# Introduction

The transcript that appears below is an unofficial transcript that may have been edited for clarity. This DWC hosted Question and Answer meeting was for informational purposes only.

This presentation and any opinions expressed are solely those of the presenter and not necessarily the positions of the State of California, Department of Industrial Relations, Division of Workers’ Compensation, or any other entity or individual. This information is intended to be a reference tool only and is not meant to be relied upon as legal advice.

Jurisdiction over fee disputes lies with the WCAB pursuant to the Labor Code and regulations addressing Independent Bill Review.

George Parisotto: Good afternoon. I’d like to welcome everybody to our second Q&A session regarding our medical legal fee schedule which went into effect on April first of this month, just a few weeks ago. Joining me today on this panel is our Executive Medical Director, Dr. Raymond Meister. We have two attorneys from the division’s legal unit, Winslow West and Nicole Richardson, and as a special guest we have Dr. Steven Feinberg who is an AME and QME in our system. So, we’re going to take questions, answer some questions and learn a bit about our fee schedule. So now I will turn it over to Winslow and Nicole.

Winslow West: You’re not coming through Nicole. You need to unmute.

Nicole Richardson: Okay, thank you Winslow. Let’s start with our standard disclaimer: This presentation and any opinions expressed are solely those of the presenter and not necessarily the positions of the State of California, Department of Industrial Relations, Division of Workers’ Compensation or any other entity or individual. This information is intended to be a reference tool only and is not meant to be relied upon as legal advice. Jurisdiction over a fee disputes lies with the Worker’s Compensation Appeals Board (WCAB) pursuant to the Labor Code and regulations addressing Independent Bill Review. In the chat, please send your questions to Nicole Richardson, the host. Questions will be read and then answered by the panel. Questions or comments related to debating the reasons for or the utility of provisions of the new fee schedule will not be addressed. If, after the session, you have additional questions or we do not get to your questions, you can email MLFSProposals@dir.ca.gov. So we’ll go ahead and jump right in – what is the effective date of the fee schedule?

Winslow West: The effective date of the fee schedule is April 1st. Evaluations that occur on or after April 1st are subject to the new fee schedule. The supplemental is the date of the request, so you look at the date on the letter, and that’s pursuant to 9795(f). So face to face evaluations on or after, supplemental requested after April 1st.

Nicole Richardson: And what about a deposition?

Winslow West: A deposition -- it's going to depend on when the deposition takes place. If it takes place after April one, which is fairly certain at this point, then it’s going to be under the new schedule.

Steven Feinberg: So Winslow, I got a letter today from an attorney dated, actually three weeks ago, about March 15, to do a supplemental, and I billed it under the old fee schedule, correct?

Winslow West: Correct. Your request was prior to April one, you’re under the old schedule, unfortunately, Dr. Feinberg.

Steven Feinberg: It was unfortunate.

Nicole Richardson: And what about this attestation? What happens if I received the records with no attestation? Do I review them?

Winslow West: Well, it depends. If the medical records have been sent to the QME it would be best practice for the parties to get the physician a declaration of the number of pages provided prior to the evaluation itself. (Okay - we have some cross talk that is apparently is quite important – I heard 4th judicial district – but it doesn’t deal with the fee schedule, so I am going to move right along.) If no declaration is provided prior to an evaluation, then we recommend proceeding with the evaluation, and depending on the nature of the case, a supplemental report might be needed for the record review after the evaluator receives the proper attestation for those records. And additionally, the parties can come to an agreement on number of pages of records sent, and if that agreement is stated in writing ahead of an evaluation, that would appear reasonable.

Steven Feinberg: So Winslow, where I am routinely getting a difference between the attestation and my count - and what I’m doing -- it’s only a few pages, usually - and it may be because they’re not counting their letters. I just put that in my report, what my count is, and that’s what I’m billing them for. To me that’s a very practical thing to do, but do you have any comments?

Winslow West: Hopefully any discrepancies will be minor and won't cause too much friction. I’d say that your procedure is probably a best practice. You're doing an attestation of what you’ve received. If prior to writing the report you can contact them and let them know about this discrepancy, you can clear it up beforehand, but I think that what you're doing is the right approach.

Steven Feinberg: We are contacting them and it does take you a little more time. I assume it will even out over the next month or two, but so far, at least for me it hasn't been a big problem.

Winslow West: Like I said, hopefully it's only a matter of a few pages. If it's a huge discrepancy, then the physician is probably better served by keeping copies of the records, so that you could prove at a later IBR dispute or even if you went to the WCAB, you could prove the amount of records that you actually received.

Steven Feinberg: Well, my recommendation, Winslow, is to not have to go there and if in fact you choose to go ahead, because there's a big discrepancy, we're just taking a picture of the PDF number of pages and putting it in the report.

Winslow West: That's good, and I hope you never get to the WCAB. I don't know if a judge would deem that credible evidence. If you walk in with the boxes of records that would be hard to dispute.

Nicole Richardson: I just want to be clear for everyone on the call that this video session is also being recorded. Someone asked if they can record it. The DWC is recording it. If you choose to record it from your own perspective, we do not have an objection to that. There's a horrible echo on my end. Hopefully we're getting that taken care of. Hopefully everyone stays on mute. I'm trying to keep people muted. If you somehow become unmuted please continue to mute yourself. Questions are requested through the chat only in order to cut down on background noise.

Is there a difference on the need for the attestation if there are less than or more than 200 pages?

Winslow West: No. The attestation is required by regulation. I believe it’s 9793, and it's required by anyone sending the physician records and it's also required on the part of the physician. And there's two parts to the attestation. The first part is that the party sending the records has complied with 4062.3, the meet and confer requirement, and the second part is the amount of pages sent to the physician.

Nicole Richardson: And what is a page?

Winslow West: Okay 9793 again, I believe, defines a page. It states for purposes of record review a page is defined as an eight and a half by eleven single sided document, chart or paper, whether in physical or electronic form. Multiple condensed pages or documents displayed on a single page shall be charged as separate pages. So I hope that answers the question with regard to a deposition transcript. If there are four on an eight and a half by eleven, you bill for four pages.

Nicole Richardson: …those consider page.

Winslow West: I didn't quite get all of that Nicole. Your microphone is cutting out again.

Nicole Richardson: I apologize. What about the advocacy letters and the proof of service pages? Are those considered pages?

Winslow West: The advocacy letters are in fact pages. If it’s required to fulfill your requirement to settle a medical issue in dispute while writing the evaluation report, then it is something that could be considered a page. If it's relevant to what you're doing in the evaluation, then it can be considered a page. The advocacy letters actually outline what the parties are asking the physician to address, so that would be considered a page. A proof of service is not relevant to what you're doing for the evaluation, nor is it relevant to settling a medical issue in dispute. So a cover page on medical records or a proof of service for the medical records would not necessarily be considered a page.

Steven Feinberg: For instance, I’m not charging for the fax cover page.

Winslow West: That would be good.

Nicole Richardson: So if the 4062.3 declaration is not sent 20 days in advance, should the appointment be kept in the interest of expediency or should the appointment be rescheduled? I think you answered this but, again, people are coming in and out so.

Winslow West: Well, in that instance you basically have records with no attestation. So everything that we said about not receiving an attestation, a valid attestation, would still apply. You're probably going to be better served keeping the appointment and trying to receive a valid attestation, either before the actual appointment or after the appointment. Once again, in all these situations communication is the key. Try to keep lines of communication open between the physician, the parties and, if necessary, the carrier.

Steven Feinberg: So this morning, I saw someone and it turned out to be a follow up because I've done an ML10 “something” within 18 months. I had no letters. I had no new records. I went ahead and saw the person and did the best job I could and said I had no records, and then it'll be a supplemental if they write to me.

Winslow West: So all of our QMEs are astute enough to know that when providing a medical legal evaluation report, that report should try to cover all of the factors contained in regulation 10682, even in the absence of receiving any charge letters. So, you did the right thing, as always, Dr. Feinberg.

Nicole Richardson: And when there is a discrepancy on the number of pages in the attestation, what is the proper procedure?

Winslow West: Once again, try to keep copies of the actual records to settle any dispute. Go ahead and do your attestation and, if possible, try to reach an agreement with the party that sent you the records.

Nicole Richardson: This is a question that doesn't deal specifically with the fee schedule as regards to the implementation of it, but I will go ahead and answer it. Will the DWC be monitoring the new billing amounts to see if they are consistent with the DWC’s intent of the projected 25% increase in QME report costs? The DWC will be monitoring this fee schedule and will be assessing the reasonableness of the fees going forward and any adjustments that need to be made. And that is our intention to always monitor anything that we do roll out.

If a third evaluation is within 18 months of a follow up, but more than 18 months of a comprehensive, how do I bill it?

Winslow West: The time clock for an ML201 starts when you do an ML201. It doesn't matter how many ML202s are coming in between. Eighteen months and a day after the most recent ML201 you start to bill an ML201 again. To say that even clearer, if possible, eighteen months and a day between 201s.

Steven Feinberg: And, ML102s, 103s and 104s, but not ML101s.

Winslow West: Correct, but wait. An ML101 is a follow up, yes. You got me on the old language. I'm thinking in new schedule only these days Dr. Feinberg.

Steven Feinberg: For most of us what’s going to happen is I’m having to go back when I see that I’ve seen someone within 18 months and make sure it’s an ML101 and not an ML102, 103 or 104. If you've seen someone within 18 months and billed an ML102, 103 or 104 it's a comprehensive and therefore you should be billing an ML202.

Winslow West: That's correct, despite the terminology for billing purposes or the billing codes. The key is when did you do the last comprehensive medical legal evaluation, as defined by the codes 9793 and 9795.

Nicole Richardson: And can I always bill for records that are sent, even if previously reviewed?

Winslow West: No. If you are dealing with an ML20l you can bill for all records sent if they were sent related to that evaluation. You cannot go back and charge for review of records previously reviewed, but not sent at that time. If it’s an ML202 you can only bill for review of records that you have not previously reviewed regardless of what was sent. If it's an ML203 you can only bill for review of records that you have not previously reviewed, even if they are sent again. So, basically if you're doing another ML201 and they send you old records then you can probably bill for those if you're reviewing them again for the ML201. If they're not there and haven't been sent, then you're not going to bill for the previously reviewed records for the 201.

Steven Feinberg: So what's wrong with this from our physician standpoint is that, and this is already happening, we're being sent records for a follow up visit which we have seen before, but it's our job to sort them and figure out which ones we've seen before, and which ones we haven't, which is extremely time consuming. In my situation it's not a big problem, because I have software that does that. But for most of us, except for me and a few others, it's very laborious and going to be staff intensive. And the other problem is, if you bill for -- you know you may say, as a physician, look, they sent me 1000 pages I'm going to bill for 1000 pages. The trouble is, if you do that, and one side or the other complains about you to the DWC, then you're going to hear from Mr. West.

Winslow West: Or you're going to hear from IBR or from a judge. We're hoping that once use of this schedule becomes routine, parties who are sending records will not send you records that you've already reviewed when asking for a 202 or 203. So, hopefully, this is a problem that will go away.

Nicole Richardson: Does the declaration and attestation from the insurance company sent with the bill for the report suffice, or does the QME have to provide a declaration and attestation as well?

Winslow West: The QME must also provide a declaration and attestation of the amount of pages received and reviewed as part of the evaluation and preparation of the report. It’s a dual burden.

Nicole Richardson: And then, again, this is a, this is a repeat question but, just in case it was missed, what should you do if the attestation from the parties do not agree, and as the QME you attempt to resolve this but are unable to come to a consensus? Can you review all records, even if the number of pages provided are more than the attestation? Do I bill for the pages I count?

Winslow West: The best practice to ensure that your report is considered substantial medical evidence is to review all relevant medical records. So that would probably be the best practice. You would settle in a later billing dispute the actual discrepancy in amount of records sent. So the best practice would be to review and bill.

Nicole Richardson: Could you please define preparing a report and the ML203 code section? If the physician has completed their drafting of the report and all that remains is staff processing, would records or declaration arriving at the time, at that time, be appropriate for a supplemental report? How is preparing different from issuance in the sub-rosa video code section?

Winslow West: Okay I’m totally confused by that question because it started out asking about a 203 and then - that's now it's asking about a sub-rosa. So.

Nicole Richardson: So, it’s questioning the use of the word preparing a report and ML203. And I believe preparing is defined by the dictionary as what gets put into use. So in my opinion, it would be at the time that the report is put into use for the parties. So it would be when you serve the report. So, if the records are received prior to the service of the report, then you would need to include that record review in with that report. Preparing if it has not yet been put into use.

Winslow West: I’m not understanding why there's a question about this, because the fee for sub-rosa defines it as records received prior to the issuance of a pending report.

Nicole Richardson: And then ML203 uses the word preparing.

Winslow West: Okay.

Steven Feinberg: So let me clarify. Today I saw someone where they came with sub-roses, and therefore, there was not a separate billing for that other than the sub-rosa. No extra supplemental report. But basically, to my colleagues who are listening in, if you can do it quick enough -- you need to get your reports out faster, because then things that come in afterwards are a supplemental. That's frankly just a financial thing. You're going to do better that way. But if you see someone today and you're working on your report and on Monday, you haven't sent out your report yet, and there's more stuff coming in, you need to review that stuff and include it. Is that what I'm hearing you say?

Winslow West: I guess that’s the right distinction. So if the report is prepared and with the administrative staff, and you receive more records during that time period, what is considered prepared for purposes of the 203. So if it hasn't gone out the door, I guess it's still in preparation, so I would agree with Dr. Feinberg.

Nicole Richardson: In the medical attestation, do you need to include the advocacy letter, the court exhibit and the declaration? So I think that's asking about the page count. We did say that you do need to include the advocacy letters as part of the page count. The declaration does not need to be considered part of the page count, but the court exhibit, I don't know if you're just referring to a reference page or if you're referring to the actual court exhibits. If you're referring to the actual documents that you want a physician to review and take into consideration in his reporting, then you would include those as your page count.

Steven Feinberg: Let me interpret that differently, what should we be sending back with our report?

Winslow West: You should be sending back the correspondence received with the report. I believe its 9793(l) that defines records required by the Administrative Director.

Steven Feinberg: So if the added attestation is separate from the letter we get from the attorney or the claims examiner, I'm hearing we don't need to send that separate sheet back.

Winslow West: That would not qualify, I don’t think, as correspondence. I will have to find the definition. But I don’t think that would qualify as correspondence. The bill is required to be sent. And I would say that correspondence is required to be sent, that was the change. I don’t know if the attestation would be. But it is an element of proof for the bill, so it might not be a bad practice to include it. Hopefully it’s not too onerous administratively.

Nicole Richardson: I’m going to ask that same question, maybe a different way. The requirement to send copies -- there's now a requirement to send copies of all correspondence received when submitting bills and reports, is very broad. Does the DWC expect the doctor to send back earlier correspondence received for previous evaluations every time there is either a follow up or supplemental evaluation, or just the correspondence specifically related to the current evaluation?

Winslow West: It’s 9795(l). It defines that. All reports and documents required by the Administrative Director shall be included in or attached to the medical legal report when it is filed and served on the parties. And I’d have to find what is required by the Administrative Director, but I believe a reasonable interpretation of that regulation would be the correspondence related to the actual report and evaluation that you're currently doing. Not prior correspondence. Not prior correspondence related to prior reports.

Nicole Richardson: Is the new medical legal fees schedule subject to IBR?

Winslow West: Yes. If it's an issue related to the proper application of a fee schedule, it is subject to IBR.

Nicole Richardson: And again, I think you covered this, but for a deposition there are usually four pages condensed on one page. The attestation is for one page only. What is the correct page count?

Winslow West: Pursuant to 9793(n) the correct page count would be four pages. Despite what's in the attestation, the physician’s attestation should reflect four pages for that one condensed page.

Steven Feinberg: So, to interpret that, either your software or your staff needs to count the actual pages. So if it's a 40 page PDF but, in fact has an 80 page deposition, it's 80 pages, or 160.

Winslow West: That presupposes a QME is reading all 160 of those pages. Right, Dr. Feinberg?

Steven Feinberg: Well, we’re supposed to do that.

Winslow West: Okay.

Nicole Richardson: And then I'll give this one, to you, Dr. Feinberg. Can I review the cover letters if there's no attestation, in your opinion?

Steven Feinberg: Well, I would because I really want to get the report done. I don’t think anyone’s going to ding me for that, frankly. But that’s not legal, that’s just my opinion.

Nicole Richardson: Can we now issue a supplemental report reviewing new medical test findings for tests that we request in the initial QME report without a request for a supplemental report from a party?

Winslow West: No. The definition of a supplemental report requires a request from the party. There is no longer a prohibition against billing for review of tests or diagnostics ordered in the first evaluation as there was in the old fee schedule. We got rid of that. So if you receive a request for a supplemental then the proper action would be to bill for a supplemental for reviewing those tests.

Steven Feinberg: So let me get practical here. So, last week I saw someone and wanted a knee x-ray. Sometimes it takes a month to get it, so I went ahead and sent my report. Low and behold the x-ray showed up two days later. My report had gone out, so I did a no cost supplemental. I just sent it out because it was the right thing to do. But, frankly, if you order a lot of tests and they come 30 days later, the answer is to send a letter to both parties and say, may I please have authorization to submit a supplemental report, since there are, you know, six different tests, I need to summarize.

Winslow West: There's an overriding thread running through all of this and that thread is communication. Dr. Feinberg is absolutely right. Given the definition of a supplemental you can't bill for it unless requested. So, the logical thing to do would be to say I've received these tests, would you like an update on the condition of the injured worker? Invariably the parties are going to want that, so you should be fine.

Nicole Richardson: How many days is considered a late cancellation?

Winslow West: Well, I don't know about the days, but I think the cancellation and the regulation in the 30s defines how late. I think it's within 6 days. Within six days of the actual evaluation. That's a regulation in the 30s. If you want to ask another question, I’ll look for it. I can tell you. Regulation 34! Look to regulation 34 for cancellation protocols.

Nicole Richardson: If a declaration attestation arrived after the report is served, can you bill for the supplemental report, in addition to billing for excess pages if done with a supplemental or the excess pages greater than 50 or 200?

Winslow West: If they arrive afterwards and they are being reviewed in conjunction with a supplemental, then it would probably be 50, if you're requested to do that. You would apply to the standard for a supplemental report.

Steven Feinberg: Winslow, let's take this case I gave before where I saw someone today and I got the report out quickly. It was a follow up. I got no letters. What if the letters come tomorrow, but it doesn't say do a supplemental? I think that's how I'm interpreting the question. The letters come tomorrow. I've already billed for my supplemental report. They're not asking -- I'm sorry I’ve already billed for my follow-up. I get two letters and there are some questions that have not been answered. One option is for me to say, would you like me to answer these questions, since I got your letters late, which means another letter asking, or an email or something, but I guess the question, basically, is if I get two letters from the sides and they come next week after I've done my report, but they're not actually asking for supplemental, their letters are just late in the mail.

Winslow West: Well, Dr. Feinberg, a QME of your quality would have answered the questions without the letters, because you would have followed 10682. Now we’re actually…

Steven Feinberg: That’s very kind of you, but it doesn’t always work that way.

Winslow West: If there are new questions and new records then you’d follow the procedure for a supplemental.

Steven Feinberg: Okay, that’s good advice.

Winslow West: But you're correct. You write to them first and say, do you want me to issue a supplemental addressing these questions that I received after production of my first report. So once again communication is the key.

Steven Feinberg: For everyone listening, you know my interpretation and what we're hearing is that your staff is going to have to, or you, is going to have to send out a semi-form letter saying I just received this, may I please respond with a supplemental report.

Winslow West: Having a check the box letter would not be bad. But as a practical matter I don't see how people are resolving their cases without complete evaluation reports. So, I would suspect that the parties are going to ask for that supplemental. Unless you've done such a great job without that, that they're able to settle the case and then it's a win, win.

Nicole Richardson: What is the correct code for the record review? The correct code for the record review is MLPRR. That would be the correct code for the record review, and that is found in 9795.

Steven Feinberg: That’s for the number of pages.

Winslow West: Correct. It’s the very last billing code before subsection d of 9795.

Nicole Richardson: If we are asked for a supplemental report via party without new medical records to review, does the QME have to serve their own declaration and attestation with the supplemental report?

Winslow West: That's an interesting question, but if you have no records it’s an easy attestation. It could probably also be part of your 4628 attestation that you always put on a medical legal report. You’d probably just say there were no records served with this request.

Nicole Richardson: If the insurance company attests to proof of service as a page, do I need to correct them?

Winslow West: That would be the kind thing to do.

Nicole Richardson: Is the declaration page part of the page count?

Winslow West: Once again, if it's relevant to production of the report it's part of the page count. I don't know if the declaration is relevant to the production. It's obviously relevant to the billing, but I don't know if it's relevant to the medical issues in dispute.

Steven Feinberg: I’m going to argue that it is.

Winslow West: And ultimately, the judge will decide. You can. It’s a matter of interpretation, Dr. Feinberg.

Steven Feinberg: Yeah

Nicole Richardson: And when can a primary treating physician use this fee schedule?

Winslow West: Whenever it is proper under the existing regulations, which were not changed by this rulemaking, for a primary treating physician to write a medical legal report. Under existing regulations and existing case law.

Steven Feinberg: My recommendation, and I know a lot of people don't follow this, but we treat in our practice, and there are some very complicated patients we treat where we just don't want to do a PR4. It's just going to be too time consuming. And we do get authorization for to use the MLFS, and once you do that you're fine. Now, if you get an applicant attorney letter, asking, or about a contested issue, you certainly can do a report, but whether you're going to have grief from the payer is another matter. So, we always find it better to get authorization. It's just easier and we get it almost all the time.

Winslow West: This is an area that's in dispute and I don't profess to be an expert on when this should actually happen, but I do know that Dr. Feinberg has just eloquently described regulation 9785(f). The last paragraph of which says that “If there's mutual agreement between the claims administrator and the physician, then any type of report can be sent.”

Nicole Richardson: Is there a place on the DWC site where we can find an example of the declaration and attestation to use in serving reports? We do not currently have a sample up on our website, nor is there a form declaration or attestation that we have created at this time. The regulations provide what is required - sign under penalty of perjury, and that's what the regulation provides guidance on. There is no form, documentation or sample at this time.

Steven Feinberg: I’m happy to share the one I have with anyone that wants to drop me an email. It’s just my name – stevenfeinberg@hotmail.com.

Nicole Richardson: Thank you, Dr. Feinberg.

Nicole Richardson: What if we have a new patient coming in for a QME evaluation and we have less than 200 pages, and it requires some time. There are no records or patient has not received a lot of treatment. How can I bill for?

Winslow West: In that instance, congratulations. You're getting an ML201 for not much effort.

Steven Feinberg: And if it’s and AME and an interpreter as well, you’re doing very well.

Winslow West: Remember, I did not say that, but I agree.

Nicole Richardson: If an ML201 sent records from defense overlap with records from applicant. Example, 1000 pages from defense, 500 pages from applicant. Do I bill for 1500 pages minus the 200 pages, of course?

Winslow West: That's the duplicate record dilemma which is not covered in this fee schedule. There's no direct guidance. We tried to insert a meet and confer requirement with respect to the records that are being sent. We hope that the community will take that meet and confer requirement to heart and not send duplicate records. The very best practice would be for the QME to bill for records received, but not the duplicate records, but there's no hard and fast regulation on that issue.

Steven Feinberg: Well I'm going to chime in here. As a physician I think if you're sent records that you've got to sort through them. Even if you only get one set there are going to be some duplicates. I urge the payers on the line, and whoever's listening to please don't send us duplicates. But if you do, it's my intention to charge for them. So if the applicant’s attorney sends duplicate records there's going to be a bill for adding the two attestations together.

Winslow West: If this is a persistent practice it's going to drive up med-legal costs. Just keep that in mind.

Nicole Richardson: Can you provide the regulation citation that requires a QME to provide an attestation of records, the dual burden that Winslow mentioned? That's found in 9795 under ML202 and 203, and at any point that you're providing the record review. But it does say when billing under this code, the physician shall include in the report a verification, under penalty of perjury, of the total number of records reviewed by the physician as part of the supplemental report. So it is right there and 9795 under each billable code section where record review is at issue.

Can a provider bill an ML203 when they have not received actual records to review, but is communicating this back to the opposing party as the preparation of report?

Steven Feinberg: I don't understand that.

Winslow West: You're not alone. I guess it's contemplating receipt of a question without records. Whether it's billable or not is going to depend on whether that's a question that should have been answered in the evaluation report that preceded the supplemental.

Steven Feinberg: So, I just did a supplemental where I was the AME and the defense attorney asked me, repeated something in my report, and said is that what you meant? I wrote back yes! I'll let you figure out what the charge was for that response.

Winslow West: I would suspect that you probably didn’t charge them but, once again, that would be the kind thing to do.

Steven Feinberg: It’s good hearing that from you.

Nicole Richardson: Winslow, under regulation 9793(n), it provides for the declaration attestation that we're talking about here. It also provides for declaration of the parties comply with the provisions of Labor Code section 4062.3. Can you talk a little bit about that?

Winslow West: 4062.3 requires that the parties send, to the other side, 20 days before the evaluation, the records that they plan to send to the QME. It also gives the other party a chance to object to anything that's being sent to the QME. That Labor code section has been there forever, but I don't know if people are routinely complying with it. I imagine the intent is, specifically, that no untoward records are sent to the QME and, hopefully, so that they can agree upon the medical records and all of the evidence that will be sent to the QME. Because even before we had the page count, in a complex case, you were paying the QME for hourly review of the records, so it doesn't make sense to send a lot of duplicates from anybody’s standpoint. So, hopefully the community will embrace the meet and confer requirements of 4062.3 and make this schedule work.

Nicole Richardson: Are you saying that we have to send the cover letters from the parties with the report or just their attestation? Regulation 9793(l) provides that you now have to provide the cover letters with your report.

Winslow West: That’s correct. Let’s see, ‘l’, that was the one I was searching for earlier in the Zoom. Thank you.

Nicole Richardson: When can you bill again for an ML201?

Winslow West: 18 months and one day after the last 201.

Steven Feinberg: Or 102, 103 or 104.

Winslow West: Correct.

Nicole Richardson: For a follow-up med-legal does the evaluator have to send back the actual records reviewed to all the parties?

Winslow West: What an evaluator does with the medical records is covered in another regulation, I believe it may be 39.5. If there's a dispute as to the amount of medical records sent, then it's probably in an evaluator’s best interest to keep a copy of the medical records, but the regulations do not require that you send a copy of the medical records with your report.

Steven Feinberg: Just your report and the letters you received.

Nicole Richardson: On the webinar you held the other day -- I think this is directed to you Winslow – you state that if the diagnostics order came in late, you could bill for a supplemental, now you're saying no, but you can send a request for a supplemental?

Winslow West: All I'm saying is that if you look at 9795 and the definition of a supplemental, it requires a request from the parties. So if I misspoke in the prior webinar I apologize, but if you review the regulations, you will not go wrong.

Steven Feinberg: Let me put it another way, the safe thing to do is to just get an assurance that you may do a supplemental for those reports that you’re getting after you’ve seen the person. It’s just a safety mechanism to avoid getting your bill denied.

Nicole Richardson: Do we need to omit non-considered page counts from copies, subpoenaed records, cover pages, proof of service attached to reports, etcetera, or does the doctor's office know not to count these pages when reviewing them? We have received messages contesting our page counts due to the doctor's office scanning the received document package, and relying on that scanned page count.

Nicole Richardson: Again, what is considered a page, Winslow went over that, and to the extent that that's not considered a page, like a proof of service or a cover page potentially is not considered a page. Therefore, you would not include that in your attestation and your declaration and you need to submit the number of pages, actually.

Winslow West: This will not prove to be a problem going forward because all of the QMEs know that Labor Code 4628 requires them to review the actual medical records. So, despite what their administrative staff might do in the beginning, once the doctor reviews the actual medical records, they will be able to have a page count of the relevant records that were sent. So, given the caliber of our QMEs I'm certain that this will not be a problem going forward.

Steven Feinberg: Let me interpret that or let me just give you my own interpretation. I think we're hearing that they don't feel we should be billing for the first six or eight pages of a subpoena, etcetera, records that are just the legal documents about getting the subpoena.

Winslow West: And, to be honest, there's no real reason for the parties to send that to the QME.

Steven Feinberg: Well, I mean you know what you're talking about is the hope that everybody behaves and that friction is reduced. I can tell you, as physicians we would love nothing more than to get the records, only the good records, in order, and allow us to just review them, but that's not what happens. And it's hard to believe a future where that does happen.

Winslow West: You have to buy into my unreasonable optimism, Dr. Feinberg.

Steven Feinberg: I’m going to do that.

Winslow West: Come with me.

Nicole Richardson: Are you allowed to communicate with the parties directly when there is a page discrepancy?

Winslow West: Okay that's running into the prohibition against ex parte communication, and I don't know the most recent case law, but I believe when dealing with administrative matters it won't be considered ex parte. If you have your administrative staff try to work these problems out, then there's no actual communication with the QME. And, finally, if you do it in writing and copy both sides, it's probably not going to be viewed as ex parte communication.

Nicole Richardson: And in writing, if you wanted to, for example, email the parties, and you're emailing everyone and the parties, do you want a supplemental report on this issue? Would that be appropriate?

Winslow West: I would recommend that it not come from the actual QME, but from a member of the staff, but I don't think that it would be judged as ex parte communication if it’s dealing strictly with administrative matters. It's taken a long time, but what a QME does with their records is governed by Regulation 39.5. That's the long delayed answer to “do you send the medical records back?” Look at Regulation 39.5. I recommend if there's a discrepancy or a possible dispute then keep an actual copy so you can consult that later.

Nicole Richardson: Is a medical index of records a page count? To the extent that the medical records index provides a number of pages for each item and sign under penalty of perjury that has met the requirements of 9793, I would opinion that is sufficient.

Winslow West: That would be sufficient, yes. If you're going to fold in your attestation with your index, that's fine. When the doctor reviews every single medical record they'll come up with an actual page count as to what was relevant. When the physician, I'm sorry.

Steven Feinberg: Let's remember that the word medical record doesn't mean it's a medical record. You may get subpoenaed records from the WCAB which are relevant, but are not medical, they're just records that are within the medical file. So, I like to use the word documents, relevant documents.

Winslow West: That’s correct. The relevant record.

Nicole Richardson: I think this one's in the regulation, can you bill for travel time to go to a deposition at a satellite office?

Winslow West: That’s a tricky one. I don’t know the permutation of billing for travel to a satellite office that you actually saw the injured worker at. That’s going to be something that is going to have to be settled. But in the normal course, yes, you can. If the deposition is taking place not at the office that you saw the injured worker.

Steven Feinberg: Winslow, you know you're a little wishy washy on that one. I was under the impression that if you saw an injured worker at an office you could not charge for transportation, because you happen to you have it as one of your 10 offices.

Winslow West: I think that would be the correct interpretation.

Steven Feinberg: Okay.

Winslow West: But it is a matter that is subject to interpretation and that's what I was trying to say. I guess I didn't say it clearly enough.

Nicole Richardson: Are declarations and attestation requirements for unrepresented workers the same as when there are attorneys?

Winslow West: Yes. Yes, I don’t know that came through.

Steven Feinberg: That's probably a weakness in the system for unrepresented workers. You really aren't going to get this.

Winslow West: Well, we have I&A officers that will probably be able to help them with this. So I hope that it's something that can be worked out.

Steven Feinberg: We are actually providing injured workers an attestation sheet that they could use and send to the claims examiner. So we're not letting them give us records when they come in. I've been explaining to them if you'd like me to see these, you need to send them to the claims examiner, and then I can see them after that.

Winslow West: That’s good forward thinking.

Nicole Richardson: DWC said QMEs cannot charge for duplicate record review and QME said that they would charge for that. Am I understanding this correctly? Or was it meant that previously reviewed records are not allowed to be billed and duplicates from applicant’s insurance companies, at the same time, will be billed?

Winslow West: That is something that the QMEs will have to decide for themselves. The regulations do not speak specifically to that. As a matter of cost control I don't think duplicate records should be billed, but it's subject to interpretation.

Nicole Richardson: If you get the ok to do a supplementary report, does it have to be in writing and included with the papers served with the report?

Winslow West: That's an interesting question. Most of the time a request for supplemental would be in writing. I don't know if there are cases where a party is calling the QME and asking for a supplemental. I would imagine that most of the time they are in writing. Otherwise, the party can’t prove that the supplemental is late pursuant to 38 if the QME doesn't produce it in 60 days; so I'd imagine that they're always in writing.

Nicole Richardson: And what do the modifiers apply to?

Winslow West: The modifiers apply to, pursuant to subsection d, the services described by procedure codes ML201 through ML203 may be modified under the circumstances described in this subdivision. So they apply to 201s, 202s and 203s.The base rate.

Nicole Richardson: And I think that there was some confusion there because sometimes the modifier goes on to talk about when an interpreter leaves it out, because the interpreter wouldn't necessarily use, for example, a supplemental report.

Winslow West: Correct.

Nicole Richardson: And we are running out of time here, and it seems like there are a lot of questions about the attestation, so I just wanted to go over this one more time. What happens if you receive records with no attestation, do you cancel the exam? What do you recommend they do?

Winslow West: Ok. So, as we stated in the beginning, if the medical records have been sent to the QME it would be best practice for the parties to give the physician a declaration of the number of pages provided prior to the evaluation itself. If no declaration is provided prior to an evaluation, then we recommend proceeding with the evaluation, and, depending on the nature of the case, a supplemental report might be needed for the record review after the evaluator receives the proper attestation for those records, and a request. Additionally, parties can come to an agreement on the number of pages of records sent, and if that agreement is stated in writing ahead of an evaluation that would appear to be reasonable.

Steven Feinberg: So, let me tell you practically what we are doing in my office. We are spending a lot of time and energy by phone and email and fax trying to get the attestation. If I don't get it, but I get the records, I do not review the records. I do my report and at the bottom of my report, I say, if you would like me to review these records, please provide an attestation and an allowance for supplemental report ML203.

Winslow West: I think that is an acceptable procedure.

Nicole Richardson: Now we are running out of time and we didn't get to everyone's questions. If you do have a pending question you can always email us at MLFSProposals@dir.ca.gov. I do have it up on the screen right now, at the bottom, but once again that's MLFSProposals@dir.ca.gov. Thank you, Dr. Feinberg and Winslow and thank you all for joining us today.

Steven Feinberg: I have a closing comment. May I?

Nicole Richardson: Absolutely.

Steven Feinberg: I want to thank both of you and George Parisotto for doing this at our request. You were very open answered questions honestly and thank you very much. I just want to tell everyone that these folks are very accessible. They answer questions readily. I know that there is a lot of grief for some of us, but let’s all work together to try to make this system work.

Winslow West: Thank you for that, Dr. Feinberg.

Nicole Richardson: Thank you. Thanks for coming.

Steven Feinberg: Thank you.