

## In This Issue



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Contributing Editor

## From the Desk of...

**There still may be hope...**

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## From the Desk of...

One of the regulations from the Administrative Director causing some defendants consternation is so called Rule 30. Title 8 California Code of Regulations, Section 30 (d)(3) provides in part that, "whenever an injury ... has been denied entirely ... only the employee may request a panel as provided in Labor Code Sections 4060(d) and 4062.1...." That means if a defendant has denied an injury AOE/COE, and hasn't already obtained a QME Panel, it will not be able to get a panel with regards to that issue. The defendant will have to rely upon whatever basis it used to make the denial in the first place. While this can have significant consequence in some cases, I think that in most cases it really does not mean a whole lot.

The defendant is still entitled to a QME Panel on everything except injury AOE/COE. Issues of treatment, TTD, permanent disability, and all other related issues can be addressed by the QME Panel. I say I don't think that it makes too much difference with regards to the issue of AOE/COE because usually work related claims are found to be compensable one way or another. I think that if you were to evaluate the many claims that are filed and determine how many are ultimately found to be work related, the injuries that are found to be work related are ninety-five percent of those claims filed. I think that I am possibly even low on that figure. The actual figure is probably closer to ninety-nine percent. If that is true, it means that in ninety-five to ninety-nine percent of the claims filed the issue of AOE/COE is not important.

I think that if you look at the remaining one to five percent of claims that actually have a real AOE/COE component that you will probably find that in more than half of these claims there is an issue of materially false medical history, or perhaps even fraud. A materially false medical history will almost always be relevant as it goes to the issue of substantial evidence. It really doesn't make any difference if a doctor has found a work related injury if there is a materially false medical history that the report is based upon. The report is essentially worthless if it relies upon an materially false medical history no matter what. The same thing applies if fraud is involved. If the set of facts upon which the doctor is relying upon is totally false then the report most probably is totally worthless. If the report does not constitute substantial evidence it cannot be relied upon.

The Medical Unit will provide Panel QME's for the issues other than AOE/COE when the appropriate objection letters have been used and the appropriate requests have been made to the Medical Unit. I do not think that "Rule 30" really poses much of a problem, since most cases really do not have serious AOE/COE issues. I think that the much greater problem is with regards to the Workers' Compensation System itself.

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I have previously complained in numerous articles about the applicant's ability to obtain multiple consultations in multiple fields of specialties. This, when coupled with the Almaraz/Guzman and Ogilvie issues make the entire system an invitation to abuse. If the only thing that keeps doctors and injured workers from abusing the workers' compensation system is their good conscience, then I think that you have a problem.

In closing I do not think that "Rule 30" is really much of a concern. The real concern is the workers' compensation system which poorly serves legitimately injured workers while at the same time allows doctors and attorneys to manipulate the system so that medical costs are as much as ten times more than they should be.