

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
Division of Workers' Compensation**

**NOTICE OF PROPOSED RULEMAKING**

**Subject Matter of Regulations: Qualified Medical Evaluators**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS,  
SECTIONS 30, 30.5, 31.1, 100, 104, 105, 106, and 109**

**NOTICE IS HEREBY GIVEN** that the Acting Administrative Director of the Division of Workers' Compensation (hereinafter "Acting Administrative Director") pursuant to the authority vested in her by Labor Code sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064, 5307.3, and 5307.4, proposes to amend regulations to implement the provisions of Labor Code sections 139.2, 4061, 4062, 4062.1, 4062.2, and 4062.3, regarding the procedures for obtaining Qualified Medical Evaluator ("QME") medical-legal evaluations, that are used to resolve disputes in the workers' compensation system. The proposed changes involve both changes without regulatory effect ("non-substantive" changes), within the meaning of section 100 of Title 1 of the California Code of Regulations (e.g. grammatical, capitalization, punctuation, syntax, numbering and lettering sequencing and corrections of cross references), as well as substantive changes. The proposed amendments will implement an online system that will replace an existing paper system, for requesting and generating a panel of randomly selected QMEs in represented cases. The proposed regulations also make form changes to clarify and make uniform the specialty code listings on the QME application and request forms. The proposed regulations also simplify the form and process for requesting a QME panel in unrepresented cases.

**PROPOSED REGULATORY ACTION**

The Department of Industrial Relations, Division of Workers' Compensation, proposes to amend sections 30, 30.5, 31.1, 100, 104, 105, 106, and 109, of Chapter 1, Articles 3, 10, and 10.5, of Title 8 of the California Code of Regulations.

Section 30	QME Panel Requests
Section 30.5	Specialist Designation
Section 31.1	QME Panel Selection Disputes in Represented Cases
Section 100	The Application for Appointment as Qualified Medical Evaluator Form
Section 104	The Reappointment Application as Qualified Medical Evaluator Form
Section 105	The Request for Qualified Medical Evaluator Panel – Unrepresented Form
Section 106	The Request for Qualified Medical Evaluator Panel – Represented Form
Section 109	The Qualified Medical Evaluator Notice of Unavailability Form

## TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed regulatory action, on the following date:

**Date: May 22, 2015**

**Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business**

**Place: Elihu Harris State office Building – Auditorium  
1515 Clay Street  
Oakland, CA 94612**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

**Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation or 5:00 P.M., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.**

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

## WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 P.M., on May 22, 2015**. The Division of Workers' Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray  
Regulations Coordinator  
Department of Industrial Relations  
P.O. Box 420603  
San Francisco, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (vial e-mail) using the following e-mail address: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 P.M.**, on **May 22, 2015**.

### **AUTHORITY AND REFERENCE**

Labor Code sections 53, 111, 122, 133, 139, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 5307.3, 5307.4, and 5703.5 authorize the Acting Administrative Director to adopt, amend and repeal these proposed regulations. The proposed regulations implement, interpret, and make specific sections 139.2, 4060, 4061, 4062, 4062.2, 4062.3, and 4064.

Reference is to Labor Code sections 124, 139.2, 139.31, 139.4, 139.43, 3716, 4060, 4062.1, 4062.5, 4064.5, 4067, 4600, 4660, 4662, 4660-4664, 5307, and 5307.3.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Acting Administrative Director of the Division of Workers' Compensation proposes to amend various regulations that govern procedures for obtaining QME panels (list of 3 QMEs), as provided in sections 30, 30.5, 31.1, 105 and 106, of Title 8 of the California Code of Regulations. These changes improve the existing system by providing an online system for obtaining a panel QME for represented parties. The proposed rulemaking also simplifies the process and form for unrepresented parties. The specific benefits anticipated from the regulation is the elimination of the delay caused by the backlog in obtaining a panel QME. This will result in quicker evaluations with QMEs to help injured workers resolve disputes and obtain workers' compensation benefits more quickly. The proposed regulations would also make non-substantive changes to QME Forms 100, 104, and 109 to make the forms consistent and clear. A full summary of the proposed changes is provided in the Initial Statement of Reasons.

The following substantive changes are proposed:

#### **Item 1 – Section 30. QME Panel Requests**

- This section is amended to no longer require unrepresented employees to attach a written objection identifying the primary treating physician, the date of the report, and a description of the medical dispute.
- This section is amended, in represented cases to require parties to submit requests for a QME panel electronically, utilizing the Division's online system.

- This section is amended to require parties to generate a list online and serve a copy of the panel and any supporting documentation to the opposing party.
- This section is amended to allow parties to make requests twenty-four (24) hours a day, seven days a week.

**Item 2 – Section 30.5. Specialist Designation**

- This section is amended to reflect the online process.

**Item 3 - Section 31.1. QME Panel Selection Disputes in Represented Cases**

- This section is amended to allow disputes regarding the validity of the panel request to be resolved with a Workers’ Compensation Administrative Law Judge (WCALJ).
- This section is amended to reflect that with an online process, this section will be obsolete as it will not allow parties to make duplicate requests.
- This section is amended to allow for specialty disputes to be resolved pursuant to section 31.5 (a)(10) of the regulations.

**Item 4 - Section 100. The Application for Appointment as Qualified Medical Evaluator Form**

- This section is the form to apply for appointment as a QME.
- This form is amended to add “INITIALS” on page 2 and the top of page 3, as applicants fail to initial those items and the application returned.
- Page 4 of this form is amended to delete “MMO Orthopaedic Surgery – Oncology,” “MMO Radiology – Oncology,” because these specialties are no longer offered to the public. The deletion of these specialties is a clarifying change.
- Page 4 of this form is amended to delete “PSN Psychology – Clinical Neuropsychology” to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code “PSY-Psychology.”
- Page 4 of this form is amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category.

**Item 5 - Section 104. The Reappointment Application as Qualified Medical Evaluator Form**

- This section is the form to apply for reappointment as a QME.
- This section is amended to add “INITIALS” on page 2 of the form to clarify that the applicants must initial the boxes.
- Page 3 of this form is amended to delete “MMO Orthopaedic Surgery – Oncology,” “MMO Radiology – Oncology,” because these specialties are no longer offered to the public. The deletion of these specialties is a clarifying change.
- Page 3 of this form is amended to delete “PSN Psychology – Clinical Neuropsychology” to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code “PSY-Psychology.”
- Page 3 of this form is amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category.

**Item 6 - Section 105. The Request for Qualified Medical Evaluator Panel – Unrepresented Form**

- This section is the form used to request a QME Panel in unrepresented cases.
- The entire text of the existing form 105 is being reformatted.
- The proposed new QME Form 105 no longer requires the unrepresented employee to attach a written objection to a determination made by the primary treating physician.
- The proposed new QME Form 105 also has clear instructions on the top of the form and a simpler proof of service.
- Page 3 of this form is amended to delete “MMO Orthopaedic Surgery – Oncology,” “MMO Radiology – Oncology,” because these specialties are no longer offered to the public. The deletion of these specialties is a clarifying change.
- Page 3 of this form is amended to delete “PSN Psychology – Clinical Neuropsychology” to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code “PSY-Psychology.”
- Page 3 of this form is amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category.

### **Item 7 – Section 106. The Request for Qualified Medical Evaluator Panel – Represented Form**

- This section is amended to reflect that this form will be utilized only for injuries occurring on or before January 1, 2005.
- This form is amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category.
- This form is amended to delete “PSN Psychology – Clinical Neuropsychology” to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code “PSY-Psychology.”
- This form is amended to add “Gastroenterology” to MMG Internal Medicine, which was inadvertently left out.

### **Item 8 – Section 109. The Qualified Medical Evaluator Notice of Unavailability Form**

- This section is the form used by QMEs to request unavailability status.
- Page 1 of the form is amended to indicate 90 “calendar days” and not the “QME fee period.” This amendment is made to conform to existing regulation section 33.

#### Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the proposed regulations is to implement an online panel process for initial panel requests for represented cases only. The proposed process will provide for a more efficient process because a paper form will no longer be needed and will not be submitted by mail. The regulations also update existing forms.

The proposed regulations will be beneficial to the health and welfare of California residents, worker safety, and the state’s environment by ensuring injured workers with a more efficient and simpler process for resolving medical disputes.

#### Determination of Inconsistency/Incompatibility with Existing State Regulations

The Acting Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that concern Qualified Medical Evaluators.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Acting Administrative Director has made the following initial determinations:

Qualified Medical Evaluators  
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- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: It is estimated that the proposed regulations will result in a savings of \$165,000 for the Division and State Compensation Insurance Fund, a quasi-state agency, per year in the Fiscal Year 2015-2016. The Division may also experience unquantifiable savings based on a reduced delay in obtaining a panel list resulting in early resolution of disputed claims.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: Most of the affected businesses are law firms, third-party administrators, self-insured employers, and insurers. There is no measurable increase in cost for private businesses; minimal costs may include postage, envelopes and paper.
- Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small businesses, and individuals, the Acting Administrative Director concludes that the adverse economic impact, including the ability of California businesses to compete with business in the other states, will not be significant. The proposed regulation changes will change existing procedures by which represented injured workers apply for a QME panel from a manual process to an electronic process.
- Significant effect on housing costs: None.

## **RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The Acting Administrative Director concludes that it is (1) unlikely the proposal will create any jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) unlikely that the proposal will create any new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely the proposal would cause the expansion of businesses currently doing business within the State of California.

**Benefits of the Proposed Action:** The proposed regulations will be beneficial to the health and welfare of California residents, worker safety, and the state's environment by ensuring workers with a more efficient and simpler process for resolving medical disputes. The specific benefit anticipated from the regulation is the elimination of the delay caused by the backlog in obtaining a panel QME with the exiting paper process. This will result in quicker evaluations with QMEs to help injured workers resolve disputes and obtain workers' compensation benefits more quickly.

**Small Business Determination:** The Acting Administrative Director has determined that the

proposed regulations will not affect small businesses to a significant degree. The regulations allow represented parties to request a QME panel electronically rather than by mail. The proposed regulations also simplify the form and panel process for unrepresented injured workers.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Acting Administrative Director must determine that no reasonable alternative considered or brought to the attention of the Acting Administrative Director's attention would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Acting Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the public hearing.

### **CONTACT PERSON FOR GENERAL QUESTIONS**

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to:

Maureen Gray, Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94612  
E-mail: mgray@dir.ca.gov  
Telephone: (510) 286-7100

### **CONTACT PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Karen Pak  
Department of Industrial Relations  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
Email: kpak@dir.ca.gov  
Telephone: (510) 286-7100



## **AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE**

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this Notice. As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, and pre-rulemaking comments. Also included are any studies, documents or information relied upon in drafting the proposed regulations.

This Notice, the Initial Statement of Reasons, and the text of the proposed regulations may also be accessed and downloaded from the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov). To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Qualified Medical Evaluator Regulations.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17<sup>th</sup> Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Acting Administrative Director may adopt the proposed regulations substantially as described in this notice. If the Acting Administrative Director makes modifications which are sufficiently related to the originally proposed text, the Acting Administrative Director will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Administrative Director adopts the regulations as received.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this Notice or may be accessed on the Division's website at [www.dir.ca.gov](http://www.dir.ca.gov).

### **AUTOMATIC MAILING**

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended, will appear in California Code of Regulations, Title 8, commencing with section 30. The text of the final regulations also may be available through the website of the Office of Administrative Law at [www.oal.ca.gov](http://www.oal.ca.gov).