

**KEGEL, TOBIN & TRUCE**  
**INTER-OFFICE MEMORANDUM**

**TO:** ALL ATTORNEYS/CLIENTS

**FROM:** JOE TRUCE

**DATE:** October 5, 2004

**RE:** WHAT DO WE DO IF AN APPLICANT'S ATTORNEY  
WANTS TO ATTEND A QME EXAM?

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This question and also the question of whether or not an applicant has a right to "tape record" a QME exam was answered by the Board in the case of Lopez v. Nestle Prepared Foods Company<sup>1</sup>

In the Lopez case, the defendant arranged a QME exam with Dr. Shirzad Abrams, M.D. The applicant appeared for the exam with a tape recorder and Dr. Abrams declined proceeding with the examination as the applicant insisted on recording it.

The examination was rescheduled and defendants filed a Petition with the Board requesting an "Order that the applicant attend the QME examination with Dr. Abrams and to make no recording of it." This petition was granted by Judge Samuel Sosna.

The applicant filed a Petition for Removal and the Board granted removal and held that the ability of an applicant to "tape record" a defense QME exam was within the sound discretion of the Workers' Compensation Judge. In this specific case, the Board returned the case to the WCJ for a hearing on the issue of whether or not the applicant should be permitted to use a tape recorder at the medical evaluation.

The key issue is whether or not the use of the tape recorder would disrupt the evaluation process.

In its Decision after Removal, the Board noted as follows:

1. In the case of Fireman's Fund Insurance Company v. WCAB (Landeros) (1980), 45 CCC 37 (writ denied) the Board allowed an employee to have an attorney or a court reporter at a defense medical evaluation.
2. In the case of County of Alameda v. WCAB (Weems) (1979), 44 CCC 452 (writ denied) the Board allowed an applicant to tape record a defense psychiatric exam.

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<sup>1</sup> Cited at 32 CWCR 166.

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Therefore, tape recording a defense QME exam, having the applicant's attorney present, or having a court reporter present are procedures that are within the sound discretion of the Workers' Compensation Judge. In the case of Penman v. WCAB (1985) 60 CCC 793 (writ denied) the Board refused to allow the presence of an attorney or a tape recorder at a QME exam.

Therefore, if the applicant's attorney intends to disrupt the QME process, by attending an exam himself, tape recording the exam, or having a court reporter present, we should immediately petition the Board for a hearing on the question of whether or not this will be disruptive to the QME process.

WJT/imm