

Maxham v. California Department of Corrections and Rehabilitation; SCIF (En Banc) January 24, 2017

Facts: Applicant’s Attorney sent its advocacy letters to the Agreed Medical Evaluators (“AMEs”) despite Defendant’s prior objection to their contents.

Issue: Whether advocacy letters constitute “information” under Labor Code § 4062.3 and Title 8 California Code of Regulations § 35 as opposed to “communication.”

Law: The above-referenced statutes define “information” as:

- 1) Records prepared or maintained by the employee’s treating physician(s),
- 2) Medical and non-medical records relevant to the determination of the medical issue, and
- 3) Letters outlining the medical determination of the primary treating physician or the compensability issue(s) that the evaluator is requested to address in the evaluation.

Labor Code § 4062.3 also outlines which documents can be provided to which type of med-legal evaluator subject to what disclosure requirements as illustrated, below:

	QME	AME
Information	Information must be served on opposing counsel 20 days before providing it to the evaluator, but opposing counsel may only object to the sending of non-medical records.	The parties must agree on what “information” is to be provided to the AME.
Communication	All communication must be in writing and served on the opposing party 20 days in advance of the evaluation.	All communication must be in writing and served on the opposing party when sent to the AME.

Holding: “Communication” such as advocacy letters can become “information” if it contains, references, or encloses information as defined by Labor Code § 4062.3(a).

Conclusion: In this case, the WCAB concluded that the letters were “information,” because they contained, referenced, or enclosed information. However, they could not determine if they were impermissibly forwarded to the AME because they could not determine whether the parties had agreed to provide the AME with the information that was so “contained, referenced, or enclosed” in the letters.

Notes: The WCAB confirmed that “communication” can include legal positions or decisions (i.e. advocacy) without constituting “information” and that such advocacy is not objectionable. However, the WCAB cautioned that advocacy can transform “communication” into “information” if it has the effect of disclosing impermissible “information” even without expressly containing, referencing, or enclosing it.