

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE OF CLAIMS**

*(Howard, et al. v. California Dept. of Industrial Relations;
Dr. _____ Agreement)*

RECITALS

1. The Lawsuit and Matters Settled. This Settlement Agreement and Mutual Release of All Claims (“Agreement”) is entered into by and among the Parties identified herein for the purpose of resolving, in full and with complete finality, the action entitled *Dr. _____ et al. v. Department of Industrial Relations, et. al.*, Los Angeles Superior Court Case Number _____ (hereinafter “Lawsuit”), as well as the related dispute and administrative proceedings referred to as AD Case Number _____, pending with the Office of Administrative Hearings (“OAH”), concerning the reappointment of a Qualified Medical Examiner (“QME”). The Lawsuit and AD Case Number _____ are collectively referred to herein as the “Matters.” The “Effective Date” of this Agreement is the date of its last signature.

2. The Parties. The Parties to this Agreement are and shall be _____ (“Petitioner” or “_____”), on the one hand, and the California Department of Industrial Relations (“DIR”), Christine Baker, in her official capacity as Director of DIR, the California Division of Workers’ Compensation (“DWC”), George Parisotto, in his official capacity as Administrative Director of DWC, and Dr. Raymond Meister, in his official capacity as Executive Medical Director of DIR, on the other hand, which parties are collectively referred herein to as “Respondents” or “DIR”.

3. _____ and Respondents are the only Parties to this Agreement and whenever this Agreement uses the term Parties it is referring collectively and exclusively to _____ and the Respondents.

4. On or about _____, 2017, _____ submitted to the DWC his application for reappointment as a QME, to be effective on or before July 15, 2017. On or about _____ 2017, the DWC served upon _____ a letter denying his reappointment as a QME, which letter was signed by Dr. Raymond Meister (“Denial Letter”). _____ timely responded to the Denial Letter, denied its allegations, and requested, *inter alia*, reconsideration of the DWC’s denial and

immediate reappointment, retroactive to _____, 2017, the DWC served upon _____ an Order On Reconsideration And Statement of Issues Re Denial of Reappointment, denying reconsideration of its denial (“Statement of Issues”), and commenced an administrative hearing process as AD Case Number _____ against _____ On _____ 2017, _____ submitted a Request For Hearing.

5. In consideration for the mutual promises and agreements made herein, the Parties agree to settle the Matters and to fully and completely release each other from any and all claims and potential claims, as set forth below in this Agreement.

TERMS

6. Reappointment of _____ as QME. Respondents will withdraw the Statement of Issues that is currently pending before the DWC and set for hearing before the OAH, as AD Case Number _____ and will reappoint _____ as a QME within seven business days after the DWC’s receipt of _____ QME application, a check for the number of offices for the performance of evaluations, and evidence of registration for a billing course. _____ reappointment period will run from April 15, 2018, and will expire two years from that date, as per Labor Code section 139.2, subdivision (a), unless terminated sooner for non-performance under this Agreement or for new grounds occurring after the Effective Date of this Agreement.

7. Reimbursement of Disputed Charges by _____ Within 60 days of the Effective Date of this Agreement, _____ will reimburse clerical charges (“99199 charges”) to insurance carriers, in an amount not to exceed \$2,500, as allocated in the chart below, subject to the provisions in the paragraph following:

Injured worker	DOE	99199	Insurance Carrier
	4/20/2017	\$1,220.00	ICW
	4/27/2017	\$60.00	Adminsure
	4/13/2017	\$90.00	Tristar
	4/27/2017	\$195.00	Albertsons
	4/27/2017	\$190.00	Corvel

L.P.	3/30/2017	\$635.00	Zenith
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hereby attests, represents and agrees that to the best of his knowledge, the carrier(s) either never paid the clerical charges listed above or that if the carrier did pay such charges, will reimburse payment of any 99199 charges that were received, and will provide evidence of such reimbursements through copies of reimbursement checks, which will be provided to the DWC within sixty (60) days of signing this Agreement.

8. to Complete Billing Course. agrees to take a course concerning QME billing, and to provide DWC with proof of successful completion of such course within 60 days of the Effective Date of this Agreement.

9. Failure to Comply and Right to Cure. If fails to comply with paragraphs 7 and/or 8 above, and to provide proof of same to DWC within 60 days of the Effective Date of this Agreement, DWC will provide written notice via email to with copies via email to Nicholas P. Roxborough, David A. Carman and Burton E. Falk, and a 15-day period during which will have a further opportunity to cure the failure to comply and to provide proof of same to DWC. If DWC is not thereafter provided with proof of the clerical charge reimbursement(s) pursuant to paragraph 7 and/or completion of a billing course as required by paragraph 8, within the 15 day period, QME status may be terminated by order of the Administrative Director with no further notice and with no further right to appeal.

10. Additional Agreements Re QME Reappointments (the "Additional Agreements"). The Parties understand and agree that the following Additional Agreements concerning the DWC QME reappointment and disciplinary processes, as set forth in this paragraph, are each a material term of this Agreement. Respondents agree to perform the following Additional Agreements:

a. Any Future Changes in the Law. The Parties agree and understand that should there be any changes after the Effective Date of this Agreement in applicable statutes or regulations, and to the extent such statutes and/or regulations as amended are inconsistent with the terms of these Additional Agreements, such statutes or regulations as amended shall govern, and shall supersede any contrary agreements stated herein.

b. No Alleged “Underground Regulations.” With respect to the existing regulatory provisions listed in paragraphs c. through f. below, Respondents agree to enforce and to apply such provisions as written.

c. ML-104(6)/Medical Causation. Respondents agree that when DWC, or any of its employees, agents and/or representatives, reviews the reports of QME physicians for purposes of determining, in the reappointment and disciplinary processes, whether the QME physician has complied with the medical-legal fee schedule, the provision of title 8, section 9795, subdivision (c), ML-103 (6) [“Addressing the issue of medical causation, upon written request of the party or parties requesting the report;”] shall be applied as written, without any additional requirements, interpretations, or other conditions imposed by the DWC. In applying this regulation as written, Respondents agree not to impose any additional requirement that the underlying injury claim have been denied or contested by the insurer, not to require that both parties (as opposed to a single party) have requested that the issue of causation be addressed, and not to require that any written request that causation be addressed include any specific words or phrases.

d. ML-104/Report Writing Extraordinary Circumstances. Respondents agree that when DWC, or any of its employees, agents and/or representatives, reviews the reports of QME physicians for purposes of determining, in the reappointment and disciplinary processes, whether the QME physician has complied with the medical-legal fee schedule, the provision of title 8, section 9795, subdivision (c), ML-104 (3) [“When billing under this code for extraordinary circumstances, the physician shall include in his or her report (i) a clear, concise explanation of the extraordinary circumstances related to the medical condition being evaluated which justifies the use of this procedure code, and (ii) verification under penalty of perjury of the total time spent by the physician in each of these activities: reviewing the records, face to face time with the injured worker, preparing the report and, if applicable, any other activities.”] shall be applied as written. Respondents agree that, as written, the word “code” in this provision applies to all subsections of ML 104, including subsections ML-104(1), ML-104(2), and ML-104(3).

e. ML-103(3)/Medical Research. Respondents agree that when DWC, or any of its employees, agents and/or representatives, reviews the

reports of QME physicians for purposes of determining, in the reappointment and disciplinary processes, whether the QME physician has complied with the medical-legal fee schedule, DWC will apply the provisions of the following regulations, quoted below, concerning medical research, as written, without any additional requirements, interpretations or other conditions as imposed by DWC beyond the language of the regulations themselves:

- i. Title 8, section 9795, subdivision (c), ML-103 ["In a separate section at the beginning of the report, the physician shall clearly and concisely specify which of the following complexity factors were required for the evaluation, and the circumstances which made these complexity factors applicable to the evaluation. An evaluator who specifies complexity factor (3) must also provide a list of citations to the sources reviewed, and excerpt or include copies of medical evidence relied upon:"]
- ii. Title 8, section 9795, subdivision (c), ML-103 (3) ["Two or more hours of medical research by the physician;"];
- iii. Title 8, section 9795, subdivision (c), ML-104 (1) ["An evaluator who specifies complexity factor (3) must also provide a list of citations to the sources reviewed, and excerpt or include copies of medical evidence relied upon."];
- iv. Title 8, section 9793, subdivision (j) ["“Medical research” is the investigation of medical issues. It includes investigating and reading medical and scientific journals and texts. “Medical research” does not include reading or reading about the Guides for the Evaluation of Permanent Impairment (any edition), treatment guidelines (including guidelines of the American College of Occupational and Environmental Medicine), the Labor Code, regulations or publications of the Division of Workers' Compensation (including the Physicians' Guide), or other legal materials."]

In applying these regulations as written, Respondents agree not to impose any additional rule that a QME may not bill for medical research within his or her own area of specialty. Petitioner understands, pursuant to the quoted language of section 9793, subdivision (j), above, that medical research may

not be billed for review of the AMA Guides, treatment guidelines, or legal materials as set forth in the language of section 9793, subdivision (j).

f. ML-103(8)/Psychiatric or Psychological Evaluation. Respondents agree that when DWC, or any of its employees, agents and/or representatives, reviews the reports of QME physicians for purposes of determining, in the reappointment and disciplinary processes, whether the QME physician has complied with the medical-legal fee schedule, the provision of title 8, section 9795, subdivision (c), ML-103 (8) [“A psychiatric or psychological evaluation which is the primary focus of the medical-legal evaluation.”] shall be applied as written, without any additional requirements, interpretations, or other conditions imposed by the DWC. Respondents agree that ML-103 (8), as written, may be used as a complexity factor concurrently with ML-103 (6), provided that the independent conditions for the use of each of those complexity factors are satisfied.

g. The Parties agree that the Additional Agreements set forth in this paragraph do not constitute underground regulations because they do not announce any new rule of general application, but rather simply reflect Respondents’ agreement to apply the regulations as written, as specified above.

11. Presentation/Training Materials. Respondents agree not to use the five PowerPoint slides attached hereto as Exhibit 1 (PowerPoint slides 9, 10, 14, 15, 16) in any public presentations or trainings, unless and until such materials, as interpreted in a reasonable and common sense manner, have been modified in such a way as to be consistent with the Additional Agreements. Respondents further agree to modify the content of the online “QME Training Module” that is currently posted on the DWC website, and which may be found at this link: <http://www.dir.ca.gov/dwc/CaliforniaDWCCME.htm>, so as to make the content of, and statements and material within the Training Module, as interpreted in a reasonable and common sense manner, consistent with the Additional Agreements. Such modifications shall be made within 60 days of the Effective Date of this Agreement, or alternatively, Respondents may elect, in their discretion, to remove the CME Training Module from the DWC website entirely by that date, and/or to develop and post an entirely new training module concerning medical billing, the

medical-legal fee schedule, and/or other topics, provided the content of such new training module is not inconsistent with the Additional Agreements.

12. Term. The term of the Additional Agreements set forth in paragraph 10, subject to the provisions of subparagraph (a) of paragraph 10, shall be four (4) years from the Effective Date of this Agreement.

13. Effect of Agreement on QMEs Other than Petitioner. The Parties understand and agree that the Additional Agreements set forth in paragraph 10 apply prospectively in the manner and as set forth in paragraph 10. This Agreement does not require Respondents to re-negotiate, re-open, or otherwise revisit any settlements, or any settlement terms, that prior to the Effective Date of this Agreement, have been entered into, signed by one or more parties, filed in any forum, formalized in any writing, or otherwise affirmatively agreed upon, between Respondents and any QME other than [redacted]. This Agreement is not binding on the Office of Administrative Hearings, and is enforceable solely in the manner set forth in this Agreement.

14. Enforcement and Respondents' Opportunity to Cure/No Injunction. This Agreement, including without limitation the Additional Agreements set forth in paragraph 10, are enforceable by motion filed pursuant to Code of Civil Procedure section 664.6. Prior to filing any such motion, [redacted] shall notify Respondents of any alleged failure on the part of Respondents to comply with the Agreement, including without limitation the Additional Agreements, and shall allow for a fifteen (15) day period during which Respondents shall have the opportunity to correct any such alleged failure to comply. Notification pursuant to this paragraph of any alleged failure by Respondents to comply with the Agreement, including without limitation the Additional Agreements, shall be by email to all of the following: gparisotto@dir.ca.gov; rmeister@dir.ca.gov; wwest@dir.ca.gov; nrichardson@dir.ca.gov; kcard@dir.ca.gov; jhall@dir.ca.gov; and m Bacon@dir.ca.gov. If such alleged failure to comply is corrected within the 15 day period, no motion to enforce this Agreement may be filed or granted. The Parties understand and agree that this Agreement does not constitute an injunction against Respondents. However, if Respondents fail to correct their noncompliance with any of the terms of the Agreement, including without limitation the Additional Agreements, within fifteen (15) days, the court may enforce this Agreement through any relief within the court's authority.

15. No Appeal From Lawsuit. All Parties agree that no appeal will be filed, by any Party, from the Judgment entered in the Lawsuit on February 20, 2018.

16. Request for Dismissal of Administrative Proceeding. The Parties will jointly file with the OAH a Joint Request for Dismissal with Prejudice of AD Case Number : _____ within five days of the Effective Date of this Agreement.

17. Dismissal of WCAB Petition/Agreement Not to Appeal. _____ agrees that he will not file any petition for writ of review, or take any other or further action, to challenge the dismissal of the action entitled *v. California Department of Industrial Relations, et al., Workers' Compensation Appeals Board, Case No. _____*, which was dismissed by the WCAB on March _____.

18. Costs. Respondents agree to pay, within 30 days of the Effective Date of this Agreement, and _____ agrees to accept, a total payment of five thousand dollars (\$5,000.00), to completely and fully resolve any and all issues of liability for litigation costs arising from the Lawsuit. The Parties further expressly agree that Petitioner does not and shall not owe Respondents, and Respondents do not, and shall not, owe Petitioner, or any other person or party, any attorneys' fees or other expenses incurred in or in relation to the Lawsuit. _____ agrees to file a Notice of Withdrawal of Memorandum of Costs in the Lawsuit within five business days of the Effective Date of this Agreement.

19. Costs and Attorneys' Fees in the Administrative Proceedings. The Parties each agree to bear their own litigation costs and attorneys' fees arising from AD Case Number : _____ and the WCAB Petition.

20. Mutual Releases. The Parties hereby mutually and fully release and discharge each other from any and all claims, potential claims, actions (including disciplinary actions), causes of action, claims for damages, and any other alleged or potential liabilities of any kind, that were or could have been filed or asserted in the Lawsuit, or that could have been filed or asserted in any forum, against each other, at any time before the last date on which this Agreement is executed, arising from or related in any way to: (a) the audit of _____ QME evaluations and bills that occurred on or about May 19, 2017, or the QME evaluations and bills that were provided by, or on behalf of, _____, so that the DWC could conduct that audit; (b) the DWC's denial of _____ application for reappointment as a

QME, including without limitation, the DWC's Denial Letter and Statement of Issues; (c) the allegations, facts, or circumstances underlying the DWC's denial of application for reappointment as a QME on or about August 7, 2017 and again on or about September 21, 2017; (d) the administrative proceeding AD Case Number (e) the allegations, facts, or circumstances alleged in the Lawsuit; or (f) the allegations, facts, or circumstances alleged in the WCAB Petition. expressly agrees and warrants that he will not file any cause of action or claim for damages or any other form of relief in any forum against any of the Respondents for any of the claims released herein. Respondents expressly agree that if satisfies all of his obligations under this Agreement, they will not deny any future application by for reappointment as a QME, initiate or bring any disciplinary action against or audit based on or related in any way to: (a) the audit of QME evaluations and bills that occurred on or after May 19, 2017 and before the Effective Date of this Agreement, or the QME evaluations and bills that were provided by, or on behalf of, i, so that the DWC could conduct that audit; (b) the DWC's August 7, 2017 and September 21, 2017 denials of application for reappointment as a QME; (c) the allegations, facts, or circumstances underlying the DWC's denial of application for reappointment as a QME on or about August 7, 2017 and again on September 21, 2017; (d) the administrative proceeding AD Case Number (e) the allegations, facts, or circumstances alleged in the Lawsuit; or (f) the allegations, facts, or circumstances alleged in the WCAB Petition.

21. Release Does Not Apply to Unknown Material Misconduct. The Parties understand and agree that the foregoing Mutual Release does not apply to any material misconduct of as a QME unknown to Respondents as of the Effective Date of this Agreement, if any such misconduct in fact existed, and if such misconduct is unrelated to the claims released herein as described above in paragraph 20 and would otherwise constitute grounds for the initiation of disciplinary proceedings pursuant to Labor Code section 139.2, subdivision (k), and/or California Code of Regulations, title 8, section 60. Respondents represent and warrant that they have no knowledge as of the Effective Date of this Agreement of any such misconduct occurring; nor do Respondents have any reason to suspect any such misconduct; nor do Respondents intend by this provision to accuse of any such misconduct. The purpose of this provision is solely to preserve the statutory and regulatory responsibility of Respondents to address

any such unrelated misconduct, and to protect any potentially impacted injured worker or other parties, should any such unrelated misconduct come to light after the Effective Date of this Agreement. This paragraph 21 shall not be construed or applied to extend any statute of limitations applicable to any allegations of misconduct or violation of law by _____ to revive any claim or allegation that is time-barred as of the Effective Date of this Agreement, or to waive any defense that _____ may have in law or equity based upon laches or the passage of time.

ADDITIONAL TERMS

22. No Admission of Liability. The Parties agree that this is a compromised release of disputed claims. No provision of this Agreement or any related document shall be construed as an admission of wrongdoing or a concession of liability by any Party. Further, Petitioner does not admit or acknowledge that non-conformity or non-compliance by a QME with the ML fee schedule is an authorized ground for denying QME reappointment. Respondents contend otherwise.

23. Executed in Counterparts. The Parties agree that this Agreement may be executed in counterparts and that a facsimile or e-mailed signature by, or on behalf of, any of the Parties will have the same force and effect as an actual signature.

24. Court Retains Jurisdiction. The Parties agree that the Los Angeles Superior Court shall retain jurisdiction over this matter under Code of Civil Procedure section 664.6 solely for the purposes of enforcing the terms of this settlement Agreement. Pursuant to Evidence Code section 1123, the Parties acknowledge that this Agreement is exempt from the confidentiality provisions of the Evidence Code section 1152, et seq. and is admissible in evidence to enforce the settlement Agreement. Only the Parties to this Agreement may enforce its terms.

In witness whereof, the Parties hereto and their respective attorneys of record have approved and executed this Agreement on the dates specified below.

Dated: _____

Dated: 4/5/18

Nicholas Roxborough, Esq.
Attorney for Applicants/Petitioners/Plaintiffs

Dated: _____

_____ for DIR

Dated: _____

_____ for DWC

Dated: _____

André Schoorl
Acting Director – DIR

Dated: _____

George Parisotto
Administrative Director – DWC

Dated: _____

Dr. Raymond Meister
Executive Medical Director – DWC

Dated: _____

James Hall, Department of Industrial Relations
Office of the Director, Legal Unit
Counsel for Respondents DIR, et al.

Dated: _____

Nicholas Roxborough, Esq.
Attorney for Applicants/Petitioners/Plaintiffs

Dated: 4/4/18

André Schoorl
for DIR

Dated: 4/4/18 GPD
for DWC

Dated: 4/4/18

André Schoorl
André Schoorl
Acting Director – DIR

Dated: 4/4/18
GPD

George Parisotto
Administrative Director – DWC

Dated: 4/4/2018

Dr. Raymond Meister
Dr. Raymond Meister
Executive Medical Director – DWC

Dated: _____

James Hall, Department of Industrial Relations
Office of the Director, Legal Unit
Counsel for Respondents DIR, et al.

Dated: _____

Nicholas Roxborough, Esq.
Attorney for Applicants/Petitioners/Plaintiffs

Dated: _____

for DIR

Dated: _____

for DWC

Dated: _____

André Schoorl
Acting Director – DIR

Dated: _____

George Parisotto
Administrative Director – DWC

Dated: _____

Dr. Raymond Meister
Executive Medical Director – DWC

Dated: *April 4, 2018*

James E. Hall

James Hall, Department of Industrial Relations
Office of the Director, Legal Unit
Counsel for Respondents DIR, et al.