

## **ANOTHER INSTALLMENT IN THE *GEORGE THE BARTENDER* SERIES**

For past installments of the *George the Bartender* series, please visit our web site at <http://www.kttlaw.us/memos.html>

**RE: EAMS TO THE RIGHT OF US, EAMS TO THE LEFT OF US,  
EAMS ALL AROUND US. ARE WE FRUSTRATED BY EAMS?  
CERTAINLY! DO WE NEED EAMS? ABSOLUTELY!**

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

The ongoing argument between George the Bartender's workers' compensation attorney, Ron Summers, and George's primary treating physician, Dr. Nickelsberg, was becoming tiresome.

The same argument had been going on for three consecutive days now. When I walked up to the bar, Ron was literally yelling at Dr. Nickelsberg that he needed the doctor's assistance in implementing the Electronic Adjudication Management System (**EAMS**) in his office.

As George the Bartender served me my second Beefeater's Martini, straight up with two olives, he wondered out loud as to why Ron felt that Dr. Nickelsberg "**owed him**" assistance in implementing the **EAMS** procedures in his office.

Curiosity finally got the better of George, who asked me why Ron would think that it was Dr. Nickelsberg's responsibility to assist him in incorporating **EAMS** into his office procedures.

I smiled and told George that this argument was probably going on with many applicant attorneys and their primary treating physicians. I commented to George that this was a byproduct of the Margolin Reform Act, the presumption of correctness of the treating doctor and finally the amendment to Labor Code §4067 dated 1977, which allowed an injured worker to select his own primary treating physician after 30 days from notice to the employer of the industrial injury.

I explained to George that in its naiveté the legislature actually thought that an injured employee would choose from a list of competent and credible physicians based on information obtained from either the medical association or from their own research.

I pointed out that the injured worker's free choice to choose a physician was almost never utilized in a litigated workers' compensation case. The applicant's attorney almost always selected the primary treating physician from the doctors used formerly as their medical-legal physicians.

Sadly, the selection of a physician has nothing to do with the quality of care but everything to do with the relationship between the applicant's attorney and the physician with respect to medical-legal reporting.

In the heyday of the presumption of correctness, treating physicians such as Dr. Nickelsberg basically ran the case for attorneys like Ron, and as there was no limit on temporary disability prior to SB899, treatment plans were expanded to two or three years and sometimes more, resulting in a computerized bonanza in medical treatment bills and collections.

The tradeoff between the applicant's attorney and his doctor was clear: The lucky physician would reap a bonanza in medical treatment and the applicant's attorney would never have to review his file as the treating doctor would manage the medical aspects of the case. The red flag for filing a Declaration of Readiness to Proceed would be the permanent and stationary report.

This partnership came to a screeching halt with the implementation of SB899 and Utilization Review.

I pointed over to the twosome of Ron and Dr. Nickelsberg and explained to George that Ron was simply calling in his IOUs as he now felt that his multiple referrals to Dr. Nickelsberg should entitle him to some assistance in implementing the **EAMS** procedures in his office.

In answer to George's question as to just what **EAMS** was supposed to accomplish, I explained to George that our industry was literally drowning in paper. Judges, attorneys, and the DWC staff have been frustrated for years by the volume of paper in our business and at some Boards they started counting the unmatched mail by the linear feet.

I told George that **EAMS** was a paperless system designed to save our industry from literally drowning in our own paperwork.

On the defense side we are a little more accustomed to a paperless system as most of our clients have either gone to a partial or total paperless system utilizing e-mail and scanners.

The idea is to have electronic "**in-boxes**" and "**out-boxes**" so eventually the Appeals Board District Offices will be able to communicate electronically with those parties that have business before the Board.

As you might expect, the scope of this project is enormous and no one could measure the incredible amount of scanning that would be involved nor the magnitude of the cost. When we originally conceptualized the **EAMS** project it was theorized that all files, open and closed, could be scanned and that judges and interested parties would have instantaneous electronic access to all cases filed before the WCAB.

However, due to the enormity of the initial project, we have somewhat scaled down our expectations. The rewards of a paperless system, even a partially paperless system, will be enormous though.

**EAMS** is not a perfect answer, but it is a step in the right direction to help deal with our paper morass.

When **EAMS** is up and running as contemplated, all petitions and/or documents formerly filed with the Board by way of paper will be electronically transmitted to the appropriate file.

An example of one time saving aspect of the **EAMS** system will be the filing of the Declaration of Readiness to Proceed.

Most law firms use the walk-through method as now allowed by the Rules of Practice and Procedure which contemplates that a representative of the law firm will go down to the District Office, request that a staff member pull the file and obtain a walk-through hearing date which is then served on all parties to the litigation.

This process, while effective, also involves the time and expense of utilizing a representative from the law firm and also from the DWC staff at the particular Appeals Board District Office in locating the file and completing the paperwork and ensuring that the case is set on calendar.

In the **EAMS** system as contemplated, the party filing the Declaration of Readiness to Proceed would simply fill out the electronic form for the Declaration of Readiness to Proceed on the website and will be given the option of selecting from ten (10) hearing dates on a calendar that would appear on the screen.

Once the date for the hearing has been established it would then be served on the other parties to the litigation and any objection to the Declaration of Readiness to Proceed would be filed by a similar electronic process.

In this one function (filing a Declaration of Readiness to Proceed) if we multiply the times savings by the volume of these documents filed with the Board daily, the savings in time and expense will be an incredible benefit not only to the WCAB but to the users of the **EAMS** system as well.

### **DISCLAIMER**

As I have just passed my 65<sup>th</sup> birthday I am certainly of the pen and quill era. However there is a long list of individuals whom I greatly respect who are committed to making this system work and this list includes applicant attorneys, defense attorneys, judges and presiding judges. Our firm intends to cooperate in any way possible to make sure that the **EAMS** system is a success.

Make mine a double George and Kim, give me a paperless coaster.

WJT/dgh