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## THE QME DOCTOR'S ROLE IN YOUR LIFE

**BY: SCOTT A. O'MARA**

With job-related injuries a critical aspect is the garnering care and treatment to cure or relieve the effects of the injury is through medical care. The medical care has to be recommended by the treating physician. This recommendation for care by the treating physician goes through a process of acceptance by the third-party administrator, the adjuster, validation as to the relationship of the job-related injury and whether the medical care is necessary to cure or relieve the effects of the injury. The workers' compensation system has various elements that must be met before the approval is garnered. If not unilaterally approved by the adjusting agency at the onset, the usage of a qualified medical care, Qualified Medical Evaluator (QME) can come into play.

The Qualified Medical Evaluators, QME, are doctors who have been certified by the California Division of Workers' Compensation. The certification is that the doctors that are performing the medical evaluations or recommendations for treatment meet crucial standards justifying either the job-relatedness, and/or the need for medical care.

If the parties are not able to come to an agreement, i.e., (the injured worker and the workers' compensation carrier), a Qualified Medical Evaluator (also known as a QME) is one of three doctors on a panel at the request of either the worker, or the employer to the California Division of Workers' Compensation (known as the DWC). The DWC provides a list of three physicians that have been certified by the DWC.

The QME doctors that are physicians provided by the DWC are to conduct a comprehensive review of medical records and evaluate the patient for determination if this is a job-related injury potentially for the extent of the residual impairment and the eligibility for additional care, treatment and payments for being off of work.

In the workers' compensation system it is not uncommon for the employer, or employee to dispute the findings of the treating doctor. When this dispute occurs and if the parties cannot agree to the care and treatment or usage of an Agreed Medical Evaluator (AME) a panel of three Qualified Medical Evaluator's are selected, not by the employer or by the worker, but by the California Division of Workers' Compensation who has established a panel of three doctors to

review and provide their medical opinion as to the causative factors and/or extent of treatment, and/or payments for lost time of work.

The California Qualified Medical Evaluators are required to pass tests that are given by the DWC.

In the event that the worker does not have legal representation the worker will make a selection of one of the three participants in the panel doctor to evaluate him/her. If the patient has counsel, the council will, based upon education, knowledge and experience as to who the participants are will remove one of the doctors that they feel is least likely to be balanced and be a good evaluator. The employer then can select one of the two remaining doctors to do the evaluation, or the roll can be reversed where the employer first eliminates one of the three doctors and of the two remaining the representative of the employee can make this determination as to who the evaluator is going to be.

The system is very complex relative to the individual knowledge that the parties must have as to who the doctors are in the panel and knowledge that the doctor has. There are some doctors that have great strength and understanding in the various medical and legal systems, but not all doctors have this knowledge. There are some doctors that have limited knowledge as to what the current case laws indicate regarding the elements of causation. There are some workers that obtain an attorney who are in a position to evaluate the doctors. There is a checks and balance that must occur relative to their QME doctor's opinion because if there is no counsel to make this review to ensure that the information provided to the doctor is medically appropriate, this can cause a major failure. The doctor's determination must be a correct determination based upon medical evidence and/or the presumptions that exists for safety members.

The panel medical evaluator or QME doctors are an instrumental element and if the worker does not have the knowledge and information as to who the panel participants are this allows the employer to make the selection. Great power is put in the employer's hand at the expense of the worker. (The employer is not to provide a recommendation to the worker as to which one to select; this would be a failure of the system.) Again, the doctors known as a QME are required to provide an impartial assessment of the worker's injury and the length and type of treatment needed.

One of the ancillary issues that some of the doctors do not want to develop is the secondary problem that may develop for the job-related injury. The secondary problem would be if you injured your right knee and you depend upon the left knee to compensate, and if the left knee becomes symptomatic the left knee can be a compensable consequence, and then becomes job-related. Another element is if you are receiving medical care for the job-related injury and the medical care causes another medical problem, which then becomes the responsibility of the employer. These are simple factors that are not developed by the adjuster in 90% of the cases. The panel doctors that have been selected and are not subject to review by the worker's attorney if there is not an attorney involved.

If the worker seeks an appointment via their counsel and if the Panel QME is unable to provide an appointment within 90-days of the appointment request the worker could waive that right and accept an appointment later no more than 120-days from the date of the initial panel request. In some situations because of whom the panel doctor is, and the attorney's awareness as to this doctor, the attorney can allow the appointment to be extended as long as it is no more than 120-days from the initial request.

The employer will monitor this and look at the time limit. There are certain situations where the worker and the employer can waive the 120-day rule. In another situation depending upon the doctor it can be to the benefit of the worker.

The request for re-evaluation at a later stage also has some time limits of no more than 120-days from the date of the applicant's request for re-evaluation. These timelines and the qualifications and the understanding of the panel doctors are very strong elements that the attorney will on a continuum evaluate and re-evaluate to ensure there is fairness and appropriate determinations made by the panel doctor.

The findings as to the panel doctor can go to causation, types of medical care, nature and extent of disability, time off from work and in many situations they determine if the worker is able to return back to do their substantial duties. The workers' compensation system has become very complex. The participants in this system whether that is the injured worker, the employer, or the medical evaluators, many times will have different avenues that they would like to see the case approach. For the injured worker their goal is to get medical care to cure or relieve the effects of the injury. In the vast majority of all cases the workers want to be able to return back to their substantial duties. The employer has a strong drive to continue to contain and control costs. There are numerous articles as to what the employers have done to contain and control costs. This is by not going forward with medical care that may have caused ancillary problems such as problems that are related to the treatment itself, and/or conditions that develop because of the job-related injury and/or medical involvement.

The unrepresented worker does not have the library of information that the employer maintains as to the doctors qualifications and their predisposed perspectives.

Preparation for the educated worker prior to the medical evaluation is paramount elements. These elements can advise the worker as to areas of examination and questions that the QME doctor will engage in or their staff. If the worker has information as to these areas the response that is provided to the doctor and staff is one of substance and will provide a substantial foundation for the care to cure or relieve.

Therefore, after you have filed your workers compensation case, and the adjuster is talking to you about selecting a particular doctor to do a medical evaluation, be cautious of that. They are not allowed to do that and if they try to communicate as to who they think is the better doctor is, again, have caution. Your goal is to cure and relieve your injuries, and protect yourself and your family.



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**NOTICE:** *Making a false or fraudulent Workers' Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.*

