Adopt

# DWC – Proposed QME Emergency Regulation in Response to COVID-19

## § 36.7 QME Electronic Service Emergency Regulation in Response to COVID-19

1. During the period that this emergency regulation is in effect, a QME, AME,

or other medical-legal report and required documents may be served electronically as follows:

1. For purposes of this section:
   * 1. “Electronic service” means service of the medical-legal report and all documents required by section 36, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by the physician or by an agent of the physician, or through an electronic service provider.
     2. “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
     3. “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.
2. Electronic service shall be permitted only where the parties agree and a written confirmation of that agreement is made. At the time of giving consent to electronic service, a party or entity shall provide the party’s electronic address for the purpose of receiving electronic service.
3. Electronic service shall not be permitted on any unrepresented party or unrepresented injured worker.
4. For purposes of electronic service, the medical-legal report or other papers must be transmitted to an electronic address maintained by the person or entity on whom it is served, using the most recent electronic address provided to the physician by the party who consented to accept service electronically.
5. Service is complete at the time of transmission. Any period of notice and any right or duty to act or make any response within any period or on a date certain after service of the document, shall be extended by two business days.
6. For purposes of service of a medical-legal report in claims of injury to the psyche, all of the terms of section 36.5 shall apply to electronic service, except the service requirements in section 36.5(b)(6) may be accomplished by electronic service pursuant to the terms of this regulation.
7. For purposes of service of all medical-legal reports, all of the terms of section 36 shall apply to electronic service, except that the manner of service of the report may be accomplished by electronic transmission, where appropriate, pursuant to the terms of this regulation.
8. For purposes of electronic service of all medical-legal reports, the mandatory form 122 (AME or QME Declaration of Service of Medical-Legal Report, see 8 Cal. Code Regs. § 122) may be replaced by an Affidavit of Proof of Electronic Service. The Affidavit of Proof of Electronic Service shall set forth the exact title of the document served in the action, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the electronic service occurs, (C) that he or she is over the age of 18 years, (D) that he or she is readily familiar with the business’ practice for serving electronically, and (E) that the document would be electronically served that same day in the ordinary course of business following ordinary business practices. The Affidavit of Proof of Electronic Service shall be signed under penalty of perjury under the laws of the State of California. The Affidavit of Proof of Electronic Service shall also include all of the following:
9. The electronic service address and the residence or business address of the person making the electronic service.
10. The date of electronic service.
11. The name and electronic service address of the person or entity served.
12. A statement that the document was served electronically.
13. For purposes of electronic service, the physician shall maintain an original copy of all documents electronically served, pursuant to the terms of section 39.5 of title 8, California Code of Regulations. The documents maintained by the physician pursuant to this section shall contain an original signature.

Note: Authority cited: Sections 133, 139.2, 4627 and 5307.3