

1                                   **WORKERS' COMPENSATION APPEALS BOARD**  
2                                   **STATE OF CALIFORNIA**

3  
4  
5 **FERNANDO MARTINEZ,**

6                                   *Applicant,*

7                                   **vs.**

8 **SANTA CLARITA COMMUNITY COLLEGE**  
9 **DISTRICT,**

10                                   *Defendants.*

**Case No. ADJ8897155**  
**(Van Nuys District Office)**

**ORDER DENYING**  
**PETITION FOR**  
**REMOVAL**

11  
12                   We have considered the allegations of the Petition for Removal and the contents of the report of  
13 the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of  
14 the record, and for the reasons stated in said report which we adopt and incorporate, we will deny  
15 removal.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 For the foregoing reasons,

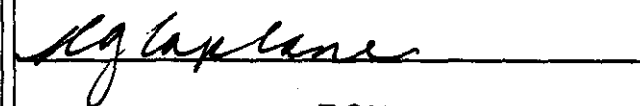
2 **IT IS ORDERED** that said Petition for Removal is **DENIED**.

3  
4 **WORKERS' COMPENSATION APPEALS BOARD**

5  
6   
7 \_\_\_\_\_  
8 **KATHERINE ZALEWSKI**

9 **I CONCUR,**

10  
11   
12 \_\_\_\_\_  
13 **MARGUERITE SWEENEY**

14   
15 \_\_\_\_\_  
16 **RONNIE G. CAPLANE**



17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **JAN 09 2015**

19  
20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **FERNANDO MARTINEZ**  
23 **ROWEN GURVEY**  
24 **LANSFORD GONZALES**

25 *jp*



STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

CASE NUMBER: ADJ8897155

FERNANDO MARTINEZ

-vs.-

SANTA CLARITA COMMUNITY  
COLLEGE DISTRICT;  
KEENAN ASSOCIATES  
RIVERSIDE;

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: Robin A. Brown

DATE OF INJURY: CT June 24, 2011 through June 14, 2012

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR REMOVAL**

**I.**

**INTRODUCTION**

1. Applicant's Occupation: Custodian
2. Age at Injury: 57
3. Date of Injury: CT June 24, 2011 through June 14, 2012
4. Parts of Body Alleged: Back, circulatory system, psyche, nervous system, hypertension, diabetes, gastrointestinal, upper and lower gastro intestinal.
5. Manner of Injury: Continuous Trauma
6. Identity of Petitioner: Applicant
7. Timeliness: The Petition is timely.
8. Verification: The Petition is verified.
9. Date of Issuance of Order/Award: October 1, 2014

10. Petitioner's Contention: Petitioner contends that the WCJ erred by finding that the applicant is not entitled to undergo PQME evaluations in the specialties of psychiatry and internal medicine at this time.

## II.

### FACTS

This matter involves a denied continuous trauma injury. The applicant objected to the report from the treating orthopedist Dr. Robert Reisch dated October 3, 2012, based upon "The disability status of the applicant's medical condition." (Applicant's Exhibit 5).

The applicant simultaneously filed 3 separate requests for QME panels in the specialties of orthopedic, psychiatric and internal medicine. All of the requests are dated January 9, 2014. In each of the Form 106s, the applicant checked off the box indicating that the reason that the QME panel is being requested is "§4062 (nonmedical treatment dispute under 4062)". (Applicant's Exhibit 2)

An orthopedic panel issued February 7, 2014. (Defendant's Exhibit I). Panels were issued in the specialties of psychiatry and internal medicine on February 10, 2014. (Defendant's Exhibits J and K). Defendant objected to the internal and psychiatric panels. (Defendant's Exhibits B through H). The applicant has not undergone a PQME evaluation in any of the three specialties, to date.

The parties proceed to trial regarding the limited issue of whether the applicant is entitled to undergo QME panels in orthopedics, psychiatry and internal medicine. The undersigned ordered the defendant to authorize the orthopedic PQME evaluation at this time, and found that the applicant is not entitled to undergo PQME evaluations in the specialties of psychiatry and internal medicine, at

this time. Further, the undersigned found that issues regarding applicant's entitlement to psychiatric and internal PQME(s) after completion of the orthopedic PQME evaluation are hereby deferred, with jurisdiction reserved.

### III.

#### DISCUSSION

Removal is an extraordinary remedy, rarely exercised by the Board. Title 8 California Code of Regulations §10843 requires that the petition for removal must demonstrate that the order, decision or action will result in irreparable harm or significant prejudice. Further, the petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. (See, *Swedlow, Inc. v. Workers' Comp. Appeals Bd.* (1983) 48 Cal.Comp.Cases 476 (writ denied); *Hardesty v. McCord & Holdren, Inc., et al.*, (1976) 41 Cal.Comp.Cases 111).

In the present case, the applicant has not met these standards. Notwithstanding the foregoing, the Petition for Removal should be denied on its merits as well.

The applicant's requests for PQME evaluations in the specialties of internal and psychiatric evaluation are premature at this time. The applicant must first complete an initial PQME examination prior to obtaining PQME evaluations in other specialties. The applicant has not meet the criteria in §31.7 for obtaining different specialties at this time.

In addition, it is noted that the applicant also failed to submit the appropriate form to request QME panels regarding other specialties. As per Title 8 California Code of Regulations §31.7, a party "shall" utilize Form 31.7 to request an additional QME panel in a different specialty. It is noted that Form 31.7 requires that the prior PQME panel number be identified when requesting other specialties, which could not have been done in this case, as all three QME panels were improperly requested at the same time.

Notwithstanding the foregoing, the applicant failed to comply with the requirements of Labor Code §4062 regarding psychiatric and internal PQMEs. The applicant stated in the three QME requests (Form 106) that the reason for the QME panel is "§4062 (nonmedical treatment dispute under 4062)". (Applicant's Exhibit 2). However, the letter attached to each PQME request objects solely to the opinions rendered by orthopedist Dr. Reisch in his report dated October 3, 2012. In said report (Applicant's Exhibit 1), Dr. Reisch stated that the applicant was given refills of Voltaren gel, and was given a Toradol injection. Further, Dr. Reisch stated that the applicant was to continue working modified duties as previously. There is no reference in said report with regard to any alleged internal or psychiatric injuries or complaints. Moreover, the applicant did not object to the findings of a psychiatrist or internal doctor prior to requesting PQME panels in the specialties of psychiatry and internal medicine. Accordingly, the applicant failed to comply with the requirements of Labor Code §4062 with regard to obtaining a PQME panel in specialties other than orthopedics, at this time.

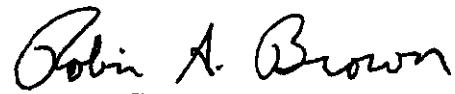
As the applicant was treating with an orthopedist at the time of the PQME requests, and as the applicant only objected to the findings of orthopedist Dr. Reisch, it is appropriate to have the applicant undergo orthopedic PQME evaluation at this time.

IV.

**RECOMMENDATION**

It is therefore respectfully recommended that the Petition for Removal be denied.

Dated: November 10, 2014



**Robin A. Brown**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

SERVED BY MAIL ON ALL PARTIES SHOWN ON  
THE OFFICIAL ADDRESS RECORD  
ON: 11/10/2014

BY: 