



WORKERS' COMPENSATION: THE END OF FORUM SHOPPING IN THE DIVISION IME PROCESS? HOW THE 2019 LEGISLATIVE UPDATE HAS AFFECTED PHYSICIAN SELECTION

In the version of the Division IME ("DIME") rule that existed up to 2018, physician forum shopping occurred in the DIME process. Regardless of where a claimant lived, claimant attorneys frequently filed for a DIME in the Colorado Springs venue. This allowed for a more favorable pool of physicians, particularly in comparison to the Denver venue. With the application of the 2019 legislative changes, it appears that the Division of Workers' Compensation ("Division") has neutralized this ability to select physicians by location.

Effective January 1, 2019, the Colorado Workers' Compensation DIME rule was significantly overhauled. For a summary of the 2019 changes, please [click here](#). One of the enacted 2019 changes was a revised application form to start the DIME process. This new form, the Notice and Proposal and Application for a DIME, asks the requesting party to designate the preferred geographic location of the DIME (i.e. Colorado Springs). However, language has been included in the form that states, "the location in which the claimant resides may take precedence over the preferred location." This language is not derived from the workers' compensation statute or the rules of procedure; rather it is unique to the new DIME application form. The 2019 DIME rule does not contain any provision specifically addressing the application of the geographic preference. See W.C.R.P. 11(1-12).

The question remained, would the Division honor a party's geographic selection for the DIME, or would the language included on the new form control? The 2019 amendment to the DIME rule has now been in the application for over a year, and the Division's position on this geographic issue is clear, they will override a party's venue selection. A party may indicate its preference for a venue, but there is no assurance it will be honored. This is a significant departure from the 2018

rule, where the venue listed by the parties determined which physician was assigned to conduct the DIME.

The Division's refusal to honor the venue selection of a party has been challenged in court. Parties argued that the selected venue should be binding on the Division. The Pre-Hearing Administrative Law Judges (PALJs) have jurisdiction over this issue. They have consistently ruled that the Division is not obligated to provide a panel of DIME physicians solely for the venue location of the selecting party. The legal rationale of the PALJs is that the 2019 DIME rules provide no mandate for the Division to exclusively select physicians from the designated venue. Further, because the legislature failed to include such a mandate, the judges will not read non-existent provisions into the statute or rules. *Arenas v. ICAO* 8 P.3d 558 (Colo. App. 2000); *Pre-hearing Order WC 5-061-562 (9/25/19)*; *Pre-hearing Order WC 5-107-136 (9/26/19)*. The Judges at the Pre-Hearing Unit are ruling consistently on this issue, and there is no prospect for it being overturned at this time.

As such, the right to select the location of the DIME physician has been transferred from the parties to the Division, with the Division holding considerable authority over whether to honor a party's selected geographic location. Thus, the 2019 legislative update has largely removed forum shopping from the DIME process. Nonetheless, the designated location will still be considered as a factor in assigning DIME physicians, and so we continue to recommend designating a preferred location on the DIME Application.

Should you have questions regarding this update, the new DIME process, or claim specific questions, please contact Paul Popovic, popovicp@hallevans.com, for further assistance.