

Defendant Entitled to New PQME Despite its own Multiple Negligent Errors and Delays

While applicant was unrepresented, she requested and scheduled a PQME appointment. She appeared for the examination at the wrong location (she was provided the incorrect address). When she arrived at the correct location, an interpreter was not present due to the address mix-up. The appointment was rescheduled at which point applicant appeared, but an interpreter was not present due to defendant's clerical error. A third appointment was scheduled, but before the exam occurred, applicant hired an attorney which prompted defendant's request for a new PQME under the *Romero* case.

Despite defendant's multiple negligent errors, the trial Judge issued a decision finding defendant was not prohibited from requesting a new PQME after applicant became represented. Applicant then filed a Petition for Removal arguing (1) she participated in the exam with the first PQME despite the lack of an interpreter and (2) defendant waived its right to request a new PQME when it participated in the first two appointments.

In a split panel, the WCAB affirmed the Judge's decision, stating there was no evidence of significant prejudice or irreparable harm if applicant's Removal was not granted. The majority relied on *Romero*, opining an applicant has received a medical-legal evaluation when he or she attends and "participates" in an examination with the PQME. Since applicant was unable to participate in the QME's examination twice, due to lack of an interpreter, no examination occurred, therefore allowing defendant to request a new PQME (pursuant to Labor Code § 4062.2).

The WCAB's Chairwoman Katherine Zalewski dissented arguing defendant was not entitled to a new PQME since it was responsible for the errors which prevented applicant's examinations with the original PQME. She further argued applicant did indeed attend and participate in the PQME examination to the extent she could do so and it was defendant's errors which prevented applicant twice from fully participating in the exams.