



## California Workers' Compensation Institute

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March 13, 2023

VIA E-MAIL – [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov)

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation  
1515 Clay Street, 18<sup>th</sup> Floor  
Oakland, CA 94612

**Re: Proposed Amendments to the Qualified Medical Evaluator Regulations  
– 45 Day Public Hearing**

Dear Ms. Gray:

These comments on proposed modifications to the text of rules related to the Qualified Medical Evaluator process are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 76% of California's workers' compensation premium, and self-insured employers with \$88B of annual payroll (31.1% of the state's total annual self-insured payroll).

Insurer members of the Institute include AF Group/CompWest, AIG, Allianz Global Corporate and Specialty, AmTrust North America, Berkshire Hathaway, CHUBB, CNA, CopperPoint Insurance Companies, Crum & Forster, EMPLOYERS, Everest Insurance, GUARD Insurance Companies, The Hanover Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, North American Casualty Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, WCF National Insurance, Zenith Insurance Company, and Zürich North America.

Self-insured employer members include Albertsons/Safeway, BETA Healthcare Group, California Fair Services Authority, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Disneyland Resort, East Bay Municipal Utility District, Grimmway Farms, Kaiser Permanente, North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Special District Risk Management Authority, Sutter Health, United Airlines, and the University of California.

Recommended revisions to the proposed regulations are indicated by underscore and ~~strikeout~~. Comments and discussion by the Institute are identified by italicized text.

The Institute offers the following comments:

## **Section 1. Definitions**

*(k) The Institute supports the four-hour expansion of instruction for disability report writing.*

### **Recommendation:**

#### **Section 11.5. Disability Evaluation Report Writing Course**

**(i)(3)** The Language of Reports (minimum recommended 4 hours)

Evaluation of disability in California (impairment and disability)

The occupational history

The physician examination and the role of testing

The Medical Treatment Utilization Schedule (MTUS) adopted by the Administrative Director pursuant to Labor Code section 5307.27, found in section 9792.20 *et seq* of Title 8 of the California Code of Regulations

~~(4) Instruction in anti-bias training which meets the qualifications outlined in Regulation 11(h) (mandatory minimum of at least 2 hours)~~

~~(5) Instruction consisting of a review workers' compensation case law (minimum recommended 2 hours)~~

Providing opinions that resolve disputed medical treatment issues consistent with the evaluation criteria specified in section 35.5 (d) of Title 8 of the California Code of Regulations

Packard Thurber's Evaluation of Industrial Disability, section 43 through 47 and section 9725 through 9727 of Title 8 of the California Code of Regulations (for cases with dates of injury not subject to the AMA guide-based impairment rating system, described below)

Factors of disability, including subjective and objective factors, loss of pre-injury capacity and work restrictions, for cases involving dates of injury not subject to the AMA guide-based impairment rating system

Activities of Daily Living, for cases subject to the AMA Guides

Work restrictions

Work Capabilities

American Medical Association, Guides to the Evaluation of Permanent Impairment, [Fifth Edition] (AMA Guides) and its use in determining permanent disability in accordance with the Schedule for Rating Permanent Disabilities [effective January 1, 2005] (for all claims with dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, in which either there is no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice to the injured worker required by Labor Code section 4061)

Causation

Determination of permanent and stationary status

Apportionment including the requirements of Labor Code sections 4660, 4663 and 4664 added by SB 899 (Stats. 2004, ch. 34)

Future medical care

Review of records

Providing sufficient support for conclusions

**(4) Instruction in anti-bias training which meets the qualifications outlined in Regulation 11(h) (mandatory minimum of at least 2 hours)**

**(5) Instruction consisting of a review workers' compensation case law (minimum recommended 2 hours)**

**Discussion:**

*The Institute recommends revising the placement of new subsections (4) and (5) so that they appear after the list of language requirements.*

**Recommendation:**

**Section 33. Unavailability of QME**

**(a)** A QME who will be unavailable to schedule or perform comprehensive medical evaluations as an Agreed Panel QME or as a Panel QME for a period of 14 days, or up to a maximum of 120 days during a calendar year, for any reason shall notify the Medical Director by submitting the form in section 109 (Notice of Qualified Medical Evaluator Unavailability) at least 30 days before the period of unavailability is to begin. The Medical Director may, in his or her or their discretion, grant unavailable status within the 30-day notice period for good cause, including but not limited to medical or family emergency or the QME's inability to schedule any new medical-legal evaluation appointments within **60 90** days of the initial appointment request because of time commitments related to existing medical-legal evaluation appointments.

**Discussion:**

*The 60-day time frame for scheduling a new medical-legal evaluation appointment must be corrected to reflect the new 90-day time frame allowed under section 31.3(e).*

**Recommendation:**

**Section 51. Reappointment and Denial of Reappointment**

**(a)(1)** The Administrative Director may deny reappointment to a QME on any one or more of the following grounds:

(1) Any grounds that would provide a basis for suspending or terminating a Physician's privilege to serve as a QME, as specified in paragraphs (1) through (6) of subdivision (k) of Labor Code Section 139.2 or in section 65 of Article 6 of this title.

(2) Any grounds that would provide a basis for suspending or terminating a Physician's privilege to participate in the workers' compensation system pursuant to section 139.21(a)(1).

**Discussion:**

*The Institute recommends including reference to section 139.21(a)(1) to clarify that any physician who has been suspended from the treatment of injured workers shall also be excluded from the provision of disability evaluation services.*

**Recommendation:**

**Section 55. Reappointment: Continuing Education Programs**

**(b)(4)** Minimum of 2 hours in of instruction consisting of a review workers' compensation case law;

**Discussion:**

*The Institute supports the 2-hour minimum requirement for a review of workers' compensation case law under section 11.5(i)(5) and recommends including the same requirement for QME reappointment criteria.*

Sincerely,

***Sara Widener-Brightwell***

Sara Widener-Brightwell, General Counsel  
California Workers' Compensation Institute  
SWB/pm

cc: Katrina Hagen, DIR Executive Director  
George Parisotto, DWC Administrative Director

CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
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