**MULTIPLE PQME DILEMNA**

3/20/19 - Michael Misa- Founding Partner MSKW LLP

When MSKW “subs in” files from other defense firms, there is generally one common issue shared by the majority of these “problematic” files: **incorrectly procured** **multiple medical evaluators in different specialties.**

**INCORRECT MULTIPLE PANEL QME PROCESS- AVOID, AVOID, AVOID!**

In many instances, panel qualitied medical evaluators in different specialties are procured incorrectly.  The BIG problem is that despite this, many defense attorneys do not object to them.  One additional panel, improperly procured, can add 6 months of litigation expense, and generally can increase the value of and cost of a claim by at least 50%.

**You must make sure that the defense attorney representing your interests is aware of the correct procedure to avoid unnecessary litigation costs, liens and increased liability.**

**RED FLAGS**

1. **Opposing Counsel Practice**

There are several “applicant mill firms” that repeatedly practice listing EVERY BODY PART possible (stress, incontinence, sleep, psych), on every claim. **Your Defense attorney should flag these files accordingly**. There are several firms that will requests multiple panel QMEs on **EVERY claim** to hike up litigation costs!

1. **Application Adjudication of Claim- Listing Every Body Part Possible**

A defense attorney should immediately be aware when an applicant firm is “setting the stage” to obtain multiple panel QMEs in different specialties incorrectly. Subsequent to receipt of an Application Adjudication of Claim (listing every body part possible), opposing counsel will provide a “blanket LC 4060” letter objecting to “opinions of physicians” (that do not even exist), proposing AMEs in multiple specialties.

Below, I have provided a synopsis of the correct procedure that must be followed in order for opposing counsel to obtain multiple panel QME lists in different specialties.

**MULTIPLE PANEL QME PROCEDURE**

REMEMBER: If your defense attorney does not object to an improperly obtained PQME list, you will likely lose your due process right to retroactively object to the PQME’s opinions after the PQME exam takes place**.   As such, you must MAKE SURE YOUR DEFENSE ATTORNEY analyzes their claims correctly, and proactively address this issue!**

1. **ACCEPTED CLAIMS- ONE PANEL AT A TIME**

When dealing with an accepted claim, the objecting party shall notify the other party in writing of the **objection within 20 days of receipt of the report** if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented by an attorney.

If the employee is **represented by an attorney**, a medical evaluation to determine the disputed medical issue shall be obtained as provided in Section 4062.2, and no other medical evaluation shall be obtained.  If there is **no evidence of objection to a report within 20 days by a secondary treating physician, referred by to designated PTP**, the panel list obtained by opposing counsel is **invalid.** (See *Morales v. Robert Half International, Inc. (BPD) 2015 Cal. Work. Comp. P.D. LEXIS 200* - *The WCAB held that before an applicant may request assignment of multiple QME panels, there must be a determination by a treating physician substantiating injury to an alleged body part and a timely objection to the report)*.

1. **DENIED CLAIMS- GOOD CAUSE- CCR 31.7**

The issue of improperly procured panel QME for denied claims generally arises when the opposing counsel, provides the denial letter and requests multiple panels through Industrial Medical Counsel, which, for some reason, at times is granted.

If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2**. CCR 31.7** is the general rule governing entitlement to a second panel PQME on denied or accepted claims

**CCR 31.7** States in part, that …”Upon a showing of **good cause** that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested…”  For the purpose of this section, good cause means:

1. A **written agreement by the parties** in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

1. Where an **acupuncturis**t has referred the parties to the Medical Unit to receive an additional panel because disability is in dispute in the matter; or

1. An **order by a Workers' Compensation Administrative Law Judge** for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators (E.g.Panel QME finds good cause outside specialty need evaluation to determine compensability and evidence of treatment- states in comprehensive report)

**BOTTOM LINE: Please make sure your representative counsel, is aware of above procedure.  IF A SECOND PANEL LIST IN ANOTHER SPECIALITY IS OBTAINED BY OPPOSING COUNSEL WITHOUT FOLLOWING PROPER PROCEDURE (ABOVE), YOUR DEFENSE ATTORNEY MUST AGRESSIVELY OBJECT TO THE PANEL QME LIST. Otherwise, you will be stuck with unnecessary months, if not years, of litigation expense and the likelihood of increased liability.**

**AGGRESSIVE PLAN OF ACTION TO COMBAT IMPROPERLY OBTAINED PQME LISTS**

Your Defense Attorney must:

* 1. **Object** to the PQME list. This includes **correspondence** to:  (1) Industrial Medical Counsel (2) Applicant Counsel (3) If exam set by opposing counsel, the remaining PQME **prior to the scheduled examination.**

* 1. Draft **motion to suspend** the PQME list to the WCAB and attach objections as exhibits to your motion (objection letters) to the WCAB with analysis to support incorrect procedure.

* 1. **File DOR for an Expedited Hearing:** Pursuant to **LC 5502 (b)(c),** an expedited hearing can be set if there is a dispute as to a “scheduled medical treatment appointment or medical-legal examination.” This will allow the hearing to expeditiously be scheduled on this issue. (Many defense attorneys are unaware of this!)

**REMEMBER:** One additional panel, improperly procured, can add 6 months of litigation expense, and generally can increase the value and cost of a claim by at least 50%. We need to tackle this issue PROACTIVELY from the onset to avoid a downward spiral of unnecessary cost and expense on your claims!