Back To Chiropractic Continuing Education Seminars Anti-Bias Training ~ 2 Hours

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This course is a 2 Hour mandatory requirement for QMEs for the California Department of Industrial Relations, Division of Worker's Compensation (DWC).

This course also counts as a 2 Hour CE Elective for the Board of Chiropractic Examiners for the state of California.

GLENN CRAFTS, B.S., D.C. *Qualified Medical Evaluator*

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Understanding Bias

QMEs need to increase awareness and understanding of differences in how people experience things differently and sometimes not as expected.

QMEs should also make themselves more aware of implied and/or unconscious bias when performing their evaluations.

QMEs should avoid blatant stereotyping, but also recognize how discrimination may take the form of unconscious bias, which may unintentionally change or effect their decision making as it pertains to performing and interpreting their medical evaluation findings and how they report them.

Understanding Bias

QMEs should apply evidence based medicine and objective reasoning that includes diagnostic tests and not solely reliant on history taking and especially not on personal biases they may have.

Applying the above will help QMEs to reduce/eliminate implicit bias in medical evaluations and reporting creating a sound report that is fair and taking into consideration all stakeholders involved.

Understand and increase QME awareness of perceived and/or non-perceived biases, or discrimination that may impact the examination and/or related QME report(s).

This course will review different types of gender biases with QME examinations/reports.

Do Our Brains Control Bias?

- Yes, and we often have implicit or unconscious biases (i.e. We don't even realize we are biased).
- We might be biased or gravitate towards individuals that are more like we are (i.e. Same gender, height, race, body weight, religion, etc.)
- This type of bias can influence our opinions.
- Our brain may even guide us to a particular bias based on our own prior experience(s). For example, if we have an affinity for dogs, have a dog we love versus a childhood experience where we were attacked and bitten by a dog.

Do Our Brains Control Bias?

- We can stereotype without realizing.
- Stereotyping can happen instantaneously and without thought, but it is more important to realize it and take appropriate action to diffuse any bias that may result.
- One might think because someone doesn't have an education, that they are incapable of attaining a reputable occupation.

Do Our Brains Control Bias?

- Some gender biases might even suggest men are automatically superior to women in math and science.
- Biases can be as simple as viewing overweight vs. muscular as good or bad, dedicated or not dedicated.
- Biases over weight/BMI may affect one's opinion adversely without taking into consideration other comorbidities. The QME needs to stay objective and thoroughly assess all factors and how they may or may not relate to the industrial injury(ies).

Unconscious Bias

Consider how QME biases can affect the overall outcome of the report, such as over/under impairment rating, illogical rationale, unfair/unaddressed apportionment, addressing causation without mechanism of injury, etc.

Review implicit (unconscious) bias that a QME may have.

Unconscious bias may be subtle, or even unintentional. QMEs should be mindful of how what they say and or their actions impact a case, or even how the Applicant may perceive it.

Unconscious Bias

Word Choice Examples:

A QME writes in their report the Applicant is confined to a wheelchair.

Perhaps a better, less biased description might be the Applicant is a person with a wheelchair disability.

A QME might consider replacing the work "grandfathered" with "exempt" to avoid biased racial undertones.

A QME might consider replacing "illegal aliens" with "undocumented immigrant."

Unconscious Bias

Word Choice Examples:

A QME might consider replacing "man hours" with "work time."

A QME shall replace "crazy" with "mental impairment."

A QME might consider replacing "tribe" with "network."

A QME might consider replacing "lame" with "disappointing."

Cultural Biases

Consider cultural biases

QMEs need to avoid cultural biases/discrimination whether their own, formed growing up, media driven and so forth. Do not favor an Applicant of the same/similar cultural background.

Understand other cultures may behave differently than yourself in how they address others, shake hands, or lack thereof. Appreciate distancing and that sometimes it may be the derivative of a culture/tradition.

Some cultures may be more introverted, or indirect with their actions and communication. Trying to understand these variances can help the QME avoid forming a bias.

Age Biases

Consider age biases

QMEs need to avoid age biases/discrimination when evaluating injured workers. Sometimes the QME's bias may be based on their own age perceptions and how the QME views other generational traits and characteristics (i.e. Gen X vs. Millennial vs. Gen Z, etc.)

Avoid making assumptions with the elderly in terms of cognitive ability. Consider their time to respond and also factor in hearing impairments.

Do not make comments that discriminate based on age, or categorize them as a certain type of generation.

Do not assume they can/cannot perform certain job duties based on their age.

Racial Biases

Consider racial biases

Do not make jokes about race.

Do not make judgmental comments about traditional/racial clothing.

Do not stereotype races, or assume a person is a certain race because of how they dress or speak.

Do not judge their personal customs, or allow it to persuade how you render your opinions within your report(s).

Bias Sources

Biases may arise from various sources:

- Local or National Media Bias
- Family Upbringing Bias
- Peer pressure Bias from friends
- Perceptions from movies
- Bias based on your prior experiences
- General stereotype bias
- Many of these types of bias and more can occur unconsciously.

Recognizing Bias Sources

How might a QME's biases affect their decisions?

The QME might allow their personal bias (if unrecognized) alter how they apportion, address causation or even rate impairment.

The key for the QME is to recognize, identify and prevent biases from creeping up whether during the evaluation itself, or even worse within their report.

QMEs need to remain neutral, and focus on medical necessity, objective factors, relevant case law, and other defined regulations to provide a medically reasonable opinion while addressing all med-legal issues at hand.

Confirmation Bias

Confirmation bias:

This type of bias has more to do with trying to find information during the exam, or during record review to "fit" your own bias, or how you perceive something should be.

The QME must take into account all evidence in order to make their own opinion and support that opinion with a solid rationale that is substantiated by medical probability.

Halo Effect Bias

Halo effect:

This type of Bias can be common and is related to identifying something in common that tends to make you more lenient towards that individual.

For example, you both like the same sports team, or favorite actor.

Because you share something in common, you may tend to favor this indivigive a higher WPI because of such favoritism.

QMEs cannot allow such biases to overshadow all facts and findings identified and to ensure their report reflects truth and well supported absent such biases.

Association Bias

Implicit association bias:

Implicit bias is similar to an unconscious bias.

Implicit bias seems to happen with quick judgements without putting too much thought into it.

As a result, being too quick to judge may lead to misperceptions or poor judgment.

Implicit Association refers to bias when associating or relating to others based on similarities such as, sharing common beliefs.

Affinity Bias

Affinity bias:

This bias is very similar with the Halo Effect bias described earlier.

This bias occurs when a person seems drawn closer to individuals that appear to be like you.

In other words, the affinity to agree more with people that have very similar likes and or dislikes as you do.

Attribution Bias

Attribution bias:

This type of bias focuses on blaming others for their situation.

In other words, we blame that individual for their own failures and for why they are in the situation they are.

For example, if they had stayed in school and finished their education, they could have earned a better job.

Without knowing their personal history, we cannot make leaps to conclusions.

How to Reduce Bias

Become familiar with the different types of biases.

Be mindful of (DEI) diversity, equity and inclusion.

Continue to improve your awareness through ongoing training.

Work on recognizing your own personal biases, and look for ways to avoid allowing them to interfere with rendering a fair report.

Apportionment Bias

Example:

Potential gender bias in a fictitious QME evaluation in which an apportionment rating is made based on an assumption about a risk factor related solely to the injured worker's gender.

Recall Apportionment:

- (Medical Separation of Industrial vs. Non-Industrial Disability)
- Apportionment as related to workers' compensation may be defined as separating or determining the employer's liability due to a specific industrial injury. This requires the physician to separate out the disability or condition that has resulted from a work injury from the other parts of disability that are the result of non-industrial conditions or diseases.

- (Medical Separation of Industrial vs. Non-Industrial Disability)
- Apportionment is usually upheld by the WCAB as long as the physician's opinions are based on substantial medical evidence. The doctor's opinion should be based on physical evaluation of the patient and complete review of the medical records.

- Labor Code Section 4663
- Pursuant to SB 899, Labor Code section 4663 was amended.
- Section 4663 may be termed "Medical Apportionment"
- Section 4663 is based on the idea that the <u>employer should</u> only be responsible for the injured worker's disability related to the industrial injury.
- All physicians <u>must address</u> the issue of <u>apportionment</u> in their final permanent and stationary report.

Labor Code 4663

• The physician must determine in their opinion what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment

and

- what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the work injury, which also includes prior work injuries.
- The physician should indicate specific reasons why they came to said conclusion.

- Labor Code Section 4664
- Labor Code section 4664 is termed "Legal apportionment."
- Section 4664 states that the employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and in the course of employment.

Labor Code Section 4664

- The WCAB ruled in the *Escobedo case* that apportionment may now include:
- Pathology, Retroactive Work Preclusions and Asymptomatic Prior Conditions.

Example: Apportionment Bias Due to Gender Bias

Potential gender bias in a fictitious QME evaluation in which an apportionment rating is made based on an assumption about a risk factor related solely to the injured worker's gender.

• QMEs should avoid assuming a risk factor based on the injured worker's gender when determining if apportionment is applicable.

Example: Apportionment Bias Due to Gender Bias

25 year old male receptionist who works 40 hours per week for the same employer the past 15 years develops B/L CTS (confirmed on multiple EDS and neuro consults).

 He also works concurrently for another employer part time performing nearly the exact job duties.

Example: Apportionment Bias Due to Gender Bias

- The female QME dismisses the complaint of B/L CTS because she believes the injured worker had too low of a pain threshold since he's a man.
- The QME also determined that based on his ethnicity he was more predisposed to hypochondria and embellished his pain.

Example: Apportionment Bias Due to Gender Bias

- Despite him working for multiple employers with similar job duties, the QME did not apportion based on her personal biases rather than based on objective diagnostics and job descriptions available for comparison and review.
- QME errs in stating no apportionment is applicable based on her gender biases rather than apportioning between the two concurrent employers with overlapping job duties and in coordination with positive objective diagnostic studies.

Gender Bias on Impairment

Example:

Evaluation and rating of permanent disability resulting from industrial breast cancer, taking into account the ways in which gender bias could potentially impact an assessment of the impairment that results from breast cancer and its treatment.

The male QME fails to rate an impairment subsequent to industrial breast cancer based on the ethnicity background of the injured worker.

The QME renders a o% impairment rating based solely on ethnicity of the female injured worker, and does not account for any other risk factors inherent to their job duties.

Gender Bias on Impairment

Example:

In this scenario, the QME may comment on the likelihood of developing breast cancer based on ethnicity, but cannot solely rely on that rationale.

Rather the QME needs to appropriately address the industrial causes and medical probability of developing breast cancer regardless of ethnicity, but also on job duties and exposure (i.e. working closely with carcinogenic materials as part of their regular employment).

Reduce Bias in Report Writing

ALWAYS USE THIRD-PERSON POINT OF VIEW

Avoid bias in your QME reports by using the third person point of view.

First person plural pronouns, "we," "our," and "us," give an impression that you and the reader have or arrive at the same conclusion, which may not be true in the Med-Legal setting.

AVOID WORDS THAT REFLECT YOUR FEELINGS

QMEs should try their best to choose language in their Med-Legal reports that does not reflect your personal opinions.

Words like "normal," "looks like," "ordinary" may read as your personal bias.

Use facts versus words that are more descriptive of feelings when making comparisons.

SPECIFICITY WHEN REFERENCING A GROUP OF PEOPLE

Avoid writing about groups of people that is interpreted as a bias.

Avoiding bias can be done by writing with specificity.

Define age or age ranges.

SPECIFICITY WHEN REFERENCING A GROUP OF PEOPLE

For example, state "over 65 years old" instead of "senior citizens."

Define a specific culture or ethnicity. No slang related references.

Define male or female.

More specificity in your writing will lead to less chance of reader misunderstanding, and reduce/eliminate any offensive perceptions by the reader.

INFORMATION BIAS

QMEs may have this type of bias as a result of errors in the measurement, collection, or interpretation of the exposure, of the disease, or any variety or combination.

QMEs need to assess the information available, but also use medical probability and support through their rationale especially when rendering a WPI rating (i.e. Consider the possibility exists that Applicants may be placed in an incorrect category resulting in inaccurate impairment ratings).

INFORMATION BIAS

QMEs need to avoid this type of information bias in interpreting results whether subjective, objective or both to eliminate the consequence of misclassifications when rating.

Some software tools offer an editing tool that can help assess the tone of your writing, which may be a consideration for the author prior to submission of their report.

- Write in the 3rd person
- Avoid using I, We, Us.

- Write with specificity when referencing ethnicity and varying cultures.
- Do not stereotype.
- Avoid generalizing or assuming language.

- Use appropriate gender pronouns accordingly.
- i.e. Transgender individuals
- Use gender neutral language where possible.

- Read your report and consider if anything written may be hurtful to an individual reader.
- Stay mindful of who your readers are.

- Look for any unsubstantiated claims in your report.
- Does your report use evidence-based medicine in your rationale?
- Are your statements opinion based, or fact based?

In general, QMEs must realize that bias comes in many forms and at times may be difficult to realize to the untrained person.

A bias can influence the reader's opinions, and or feelings about a particular topic within the QME report.

One of the main goals of the QME is to remain neutral and provide unbiased opinions that are well supported by the subjective and objective information available.

Resources

- State of California Dept. of Insurance <u>www.insurance.ca.gov</u>
- UR and Causation section of FAQs: http://www.dir.ca.gov/dwc/UtilizationReview/UR FAQ.htm
- Division of Workers' Compensation Dept. of Industrial Relations http://www.dir.ca.gov/DWC
- URAC <u>www.urac.org</u>
- MTUS Regulations: http://www.dir.ca.gov/dwc/DWCPropRegs/MTUS Regulations/MTUS Regulations.htm.
- ACOEM-Occupational Medicine Practice Guidelines 2nd Edition 2004
- CWCI
- https://bafreely.medium.com/7-tips-on-how-to-avoid-bias-in-your-writing-2bb211e871f1
- Internet searches including Google, PubMed
- https://pmc.ncbi.nlm.nih.gov/articles/PMC7318122/
- LexisNexis
- https://i-asc.org/lessons/the-neurology-of-bias-it-is-actually-is-all-in-your-head/
- ICD-10 CM PMIC 2015
- https://www.snexplores.org/article/think-youre-not-biased-think-again
- CPT Plus PMIC 2012
- https://www.dir.ca.gov/t8/9795.html
- AMA Guides, 5th Edition 2005

"Luck favors the prepared."

- Edna Mode

Questions?

COURSE EVALUATION FOR ADMINISTRATIVE DIRECTOR

As a part of the Administrative Director's ongoing efforts to ensure that courses for Qualified Medical Evaluators offer valuable information on California's Workers' Compensation-related medical evaluation issues, we are asking attendees of the courses approved by the Administrative Director (including distance learning programs) to complete the following Course Evaluation.

COURSE EVALUATION LINK (click here)

TO ALL ATTENDEES: PLEASE RETURN THIS FORM TO THE DWC

DIVISION OF WORKERS' COMPENSATION - MEDICAL UNIT PO BOX 71010 OAKLAND, CA 94612

OR

AOGarcia@dir.ca.gov

Thanks So Much!



Hope To See You Soon

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