

State: Calif.

QMEs Want Remote Evaluations During Pandemic; DIR Won't Say Whether They Can: Top [2020-03-19]

A Southern California law firm representing more than 100 qualified medical evaluators has asked the Department of Industrial Relations to adopt an emergency policy change that would allow remote evaluations in response to the COVID-19 outbreak.



Gabor Vari

So far, they say they're still waiting for a useful answer.

"We saw this coming and started asking, 'What's your policy?' We just got a bunch of non-responses that weren't addressing the issue," said Gabor Vari, co-founder and CEO of California Medical Evaluators, one of the state's largest QME companies and represented in the formal letter to the DIR. "The issue is the QME system, and if that falls apart, the workers' comp system falls apart."

Woodland Hills-based firm Roxborough, Pomerance, Nye & Adreani addressed the letter to newly appointed DIR Director Katrina Hagen on Tuesday.

The firm decided to send the letter after QME stakeholders tried unsuccessfully for more than a week to get clarity from DIR officials as to whether remote evaluations would be allowed as residents and health care professionals attempt to slow the spread of coronavirus, according to emails provided by the law firm.

Many of California's QMEs are more than 65 years old and likely at risk of contracting the virus and spreading it to patients, said Dr. Jacob Rosenberg, president of the California Society of Industrial Medicine and Surgery.

As of 5 p.m. Wednesday, there were 598 confirmed cases of coronavirus in California, including 17 deaths, according to the California Department of Public Health.

Rosenberg said evaluators aren't sure what they're supposed to do in the midst of the pandemic. He said the lack of meaningful response from DIR officials is "disappointing."

“It’s not a complicated issue, so they could have taken some action,” Rosenberg said. “They don’t have to issue a directive. But it would’ve been nice for them to say, ‘We see your issues. Here’s what we can do to help.’ They didn’t do that. They basically said, ‘Hey, do what you think is right and maybe nothing bad will happen to you.’”

On March 6, Vari emailed DIR attorney Nicole Richardson asking “about the possibility of performing evaluations through telemedicine” and whether the DWC would “allow a temporary loosening of existing policies on telemedicine and telepsychiatry in light of coronavirus.”

Richardson advised Vari on March 9 to seek guidance from local, state and federal health agencies, and that the DWC “does not have the power to suspend our regulations with respect to appointments and settings.”

Vari replied, “Thanks for your response on this. I hope that you and everyone else in the WC community are not too significantly impacted by this emerging crisis.”

On March 10, Richardson replied that the DWC “does not have a policy on telemedicine.” She added, “At the current time there are no changes from the division regarding the use of telemedicine evaluations for QME exams.”

When asked by Vari to “summarize the division’s position and current enforcement efforts on telemedicine,” Richardson referred him to the DWC’s “Disciplinary Guidelines found in regulation 60,” which describes the administrative director’s powers for terminating QMEs.

“There’s a long, sordid history of the DWC basically neglecting the QME system, and this is, unfortunately, the latest chapter,” Vari said. “The system needs to be adjusted to accommodate the new normal.”

DIR officials did not return messages seeking comment Wednesday.

On Monday, Rosenberg reached out via email to Administrative Director George Parisotto and Executive Medical Director Dr. Raymond Meister, looking for the DWC to provide some guidance/leadership on dealing with QME evaluations.

Rosenberg wrote, “at a minimum we need the DWC to publicly state that ML evaluations can be canceled to be rescheduled at a later date without penalty for the QME.”

He added that the division should make it clear that telephonic evaluations are acceptable until the crisis stabilizes.

In response, Meister offered a reply nearly identical to the one Richardson gave Vari on March 9, adding only a sentence of advice on how to document a canceled meeting.

Nicholas P. Roxborough, partner at law firm RNPA, which sent the letter to DIR officials, said the emails prove QME stakeholders are “getting the runaround.”

Not only are they unsure if they can conduct exams remotely, they’re unsure if they’ll be punished for doing so.

“The DWC has had a history of going after QMEs,” Roxborough said. “QMEs are skittish about not being expressly approved for their evaluations.”

Roxborough said he hadn’t received a response from the DIR as of Wednesday afternoon.

“They certainly have the authority to say, ‘We’re not gonna hold you responsible. Do what you need to do,’” he said. “QMEs are looking to do their jobs, just like people who have been ordered to stay at home. They could not get a straight answer from anybody. We’re writing to ask, ‘Look. Here’s the issue. Yes or no? Can we do it? We’re not gonna violate health and safety laws.’ It’s not an unreasonable request.”

If DIR officials remain unresponsive, stakeholders will continue to climb up the chain, all the way to Sacramento if necessary, according to Rosenberg of CSIMS.

“The governor has a lot on his plate. It wouldn't even come to his attention that there's an issue with workers' compensation,” he said. “Maybe we'll send it to the insurance commissioner and then the governor. We shouldn't have to send a letter to (DIR) telling them they should be doing that for us.”