

# INTER-OFFICE MEMORANDUM

**TO:** ATTORNEYS & CLIENTS

**FROM:** W. Joseph Truce

**DATE:** December 28, 2006

**RE: George's Attorney and the Agreed Medical Examiners**

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## **FROM THE LOBBY BAR AT THE HYATT:**

The attorney for George the Bartender, Ronald Summers, was inconsolable by the time I arrived at the bar.

To say that Ron was “**crying in his beer**” is an understatement. I make it a practice **never** to inquire about anyone else’s troubles until I have downed my first martini and tonight was no exception.

In ordering my second martini, I made the mistake of asking Ron what had happened and the words gushed out: My business is ruined, Ron moaned. And he proceeded to explain to me that the defense attorneys on his files were now rejecting his “**list**” of Agreed Medical Examiner and obtaining **QME** evaluations.

Not fully appreciating the magnitude of what George’s attorney considered a “**financial disaster**,” I asked Ron to explain: Ron advised that he and the other applicant’s attorneys at his Board maintained a list of **AMEs** which were offered to defendants on every case. In order to make the “**list**” a potential **AME** had to “pass muster” by auditioning at a local Italian restaurant before Ron and the rest of the applicant’s attorneys practicing at Ron’s Board. Ron explained that no **AME** would make the list unless they understood the “rules of the road” and had been appropriately “**screened**” by him and the other applicant’s attorneys.

I then asked Ron the rather obvious question as to why a refusal by a defense attorney to go to one of the **AMEs** “on his list” would be so terrible. Ron advised that if the defendant actually utilized a **QME** then this would force Ron to actually read the file instead of waiting for his **AME report to mature like an annuity or Certificate of Deposit**.

Ron went on to explain that if all of his cases went to **AMEs** on the **list**, this would allow him to handle ten times as many cases and even though the **AMEs** on the “list” were setting appointments seven to eight months out he would be assured of the eventual pot of gold complete with retroactive benefits.

Ron’s “**dilemma**” highlights, in my opinion, a troublesome area for employers and insurance carriers. A referral to one of the standard Agreed Medical Examiners certainly solves the problem

of reviewing the file for the Workers' Compensation Judge, the applicant's attorney, the adjuster and sadly the defense attorney.

We all basically ignore the built-in conflict in utilizing an Agreed Medical Examiner in the first place. In our system the applicant's attorney's fees are **contingent** on an award of benefits, specifically permanent disability benefits. I think we can rest assured that any of the **AMEs** on "**Ron's list**" will be "**off the list**" should the **AME** find that an applicant has not suffered any permanent disability.

I have been advised by one **QME** that he was interviewed at the Italian restaurant and promised to be fair and impartial. The response was that, "We don't want you to be fair."

This conflict in my opinion has been addressed by Labor Code §4662.2 and the panel **QME** system for injuries after 1/1/05. These panel doctors come in three classifications:

1. Applicant's doctor;
2. Defense doctors;
3. We-have-never-heard-of-them doctors.

We have had extremely good success with all three classifications of panel **QMEs** as noted above. The original intent of the **AME** system was to obtain an impartial and unbiased medical opinion.

The built-in "**conflict**" has been deleted from the Labor Code §4662 panel **QME** system as all of the panel **QMEs** know that they are selected by random by the administrative director and their business will not be affected by either the applicants or defense side by their **QME** report.

So far our experience has been that we receive comprehensive, well reasoned, and impartial **QME** reports from panel doctors be they applicant's doctors, defense doctors or I-don't-know-who-they-are doctors.

Unlike **AMEs** or **QMEs** (prior to January 1, 2005) we are obtaining early medical appointment examination dates and reports within 30 days from the exam.

The Labor Code provides that each side can submit its "**advocacy letter**" to the selected panel **QME** (as long as a copy is sent to the other side) analyzing the factual, medical and legal issues to be addressed.

We recommend that the old form letters that used to be sent to physicians be discarded and that letters to the panel **QMEs** be drafted to flesh out the issues as to the specific case on which the **QME** is reporting.

**Our experience is that the panel QME system is driving the applicant's bar crazy or in the case of attorney Ron Summers to the Lobby Bar. We have applicant's attorneys literally begging to go to an AME by repeated phone calls, letters, faxes--anything to keep the case from being reviewed by a QME.**

**Make mine a double George.--Joe Truce**