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FAILURE TO ADEQUATELY COMPENSATE FORENSIC DOCTORS HAS CAUSED A MAJOR DECREASE IN QMEs AND AMEs

BY: SCOTT A. O'MARA

The California Workers' Compensation system is unique regarding the benefits offered and the process involved in proving a case to enable injured workers to obtain access to medical care. The legislation enacted has established a template which involves forensic doctors who evaluate injured workers to determine whether their injuries are job-related (and assess what percentage is work-related if apportionment is involved), and opine as to the medical care they need, the period of time they are to remain off work, and the level of impairment resulting from their injuries. Compensation for these doctors is paid according to a formula called the Medical-Legal Fee Schedule.

The doctors who participate in these forensic evaluations must possess unique education experience and medical credentials before they can attain the title of Qualified Medical Evaluator (QME) or Agreed Medical Evaluator (AME). The availability of doctors for these positions — QME and AME — has decreased, and one rationale is the complexity involved in fulfilling these roles, but certainly another major factor is the inadequate compensation doctors receive for doing this valuable work.

The current version of the Medical-Legal Fee Schedule attempts to minimize forensic doctors' ability to obtain reasonable compensation. As a result, fewer doctors want to participate in the AME-QME protocol because they believe the financial benefit they will receive from such participation is inadequate.

It is very important to recognize that much studious work is required by these doctors to correctly determine causation for many industrial injuries and to support their determinations with empirical data. Then, when a condition has been determined to be job-related, forensic doctors have the next task of opining as to the medical care they believe is reasonable and necessary, the length of time they believe an injured employee should be taken off work, and, potentially, the level of the worker's impairment.

Obtaining a forensic evaluator's opinion based on substantial evidence enhances the timeliness of the injured worker receiving the care which is needed. If forensic doctors do not delve into their cases to the depth required, defense attorneys can take issue as to the medical substantiality of the

doctors' evidence and depose the doctors accordingly, thereby denying or delaying injured workers access to the care they need.

In a 5/16/18 letter from Jason Marcus, Esq., President of the California Applicant's Attorneys Association, Mr. Marcus correctly states:

"Initially, medical-legal fees must be sufficient to attract qualified physicians to provide quality evaluations as QMEs and AMEs. In the last five years, the availability of physicians to conduct medical-legal evaluations in the State of California has decreased dramatically by 20% (see CWCI report on changes in QME population and Medical Legal Trends, February 2018). In some medical specialties there are not even five physicians certified in the requested specialty to issue a Panel QME list. In other medical specialties, the injured worker is provided a list of physicians ranging geographically from San Francisco to Santa Ana to Sacramento while the injured worker resides in San Diego. In more rural areas, injured workers have to drive more than four hours to attend an evaluation. In addition, as noted in other recent studies, there has been a 'graying' of currently available QMEs who upon retirement are not being replaced. This will contribute to a further decrease in available QMEs in the next five years."

CAAA President Marcus correctly identifies current problems in the QME-AME system resulting from the decrease in qualified physicians who want to be forensic evaluators in this system because of the lack of adequate compensation they receive for taking on this role.

It takes very little analysis to recognize the manipulation in which many insurance carriers and self-insured employers are engaging to deny or delay care to many injured workers and force them to access medical care under their own health plan because of the current system's failure to attract sufficient competent physicians to perform forensic evaluations as QMEs and AMEs. Clearly, action is needed to rectify this unacceptable situation and stop the downward slide in the pool of QME/AMEs so injured workers can be evaluated by competent forensic doctors in their geographical area and obtain access to the medical care they need on a timely basis.



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