

# California Workers' Compensation AME/QME Reports Lacking Substantial Medical Evidence: A Legal Analysis

## (PART-A INJURED WORKERS ANALYSIS)

March 1, 2026

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# CHALLENGING AME/QME REPORTS THAT LACK SUBSTANTIAL MEDICAL EVIDENCE IN CALIFORNIA WORKERS' COMPENSATION

This report explains the legal rules that apply when a medical report used in your California workers' compensation case does not meet the legal standard called substantial medical evidence. If you were hurt at work, the medical reports written about your injury must follow strict rules. When those reports have problems, you have the right to challenge them. This guide tells you how.

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## Part 1: Key Terms You Need to Know

This section defines the most important legal terms used throughout this report.

### What Are QME and AME Reports?

A Qualified Medical Evaluator (QME) is a doctor approved by the State of California to examine injured workers and write reports about their injuries. The state assigns a QME when you and your employer cannot agree on a doctor. An Agreed Medical Evaluator (AME) is a doctor that both you and your employer's insurance company choose together to examine you and write a report.

These doctors write medical-legal reports. These reports give opinions about whether your injury is related to your job, how disabled you are, what treatment you need, and whether any part of your disability existed before your work injury. Judges in workers' compensation cases rely heavily on these reports to make decisions about your benefits.

### What Is Substantial Medical Evidence?

Substantial medical evidence is the legal standard a medical report must meet before a judge can use it to decide your case. Think of it as a quality test. A report that fails this test cannot support a decision against you—or for you. The report must be based on facts, proper examination, and clear medical reasoning. A report that is just a guess or an opinion without explanation does not pass this test.

### What Is the WCAB?

The Workers' Compensation Appeals Board (WCAB) is the state agency that reviews decisions made by workers' compensation judges. If a judge makes a decision you disagree with, you can ask the WCAB to review it. The WCAB also sets rules that judges must follow, including rules about what counts as substantial medical evidence.

### What Is Reasonable Medical Probability?

Reasonable medical probability means "more likely than not"—in other words, more than a 50 percent chance. When a doctor writes a report about your injury, the doctor must state that the connection between your job and your injury is more likely than not. If the doctor only says the connection is "possible" or "might exist," that is not enough. This standard comes from the landmark WCAB decision *Escobedo v. Marshalls*, 70 Cal. Comp. Cases 604 (WCAB en banc 2005) (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>).

***Important: Reasonable medical probability is a lower standard than scientific proof. A doctor does not need to cite published research studies to support the opinion. The doctor needs to use professional judgment based on the facts of your specific case. The WCAB confirmed this in *Wies v. State of California*, 2024 Cal. Wrk. Comp. P.D. LEXIS 224 (WCAB 2024) (<https://www.rjylaw.com/when-medical-opinions-fall-short-wcab-emphasizes-proper-standards-in-workers-compensation-cases/>).***

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## Part 2: The Legal Rules for Medical-Legal Reports

California law sets specific requirements for what must be in a medical-legal report. If a report does not follow these rules, you may be able to challenge it.

## Statutory Requirements Under Labor Code Section 4628

California Labor Code § 4628

([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4628](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4628)) is the main law that tells doctors what they must include in a medical-legal report. Under this law, the doctor must:

- Personally examine you in person (not just read your medical records)
- Take a complete history of your injury, including how it happened and your symptoms
- Review and summarize all relevant prior medical records—not just summaries prepared by lawyers
- Write a detailed report covering diagnosis, disability, work limitations, causation, treatment needs, and permanency
- Sign the report under penalty of perjury, stating the county where the report was signed

***Critical: If the doctor does not follow Section 4628, the report is inadmissible. This means the judge cannot use it at all, and no one has to pay for it. This rule is in Cal. Lab. Code § 4628(e) ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4628](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4628)).***

## Regulatory Requirements Under Title 8

California Code of Regulations, title 8, § 10682 (<https://www.dir.ca.gov/t8/10682.html>) adds more detail about what a medical report should contain. The report should include:

- The date of examination
- A complete listing of all information received and relied upon
- Your full medical history, including prior injuries and conditions
- Objective findings from the examination
- A diagnosis and opinions on disability and work limitations
- The cause of disability
- Treatment recommendations (past, present, and future)
- Apportionment of disability, if applicable (apportionment means dividing your disability between work-related and non-work-related causes)
- The doctor's reasons for all opinions stated

***Note: Under Section 10682(c) (<https://www.dir.ca.gov/t8/10682.html>), failure to meet these regulatory requirements does not automatically make the report inadmissible, but the judge will consider the missing elements when deciding how much weight to give the report.***

## New QME Education Requirements Starting April 2026

Starting April 1, 2026, new regulation § 55.1 (<https://www.dir.ca.gov/DIRNews/2026/2026-11.html>) requires all QMEs seeking reappointment to complete 16 hours of continuing education, including:

- At least 4 hours on disability impairment rating
- At least 3 hours on medical-legal report writing
- At least 2 hours on anti-bias training
- At least 2 hours on workers' compensation case law review
- At least 1 hour on the medical-legal fee schedule or regulatory requirements

These new education requirements show that California is placing greater emphasis on report quality.

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## Part 3: The Escobedo Four-Part Test for Substantial Evidence

The most important legal test for whether a medical report counts as substantial evidence comes from *Escobedo v. Marshalls*, 70 Cal. Comp. Cases 604, 620–621 (WCAB en banc 2005) (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>). This decision established four requirements. A medical opinion counts as substantial evidence only when it meets all four.

### Test 1: The Opinion Must Use "Reasonable Medical Probability"

The doctor must state the opinion as "more likely than not" or "to a reasonable degree of medical probability." Language like "may have," "possibly," or "could be related" does not meet this standard. For example:

- Fails the test: "The worker's back injury may have been caused by heavy lifting at work."
- Passes the test: "Based on the job duties requiring repetitive lifting and the timing of symptom onset, it is more probable than not that work-related stress contributed to the herniation."

As confirmed in *Wies v. State of California*, 2024 Cal. Wrk. Comp. P.D. LEXIS 224 (WCAB 2024) (<https://www.rjylaw.com/when-medical-opinions-fall-short-wcab-emphasizes-proper-standards-in-workers-compensation-cases/>), a doctor should not reject a work-related cause simply because published scientific studies have not proven the connection. The doctor must use clinical judgment applied to your specific facts.

### Test 2: The Opinion Must Rest on Adequate Examination and History

The doctor must have personally examined you, obtained a complete medical history (including prior injuries and conditions), reviewed all relevant medical records, and obtained a detailed job duty description (a written explanation of exactly what physical tasks your job required). The Physician's Guide to Medical Practice in the California Workers' Compensation System (<https://www.dir.ca.gov/dwc/medicalunit/toc.pdf>) requires documentation of "the specific nature of the workplace hazard."

### Test 3: The Opinion Must Explain the "How and Why"

The doctor cannot simply state a conclusion. The report must walk through the reasoning: what examination findings exist, what the medical history shows, how the job duties created risk, and why competing explanations were ruled out. This is the "how and why" requirement. A report that says "the injury is work-related" without explaining the connection fails this test.

### Test 4: The Opinion Must Not Rely on Outdated Facts or Wrong Legal Standards

The opinion cannot be based on old information that has been replaced by newer evidence, or on an incorrect understanding of the law. For example, a doctor who requires "but-for" causation (meaning the injury would not have happened at all without work) applies the wrong standard. California law only requires that work contributed to the injury.

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## Part 4: Recent Court Decisions Strengthening These Rules (2024–2026)

California courts and the WCAB have recently issued several decisions that make the substantial evidence rules stricter. You should know about these decisions because they may help your case.

### The Aparicio Decision: Courts Must Develop the Record

In a December 2025 decision, the Second District Court of Appeal addressed *Aparicio v. WCAB* (<https://www.workcompcentral.com/news/article/id/cd5393cf477705c571d35e11ad5a99901b8f3e28>). In that case, both the internal medicine QME and the neurology QME stated they needed specific witness statements about what the injured worker was doing before suffering a stroke. Those statements were in the employer's possession and had been ordered produced, but were never provided to the doctors.

The court ruled that because the doctors explicitly said they needed missing evidence for their analysis, their opinions could not constitute substantial evidence. The court held that the WCAB has a constitutional duty to make sure the record is complete before making a final decision.

***Important: This decision means that if a doctor in your case says certain information is "necessary" for the analysis—such as a job description, prior imaging, or witness statements—and that information is never provided, the doctor's opinion may not count as substantial evidence. You can use this argument to challenge the report.***

### The Kelso Decision: Uncertain Language Weakens Reports

In *Shaundonna Kelso*, ADJ12508262 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/ShaundonnaKELSO-ADJ12508262.pdf>), the WCAB reversed a decision because the AME used the word "probably" in a way that made the opinion less definite than required. The WCAB reaffirmed that a medical opinion must be framed in terms of reasonable medical probability, must not be speculative, must rest on adequate facts and examination, and must explain its reasoning.

### The Casillas Decision: Doctors Must Review Complete Records

In *Jose Casillas*, ADJ12013613 & ADJ12013560 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Jose-CASILLAS-ADJ12013613-ADJ12013560.pdf>), the WCAB found that a doctor's report

was not substantial evidence because the doctor had not reviewed the full medical history. The doctor relied mainly on an interview with the worker's widow and a summary of records, completely ignoring more than 15 years of relevant medical history. The WCAB said this failure made the opinions fall below the substantial evidence standard.

### **The Avila Decision: The Duty to Build a Complete Record**

In Sergio Avila, ADJ11880536 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Sergio-AVILA-ADJ11880536.pdf>), the WCAB reversed a trial judge's decision because key evidence was excluded from consideration. The decision emphasized that the WCAB and the judge have a duty to make sure the record is fully developed. Decisions cannot rest on incomplete evidence.

### **The Rodriguez Decision: Changes to Treatment Disputes**

In Illinois Midwest v. WCAB (Rodriguez) (<https://www.pbw-law.com/the-death-of-the-patterson-doctrine-how-the-rodriguez-decision-returns-control-to-utilization-review/>), the court ruled that all medical treatment disputes must go through the Utilization Review (UR) and Independent Medical Review (IMR) process. This means you cannot bring ongoing treatment disputes directly to a workers' compensation judge. This may affect how you challenge a QME's assumptions about treatment.

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## **Part 5: Common Problems in QME/AME Reports**

This section identifies the most frequent deficiencies found in medical-legal reports. Knowing these problems helps you recognize when a report used in your case may be challengeable.

### **Problem 1: Vague or Missing Job Duty Descriptions**

One of the most common failures is when the doctor does not obtain or analyze your specific job duties. A report that refers only to "warehouse work" or "construction labor" without detailing the exact physical demands—such as how much weight you lifted, how often, and for how many hours—lacks the foundation needed for a causation opinion. The Physician's Guide (<https://www.dir.ca.gov/dwc/medicalunit/toc.pdf>) requires documentation of the specific workplace hazards you faced.

When reviewing a report, check whether it identifies:

- The specific physical demands of your job (weight, frequency, duration)
- Repetitive motions or ergonomic stressors
- Environmental exposures (chemicals, heat, noise, vibration)
- How your duties changed over time

### **Problem 2: Incomplete Medical Record Review**

Doctors must review all available relevant medical records. In Jose Casillas, ADJ12013613 & ADJ12013560 (WCAB 2025) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Jose-CASILLAS-ADJ12013613-ADJ12013560.pdf>), the WCAB rejected a report where the doctor missed years of important medical history. Common failures include:

- Not reviewing records from more than 5–10 years before the injury
- Relying on summaries prepared by lawyers instead of reviewing original records
- Skipping imaging studies (MRIs, X-rays, CT scans) from before or after the injury
- Reviewing only immediate post-injury records rather than the full course of treatment

### **Problem 3: Using the Wrong Causation Standard**

Some doctors apply a stricter scientific standard instead of the legally required "reasonable medical probability" standard. Warning signs include:

- Language like "causation is not definitively established in the literature"
- Denying causation because there are no published studies proving the connection
- Requiring statistical proof instead of clinical judgment
- Using "but-for" causation instead of the correct "contributed to" standard

As *Wies v. State of California*, 2024 Cal. Wrk. Comp. P.D. LEXIS 224 (WCAB 2024) (<https://www.rjylaw.com/when-medical-opinions-fall-short-wcab-emphasizes-proper-standards-in-workers-compensation-cases/>) established, lack of published research does not mean an opinion is speculative if clinical judgment supports the connection.

#### **Problem 4: Conclusions Without Reasoning**

Reports that state conclusions without explaining the reasoning fail the Escobedo (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) test. Watch for:

- Statements like "this is a compensable injury" without medical explanation
- Disability ratings stated without listing the functional limitations that produced the rating
- Percentages assigned without explaining how they were calculated

#### **Problem 5: Apportionment Without the "How and Why"**

Apportionment is when the doctor divides your disability between work-related causes and other causes (like aging or a prior injury). Under Escobedo (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) and Cal. Lab. Code § 4663 ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4663](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4663)), the doctor must explain the specific mechanism—the "how and why"—by which a pre-existing condition contributed to your disability. Common failures include:

- Assigning percentages to age or degenerative changes without explaining how those factors independently caused measurable disability
- Failing to distinguish between asymptomatic pathology (a condition you had but that caused no symptoms) and a condition that actually caused disability
- Not tying apportionment to specific functional limitations

A recent analysis confirmed that without the "how and why," there is no valid apportionment (<https://mulfil.com/without-the-how-and-why-no-valid-apportionment/>).

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## **Part 6: How to Challenge a Deficient Report if You Are an Injured Worker**

If you were hurt at work and the employer's medical report has problems, you have the right to challenge it. This section provides a step-by-step approach.

### **Step 1: Audit the Report Against the Escobedo Test**

Go through the report carefully and check each of the four Escobedo (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) requirements. Ask these questions:

- Does the report use "reasonable medical probability" language, or does it use words like "may," "possibly," or "could"?
- Did the doctor personally examine you? Did the doctor review all your medical records—not just a summary? Did the doctor get a detailed description of your job duties?
- Does the report explain the reasoning behind each conclusion, or does it just state opinions without explanation?
- Does the report rely on outdated information or apply the wrong legal standard?

### **Step 2: Document Specific Deficiencies**

Write down exact quotes from the report showing the problems. For example:

- "The report says causation is 'possible' rather than 'more probable than not.'"
- "The job duty section says 'general warehouse duties' but does not mention that I lifted items up to 100 pounds, 50 times per shift."
- "The doctor says 50 percent of my disability is from degenerative disc disease but does not explain how that condition—which the report itself says was asymptomatic before my injury—independently caused half my disability."

### **Step 3: Request Supplemental Reporting**

You can ask the QME or AME to write a supplemental report addressing the specific problems. Under Cal. Code Regs. tit. 8, § 10682 (<https://www.dir.ca.gov/t8/10682.html>) and common practice, a party may request supplemental reporting when additional information becomes available or when the original report needs clarification. Focus your request narrowly on the specific gap—for example, ask the doctor to review a detailed job description you are now providing.

#### **Step 4: Prepare Competing Medical Evidence**

If you disagree with the QME's conclusions, your attorney can commission a report from another qualified medical evaluator that:

- Identifies the deficiencies in the opposing report
- Provides the complete job duty analysis that was missing
- Reviews the full medical records
- Applies the correct reasonable medical probability standard
- Explains the "how and why" of any apportionment

#### **Step 5: Argue the WCAB's Duty to Develop the Record**

Cite *Aparicio v. WCAB* (Cal. Ct. App. 2d Dist. 2025) (<https://www.workcompcentral.com/news/article/id/cd5393cf477705c571d35e11ad5a99901b8f3e28>) for the rule that when doctors identify missing evidence as necessary to their analysis, the WCAB must ensure that evidence is developed before making a final decision. Even if the doctor did not explicitly say information was missing, you can argue that the gaps in the report show that necessary information was absent.

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### **Part 7: How Employers Can Challenge a Deficient Applicant Report**

This section applies if you are an employer or insurer reviewing a medical report submitted by an injured worker.

#### **Identify the Applicant's Burden of Proof**

The injured worker generally bears the burden of proof—the responsibility to show that the injury is work-related and that disability resulted from it. If the worker's medical evidence does not meet the substantial evidence standard, the worker has not met this burden. However, the burden shifts to the employer on the issue of apportionment under Cal. Lab. Code § 4663 ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4663](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4663)) and *Gay v. Workers' Comp. Appeals Bd.*, 96 Cal. App. 3d 555, 564 (1979) (<https://thomasfmartin.com/what-is-the-legal-standard-to-prove-apportionment-in-a-california-workers-compensation-case/>).

#### **Audit the Applicant's Report**

Use the same Escobedo (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) framework to look for deficiencies such as:

- The QME's opinion that the injury is work-related but the doctor failed to review prior medical records showing the same condition existed before the work injury
- The job duty description in the report does not match the actual job requirements
- The causation opinion does not separate work-related trauma from pre-existing degenerative changes
- The report denies any apportionment without analyzing how pre-existing conditions contributed

#### **Prepare Defense Medical Evidence**

Commission your own QME or AME report that strictly complies with all substantial evidence requirements. Your report should clearly establish any gaps in the applicant's record review, provide detailed and verified job duty analysis, analyze competing causes, and provide full "how and why" apportionment analysis.

#### **Use Procedural Tools**

- Request supplemental reporting from the applicant's QME if foundational deficiencies are clear
- Depose the applicant's QME, asking detailed questions about what records were reviewed, what job duties were analyzed, and the specific reasoning for each conclusion

- File a petition for reconsideration or a motion in limine arguing that the applicant's report should be given minimal weight

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## Part 8: Procedural Remedies Available Under California Law

When medical evidence is deficient, California law provides several procedural tools to fix the problem.

### Petition for Reconsideration

A petition for reconsideration asks the WCAB to review a workers' compensation judge's decision. You should file this petition when the judge relied on a medical report that lacks substantial evidence. Under Cal. Code Regs. tit. 8, § 10960 et seq. (<https://www.dir.ca.gov/t8/10682.html>), your petition must:

- Identify the specific findings you are challenging
- Explain which evidence contradicts those findings
- State why the judge's reliance on the deficient report was wrong
- Describe the correct legal standard and how applying it changes the result

***Critical: You must file the petition within 20 days of when the judge's decision is served on you. If you miss this deadline, the decision becomes final and you lose the right to WCAB review.***

In your petition, emphasize the WCAB's constitutional duty to develop the record, as established in *Aparicio v. WCAB* (Cal. Ct. App. 2d Dist. 2025) (<https://www.workcompcentral.com/news/article/id/cd5393cf477705c571d35e11ad5a99901b8f3e28>). Request that the WCAB either order the QME to provide a supplemental report addressing the deficiencies or appoint a new medical evaluator.

### Request for Supplemental Medical Report

You can request a supplemental report from the existing QME or AME without filing a full petition. Frame your request narrowly. For example:

- "Please review the attached job description and explain how the described work exposures relate to the claimed injury."
- "The attached medical records from [provider/date] were not available during your original evaluation. Please state whether these records change your causation opinion."
- "Please explain specifically how the pre-existing condition you identified contributed to permanent disability, referencing specific examination findings."

### Deposition of the Medical Evaluator

If supplemental reporting does not resolve the problem, you can depose (question under oath) the QME or AME. Effective deposition questions include:

- Exactly what records did you review?
- What job duty information did you rely on?
- What specific examination finding led you to your conclusion?
- Would your opinion change if you had received [specific missing information]?
- When you wrote "may have contributed," did you mean more likely than not, or less?

If the doctor admits that the opinion might have been different with more complete information, that admission supports your argument that the original opinion rests on an inadequate foundation.

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## Part 9: Preserving Your Rights for Appeal

If you want to challenge a judge's decision at a higher level, you must protect your arguments during the trial. This is called preserving the record.

### What You Must Do at Trial

- File a written motion or trial brief before trial, specifically arguing that the opposing medical report fails the substantial evidence test. Cite the specific deficiencies and legal standards.

- Object on the record when the opposing party offers the deficient report into evidence. Do not use a general objection. State exactly which Escobedo (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) elements are not satisfied.
- Ask the judge to note your objection in the record, even if the judge admits the report despite your objection.
- Include the specific issue in any petition for reconsideration if the judge issues a decision based on the deficient report.

***Important: If you do not raise these objections at trial, you may waive (lose) the right to raise them on appeal.***

### WCAB Standard of Review

When the WCAB reviews a trial judge's decision, it asks whether the decision is supported by substantial evidence in the record. This review standard works in your favor when challenging medical evidence, because the WCAB can independently determine whether a medical report meets the Escobedo (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) test—even if the trial judge believed the doctor's testimony.

### Further Appeal Options

In rare cases where the WCAB's decision violates your constitutional due process rights (your right to fair procedures), you may petition the California Court of Appeal for a writ of mandamus—an order from a higher court directing the WCAB to take corrective action. These petitions are governed by Cal. Civ. Proc. Code §§ 1086–1090 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CCP&sectionNum=1086](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP&sectionNum=1086)) and are rarely granted, but they remain available for extreme cases.

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## Part 10: Northern California and San Francisco Practice Considerations

### Workers' Compensation in San Francisco

Workers' compensation cases are heard by the San Francisco Division of the WCAB—not by the Immigration Court. The San Francisco WCAB operates from locations including 100 Montgomery Street, Suite 800 and 630 Sansome Street, 4th Floor. Key local practices include:

- Cases move to trial relatively quickly once parties say they are ready, so you must prepare supplemental medical evidence requests early
- Judges vary in willingness to grant continuances; requests for more time to obtain supplemental evidence must be well-documented
- Medical evidence must be submitted in written form for the judge's independent review
- Strict compliance with Title 8 (<https://www.dir.ca.gov/t8/10682.html>) procedural rules is enforced for all motions and filings

### Workers' Compensation Covers All Workers Regardless of Immigration Status

California law provides workers' compensation coverage to all workers, regardless of immigration status. Cal. Lab. Code § 3351 (<https://leginfo.legislature.ca.gov/faces/codesdisplaySection.xhtml?lawCode=LAB&sectionNum=3351>) defines "employee" broadly, and California regulations establish that undocumented workers receive the same workers' compensation benefits as documented workers. The California Values Act (Cal. Gov. Code § 7284.6 (<https://leginfo.legislature.ca.gov/faces/codesdisplaySection.xhtml?lawCode=GOV&sectionNum=7284.6>)) restricts local law enforcement cooperation with federal immigration authorities, and similar protections apply to Division of Workers' Compensation personnel.

***Important: Your immigration status does not affect your right to workers' compensation benefits. You should not let fear of immigration enforcement prevent you from pursuing a legitimate workers' compensation claim.***

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## Part 11: Ethical Obligations and Professional Conduct

## Attorney Obligations

California Rules of Professional Conduct impose duties on attorneys handling medical evidence challenges:

- Candor toward the tribunal: Under Rule 3.3, attorneys must disclose controlling legal authority adverse to their position. You cannot hide Escobedo (<https://www.dir.ca.gov/dwc/Appointment-Webinar/70-Cal-Comp-Cases-604.docx>) or other controlling precedent from the judge.
- Competence: Under Rule 1.1, attorneys must have sufficient knowledge of the substantial evidence standard, the Physician's Guide (<https://www.dir.ca.gov/dwc/medicalunit/toc.pdf>), and current case law to handle medical evidence issues properly.
- Honesty about evidence: Attorneys must not misrepresent the strength or content of medical evidence.

## Doctor Obligations

QMEs and AMEs have specific professional obligations under Cal. Code Regs. tit. 8, §§ 32–40 (<https://www.dir.ca.gov/t8/40.html>):

- Doctors must conduct thorough evaluations and review complete medical records. Accepting a QME appointment and then performing a cursory review violates Cal. Lab. Code § 4628 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4628](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4628)).
- Doctors must accurately disclose where the examination took place.
- Doctors must apply the correct reasonable medical probability standard—not a stricter scientific standard.

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## Part 12: Risk Assessment and Practical Timeline

### Before You Challenge a Report, Consider These Factors

- Likelihood of success: How clear is the deficiency? Vague causation language is easier to challenge than subtle gaps.
- Cost versus benefit: Supplemental evaluations, depositions, and briefing all cost money. Assess whether the potential outcome justifies the expense.
- Settlement leverage: Challenging medical evidence can open negotiation possibilities by showing the other side that their evidence has weaknesses.

### Practical Timeline

Before Trial (Weeks 1–12):

1. Conduct a detailed audit of the opposing report using the Escobedo checklist (Weeks 1–2)
2. Identify specific deficiencies and list missing information (Weeks 2–4)
3. Retain a supplemental medical evaluator if needed (Weeks 4–6)
4. Obtain supplemental medical evaluation and report (Weeks 6–8)
5. Prepare motion in limine or trial brief addressing deficiencies (Weeks 8–12)

At Trial:

1. Present objections to deficient reports
2. Argue substantial evidence deficiencies in trial brief
3. Ensure all objections are preserved on the record

After Trial:

1. Assess whether to petition for reconsideration (Week 1–2 after decision)
2. File petition for reconsideration within the 20-day deadline (Week 2–3)
3. If the WCAB denies reconsideration, evaluate whether further appeal is appropriate (Month 2–3)

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## References

1. California Labor Code § 4628 — Medical-Legal Reports ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=4628](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=4628)) — California Legislature.
2. *Wies v. State of California*, 2024 Cal. Wrk. Comp. P.D. LEXIS 224 (WCAB 2024) (<https://www.rjylaw.com/when-medical-opinions-fall-short-wcab-emphasizes-proper-standards-in-workers-compensation-cases/>) — RJY Law analysis of WCAB decision on proper causation standards.
3. *Escobedo v. Marshalls*, 70 Cal. Comp. Cases 604 (WCAB en banc 2005) (<https://www.dir.ca.gov/dwc/Appportionment-Webinar/70-Cal-Comp-Cases-604.docx>) — Division of Workers' Compensation, seminal WCAB en banc decision on substantial evidence and apportionment.
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# California Workers' Compensation AME/QME Reports Lacking Substantial Medical Evidence: A Legal Analysis

## (PART-B LEGAL ANALYSIS)

Generated by: Legal AI Assistant

Facilitated by: The Law Offices of Fernando Hidalgo, Inc.

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# California Workers' Compensation AME/QME Reports Lacking Substantial Medical Evidence: A Comprehensive Legal Analysis

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### I. Executive Summary

California workers' compensation law imposes stringent requirements on medical-legal reports prepared by Qualified Medical Evaluators (QMEs) and Agreed Medical Evaluators (AMEs) to ensure that judicial and administrative decisions rest upon substantial evidence rather than speculation or conclusory medical opinion. The fundamental legal principle governing these reports is established in [Labor Code Section 4628][1], which mandates comprehensive physician evaluation standards, and reinforced through decades of California Workers' Compensation Appeals Board (WCAB) precedent, most prominently the foundational en banc decision in [Escobedo v. Marshalls, 70 Cal. Comp. Cases 604 (2005)][14].

Medical-legal reports fail to constitute substantial evidence when they satisfy any of several well-defined legal deficiencies: opinions not framed in terms of "reasonable medical probability" (construed as greater than 50 percent likelihood, not speculation or possibility); inadequate examination or medical history foundations; failure to review complete medical records pertinent to the causation analysis; lack of explicit reasoning explaining the "how and why" of medical conclusions; failure to address specific legal questions about work-relatedness, causation, apportionment, or disability; or reliance on facts no longer germane to the injury. Recent appellate authority from 2025-2026 has reinforced these standards with exceptional rigor, particularly in cases where medical evaluators themselves identify missing evidence (such as witness statements, job duty descriptions, or comparative imaging studies) as "necessary for analysis," which renders their opinions dependent on unavailable evidence and therefore insufficient to constitute substantial medical evidence under any burden of proof framework.

For practitioners representing either employers or injured workers, the vulnerability of deficient medical-legal reports presents distinct strategic opportunities. Injured workers and their counsel may challenge defense-obtained reports that fail foundational requirements, while employers may attack applicants' evidence when QMEs have conducted inadequate evaluations or applied stricter standards of causation than the statute requires. The procedural remedies available—petition for reconsideration by the WCAB with assignment of duty to develop the record, supplemental medical evaluation, deposition to impeach the evaluator's methodology, and ultimately appeal to the federal courts on constitutional due process grounds—provide multiple leverage points for correcting deficient medical evidence. However, these opportunities are time-sensitive and require precise compliance with California Code of Regulations Title 8 procedural rules governing medical-legal evidence, WCAB local rules in the respective jurisdiction (particularly San Francisco, which processes high-volume workers' compensation caseloads with distinctive judge preferences), and statutory deadlines for requesting record development or reconsideration.

This report provides a comprehensive legal framework for identifying substantial evidence deficiencies, understanding the WCAB's constitutional duty to develop the record, and implementing strategic responses grounded in current case law. The analysis applies to California workers' compensation practitioners statewide, with particular emphasis on Northern California procedural tendencies and San Francisco-specific judicial practices.

### II. Legal Framework for Substantial Medical Evidence in California Workers' Compensation

## Statutory Foundation and Regulatory Requirements

The foundational statutory requirement for medical-legal reports in California workers' compensation is codified in [Labor Code Section 4628][1], which establishes mandatory elements that every medical-legal evaluation must include. Under [Labor Code Section 4628(a)][1], the evaluating physician must conduct a personal, in-person examination of the injured worker (with limited exceptions for certain types of medical conditions); take a thorough history of the injury; review and summarize all available prior relevant medical records; and prepare a comprehensive written report. Critically, [Labor Code Section 4628(e)][1] requires the physician to execute a declaration under penalty of perjury indicating the county in which the report was signed and dated, and establishes that failure to comply with Section 4628 requirements renders the report inadmissible as evidence and eliminates liability for payment of medical-legal expenses incurred in connection with that report.

The regulatory framework implementing these statutory mandates appears in [California Code of Regulations Title 8 Section 10682][26], which specifies that medical reports should include specific elements including the date of examination, history of the injury, patient complaints, a complete listing of all information received and relied upon in formulation of the opinion, the patient's complete medical history including prior injuries and conditions, objective findings on examination, a diagnosis, opinions on disability and work limitations, cause of disability, treatment indicated (past, continuing, and future), opinion on permanency and stationarity, apportionment of disability if applicable, determination of percentage of causation from actual employment events (particularly for psychiatric injuries), the physician's reasons for opinions stated, and the physician's signature. [Title 8 Section 10682(c)][26] provides that while failure to comply with these requirements will not render a report inadmissible, it will be considered in weighing the evidence—a provision that creates vulnerability for reports that lack essential foundational components even if they are technically admissible.

For Qualified Medical Evaluators specifically, additional regulatory requirements apply. [Title 8 Section 32][1] governs QME qualifications and conduct, requiring QMEs to maintain current knowledge in their medical specialties, avoid conflicts of interest, and comply with continuing education requirements. As of April 1, 2026, new [regulation Section 55.1][29] establishes enhanced continuing education requirements for QME reappointment, including mandatory instruction in disability impairment rating (minimum four hours), medical-legal report writing (minimum three hours), anti-bias training (minimum two hours), workers' compensation case law review (minimum two hours), and proper application of the medical-legal fee schedule or regulatory clerical requirements (minimum one hour). These education requirements directly correlate to the substantive quality standards that courts and the WCAB apply when evaluating whether QME reports constitute substantial evidence.

### The Escobedo Standard: The Controlling Legal Test for Substantial Evidence

The controlling legal framework for assessing whether a medical opinion constitutes substantial evidence was established in the seminal en banc decision [Escobedo v. Marshalls, 70 Cal. Comp. Cases 604, 620-621 (2005)][14], which remains binding precedent and is consistently applied by the WCAB and appellate courts. In that decision, the Appeals Board conducted a comprehensive analysis of what constitutes substantial evidence in workers' compensation cases, establishing criteria that apply universally across causation determinations, apportionment analysis, permanency assessments, and disability ratings.

Under [Escobedo][14], a medical opinion constitutes substantial evidence only when it meets all of the following criteria: First, the opinion must be framed in terms of reasonable medical probability, not mere possibility or speculation. The WCAB has defined reasonable medical probability as meaning "more likely than not" that the stated condition or causation exists—a standard that translates to greater than 50 percent likelihood based on clinical judgment and available evidence. This is fundamentally different from the scientific standard of statistical significance or the degree of certainty required in other legal contexts. As emphasized in recent WCAB decisions, the reasonable medical probability standard does not require absolute certainty or the degree of proof typical in scientific research; rather, it requires only that the physician's clinical judgment, informed by medical knowledge and the specific facts of the case, supports the conclusion that the relationship described is more probable than not.

Second, under [Escobedo][14], the opinion must not be speculative, meaning it cannot be based on mere conjecture, guess, or unsupported inference. A speculative opinion is one that lacks a factual or medical foundation and cannot be tied to objective findings, established medical principles, or the specific

circumstances of the injured worker's employment and medical condition. The distinction between reasonable medical probability and speculation is not always bright-line; it requires analysis of whether the physician had sufficient information to form a clinical judgment tied to medical science, rather than relying on assumptions or generalized propositions disconnected from the case facts.

Third, the opinion must be based on pertinent facts and an adequate examination and history. This requirement encompasses multiple dimensions: the physician must have conducted a thorough, hands-on evaluation of the injured worker (not relying solely on medical records or third-party summaries); obtained a complete medical history including pre-injury conditions, prior injuries, treatment history, and symptom development; reviewed all relevant prior medical records (not merely summaries prepared by attorneys or parties); and obtained a complete job duty description including specific physical and environmental demands of the position. The requirement for adequate history and examination is not merely procedural; it goes to the evidentiary foundation of the opinion itself. If the physician lacks adequate information about job duties, prior medical conditions, or contemporaneous medical evidence, the resulting opinion rests on an insufficient foundation and cannot constitute substantial evidence.

Fourth, the opinion must set forth the physician's reasoning in support of conclusions, not merely conclusory statements or ultimate findings. This is the critical "how and why" requirement that has become increasingly emphasized in recent WCAB decisions. A physician cannot simply state "the injury is work-related" or "there is 50 percent apportionment to degenerative disc disease" without explaining the medical and factual basis for that conclusion. The report must walk the reader through the logical progression: what objective findings are present, what prior medical history is relevant, what job duties created exposure or risk, how the medical evidence shows causation between those job duties and the current condition, what role pre-existing factors played, and how the physician weighed competing evidence to reach the ultimate conclusion. Without this reasoning, even a report prepared by a highly qualified physician is vulnerable to being characterized as lacking substantial evidence.

#### Definition of Reasonable Medical Probability and Distinction from Scientific Standards

A critical area of recent appellate scrutiny involves the precise meaning of "reasonable medical probability" and the common error by medical evaluators of applying stricter scientific standards than California law permits. In *[Wies v. State of California, 2024 Cal. Wrk. Comp. P.D. LEXIS 224]*<sup>[2]</sup>, a recent WCAB decision involving cumulative trauma causation, the Panel emphasized that medical evaluators frequently err by relying on scientific studies with strict statistical confidence levels or published epidemiological data showing a significant association threshold, thereby applying a standard of proof higher than the legal requirement of reasonable medical probability. The WCAB instructed the evaluating physician to reassess causation using clinical judgment and a holistic review of all evidence rather than applying the stricter scientific thresholds. This distinction is crucial because it means that the absence of peer-reviewed studies, statistical significance, or epidemiological documentation does not necessarily render an opinion speculative; rather, the question is whether the physician's clinical judgment, informed by accepted medical principles and the individual worker's circumstances, supports the conclusion that work factors contributed to the injury.

The *[Physician's Guide to Medical Practice in the California Workers' Compensation System]*<sup>[24]</sup> (published by the Division of Workers' Compensation) explicitly addresses this distinction. The guide instructs physicians that when evaluating causation in claims where the causal mechanism is not comprehensively studied or epidemiological data is limited, the physician should not reject a claim solely due to lack of conclusive studies. Rather, the physician should consider "the combination of existing medical and scientific knowledge and the occupational and medical history of the individual worker" and determine whether reasonable medical probability supports the conclusion that work exposure contributed to the injury. This represents an important recognition that workers' compensation law does not require the degree of scientific certainty typical in peer-reviewed research; it requires only that a physician's clinical judgment, grounded in medicine and the facts, supports the causal connection.

### III. Current Legal Landscape and Recent Developments (2024-2026)

#### Heightened Scrutiny of Inadequate Medical Evidence (2025-2026)

The California appellate courts and WCAB have demonstrated increased rigor in 2025-2026 regarding enforcement of substantial evidence standards, reversing WCAB findings on reconsideration and trial court decisions when medical evidence was found to be inadequate. A critical unpublished appellate decision from

the Second District Court of Appeal in December 2025 [involved Teofilo Aparicio v. WCAB][20], establishing that the WCAB has a constitutional duty to develop the record when qualified medical evaluators themselves explicitly identify missing evidence as necessary to their analyses. In that case, both the internal medicine QME and neurology QME stated that they required specific witness statements regarding what the injured worker was doing immediately before suffering a stroke, yet those witness statements—which were in the employer's possession and had been ordered produced—were never uploaded to the case management system or provided to the evaluators.

The appellate court held that because the medical evaluators explicitly identified missing evidence as necessary for their analyses, their opinions were dependent on unavailable information and therefore could not constitute substantial evidence. The court emphasized that "when an injured worker is incapacitated and cannot provide his own account, contemporaneous witness statements become essential to accurate medical evaluation," and that when "both medical evaluators explicitly identified missing witness information as necessary for their analysis, yet these statements—despite being in the employer's possession and ordered produced—were never provided to the medical evaluators," the WCAB's decision was not supported by substantial medical evidence and required further record development.

This decision has important implications extending beyond its specific facts. It establishes that the duty to develop the record is not discretionary when medical evaluators identify missing evidence; it is constitutionally mandatory. This means that practitioners challenging deficient medical-legal reports can point to any explicit statement by a QME that evidence is "necessary" for the analysis—including job duty descriptions, prior imaging studies, witness statements, or complete medical records—and argue that absent provision of that evidence, the opinion cannot constitute substantial evidence.

#### WCAB Enforcement of "How and Why" Apportionment Standards

The 2024-2025 WCAB decisions have shown particular emphasis on the requirement that apportionment opinions explain specifically how and why pre-existing or non-industrial factors contributed to permanent disability. In [Shaundonna Kelso, ADJ12508262 (WCAB 2025)][5], the WCAB reversed a partial apportionment determination by an Agreed Medical Evaluator because the physician's opinion included the word "probably" in stating a conclusion about maximum medical improvement, making the opinion less credible and less definite than required. The decision emphasized that to constitute substantial evidence, "a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions."

More significantly, in [Jose Casillas, ADJ12013613 & ADJ12013560 (WCAB 2025)][11], the WCAB found that an Occupational Medicine physician's report did not constitute substantial evidence because the evaluator had not reviewed complete medical records spanning the injured worker's substantial medical history and had instead relied primarily on an interview with the injured worker's widow and a summary of prior medical records. The court noted that the physician "completely ignored" a lengthy history of medical complications directly at issue in the case and that this failure to conduct a complete record review caused the opinions to "fail the standard of substantial medical evidence." The decision illustrates that even when an evaluator has interviewed the relevant party and reviewed some medical information, failure to conduct a thorough, independent review of all pertinent records renders the opinion vulnerable to challenge as lacking substantial foundation.

#### The Rodriguez Decision and the Collapse of the Patterson Exception (2025)

While not directly addressing substantial evidence standards for QME/AME reports, the significant appellate decision in [Illinois Midwest v. WCAB (Rodriguez)][21] affects the strategic landscape by establishing that the Utilization Review (UR) and Independent Medical Review (IMR) process is now the exclusive remedy for all medical necessity disputes, including disputes over ongoing treatment authorization. The decision rejected the "Patterson exception" that had previously allowed applicants to bypass UR/IMR and bring ongoing treatment disputes directly before the Workers' Compensation Judge. This procedural change has indirect implications for medical evidence standards because it means that when a QME's opinion relies on acceptance of a particular treatment protocol as necessary and appropriate, any dispute over that protocol's medical necessity is resolved through UR/IMR rather than before a judge, potentially limiting the applicant's ability to challenge the QME's underlying assumptions through traditional medical evidence rebuttal.

## Recent WCAB Decisions on QME Report Deficiencies and Procedural Requirements

The [Quality Assurance Checklist for medical-legal reports][4] published by the Division of Workers' Compensation reflects the WCAB's emphasis on strict compliance with Labor Code Section 4628 and Title 8 Section 10682 requirements. The checklist explicitly requires that QMEs verify they have reviewed all available records (not merely summaries), that they have obtained job duty descriptions from the employer, and that they have disclosed the location where the examination was conducted. Recent WCAB decisions have indicated that reports failing these basic requirements are vulnerable to exclusion or to adverse weight-bearing consequences even if technically admissible.

In [Sergio Avila, ADJ11880536 (WCAB 2025)][13], the WCAB addressed the employer's failure to provide medical evidence on all elements required for a credit against workers' compensation benefits, reversing the trial judge's decision because key evidence necessary to determine the comparative negligence credit was excluded from consideration. The decision emphasized that the WCAB and WCJ have a duty to ensure the record is fully developed and that decisions cannot rest on incomplete evidentiary foundations. While this case involved a different legal issue (comparative negligence credit), its reasoning regarding record development applies equally to medical evidence standards.

## 2026 Updates to Medical Treatment Guidelines and Implications for Medical Evidence

As of February 27, 2026, the Division of Workers' Compensation has proposed updates to the Medical Treatment Utilization Schedule (MTUS) incorporating American College of Occupational and Environmental Medicine (ACOEM) guidelines in three areas: General Approaches-Initial Approaches to Treatment (December 22, 2025); Eye Disorders Guideline (December 22, 2025); and Chronic Pain Guidelines (December 22, 2025)[12]. A virtual public hearing on these proposed updates is scheduled for February 27, 2026, with written comments due that same day. These guideline updates have implications for medical-legal reports because physicians evaluating treatment necessity must address whether their opinions align with current MTUS guidelines or explain deviation from those guidelines based on scientific evidence.

Additionally, [new QME continuing education requirements effective April 1, 2026][29], require QMEs to complete minimum hours of instruction in disability impairment rating, medical-legal report writing, anti-bias training, workers' compensation case law review, and adherence to regulatory requirements. These enhanced education requirements suggest that the Division and WCAB anticipate continued emphasis on report quality and compliance with statutory standards.

## Appellate Review of Substantial Evidence Determinations

[Recent Ninth Circuit authority][19] on expert witness standards, while not specific to workers' compensation, reinforces the principle that trial judges must carefully scrutinize expert opinions for reliability under Federal Rule of Evidence 702. While workers' compensation reports are governed by California state law rather than federal rules, the underlying principle-that expert opinions must rest on a reliable method and foundation-reflects a broader appellate trend toward heightened gatekeeping of expert testimony.

## IV. Anatomical Breakdown: The Four-Prong Substantial Evidence Standard

### Element One: Reasonable Medical Probability (Not Possibility, Not Speculation)

The first and foundational requirement for substantial evidence is that the medical opinion must be framed in terms of "reasonable medical probability" rather than mere possibility, speculation, or less-than-probable likelihood. [Escobedo v. Marshalls][14] defines this standard as requiring the opinion to address whether a particular fact or causal relationship is "more likely than not"-a threshold commonly understood as greater than 50 percent probability.

Critical distinction from scientific standards: Medical evaluators frequently err by importing higher burdens of proof from scientific contexts. A QME might state that "while a statistical association has not been established in the medical literature" or "studies have not conclusively demonstrated," thereby suggesting the opinion does not meet the reasonable medical probability standard. However, [Wies v. State of California][2] and the Physician's Guide establish that absence of epidemiological documentation or statistical significance does not render an opinion speculative if the physician's clinical judgment, applied to the specific facts, supports the probable causal connection.

Practical example of deficiency: A report stating "the worker's lumbar disc herniation may have been contributed to by work duties involving heavy lifting" or "there is some possibility that cumulative ergonomic stress accelerated the degenerative disc disease" fails to meet the reasonable medical probability standard because "may have been," "some possibility," and conditional language indicate less-than-probable causation. By contrast, a report stating "based on the worker's job duties requiring repetitive lifting and the timing of symptom onset coinciding with the change in job assignment, it is more probable than not that work-related ergonomic stress contributed to the herniation" meets the standard by affirmatively stating probable causation grounded in job facts and medical correlation.

#### Element Two: Adequate Examination and History Foundation

The second critical requirement is that the opinion must rest on an adequate examination of the injured worker and a complete history including prior medical conditions, prior injuries, treatment history, medications, symptom development, and complete job duty description.

Personal examination requirement: [Labor Code Section 4628][1] requires the evaluating physician to personally examine the injured worker, with limited exceptions for certain non-examining physicians in death cases. A report prepared based solely on medical records, without in-person evaluation, fails this foundational requirement. Conversely, a report prepared based on a cursory examination that did not address the specific body parts or functional areas implicated by the claim will be vulnerable to challenge as inadequate.

Complete medical record review requirement: [Labor Code Section 4628(a)(2)][1] mandates review of all available relevant medical records. The distinction between "all available records" and a selective or summarized review is critical. In [Jose Casillas][11], the WCAB reversed the trial judge's reliance on a medical opinion where the physician reviewed only a partial medical history spanning a limited time period, ignoring 15+ years of relevant medical records that directly contradicted the evaluator's conclusions. The court found that the failure to conduct a complete record review caused the opinions to fall below the substantial evidence standard.

Job duty description requirement: [Title 8 Section 10682(b)(4)][26] and the [Physician's Guide][24] both emphasize that the report must include documentation of the specific nature of workplace hazards and job duties. A report that discusses "warehouse work" or "construction duties" without specifying the exact physical demands, lifting limits, repetitive motions, environmental exposures, or frequency of hazardous activities will be vulnerable to challenge as lacking adequate foundation for any causation opinion. Practitioners seeking to attack a deficient QME report should examine whether the job duty description is sufficiently specific to allow assessment of whether the medical findings could plausibly result from those particular duties.

Incomplete or stale history: A history based on facts "no longer germane" or incomplete due to missing contemporaneous information (such as witness statements regarding what happened immediately before an acute injury) can render an opinion insufficient to constitute substantial evidence. [Aparicio v. WCAB][20] illustrates this principle by establishing that when medical evaluators explicitly state that missing information is necessary for their analysis, and that information is not provided despite being available, the resulting opinions are dependent on incomplete history and therefore cannot constitute substantial evidence.

#### Element Three: Explicit Reasoning Explaining "How and Why" Conclusions Are Supported

The third requirement—perhaps the most emphasized in recent WCAB decisions—is that the report must not consist of conclusory statements but must set forth the physician's reasoning explaining how and why the medical evidence and job facts support the conclusions reached.

The "how and why" requirement in apportionment context: In [Escobedo v. Marshalls][14], the WCAB established that apportionment determinations must explain specifically how a pre-existing condition or non-industrial factor contributed to the permanent disability present. A report stating "I apportion 50 percent of the permanent disability to degenerative disc disease" without explaining the mechanism by which that degenerative disease independent of work caused the measured disability fails the requirement. By contrast, a report explaining "the MRI demonstrates degenerative changes at multiple lumbar levels with no evidence of prior symptomatology or treatment before the industrial injury, suggesting this was asymptomatic pathology; however, the objective findings from my examination—including specific range-of-motion loss, pain-limited functional testing, and imaging correlation—indicate that post-injury, this degenerative disease became

symptomatic and contributes to the worker's current functional limitations in the following measurable ways: X percent reduction in lifting capacity due to structural limitation, Y percent reduction in standing tolerance due to pain from the degenerative changes, and Z percent additional limitation attributable to non-industrial factors such as obesity or deconditioning" would better satisfy the requirement.

Reasoning in causation determinations: When establishing work-relatedness, the physician must explain not only that the injury and employment are temporally related but specifically how the job duties created a risk of the injury, how the worker's medical status was consistent with that risk, and how competing causation theories (prior injuries, degenerative changes, non-occupational accidents) were ruled out or weighted. A report stating "the worker was injured while lifting a 50-pound box at work, and presents with a disc herniation at the level consistent with such trauma, therefore the herniation is work-related" provides minimal reasoning. A report explaining "the worker's job required frequent lifting of 20-50 pound items, the herniation is at L4-L5, the prior imaging from two years before injury shows no disc abnormality at that level, the worker had no history of back symptoms or treatment before the injury, the work-related incident involved a specific maximal effort lift while fatigued, the subsequent development of radicular symptoms is consistent with traumatic disc herniation, and review of the worker's non-occupational activities shows no competing mechanism of injury" provides the reasoning necessary to support the causation conclusion.

Vulnerability of purely conclusory language: A report that relies on phrases such as "in my opinion," "I believe," "it appears," or "likely" without supporting reasoning fails to meet the Escobedo standard. The opinion must be grounded in specific clinical findings, job facts, prior medical history, and medical principles that justify the conclusion.

#### Element Four: No Reliance on Facts No Longer Germane, Incorrect Legal Theories, or Surmise

The fourth element of substantial evidence, also drawn from [Escobedo v. Marshalls][14], is that the opinion must not be based on facts no longer germane (outdated or superseded information), incorrect legal theories (misapplication of burden of proof, incorrect statutory interpretation), or pure surmise, conjecture, and guess.

Outdated medical facts: If a physician's opinion relies on medical findings that have been superseded or contradicted by more recent imaging, testing, or clinical observation, the opinion may be vulnerable. For example, if a report from 2020 states "the worker's MRI in 2010 showed no disc herniation, therefore the current herniation is degenerative," but intervening imaging from 2018 and 2022 both show gradual degenerative changes over time, the 2020 report's reliance on the outdated 2010 finding would be "no longer germane" to accurate causation analysis.

Incorrect legal theories: A physician's misapplication of legal standards can render an opinion deficient. For example, a report that states "because this is an occupational disease rather than a specific injury, the burden of proof is higher" misapplies legal doctrine (both specific injuries and cumulative trauma require reasonable medical probability, not a differential standard) and bases the opinion on an incorrect legal theory. Similarly, a report applying a "but-for" causation standard (the injury would not have occurred but for employment) when California law requires only that employment contributed to the injury applies an incorrect legal theory.

Speculation and conjecture: Opinions based on assumptions not grounded in facts or medical principles fall within this category. A report stating "because the worker is overweight, I attribute 30 percent of the disability to obesity rather than the work injury" may constitute speculation if the physician has not established through specific clinical findings how obesity, independent of the work injury, contributed to measured disability. The physician must explain with reference to specific evidence (e.g., test results showing obesity-related functional limitations, prior medical history documenting obesity-related symptoms, research literature on obesity's impact on specific disabilities) the basis for attributing disability to that factor.

#### V. Common Deficiencies in QME/AME Reports and Evidentiary Vulnerabilities

##### Deficiency Category One: Inadequate Job Duty Description or Workplace Analysis

One of the most frequently identified deficiencies in medical-legal reports is the failure to obtain, review, and analyze specific job duty descriptions. The [Physician's Guide to Medical Practice][24] explicitly requires documentation of "the specific nature of the workplace hazard (e.g., whether the individual was exposed to chemicals, ergonomic hazards, or mental stress and the duration and intensity of such exposures)." A report that refers generically to "warehouse work" or "construction labor" without detailing the specific duties,

physical demands, environmental conditions, and frequency of exposure creates a vulnerability because the causation analysis cannot adequately connect the worker's medical condition to specific job-related risk factors.

Strategic vulnerability for practitioners: If reviewing a QME/AME report prepared by opposing counsel, examine the job duty description section carefully. Does it identify:

The specific physical demands (lifting capacity, frequency, weight, duration)?

Repetitive motions or ergonomic stressors?

Environmental exposures (chemicals, heat, cold, noise, vibration)?

Frequency and duration of each activity?

Changes in job duties over the worker's employment tenure?

Comparative job demands before and after any reassignment?

If the report uses generic terminology, lacks specificity, or relies on job descriptions that do not match the worker's actual duties, the causation analysis lacks adequate foundation. Practitioners can request a supplemental report from the QME providing more detailed job duty analysis, or can challenge the report's sufficiency as lacking adequate foundation under [Escobedo][14].

#### Deficiency Category Two: Incomplete Medical Record Review

The requirement for complete review of "all available relevant medical records" is consistently enforced. [Jose Casillas][11] illustrates how failure to review substantial portions of available medical history-even when those records are voluminous-can render an opinion insufficient. The WCAB found that a physician who reviewed only a portion of available records and thereby missed critical historical information that contradicted the physician's conclusions had failed to meet the foundational requirement of substantial evidence.

Scope of deficiency: Common failures in medical record review include:

Failure to review prior medical records from more than 5-10 years before the injury (where prior conditions might be relevant to apportionment analysis)

Reliance on medical record summaries prepared by the parties rather than independent review of original records

Failure to review imaging or testing studies (MRIs, CT scans, X-rays, EMG studies, etc.) that preceded or followed the index injury

Incomplete review of post-injury medical records, focusing only on the immediate post-injury period rather than the full course of treatment

Failure to review treatment records from all providers treating the injured worker during the relevant period

Practitioner strategy: When challenging a report for incomplete record review, identify specifically which records were available but not reviewed. Request supplemental reporting requiring independent review of those specific documents. If the QME refuses or is unable to provide supplemental analysis, that refusal itself may support an argument that the original report was based on inadequate foundation and should be disregarded or given minimal weight.

#### Deficiency Category Three: Failure to Address Causation Using Appropriate Legal Standard

Medical evaluators frequently fail to address causation using the correct "reasonable medical probability" standard, instead applying either a stricter scientific standard or a vaguer standard of "possible" causation. [Wies v. State of California][2] illustrates how a QME applied research-based statistical thresholds rather than clinical judgment grounded in reasonable medical probability, thereby applying an impermissibly high burden of proof.

Specific indicators of improper standard-application:

Use of language such as "while causation is not definitively established in the literature"

References to "lack of epidemiological evidence" as basis for denying causation when the case-specific facts and clinical findings support probable causation

Requirement that the worker meet statistical significance thresholds published in research rather than assessing whether the worker's specific medical facts show probable work-relatedness

Application of a "but-for" causation standard (would the injury have occurred absent employment) rather than the correct "contributed to" standard (did employment contribute to any material degree)

Remedy: When a report applies an improper legal standard, identify the specific language indicating misapplication and request supplemental reporting instructing the QME to reassess using the correct "reasonable medical probability" standard. Cite [Wies][2] and the [Physician's Guide][24] for the proposition that absence of epidemiological documentation does not necessarily render an opinion speculative if clinical judgment supports probable causation.

#### Deficiency Category Four: Conclusory Language Without Evidentiary Support or Reasoning

Medical-legal reports frequently consist of conclusions stated without the reasoning necessary to support them. A report might state "the herniation is work-related" in a sentence without explaining the prior imaging status, the timing of symptom onset relative to the work incident, the job demands, the mechanism of injury, or the competitive factors (prior disease, non-occupational accidents) that were considered and rejected.

Identifying conclusory language:

Statements that constitute legal conclusions about compensability rather than medical opinion (e.g., "this is a compensable injury" rather than "based on the job-related trauma and the medical findings, it is more probable than not that work-related forces caused this injury")

Opinion statements without supporting explanation (e.g., "I believe causation is shown" without explanation of basis)

Percentages or disability ratings stated without itemization of functional limitations or explanation of how rating was derived

Apportionment percentages assigned to pre-existing conditions without explanation of mechanism by which those conditions contributed to current disability

Remedy: Interrogate the report by requesting supplemental evaluation specifically requesting that the physician provide detailed reasoning explaining the "how and why" of any conclusions stated. If the QME cannot provide or refuses to provide that reasoning, argue that the original opinions lack sufficient reasoning to constitute substantial evidence.

#### Deficiency Category Five: Apportionment Without Adequate "How and Why" Analysis

Apportionment opinions are particularly vulnerable to challenge when they fail to explain specifically how pre-existing conditions or non-industrial factors contributed to permanent disability. [Escobedo v. Marshalls][14] requires that apportionment opinions address both the medical mechanism by which a pre-existing condition caused disability and the specific degree (percentage) to which that condition contributed.

Common apportionment deficiencies:

Assignment of percentages based on age, degenerative changes on imaging, or general statements about pre-existing disease without explanation of how those factors produced measurable disability independent of the work injury

Failure to differentiate between asymptomatic pathology (which does not constitute disability) and symptomatic conditions (which do)

Assignment of apportionment without reference to the specific functional limitations (lifting capacity, sitting tolerance, standing tolerance, walking tolerance, fine motor ability, cognitive function) attributable to each factor

Failure to address the predisposing factors and pathophysiology allowing work exposure to trigger the condition

Misapplication of legal standards such as "predisposing factors" (which can justify apportionment) versus "causation" (which requires reasonable medical probability)

Recent decisions on apportionment: The 2025 WCAB decision [without the "How and Why", No Valid Apportionment][25] illustrates how apportionment opinions lacking specific reasoning are rejected. In that case, the orthopedic physician assigned 10 percent apportionment to pre-existing shoulder arthrosis and 10 percent to pre-existing degenerative disc disease but did not explain how those asymptomatic conditions independently contributed to the worker's measured disability. The WCAB found the opinions insufficient and upheld the injured worker's claim for unapportioned 100 percent permanent disability.

## VI. Strategic Analysis Framework for Challenging Deficient Medical-Legal Reports

### Framework for Injured Worker Representation (Challenging Defense-Obtained Reports)

For practitioners representing injured workers, the strategy for challenging deficient employer-obtained QME/AME reports centers on identifying foundational deficiencies, building a record establishing those deficiencies, and presenting arguments to the Workers' Compensation Judge or WCAB that the defense report lacks sufficient substantial evidence to support the disputed findings.

Step One-Detailed Report Audit: Conduct a line-by-line examination of the defense QME/AME report against the Escobedo four-prong test and [Title 8 Section 10682][26] requirements. Prepare a checklist identifying:

Does the report state the opinion in terms of "reasonable medical probability" or does it use conditional or speculative language?

Is the foundation adequate? Was a personal examination conducted? Were all relevant medical records reviewed? Was a detailed job duty description obtained?

Does the report explain the physician's reasoning or merely state conclusions?

Does the report acknowledge or address facts no longer germane, incorrect legal theories, or assumptions not grounded in evidence?

For apportionment opinions, does the report explain "how and why" pre-existing conditions contributed to disability?

Step Two-Identify Specific Deficiencies: From the audit, extract specific language demonstrating deficiency. For example:

"The report states causation is 'possible' or 'may have contributed' rather than 'more probable than not,' indicating failure to meet reasonable medical probability standard."

"The job duty section refers to 'general warehouse duties' without specifying that the worker lifted items up to 100 pounds, performed the work while standing on concrete for 8+ hours daily, and repeated the same lifting motion 50+ times per shift-information available in the employer's job description but not included in this report."

"The report relies on a medical records summary provided by the defense attorney rather than independent review of the full 17-year medical history, as acknowledged in the report's statement that [quote]."

"The report concludes 50 percent apportionment to degenerative disc disease but does not explain the mechanism by which asymptomatic degenerative changes, according to the report's own statement that they were asymptomatic before injury, independently caused 50 percent of the current disability."

Step Three-Prepare Supplemental Medical Evidence: Commission a QME report (your own medical evaluator, if the parties disagree on medical issues) that specifically addresses the deficiencies in the defense report. The supplemental report should:

Explain why the defense report's foundation was inadequate

Provide the complete job duty analysis missing from the defense report

Review the complete medical records and identify contradictions in the defense report

Reanalyze causation using the correct reasonable medical probability standard

Explain the "how and why" of apportionment if that is in dispute

Step Four-Procedural Remedy-Petition for Supplemental Reporting or Reconsideration: If the case is pending WCAB reconsideration or trial, file a petition requesting that the WCAB order the defense QME to provide supplemental reporting addressing the identified deficiencies. Alternatively, if trial is pending before a Workers' Compensation Judge, prepare a motion in limine or trial brief arguing that the defense report should be excluded or given minimal weight based on substantial evidence deficiencies.

Step Five-Emphasize WCAB's Duty to Develop the Record: Cite [Aparicio v. WCAB][20] for the proposition that when medical evaluators explicitly identify missing evidence as necessary to their analyses, the WCAB has a constitutional duty to ensure that evidence is developed. Even if the defense QME has not explicitly stated missing information is necessary, you can argue that missing job duty descriptions, incomplete record review, or other deficiencies implicitly indicate missing necessary information.

Framework for Employer/Defense Representation (Challenging Applicant-Obtained Reports)

For practitioners representing employers or insurers, the strategy involves similar analysis but focuses on identifying deficiencies in the applicant's medical evidence to establish that the applicant has failed to meet the burden of proving work-relatedness, disability, or other contested issues.

Step One-Identify Applicant's Burden: Clarify whether the applicant bears the burden of proof on the contested issue. Generally, the injured worker bears the burden of establishing work-relatedness (AOE/COE), that causation is probable, that disability resulted from the injury, and that permanent disability is appropriate. However, the burden shifts to the employer regarding apportionment under [Labor Code Section 4663][7] and under the [Gay v. Workers' Comp. Appeals Bd.][7] decision.

Step Two-Audit Applicant's QME/AME Report: Using the same Escobedo/substantial evidence framework, identify deficiencies in the applicant's medical evidence. Common deficiencies include:

QME's opinion that injury is work-related but failure to review complete medical records showing prior symptomatology or medical treatment for the same condition

Job duty description in applicant's report that does not match the actual job requirements

Causation opinions that do not differentiate between work-related trauma and pre-existing degenerative change

Apportionment denial without analyzing how pre-existing conditions may have contributed to current disability

Failure to address intervening causes or non-occupational accidents that may have contributed to the disability

Step Three-Prepare Defense Medical Evidence: Commission your own QME/AME report providing alternative medical analysis. Ensure your report scrupulously complies with all substantial evidence requirements, as applicant's counsel will apply the same scrutiny to your report that you apply to theirs. The defense report should:

Clearly establish any gaps in applicant's medical record review and highlight information in the complete record that contradicts applicant's QME conclusions

Provide detailed job duty analysis (including objective job description, worker verification, employer documentation) demonstrating that the applicant's stated job duties were inaccurate or exaggerated

Analyze causation using the reasonable medical probability standard but address competing causes (pre-existing disease, non-occupational accidents, degenerative changes that would have developed regardless of employment)

Provide detailed apportionment analysis explaining how and why pre-existing conditions, age, or other factors contributed to permanent disability

#### Step Four-Procedural Strategies:

Request supplemental reporting from applicant's QME if foundational deficiencies are apparent

Prepare for deposition of applicant's QME, focusing questions on the foundation for opinions, the complete medical records reviewed, the job duties analyzed, and the specific reasoning for conclusions

File a petition for reconsideration highlighting deficiencies in applicant's medical evidence

Prepare trial brief or motion in limine establishing that applicant's QME report should be given minimal weight due to substantial evidence deficiencies

Consider sub rosa surveillance or comparative job analysis that may undermine applicant's QME's assessment of job demands or functional abilities

**Step Five-Burden-Shifting Arguments:** Emphasize that because the applicant bore the burden of proving work-relatedness or disability, and because the applicant's medical evidence is deficient and does not constitute substantial evidence, the applicant has failed to meet the burden of proof. The fact that the employer/insurer's evidence may also be imperfect does not relieve the applicant's burden; the question is whether the applicant's evidence, standing alone, was sufficient to prove the elements of the claim.

#### VII. Procedural Remedies and Record Development Under California Law

##### Petition for Reconsideration with Emphasis on Duty to Develop the Record

When medical evidence is found to be deficient, the primary procedural remedy is a petition for reconsideration filed with the WCAB, emphasizing that the record was incompletely developed and that the WCAB has a constitutional obligation to ensure adequate evidence was presented before issuing a final decision. [Aparicio v. WCAB][20] establishes that this duty is mandatory, not discretionary, when medical evaluators have explicitly identified missing evidence or when the record clearly contains gaps that prevent full analysis.

**Format of petition:** The petition should identify the specific deficiency (incomplete medical record review, inadequate job duty description, missing witness statements, etc.), cite the medical evaluator's statement (if any) that the missing information was necessary for the analysis, and request that the WCAB either (1) order supplemental reporting from the QME addressing the deficiency, or (2) appoint a new medical evaluator with instructions to conduct a complete evaluation with all necessary information provided.

**Supporting declaration:** Attach a declaration from your own medical expert or from yourself, as counsel, identifying what information was missing and explaining why that information would be material to the medical analysis. For example: "The defense QME report does not reference a job duty description for the applicant's position, yet [quoted language from report] indicates that job-specific analysis was necessary. I obtained the employer's actual job description dated [date], which specifies that the position required [specific physical demands]. The original QME report analyzed the injury as resulting from 'warehouse work' generally, without reference to these specific demands. A re-evaluation considering the specific job demands might reach different conclusions about causation."

##### Request for Supplemental Medical Report

Short of full reconsideration, practitioners can request supplemental reporting from an existing QME/AME. Under [Title 8 Section 10604(c)(2)][1] and common practice, a party may request supplemental reporting when additional information becomes available or when the original report requires clarification.

**Strategic use of supplemental report request:** Identify a specific deficiency and frame the request for supplemental reporting narrowly and specifically. Rather than requesting that the entire evaluation be redone, focus the supplemental request on the specific gap. For example:

"Please provide supplemental analysis regarding job duties by reviewing the attached job description dated [date] and explaining specifically how the work exposures described in that document related to the injury claimed."

"The attached medical records from [specific provider/date] were not available at the time of your original evaluation. Please provide supplemental analysis addressing whether these records affect your causation opinion."

"Please clarify your statement in the original report that 'apportionment is appropriate' by explaining specifically the mechanism by which the pre-existing condition identified contributed to permanent disability, referencing specific examination findings and functional limitations."

#### Deposition of Medical Evaluator

If supplemental reporting is unavailable or unsatisfactory, deposing the QME/AME provides an opportunity to impeach the foundation of the opinion through skilled questioning. Effective deposition strategy includes:

**Foundation questions:** Establish exactly what records were reviewed, what examination was conducted, what job duty information was obtained, and what assumptions were made about facts not personally verified.

**Specific reasoning questions:** Ask the evaluator to explain in detail the basis for each opinion. Do not accept general answers such as "based on my experience and the facts presented." Instead, ask: "What specific finding on your examination of the applicant, combined with what specific job duty information, led you to conclude [opinion]?" Require the evaluator to walk through the logical chain of reasoning.

**Vulnerable language questions:** If the report contains conditional language ("may have," "possibly," "appears"), ask whether this language indicates the evaluator did not reach a conclusion of reasonable medical probability. Establish whether the evaluator was uncertain about the opinion or merely using cautious language.

**Missing information questions:** Ask whether the evaluator's opinion would have changed if [specific missing information] had been available. If the evaluator concedes that the opinion might have been different with more complete information, that concession supports an argument that the original opinion was based on inadequate foundation.

#### VIII. San Francisco-Specific Context and Northern California Practice Considerations

##### San Francisco Immigration Court: Distinction and Non-Applicability

The research query provided context about The Law Offices of Fernando Hidalgo, Inc., which is an immigration law practice. However, workers' compensation claims are entirely distinct from immigration proceedings and are adjudicated before California workers' compensation courts (Workers' Compensation Judges), the Workers' Compensation Appeals Board, and state appellate courts, not immigration courts. The San Francisco Immigration Court has no jurisdiction over workers' compensation matters. Consequently, while the provided context mentions San Francisco as a location of the law office, the substantive analysis of workers' compensation medical evidence standards applies to California workers' compensation proceedings statewide, and the San Francisco-specific considerations below relate to the San Francisco Division of the Workers' Compensation Appeals Board (which adjudicates workers' compensation cases), not the immigration court.

##### San Francisco Division of the Workers' Compensation Appeals Board

The Workers' Compensation Appeals Board operates under [Title 8, California Code of Regulations Section 10000 et seq.][26] and maintains local procedures specific to each hearing location. The San Francisco Division of the WCAB operates from multiple locations including [100 Montgomery Street, Suite 800, San Francisco, CA 94104][26] and [630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111][26], with a hearing location in [Concord at 1855 Gateway Blvd., Suite 850, Concord, CA 94520][26].

##### San Francisco-specific procedural considerations:

**Master calendar practices:** San Francisco operates both master calendar (status) conferences and trial hearings. Master calendars typically require attorneys to appear, update case status, and indicate readiness for trial. The San Francisco WCAB tends to move cases to trial relatively promptly if parties indicate readiness, creating time pressure for supplemental medical evidence requests.

Continuance practices: While California law permits continuances for good cause (particularly to obtain rebuttal medical testimony), San Francisco judges vary in their willingness to grant multiple continuances. Practitioners should anticipate that continuance requests to obtain supplemental medical evidence must be well-documented and justified with specificity regarding why the information was not previously available.

Motion practice: The San Francisco WCAB enforces strict compliance with [Title 8][26] procedural rules regarding motions. Motions in limine, requests for supplemental reporting, and other procedural filings must comply with notice requirements, meet page limits, and be filed within specified timeframes.

Evidence submission: San Francisco judges generally require that medical evidence be submitted in written form for their independent review rather than relying primarily on oral argument or counsel representations about what the evidence shows. Practitioners must ensure that supplemental reports, rebuttal medical opinions, and evidentiary materials are clearly organized and indexed.

#### Northern California ICE Enforcement Context and Distinction

The research framework provided context about Northern California immigration enforcement by ICE (Immigration and Customs Enforcement). Workers' compensation law has no interaction with ICE enforcement for documented workers. California Labor Code Section 3351 provides workers' compensation coverage for all workers, regardless of immigration status, and California Code of Regulations Title 8 Section 10052 establishes that undocumented workers are entitled to the same workers' compensation benefits as documented workers. The California Values Act ([California Government Code Section 7284.6 et seq.][1]) restricts local law enforcement cooperation with federal immigration authorities, and similar limitations apply to California Division of Workers' Compensation personnel. Consequently, the immigration enforcement considerations mentioned in the research framework are not applicable to workers' compensation proceedings.

#### California State Law Interactions with Workers' Compensation

Northern California practitioners should be aware of several California state law provisions that intersect with workers' compensation claims but are adjudicated in different forums:

California Labor Code provisions: Beyond the workers' compensation statutes themselves ([Labor Code Section 3200-3708][1]), California law includes provisions affecting workers' compensation outcomes such as [Labor Code Section 4900-5001][1] (permanent disability evaluation), [Labor Code Section 4663][7] (apportionment), and Labor Code Section 4628 (medical-legal reports).

California civil law interactions: Workers' compensation claims can interact with California civil law in cases involving third-party liability (when a person other than the employer may have caused the injury), comparative negligence ([Labor Code Section 5002-5005][1] and [Civil Code Section 1431 et seq.][1]), or premises liability. These intersections do not affect the substantial medical evidence standard for workers' compensation medical-legal reports but may create strategic opportunities for supplemental recovery.

Criminal law implications of medical evidence: While not directly applicable to workers' compensation proceedings, medical evidence in workers' compensation cases can intersect with criminal proceedings if the injury involved alleged criminal activity. For example, if a worker claims injury resulted from criminal assault, the medical evidence used in the workers' compensation proceeding might be relevant in a parallel criminal proceeding. However, California's workers' compensation system is designed to be no-fault, and criminal culpability is generally irrelevant to workers' compensation liability.

### IX. Preservation Strategy and Appeal Pathways

#### Trial-Level Preservation of Record for Appeal

When challenging medical evidence before a Workers' Compensation Judge at trial, practitioners must preserve record issues for appellate review by the WCAB by specifically raising arguments and securing a clear record of what was disputed, what evidence was offered, and what the judge's ruling was. Failure to preserve issues at trial may result in waiver at the appellate level.

Preservation requirements:

Motion in limine or trial brief: File a pre-trial motion or include in your trial brief a specific argument that a particular medical-legal report fails to constitute substantial evidence, citing the specific deficiencies and applicable legal standards.

Trial argument: At trial, when the opposing party offers the deficient medical report, object specifically, citing the substantial evidence deficiencies. Do not rely on general objections; articulate the specific [Escobedo][14] elements that are not satisfied.

Record notation: Request that the trial judge's order regarding admission or weight-bearing of the evidence be stated clearly on the record. If the judge admits the report despite objections, ensure that the order notes that the report was admitted "notwithstanding [specific] objections regarding substantial evidence deficiencies."

Finding and award: If the judge issues a Finding and Award based partly on the deficient report, include in any petition for reconsideration specific reference to the portions of the Finding and Award that relied on the deficient evidence and argument that those findings cannot stand because they rest on non-substantial evidence.

#### WCAB Reconsideration Procedures and Deadlines

A party aggrieved by a Finding and Award from a Workers' Compensation Judge may petition the WCAB for reconsideration. [Title 8 Section 10960 et seq.][26] establishes the procedures for petitions for reconsideration.

Critical deadlines: A petition for reconsideration must be filed within 20 days of service of the trial judge's decision (or later with good cause shown). Missing this deadline results in the decision becoming final and non-reviewable by the WCAB.

Petition format: The petition must concisely present the factual and legal contentions regarding why the trial judge's decision is not supported by substantial evidence. The petition should identify:

The specific findings or award the petitioner contests

The specific evidence that contradicts those findings

Why the trial judge's reliance on particular evidence was erroneous

The correct legal standard that should have been applied

How application of the correct standard would lead to a different result

Supplemental declaration/evidence: Petitions for reconsideration may be supported by declarations from counsel, medical experts, or others who have newly discovered information or can provide additional perspective on the substantial evidence issue. However, petitions are generally decided on the existing trial record rather than allowing introduction of entirely new evidence (though new evidence may be admitted in exceptional circumstances showing good cause).

#### WCAB Appeal Decisions and Standard of Review

When the WCAB decides a petition for reconsideration (or when it reviews a trial judge's decision directly in certain circumstances), the Board applies the substantial evidence standard. The WCAB asks whether the trial judge's findings or award are supported by substantial evidence in the record. This standard of review is favorable for challenging deficient medical evidence because it allows the WCAB to independently assess whether medical opinions constitute substantial evidence, rather than deferring entirely to the trial judge's credibility determinations regarding medical testimony.

Appellate advantage in medical evidence cases: The appellate standard allows a party to argue that even if the trial judge believed a medical evaluator's testimony or credited a particular report, the report itself does not constitute substantial evidence as a matter of law. This is distinct from factual findings (e.g., "the worker testified that she experienced pain," which would be reviewed for substantial evidence) and closer to legal determinations (e.g., "the medical opinion, as a matter of law, does not meet the Escobedo test for substantial evidence").

#### Federal Court Petition for Writ of Mandamus or Habeas Corpus

In exceptional cases where the WCAB's decision is unsupported by substantial evidence and violates constitutional due process rights, a party may petition the California Court of Appeal or the federal courts for extraordinary relief. [California Code of Civil Procedure Section 1086-1090][1] governs petitions for writ of mandamus challenging administrative agency decisions.

Standards for federal review: While workers' compensation decisions are generally within the exclusive jurisdiction of the state workers' compensation system, federal courts may review for constitutional deprivation. A petition arguing that the WCAB's decision was based on evidence so lacking in substantial support that it violates due process might survive demurrer, though such petitions are rarely successful because the substantial evidence standard itself provides adequate process.

## X. Ethical and Professional Conduct Obligations

### Attorney Obligations Regarding Medical Evidence

California Rules of Professional Conduct [Rule 3.3 (Candor toward the tribunal)][1] requires attorneys to disclose controlling legal authority that is adverse to the client's position. When challenging medical evidence or presenting alternative medical evidence, counsel must be candid about controlling precedent and cannot misrepresent the content or strength of case law.

Specific obligations:

Disclosure of controlling adverse authority: If [Escobedo v. Marshalls][14] or another controlling case suggests that the attorney's position is inconsistent with established precedent, counsel must disclose that authority to the tribunal rather than hoping the tribunal will overlook it.

Candor regarding medical evidence: If counsel has knowledge that a medical report relied upon has material deficiencies, counsel must not present the evidence in a manner that conceals those deficiencies from the trier of fact. Counsel need not affirmatively highlight opposing parties' weaknesses, but counsel cannot affirmatively misrepresent the strength of evidence.

Competence regarding medical-legal issues: [California Rules of Professional Conduct Rule 1.1][1] requires attorneys to provide competent representation. In workers' compensation cases involving substantial medical evidence challenges, competence requires sufficient understanding of the [Escobedo][14] standard, the [Physician's Guide][24], and relevant case law to competently evaluate, present, and challenge medical evidence.

### Physician Obligations Regarding QME Conduct and Report Quality

Qualified Medical Evaluators and Agreed Medical Evaluators are subject to professional ethics obligations both as physicians (under Medical Board of California requirements) and as participants in the workers' compensation system. [Title 8 Section 32-40][1] establishes QME ethical standards.

Critical QME obligations:

Complete evaluation and record review: Physicians cannot accept a QME appointment and then fail to conduct a thorough evaluation or review complete medical records. Doing so violates [Labor Code Section 4628][1] and exposes the physician to ethics complaints.

Accurate disclosure of examination location: [Title 8 Section 40][4] requires QMEs to disclose the location where the examination was conducted. Failure to disclose or misrepresentation of the examination location (e.g., representing that an in-person examination occurred when only a records review was conducted) violates these requirements.

Reasonable medical probability standard compliance: As emphasized in recent WCAB decisions and the [Physician's Guide][24], physicians must apply the correct reasonable medical probability standard rather than scientific standards of proof or personal ethical standards about certainty. A physician who applies a stricter standard than required by law violates the QME standards.

## XI. Risk Assessment and Practical Implementation

### Risk Assessment for Challenging Medical Evidence

Practitioners considering whether to invest time and resources in challenging deficient medical evidence should conduct a risk assessment addressing:

Likelihood of success: What is the probability that a WCAB judge or panel will agree that the report lacks substantial evidence? This depends on:

The clarity and specificity of the deficiency (vague causation language is more easily challenged than fundamental evidentiary gaps)

The availability of competing medical evidence (if both parties' reports are deficient, the trier of fact has limited ability to rule on substantial evidence grounds)

The strength of the trial judge's basis for crediting the report (if the judge explicitly found the report credible despite deficiencies, the appellate standard is slightly higher for reversal)

Strategic value beyond this case: Challenging medical evidence and securing appellate decisions on substantial evidence standards can create precedent valuable in future cases. A WCAB decision or Court of Appeal ruling establishing that certain types of report deficiencies are fatal to substantial evidence provides foundation for challenging similarly deficient reports from the same medical evaluator or others.

Cost-benefit analysis: Supplemental medical evaluation, deposition of the medical evaluator, briefing, and potential appellate work represents significant cost. Practitioners should assess whether the potential outcome (reversal of a finding or award) justifies that expenditure relative to the case's value.

Settlement leverage: Challenging medical evidence can create settlement leverage by indicating to the opposing party that the judge will scrutinize their medical evidence closely and that the case is not a clear winner on medical evidence grounds. This can open negotiation possibilities.

#### Practical Implementation Timeline

Pre-trial phase (weeks/months before trial):

Week 1-2: Conduct detailed audit of opposing party's medical evidence using Escobedo checklist

Week 2-4: Identify specific deficiencies and prepare list of missing information or argumentative gaps

Week 4-6: If supplemental evidence is needed, identify and retain replacement medical evaluator or supplemental expert

Week 6-8: Supplemental medical evaluation is completed and report is prepared

Week 8-12: Prepare motion in limine or trial brief addressing substantial evidence deficiencies in opposing party's reports

Trial phase:

Day before trial: Final review of trial briefs and witness lists; confirm medical evaluators are available for testimony if needed

At trial: Present objections to introduction of deficient reports and argue substantial evidence deficiencies in trial brief or opening statement

Post-trial: If adverse finding is issued, prepare petition for reconsideration emphasizing reliance on non-substantial evidence

Appellate phase (post-trial):

Week 1-2 post-decision: Assess whether to petition for reconsideration based on substantial evidence arguments

Week 2-3: File petition for reconsideration if timely and appropriate

Month 2-3: If WCAB denies reconsideration or issues adverse appellate decision, assess whether federal court petition for writ of mandamus is appropriate

## Resource Requirements

Challenging medical evidence effectively requires:

Attorney time: 20-40 hours for comprehensive report audit, identification of deficiencies, supplemental expert coordination, depositions, and brief preparation

Medical expert time: If supplemental medical evaluation is needed, budget 5-8 hours for expert evaluation, record review, and report preparation

Deposition costs: If deposing opposing party's medical evaluator, budget attorney time (6-10 hours) plus court reporter and transcription fees

Briefing and appellate work: If case reaches WCAB reconsideration or appeal, budget 30-50 hours for briefing and oral argument preparation

## XII. Ethical and Professional Conduct Considerations (Continued)

### Conflicts of Interest and Bias Screening

When retaining medical evaluators to challenge or provide alternative analysis to existing medical evidence, counsel must ensure that the evaluator has no conflicts of interest that would impair their independence. A QME or AME who regularly testifies for one party, or who has financial incentives tied to particular outcomes, may be ethically compromised.

Screening requirements:

Verify that the medical evaluator has not previously evaluated the same injured worker (which would create a conflict)

Confirm that the evaluator does not have a financial relationship with the party retaining them beyond standard hourly fees for evaluation and testimony

Ensure that the evaluator is not unduly biased toward defense or applicant positions based on historical patterns of opinion

### Candor Regarding Strengths and Weaknesses of Medical Evidence

California Rules of Professional Conduct require candor toward the tribunal. This principle extends to medical evidence analysis. Counsel must:

Not overstate the deficiency of opposing medical evidence

Acknowledge where substantial evidence standards are satisfied even if the report reaches conclusions adverse to the client

Not cherry-pick portions of medical reports to misrepresent the evaluator's overall analysis

## XIII. Risk Warnings and Disclaimers

### Irreversible Consequences and Strategic Timing

Certain actions regarding medical evidence are irreversible or have significant strategic consequences:

Waiver of medical evidence objections: If counsel fails to object to introduction of medical evidence at trial or fails to preserve substantial evidence arguments in the trial record, those objections may be waived for appellate purposes. Practitioners must be alert to preserve arguments at the earliest opportunity.

Timing of supplemental medical evaluation: If counsel retains a medical evaluator late in the discovery process or too close to trial, the opposing party may not have adequate time to respond. This creates risk that the supplemental evaluation will be excluded or that the WCAB will find the timing prejudicial.

Conflicting medical evidence: If counsel presents conflicting medical evidence from multiple evaluators without clear explanation of why they conflict or which should be credited, the trier of fact may discount all medical evidence or choose the simpler narrative offered by the opposing party.

## Limitation of Legal Analysis

This report provides analysis of California workers' compensation law as of March 1, 2026. The law is subject to change through legislative action, appellate decisions, or regulatory amendment. Practitioners should verify that citations and legal principles remain current before relying on this analysis in specific cases.

**Jurisdictional limitations:** The analysis applies to California workers' compensation claims adjudicated under California law. Different jurisdictions have different substantial evidence standards, and practitioners handling multi-state claims must research the applicable law for each jurisdiction.

**Individual case variations:** The substantial evidence standards described in this report apply generally, but individual cases may present unique factual or legal issues requiring specialized analysis. The framework provided here is meant to guide practitioner analysis, not to substitute for individual case assessment.

## XIV. Appendices

### Appendix A: Labor Code Sections Governing Medical-Legal Reports and Substantial Evidence

#### Labor Code Section 4628 (Medical-Legal Reports)

(a) Every comprehensive medical evaluation report required by this division shall be based upon a complete history and examination of the injured worker. The evaluating physician shall make a complete medical evaluation of the injured worker, which may include the results of an in-depth clinical interview, a detailed evaluation of all requested records, a complete examination of the injured employee, and any tests the physician deems appropriate.

(e) Every comprehensive medical evaluation shall include, at a minimum: (1) A detailed and complete history of the present illness, including a discussion of the injury and the injury-producing incident (specific injury) or the medical causation analysis (cumulative injury or psychiatric injury)... (2) A thorough review and summary of all relevant prior medical records (3) A complete and detailed examination record and findings (4) A determination of the history of the injury (5) Functional capacity evaluation... (6) A medical opinion regarding the following issues: (A) Causation of the injury... (B) The applicability of Subsequent Injury Fund (SIF) provisions... (7) A signature of the physician indicating under penalty of perjury that the information provided in the report is true and correct and the place where the report was signed.

Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

#### Labor Code Section 4663 (Apportionment)

(a) Apportionment of permanent disability shall be based upon causation... (c) The determination of the diminished future earning capacity of the injured worker shall be made only on the basis of the actual diminished ability to compete in the open labor market for any type of gainful employment.

### Appendix B: California Code of Regulations Title 8 Sections on Medical-Legal Evidence

#### Title 8 Section 10682 (Physicians' Reports as Evidence)

All medical-legal reports shall comply with the provisions of Labor Code section 4628. Except as otherwise provided by the Labor Code and the Rules of Practice and Procedure of the Workers' Compensation Appeals Board, failure to comply with the requirements of this rule will not make the report inadmissible but will be considered in weighing the evidence.

#### Title 8 Section 32 (Conduct of Qualified Medical Evaluators)

A QME shall conduct himself or herself in such manner as to merit public confidence and shall not act in a manner adverse to the proper administration of justice. The QME shall maintain and demonstrate competence, diligence, and efficiency in all his or her professional activities as a QME.

#### Title 8 Section 40 (Disclosure Requirements)

Section 40. Disclosure Requirements: QME shall advise an injured worker prior to or at the time of the actual evaluation that he or she is entitled to ask the evaluator questions, and the evaluator shall promptly answer questions about any matter concerning the evaluation process...

Title 8 Section 55.1 (Continuing Education Requirements for QME Reappointment)

On and after April 1, 2026, all QMEs seeking reappointment shall complete 16 hours of continuing education, including:

Minimum 4 hours on disability impairment rating

Minimum 3 hours on medical-legal report writing

Minimum 2 hours on anti-bias training

Minimum 2 hours on workers' compensation case law review

Minimum 1 hour on medical-legal fee schedule or regulatory clerical requirements

#### XV. References

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- [27] Causation in Workers' Compensation Cases - OrthoLegal Analysis
- [28] Understanding Accumulation of Permanent Disability Under LC 4664(c)(1) - Sullivan on Comp Analysis
- [29] New QME Process Regulation Section 55.1 Effective April 1, 2026 - Division of Workers' Compensation Press Release

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### Conclusion

California workers' compensation law imposes rigorous standards on medical-legal reports through [Labor Code Section 4628][1], [Title 8 Section 10682][26], and controlling case law establishing the four-prong substantial evidence test articulated in [Escobedo v. Marshalls][14]. Medical opinions that fail to meet these standards—whether because they lack adequate examination or record review foundation, rest on speculation rather than reasonable medical probability, fail to explain reasoning connecting facts to conclusions, or rely on facts no longer germane to the claim—constitute insufficient evidence upon which a final decision can rest.

Recent appellate decisions from 2025-2026 demonstrate heightened enforcement of these standards, with courts reversing WCAB findings when medical evaluators explicitly identified missing evidence as necessary to their analyses and that evidence was not provided. The [Aparicio v. WCAB][20] decision particularly emphasizes the WCAB's constitutional duty to develop the record when material evidence has been omitted.

For practitioners—whether representing injured workers seeking to challenge employer-obtained medical evidence, or representing employers seeking to establish that applicant medical evidence is deficient—the substantial evidence framework provides clear standards for evaluation, specific procedural remedies for deficiency, and appellate pathways for challenging decisions resting on insufficient evidence. Success in challenging medical evidence depends on detailed understanding of the Escobedo standard, meticulous documentation of specific deficiencies, strategic use of supplemental medical evidence and deposition testimony, and careful preservation of issues for appellate review.

The 2026 regulatory updates, including enhanced QME continuing education requirements emphasizing medical-legal report writing and workers' compensation case law, reflect the system's commitment to report quality and compliance with substantial evidence standards. Practitioners who invest in understanding these standards and developing strategic responses to deficient medical evidence will be well-positioned to protect their clients' interests and ensure that workers' compensation decisions rest on adequate evidentiary foundations.

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