCJ found that there was no impermissible ex parte communication with the AME.
  - The Appeals Board again opined that “in certain circumstances, it may be appropriate for the medical-legal evaluator to interview the person most knowledgeable about the employee to supplement the employee’s history and symptoms as reported by the employee during the examination.”
    - Decision further held that the wife is not a “party” per WCAB Rule 10301(dd).

- The WCJ's decision was rescinded and the matter returned to the trial level to address whether the employee's provision of medical records to the AME at his deposition violated section 4062.3(c) [parties must agree on what information to provide to an AME].
  - Implied that the analysis in *Suon* is also applicable to a violation of section 4062.3(c).

- *Dollemore v. Wayne Perry, Inc.* (November 9, 2018, ADJ10452831) [2018 Cal. Wrk. Comp. P.D. LEXIS 528]
  - The represented employee was evaluated by the QME on 5/18/2017.
  - After receipt of the QME's report, the employee emailed the QME's office on 8/3/2017 (without copying defendant) questioning the lack of an add-on impairment rating for pain.
  - The WCJ found the email communication impermissible and struck all of the QME's reports.
  - The Appeals Board also found the employee's email was ex parte, but returned the matter to the trial level to address whether defendant elected to terminate the evaluation within a reasonable time or engaged in conduct inconsistent with an election to terminate the evaluation per *Suon*.
    - The decision also noted that only those reports by the QME issued <u>after</u> the ex parte communication need be stricken from the record if a new QME panel is issued.
      - See also *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231 [78 Cal.Comp.Cases 1209] [the Labor Code favors the admissibility of medical reports in workers' compensation proceedings].

<u>VIOLATIONS OF SECTION 4062.3(b)</u>

LC section 4062.3(b): "Information that a party proposes to provide to the qualified medical evaluator selected from a panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation."

- *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal.Comp.Cases 136 (en banc)
  - Distinguished between "information" and "communication" under section 4062.3, and defined "information" as follows:
    - 'Information,' as that term is used in section 4062.3, constitutes (1) records prepared or maintained by the employee's treating physician or physicians, and/or (2) medical and nonmedical records relevant to determination of the medical issues.

- *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (en banc)
  - No specific remedy for violating section 4062.3(b).
  - Not entitled to a replacement QME panel for a violation of this section per the LC.
  - Outlines 6 factors for the trier of fact to consider in determining the appropriate remedy, if any, for a violation of this section.

- Follow-up to *Suon*: *Juarez v. EB Design, Inc.* (2018) 84 Cal.Comp.Cases 238
  - WCAB Rule 10507 for mailing does not apply to 20 days for service of information, but applies to the 10 days to object to non-medical records proposed to be provided to the QME.

GOING BEYOND SECTIONS 4062.1/4062.2

- LC section 4062.2(a)
  - "Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section."
- LC section 4064(d)
  - [N]o party is prohibited from obtaining any medical evaluation or consultation at the party's own expense . . . . All comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in Section 4060, 4061, 4062, 4062.1, or 4062.2.
- LC section 4605

- "Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation…"

- *Batten v. WCAB* (2015) 241 Cal.App.4th 1009 [80 Cal.Comp.Cases 1256]
  - "Neither section [4605 or 4061(i)] permits the admission of a report by an expert who is retained solely for the purpose of rebutting the opinion of the panel qualified medical expert's opinion."
- Parties must follow the procedure in section 4062.2 to obtain a comprehensive medical evaluation where the employee is represented.
- A party can obtain a medical evaluation or consultation at the party's own expense per section 4064(d).
- Employee can provide a consulting or attending physician at his/her own expense, but the resulting report cannot be the sole basis for an award per section 4605.
- Report obtained from a physician who is retained solely to rebut the QME's opinion is not admissible per *Batten*.
  - See e.g. *Davis v. City of Modesto* (November 20, 2018, ADJ9467074, ADJ9468922) [2018 Cal. Wrk. Comp. P.D. LEXIS 546]
- See also *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal.4th 1231 [78 Cal.Comp.Cases 1209] [the Labor Code favors the admissibility of medical reports in workers' compensation proceedings].
- LC section 5701
  - "The appeals board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the timebooks and payroll of the employer to be examined by any member of the board or a workers' compensation judge appointed by the appeals board. The appeals board may also from time to time direct any employee claiming compensation to be examined by a regular physician. The testimony so taken and the results of any inspection or examination shall be reported to the appeals board for its consideration."
- *Campbell v. City of Redbluff Fire Dept.* (August 16, 2019, ADJ10856280) [2019 Cal. Wrk. Comp. P.D. LEXIS 314]
  - Four QME panels issued over 3 months.
  - The Appeals Board issued a decision invalidating all 4 panels. In lieu of returning to the panel process, the parties were ordered to agree to an

AME within 15 days or the WCJ could appoint a physician per section 5701.

LAST THOUGHTS – AME!

- LC section 4062.2(f)
  - "The parties may agree to an agreed medical evaluator at any time…"
- The parties can always agree to an AME in lieu of litigating QME panel issues if the employee is represented.