

**WORKERS' COMPENSATION  
ALTERNATIVE DISPUTE RESOLUTION  
AGREEMENT BETWEEN COUNTY OF ORANGE AND  
ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS**

This Workers' Compensation Alternative Dispute Resolution Agreement ("Agreement") is entered into by and between the County of Orange ("County") and the Association of Orange County Deputy Sheriffs ("AOCDS"); (collectively, "parties"). This Agreement is created pursuant to California Labor Code Section 3201.7(a)(3)(C).

Nothing in this Agreement diminishes the entitlement of a covered employee to compensation payments for total or partial permanent disability, total or partial temporary disability, or medical treatment fully paid by the employer as otherwise provided for in Division 4 of the California Labor Code ("Workers' Compensation Law"), nor to California Labor Code Section 4850 benefits. Nothing in this Agreement denies to any covered employee the right to representation by counsel at all stages during this alternative dispute resolution process.

**Article I: Purpose**

The purpose of this Agreement is:

To provide covered employees and retirees, as defined in Article III, paragraphs A..:B below, claiming compensable injuries under Workers' Compensation Law, with an alternative dispute resolution process with the intent of expeditiously resolving disputes.

This purpose will be achieved by utilizing an exclusive list of agreed-upon medical providers ("Independent Medical Evaluators" or "IMEs") to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(a)(3)(C).

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

**Article II: *Term* of Agreement**

The parties understand that this Agreement governs a pilot program and that this Agreement shall become effective on or after July 1, 2018, only after it is approved by the County Board of Supervisors, executed by the parties, submitted to the Administrative Director ("Director") of the State of California, Department of Industrial Relations, Division of Workers' Compensation, in accordance with Title 8, California

Code of Regulations, Section 10202(d), and accepted by the Director as evidenced by the Director's letter to the parties indicating approval of the Agreement. This Agreement shall remain in effect for at least one year from the date of the Director's letter of approval to the parties. Thereafter, it shall continue and remain in force from year to year unless terminated by either party as provided for below. Any claim arising from an industrial injury that is covered by this Agreement and sustained before the termination of this Agreement shall continue to be covered by the terms of this Agreement, until all medical issues related to the pending claim are resolved.

The parties reserve the right to terminate this Agreement at any time for good cause, by mutual agreement, or by act of the Legislature. The terminating party must give at least 30 calendar days written notice to the other party of the intent to terminate, including an explanation of the good cause. The parties agree to meet and confer in good faith to try and resolve the issues underlying the proposed termination of the Agreement prior to the Agreement's termination. Upon termination of this Agreement, the parties shall become fully subject to the provisions of the applicable California Labor Code provisions to the same extent as they were prior to the implementation of this Agreement, except as otherwise specified herein.

### **Article III: Scope of Agreement**

A. This Agreement applies only to injuries, as defined by Workers' Compensation Law, claimed by the following (referred to collectively as "covered employees"):

1. Active County employees who are members of AOCDS;
2. Retirees of the County who are members of AOCDS who claim a presumptive injury as defined by California Labor Code Section 3212 et seq., including Section 3213.2; and
3. Active County employees who are members of AOCDS and who file a claim and subsequently retire before the claim is resolved. Such individuals are covered under this Agreement only for the purposes of petitions to reopen a pre-existing claim unless covered under A(2) of this paragraph.

B. This Agreement does not apply to any other retired individuals, nor does it apply to claims filed before the effective date of this Agreement, except to the extent such claims fall within this paragraph B. Active employees and retirees with an existing claim filed prior to the effective date of this Agreement ("pre-existing claim") who have not already had a medical-legal evaluation by an Agreed Medical Evaluator or Qualified Medical Evaluator under California's workers' compensation system may request to resolve their claims under the provisions of this Agreement. Such requests must be made in writing to the County's Third Party Administrator ("TPA"). The

authority to decide whether to accept a pre-existing claim into the alternative dispute resolution program described in this Agreement will lie solely with, and depend on the mutual agreement of, both the County and the employee (or if the employee is represented, by the employee's legal representative acting on behalf of the employee). If a request is made to utilize the alternative dispute resolution program: described in this Agreement for a pre-existing claim and that request is approved the individual will be a "covered employee" under this Agreement, and all future disputes on said claim must be resolved according to the provisions of this Agreement. The scope of this Agreement does not apply to retirees that have a medical dispute that is outside the five-year statute of limitations or California Labor Code Section 5804.

C. Injuries occurring and claims filed after termination of this Agreement are not covered by this Agreement.

D. This Agreement is restricted to: 1) establishing an exclusive list of IMES to be used for medical dispute resolution of covered employees, and 2) establishing a process for informal legal discovery in accordance with Article V. For purposes of this Agreement, a "claimed injury" is one for which either a Workers' Compensation Claim Form DWC-1 or an Application for Adjudication of Claim has been filed with the Workers' Compensation Appeals Board ("WCAB").

#### **Article IV: Expedited Independent Medical Evaluator Process**

A. This Agreement does not constitute a Medical Provider Network ("MPN"). However, all covered employees must utilize the County's MPN for treatment purposes during the time the County maintains and utilizes the MPN. All MPN physicians will have prior authorization for medical appointments consistent with California Labor Code Section 4600. The MPN is governed by California Labor Code Section 4616 et seq. Physicians who act as a covered employee's treating physician, or have provided treatment to the covered employee shall not act as the IME in the covered employee's claim. Pre-designation of a physician must comply with the requirements set forth in California Labor Code Section 4600(d)(1)-(2)(C).

B. All covered employees with a disputed medical issue as described in Article IV, paragraph D below must be evaluated by an approved physician from the exclusive list of IMEs. Attached hereto as Exhibit A is the exclusive list of IMEs agreed upon by the parties. Should the covered employee claim injuries requiring more than one IME specialist, the covered employee shall be provided an IME appointment in each area of specialty. If the IME requires the opinion of an additional sub-specialist, the IME shall advise the claims examiner, who shall then select an approved medical provider in the requested specialty from the agreed-upon IME list. The IME may not refer the covered employee to the covered employee's treating physician for this purpose. The consulting sub-specialist's charges are subject to the Official Medical Fee

Schedule promulgated by the California Division of Workers' Compensation administrative director.

C. The exclusive list of IMEs shall include the IMEs' respective specialties as agreed upon by the parties.

D. An IME shall be used for all medical disputes that arise in connection with a workers' compensation claim including, but not limited to, determination of causation, the nature and extent of an injury, the nature and extent of permanent disability and apportionment, work restrictions, ability to return to work (including transitional duty), future medical care, and resolution of all medical treatment disputes arising from utilization review, including the need for spinal surgery. The parties agree that the covered employee shall use the originally chosen IME for all subsequent disputes and injuries claimed arising under this Agreement. In the event that said IME is no longer available, the parties shall utilize the next specialist on the list pursuant to Article IV, subparagraph 1(5) below.

E. The IME process described above will be triggered where either party provides the other written notice of an objection in connection with any issues set forth in Article IV, paragraph D above. Objections from the County shall be sent to the covered employee with a copy to the covered employee's legal representative, if represented, and if the covered employee/legal representative gives notice to the County that the covered employee is represented. Objections from the covered employee or covered employee's legal representative shall be sent to the covered employee's assigned claims examiner with a copy to the County and County's legal representative, if applicable.

F. Objections shall be sent within 30 calendar days of receipt of a medical report addressing any of the issues set forth above. Delayed decisions based on legal issues shall not trigger the IME process. A subsequent acceptance of the claim and/or resolution of the disputed issue may eliminate the need for completion of the IME process set forth in this Agreement.

G. The exclusive list of IMEs shall serve as the exclusive source of medical evaluations for all disputed medical issues arising from a claimed injury, unless otherwise agreed to by the parties in writing.

H. The parties hereby agree that from time to time the exclusive list of IMEs may be amended. For either party to propose adding an IME to the exclusive list of IMEs, the party must provide notice, in writing, to the other party of its request to add a physician to the list. The parties must mutually agree in writing to the addition of physicians to the IME list. A physician may only be deleted from the exclusive list of IMEs if that physician breaches the terms and conditions of his/her contract with the County or by written mutual agreement of the parties. The exclusive list of IMEs shall be reviewed quarterly, or as otherwise agreed upon, by both parties for proposed additions and/or deletions of IMEs. Any physician proposed for addition or deletion

after the quarterly review or other agreed-upon period will be reviewed at the next scheduled review period.

I. Appointments

1. The County's TPA shall schedule any appointment(s) between the IME and covered employee and provide notice of the appointment(s) to the covered employee within 10 business days of the date of receipt of the objection. The notice of the appointment shall include the location, date, and time of the appointment.

2. The covered employee shall be responsible for providing the County's TPA with his/her work schedule prior to an appointment being made, so that appointments can be made, if possible, during a covered employee's non-working hours.

3. Compensation for attending medical appointments under this Agreement shall be consistent with California Labor Code requirements.

4. Mileage reimbursement to covered employees shall be in accordance with California Labor Code Section 4600(e)(2) unless transportation is provided by the County.

5. For purposes of appointments, the County's TPA shall select the IME(s) by starting with the first name listed on the exclusive list of IMEs within the appropriate specialty, and continuing down the list, in order, until the list is exhausted, at which time the County's TPA will resume using the first name on the list. Said list of IMEs shall be organized in alphabetical order by the IMEs' last names. IMEs that cannot meet the appointment timeframes designated in the Physician Contract shall be bypassed for the next available IME on the list.

6. The TPA will maintain a log of the:

- a. Number of disputed claims;
- b. Timeframe (number of days) for setting IME appointments;
- c. Timeframe (number of days) from IME exam to receipt of medical report;
- d. Dispute outcome; and
- e. Timeframe (number of days) from dispute to resolution.

7. The IME shall submit the medical reports within 30 calendar days following examination of the covered employee, pursuant to the terms of the IME's contract, unless a longer period of time is agreed to by the parties.

J. The County is not liable for the cost of any medical examinations used to resolve disputes governed by this Agreement where said examination is furnished by a medical provider that is not authorized by this Agreement. Medical evaluations shall not be obtained outside of this Agreement for disputes covered by this Agreement, notwithstanding California Labor Code Section 4605.

K. Both parties shall be bound by the opinions and recommendations of the IME selected in accordance with the terms of this Agreement, subject to legal challenges brought by the parties.

L. Either party who receives records prepared or maintained by the treating physician(s), or records, either medical or non-medical, that are relevant to the determination of the medical issue, shall serve those records on the other party immediately upon receipt. If a party objects to the provision of any nonmedical record(s) to the IME, the party shall object within 10 calendar days of the service of record(s) to the other party. Objecting to the provision **OF** nonmedical records may result in the denial of the claim on the basis that the IME did not have complete and accurate information. There shall be no objection to the provision of medical records to the IME, subject to the provisions of the California Labor Code.

M. The County's TPA shall provide to the IME records prepared or maintained by the covered employee's treating physician(s) and medical and nonmedical records relevant to the determination of the medical issue(s). The County's TPA shall prepare a list of all documents provided to the IME, and shall serve a copy of the list on the covered employee and/or on his/her legal or other representative.

N. Unless otherwise agreed upon by the parties in writing, all communications with the IME shall be in writing and shall be served on the opposing party. This provision does not apply to oral or written communications by the covered employee or, if the covered employee is deceased, the covered employee's dependent, in the course of the covered employee's examination or at the request of the IME in connection with the examination. This provision also does not apply to communications solely and exclusively about and limited in their content to; scheduling the covered employee's IME evaluation, including arranging the exam date, joint letter, or service of agreed upon records.

O. Ex parte communication with the IME is prohibited. If a party or their legal representative communicates with the IME in violation of paragraph N and/or O of Article IV, the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from the next IME chosen from the exclusive list of IMEs pursuant to Article IV, subparagraph I(S) above. If a new examination *is* required, the party making the communication prohibited herein shall be liable for the cost of the initial medical evaluation.

P. If either party disputes a medical finding of the IME, they shall notify the other party of this dispute by way of written objection within 14 calendar days of actual receipt of the IME's report. All disputes of this nature shall be resolved either by way of supplemental interrogatory and report or by way of deposition.

**Article V: Discovery**

A. Covered employees will cooperate and provide the County's TPA with fully executed medical, employment and concurrent employment releases, disclosure statements, and any other documents and information reasonably necessary for the County to resolve the covered employee's claim, when requested, and subject to the limitations set forth in the California Code of Civil Procedure, Labor Code, and Peace Officers Bill of Rights. If the covered employee fails to return the executed releases and it is determined that the medical information is not sufficient for the IME to provide a comprehensive evaluation, the parties shall meet to resolve the issue(s) within 14 calendar days prior to setting a medical evaluation. This Article does not supplant or diminish the parties' rights to pursue or contest discovery issues pursuant to the remedies provided in the California Labor Code or by the WCAB.

B. This Agreement does not preclude a formal deposition of a covered employee or IME when necessary pursuant to the right of discovery in accordance with applicable provisions of law. The need for a formal deposition may delay the scheduling of an appointment with an IME until the deposition has been completed. Attorney's fees for depositions of covered employees shall be paid at a rate consistent with California Labor Code Section 5710. This rate of reimbursement for attorney's fees for depositions of covered employees is subject to an annual review to determine if adjustments to said rate of reimbursement should be made. There shall be no attorney's fees for depositions of IMEs or other physicians.

**Article VI: General Provisions**

A. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

B. This Agreement shall be governed and construed pursuant to the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county.

C. This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement.

D. If any portion of this Agreement is found to be unenforceable or illegal the remaining portions shall remain in full force and effect.

E. This Agreement may be executed in counterparts.

F. Notice required under this Agreement shall be provided to the parties as follows:


COUNTY: Michael Alio, Director, CEO Risk Management  
600 W. Santa Ana Blvd., Suite 104  
Santa Ana, CA 92701

AOCDS: Paul Bartlett, Executive Director  
1600 N. Main Street  
Santa Ana, CA 92701

John A. Ferrone, Esq.  
Adams, Ferrone & Ferrone  
4333 Park Terrace Dr., Ste. 200  
Westlake Village, CA 91361

The parties hereto have executed this Agreement in the County of Orange, California.

ASSOCIATION OF ORANGE COUNTY DEPUTY SHERIFFS


BY:  DATE: 11/28/19  
Paul Bartlett, Executive Director

BY:  DATE: 11/28/19  
Tom Dominguez, President

COUNTY OF ORANGE

BY:  DATE: 11/28/19  
Michael Alio, Director, CEO Risk Management

APPROVED AS TO FORM  
OFFICE OF THE COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

BY:  DATE: 11/28/19  
Deputy County Counsel