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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CURTIS TURNER,

Applicant,

vs.

**PT GAMING, LLC; MITSUI SUMITOMO
INSURANCE, adjusted by GALLAGHER
BASSETT SERVICES, INC.,**

Defendants.

Case Nos. **ADJ10099437**
 ADJ10183224
 (Van Nuys District Office)

**OPINION AND ORDER
DENYING PETITION FOR
REMOVAL**

Applicant seeks removal of the Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ) on October 13, 2017. By the Findings, the WCJ determined that applicant has no right to a replacement qualified medical evaluator (QME) panel in internal medicine/cardiology.

Applicant contends that he is entitled to a replacement QME panel because the current QME engaged in ex parte communication with defendant and the QME's initial report was untimely served on him.

We received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of applicant's Petition for Removal, defendant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, and discussed below, we will deny removal.

FACTUAL BACKGROUND

Applicant claims injury to his neck, upper extremities, back, shoulders, elbow, internal and heart from December 3, 2013 through November 25, 2014 while employed as a gaming associate for PT

1 Gaming (ADJ10099437).¹ Defendant disputes liability for the claimed injury to applicant's internal
2 system.

3 The parties obtained a QME panel in internal medicine. Paul Grodan, M.D., was the resulting
4 physician from this panel. An appointment for an initial evaluation of applicant by Dr. Grodan was set
5 for October 19, 2016. (Defendant's Exhibit L, Notice of a QME Exam from Dr. Grodan's office,
6 September 1, 2016.) Notice of the examination was served by Dr. Grodan's office on both defense
7 counsel and applicant's counsel. (*Id.*)

8 Defendant served applicant with its proposed advocacy letter to Dr. Grodan on
9 September 12, 2016. (Defendant's Exhibit K, Letter from defendant to applicant's attorney,
10 September 12, 2016.) Defendant's letter requested that Dr. Grodan serve his report on defense counsel
11 and the claims adjuster, but did not request that service also be made on applicant or his attorney. (*Id.* at
12 p. 2.) Applicant's attorney was copied on the letter. (*Id.* at p. 3.) Applicant did not object to defendant's
13 letter or send his own advocacy letter to Dr. Grodan.

14 Dr. Grodan issued two reports regarding applicant. The first was served on November 9, 2016 on
15 defendant and its attorney only. (Applicant's Exhibit No. 3, QME Report by Dr. Grodan,
16 November 9, 2016, pp. 1 and 13.) The second report was also served only on defendant and its attorney.
17 (Applicant's Exhibit No. 2, Supplemental QME Report by Dr. Grodan, November 30, 2016, pp. 1 and
18 22.) Applicant scheduled Dr. Grodan's deposition for January 19, 2017, although this did not proceed.
19 (Defendant's Exhibit G, Deposition notice of Dr. Grodan by applicant's attorney, December 13, 2016.)
20 Another deposition was also set by applicant for April 20, 2017, but this also did not proceed.
21 (Defendant's Exhibit D, Deposition notice of Dr. Grodan by applicant's attorney, March 14, 2017.)
22 Applicant purportedly did not obtain Dr. Grodan's initial report until April 2017.

23 Applicant filed a Declaration of Readiness to Proceed (DOR) on April 21, 2017 alleging as
24 follows:

25
26 ¹ Applicant has a separate claim under ADJ10183224. However, the trial regarding this dispute and the Findings were only
27 issued in ADJ10099437.

1 Applicant moves to disqualify internal QME Grodan on grounds of ex
2 parte communication with one party (failure to serve or include applicant in
QME report), and failure to serve report within 30 days.

3 (Applicant's Declaration of Readiness to Proceed, April 21, 2017, p. 2.)

4 Applicant also filed a complaint against Dr. Grodan with the DWC-Medical Unit. (Defendant's
5 Exhibit C, QME Complaint against Dr. Grodan by applicant's attorney, July 12, 2017.) Dr. Grodan
6 submitted a reply to the complaint wherein he stated that his "office assumed it was a unilateral defense
7 QME appointment." (Applicant's Exhibit No. 1, Letter to medical unit by Dr. Grodan, July 19, 2017,
8 p. 2.) Dr. Grodan also reported in his reply that he has "been performing medical legal evaluations for
9 very [*sic*] long time and [he is] quite familiar with the legal issues and the responsibilities and
10 requirements by Panel QMEs." (*Id.* at. p. 3.) A formal Petition to Disqualify Dr. Grodan as the QME
11 and request for a replacement QME panel was filed by applicant on September 1, 2017.

12 The matter proceeded to trial on September 7, 2017 on the sole issue of "[w]hether the applicant
13 is entitled to a new panel QME in internal medicine pursuant to CCR § 31.5." (Minutes of Hearing,
14 September 7, 2017, p. 2.) By the resulting Findings, the WCJ determined that applicant has no right to a
15 replacement QME panel in internal medicine/cardiology.

16 DISCUSSION

17 Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers'*
18 *Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5];
19 *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases
20 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial
21 prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10843(a);
22 see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration
23 will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code
24 Regs., tit. 8, § 10843(a).)

25 I.

26 Labor Code section 4062.3(g) provides in relevant part, as follows:

27 Ex parte communication with an agreed medical evaluator or a qualified
medical evaluator selected from a panel is prohibited. If a party

1 communicates with the agreed medical evaluator or the qualified medical
2 evaluator in violation of subdivision (e), the aggrieved party may elect to
3 terminate the medical evaluation and seek a new evaluation from another
4 qualified medical evaluator to be selected according to Section 4062.1 or
5 4062.2, as applicable, or proceed with the initial evaluation.

6 Administrative Director (AD) Rule 35(k) states in pertinent part that:

7 The Appeals Board shall retain jurisdiction in all cases to determine
8 disputes arising from objections and whether ex parte contact in violation
9 of Labor Code section 4062.3 or this section of Title 8 of the California
10 Code of Regulations has occurred. If any party communicates with an
11 evaluator in violation of Labor Code section 4062.3, the Medical Director
12 shall provide the aggrieved party with a new panel in which to select a new
13 QME or the aggrieved party may elect to proceed with the original
14 evaluator

15 (Lab. Code, § 4062.3(g);² Cal. Code Regs., tit. 8, § 35(k).) Section 4062.3(g) prohibits ex parte
16 communication with a QME whether the communications are substantive, procedural or administrative.
17 (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 587-589 [75 Cal.Comp.Cases
18 817].) However, the *Alvarez* Court further found that "an ex parte communication may be so
19 insignificant and inconsequential that any resulting repercussion would be unreasonable." (*Id.* at 590.)

20 Applicant contends that the central issue is whether defendant "inducing Dr. Grodan to have Ex
21 Parte communication" mandates the QME's disqualification. (Applicant's Petition for Removal,
22 November 7, 2017, p. 3:16-19.) Firstly, we are not persuaded that the communication at issue here,
23 merely the service of his reports on defendant and not applicant, is "substantive" such that a replacement
24 QME panel is warranted. As cited by defendant, previous panels have held that an inadvertent failure to
25 serve all parties may be so inconsequential that ordering a replacement QME panel is unjustified. (See
26 *Lenier v. Brookdale Living Communities* (September 7, 2010, ADJ4171773, ADJ125397) [2010 Cal.
27

² All further statutory references are to the Labor Code unless otherwise stated.

1 Wrk. Comp. P.D. LEXIS 423] [removal denied as service of QME's reports solely on defendant fell
2 within insignificant and inconsequential communications per *Alvarez*].)³

3 Applicant also ignores the role he played in this alleged "inducement" to "ex parte"
4 communication with defendant. Defendant provided applicant with its proposed advocacy letter to the
5 QME on September 12, 2016. (Defendant's Exhibit K, Letter from defendant to applicant's attorney,
6 September 12, 2016.) Yet there is no evidence in the record that applicant objected to defendant's letter
7 or found it misleading regarding whether applicant was represented. Previous panel decisions have held
8 that a "party may not wait until after an adverse report issues to raise an irregularity but must do so at the
9 earliest opportunity." (*Lopez v. C&S Wholesale Groceries* (October 22, 2013, ADJ6872612) [2013 Cal.
10 Wrk. Comp. P.D. LEXIS 562, *6 [citing *Fajardo v. Workers' Comp. Appeals Bd.* (2007) 72
11 Cal.Comp.Cases 1158 [2007 Cal. Wrk. Comp. LEXIS 220] (writ den.)].) The record reflects that
12 applicant did not raise an issue with Dr. Grodan's reports until April 2017, approximately six months
13 after Dr. Grodan's initial evaluation (and about seven months after service on applicant by defendant of
14 its proposed letter). Moreover, applicant failed to send his own advocacy letter to the QME, which
15 would have made clear to Dr. Grodan the fact that he is represented.

16 Applicant further contends that "[b]y his own admission, Dr. Grodan was not impartial."
17 (Applicant's Petition for Removal, November 7, 2017, p. 4:9-10.) This misstates the record. Dr. Grodan
18 concedes that his "office assumed it was a unilateral defense QME appointment." (Applicant's Exhibit
19 No. 1, Letter to medical unit by Dr. Grodan, July 19, 2017, p. 2.) Nowhere in Dr. Grodan's letter does he
20 state or imply that this incorrect belief affected his evaluation or conclusions regarding applicant.
21 Instead, Dr. Grodan explicitly says that he has "been performing medical legal evaluations for very [*sic*]
22 long time and [he is] quite familiar with the legal issues and the responsibilities and requirements by

23 _____
24 ³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v.*
25 *Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions
26 are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on
27 issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76
Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260,
1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Lenier, supra*, because it considered a similar issue. We recommend
that practitioners proceed with caution when citing to a panel decision and verify its subsequent history.

1 Panel QMEs.” (*Id.* at. p. 3.) There is no evidence in the record that Dr. Grodan did not act impartially
2 despite his incorrect belief regarding his role in the matter and we decline to infer such.

3 **II.**

4 In the alternative, applicant contends that he is entitled to a new QME panel because Dr. Grodan
5 did not serve his initial report on him within 30 days of the evaluation.

6 Section 4062.5 states:

7 If a qualified medical evaluator selected from a panel fails to complete the
8 formal medical evaluation within the timeframes established by the
9 administrative director pursuant to paragraph (1) of subdivision (j) of
Section 139.2, a new evaluation may be obtained upon the request of either
party, as provided in Sections 4062.1 or 4062.2.

10 (Lab. Code, § 4062.)

11 Rule 38 provides the QME with 30 days to issue an initial comprehensive medical-legal
12 evaluation report. (Cal. Code Regs., tit. 8, § 38(a)-(b).) A party may obtain a replacement QME
13 pursuant to Administrative Director Rule 31.5 if the QME fails to timely issue a formal medical
14 evaluation under Rule 38. Specifically, Rule 31.5(a)(12) states:

15 (a) A replacement QME to a panel, or at the discretion of the Medical
16 Director a replacement of an entire panel of QMEs, shall be selected at
17 random by the Medical Director and provided upon request whenever any
of the following occurs: . . .

18 (12) The evaluator failed to meet the deadlines specified in Labor Code
19 section 4062.5 and section 38 (Medical Evaluation Time Frames) of Title 8
20 of the California Code of Regulations and the party requesting the
21 replacement objected to the report on the grounds of lateness prior to the
date the evaluator served the report. A party requesting a replacement on
this ground shall attach to the request for a replacement a copy of the
party's objection to the untimely report.

22 (Cal. Code Regs., tit. 8, § 31.5(a)(12) (emphasis added).)

23 It is well established that a party cannot wait until *after* receipt of a report to object to its
24 timeliness under section 4062.5 and Rule 38. (See *Fajardo, supra* [WCJ properly denied request for
25 replacement QME panel when applicant waited until after receipt of report to object to its timeliness].)

26 This policy prevents parties from first reviewing a report to determine if it is favorable before submitting
27

1 an objection to the report as untimely. Applicant failed to object to Dr. Grodan's report as untimely until
2 April 2017 *after* receipt of his report and provides no reasonable basis for this delay.

3 Consequently, applicant has failed to show that substantial prejudice or irreparable harm will
4 result if removal is not granted. The WCJ's decision to deny his Petition to Disqualify Dr. Grodan does
5 not prevent applicant from challenging Dr. Grodan's conclusions in future proceedings or through further
6 discovery. Applicant may specifically question Dr. Grodan regarding whether his evaluation and
7 opinions were colored by his mistaken belief that he was acting as a defense QME. Moreover, applicant
8 has failed to show that reconsideration of a final decision adverse to him will not provide an adequate
9 remedy. Thus, applicant has not made the requisite showing that removal of the Findings is warranted.

10 In conclusion, we will deny applicant's Petition for Removal.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that applicant's Petition for Removal of the Findings of Fact issued by the
3 WCJ on October 13, 2017 is **DENIED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

5 **CHAIR**

6 

7
8 **KATHERINE ZALEWSKI**

9 **I CONCUR,**

10 

11 **DEIDRA E. LOWE**
12 **I DISSENT (see separate dissenting opinion),**

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14 
15

16 **MARGUERITE SWEENEY**



17
18 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

19
20 **MAR 14 2018**

21 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
22 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

23 **CURTIS TURNER**
24 **HITZKE & FERRAN, LLP**
25 **LAW OFFICES OF MARC APPEL**

26
27 **AI:mm**

TURNER, Curtis

1 Moreover, Dr. Grodan's belief that he was acting as a defense QME and the resulting service of
2 his reports only on defendant necessitates a replacement QME panel to preserve the integrity of the
3 medical-legal evaluation process. As stated by the *Alvarez* Court, "[i]n a field that is dependent on expert
4 medical opinions, the impartiality and *appearance of impartiality* of the panel-qualified medical
5 evaluator is critical." (*Alvarez, supra*, at p. 589 (emphasis added).) In a perfect world, a QME's
6 opinions would be the same whether the physician is acting as a party's own medical-legal evaluator or
7 as an evaluator from a panel. Unfortunately, we do not live in that world. In order to ensure applicant's
8 internal claim is evaluated by an impartial physician, I would order a replacement QME panel.

9 Thus, I would grant applicant's Petition for Removal, rescind the WCJ's Findings and order a
10 replacement QME panel in internal medicine/cardiology.



WORKERS' COMPENSATION APPEALS BOARD

MARGUERITE SWEENEY, COMMISSIONER

16 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **MAR 14 2018**

19 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
20 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

21 **CURTIS TURNER**
22 **HITZKE & FERRAN, LLP**
23 **LAW OFFICES OF MARC APPEL**

27 **AI:mm**

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ10099437

CURTIS TURNER

-vs.-

PT GAMING LLC

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Lynn Devine

DATE: 11/17/2017

REPORT AND RECOMMENDATION ON REMOVAL

I. INTRODUCTION

- | | |
|--|--------------------|
| 1. Order | 10/13/2017 |
| 2. Identity of Petitioner | Applicant |
| 3. Verification | Yes |
| 4. Timeliness | Petition is timely |
| 5. Petition for Removal Filed | 11/07/2017 |
| 6. The grounds cited in the Petition for Removal are that the court's decision to not issue a replacement panel in Internal Medicine/Cardiology will result in significant prejudice and irreparable harm. | |

II. FACTS

The applicant attorney filed an application on 09/13/2015 alleging a continuous trauma claim of an orthopedic nature.

On 09/22/2015 defense counsel entered its appearance on 09/22/2015 along with a Petition to Quash a subpoena for records held by the employer.

On 10/15/2015 Judge Seymour quashed the subpoena.

On 10/22/2015 defense counsel filed an answer indicating nature and extent was disputed. This answer is served on applicant's attorney on 10/29/2015.

On 02/12/2016 Dr. Kambiz Hannani MD performed a PQME in orthopedics and found injury to the applicant's neck, left shoulder, left elbow right elbow and low back.

In his report dated 03/14/2016 Dr. Hannani finds the applicant MMI. He provides restrictions and an impairment rating. The report is served on applicant, applicant's attorney, defense counsel and the claims administrator on 03/25/2016.

On 04/15/2016 applicant files an amended application to include internal and heart.

On 08/26/2016¹ defense counsel sends an appointment letter to the applicant for a PQME appointment set with Dr. Grodan, internal medicine and cardiology, on 10/19/2016 with a map and directions followed by a proof of service dated 08/26/2016 on the employer, the claims administrator, applicant, applicant's attorney and Dr. Grodan.¹

There is an appointment letter dated 08/24/2016 from Dr. Grodan's office noting the adjustor, the third party administrator, defense counsel and applicant's attorney followed by a QME appointment notification form with a proof of service dated 09/01/2016 showing service on the applicant, applicant's attorney, the claims adjustor and defense counsel served by Dr. Grodan's office; lastly a fax cover sheet from Dr. Grodan showing fax service on the claims adjustor, defense counsel and applicant's attorney with the scheduled appointment date.²

On 09/12/2016 defense counsel wrote to applicant's attorney enclosing their advocacy letter to Dr. Grodan.³ At the bottom of page 2 of the advocacy letter it directs the original report be sent to the defense office and a copy of the report with the billing sent to the claims adjustor. There is no instruction as to serving the report on applicant's attorney although the letter is copied to the employer, the claims examiner, a third person unknown to the court and applicant's attorney. This is followed by a schedule of records and a proof of service dated 09/15/2016 on the employer the claims examiner and applicant's attorney.⁴

This letter having been received by applicant's attorney should have lodged his objection to the potential exparte instructions at that time, prior to the PQME appointment with Dr. Grodan.

On 10/19/2016 Dr. Grodan examines the applicant referential to his internal and cardiovascular claim of injury. Dr. Grodan renders preliminary findings dated 11/06/2016 signed by Dr. Grodan on 11/09/2016 showing a carbon copy designation at the bottom of the signature page to the claims examiner only. The first page of the report is addressed to defense counsel only.⁵

¹ Exhibit M

² Exhibit L

³ This was the document that precipitated the current dispute applicant's attorney now alleges as ex parte.

⁴ Exhibit J, K and Exhibit 4

⁵ Exhibit 1 and Exhibit 3 which only consists of the first and last page of the report.

11/19/2016 would have been the 30 day mark for applicant to have objected to a late report. There is a subsequent report dated 11/20/2016 signed by Dr. Grodan on 11/30/2016 again addressed only to defense counsel and carbon copied to the claims examiner.⁶

On 12/13/2016 the applicant's attorney sets the deposition of PQME Dr. Grodan for January 19, 2017.⁷

On 01/04/2017 defense counsel files a Declaration of Readiness to Proceed on all issues.

On 01/06/2017 applicant's attorney files an objection to the Declaration of Readiness to Proceed due to ongoing discovery including the cross examination of the PQME. There is still no mention of an untimely PQME report or ex parte communication.

On 02/09/2017 applicant's attorney files for an Expedited Hearing on treatment and temporary disability. Again, no objection to an untimely report or allegation of ex parte communication.

On 03/14/2017 a new deposition notice for the cross examination goes out moving the cross examination date of Dr. Grodan to 04/20/2017.⁸

On 03/14/2017 the matter comes to Mandatory Settlement Conference before Judge Rasmusson who takes the matter off calendar for further discovery.⁹ Again there is nothing said regarding ex parte contact or a late PQME report.

In the petition to disqualify the PQME dated 09/01/2017 applicant's attorney avers he received the report on or about 04/19/2017.¹⁰ The defense firm never provided a proof of service of the PQME report on applicant's attorney.

On 04/21/2017 applicant files a Declaration of Readiness to Proceed on the issue to disqualify Dr. Grodan, six months after the examination.

“...on grounds of ex parte communication with one party (failure to serve or include applicant in QME report) and failure to serve report within 30 days. Specific petition will be filed separately prior to date of hearing. DOR following meet and confer with defense who rejected request new panel.”

Dr. Grodan, in correspondence dated 07/19/2017 states he received a complaint form dated 07/12/2017 alleging an ex parte contact violation and that the QME report was never served the applicant or applicant's counsel within that 30 day timeframe.¹¹

⁶ Exhibit H and Exhibit 2 which only consists of the first and last page of the report.

⁷ Exhibit G

⁸ Exhibit D

⁹ Exhibit E note it was likely Judge Glass actually dispositioned the MSC.

¹⁰ Petition to Disqualify PQME; Request for a Second (sic) Panel QME dated 09/01/2017, page 2, line 21.

¹¹ Exhibit I

Dr. Grodan acknowledges receiving an appointment and advocacy letter from the defense firm that specified that the original report should be submitted to their office and a copy sent to Gallagher Bassett. Considering that the defense firm scheduled the appointment and specifically stated in their letter that the report should be served to their firm in the claims examiner without any mention of service on the applicant or absent any representation notice or advocacy letter from the applicant's office it gave the impression of a unilateral QME appointment. The proof of service to the defense firm did list Mr. Appell, the applicant's attorney, on the service list however no communication was received from applicant's attorney.

In the Opinion it was found the law firm of Hitzke & Ferran did engage in impropriety with regard to informing the PQME of the parties involved and who to serve with the report. The instructions given by the Hitzke firm did result in the PQME report not being served in the initial service on applicant's counsel although it is clear applicant's attorney received the report prior to any objection.

On 10/13/2017 the Petition for a Replacement Panel in Internal Medicine/Cardiology was denied. Parties were ordered to complete, or waive in writing, the cross examination of Dr. Grodan before another Declaration of Readiness to Proceed is filed.

On 11/07/2017 the present appeal on Removal was received. As of this report there has been no response from the defendant.

III. DISCUSSION

The ex parte act is alleged to be comprised of late service of the PQME report on petitioner. Here petitioner seeks to elevate a late report CCR §38 (a) to an affirmative act of ex-parte form of communication. In this matter we are dealing with what is a delay in raising the objection of a "late" report until after petitioner's receipt of the report.

I see the defense attempts to gloss over its own misconduct by casting the petitioner as "asleep at the wheel" nonetheless the law firm of Hitzke & Ferran is admonished to stop what appears to be a "sharp practice" and henceforth to include opposing counsel as a participant to be served by the PQME. Failure to do so in the future, should it come to the court's attention, will be dealt with accordingly.

On the other hand there was a period between 11/19/2016 and 04/19/2017 when petitioner should have realized the report was "late" and objected. When it was served petitioner failed to immediately file the appropriate objection for a replacement panel until the 04/21/2017 Declaration of Readiness to Proceed.

During the intervening time the parties attended an March 2017 Mandatory Settlement Conference before Judge Rasmussen which should have been a wake up call for the petitioner. Back in December 2016 when applicant's attorney first set the cross examination of Dr. Grodan would also have been a good time to assert a late report. There is no support for such late complaint as a basis for disqualification of the PQME.

The undersigned finds guidance from the Appeals Board's panel decision in the matter of *Torres v. Pacific Coast Products* 2013 Cal Wrk Comp PD LEXIS 287 in particular here where at many points over the six months after the report was due petitioner failed to lodge a timely objection until after receipt of the report.

Further the Second District Court of Appeal found on the issue:

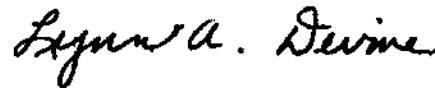
"...not every conceivable exparte communication permits a party to obtain a new evaluation from another panel qualified medical evaluator..."¹²

Petitioner seeks to shift responsibility away from himself ignoring the late objection. The undersigned expressly disapproves of the conduct by defense however neither one of these actions seems a sufficient basis for a replacement panel.

IV. RECOMMENDATION ON REMOVAL

It is respectfully requested that since there is no stated significant prejudice or irreparable harm identified herein; and the petitioner's unexplained delay in raising a timely objection after he should have realized that 30 days had elapsed under CCR §38 (a), that the decision in this matter go undisturbed.

DATE: 11/17/2017



Lynn Devine
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

¹² *Alvarez v. WCAB* (2010) 75 CCC 817