

DWC – Proposed QME Emergency Regulation in Response to COVID-19

§ 36.7 QME Electronic Service Emergency Regulation in Response to COVID-19

- (a) During the period that this emergency regulation is in effect, a QME, AME, or other medical-legal report and required documents may be served electronically as follows:
- (1) For purposes of this section:
 - (A) “Electronic service” means service of the medical-legal report and all documents required by section 36, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by the physician or by an agent of the physician, or through an electronic service provider.
 - (B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
 - (C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.
 - (2) Electronic service shall be permitted only where the parties agree and a written confirmation of that agreement is made. At the time of giving consent to electronic service, a party or entity shall provide the party’s electronic address for the purpose of receiving electronic service.
 - (3) Electronic service shall not be permitted on any unrepresented party or unrepresented injured worker.
 - (4) For purposes of electronic service, the medical-legal report or other papers must be transmitted to an electronic address maintained by the person or entity on whom it is served, using the most recent electronic address provided to the physician by the party who consented to accept service electronically.
 - (5) Service is complete at the time of transmission. Any period of notice and any right or duty to act or make any response within any period or

on a date certain after service of the document, shall be extended by two business days.

- (b) For purposes of service of a medical-legal report in claims of injury to the psyche, all of the terms of section 36.5 shall apply to electronic service, except the service requirements in section 36.5(b)(6) may be accomplished by electronic service pursuant to the terms of this regulation.
- (c) For purposes of service of all medical-legal reports, all of the terms of section 36 shall apply to electronic service, except that the manner of service of the report may be accomplished by electronic transmission, where appropriate, pursuant to the terms of this regulation.
- (d) For purposes of electronic service of all medical-legal reports, the mandatory form 122 (AME or QME Declaration of Service of Medical-Legal Report, see 8 Cal. Code Regs. § 122) may be replaced by an Affidavit of Proof of Electronic Service. The Affidavit of Proof of Electronic Service shall set forth the exact title of the document served in the action, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the electronic service occurs, (C) that he or she is over the age of 18 years, (D) that he or she is readily familiar with the business' practice for serving electronically, and (E) that the document would be electronically served that same day in the ordinary course of business following ordinary business practices. The Affidavit of Proof of Electronic Service shall be signed under penalty of perjury under the laws of the State of California. The Affidavit of Proof of Electronic Service shall also include all of the following:
 - (1) The electronic service address and the residence or business address of the person making the electronic service.
 - (2) The date of electronic service.
 - (3) The name and electronic service address of the person or entity served.
 - (4) A statement that the document was served electronically.
- (e) For purposes of electronic service, the physician shall maintain an original copy of all documents electronically served, pursuant to the terms of section 39.5 of title 8, California Code of Regulations. The documents maintained by the physician pursuant to this section shall contain an original signature.

Note: Authority cited: Sections 133, 139.2, 4627 and 5307.3

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§ 46.2 QME Emergency Regulation in Response to COVID-19

- (a) During the period that this emergency regulation is in effect a QME, AME, or other medical-legal evaluation may be performed as follows:
 - (6) A QME or AME may reschedule in-person medical-legal appointments currently calendared. When a currently calendared in-person medical-legal appointment is rescheduled, the physician shall reschedule the evaluation to take place within 90 days after the date that both the statewide stay-at-home order limiting travel outside one's home, and any similar local order in the jurisdiction where the injured worker resides or the visit will occur, if applicable, are lifted; or
 - (7) A QME or AME may provide a record review and injured worker electronic interview summary report. The physician may interview the injured worker either by telephone or by any form of video conferencing. Once the statewide stay-at-home order, and any similar local order in the jurisdiction where the visit will occur, are lifted, the QME may then schedule a face-to-face evaluation taking all necessary precautions.
 - (A) The QME or AME shall schedule the electronic interview appointment by sending notice of the appointment with the information necessary for the injured worker to make the telephone call or initiate the videoconferencing for the appointment. The notice shall contain all the information ordinarily provided by the form 110 (QME: Appointment Notification Form See 8 Cal. Code Regs. §110) in addition to the information to complete the telephone or videoconference connection. The notice of electronic interview shall be transmitted in the manner required by 8 CCR section 34(a). Upon service of the notice of electronic interview, the parties to the action shall provide the QME or AME with the records for review at least 10 days prior to the scheduled appointment and in accordance with the provisions of Labor Code section 4062.3.
 - (8) A QME or AME may complete a medical-legal evaluation through telehealth when a physical examination is not necessary and all of the following conditions are met:

- (A) The injured worker is not required to travel outside of their immediate household to accomplish the telehealth evaluation; and
 - (B) There is a medical issue in dispute which involves whether or not the injury is AOE/COE (Arising Out of Employment / Course of Employment), or the physician is asked to address the termination of an injured worker's indemnity benefit payments or address a dispute regarding work restrictions; and
 - (C) There is agreement in writing to the telehealth evaluation by the injured worker, the carrier or employer, and the QME. Agreement to the telehealth evaluation cannot be unreasonably denied. If a party to the action believes that agreement to the telehealth evaluation has been unreasonably denied under this section, they may file an objection with the Workers' Compensation Appeals Board, along with a Declaration of Readiness to Proceed to set the matter for a hearing;
 - (D) The telehealth visit under the circumstances is consistent with appropriate and ethical medical practice, as determined by the QME; and
 - (E) The QME attests in writing that the evaluation does not require a physical exam.
- (9) For purposes of evaluations pursuant to subdivision (3) of this emergency regulation, telehealth means remote visits via video-conferencing, video-calling, or similar such technology that allows each party to see the other via a video connection.
- (b) During the time this regulation is in effect, section 31.3 (e) of title 8 of the California Code of Regulations, is suspended and the following is effective:
- (1) If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within 90 days of the date of the appointment request, that party may waive the right to a replacement QME in order to accept an appointment that is no more than 120 days after the date of the party's initial appointment request. When the selected QME is unable to schedule the evaluation within 120 days of the date of

that party's initial appointment request, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the 120-day time limit for scheduling the initial evaluation.

- (c) During the time this regulation is in effect, all of the time periods enumerated in section 38 of title 8 of the California Code of Regulations are extended by a period of 15 days.
- (d) During the time this regulation is in effect, section 34(b) of title 8 of the California Code of Regulations is suspended and the following is effective:

The QME shall schedule an appointment for the first comprehensive medical-legal evaluation which shall be conducted at a medical office listed on the panel selection form or any office listed with the Medical Director provided there is agreement by the parties. Any subsequent evaluation appointments may be performed at another medical office of the selected QME if it is listed with the Medical Director and is within a reasonable geographic distance from the injured worker's residence.

- (e) Upon the lifting or termination of Governor Gavin Newsom's Executive Order N-33-20, and when there is no longer any stay-at-home order in the jurisdiction where the injured workers resides or evaluation will occur, QME evaluations may take place under the provisions of the non-emergency QME regulations (title 8 Cal. Code of Regs. Articles 3, 4 and 4.5) or via the emergency regulations while they are in effect.
- (f) Nothing in this emergency regulation is intended to encourage or to authorize any individual, group, or business to violate any provision of Governor Gavin Newsom's Executive Order N-33-20 and related stay-at-home and social distancing protocols, or any similar such orders applicable in local jurisdictions.

Note: Authority cited: Sections 133, 139.2, 4627, 5307.3, 5307.6, 4061 and 4062.