

## DEPARTMENT OF INDUSTRIAL RELATIONS / OFFICE OF THE DIRECTOR

**Writing Usable Reports – IMC's Perspective**

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**I. IMC Functions and Authority - Overview**

- A. Regulate QMEs (LC 139.2 et seq.), AME's (LC 4061(g); 4062(c); 139.2(i).) and IMEs [pre-1/1/91 DOI] (LC 139.1.)
- B. Set standards for med/legal evaluation exams and reports (LC 139.2(j).)
- C. QME Panel assignments for unrepresented workers (LC 139.2(h).)
- D. Study QME and AME med/legal evaluation quality & timeliness (LC 139.2(i).
- E. Adopt Treatment Guidelines
- F. Make recommendations to A.D. on Fee Schedules

**II. Goal for QME reports**

- A. Ratable
- B. Admissible
- C. Meet minimum criteria of quality
- D. Paid for
- E. Do not lead to disciplinary action

**III. Statutes and Regulations Governing Medical/Legal Evaluation Reports****A. Contents of Report**

- 1. Rules governing content (LC 4628,4062.2(d), 5703(a)(2), and 8 CCR 10606)
  - a. List of basic elements (attachment)
- 2. Information received, reviewed and relied on (LC 4062.2(d).)
  - a. All communications with AME or QME panel physician must be written and served on other parties (LC 4062.2(d)(e).)
- 3. Declaration under penalty of perjury (LC 4628(j).)
- 4. Declaration of compliance with LC 139.3 [no referral to person/entity with whom have financial interest] (LC 5703(a)(2).)
- 5. Statements of compliance with minimum evaluation time guidelines, evaluation procedure guidelines and that signing physician actually did evaluation (LC 4628(b).)

**B. Timing of Report (LC 139.2(j)(I), 8 CCR 38 - 38.4)**

- 1. **Report due date (8 CCR 38(a) and (b).)**
  - a. 45 days from date of exam [DOI 1/1/91 12/31/93]
  - b. 30 days from date of exam [DOI: 1/1/94 and after]
- 2. **Extensions (LC 139.2)(j)(1); 8 CCR 38(c).)**
  - a. **Basis - General (8 CCR 38(a) and (b).)**
    - 1. Evaluator not received test results
    - 2. Not received consulting physician's evaluation
    - 3. Both #1 and #2 above must be necessary to address disputed medical issues
    - 4. Not valid basis (8 CCR 38(c).):
      - a. Not received relevant medical information or records
      - b. Must complete evaluation on info available and state opinion may change after review of relevant absent info or records
  - b. **"Good Cause" Basis for Extension (LC 139.2 (j)(1); 8 CCR 38(c).)**
    - 1. Initial time period may be extended by an additional 15 days upon satisfying IMC of 'good cause'
    - 2. Good cause defined as (LC 139.2(j)(1):
      - a. Medical emergencies of evaluator or evaluator's family;
      - b. Death in evaluator's family; or
      - c. Natural disasters or other community catastrophes that interrupt the operation of the **evaluator's office operations.**
- c. **Request for Extension of Time (8 CCR 38 (a) and (b).)**
  - 1. AME or QME Evaluator must notify worker and claims adjuster or, if none, employer
  - 2. Request must be not later than 5 days before end of 45 or 30-day deadline, as appropriate
  - 3. Request must be on IMC form 1=09 (8 CCR 38.1)
  - 4. Send request to IMC in all cases
  - 5. Must get approval of Executive Medical Director of IMC if seeking extension Which:
    - a. Exceeds 90 days from date of initial evaluation for DOI of 1/1/91 – 12/31/93
    - b. Exceeds 60 days from date of initial evaluation for DOI after 1/1/94

**d. Approval of Extension of Time**

1. Routinely given for requests on proper grounds for extensions not to exceed 90/60-day limits
2. Requests for approval beyond 90/60-day limits
  - a. Reviewed case-by-case by Exec. Med. Director
3. IMC issues Time Extension Approval Form (8 CCR 38.2; IMC form 3.)

**e. Denial of Request for Extension**

1. Routinely deny extension if wrong reasons for request
2. If Medical Director denies extension, IMC issues Denial of Extension form (IMC F 5)
  - a. For represented worker cases, either party may withdraw from use of AME and no party is liable for payment to AME (8 CCR 38 (a) and (b)).
  - b. Unrepresented injured worker is entitled to new QME panel (8 CCR 38(a) and (b).)
3. **Notice of Late QME Report is issued to unrepresented injured worker (IMC form 7) (8 CCR 38.4.)**
  - a. Right of injured worker to object to late report or waive defect
  - b. Unrepresented injured worker may object to late report and request new QME panel within 15 days of Notice of Late Report (LC 4062.5; 8 CCR 38(a) and (b))
    1. No liability in employer, insurer or injured worker to pay for evaluation, unless worker waives right to new evaluation on IMC form and accepts late original evaluation (LC 4062.5; 8 CCR 38(a) and (b).)

**C. Evaluation Exams - scheduling and evaluation time**

1. **IMC sets time frame for evaluation (LC 139.2(j)(5).)**
2. **Minimum evaluation time guidelines by injury (8 CCR 49 - 49.9)**
  - a. Must be Face to Face time with the QME
  - b. Physician statement of compliance or variance
  - c. Existing Face to Face time guidelines:
    1. Cardiovascular - § 49.4 (30 min. or more)
    2. Pulmonary - § 49.6 (30 min. or more)
    3. Psychiatric - § 49.8 (60 min. or more)
    4. Neuromusculoskeletal - § 49.2 (20 min. or more)
    5. Other - § 49.9 (30 min. or more)
3. **Evaluation protocols (8 CCR §§ 43 - 47)**
  - a. **Psychiatric - § 43 (Previously 8 CCR 9726)**
  - b. **Pulmonary - § 44 (Revised 1998)**
  - c. **Cardiac - § 45 (Revised 1998)**
  - d. **Immunologic - § 47**
  - e. **Neuromusculoskeletal - § 46 - (neck/extremities supplement TBD)**
4. Notice of QME panel exam w/in 5 working days of date appointment made (8 CCR 34(a); IMC 12205A- 8 CCR 34.1)

**D. Service of Report and Summary Form**

1. **Summary Form (LC 4061(g), LC 4062(c), 8 CCR 36,36.1 [IMC form 10021])**
  - a. All evaluators must complete (LC 4061(l), 4062(c), 8 CCR 36.)
  - b. Serve with evaluation report (LC 4061(l), 4062(c), 8 CCR 36.)
2. **Parties Served (LC 4061(l), LC 4062(c), 8 CCR 36)**
  - c. Injured worker or injured worker's attorney, OR Claims adjuster or employer, **AND**
  - d. Local DEU office
3. **Original report to:**
  - a. For represented worker, party requesting QME exam
  - b. For unrepresented worker, DEU
4. **Request for Rating Determination of QME/AME Report**
  - a. **Panel QME's (DOI after 1/1/91)**
    1. Carrier or Self Insured Employer required giving DEU 100 (Employee's Permanent Disability Questionnaire) to Injured worker prior to QME exam (8 CCR 10160(b).) QME to supply DEU 100 at evaluation if injured worker does not have it.
    2. Carrier or Self Insured Employer required to complete DEU 101 (Request for Summary Rating Determination), designating appropriate DEU office, and send to QME with all medical records in case prior to QME exam. Carrier/Self Insured Employer to complete proof of service on bottom of form to show service on injured worker.
      - a. **Note Per LC 4062.2(c) must serve all medical records on injured worker at least 20 days before QME exam and before they are served on the QME.**

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- 3. After completing QME report, QME to submit to DEU listed on DEU 101, and concurrently serve on injured worker and claims administrator.**
  - a. DEU 101, as cover page
  - b. QME report with IMC Summary Findings Form (Form 1002) attached.
  - c. DEU 100 (8 CCR 10160(d).)
- b. QME in Represented Cases (DOI 01/01/91 - 12/31/93) 12-01-2003**
  1. Party wanting Summary Rating by DEU prepares DEU 101 and provides to QME with medical records in case
  2. QME must send to designated DEU office and concurrently serve on party requesting evaluation.
    - a. DEU 101
    - b. Completed medical/legal report with IMC Summary Findings form (IMC 1002)

### **E. Discipline For Inadequate Reports**

- 1. Statutory basis (LC 4628; LC 139.2(k); 8 CCR 61)**
- 2. Forms of discipline**
  - a. Report inadmissible and no payment (LC 4628(e).)**
    1. Failure to comply with LC 4628
    2. No requirement of 'knowing' failure
  - b. Civil Penalty \$ 1000/violation assessed by WCJ or WCAB (LC 4628(f).)**
    1. Knowing failure to comply w/LC 4628
  - c. Contempt by WCAB (LC 4628(h).)**
    1. Knowing failure to comply w/LC 4628
  - d. Contempt by WCAB (LC 134)**
    1. Failure to comply with 8 CCR 10606
    2. No requirement of 'knowing, failure
  - e. IMC imposed probation, suspension, or termination as QME for conduct relating to evaluation reports**
    1. Upon assessment of civil penalty per LC 4628(g) and disciplinary action per LC 139.2(k) (LC 4628(g).)
    2. Failure to follow IMC procedures (LC 139.2(k)(2)) for:
      - a. Evaluating (LC 139.2(j)(2).)
      - b. Determining disputed medical issues (LC 139.2(j)(3).)
      - c. Determining psychiatric injury (LC 139.2(j)(4), LC 3208.3; 8 CCR 43)
      - d. Range of time for non-fee schedule evaluation, treatment, or other requested evaluation procedure (LC 139.2(j)(5).)
    3. Med/Legal reports fail to meet minimum IMC or WCAB standards (LC 139.2(k)(5).)
  - f. IMC refusal to reappoint**
    1. 5 or more reports rejected by WCAB at contested hearing (LC 139.2(d)(2); 8 CCR 50.3)
      - a. Failure to prove/disprove contested issue
      - b. Failure to comply w/IMC guidelines per LC 139.2(j)(2), (3), (4) or (5)
    2. Failure to comply with report time frames 3 or more times per year or unreasonable or excessive requests for extension (8 CCR 38(d); 8 CCR 50.1.)
    3. Failure to issue QME Appointment Notification Form within 5 working days of date appointment made, 3 or more times per year (8 CCR 34(a), 60(b)(5).)
- 3. Procedures**
  - a. Hearing procedure (8 CCR 61)
  - b. Denial of reappointment (8 CCR 50.1 and 52.)
  - c. Probationary status (8 CCR 62)

### **IV. Common Errors**

#### **A. Errors Affecting Ratability**

- 1. Conflicting statements suggesting not P & S**
- 2. Inadequate description of factors and findings of disability**
- 3. Conflicting statements about disability**

*(Ex.: description of factors of disability do not match findings, or use of buzz words for work restrictions does not match factors of disability; discussion on permanent disability does not warrant VOC rehab, but under VOC rehab conclusion stated that IW is QIW)*

- a. Advisable for QME not to state disability as a percentage [of disability] – describe findings of impairment and factors of disability [or an overall percentage of functional loss.**
- b. Check that description and reasoning in PD discussion and vocational rehabilitation are consonant.**

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*Note: The ending of Vocational Rehabilitation on 1-1-2004 doesn't eliminate the pre-requisite that the description and reasoning of Permanent Disability and the need for job modifications are consonant. Employer responsibility for job modifications has not diminished under ADA Guidelines.*

### **Administrative Director Decisions (AD No. 4061-02-18899 – Rocha vs. C.C.I.)**

**Percentage Loss of Pre-injury Capacity: Based on a comparison of what the worker could do before and after the injury. The loss of pre-injury capacity is reported as a percentage. The medical evidence relied on must be clearly described.**

#### **B. Errors Causing Rejection of Report by WCAB**

##### **1. Substantial Evidence Rule**

- a. **Incorrect or incomplete medical history**
- b. **Conclusions based on incorrect legal theory**
  1. **Misapply theory of apportionment**
  2. **Retroactive prophylactic work restrictions**
  3. **Apportion to pathology instead of disability.**

##### **2. Errors/Omissions Affecting Admissibility**

- a. **Violations of 8 CCR 10606**
  1. Report admissible but affects weight given report as evidence (8 CCR 10606.)
- b. **Violations of any part of LC 4628**
  1. **Report not admissible and no liability for payment for evaluation or report (LC 4628(e).)**
- c. **Failure of signing physician to include declaration under penalty of perjury of no violation of LC 139.3 [referral to person with whom have financial interest]**
  1. **Report not admissible (LC 5703(a)(2).)**
- d. **Failure of AME or QME to file report within time limits**
  1. For AME, either party may withdraw from AME and no party liable for payment (8 CCR 38 (a), (b).)
  2. For QME, un-represented worker may request new QME panel and no one liable to pay for QME evaluation or report (8 CCR 38(a), (b).) IMC Procedures

#### **V. IMC Procedures**

##### **A. Education**

1. Physician's Guide: 'Medical Practice in the California Workers' Compensation System' [available from IMC]  
<http://www.dir.ca.gov/IMC/physicians.html>
2. QME Exam (LC 139.2(b)(1); 8 CCR (11)(f).)
3. Continuing Education requirement and courses (LC 139-2(d)(3); 8 CCR 53.)

##### **B. Complaints**

1. Referrals
  - a. Parties (injured worker, employer/insurer)
  - b. WCJ or WCAB
  - c. DEU
  - d. Other physicians - treating and evaluating
2. Types of Investigation
3. Consequences of Investigation

#### **VI. IMC Review of Quality of AME/QME Reports**

##### **A. Mandate (LC 139.2(i).)**

1. Continuously review quality and timeliness of AME and QME comprehensive medical/legal reports
2. Random Sample
3. By referral from DEU, party or other providers. (Claims Adjusters Administrators, etc.)

##### **B. Review Process**

###### **1. Three tier review**

- a. Tier I - 25 essential elements
- b. Tier II - complex issues (apportionment, PD)
- c. Tier III - compliance with IMC evaluation guidelines

###### **2. Physician and attorney roles**

- a. Action on deficient reports
- b. Letter to QME/AME advising of deficiencies
- c. Referral to complaint tracking (repeated deficiencies)

##### **C. Review Results**

1. **See 12/30/97 Report to Administrative Director (attached in original document) 1998 review plans SPM; Ratable Rpts/IMC/2/98**
2. **1999 review plans.**