

# QME FALL ZOOMINAR SERIES

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# PERRY J. CARPENTER DC QME



- 1983 - UC Santa Cruz: BA Cell Biology
- 1988 - Palmer West College of Chiropractic - DC
- 1995 - Qualified Medical Evaluator
- 2011 - DWC Continuing Education Provider
- 2013 - State Bar Board of Legal Specialization  
Workers Compensation Law Provider
- 2018 - QME Data Works Virtual QME Office
- 2021 - California Chiropractic Evaluators



# QME UPDATE 2021 - SECRETS TO YOUR SUCCESS

New Medical  
Legal Fee  
Schedule

Passage of  
Senate Bill 788 -  
LC 4663

Lindh  
Kite & Others  
Wiest -

May 2021

Ongoing

Emergency  
Regulations

Apr. 2021

June 2021

Case Law  
Updates

New Proposed  
Changes to QME  
Regs.

Report Quality  
Committee  
Findings

COVID  
Extensions -  
01/15/22



# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- Purpose:
  1. To explain to you how the DWC's plan to combat bias in the medical legal evaluation, and in the reporting of QMEs is expected to impact the QME, and by understanding that,
  2. How you can arrive at opinions and conclusions, and write your Report free from bias so that appropriate benefits can be provided for all persons....



# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- What is “Bias?”
  - Bias is a prejudice in favor of or against one thing, person, or group compared with another usually in a way that’s considered to be unfair. Biases may be held by an individual, group, or institution and can have negative or positive consequences.
- Targets of Bias - **Person** Targets.....and **Characteristics** Targets of Bias
  - **Person** Targets of bias:
    - Examinee -
    - Claims Administrator -
    - Applicant Attorney -
    - Defense Attorney -
    - Others.....

# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- Characteristic Targets of “Bias?”:
  - DWC - Race, sex (gender), national origin, religion, or sexual preference....
  - Age, gender identity, marital status, disability/physical abilities, weight...and many other characteristics are subject to bias.
- Examinee - Age, race, gender, gender identity, physical abilities, religion, sexual preference, weight, national origin
- Claims Administrator - Age, gender, sexual preference, weight, cooperativeness, Cover Letter, reimbursement status
- Attorneys - Applicant Attorney/Defense Attorney?
- QME?



# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- “Specifically, the workers compensation system unlawfully discriminates on the basis of sex in the calculation of permanent disability benefits - benefits intended to compensate injured workers for long term physical loss and the loss of earning capacity - in two ways:
  1. Women receive fewer permanent disability benefits than the extent of their injuries merit because harm **unique to women** is ignored.”
  2. The permanent disability benefits to which injured women workers are entitled are reduced for no reason other than the worker’s gender. Women’s permanent disability benefits are routinely reduced because women’s injuries are **apportioned** - that is, attributed in part to the “risk factor” or “predisposing condition ” of the female gender or women’s reproductive biology.

# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- Claimant 1- CTS Impairment Rating apportioned 20% to non-industrial risk factors (gender)
- Claimants 2 & 3 - Industrial Breast Cancer - No Impairment Rating following double mastectomy... No Impairment rating following single mastectomy
- Claimant 4 - California State Council - Members are subjected to illegal reduction in workers' compensation (the “**Apportionment** Class”) on account of their gender.

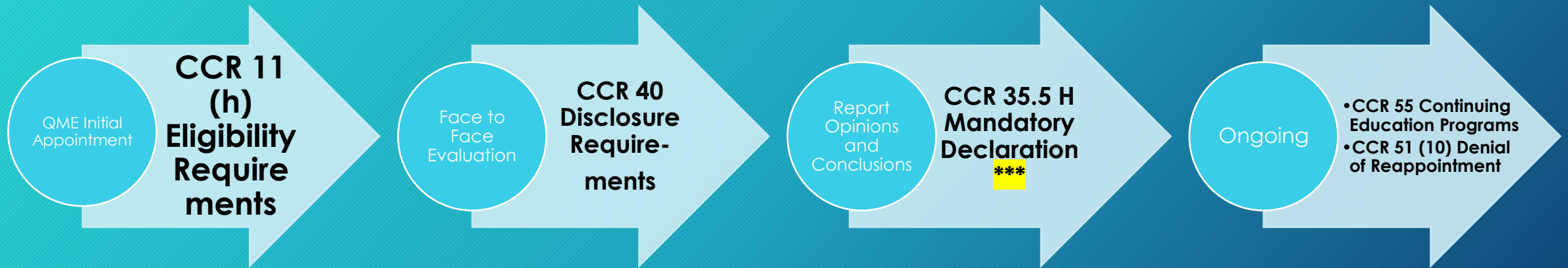


# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- Examples of Bias In the Medical Legal Evaluation
  - Page vs. Parisotto - Gender
  - QME Replaced - National Origin
  - Beecham vs. Swift Transportation - Racial
  - Claims Bias - Race/National Origin
  - Disability Bias - Work Restrictions

# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION





# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- What is “Bias?”
  - Wikipedia - Pre-reflective attribution of particular qualities by an **individual** to a member of some social “in” or “out” group.
  - In Group -
  - Out Group -
  - Bias is a prejudice in favor of, or against one thing, person, or group (the **“out-group”**) compared with another (the **in-group**) usually in a way that’s considered to be **unfair**. Biases may be held by an individual, group, or institution and can have negative, or positive consequences.

# COMBATTING BIAS IN THE MEDICAL LEGAL EVALUATION



- In - Group = Favoritism
- Out - Group = Negativity
- Social psychologists have long made the distinction between ingroup favoritism and outgroup negativity, where outgroup negativity is the act of **punishing** or **placing burdens** upon the outgroup. Indeed, a significant body of research exists that attempts to identify the relationship between ingroup favoritism and outgroup negativity, as well as **conditions** that will lead to outgroup negativity.



Group	Examinee	Claims Administrator	Applicant Attorney	Defense Attorney	Favoritism/Punishment/Burden	Conditions Leading to Positivity/Negativity
In-Group	X	***	X	***	<p><b>Favoritism:</b></p> <ul style="list-style-type: none"> <li>• Yes - AOE/COE</li> <li>• Yes - TTD</li> <li>• Yes - High Impairment</li> <li>• Yes - Low Apportionment</li> </ul> <p><b>Punishment:</b></p> <ul style="list-style-type: none"> <li>• Not P&amp;S</li> <li>• Add'l Dx Studies</li> <li>• Add'l TTD</li> </ul>	<p><b>Prior History</b></p> <p><b>Prior Experience</b></p>
	X = Ingroup	*** = Outgroup				

Group	Examinee	Claims Administrator	Applicant Attorney	Defense Attorney	Favoritism/Punishment/Burden	Conditions Leading to Positivity/Negativity
Out-Group	***	X	***	X	<b>Favoritism:</b> <ul style="list-style-type: none"> <li>• No AOE/COE</li> <li>• No TTD</li> <li>• No Impairment</li> <li>• High Apportionment</li> <li>• Reduce Work Restrictions</li> </ul> <b>Negativity:</b> <ul style="list-style-type: none"> <li>• Deny Injury</li> <li>• Deny Benefits</li> <li>• Refer to Primary Care Physician</li> </ul>	<b>Prior History</b>  <b>Prior Experience</b>
	X = Ingroup	*** = Outgroup				



Group	Examinee	Claims Administrator	Applicant Attorney	Defense Attorney	Punishment/Burden	Conditions Leading to Negativity
In-Group	X	***	X	***	Not P&S Add'l Dx Studies Add'l TTD	Prior History Prior Experience
Out-Group	***	X	***	X	No AOE/COE No Impairment High Apportionment Reduce Work Restrictions	Prior History Prior Experience
	X = Ingroup	*** = Outgroup				

# HOW TO ELIMINATE BIAS IN THE MEDICAL LEGAL EVALUATION



- Struch and Schwartz found support for the predictions of belief congruence theory.<sup>1</sup>
  - The *belief congruence theory* concerns itself with the degree of **similarity** in beliefs, attitudes, and values **perceived** to exist between individuals. This theory states that dissimilarity increases negative orientations towards others.
  - When applied to racial discrimination, the belief congruence theory argues that the perceived dissimilarity of beliefs has more of an impact on racial discrimination than does race itself.



Group	Examinee	Claims Administrator	Applicant Attorney	Defense Attorney	Similar Beliefs	Dissimilar Beliefs
In-Group	X	***	X	***	Insurance screws everyone Employers hide injuries Medical Treatment is terrible	Fakers Benefit Seekers Scammers Never get well
Out-Group	***	X	***	X	Exaggerators/Malingerers/Symptom Magnifiers Poly Claim Mongers	Need Benefits No Injury Return to Work

# UPCOMING SESSIONS



- 10/20/21 - AOE/COE IN THE POST EMPLOYMENT CT CLAIM
- 10/27/21 - QME'S CLINICAL ROUNDS
- 11/03/21 - TRUTH AND LIES IN THE FACE TO FACE EVALUATION
- 11/10/21 - PROFIT LEAKS IN THE QME EVALUATION - **NO CE CREDITS!!**
- 11/17/21 - HEADS AND TAILS ON PERMANENT IMPAIRMENT RATINGS
- 12/01/21 - THE "ANYTHING GOES" RULES OF APPORTIONMENT
- 12/08/21 - STATS/TRENDS/AND DISTURBING FACTS
- 12/15/21 - YOUR FINAL REPORT IS TERRIBLE AND YOU SHOULD NOT SIGN IT
- JANUARY 2022 - QME PRACTICE BUILDING SERIES