



# CITY OF LONG BEACH **R-28**

DEPARTMENT OF HUMAN RESOURCES

333 West Ocean Boulevard 13<sup>th</sup> Floor • Long Beach, CA 90802

October 9, 2007

HONORABLE MAYOR AND CITY COUNCIL  
City of Long Beach  
California

## RECOMMENDATION:

Authorize the City Manager to enter into contracts with various physicians for the purpose of serving as Independent Medical Examiners in the workers' compensation alternative dispute resolution process with the Long Beach Police Officer's Association and the Long Beach Firefighters Association. (Citywide)

## DISCUSSION

City management representatives, representatives of the Long Beach Police Officers Association (LBPOA), and representatives of the Long Beach Firefighters Association (LBFFA) have held meet and confer sessions over the last six months regarding implementation of a workers' compensation alternative dispute resolution process. During these meetings, the City and Union representatives mutually agreed upon a list of current Agreed Medical Examiners (AME) to approach as potential Independent Medical Examiners (IME) for the purpose of the workers' compensation alternative dispute resolution process. Physicians were chosen based upon their ability to be impartial in analyzing specifics of a workers' compensation case and their ability to write thorough reports. A total of 86 physicians were approached in various specialties, with 56 physicians responding that they were interested, 29 physicians did not reply, and 1 declined.

The current workers' compensation claim resolution process, as supported by the State regulations, is filled with delays for both the City and employee. There are currently two pathways for a workers' compensation claim to be resolved under State regulations: non-litigated cases are resolved through a Qualified Medical Examiner (QME) and litigated cases may be resolved using an Agreed Medical Examiner (AME) or a QME. QME's are assigned by the State through a complicated process that allows the employee to choose from a State panel of physicians. The State randomly assigns this panel of physicians by specialty and consideration is not given to the proximity of the employee's home or work location. On average, it currently takes approximately three to five months from the time a QME is requested for the employee to be seen and the City to receive a report on the particular issues of the claim. This delay causes many claims to be denied

pending receipt of the medical opinion. When a case is litigated, the two parties may agree to use an AME to resolve outstanding issues or use a QME. On average, it currently takes approximately six months or more for an employee to be seen by an AME because of the full calendars of these physicians and three additional months for the City to receive a report on the particular issues of the claim. This type of delay causes claim costs to rise while affecting the morale of employees.

In order to expedite resolution of disputed workers' compensation claims, the City and the LBPOA and LBFFA have agreed that all disputed cases will be resolved by the agreed upon IME's. The City's proposed fee schedule (see Attachment A) for the IME's is slightly higher than an AME would typically receive under State regulations. In return, the IME's will guarantee appointments are scheduled within 30 days of the request and reports will be sent to the City within 30 days from the completed evaluation by the physician.

IME's will be chosen based on specialty and the type of injury the employee has sustained. IME's will be assigned to the employee by the Workers' Compensation Office moving through the alphabetical list of physicians by name. At any time during the term of the MOU, either party may request a physician to be removed or added to the approved list of physicians.

This matter was reviewed by Deputy City Attorney Christina Checел and Manager of Budget and Performance Management David Wodynski on October 3, 2007.

#### TIMING CONSIDERATIONS

City Council action is requested on October 9, 2007 to ensure implementation of the MOU provisions by December 1, 2007.

#### FISCAL IMPACT

The alternative dispute resolution program is expected to generate savings to the City through decreased litigation and quicker resolution of workers' compensation claims while improving service to our injured employees. The City will evaluate costs of this pilot program at the end of one year. Costs associated with this program are paid through the Insurance Fund (IS390). In Fiscal Year 07, total medical and indemnity costs for Police and Fire totaled \$8.2 million.

HONORABLE MAYOR AND CITY COUNCIL  
October 9, 2007  
Page 3

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



SUZANNE R. MASON  
DIRECTOR OF HUMAN RESOURCES

SRM:MA

Attachments

APPROVED:



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PATRICK H. WEST  
CITY MANAGER

## Proposed Fee Schedule

### AOE-COE Exam

In the case of a simple AOE-COE examination for the determination of Industrial causation, reimbursement will be at the basic rate with a modifier of 1.35. This would equal \$675.00. Conditions anticipated in this category would be Hearing loss, skin cancer, hernia, conjunctivitis, eye strain and dermatitis. This may not include all types in this category.

A more complex exam that involves review of records, tests and expert opinion will be reimbursed at the ML 103 with the 1.35 modifier. This would be at \$1,012.50.00. It is anticipated this would include new vs old injuries, internal exams, orthopedic exam with prior injuries or non-industrial conditions, cardiovascular cases, respiratory conditions, pneumonia, bronchitis, blood born pathogens, overuse syndromes and any CT type claim.

### Treatment and Temporary Disability Issues

When there is an issue on treatment or the employee's ability to perform some modified duty and an exam is not necessary the reimbursement would be at the ML 102 with the 1.35 modifier. This would be \$675.00. If an exam is needed to resolve the issue the payment would be \$1,012.50. This would include issues regarding spinal surgery.

### Permanent and Stationary (MMI)

All Permanent and Stationary exams will be at the \$1,012.50 level. If the parties agree the exam will reach a ML 104 the reimbursement will be at rate of \$350.00 per hour. The factors needed to support the ML 104 are outlined in Cal. Code of Regulations 9795.

### Deposition Fee

The hourly rate for depositions will be \$350.00, payable in quarter hours.

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# A G R E E M E N T

THIS AGREEMENT is made and entered, in duplicate, as of \_\_\_\_\_ for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on \_\_\_\_\_, 2007, by and between Dr. \_\_\_\_\_, whose address is \_\_\_\_\_, ("Physician"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City requires independent and experienced physicians to provide Independent Medical Evaluations with respect to workers' compensation claims filed by Long Beach Police Officers and Firefighters injured while in the employment of the City of Long Beach; and

WHEREAS, the City of Long Beach wishes to reduce the delays inherent in the workers' compensation system which lead to increased costs and the unacceptable treatment of injured workers; and

WHEREAS, the above mentioned Physician is willing and able to expeditiously provide said Independent Medical Evaluation required by the City at the rates indicated in Exhibit "A";

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions herein, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES

A. The Physician shall provide the following medical services to the City at the rates shown on Exhibit "A" attached hereto and incorporated herein by this reference:

- (a.) AOE - COE EXAMS, (exams for the determination of industrial causation).
- (b.) Evaluation for necessity of appropriate medical treatment.
- (c.) Assessment of employee's present ability to return to work, whether full duty or modified.

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- (d.) Advise on condition of maximum medical improvement status.
- (e.) Determine nature and extent of permanent disability, including factors of apportionment and need for future medical care.
- (f.) Resolve utilization review disputes.
- (g.) Determine the need for spinal surgery pursuant to Labor Code section 4062(b).

B. Physician shall perform the evaluation in full accordance with the standards defined by the Division of Worker's Compensation of the State of California and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. This requires a report of the injury, prior status, clinical chronology, current status, and past medical history. The physical examination will document all pertinent positive, negative, and non-physiological findings. For extremity injuries, measurements must be documented bilaterally. Additionally, Physician agrees to: (I) provide that medical exams will be set within thirty (30) days of the date of appointment request, and (II) prepare a written report of medical findings within thirty (30) days of the date of exam or evaluation and provide a copy to the parties within said time frame.

C. The parties agree that the City is not obligated to pay compensation to the Physician except for agreed upon medical services and care. Failure of Physician to provide a written medical report within 30 days of the date of the exam, subjects Physician to non-payment for services rendered.

D. Physician billing shall conform to the requirements listed in section 9795 of Title 8 of the California Code of Regulations. Charges for services rendered will be reviewed in accordance with section 9795 to determine appropriate level of service.

E. City shall pay Physician within forty-five (45) days following receipt from Physician of invoices for services rendered and for which payment has not previously been made, provided that: Physician shall submit all invoices

1 within ninety (90) days after the date of service.

2 2. TERM

3 A. The term of this Agreement shall be for the duration of the  
4 Labor-Management Workers' Compensation Supplemental Dispute Resolution  
5 Agreement ("Dispute Resolution Agreement").

6 B. Either party hereto may terminate this Agreement at any time  
7 by giving to the other party written notice thereof at least thirty (30) days prior to  
8 the effective date of such termination. Physician agrees that withdrawal from this  
9 agreement is conditioned upon completion of all work in progress.

10 C. Any notices required or desired to be given hereunder shall be  
11 in writing and personally served or deposited in the U.S. Postal Service, first class,  
12 postage prepaid to: Robert Johnson, Claims Manager, 333 West Ocean  
13 Boulevard, 8th Floor, Long Beach, California 90802. Notice shall be deemed  
14 given on the date deposited in the mail or on the date personal delivery is made,  
15 whichever occurs first.

16 3. INSURANCE

17 As a condition precedent to the effectiveness of this Agreement, Physician  
18 shall procure and maintain at Physician's expense for the duration of this Agreement from  
19 insurance companies that are admitted to write insurance in California or from authorized  
20 non-admitted insurance companies that have ratings of or equivalent to A:VIII by A.M.

21 Best Company:

22 (a) Commercial general liability insurance equivalent in scope to ISO  
23 form CG 00 01 11 85 or CG 00 01 1093 in an amount not less than One  
24 Million Dollars (\$1,000,000) per occurrence and Two Million Dollars  
25 (\$2,000,000) general aggregate. Such coverage shall include but not be  
26 limited to broad form contractual liability, cross liability independent  
27 contractors liability, and products and completed operations liability. The  
28 City, its officials, employees and agents shall be named as additional

1 insured by endorsement on the City's endorsement form or on an  
2 endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26  
3 11 85, and this insurance shall contain no special limitations on the scope  
4 of protection given to the City, its officials, employees and agents.

5 (b) Workers' Compensation insurance as required by the Labor  
6 Code of the State of California and employer's liability insurance in an  
7 amount not less than One Million Dollars (\$1,000,000) per occurrence.

8 (c) Professional (Medical Malpractice) or errors and omissions  
9 liability insurance in an amount not less than One Million Dollars  
10 (\$1,000,000) per claim.

11 Any self-insurance program, self-insured retention, or deductible must be  
12 separately approved in writing by City's Risk Manager or designee and shall protect City,  
13 its officials, employees and agents in the same manner and to the same extent as they  
14 would have been protected had the policy or policies not contained retention or  
15 deductible provisions. Each insurance policy shall be endorsed to state that coverage  
16 shall not be reduced, non-renewed or canceled in coverage except after thirty (30) days  
17 prior written notice to City, and shall be primary and not contributing to any other  
18 insurance or self-insurance maintained by City, its officials, employees and agents.  
19 Physician shall notify the City in writing within five (5) days after any insurance required  
20 herein has been voided by the insurer or cancelled by the insured.

21 Physician shall require that all contractors and subcontractors which  
22 Physician uses in the performance of services hereunder maintain insurance in  
23 compliance with this Section unless otherwise agreed in writing by City's Risk Manager or  
24 designee.

25 Prior to the start of performance hereunder, Physician shall deliver to City  
26 certificates of insurance and required endorsements, including any insurance required of  
27 Physician's contractors and subcontractors, for approval as to sufficiency and form. The  
28 certificates and endorsements for each insurance policy shall contain the original



1 signature of a person authorized by that insurer to bind coverage on its behalf. In  
2 addition, Physician shall, within thirty (30) days prior to expiration of the insurance  
3 required hereunder, furnish to City certificates of insurance and endorsements evidencing  
4 renewal of such insurance. City reserves the right to require complete certified copies of  
5 all said policies of Physician and Physician's contractor and subcontractors at any time.  
6 Physician shall make available to City all books, records and other information relating to  
7 the insurance coverage required herein during normal business hours.

8 Any modification or waiver of the insurance requirements herein shall only  
9 be made at the request of the City department administering this Agreement and with the  
10 written approval of the City's Risk Manager or designee. Not more frequently than once  
11 a year, the City's Risk Manager or designee may require that Physician, Physician's  
12 contractors and subcontractors change the amount, scope or types of coverages required  
13 herein if, in his or her sole opinion, the amount, scope, or types of coverages are not  
14 adequate.

15 The procuring or existence of insurance shall not be construed or deemed  
16 as a limitation on liability relating to Physician's performance of services or as full  
17 performance of or compliance with the indemnification provisions of this Agreement.

18 4. INDEPENDENT CONTRACTOR

19 In performing services hereunder, Physician is an independent contractor  
20 and not an employee, agent, or representative of the City. Physician acknowledges and  
21 agrees that the City will not secure workers' compensation or pay unemployment  
22 insurance to, for on Physician's behalf nor provide any of the usual rights, benefits or  
23 privileges of City employees.

24 5. INDEMNITY

25 Physician shall defend, protect, indemnify and hold the City, its officials,  
26 employees, and agents harmless from and against any and all claims, suits, causes of  
27 action, losses, damages, demands, liabilities, costs and expenses including reasonable  
28 attorney's fees, whether or not reduced to judgment or paid through settlement, which

1 may be asserted against City, its officials, employees and agents attributable to or  
2 caused directly or indirectly by Physician, its employees or agents in the performance of  
3 this Agreement, or caused by any alleged negligent or intentional act, omission or  
4 misrepresentation by Physician, its employees or agents, which act, omission or  
5 misrepresentation is connected in any way with performance of this Agreement.

6 6. AMENDMENT

7 This Agreement, including all exhibits, shall not be amended nor any  
8 provision or breach thereof waived except in writing signed by the parties.

9 7. LAW

10 This Agreement shall be governed by and construed according to the laws  
11 of the State of California. Physician shall comply with all laws, ordinances, rules and  
12 regulations of and obtain such permits, licenses, and certificates required by all federal,  
13 state, and local governmental authorities.

14 8. CONFLICT OF INTEREST

15 Physician agrees not to engage in treatment of City employee as the  
16 employee's primary care physician.

17 9. ENTIRE AGREEMENT

18 This Agreement including all exhibits constitutes the entire understanding  
19 of the parties and supersedes all other agreements, oral or written, with respect to the  
20 subject matter herein.

21 10. COSTS

22 In the event that there is any legal proceeding between the parties to  
23 enforce or interpret this Agreement or to protect or establish any rights or remedies  
24 hereunder, the prevailing party shall be entitled to its costs and expenses, including  
25 reasonable attorney's fees.

26 11. WAIVER

27 The acceptance of any services or the payment of any money by the City  
28 shall not operate as a waiver of any provision hereof, or of any rights or remedies

1 hereunder. The waiver of any breach of any provision of this Agreement shall not  
2 constitute a waiver of any other or subsequent breach.

3 IN WITNESS WHEREOF, the parties have caused this document to be duly  
4 executed with all formalities required by law on the date first stated above.

5 \_\_\_\_\_, 2007 By \_\_\_\_\_  
6 Physician

7  
8 CITY OF LONG BEACH, a municipal  
9 corporation

10 \_\_\_\_\_, 2007 By \_\_\_\_\_  
11 City Manager

12 "City"

13 This Agreement is approved as to form on \_\_\_\_\_, 2007.

14 ROBERT E. SHANNON, City Attorney

15 By \_\_\_\_\_  
16 Deputy

17 OFFICE OF THE CITY ATTORNEY  
18 ROBERT E. SHANNON, City Attorney  
19 333 West Ocean Boulevard, 11th Floor  
20 Long Beach, CA 90802-4664

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