

Doctors, doctors, doctors

Medical providers and evaluators; their roles in the workers' comp process

By Jessica E. Berlat and Eustace de Saint Phalle

Every civil attorney needs to be aware of who the treaters and medical-legal evaluators are in a workers' compensation case and what their essential roles are within the system. Medical providers in workers' compensation determine and produce reports that establish early on diagnosis of injury, causation of injury (arising out of employment/course of employment), entitlement to temporary disability benefits, level of permanent disability and whether an injured worker can return to their occupation or will need to be retrained.

For a civil attorney, understanding the roles of these medical providers and how to best utilize their expertise allows more control over the record and minimizes litigation costs.

Under the workers' compensation system an injured worker is entitled to all medical care that is reasonably required to cure or relieve the effects of the industrial injury. In reality, this entitlement to care is fraught with delays and denials.

To avail oneself of this benefit, the injured worker must understand the crucial role their medical providers play in not only the delivery of current and future medical treatment, but also the overall value of their workers' compensation case and potentially a crossover third-party civil case.

When an injured worker has a third-party claim, their workers' compensation medical-legal evaluator can act as an expert in their civil case. It is therefore essential in these crossover cases that the injured worker retain competent workers' compensation counsel to oversee their medical treatment and ensure access to quality treaters.

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This article will discuss the essential roles of the Primary Treating Physician ("PTP") and the Qualified Medical Evaluator ("QME") in a workers' compensation case. This article hopes to shed light on the importance of these workers' compensation medical providers in the context of workers' compensation and potentially developing a third-party case. This article will demonstrate how obtaining a quality treater early on will provide better overall care for the injured worker and produce a qualified expert in a third-party case.

The Primary Treating Physician

A PTP in workers' compensation acts as the director or manager of an injured worker's medical care. A PTP is a doctor that has examined an injured worker at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter. A PTP is responsible for reporting to the claims administrator. They are responsible for reporting the employee's condition if there is any significant change in treatment plan, work status, when/if employee is released from care, and whether the employee's condition precludes or is likely to preclude the employee from engaging in the employee's usual occupation.

A PTP must evaluate and report on the employee's condition a minimum of every 45 days if continued medical treatment is provided, and the employee is off work receiving partial or total temporary disability benefits.

The role of the Primary Treating Physician

An injured worker's choice of PTP is the most crucial decision they will make in their workers' compensation case. The PTP is the gateway to receiving appropriate medical care, work restrictions, and permanent disability. A PTP's knowledge of the system can often predict whether care is approved, whether an injured worker returns to work at an appropriate time and can ensure the right to future medical care. A PTP that is a patient advocate and familiar with the hurdles of getting treatment approved can help prevent long delays in obtaining medical care.

One of the most important roles of the PTP is deciding what treatment is required to cure or relieve the effects of the injury. However, as illogical as it sounds, the PTP does not have the discretion to ultimately decide if the injured worker will actually receive this treatment.

The limitations of a PTP

In order to understand the limits of medical care in the workers' compensation system it is important to be aware of the Request for Authorization and Utilization Review system which all medical care in the workers' compensation system is governed by.

In 2012, Senate Bill 863 amended Labor Code section 4610 to provide for a review process for all medical treatment for injured workers. It created a two-step process to obtaining medical care. To obtain authorization, a PTP must submit a compliant Request for Authorization "RFA" to the claims administrator. This request is then submitted through a review process called Utilization Review or "UR" where it is approved, modified or denied.

An entire article could be written about the RFA, UR process. In short, the UR process is used by employers/claims administrators to review treatment plans and determine whether or not it is medically necessary. Medical necessity is governed by the Medical Treatment Utilization Schedule (MTUS). MTUS is a set of regulations found in Title 8, California Code of Regulations sections 9792.20-9792.27.23. The MTUS adopted treatment guidelines developed by the American College of Occupational and Environmental Medicine (ACOEM).

All employers and their claim administrators are required by law to have a UR program. This process is governed by the Labor Code and regulations written by the California Division of Workers' Compensation.

It is critical that a PTP is familiar with the RFA/UR process and the medical guidelines in order to successfully substantiate their RFA for treatment. A PTP's familiarity with the system and the medical guidelines will directly impact whether or not care is approved.

Work status

A PTP is not only responsible for managing an injured worker's medical care and treatment. He or she is also responsible for determining their work status. A PTP must decide whether an injured worker can return to work without restrictions, provide modifications where appropriate, or take an injured worker off work completely. A work status report from the PTP will govern whether an injured worker is entitled to temporary disability benefits. A PTP's report can provide a framework by which the employer can bring the injured worker back to modified work.

At the outset of a case, these restrictions are usually temporary. Meaning, as the injured worker obtains treatment, the level of restrictions might lessen. As the claim proceeds forward, and once an injured worker becomes permanent and stationary (or reaches maximum medical improvement), if there are still restrictions, those become permanent.

"Permanent and stationary" and "maximum medical improvement" are terms of art in workers' compensation. They signify that an injured worker has reached a point in treatment where they are stable and their condition is not likely to change substantially in the next year with or without medical treatment.

Obtaining a Primary Treating Physician

An injured worker can secure a PTP in a couple different ways. The most efficient and seamless way is to predesignate a PTP before an industrial injury. Unfortunately, the vast majority of injured workers fail to predesignate, leaving their medical care and PTP in the hands of their employer and claims administrator. Employers often choose to

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send their employees to occupational clinics like Concentra or Kaiser Occupational.

If an employee fails to predesignate, then the employer/claims administrator picks the PTP for a minimum of the first 30 days of the injury. After that time period, the employee is permitted to select a treating physician at a facility of his or her choice within a reasonable geographic distance. However, if the employer/claims administrator has a Medical Provider Network, the injured worker's choice of physician is limited to that network.

The Primary Treating Physician reporting

In healthcare, a widely used method for medical reporting is the acronym "SOAP." SOAP stands for subjective, objective, assessment and plan. A PTP's evaluation and reporting will follow that outline. When an injured worker meets with their PTP it is important for them to understand each of these categories as it will enable them to better advocate for themselves and provide complete information to the PTP. In turn, the PTP will then produce a well-reasoned, thorough report that will substantiate the need for treatment. Remember, a PTP's reporting is what supports the medical necessity for the RFAs submitted for UR approval.

Subjective

Subjective information is provided by the injured worker to the physician. This is where the injured worker needs to explain how the injury occurred, what their pain level is, what their limitations are, and how their injury has impacted their activities of daily living (fundamental skills required to care for oneself).

Many physicians use the following categories when collecting subjective information: onset of symptoms, provoking factors, quality of patient's symptoms, region of body affected, severity of symptoms and/or associated symptoms, time course of patient's symptoms.

Additionally, a PTP is going to want to collect any relevant medical history. This is going to include past medical, surgical history, family history and social history. While an injured worker should always provide accurate and honest answers, they should not guess or assume. For example, if an injured worker does not know with certainty what their family history is, they should not provide it.

Objective

Objective information is gathered by the physician themselves through their physical examination of the injured worker. This includes taking vital signs and conducting a physical exam. The physician may utilize certain exam tools like range-of-motion measurements and tests. This is also where a physician is going to rely on diagnostic tests like X-rays, MRIs, etc.

Assessment

The assessment is where the physician is going to make their clinical impressions and interpretation of the subjective and objective information. They may make preliminary determination as to whether or not this is a work-related injury and which body parts are included.

Plan

The plan is the area where the physician is going to talk about the next steps in terms of treatment recommendations. At this stage, a PTP may need more testing in order to complete their analysis of the injury.

The Qualified Medical Evaluator and the Agreed Medical Evaluator

A Qualified Medical Evaluator ("QME") is a physician that is certified by the Division of Workers' Compensation to examine an injured worker. Their role is to evaluate for disability and write medical-legal reports. A QME is a neutral board-certified doctor who evaluates in detail the scope of an industrial injury.

The Division of Workers' Compensation has a QME database that covers many areas of expertise by QME specialists. Specialties include: orthopedic, chiropractic, pain management, psychology, psychiatry, internal medicine, etc.

The medical-legal report a QME produces addresses the following: cause of injury, the body parts injured, confirmed periods of temporary disability, permanent disability, apportionment and the need for future medical care. The reports are used to determine whether or not an injured worker is eligible to receive workers' compensation benefits. These reports can be critical to a workers' compensation case. In a denied case, it is the QME who often decides whether or not a claim for industrial injury should be accepted or a denial upheld.

While an injured worker could potentially proceed through their case without a QME, it would be a mistake for them not to obtain a QME opinion. A QME is the expert when it comes to things like level of permanent disability and whether or not apportionment is a factor. QMEs are also well versed in the application of the "American Medical Association Guides to Evaluation of Permanent Impairment, Fifth Edition" (AMA Guides), which governs the workers' compensation system's method of ascertaining permanent impairment.

As part of the Workers' Compensation Reform Act of 2004 (SB 899), it became mandatory that QME/AMEs use the AMA Guides to describe impairments. That reform also adopted a new Schedule for Rating Permanent Disabilities.

The calculation of permanent disability is based on the PTP or QME's impairment rating. The evaluation protocols and rating procedures are set forth in the AMA Guides. Once a doctor has evaluated for permanent disability impairment, that impairment is then adjusted using the Schedule for Rating Permanent Disability to account for diminished future earning capacity, occupation and age at the time of injury.

In a third-party case, because of the mandated use of the AMA Guides, the civil attorney has a consistent standard by which all evaluators are assessing an injury in workers' compensation cases statewide.

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In the event of a workers' compensation case proceeding to trial, the judge will be using the medical-legal reports to formulate their opinion. A QME or AME will not testify at trial. Instead, it is their reports and deposition testimony that are submitted and relied upon by the trial judge.

An Agreed Medical Evaluator is, for all essential purposes, the same as a Qualified Medical Evaluator with the exception that they are obtained through mutual agreement by the attorney and insurance company. An unrepresented injured worker is not able to enter into an AME Agreement. An AME report is also typically given more weight at the Workers' Compensation Appeals Board as opposed to a QME because the parties have both agreed to rely on this AME.

Obtaining a QME

A request for a QME or AME usually occurs at the onset of the case when a claim is either denied or delayed. The insurance company's delay or denial of a claim triggers an injured worker's right to obtain the QME opinion.

Once a case is accepted and the injured worker is treating with a PTP, a QME is likely not necessary until much later in the claim. With an accepted injury, a QME/AME is not requested until there is a dispute over the following: whether the injured worker is permanent and stationary, periods of temporary disability, permanent disability impairment percentage, amount of apportionment, need for future medical care, body parts injured.

A QME is obtained by submitting a request form to the Medical Unit of the Department of Workers' Compensation following a triggering event as outlined above (denial/delay of claim, dispute over body parts, dispute over permanent disability impairment, objection to PTP report recommendations, etc.).

The request form must include claim information, the requested specialty and the reason for the QME request.

Once the request form is sent to the Medical Unit, a panel of three doctors will issue in the specialty requested. If the injured worker is unrepresented, he or she can select any of the three doctors on the list. If the injured worker is represented, then his or her attorney will strike one doctor on the list and the insurance company will strike one doctor. The last doctor standing is the QME.

The selection of the QME specialty and the eventual QME is also critical to a successful outcome of a workers' compensation case. Once an injured worker has been evaluated by a QME, they are locked in with that doctor. An injured worker does not get to change their doctor or obtain a new QME, except to meet the need for an additional QME in another specialty. Additionally, if an injured worker petitions to reopen their case, within five years of their original date of injury, they return to the original QME for determination of whether there is new and further injury.

The QME evaluation

Prior to a QME evaluation, the claims administrator should have provided the QME with the injured worker's medical record and anything else relevant to the claim of injury like First Report of Injury, DWC-1 form, etc. Additionally, the injured worker will be asked to fill out an Employee's Disability Questionnaire in advance of their appointment.

As part of the QME evaluation and report, the QME is reviewing the medical record. This medical review is necessary for the QME's report to be considered substantial medical evidence. The majority of an injured worker's medical reporting is going to come from the PTP reporting. If the injured worker has a quality PTP, the QME is going to be relying on accurate, well-reasoned, detailed reports. However, if the injured worker is exclusively treating through their employer's or claims administrator's occupational clinic/doctor, the reporting is going to be minimal, often recycled and inaccurate. The injured worker's choice of PTP will ultimately impact the quality of the QME evaluation and report they receive.

At the QME evaluation, the doctor will confirm all of the information they have been provided. They will review the date of injury, the mechanism of injury, and create a timeline of what has transpired, symptom and treatment wise, since the date of injury.

The QME's medical-legal report is going to have to meet the statutory and regulatory reporting requirements. However, the categories and information required are going to roughly follow the "SOAP" formula discussed in detail above. Therefore, a large portion of the evaluation is going to be collecting and confirming all subjective information from the injured worker.

Preparing the worker for the QME

Too many injured workers walk into an evaluation and expect the QME is going to formulate their opinion on the medical records and a brief physical exam. It is crucial that the injured worker enter the QME appointment advocating for themselves. An injured worker's role in this evaluation is to help the QME complete the subjective portion of their evaluation with as much detail as possible.

The injured worker should come to the QME evaluation prepared and meticulous about the events surrounding their claim. In many cases, a long time can transpire between the date of injury and date of QME evaluation. It is not uncommon for the injured worker to be in treatment for years before having an initial evaluation. The issue with this is that many injured workers become accustomed to living with and around their injuries. Injured workers forget all the ways in which their activities of daily living have been impacted by the new limitations of the injury, or the many ways in which they have altered their way of life to adjust for their injury and pain.

An injured worker should view the QME evaluation as a means of obtaining

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an expert opinion on the scope of their industrial injury. They should take advantage of the expertise and knowledge many of these physicians have and come equipped with a solid timeline of events, current symptoms and concerns. In terms of preparation, an injured worker should come with notes outlining their symptoms, limitations, pain, etc. If there are treatment modalities that their PTP has recommended but have been consistently denied, this is the time to bring it up.

It is important to note that a QME is not a treater. While they do not have the authority to overturn a UR denial of medical care, their reports and the medical recommendations made within those reports are very persuasive.

Third-party civil claims

An important advantage the civil attorney has in a crossover workers' compensation/third-party case is the use of the PTP and QME/AME reporting. This reporting is going to provide a framework that establishes causation, scope of the injury (body parts and compensable consequences thereof), reasonableness of current medical care and outline for future medical treatment. A civil attorney is going to have access to this information much earlier into a case than they typically would and without formal discovery. Access to these medical records and experts is not only convenient, it minimizes litigation costs for a civil attorney.

Importantly, and worth repeating, to become a QME/AME, a physician must meet educational and licensing requirements. They must pass a test and participate in ongoing education on the workers' compensation evaluation process. They are certified by the Division of Workers' Compensation and serve as a medical-legal expert in evaluating the extent of disability, which is outlined in their medical-legal reports. Pursuant to the Labor Code, their medical-legal reports are to be signed under the penalty of perjury. When utilizing a QME/AME as an expert, this mandatory declaration should be explained to the jury, as it will add significant weight to their opinions.

As mentioned above, a QME/AME is a neutral evaluator, obtained by a panel process or by agreement by two parties. Introduced into a civil case as a neutral medical-legal expert, their testimony and reporting will naturally establish a higher degree of credibility than that of an expert hired by either side.

Conclusion

The PTP and QME play essential roles in not only the successful outcome of a workers' compensation case, but also in a potential crossover third-party civil case. The quality of their care can have long-term consequences for an injured worker. Their competence in the system can only benefit a crossover case. It is critical that an injured worker either knows how to navigate the workers' compensation system or retains counsel to ensure they have knowledgeable, patient advocate-minded treaters.

A case should be assessed early on as to whether there is a potential third-party claim. In a crossover matter, the civil attorney and workers' compensation attorney should work in concert with one another at the outset of a claim to make sure the appropriate treaters are being selected, and that the reporting that comes from those providers is complete.

Considering the medical reporting requirements required in a workers' compensation case, when the system is utilized properly, a civil attorney in a crossover case has the advantage of earlier access to medical records without formal discovery, solidifying quality experts, and reducing costs of litigation dramatically.


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