

# QME Process Update 2010

Suzanne Honor-Vangerov, J.D.  
Manager, DWC Medical Unit

Suzanne P. Marria, Esq.  
DWC Legal Unit

2/11/10

## Overview of Presentation

- Panel Processing – What's the hold up?
- Getting a panel filled on the first try
- Common problems with panel requests
- QME appointment scheduling and cancelling
- *Ex parte* communications, discovery, and depositions
- Contents of the report
- Time limits for serving the report
- Psych cases and special considerations
- Replacement panels – Rule 31.5

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## Overview of Presentation - cont.

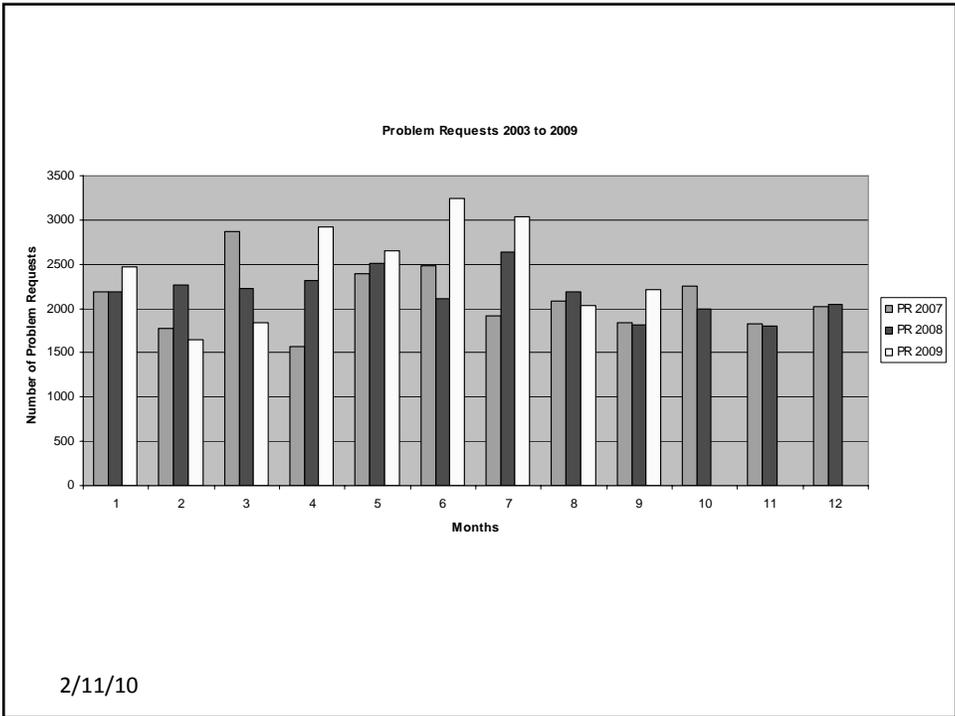
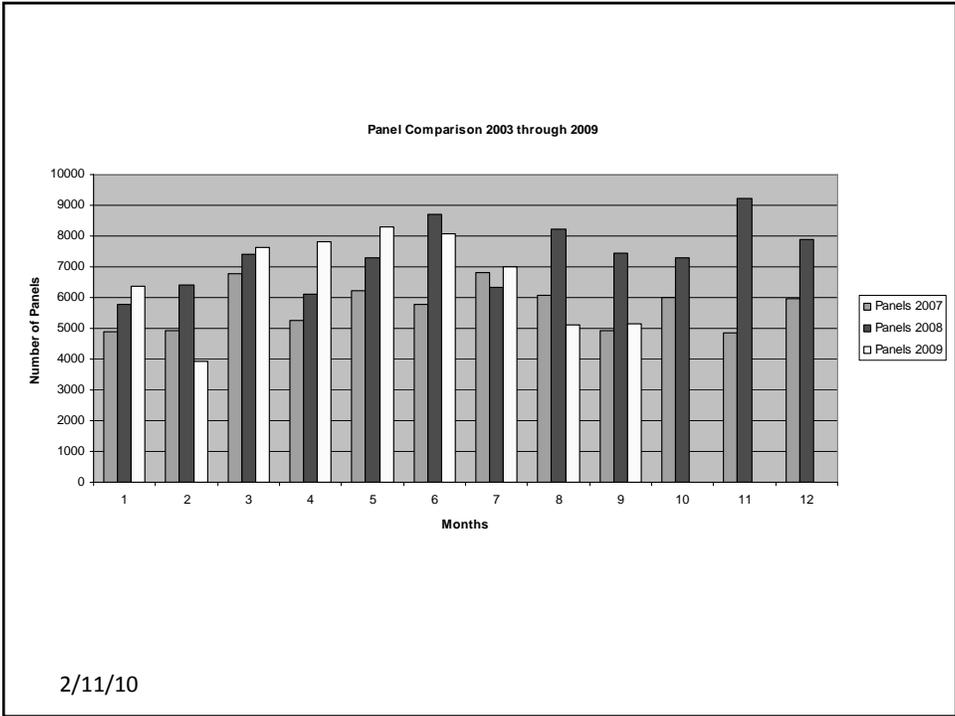
- . Additional panels in new specialty
  - Rule 31.7
- . Consultations
- . Conflicts of Interest
- . Supplemental reports in unrepresented cases
- . Party Panel Requests – Top 10 ‘Gimme’ List
- . Resources

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## Why Haven't You Issued My Panel?

- . Medical Unit Panel Processing
  - Received: Average 9,000 to 10,000 panel requests/month
    - July 2009 example:
      - **3,077 Unrepresented injured worker (IW) requests**
      - **2,086 Claims administrator requests in unrepresented cases**
      - **4,799 Represented party panel requests**
      - **130 Requests on superseded forms**
  - Issued: Average 9,000 to 10,000 panels or problem letters /month
    - July 2009: 7,000 panels issued; 3000 problem letters

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## Why Haven't You Issued My Panel - cont.

- MU Processing Performance
  - Unrepresented cases :
    - **Issue all within 15 business days of DWC-MU receipt** as required by LC 139.2(h)(1).
    - Average filled per month: **4700**
  - Represented panels:
    - Filled per month (average): **4100**
  - WCALJ orders:
    - Fulfilled per month (average): **100**
  - Replacement/Additional panel requests: Fill/mo. (average): **550**
  - Total panel requests filled per month (average): **6600**

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## Why Haven't You Issued My Panel - cont.

- What MU Staff Looks For
  - Completed panel request form
  - Proper supporting documentation
  - Check QME database for existing panel
  - When problem discovered, issue "PR", i.e. a letter explaining the problem and either asking for more information or instructing parties must resubmit, then staff file paperwork
  - If no problems, issue panel. File paperwork.
  - Occasionally, letter from DWC Legal Unit (e.g. boilerplates; complex objections by attorney)

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## Get **Unrepresented** Panel Filled on First Try

Complete relevant parts of form 105

- Claim no.
- Reason for panel request
- Specialty of PTP
- Was claim denied? If yes, date?
- MPN dispute sections
- Claims/defendant address info
- Prior QME panel questions

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## Get **Unrepresented** Panel Filled on First Try

Attach proper supporting documentation

- LC 4060 - Defendant request:
  - Notice or objection letter to IW **stating defendant needs** med/legal to determine compensability and **requesting** IW to file form 105
  - Evidence that form 105 and attachment provided to IW; relevant parts of QME form 105 completed
  - Sent to IW **before** claim denied or presumption of compensability attached
- LC 4061 or 4062 disputes – Defendant request:
  - Objection letter to IW must state nature of dispute
  - If LC 4062, must state non-UR disputed issue in letter and write on line below 4061/4062 reason for panel box

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## Get Represented Panel Filled on First Try

- Fill out QME form 106 **completely** (see 8 CCR 30(c) re: returns of incomplete panels)
  - Claim no.
  - Reason for QME panel request
  - Specialty **by code**: Requested; of PTP; opposing party pref.
  - Was claim denied? If yes, date? Any body part accepted?
  - MPN dispute section
  - Party and attorney name/address sections
  - Prior QME panel information questions
- Enter requestor name, date and **sign**

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## Get Represented Panel Filled on First Try

- Attach appropriate supporting documentation
  - Letter to opposing party stating a disputed issue that requires a med/legal eval to resolve **and** naming at least one physician as AME (see, 8 CCR 30(b) and 106 form, pg. 1)
  - Serve or mail to DWC Medical Unit on 11<sup>th</sup> day of AME discussion period in LC 4062.2(b)
- Dispute in AME offer letter and reason for panel on form must match
  - For panel to be issued, there must be one or more disputed issues that can be resolved by a medical/legal evaluation that was identified in the AME offer letter

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## Get Represented Panel Filled on First Try

- LC 4060 panel requests
  - Neither party eligible once any body part accepted (see LC 4060(a))
    - “This section shall not apply where injury to any part... of the body is accepted...”
  - Defendant eligible for LC 4060 panel **to determine compensability** during 90 day described in LC 5402(b) **before entire claim denied** and **before presumption of compensability attaches**
    - If claim form filed “late” (i.e. not close in time to date of injury), state first date of receipt of claim form on form 106 and attach copy to show actual 90 day period
    - C/T claims added late?

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## Get Represented Panel Filled on First Try

- LC 4060 requests (cont.)
  - Defendant has **duty to conduct good faith investigation**. Must gather pertinent information not just objections/ defenses (8 CCR 10109)
  - Once presumption of compensability attaches, Defendant eligible for LC 4060 panel only with WCALJ finding (see, 8 CCR 30(d)(4))
  - Once entire claim denied, Defendant not eligible for LC 4060 panel – IS eligible under LC 4061 or 4062 if proper objection/AME letter

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## Get **Represented** Panel Filled on First Try

- LC 4061 panel requests
  - Either party eligible after proper objection/AME offer referring to dispute covered by LC 4061
- LC 4062 panel request
  - Treatment dispute: Dispute on nature, extent or scope of treatment – **only** applicant eligible
    - Defendant only remedy is UR or spinal surgery second opin.
    - Defendant requesting LC 4062 panel MUST state non-UR reason for
  - Non-UR dispute: Both parties eligible after proper objection/AME offer letter

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## Common Reasons for Delay - **Represented** Panel Requests

- Failure to complete form 106
  - Claims administrator/defense counsel request under 4062 but no non-UR dispute issue **stated** on line provided under 4061/4062 box
  - Failure to answer whether claim denied, and if so to state date of denial
  - Failure answer MPN related questions
  - Failure to sign panel request form
- Failure to attach supporting documentation

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## Common Reasons for Delay - Represented Panel Requests

- Defect in supporting documentation
  - Objection/AME offer letter must identify at least one disputed issue and name at least one physician
    - “Whenever a comprehensive medical evaluation **is required to resolve any dispute...**” (LC 4062.2(a))
    - “1) **identify the disputed issue** that requires a comprehensive medical/legal report to be resolved; 2) **attach a copy of the written proposal naming at least one or more physicians to be the [AME], that was sent to the opposing party once the dispute arose...**” (8 CCR 30(b))
    - “**You must attach a copy of your written proposal identifying a disputed issue and naming one or more physicians to be an AME**” (8 CCR 106, Form 106, pg. 1)

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## Common Reasons for Delay - Represented Panel Requests

- Conflict between supporting documentation and form 106
  - Defense request: AME offer letter objects only to treatment but reason checked on form 106 is PD under 4061
  - Applicant request: AME offer letter is notice of representation with boilerplate language objecting to “any and all diagnoses/treatments” by physician; reason checked on form 106 is 4061
  - AME offer letter refers to specific date of injury; form 106 refers only to C/T date of injury

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## Common Reasons for Delay - Represented Panel Requests

- Use old form or form for unrepresented panel
- Use old code for specialty and staff cannot determine specialty intended by requestor
- Fail to check off a reason for the panel request
- Not eligible for panel
  - Applicant saw QME so no new panel per **Romero v Costco**
  - Parties already used an AME or QME, so must use same evaluator to extent possible (8 CCR 31.7(a)) or explain why unable to do so
  - Want different specialty from existing AME or QME but fail to satisfy requirements under 8 CCR 31.7(b)

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## Common Reasons for Delay - Unrepresented Panel Requests

- Failure to attach supporting documentation
  - Proper benefit notice or objection letter that describes dispute; QME form 105 and attachment; QME fact sheet
- Non-complaint language for LC 4060 panel
  - Notice letter to IW must state that the employer ***requests*** needs or wants a med/legal evaluation to determine compensability
  - Stating only that “the employer has not accepted liability and the employee *may* request” a QME panel does ***not*** satisfy the limiting language in LC 4062.1(b) (“...employer may not submit...unless...furnished form and requested [IW] to submit...” IW is *not* required to file if letter says ‘may request’ because IW may be relying on PTP opinion and has no desire to contest PTP by getting a QME panel on compensability

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## Common Reasons for Delay - **Unrepresented** Panel Requests

- Non compliant language for 4061 or 4062 panel
  - If defendant does not state an objection and that defendant therefore needs a QME panel, the 10 day trigger in LC 4062.1(b) does not apply
- Failure to provide evidence of a dispute
  - IW refusal to accept settlement offer based on PTP P&S report is not grounds for a QME panel. Contact I and A for assistance in discussing offer with IW
- Failure to sign form 105

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## Common Reasons for Delay - **Unrepresented** Panel Requests

- Failure to complete form 105
  - Fail to disclose prior QME panel
  - Fail to state claim number
  - Fail to provide full address information for claims adjuster and insurer
  - Failure to enter specialty code
  - Failure to answer all questions about prior QMEs
- Medical Unit finds existing QME panel in database
  - Per LC 4062.3(j), to extent possible parties must use existing AME or QME

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## Other Common Reasons for Delay – All Types of Panels

- Labor Code 4060 panels
  - Defendant asking for LC 4060 panel for new body part dispute on accepted claim (see, LC 4060(a))
  - Defendant asking for LC 4060 panel after entire claim denied (see 8 CCR 30(d)(3))
  - Defendant asking for LC 4060 panel after presumption of compensability attached but no WCALJ finding (8 CCR 30(d)(4))
- Existing panel in system for specific injury but now asking for C/T injury, same body parts, same specialty (see, LC 4062.3(j); 8 CCR 31.7(a))

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## Other Common Reasons for Delay – All Types of Panels

- Objection letter arrives before panel request
  - DWC MU unable to match objection letter to a panel request until a panel record is created in system
  - DWC MU will acknowledge receipt but direct writer to re-file objection if still relevant after panel is issued, and refer to the “PR” letter number when re-file
- Work flow interruptions
  - Furlough days; holidays; Post Office practices
  - Limited staff and/or overtime
  - Multiple, duplicate requests

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## Common Reasons for Delays after WCALJ Orders Panel

- Missing basic information needed to issue a panel
  - **Specialty**, or in represented cases, which party is entitled to select specialty;
  - Zip code of IW home or workplace
- Confusion over Replacement Panel vs. Additional Panel in New Specialty
- Fail to specifically order a party or I & A to serve the order on the Medical Unit

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## Medical Unit Review - General

- Forms that are incomplete or improperly completed so that QME panel selection cannot be made, Medical Director may delay issuing panel and request additional information (8 CCR 30(c))
- Time periods for selecting an evaluator under LC 4062.1(c) and 4062.2(c) are tolled whenever Medical Director requests additional information to resolve a panel request. Remain tolled until new panel issued or decision on request is issued (8 CCR 30(f))

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## Rule 30 and Compensability Disputes

- What tools are available to claims administrator after denying entire claim and after 90 day period?
  - Represented case: Ask for **priority trial conference** on AOE/COE (8 CCR 10254 and 10555)
  - Object to PTP determinations on LC 4061 issues and *non-UR issues* under LC 4062 (**new body part; P&S; future med; new & further**)

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## QME Availability - Scheduling Exams

- 60 days unless waived to 90 days
  - QME may be replaced if unable to schedule exam within 60 days of call, unless party with legal right to schedule waives 60 day time limit to accept appointment within 90 days of call. (8 CCR 31.5(a)(2); 33(e))
  - To accept appointment more than 90 days from call, both parties must agree in writing to waive the 90 day time limit. (8 CCR 31.5(a)(2); 33(e))

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28

## Exam Appointment Notices - Rule 34

- QME must use Form 110.
- Must be postmarked or faxed within 5 business days of date appointment made.
- Must send to parties' attorneys, if any, as well as IW and claims administrator.
- For IW convenience only and upon written request, may move to other DWC certified office of that QME. (8 CCR 34(b))
- When QME arranges consultation, must advise parties with QME form 110. (8 CCR 32(d))

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29

## Evaluators - Cancelling and Rescheduling Appointments - Rule 34

- AME, Agreed Panel QME and QME shall not cancel less than 6 business days before scheduled appointment, except for good cause. (8 CCR 34(d))
- Must give parties written reason for cancellation.
- Agreed Panel QME and QME must reschedule within 30 days of date of cancellation and no more than 60 days from date of initial appointment request unless parties agree in writing to accept later date. (8 CCR 34(e))
- AME who cancels must reschedule within 60 days of cancellation unless parties agree in writing to no more than 30 days beyond 60 day limit. (8 CCR 34(f))
- Unilateral re-scheduling panel QME exam more than 2 times is violation of ethical requirements. (8 CCR 41(a)(7))

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30

## Parties - Cancelling and Rescheduling Appointments – Rule 34(h)

- Applies to party and party's attorney.
- Shall not cancel or reschedule appointment with AME, Agreed Panel QME or QME less than 6 business days before appointment date, except for good cause.
- Cancellation must always be made in writing, state reason for cancellation and be served on other party.
- Oral cancellations - within 24 hours must mail or fax written cancellation.
- If for good cause, IW not liable for missed appointment fee; WCAB jurisdiction on disputes

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## Information Sent to QME, Agreed panel QME or AME – Rule 35

- No *ex parte* with AME, Agreed panel QME or QME
- All communications must be written and sent simultaneously to opposing party;  
(8 CCR 35(b)(1))
  - Specified exceptions in 8 CCR 35(c) [HSC 123115(b)]; 8 CCR 35 (k) [IW oral or written in course of exam or by request of evaluator]; 8 CCR 35 (l) [pre-1/1/05 represented cases].
- With AME or Agreed panel QME, represented parties must agree on what is sent.  
(8 CCR 35(b)(2))

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3232

Information Sent to QME, Agreed panel  
QME or AME - Rule 35 - cont.

- Claims administrator must, and injured employee may, provide PTP *relevant* medical records, UR records if treatment disputed.
- Claims administrator **must attach log to front** of records provided, **listing in order as attached** (8 CCR 35(c))
- 20 days advance service on opposing party still applies.
- Upon objection within 10 days, disputed record must not be provided to evaluator until WCALJ rules. (8 CCR 35(d))

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Information Sent to QME, Agreed panel  
QME or AME - Rule 35 - cont.

- **MUST NOT SEND:** medical/legal report rejected by party as untimely per LC 4062.5; any evaluation or consulting report by physician other than PTP, secondary TP or LC 4060- 4062 evaluator that addresses impairment, PD or apportionment, **unless WCALJ has first ruled report admissible**; report if stricken, found inadequate, or found inadmissible by WCALJ or by law.
- Appeals Board to resolve disputes over records objected to and alleged *ex parte* communication.

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## Discovery and Depositions

- Either party may use discovery to establish the accuracy or authenticity of non-medical records or information prior to the evaluation. (8 CCR 35(f))
- Unless WCAB or WCALJ orders otherwise, whenever party is legally entitled to depose evaluator, evaluator must make self available within at least 120 days of notice of deposition; **and**
- When unrepresented IW requests and is consistent with LC 5710, deposition must be held at either location of evaluation exam or at a facility or office chosen by deposing party that is no more than 20 miles from evaluation location. (8 CCR 35.5(f))
- Time runs from service of notice of deposition

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## Report Time Limits and Extensions

- Initial and Follow up Evaluation Reports
  - **30 days** from date exam commenced, unless have extension approved by Medical Director.  
(LC 4062.5; 8 CCR 38(a))
  - Applies to AMEs, Agreed Panel QMEs, QMEs.
- Request for Extension
  - Request extension of 30 days on QME Form 112 five days before end of 30 day period; 15 day extension in extraordinary circumstances.
  - If Medical Director denies extension, parties receive QME Form 113 to state whether the party requests a new evaluator or will accept the late report; per LC 4062.5 both must agree.
  - No extension because relevant medical records or DEU form not received.

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## Report Time Limits and Extensions – cont.

- Delayed consultation report
  - Must either serve medical-legal report on time and issue supplemental upon late receipt of consultant report; **or**
  - Timely request and get extension approval from Medical Director.
  - See 8 CCR 32(f).
  - Must serve supplemental report within 15 days of receipt of consultant's report.
- Supplemental Reports
  - **60 days** from date of request for supplemental.
  - May be extended by 30 days if parties agree, and in such case no need to request extension from Medical Director.  
(8 CCR 38(h))
  - If no agreement on extension, timely request extension from Medical Director.

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## Consequences of Late Reports

- No party has liability for payment unless **both** parties waive right to new evaluation in writing.  
(LC 4062.5; 8 CCR 30(a))
- Agreed Panel QMEs and QMEs may be replaced if report late and party requesting replacement objected to report due to lateness prior to date report was served.  
(8 CCR 31.5(a)(12))
- May be grounds for denial of reappointment.  
(8 CCR 38(i))

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## QME Replacement Requests Rule 31.5

- 8 CCR 31.5 provides 16 grounds for replacing a QME
- No need for WCALJ order
- DWC MU replaces the affected QME(s) only
- *Exception:* In represented case in which *both* attorneys strike a different QME and the remaining QME is unavailable or there are other grounds to replace, then new panel with 3 new names will be issued (8 CCR 31.5(c))
- QME regulations do not address what happens if both attorneys strike the same QME name.

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## QME Replacement Requests Rule 31.5 - cont.

- **Wrong specialty:** QME on panel does not practice in specialty requested by party with legal right to select specialty (31.5(a)(1))
- **No initial appointment within 60 or 90 days:** QME on panel cannot schedule appointment within either 60 days of initial call, or within 90 days of initial call if party with legal right to schedule waives the 60 day limit (31.5(a)(2))
  - Only applies to appointment for *initial evaluation*, not follow up (re-evaluation) exams; not supplemental reports
  - DWC MU verifies unavailability before replacing QME
- **IW moved and request replacement before initial exam** (31.5(a)(3))

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## QME Replacement Requests Rule 31.5 – cont.

- **QME not available per rule 33**
  - QME can request and be granted 'unavailable' status for up to 90 days per fee period (one year)
  - When on 'unavailable' status, QME may only complete medical/legal evaluations and reports *already scheduled and reported* to Medical Director, and supplemental reports (no exam required)
- **Prior AME or QME in case not available**
  - (Ex.) retired; moved out of state; incapacitated
- **Is now or was PTP or secondary treater for injury in dispute**

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## QME Replacement Requests Rule 31.5 - cont.

- Agree in writing **for IW convenience only** to get panel in area of workplace
- Medical Director discretion based on 'good cause' for reasons related medical nature of injury
  - Good cause: 'documented medical or psychological impairment
- Medical Director determines after review of medical records that specialty chosen is inappropriate for disputed issue(s)
  - Submit DFR 5021 or recent PR-2 or other relevant medical

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## QME Replacement Requests Rule 31.5 – cont.

- Evaluator violated appointment notification regulation **and** replacement request made no more than 15 calendar days from the date party first became aware of the violation or from the date the M/L report was served whichever is earlier
- Evaluator served the report late in violation of LC 4062.5 and 8 CCR 38 **and** party requesting replacement objected due to lateness *prior* to the date report was served by the evaluator

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## QME Replacement Requests Rule 31.5 – cont.

- AD orders new QME after rating reconsideration
- QME has disqualifying conflict of interest per 8 CCR 41.5
- Panel issued more than 24 months before request and none of QMEs on panel already examined IW

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## QME Replacement Requests Rule 31.5 – cont.

- Selected QME refuses to provide, when requested, either: a complete report addressing all disputed issues on one or more claim forms or disputed issues that later arise in case, **or** a written statement explaining why QME is not medically qualified to address disputed issue(s) in case

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## Replacement vs. Additional Panel?

- **Replacement** QME or QME Panel (8 CCR 31.5)
  - Medical Director replaces one QME on panel because of reason stated in section 31.5; OR
  - Medical Director replaces all 3 QMEs on a panel at the same time because the attorneys in a represented case each struck a different QME on the panel and the remaining QME was not available (see 8 CCR 31.5(c).)
- **Additional** QME Panel in New Specialty
  - Two sources of authority – 8 CCR 31.7 or 32.6
  - Parties already have an AME or QME who reported; now need a different specialty

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## Additional Panel in New Specialty Rule 31.7

- To the extent possible, parties must use the same AME or QME  
(LC 4062.3(j); 8 CCR 31.7(a))
- May issue panel in a different specialty for just and expeditious resolution of disputed medical issues if find “good cause” (8 CCR 31.7(b)):
  - **WCALJ Order:** Stating new specialty (from current list on forms 105 or 106) or designating a party to select the specialty for the *additional* QME panel;

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## Additional Panels in New Specialty Rule 31.7 – cont.

- “Good cause” basis (cont.)
  - **Beyond license or clinical competency:** AME or QME states one or more remaining disputed issues remain that are outside of evaluator’s scope of license or area’s of clinical competence and parties cannot agree on AME;
  - **Represented case:** Parties submit written agreement that additional QME in another specialty needed; **agree on specialty**; did not agree on AME
  - **Unrepresented case:** Parties confer and agree “in the presence” of I & A officer and I & A initials panel request form. May confer by phone or in person

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## Other Orders for QME Panel Rule 32.6

- Order by WCALJ or WCAB
- Finding that an additional evaluation is reasonable and necessary to resolve disputed issues under LC 4060, 4061 or 4062.
- Order must specify the specialty for the panel or the party to select the specialty
- Per 8 CCR 31(d), MU needs at least 5 active QMEs in a specialty to issue a panel randomly

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## Consultations Rule 32

- AME or QME may arrange consultation
- Acupuncturist QME
  - Must obtain consultation from QME who can evaluate disability
  - If requests panel from Medical Director, L.Ac. shall select the specialty
- No QME may obtain a consultation to address permanent disability and apportionment consistent with LC 4660 - 4664 and the AMA guides.

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## Consultations Rule 32 – cont.

- For post-1/1/1994 DOI, QME may obtain from any physician as reasonable and necessary per LC 4064(a)
- Referring QME must complete report on time; when receive consulting report later, must issue supplemental report within 15 calendar days.
- All party communications to consultant must be written, **and** *sent through referring QME*

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## Consultations Rule 32 – cont.

- Agreed Panel QME or QME who decides needs consultation becomes 'referring' physician.
- Referring QME must:
  - **Arrange appointment and advise parties using QME form 110 of time, date, place of any appointment with consultant**
  - **Parties must communicate with consulting physician through referring physician.**
  - **Consulting physician serves report on referring QME.**
  - **Referring QME must, upon receipt of consulting report, review, attach and incorporate consulting report by reference; comment on whether and how the findings in the consulting report change h/h opinions; list all reports received from the parties for the consulting physician and whether it was forwarded to consulting or reason not forwarded.**

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# Represented Party Panel Request Problems

*Or the  
Top 10 List*

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10. Mine got there first – see my proof of service; ignore that postmark behind the curtain!



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9. I'm using his bad AME offer letter before he can!



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8. I objected in 2001 to a PTP opinion  
- see, here's my objection!



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7. Delayed service of my objection and AME offer letter? *MOI????*



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6. Delayed service of the panel request on opposing counsel? *MOI???*



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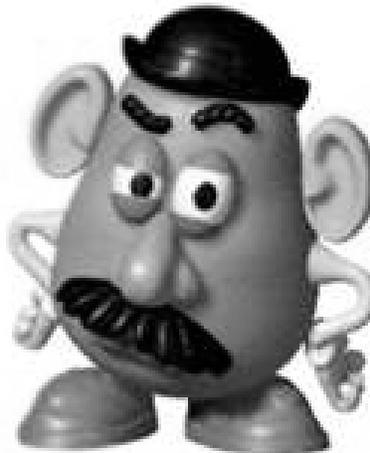
5. I now represent this party; serve all reports and pleadings; here are all the physicians I'll consider using as an AME; if you do not respond in 10 days I'll apply for a panel...



*What is the dispute?*

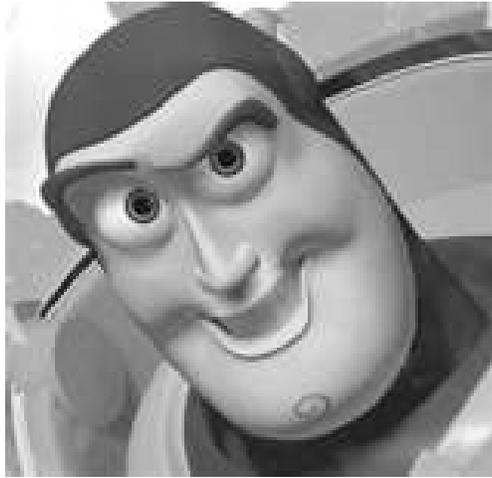
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4. I object under Labor Code sections 4600, 4601 (sic), 4062, 4062.1, 4062.2, 4064 and 4067!



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3. I object to *any and all opinions of the treating physician into infinity and beyond!*



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2. Please provide panel in orthopedic surgery; the date of injury is June 1, 2002.



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1. Hey Medical Unit, when are *you* going to schedule the QME examination in this case?



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## What's Available On the Web

- Clean copy of QME regulations:
  - [http://www.dir.ca.gov/dwc/DWCPropRegs/qme\\_regulations/qme\\_regulations.htm](http://www.dir.ca.gov/dwc/DWCPropRegs/qme_regulations/qme_regulations.htm)
- Clean copy of all QME forms:
  - [http://www.dir.ca.gov/dwc/DWCPropRegs/qme\\_regulations/qme\\_regulations.htm](http://www.dir.ca.gov/dwc/DWCPropRegs/qme_regulations/qme_regulations.htm)
- Fillable QME forms: <http://www.dir.ca.gov/dwc/forms.html>
- Spanish translations of specific forms:
  - <http://www.dir.ca.gov/dwc/forms.html>
- PDF of detailed presentation of changes to QME regulations:
  - <http://www.dir.ca.gov/dwc/educonf16/QME/QME.html>

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## We're Here to Serve

- Suzanne Honor-Vangerov (panel processing)
  - Email: [shonor@dir.ca.gov](mailto:shonor@dir.ca.gov)
  - Phone: 510-628-2002
- Suzanne Marria (regulations; forms; UR issues)
  - Email: [smarria@dir.ca.gov](mailto:smarria@dir.ca.gov)
  - Phone: 510-286-0634

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