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State of California

# DWCNewsline

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## **Timeline set forth for selecting an agreed medical evaluator and requesting a panel qualified medical evaluator**

The Workers' Compensation Appeals Board (WCAB) issued an en banc decision in [\*Messele v. Pitco Foods Inc.\*](#) Cal. Wrk. Comp. LEXIS 144, on Sept. 27, 2011. The decision concerns the number of days the parties in a represented case must wait after an agreed medical evaluator (AME) proposal is mailed before requesting a qualified medical evaluator (QME) panel from the Medical Unit. In *Messele v. Pitco Foods* the WCAB held (1) when the first written AME proposal is mailed or by any method other than personal service, the period for seeking agreement on an AME under Labor Code section 4062.2(b) is extended five calendar days if the physical address of the party being served with the first written proposal is within California; and (2), the time period set forth in Labor Code section 4062.2(b) for seeking agreement on an AME starts with the day after the date of the first written proposal and includes the last day.

Effective immediately, the Medical Unit will only issue panels that comply with the holding in *Messele v. Pitco Foods Inc.* In reviewing panel requests currently on file, if a panel request is found by the Medical Unit to have been filed prematurely, the unit will send a letter to the parties indicating their request will not be filled because it was filed prematurely pursuant to *Messele v. Pitco Foods*.

Panels that were previously issued, where the panel request was filed with the Medical Unit prematurely pursuant to *Messele v. Pitco Foods*, will be handled in the following manner:

1. Where a panel was issued *and a QME evaluation was conducted by a doctor selected from the panel* the parties should seek a court order from a workers' compensation judge indicating that the medical evaluation was improperly procured under *Messele v. Pitco Foods Inc.* To help the Medical Unit identify and process these requests we are asking that filers send the following documents to the Medical Unit:
  - a. A cover letter that indicates the request is a result of the *Messele v. Pitco Foods case*
  - b. In the cover letter indicate the number of the prior panel that is being replaced (The panel number appears on the list of QME's previously sent)
  - c. A copy of the order issued by the board
  - d. A new form 106, the represented panel request form, filed in compliance with *Messele v. Pitco Foods*

- e. A copy of a new AME offer letter indicating the nature of the dispute and offering the name of at least one doctor to act as an agreed medical evaluator in the case
2. Where a panel was issued *but no QME evaluation was conducted*, the Medical Unit will issue a new panel if a filer establishes the panel request complies with *Messele v. Pitco Foods*. To help the Medical Unit identify and process these requests we are asking that filers send the following documents to the Medical Unit:
    - a. A cover letter that indicates the request is a result of the *Messele v. Pitco Foods case*
    - b. In the cover letter indicate the number of the prior panel that is being replaced. (The panel number appears on the list of QME's previously sent.)
    - c. In the cover letter please indicate the date of service of the original AME offer letter and the date of service of the original form 106
    - d. A new form 106, the represented panel request form, filed in compliance with *Messele v. Pitco Foods*
    - e. A copy of a new AME offer letter indicating the nature of the dispute and offering the name of at least one doctor to act as an agreed medical evaluator in the case

In these circumstances, the Medical Unit is requesting filers to provide additional information beyond what would ordinarily be required to issue a QME panel to facilitate the panel process.

***Practice pointers from Tsegay Messele v. Pitco Foods Inc and the regulations:***

To facilitate the review process at the Medical Unit and beyond, clearly indicate the nature of the dispute for which you are requesting a panel in the AME proposal letter or the cover letter that sometimes accompanies the panel request to the Medical Unit.

The WCAB points out in footnote 11 of the decision “[a]lthough Labor Code section 4062.2(b) may not explicitly require “service” of the AME proposal, the wise practitioner will avoid any doubt as to when the first written proposal was “made” by including proof of service. (See Cal. Code Regs., tit. 8, § 10505.) Adhering to the WCAB recommendation about the AME proposal letter will help speed the review process and reduce disputes that need to be resolved.

It is strongly recommended that litigants refrain from filing objections to the panel requests currently on file with the Medical Unit or from sending letters asking to withdraw a panel request that has been filed but not filled, except as specified above. Finally, do not file correspondence with the Medical Unit where the unit is merely being copied on the correspondence. Unnecessary correspondence detracts the processing of panel requests.

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