

QME Medical Ethics

How to Stay Out of Trouble

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Disclosure

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The comments from Traci Hinden, Esq. are not a promise of results or outcome.

Sanctions Guidelines - 8 CCR § 65

<https://www.dir.ca.gov/t8/65.html>

Sanctions Guidelines - 8 CCR 65 & other Items for QMEs to know to prevent violations!!!

Part 1 of the Guidelines (in pertinent part)

The purpose of these guidelines is to provide the framework of the Administrative Director's (AD) disciplinary process for those affected by it –

- Not intended to be an exhaustive list of violations or disciplinary actions
- Any violation of statutory or administrative duties may constitute grounds for discipline under these guidelines
- Education is most effective course
- Consistency in imposing disciplinary sanctions for similar offenses
- Recognizes that mitigating or aggravating circumstances in a specific case may necessitate variance from these guidelines

Worst Possible Probation Terms

- 3. Monitoring of practice by another physician in the same area of practice, with periodic reports to the Administrative Director (#23)
- 4. Pass a written or oral exam administered by the Administrative Director (#19)
- 5. Notation of probationary QME status (#33)
- 6. (For sexual transgressions): Requiring the presence of a designated third person during all medical-legal exams (#21)

Worst Possible Probation Terms

- ▶ 7. Undergo psychiatric evaluation and/or psychiatric treatment (#24, #25)
- ▶ 8. Structured supervised practice (#22)
- ▶ 9. Undergo medical evaluation or treatment (#26, #27)
- ▶ 10. QME certificate surrender (if suspended or terminated) (#14)
- ▶ 12. Biological fluid testing (#28)
- ▶ 13. Maintain Controlled Substances Log (#31)
- ▶ 15. Restitution of monies received (#20)

Worst Possible Probation Terms

- 17. Require QME to submit up to the next 5 med-legal reports to the Administrative Director (#34)
- 18. Print and distribute corrected information after advertising violation (#35)

The Administrative Director may also impose other conditions as appropriate to the case which are not contrary to public policy or existing law

Probation Terms

1) Notice of probationary status given to:

(a) Physician's professional licensing board in California

(b) Every party for whom Physician has a pending QME or AME evaluation exam or medical-legal report due

(c) The Court Administrator of the Division of Workers' Compensation for distribution to Workers' Compensation Administrative Law Judges

(d) The President of the California Applicants' Attorneys Association

(e) The President of the California Defense Attorneys Association

When Maximum Sanction (Revocation) is used:

- a. Professional licensure has been terminated
(Labor Code § 139.2(m))
- b. Conviction of a felony or misdemeanor (including
billing/insurance fraud) related to the conduct of the
physician's practice (Labor Code § 139.2(m))
- c. Conviction of a felony or misdemeanor for a crime of
moral
turpitude (Labor Code § 139.2(m))

When Maximum Sanction (Revocation) is used:

- d. Arranging for the impersonation of a QME or impersonating a physician in the QME competency exam
- e. Arranging for the impersonation of a QME or impersonating another physician during QME evaluation
- f. Performing QME evaluations without a QME certificate or while knowing that their QME status is suspended

When Maximum Sanction (Revocation) is used:

- g. Failure to file a notice of defense to an accusation filed by the Administrative Director or failure to appear at a disciplinary hearing initiated by the Administrative Director
- h. Failure to pay the required QME fee (Labor Code § 139.2(n))
- i. False statements made under penalty of perjury relating to medical/QME licensing and/or specialty credentials

If warranted, the maximum penalty can be imposed in any case.

Guideline 1 - Sexual Misconduct

(Labor Code §139.2(k); Bus. & Prof. Code §726)

Minimum sanction: Stayed revocation, 7 years probation and:

- a. Approved education course on sexual harassment, to be completed within 90 days (#17); and
- b. Require third party present during all workers' compensation-related evaluations and treatment (# 21); and

If warranted, any or all of the following:

- c. Psychiatric evaluation and/or psychotherapy (#24, #25);
- d. Required supervised workers' compensation-related practice environment (#22 or #23);
- e. Actual suspension at least one (1) year, under the criteria of PART ONE

Guideline 2 - Abuse of Drugs or Alcohol While Evaluating or Treating Patients (Labor Code § 139.2(k); Bus. & Prof. Code § 2239)

Minimum sanction: Stayed revocation, five (5) years probation and:

a. Evaluation by Diversion Program of appropriate licensing board and follow its recommendations

b. If a Diversion Program is not available through the licensing board, then physician will be evaluated by an alcohol/drug rehabilitation program acceptable to the Administrative Director and will follow its recommendations

c. Allow the pertinent program to report on status to the Administrative Director

d. Abstain from use (#30, #32) and,

Guideline 2 - Abuse of Drugs or Alcohol While Evaluating or Treating Patients

(Labor Code § 139.2(k); Bus. & Prof. Code § 2239)

If warranted,

- e. Cease performing QME evaluations while being evaluated by the Diversion Program
- f. Biological fluid testing (#28)
- g. Maintain controlled substances log (#31)
- h. Structured supervised practice (#22)
- i. Monitored practice (#23)
- j. Oral or written exam (#19)

Guideline 3. Billing/Insurance Fraud or Submitting False Documents

(Labor Code §139.2(k); Bus. & Prof. Code §2234(e); Bus. & Prof. Code §2261; Bus. & Prof. Code §810)

Minimum sanction: Stayed revocation & 5 years probation and, if warranted, any or all of the following:

- a. Approved ethics course within 90 days (#17)
- b. Restitution of amounts received (#20)
- c. Pass oral or written exam (#19)
- d. Actual suspension of at least 6 months under the factors of PART ONE A
- e. Maximum sanctions

Med-Legal Fee Schedule/Guidelines
are found in Labor Code §4620 et
seq. and

Specific QME & AME billing rules are
found at 8 CCR §§9793, 9794 & 9795

Guideline 4 - False Statements Made Under Penalty of Perjury

(Labor Code § 139.2(k); 8 CCR§ 11; Labor Code § 139.2(b); Labor Code § 139.2(c); Labor Code § 139.2(d); Bus. & Prof. Code §§ 2234(e) & 2261)

Example: False statement on QME exam application, appointment or reappointment application regarding:

- probationary professional license status
- past criminal conviction related to professional practice
- completion of minimum continuing education, teaching or practice criteria for appointment or reappointment
- time spent in direct patient treatment
- number of QME or AME evaluations done in prior year(s) for purpose of annual fee or for reappointment
- extent of AME work in lieu of direct patient treatment
- Representing self as QME with active status when untrue

Guideline 4 - False Statements Made Under Penalty of Perjury

(Labor Code § 139.2(k); 8 CCR § 11; Labor Code § 139.2(b); Labor Code § 139.2(c); Labor Code § 139.2(d); Bus. & Prof. Code §§ 2234(e) & 2261)

Minimum sanction:

Stayed revocation and 5 years probation; and, if warranted, any or all of the following:

- a. Actual suspension of at least 90 days (#16) under the factors of PART ONE A
- b. Take approved ethics course within 90 days (#17)

Guideline 5 - Advertising Violations

(Labor Code § 139.2(k); Labor Code § 139.4; Labor Code §§ 5430-5434; 8 CCR § 153; 8 CCR. §§ 9820-9837)

and conduct including:

- Misleading or deceptive advertising -
Bus. & Prof. Code § 2271, 651
- Failure to include required fraud warning -
Labor Code §§ 5432, 5433
- Anonymous advertising - Bus. & Prof. Code § 2272
- Misuse of title 'M.D.', 'D.O.', 'doctor', etc.
Bus. & Prof. Code §§ 2275, 2276
- Use of fictitious name without permit
Bus. & Prof. Code § 2285

Guideline 5 - Advertising Violations

(Labor Code § 139.2(k); Labor Code § 139.4; Labor Code §§ 5430-5434; 8 CCR § 153; 8 CCR. §§ 9820-9837)

and conduct including:

Minimum sanction: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:

- a. Stayed revocation and 3 years probation
- b. Take approved ethics course within 90 days (#17)
- c. Oral or written exam by Administrative Director (#19)
- d. Print and distribute correct information (#35)
- e. Pay for ad(s) in WC publications advising readers of statutes and regulations on permissible advertising
- f. Actual suspension for at least 90 days (#16) under the factors of PART ONE A
- g. Maximum sanctions

Guideline 6 - Soliciting or Providing Treatment in Course of QME Evaluation

(Labor Code 139.2(k); 8 CCR §§ 11(d) and 41(a)(4))

Minimum sanctions: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:

- a. Stayed revocation, one (1) year probation
- b. Approved ethics course (#17) within 90 days
- c. Restitution of amounts received for report to payor (#20)
- d. Actual suspension at least 30 days (#16) under the factors of PART ONE A

Guideline 7 - Self Interested Referral

(Labor Code §§ 139.2(k) or 139.2(o); Labor Code § 3215; 8
CCR §§ 41 or 41.5; Labor Code § 139.3)

Minimum sanction: Educational materials to be provided by Administrative Director and, if warranted, any or all of the following:

- a. Stayed revocation and five (5) years probation
- b. Restitution of amounts received from unlawful referrals (#20)
- c. Approved ethics course within 90 days (#17)
- d. Actual suspension one (1) year (#16), under the factors of PART ONE A
- e. Maximum sanctions

Guideline 8 - Ex Parte Communication

(Labor Code § 139.2(k), Labor Code § 4062.3, 8 Cal. Code Regs. § 41(b))

Minimum sanction: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:

- a. Stayed revocation, one (1) year probation
- b. Approved ethics course within 90 days (#17)
- c. Restitution of amounts received for report to payor (#20)
- d. Actual suspension at least 30 days, under the factors of PART ONE A
- e. Maximum sanctions

Guideline 9 - Violations of QME

Ethical and/or other

Conduct including but not limited to:

Regulations

- refusing to schedule unrepresented cases (8 CCR § 41(a)(2))
- routinely requiring IWs to wait more than one hour (8 CCR § 41(f))
- rescheduling panel QME exam 3 or more times per case (8 CCR § 41(a)(7))
- switching location of QME exam to address not on QME panel letter (8 CCR § 34(b))
- failing to serve QME appointment notification form/3 or more instances (8 CCR § 34(a))
- failure to submit evaluations upon request by the Medical Director
- failure to timely notify the parties of a disqualifying conflict of interest (8 CCR § 41.5)

8 CCR §§41.5(d) (2) (D) & 41.5(d) (4)

- §41.5(d) (2) (D)

(d) "Disqualifying Conflict of Interest" means the evaluator has any of the following relationships or interests with a person or entity listed in subdivision 41.5(c):

(2) A significant disqualifying financial interest, as defined below, including:

(D) A financial interest as defined in Labor Code section 139.3 that would preclude referral by the evaluator to such a person or entity

- §41.5(d) (4)

(4) Any other relationship or interest not addressed by subdivisions (d)(1) through (d)(3) which would cause a person aware of the facts to reasonably entertain a doubt that the evaluator would be able to act with integrity and impartiality

Guideline 10 - False Statements in Medical-Legal Report (Labor Code § 139.2(k); 8 CCR § 41(c)(4); Labor Code § 4628, Including Ghostwriting)

Involving a reckless disregard for available information or facts known to the physician

Minimum sanction: Stayed revocation and five (5) years probation, with:

- a. Approved ethics course within 90 days (#17) and, if warranted, any or all of the following:
 - b. Actual suspension, up to one year under the factors of PART ONE A
- c. Maximum sanctions

Guideline 11 - Failure to Spend Requisite Face-to-Face Time

- Minimum face-to-face time in evaluation
- (Labor Code § 139.2(k); Labor Code § 4628; 8 CCR § 49 et seq. See §49.9)
- When billing for medical-legal report
- (Labor Code § 139.2(k); Labor Code § 4628; 8 CCR § 9795).

Guideline 11 - Failure to Spend Requisite Face-to-Face Time

Minimum sanction: Educational materials to be provided by the Administrative Director.

If warranted, any or all of the following:

- a. Stayed revocation, up to one (1) year probation, and
- b. Approved education course on related workers' compensation billing regulations (#17)
- c. Restitution to payor (#20)
- d. Approved ethics course, to be completed within 90 days (#17)
- e. Actual suspension of at least 90 days, under the factors of PART ONE A

Guideline 12 - Knowing Misrepresentation or Intentional Failure to Disclose Roles of Others (Labor Code § 139.2(k); Labor Code § 4628) - **or**- Interference with or Obstruction of an Investigation by the Medical Director into a Complaint Against a QME (Labor Code 139.2(J)(6))

Minimum sanction: Stayed revocation, one (1) year probation and, if warranted, any or all of the following:

- a. Educational material to be provided by the AD
- b. Approved ethics course within 90 days (#17)
- c. Restitution of amounts received for report to payor (#20)
- d. Actual suspension at least 90 days, under the criteria of PART ONE A (#16)
- e. Maximum sanctions

Guideline 13 - Performing Unnecessary Medical Tests in Capacity as QME or AME

(Labor Code § 139.2(k); 8 CCR § 41(a)(3);
Bus. & Prof. Code §§ 725 & 2234(e))

Minimum sanction: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:

- a. Stayed revocation and up to five (5) years probation, and
- b. Restitution of amounts received for unnecessary tests (#20)
- c. Pass oral or written exam (#19)
- d. Completion of an approved clinical course (#18)
- e. Approved ethics course within 90 days (#17)
- f. Actual suspension, at least 90 days under the factors of PART ONE A
- g. Maximum sanctions

Guideline 14 - Late Reports

[Labor Code § 139.2(k); Labor Code § 139.2(j)(1); 8 CCR §§ 38 & 60(b)(4) (3 or more instances)]

Minimum sanction: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:

- a. Stayed of revocation, six (6) months probation
- b. Approved ethics and/or office management course within 90 days (#17)
- c. Suspension of 30 days (#16) under the factors of

PART ONE A

Guideline 15 - Failure to Follow AD Evaluation Guidelines

(Labor Code §§ 139.2(h); 139.2(k); Labor Code § 4628;
CCR § 41(c)(5))

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Involving 3 or more instances -

Minimum sanction: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:

- a. Approved course in medical-legal report writing within 90 days (#17)
- b. Stayed revocation, one (1) year probation
- c. Actual suspension 30 days (#16), under the factors of PART ONE A

Guideline 16 - Report

Deficiencies (Labor Code § 139.2(k))

- Defective declaration(s) required by Labor Code § 4628
- Serving an unsigned report
- Omitting discussion in a report of relevant information provided to the QME
- Inadequate or incorrect discussion of factors of disability
- Other report deficiencies identified by Administrative Director quality review panel
- Other report deficiencies that affect the substantial rights of a party and are in violation of the regulations governing QMEs.

Guideline 16 - Report Deficiencies

(Labor Code § 139.2(k))

- Determinations by DEU that a report is not ratable
- Decisions of Administrative Director granting rating reconsideration
- Omitting declaration(s) required by Labor Code § 4628

- Minimum sanction: Educational material to be provided by the Administrative Director and, if warranted, any or all of the following:
 - a. Require QME to submit up to five medical-legal reports to the Administrative Director medical-legal quality review staff (#34)
 - b. Approved course(s) in medical-legal report writing within 90 days (#17)
 - c. Oral or written exam by Administrative Director (#19)
 - d. Probation (six (6) months)

Guideline 17. Report Deficiencies Affecting Admissibility (Labor Code § 139.2(k))

- Five Finding(s) by WCJ under Labor Code § 4628(e) or Labor Code § 139.2(d)(2)

Minimum sanction: Stayed revocation, one (1) year probation and, if warranted, any or all of the following:

a. Approved course(s) in medical-legal report writing within 90 days (#17)

b. Require QME to submit next five medical-legal reports to the Administrative Director medical-legal quality review staff (#34)

c. Oral or written exam by Administrative Director (#19)

Guideline 18. Violation of Probation

Minimum sanction: Impose an actual period of suspension.
(Refer to #3, #4, or #5)

Top 10 Complaints and Questions Currently Before the Investigation

- 1) **Unit** 8 CCR §32(b) Referrals – Consults: QMEs are no longer allowed to send injured workers for consultations
- 2) Any current medical TX disputes (IMR) - 8 CCR §36.5(6)
QMEs are no longer allowed to opine on current medical treatment disputes. These are now issues for IMR. However, if the injury occurred before January 1, 2013, and the evaluation was done before June 30, 2013, comment on treatment disputes is allowed. Addressing an issue in utilization review is no longer a complexity factor.

Top 10 Complaints and Questions Currently Before the Investigation

- 3) Interpreters – Asking him/her to leave the exam room during examinations. This is a source of many complaints with regard to the demeanor of the QME performing the evaluation (sexual harassment, discrimination, etc.). Also, sending a non-certified interpreter provided by the employer. The employer is the only party authorized to provide the interpreter, but he/she must be certified. (Is it a conflict of interest if the interpreter is an employee of the carrier or the provider?) Another certified interpreter can be provided if the employer fails to do so.
- 4) Report writing – The report should be about the actual injury. Try to leave irrelevant comments with regard to the applicant's profession, anatomy, or attitude out of the report.

Top 10 Complaints and Questions Currently Before the Investigation Unit

- 5) State of California Licensing Board Address – Please ensure that your address listed with your licensing board is up to date. This is your legal address and will be used for all legal correspondence. If it is sent to this address, it will later be assumed that you received it for purposes of litigation.
- 6) No prior payments before appointment - Payment is strictly governed by the fee schedule -- 8 CCR §9795.

Top 10 Complaints and Questions Currently Before the Investigation Unit

- 7) Make yourself available for Deposition - Do not demand prepayment as a condition of scheduling the deposition. CCP § 2030.450 - Payment at time of notice; or at the start of the deposition. Asking for one hour (\$250.00 or \$312.50 if an AME on the case) prep time is customary (8 CCR § 9795).
- 8) Form 110 within 5 business days - Send the appointment notification form to the parties within five business days. Using the Form 110 on the DWC website is mandatory. Always use the address that was on the QME panel issued by the DWC.

Top 10 Complaints and Questions Currently Before the Investigation Unit

9) Unavailability – 8 CCR §33 governs unavailability. Please fill out the Form 112 and submit the form at least 30 days prior to period of unavailability if you know you will be unavailable for a certain period of time. Please be sure to list your pending QME appointments on the form.

10) Valid Proof of Service for Medical Reports - Please use a valid proof of service when serving all of your medical reports. The proof of service form can be found on the DWC website as follows:

▶ <https://www.dir.ca.gov/dwc/FORMS/ProofOfService.pdf>

CHANGES TO THE WALL OF SHAME

- ▶ The DWC has recently adopted a policy that mimics the Medical Board of California policy with respect to the website listing of disciplined physicians. After a period of 10 years from the date of the order, or the expiration of probation, the physician will be taken off of the disciplined physician's website page.
- ▶ The website can be accessed as follows:

<http://www.dir.ca.gov/dwc/medicalunit/DisciplineList.html>

- ▶ Please be advised that the DW C maintains a record of disciplined physicians indefinitely. Therefore, the information could still be obtained through a Public Records Act Request