

**RULES OF THE OPERATING ENGINEERS**  
**WORKERS' COMPENSATION TRUST ALTERNATIVE DISPUTES**  
**RESOLUTION PROGRAM**

Pursuant to the provisions of California Labor Code Section 3201.5 the Operating Engineers Workers' Compensation Trust Alternative Disputes Resolution Program replaces all of those dispute resolution processes contained in Division 4 of the California Labor Code. These rules may be changed by the Board of Trustees of the Operating Engineers Workers' Compensation Trust at any time. The rules are intended to facilitate and expedite the resolution of disputes involving work-related injuries.

**ARTICLE 1.      Pre-Arbitration Discovery:**

Section 1.      Pre-Arbitration discovery shall be allowed in the same manner as discovery is permitted in California Labor Code Section 5710. Provided any references therein to the appeals board or workers' compensation judges or referees shall be deemed to be references to the Trust, Mediators or Arbitrators as the context so require.

Section 2.      Upon filing of a claim of workers' compensation injury with any contributing member of the Trust at the request of any concerned party it shall be the duty of all parties to immediately serve upon all concerned parties, as the case may be, copies of all medical reports in their possession or under their control, and related to the injury or that may come into their possession or under their control.

**ARTICLE I-A.      Ombudsman:**

Section 2.a      The operating Engineers' Workers' Compensation Trust Fund, shall employ, with the approval of the Trustees, at least one individual to serve as an ombudsperson. The ombudsperson is an employee at will and as such may be discharged/removed upon mutual agreement of the trustees. A vote of the trustees of the Operating Engineers' Workers' Compensation Trust Fund shall serve to affect any personnel action deemed necessary.

The ombudsperson shall, upon request of an employee, assist the employee in filing claims related to alleged work-related injuries subject to the Addendum. The ombudsperson shall receive complaints from employees who have filed claims for Workers' Compensation benefits subject to the Addendum and upon the request of the employee shall assist the employee in attempting to resolve those disputes with the Workers' Compensation insurer of an employer subject to the Addendum.

## ARTICLE II. Commencing Mediation:

Section 3. Provided a dispute has been submitted to the Ombudsman and it has not been resolved within 10 working days, or such period mutually agreed upon between the employee and the employer, mediation may be commenced by either party. When used in any of the mediation and arbitration rules, policies, and procedures, the word "employer" also refers to the employer's workers' compensation insurance carrier. The ombudsman shall sign the "Request for Mediation" certifying that the dispute or issue which is the subject of the Mediation request was presented to the Ombudsman for resolution but the Ombudsman was unable to resolve same.

The Operating Engineers' Workers' Compensation Trust Fund shall appoint a mediator from the list within three (3) working days of receipt of a request for an appointment of a mediator. Mediators shall be appointed on a rotating basis, however, no mediator who is unable to meet with the employee and representative of the insurer within five (5) working days of appointment by the Operating Engineers' Workers' Compensation Trust Fund shall be appointed to mediate that dispute. Upon request by the employee, the ombudsperson shall assist the employee in any mediation proceedings.

The mediator shall contact the employee and a representative of the employer's insurer. Both the employee and employer's insurer shall supply the mediator with requested information. The mediator shall meet separately with the employee and the representative of the insurer. The mediator may schedule a mediation session to be attended by both the employee and the representative of the insurer. If such meeting is scheduled, it shall be conducted at a location selected by the Operating Engineers' Workers' Compensation Trust Fund and said location shall be no more than forty(40) miles from the residence of the employee and within the eleven (11) Southern California counties of California and if no such residence exists, at the offices of the Operating Engineers' Workers' Compensation Trust Fund or within forty (40) miles of the Operating Engineers' Workers' Compensation Trust Fund's offices.

If the dispute is not resolved within fifteen (15) working days of the appointment of the mediator, the mediation process shall be deemed exhausted absent a contrary stipulation between the employee and the representative of the insurer.

In the event the parties mutually object to mediation, the procedures described in this Section shall not apply and the parties may proceed to arbitration under Section 9.

Section 4. Either party may request the Ombudsman to assist in the filing of a request for mediation.

Section 5. The "Request for Mediation" shall be filed with the Trust on the "Request for Mediation" form. A copy of which is attached to these procedures.

Section 6. At the time of filing the "Request for Mediation" the Trust shall serve a copy of the "Request for Mediation" by mail, facsimile transmission, or other means to assure receipt within 3 days upon the other party or parties.

### **ARTICLE III. Processing the "Request for Mediation":**

Section 7. Upon receipt of the "Request for Mediation" the Trust shall:

a. Endorse and date stamp the Request as filed and assign a Trust Mediation number to the case.

b. The appointment of a mediator and the scheduling of mediation activities shall be in accordance with Section 3 of Article II.

### **ARTICLE IV. Mediator:**

Section 8. The Mediator shall take whatever steps the Mediator deems reasonable to bring the dispute to an agreed conclusion within the time allowed for completing the Mediation, including scheduling mediation sessions, implementing means to discuss the dispute with the parties individually or collectively, requiring a party or parties to provide additional documentation or information..appointing -Issue.

Within ten days of completion of the Mediation, the Mediator shall file with the Trust the "Mediator's Statement of Completion and Result" and serve a copy of same on the parties and the ombudsman.

### **ARTICLE V. Arbitration:**

Section 9. Within sixty (60) calendar days following the filing of the "Mediator's Statement of Completion and Result" any party not satisfied with the outcome of Mediation may file with the Trust a request that the matter be referred to Arbitration. Failure to timely file the request for referral to arbitration of the disputed issue or issues submitted to the Mediator shall bar any further right to adjudicate such disputed issue or issues. The time for filing the request for arbitration may be extended upon a showing of good cause filed in writing with the Trust and approved by an Arbitrator.

If a dispute related to a claim has not been resolved pursuant to Article IV, the worker or representative of the insurer may request the Operating Engineers' Workers' Compensation Trust Fund to appoint an arbiter from the list to arbitrate the dispute. Absent extraordinary circumstances, arbitration must be requested no later than 60 days after the mediation process involving the same dispute has been exhausted or the date the parties have mutually objected to mediation.

The Operating Engineers' Workers' Compensation Trust Fund shall appoint an arbiter from the list within three (3) working days of receipt of a request. Arbiters shall be appointed on a rotating basis, however, no arbiter who is unable to arbitrate the dispute within 20 working days of appointment shall be appointed to arbitrate that dispute absent a contrary stipulation between the employee and representative of the insurer. The employee and representative of the insurer may jointly request appointment of a specific Arbiter from the panel of arbitrators. Upon request by the employee, the ombudsperson shall assist the employee in the arbitration. An employee receiving assistance from an ombudsperson but is not represented in the arbitration proceeding by an attorney, shall be considered by the arbiter to be an "Unrepresented worker".

Upon receipt of notice of acceptance of the assignment from the Arbitrator to the Trust, the Trust shall promptly consult with the parties. If the parties are not both prepared to arbitrate the dispute within twenty (20) days the Trust shall allow them thirty (30) days to retain and/or consult with legal counsel. The Trust shall set the date of hearing and give notice of the date, time and place of hearing to the parties, which except as set forth below shall not be more than sixty (60) days from the date of the Arbitrator accepts assignments. Notwithstanding the foregoing a hearing date may be set at any time if agreed upon by the parties and approved by the Arbitrator.

Notice of time and place for hearing shall be given by the Trust by mailing to each party notice thereof at least twenty calendar days in advance, unless the parties agree otherwise.

Any party to the hearing may be represented by an attorney. A party intending to be represented by an attorney shall notify the other party or parties and the Trust of the name and address of such attorney not less than 5 days prior to the date set for the hearing at which the attorney is first to appear.

In conducting the arbitration, the arbiter shall apply the same presumptions of compensability, statutory construction and rules of admissibility of evidence that would be applied by a Workers' Compensation Referee conducting a proceeding under the California Labor Code. The arbiter shall have the same authority as a Workers' Compensation Referee over discovery, the production of documents, the issuance of subpoenas and other procedural matters related to the arbitration hearing.

Absent a contrary stipulation between the employee and the representative of the insurer, an arbitration proceeding shall be conducted at a location selected by the Operating Engineers' Workers' Compensation Trust Fund and no more than forty (40) miles from the residence of the employee within the eleven (11) Southern California counties of California and otherwise at the offices of Operating Engineers' Workers' Compensation Trust Fund or within forty (40) miles of the Operating Engineers' Workers' Compensation Trust Fund's offices.

All arbitration proceedings shall be electronically recorded. The original tape and record of the proceeding shall be retained by the Operating Engineers' Workers' Compensation Trust Fund. Copies of the recording and records shall be supplied upon request to the arbiter, employee or representative of the insurer.



Within ten (10) working days following the conclusion of the arbitration, the arbiter shall issue his or her written findings of fact, decision, order and, if applicable, award. The arbiter's decision shall include minutes of the arbitration ; a summary of the oral testimony, if any; and the reasons for the decision. The arbiter is authorized to include in any award all relief available from a Workers' Compensation Referee including, but not limited to, enhancements to compensation due to any unreasonable delay in the payment of compensation by the insurer as provided for by law, and attorney's fees and costs. The cost of dispute resolution process contained in this Addendum may be assessed against the insurer (or the self-insured), including the arbiter's fees, pursuant to the guidelines established by the parties to this Addendum. The arbiter is authorized to resolve all liens not settled by the parties, provided that written notice of the time and place of the arbitration is given to all lien holders advising them of their right to appear and present argument and testimony in support of their lien claims.

Any findings of fact, award, order or decision of the arbiter shall have the same force and effect as findings of fact, an award, order or decision of a California Workers' Compensation Referee.

The decision of the arbiter shall be subject to review pursuant to California Labor Code Section 3201.5(a)(1) by the California Workers' Compensation Appeals Board in the same manner as provided for reconsideration of a final order, decision or award made and filed by the Workers' Compensation Referee and by the California Court of Appeal pursuant to the procedures set forth in California Labor Code Section 3201.5(a)(1).

The Arbitrator or Arbitrators (hereinafter referred to as "the Arbitrator") approved by the Trustees of the Operating Engineers Workers' Compensation Trust is or are vested with full power and authority and jurisdiction to try and determine finally all the matters specified in Section 53 00 of the California Labor Code, subject only to the review by the Workers' Compensation Appeals Board of the State of California and the courts specified in Division 4 of the California Labor Code as having powers of review of determinations of the appeals board. The Arbitrator shall apply California law, both decisions and statutory, under the authority of California Labor Code Section 3201.5, in rendering his or her decision. The rules of Arbitration herein are in lieu of the rules of the American Arbitration Association.

**Section 10.** All orders, rules, findings, decisions, and awards of the Arbitrator shall be prima facie lawful and conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the appeals board or upon a review by the courts within the time and in the manner specified in Division 4 of the California Labor Code.

**Section 11.** There is but one cause of action for each injury coming within the Operating Engineers Workers' Compensation Alternative Dispute Resolution program (hereinafter "the Program" except for continuous trauma cases). All claims brought for medical expenses disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the Arbitrator, be joined in the same proceeding at any time provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall an award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability need for medical treatment or death. Notwithstanding the foregoing, the rule established in the case of Wilkinson v WCAB (1977) 19 C3d 491, 138 CR 696, 42 CCC 406, shall govern combining permanent disabilities that become permanent and stationary at the same time.

If a continuous trauma claim is filed, which trauma falls completely within the *ADR* coverage period, but involving more than one *ADR* employer, then the Arbitrator shall have the authority to resolve the entire matter under the jurisdiction of the *ADR* process. A Finding and Award, Stipulated Findings and Award or Compromise and Release will be approved by the Arbitrator, assigning liability for benefits based on his determination of the respective exposure of the parties defendant.

If a continuous trauma claim is filed where the coverage period is partly within the *ADR* coverage and partly without said period, the Ombudsman shall advise the injured worker that part of the period of his injurious exposure falls under the WCAB jurisdiction and that he needs to file an application with the Board naming the non-*ADR* carrier as a defendant. If the *ADR* carrier is the "tail" carrier then this carrier shall provide the appropriate benefits, and shall seek contribution through the WCAB. The carriers shall be left to their own device to resolve contribution, but nothing shall permit the *ADR* carrier to deny or delay benefits to the injured worker.

**Section 12.** The Arbitrator has jurisdiction over any controversy relating to or arising out of medical and hospital treatment as between the parties and the providers.

**Section 13.** The Arbitrator has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of California in those cases where the contract of hire was made in this state. Any such employee or his dependents shall be entitled to the compensation or death benefits provided by the Program.

**Section 14.** The death of an employer subsequent to the sustaining of any injury by an employee shall not impair the right of the employee to proceed within the Program against the estate of the employer, and the failure of the employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall in no way bar or suspend such right.

Section 15. The Arbitrator may appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent upon the terms and conditions which he or she deems proper.

Section 16. The Arbitrator may provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, service provider or otherwise.

#### ARTICLE VI. Settlements:

Section 17. Any case may be settled upon submission of the proposed settlement to the Trust. The proposed settlement shall be set forth either upon the forms approved by the Trust and entitled "Compromise & Release Agreement" or "Stipulation with Request for Award." Upon receipt of a fully executed proposed settlement, the Trust shall forward same to an Arbitrator for review for adequacy and approval.

Section 18. Upon receipt of a proposed settlement, the Arbitrator shall act independently and, in issuing orders or awards, shall either:

- a. Approve the proposal as submitted and issue an appropriate order or award and serve same on the parties and the Trust;
- b. Reject the proposal and specify the reasons therefor in writing and serve same on the parties and the Trust; or
- c. Contact the parties by telephone or writing and suggest amendments that would qualify the proposal for approval. A new Arbitrator shall be appointed if a settlement is not accomplished and the fees for the new Arbitrator shall be paid for by the insurance carrier or the self-insured.

If the Arbitrator elects to proceed under subsection "c" above, the parties shall have 5 working days to notify the Arbitrator of his, its, or her acceptance or rejection of the suggested amendments. If accepted, the Arbitrator shall hold the file for not more than 20 working days for receipt of the appropriately amended agreement. If rejected, the Arbitrator shall immediately return the file to the Trust and advise the parties and the Trust in writing that the proposed settlement was unacceptable and state the reasons therefore.

#### ARTICLE VII. Hearing:

Section 19. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter as such is defined in California Labor Code Section 5811(b) and fees shall be allowed in accordance with said Labor Code section.

**Section 20.** The Arbitrator shall maintain the privacy of the hearing unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearing. The Arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other person.

**Section 21.** The Arbitrator may, for good cause, postpone the hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant such postponement when all of the parties agree thereto.

**Section 22.** Before proceedings with the first hearing the Arbitrator shall take an oath of office. The Arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

**Section 23.** Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

**Section 24. Order of Proceedings:**

a. The hearing shall be opened by the filing of the oath of the Arbitrator, by the recording of the place, time and date of the hearing and the presence of the Arbitrator, the parties, and counsel, if any; and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

b. The Arbitrator may at the beginning of the hearing, ask for the statements clarifying the issues involved. The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs. The Arbitrator shall fully develop the record.

c. Exhibits, when offered by either party may be received in evidence by the Arbitrator.

d. The name and addresses of all witnesses and exhibits in the order received shall be made part of the record.

e. The parties may, by written agreement, provide for the waiver of oral hearings.



## Section 25. Evidence:

a. The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. The Arbitrator is authorized to subpoena witnesses or documents and may do so upon the request of any party or independently.

b. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. Notwithstanding the foregoing the parties agree that no evidence is to be admitted into evidence by the arbitrator that is not admissible in an action before the Workers' Compensation Appeals Board not subject to the *ADR* process. All of the evidence shall be taken in the presence of the Arbitrator and all of the parties, except where any of the parties is absent in default or waives the right to be present.

c. Any party intending to offer any medical report or record at the hearing must provide the other party with a copy at least twenty days in advance thereof, unless the Arbitrator finds good cause for failure to do so.

d. The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Arbitrator deems it entitled to after consideration of any objection made to its admission.

e. If the parties agree or the Arbitrator directs that documents are to be submitted to the Arbitrator after the hearing, they shall be filed with the Trust for transmission to the Arbitrator. The filing party shall serve the other party or parties with copies of same at the time of filing.

f. The Arbitrator may in his or her sole discretions appoint an authorized health care professional to assist in the resolution of any medical issue.

**Section 26.** Unless the parties otherwise agree, the arbitration proceeding shall be completed within 30 days after the first hearing which is deemed to be the date of referral. The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard.

Upon receiving negative replies, or if satisfied that the record is complete, the Arbitrator shall declare the hearing closed and submitted for decision and such closing and submission shall be made a part of the record of proceedings. If briefs are to be filed, the hearing shall be declared to be closed and submitted as of the final date set by the Arbitrator for the receipt of briefs. If post-hearing filing of evidentiary documents is allowed by the Arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing and submission for decision. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing and submission for decision.

Section 27. The hearing may be reopened by the Arbitrator at his or her discretion, or for good cause upon the application of any party at any time before the Arbitrator files his or her decision and award.

#### ARTICLE VIII. Findings and Awards.

Section 28. All awards of the Arbitrator either for payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. Such interest shall run from the date of making and filing of an award. As to amounts which by the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date each such amount becomes due and payable.

Section 29. The Arbitrator in his or her award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of disability.

Section 30. The Program has continuing jurisdiction over all orders, decisions, and awards made and entered under its authority and pursuant to the provisions of California Labor Code Section 3201.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the Arbitrator may rescind, alter, or amend any order, decision or award, good cause appearing therefor. This power includes the right to review, grant or re-grant, diminish, increase, or terminate, within the limits prescribed for workers' compensation judges or referees by Division 4 of the California Labor Code, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

Section 31. The certified copy of the findings and order, decision, or award of the Arbitrator as filed with the Trust and a copy of the judgment constitute the judgment-roll of the Trust. The pleading, all orders of the Arbitrator, Arbitrator's original findings and order, decision, or award, and all other papers and documents filed in the cause shall remain on file in the Office of the Trust.

Section 32. The Arbitrator shall have the same authority as workers' compensation referees with respect to all Sections of the Labor Code including, but not limited to, those relating to bad faith actions or tactics, liability for additional expenses, and unreasonable delay or refusal of payment of compensation.

Section 33. Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the Arbitrator prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely to the party in whose interest such issue was raised.

Section 33.a Nothing in this alternative dispute resolution process shall prevent an employee from retaining an attorney to represent the employee in any and all stages of the alternative dispute resolution process established by this Addendum. Such retention of an attorney is the sole and absolute choice of the employee. In no event shall the Operating Engineers' Workers' Compensation Trust Fund be liable for the expense of such representation. The terms and conditions of any agreement between an employee and the employee's retained counsel are not subject to this Addendum nor does this Addendum in any fashion alter or replace any or all California law application to an agreement between an attorney and a worker pursuing Workers' Compensation benefits.

Section 34. The Arbitrator shall make a finding as to which party is the prevailing party in the arbitration proceeding. If the employee is found to be the prevailing party the Arbitrator shall set the attorney's fee as a percentage of the permanent disability award and order the attorney's fee to be paid by the employer. If the employee is not found to be the prevailing party, the Arbitrator shall set the attorney's fee as a reasonable percentage of the permanent disability award and order the attorney's fee to be withheld from the employee's compensation and paid to the employee's attorney.

Section 35. The employee and the attorney may agree to a fee in excess of 12%, provided the attorney submits evidence, including a copy of a written fee agreement between the employee and the attorney, and itemization of personal time involved in activities relating to advancing the employee's cause, which shall include good faith settlement efforts, to the Arbitrator justifying such fee, and the Arbitrator makes specific findings of fact to support an order granting such excess fee.

#### **ARTICLE IX. Medical Examinations.**

Section 36. The Union and employers have jointly approved the Qualified Medical Evaluators listed on Attachment "\_\_\_" hereto. Additional qualified medical evaluators may be subsequently selected by the Operating Engineers' Workers' Compensation Trust Fund. They shall serve as exclusive source of comprehensive medical-legal evaluations, other than those received from treating physicians, to be obtain by employees covered by this Addendum and the insurers of the employers who are parties to this Addendum as to claims for Workers' Compensation benefits which are subject to this Addendum. Any Qualified Medical Evaluator who does not continue to

be a Qualified Medical Evaluator within the meaning of California Labor Code Section 139.2 shall be deleted from the pool of Qualified Medical Evaluators upon loss of status as a Qualified Medical Evaluator under California Labor Code Section 139.2

**Section 37.** All notices of denial of claims and all notices required under the California Labor Code which require advice of an employee's right to a comprehensive medical-legal evaluation shall include a list of the Qualified Medical Evaluator panel including the addresses and telephone numbers of panel members. The notice shall include a copy of Section 36, 37, 38, 39, 40, 41 and 42 of this Addendum.

**Section 38.** If the employee is not represented by an attorney and is entitled to a comprehensive medical-legal evaluation under the standards of California Labor Code Sections 4060, 4061, or 4062 and all related sections of the California Labor Code, the employees may obtain one comprehensive medical legal evaluation from any one Qualified Medical Evaluator included in the panel. The Qualified Medical Evaluator selected by the employee shall consult with any Qualified Medical Evaluator of his or her choice if the opinion of the Qualified Medical Evaluator such consultation is necessary for a complete comprehensive medical-legal evaluation. In cases subject to California Labor Code Section 4061 and 4062 involving unrepresented employees, the reports and testimony of the treating physician or physicians and the comprehensive medical-legal evaluation obtained by the employee from a panel member and the panel member's testimony shall be the only admissible medical evidence in a proceeding before the arbiter.

In cases subject to the California Labor Code Section 4060 involving unrepresented employees, the insurer of the employer may also obtain a comprehensive medical-legal evaluation from any Qualified Medical Evaluator included in the panel. In such cases, the Qualified Medical Evaluator selected by the insurer shall consult with any Qualified Medical Evaluator of his or her choice in the opinion of the Qualified Medical Evaluator such consultation is necessary for a complete comprehensive medical-legal evaluation.

In cases subject to the California Labor Code Section 4060 involving unrepresented employees, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluations obtained by the parties from panel members and the testimony of those panel members shall be the only medical evidence admissible in a proceeding before the Arbitrator.

In cases subject to California Labor Code Section 4060 involving unrepresented employees, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluation obtained by the insurer from a panel member and the testimony of those panel members shall be the only medical evidence admissible in a proceeding before the arbiter.

Notwithstanding any other provision of this Addendum, no physician who has been involved in the treatment of the employee may act as a Qualified



Medical Evaluator in the employee's case.

Section 39. If the employee is represented by an attorney and is entitled to a comprehensive medical-legal evaluation under the standards of California Labor Code Sections 4060, 4061 or 4062 and all related sections of the California Labor Code, neither the employee nor the insurer of the employer shall obtain any comprehensive medical-legal evaluation, other than that of a treating physician or physicians, prior to the expiration of a ten (10) working day period during which the employee and insurer shall attempt to agree upon a single Qualified Medical Evaluator. In such cases, the parties to the dispute may agree upon a Qualified Medical Evaluator who is or is not included on the panel of Qualified Medical Evaluators established by the parties to this Addendum. If agreement on a Qualified Medical Evaluator is not reached within the ten (10) working day period, the employee and insurer then may each select a Qualified Medical Evaluator from the panel of Qualified Medical Evaluators. The Agreed Medical Evaluator or Qualified Medical Evaluators selected shall prepare comprehensive medical-legal evaluations and shall consult with any Qualified Medical Evaluator of their respective choice if in the opinion of any Evaluator such consultation is necessary for a complete comprehensive medical-legal evaluation. In cases involving employees represented by attorneys, the reports and testimony of the treating physician or physicians, the comprehensive medical-legal evaluation obtained pursuant to the foregoing procedure and the testimony of those panel members or Agreed Medical Evaluator shall be the only medical evidence admissible in the proceeding before the arbiter.

Notwithstanding any other provision of this Addendum, no physician who has been involved in the treatment of the employee may act a Qualified Medical Evaluator in the employee's case.

Section 40. Qualified Medical Evaluators on the panel established by the parties to this Addendum shall prepare and complete examinations and comprehensive medical-legal evaluations within the time frames established under applicable regulations of Title 8 of the California Code of Regulations. Each comprehensive medical-legal evaluation shall address all contested medical issues in dispute at the time the evaluation is prepared.

Section 41. An employee who obtains a qualified medical-legal evaluation while not represented by an attorney shall not be entitled to any additional comprehensive medical-legal evaluation merely due to the fact that the employee subsequently retains an attorney.

Section 42. In accord with California Labor Code Section 4064, the employer, through the insurer, shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to this

Addendum. The employer shall not be liable for the cost of any comprehensive medical-legal evaluation obtained by its employee other than those authorized pursuant to this Addendum. In no event shall the employer be liable for any comprehensive medical-legal evaluation performed by other than the treating physician or physicians, either in whole or in part, prior to the employee's filing of a claim form and prior to the time the claim is denied or becomes presumptively compensable under California Labor Code Section 5402. Nothing in this Addendum prevents the employer, insurer or employee from obtaining any additional comprehensive medical-legal evaluation or consultation at the employer's, insurer's or employee's own expense, but in no event shall such additional comprehensive medical-legal evaluations or consultations be admissible in a proceeding before the arbiter under this Addendum.

THE UNDERSIGNED TRUSTEES OF THE WORKERS' COMPENSATION TRUST ALTERNATIVE DISPUTE PROGRAM ACKNOWLEDGES THAT THEY HAVE READ THE ABOVE ENTITLED DOCUMENT AND APPROVE THE TERMS AND CONDITIONS THEREIN BY WHICH THE ADR PROGRAM SHALL BE CONDUCTED.

UNION TRUSTEE

Robert A. Burns  
Mike J. Gentry  
Steve G. Bullock

EMPLOYER TRUSTEES

Charles D. Allen  
Charles H. Ross  
Joe H. Smith

## **SAFETY COMMITTEE RESOLUTION**

**Be it resolved that the International Union of Operating Engineers ("IUOE"), Local 12 and the Affiliated Contractor Associations hereby establish a Safety Committee made up of the following members:**

**IUOE, Local 12 and Affiliated Contractor Association Workers' Compensation ADR Trustees.**

**The Safety Committee shall consist of Four Trustees, composed of not less than two management and two union trustees.**

**The role of the Safety Committee will be to provide safety and loss control guidance to the members by working with our insurance carrier in the following areas:**

- 1. Review of all open claims to identify trends in causes of loss.**
- 2. Review critical loss control and safety issues affecting members.**
- 3. Invite outside resources to enhance current safety programs available to all members.**
- 4. Prepare and send to each member topical items of specific interest.**

**Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2002, at \_\_\_\_\_, California.**

### **ASSOCIATIONS**

**Associated General Contractors of California, Inc.**

**By: \_\_\_\_\_**

**Engineering Contractors' Association, Inc.**

**By: \_\_\_\_\_**

**International Union of Operating Engineers,  
Local 12**

**By: \_\_\_\_\_**

**Building Industry Association of Southern California, Inc.**

**By: \_\_\_\_\_**

**Southern California Contractors' Association, Inc.**

**By: \_\_\_\_\_**

**INTERNATIONAL UNION OF OPERATING ENGINEERS  
LOCAL 12 WORKERS' COMPENSATION TRUST**

**ALTERNATIVE DISPUTE RESOLUTION SYSTEM  
Pursuant to California Labor Code §3201.5**

**MEMORANDUM OF UNDERSTANDING**

In signing this Memorandum of Understanding (MOU), the undersigned firm hereby agrees to be bound by all terms and provisions of the Agreement of the Workers' Compensation Alternative Dispute Resolution Procedure (hereinafter "Workers' Compensation Agreement") between LOCAL 12 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS and the signatory Contractors' Associations. This MOU shall become effective on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. It will remain in effect until the earlier of the termination of this MOU or of the Workers' Compensation Agreement, in the manner provided by the Workers' Compensation Agreement.

The undersigned firm agrees to be bound by the terms of the International Union of Operating Engineers Local 12 Workers' Compensation Trust Agreement and Funding Agreement. The undersigned firm also understands that it will only be entitled to participate in this program as long as it is signatory to the appropriate labor agreement.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

FAX No.: \_\_\_\_\_

Contractor's License: \_\_\_\_\_

Insurance Co.: \_\_\_\_\_

Policy #/Effective Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_  
(Employee, broker, other?)



## **QUALIFIED MEDICAL EXAMINERS**

- 1. Those physicians appointed by, and in good standing with, the Industrial Medical Council of the State of California (IMC), as qualified medical evaluators (QMEs) and as agreed medical evaluators (AMEs) may be selected for the purpose of evaluating medical issues. This list can be modified at any time by mutual agreement of the parties.**