PREDESIGNATION OF PERSONAL PHYSICIANS AND REPORTING DUTIES OF THE PRIMARY TREATING PHYSICIAN REGULATIONS

Title 8, California Code of Regulations
Chapter 4.5. Division of Workers' Compensation
Subchapter 1. Administrative Director – Administrative Rules

Article 5. Predesignation of Personal Physician; Request for Change of Physician; Reporting Duties of the Primary Treating Physician; Petition for Change of Primary Treating Physician

§9780. Definitions.

As used in this Article:

(a) "Claims Administrator" means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(b) "Emergency health care services" means health care services for a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to place the patient's health in serious jeopardy.

(c) "Facility" means a hospital, clinic or other institution capable of providing the medical, surgical, chiropractic or hospital treatment which is reasonably required to cure or relieve the employee from the effects of the injury.

(d) "First aid" is any one-time treatment, and a follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, etc., which do not ordinarily require medical care. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid, even though provided by a physician or registered professional personnel.

(e) ~~"Nonoccupational group health coverage" means coverage for nonoccupational health care that the employer makes available to the employee, including, but not limited to, a Taft Hartley or Employee Retirement Income Security Act (ERISA) trust, or a health plan negotiated between a union or employee's association and the employer or employer's association.~~

~~(f)~~ "Personal Physician" means (1) the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with section 2000) of Division 2 of the Business and Professions Code, (2) who has been the employee's primary care physician, and has previously directed the medical treatment of the employee, and (3) who retains the employee's medical records, including the employee's medical history. "Personal physician" includes a medical group, if the medical group is a single corporation or partnership composed of licensed doctors

of medicine or osteopathy, which operates an integrated multispecialty medical group providing comprehensive medical services predominantly for nonoccupational illnesses and injuries.

~~(g)~~ (f) “Primary Care Physician” means a physician who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for specialist care. A primary care physician shall be either a physician who has limited his or her practice of medicine to general practice or who is a board-certified or board-eligible internist, pediatrician, obstetrician-gynecologist, or family practitioner.

~~(h)~~ (g) “Reasonable geographic area” within the context of Labor Code section 4600 shall be determined by giving consideration to:

(1) The employee's place of residence, place of employment and place where the injury occurred; and

(2) The availability of physicians in the fields of practice, and facilities offering treatment reasonably required to cure or relieve the employee from the effects of the injury;

(3) The employee's medical history;

(4) The employee's primary language.

Authority: Sections 59, 133 and 4603.5, Labor Code.
Reference: Section 4600, Labor Code.

§ 9780.1. Employee's Predesignation of Personal Physician.

(a) An employee may be treated for an industrial injury in accordance with section 4600 of the Labor Code by a personal physician that the employee predesignates prior to the industrial injury if the following three conditions are met:

(1) Notice of the predesignation of a personal physician is in writing, and is provided to the employer prior to the industrial injury for which treatment by the personal physician is sought. The notice shall include the personal physician's name and business address, and the name of the plan, policy, or fund providing the employee with health care coverage for nonoccupational injuries or illnesses as required by subdivision (a)(2) of this section. The employee may use the optional predesignation form (DWC Form 9783) in section 9783 for this purpose.

(2) The employee has health care coverage for nonoccupational injuries or illnesses on the date of injury in a plan, policy, or fund as described in subdivisions (b), (c), and (d) of Labor Code section 4616.7. ~~The employer provides: (i) nonoccupational group health coverage in a health care service plan, licensed pursuant to Chapter 2.2 (commencing with section 1340) of Division 2 of the Health and Safety Code, or (ii) nonoccupational health coverage in a group health plan or a group health insurance policy as described in section 4616.7 of the Labor Code. The employer's provision of health coverage as defined herein is sufficient to meet this requirement, regardless of whether the employee accepts or participates in this health coverage.~~

(3) The employee's personal physician agrees to be predesignated prior to the injury. The personal physician may sign the optional predesignation form (DWC Form 9783) in section 9783 as documentation of such agreement. The physician may authorize a designated employee of the physician to sign the optional predesignation form on his or her behalf. If the personal physician or the designated employee of the physician does not sign a predesignation form, there must be other documentation that the physician agrees to be predesignated prior to the injury in order to satisfy this requirement.

(b) If an employee has predesignated a personal physician prior to the effective date of these regulations, such predesignation shall be considered valid if the conditions in subdivision (a) have been met.

(c) Where an employer or an employer's insurer has a Medical Provider Network pursuant to section 4616 of the Labor Code, an employee's predesignation which has been made in accordance with this section shall be valid and the employee shall not be subject to the Medical Provider Network.

(d) Where an employee has made a valid predesignation pursuant to this section, and where the employer or employer's insurer has a Medical Provider Network, any referral to another physician for other treatment need not be within the Medical Provider Network.

(e) ~~An employer who qualifies under (a)(2) of this section shall notify its employees of all of the requirements of this section and provide its employees with an optional form for predesignating a~~

~~personal physician, in accordance with section 9880. The employer may use the predesignation form (DWC Form 9783) in section 9783 for this purpose.~~

~~(f)~~ Unless the employee agrees, neither the employer nor the claims administrator shall contact the predesignated personal physician to confirm predesignation status or contact the personal physician regarding the employee's medical information or medical history prior to the personal physician's commencement of treatment for an industrial injury.

~~(g)~~ (f) Where the employer has been notified of an employee's predesignation of a personal physician in accordance with this section and where the employer becomes liable for an employee's medical treatment, the claims administrator shall:

(1) authorize the predesignated physician to provide all medical treatment reasonably required to cure or relieve the injured employee from the effects of his or her injury;

(2) furnish the name and address of the person to whom billing for treatment should be sent;

(3) where there has been treatment of an injury prior to commencement of treatment by the predesignated physician, arrange for the delivery to the predesignated physician of all medical information relating to the claim, all X-rays, the results of all laboratory studies done in relation to the injured employee's treatment; and

(4) provide the physician with (1) the fax number, if available, to be used to request authorization of treatment plans; (2) the complete requirements of section 9785; and (3) the forms set forth in sections 9785.2, ~~and~~ 9785.4, and 9785.5. In lieu of providing the materials required in (2) and (3) immediately above, the claims administrator may refer the physician to the Division of Workers' Compensation's website where the applicable information and forms can be found at http://www.dir.ca.gov/DWC/dwc_home_page.htm.

~~(h)~~ (g) Notwithstanding subdivision ~~(g)~~ (f), the employer shall provide first aid and appropriate emergency health care services reasonably required by the nature of the injury or illness. Thereafter, if further medical treatment is reasonably required to cure or relieve the injured employee from the effects of his or her injury, the claims administrator shall authorize treatment with the employee's predesignated personal physician in accordance with subdivision ~~(g)~~ (f).

~~(i)~~ (h) If documentation of a physician's agreement to be predesignated has not been provided to the employer as of the time of injury, treatment shall be provided in accordance with Labor Code section 4600, or Labor Code section 4616, if the employer or insurer has established or contracted for a Medical Provider Network, as though no predesignation had occurred. Upon provision of the documented agreement that was made prior to injury that meets the conditions of Labor Code section 4600(d), the employer or claims administrator shall authorize treatment with the employee's predesignated physician as set forth in subdivision ~~(g)~~ (f).

Authority: Sections 59, 133 and 4603.5, Labor Code.
Reference: Sections 3551, 4600, and 4616, Labor Code.

§ 9783. DWC Form 9783 Predesignation of Personal Physician.

PREDESIGNATION OF PERSONAL PHYSICIAN

In the event you sustain an injury or illness related to your employment, you may be treated for such injury or illness by your personal medical doctor (M.D.), doctor of osteopathic medicine (D.O.) or medical group if:

- on the date of your work injury you have health care coverage for injuries or illnesses that are not work related ~~your employer offers group health coverage~~;
- the doctor is your regular physician, who shall be either a physician who has limited his or her practice of medicine to general practice or who is a board-certified or board-eligible internist, pediatrician, obstetrician-gynecologist, or family practitioner, and has previously directed your medical treatment, and retains your medical records;
- your "personal physician" may be a medical group if it is a single corporation or partnership composed of licensed doctors of medicine or osteopathy, which operates an integrated multispecialty medical group providing comprehensive medical services predominantly for nonoccupational illnesses and injuries;
- prior to the injury your doctor agrees to treat you for work injuries or illnesses;
- prior to the injury you provided your employer the following in writing: (1) notice that you want your personal doctor to treat you for a work-related injury or illness, and (2) your personal doctor's name and business address.

You may use this form to notify your employer if you wish to have your personal medical doctor or a doctor of osteopathic medicine treat you for a work-related injury or illness and the above requirements are met.

NOTICE OF PREDESIGNATION OF PERSONAL PHYSICIAN

Employee: Complete this section.

To: _____ (name of employer) If I have a work-related injury or illness, I choose to be treated by:

_____

(name of doctor)(M.D., D.O., or medical group)

_____(street address, city, state, ZIP)

_____(telephone number)

Employee Name (please print):

_____

Employee's Address:

_____

Name of Insurance Company, Plan, or Fund providing health coverage for nonoccupational injuries or illnesses:

_____

Employee's Signature _____Date: _____

Physician: I agree to this Predesignation:

Signature: _____ _____Date: _____

(Physician or Designated Employee of the Physician or Medical Group)

The physician is not required to sign this form, however, if the physician or designated employee of the physician or medical group does not sign, other documentation of the physician's agreement to be predesignated will be required pursuant to Title 8, California Code of Regulations, section 9780.1(a)(3).

Title 8, California Code of Regulations, section 9783.
(Optional DWC Form 9783 ~~March 1, 2007~~ July 1, 2014)

Authority: Sections 133, 4603.5 and 5307.5, Labor Code.
Reference: Section 4600, Labor Code.

§ 9783.1. DWC Form 9783.1 Notice of Personal Chiropractor or Personal Acupuncturist.

NOTICE OF PERSONAL CHIROPRACTOR OR PERSONAL ACUPUNCTURIST

If your employer or your employer's insurer does not have a Medical Provider Network, you may be able to change your treating physician to your personal chiropractor or acupuncturist following a work-related injury or illness. In order to be eligible to make this change, you must give your employer the name and business address of a personal chiropractor or acupuncturist in writing prior to the injury or illness. Your claims administrator generally has the right to select your treating physician within the first 30 days after your employer knows of your injury or illness. After your claims administrator has initiated your treatment with another doctor during this period, you may then, upon request, have your treatment transferred to your personal chiropractor or acupuncturist.

NOTE: If your date of injury is January 1, 2004 or later, a chiropractor cannot be your treating physician after you have received 24 chiropractic visits unless your employer has authorized additional visits in writing. The term "chiropractic visit" means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management. Once you have received 24 chiropractic visits, if you still require medical treatment, you will have to select a new physician who is not a chiropractor. This prohibition shall not apply to visits for postsurgical physical medicine visits prescribed by the surgeon, or physician designated by the surgeon, under the postsurgical component of the Division of Workers' Compensation's Medical Treatment Utilization Schedule.

You may use this form to notify your employer of your personal chiropractor or acupuncturist.

Your Chiropractor or Acupuncturist's Information:

_____
(name of chiropractor or acupuncturist)

_____
(street address, city, state, zip code)

_____
(telephone number)

Employee Name **(please print)**:

_____

Employee's Address:

_____

Employee's Signature _____ Date: _____

Title 8, California Code of Regulations, section 9783.1.
(Optional DWC Form 9783.1 Effective date ~~March 2006~~ July 1, 2014)

Authority: Sections 133, 4603.5 and 5307.3, Labor Code.
Reference: Sections 4600 and 4616, Labor Code.

§9785. Reporting Duties of the Primary Treating Physician.

(a) For the purposes of this section, the following definitions apply:

(1) The "primary treating physician" is the physician who is primarily responsible for managing the care of an employee, and who has examined the employee at least once for the purpose of rendering or prescribing treatment and has monitored the effect of the treatment thereafter. The primary treating physician is the physician selected by the employer, the employee pursuant to Article 2 (commencing with section 4600) of Chapter 2 of Part 2 of Division 4 of the Labor Code, or under the contract or procedures applicable to a Health Care Organization certified under section 4600.5 of the Labor Code, or in accordance with the physician selection procedures contained in the medical provider network pursuant to Labor Code section 4616. For injuries on or after January 1, 2004, a chiropractor shall not be a primary treating physician after the employee has received 24 chiropractic visits, unless the employer has authorized additional visits in writing. This prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the employee's surgeon, or physician designated by the surgeon pursuant to the postsurgical component of the medical treatment utilization schedule adopted by the Administrative Director pursuant to Labor Code section 5307.27. For purposes of this subdivision, the term "chiropractic visit" means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management.

(2) A "secondary physician" is any physician other than the primary treating physician who examines or provides treatment to the employee, but is not primarily responsible for continuing management of the care of the employee. For injuries on or after January 1, 2004, a chiropractor shall not be a secondary treating physician after the employee has received 24 chiropractic visits, unless the employer has authorized, in writing, additional visits. This prohibition shall not apply to the provision of postsurgical physical medicine prescribed by the employee's surgeon, or physician designated by the surgeon pursuant to the postsurgical component of the medical treatment utilization schedule adopted by the Administrative Director pursuant to Labor Code section 5307.27. For purposes of this subdivision, the term "chiropractic visit" means any chiropractic office visit, regardless of whether the services performed involve chiropractic manipulation or are limited to evaluation and management.

(3) "Claims administrator" is a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, or a third-party administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.

(4) "Medical determination" means, for the purpose of this section, a decision made by the primary treating physician regarding any and all medical issues necessary to determine the employee's eligibility for compensation. Such issues include but are not limited to the scope and extent of an employee's continuing medical treatment, the decision whether to release the employee from care, the point in time at which the employee has reached permanent and stationary status, and the necessity for future medical treatment.

(5) “Released from care” means a determination by the primary treating physician that the employee's condition has reached a permanent and stationary status with no need for continuing or future medical treatment.

(6) “Continuing medical treatment” is occurring or presently planned treatment that is reasonably required to cure or relieve the employee from the effects of the injury.

(7) “Future medical treatment” is treatment which is anticipated at some time in the future and is reasonably required to cure or relieve the employee from the effects of the injury.

(8) “Permanent and stationary status” is the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.

(b)(1) An employee shall have no more than one primary treating physician at a time.

(2) An employee may designate a new primary treating physician of his or her choice pursuant to Labor Code §§4600 or 4600.3 provided the primary treating physician has determined that there is a need for:

(A) continuing medical treatment; or

(B) future medical treatment. The employee may designate a new primary treating physician to render future medical treatment either prior to or at the time such treatment becomes necessary.

(3) If the employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4061 and 4062. If the employee objects to a decision made pursuant to Labor Code section 4610 to modify, delay, or deny a treatment recommendation, the dispute shall be resolved pursuant to Labor Code section 4610.5, if applicable, or otherwise pursuant to Labor Code section 4062. No other primary treating physician shall be designated by the employee unless and until the dispute is resolved.

(4) If the claims administrator disputes a medical determination made by the primary treating physician, the dispute shall be resolved under the applicable procedures set forth at Labor Code sections 4610, 4061 and 4062.

(c) The primary treating physician, or a physician designated by the primary treating physician, shall make reports to the claims administrator as required in this section. A primary treating physician has fulfilled his or her reporting duties under this section by sending one copy of a required report to the claims administrator. A claims administrator may designate any person or entity to be the recipient of its copy of the required report.

(d) The primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation in the manner prescribed in subdivisions

(e), (f) and (g) of this section. The primary treating physician may transmit reports to the claims administrator by mail or FAX or by any other means satisfactory to the claims administrator, including electronic transmission.

(e)(1) Within 5 working days following initial examination, a primary treating physician shall submit a written report to the claims administrator on the form entitled “Doctor's First Report of Occupational Injury or Illness,” Form DLSR 5021. Emergency and urgent care physicians shall also submit a Form DLSR 5021 to the claims administrator following the initial visit to the treatment facility. On line 24 of the Doctor's First Report, or on the reverse side of the form, the physician shall (A) list methods, frequency, and duration of planned treatment(s), (B) specify planned consultations or referrals, surgery or hospitalization and (C) specify the type, frequency and duration of planned physical medicine services (e.g., physical therapy, manipulation, acupuncture).

(2) Each new primary treating physician shall submit a Form DLSR 5021 following the initial examination in accordance with subdivision (e)(1).

(3) Secondary physicians, physical therapists, and other health care providers to whom the employee is referred shall report to the primary treating physician in the manner required by the primary treating physician.

(4) The primary treating physician shall be responsible for obtaining all of the reports of secondary physicians and shall, unless good cause is shown, within 20 days of receipt of each report incorporate, or comment upon, the findings and opinions of the other physicians in the primary treating physician's report and submit all of the reports to the claims administrator.

(f) A primary treating physician shall, unless good cause is shown, within 20 days report to the claims administrator when any one or more of the following occurs:

(1) The employee's condition undergoes a previously unexpected significant change;

(2) There is any significant change in the treatment plan reported, including, but not limited to, (A) an extension of duration or frequency of treatment, (B) a new need for hospitalization or surgery, (C) a new need for referral to or consultation by another physician, (D) a change in methods of treatment or in required physical medicine services, or (E) a need for rental or purchase of durable medical equipment or orthotic devices;

(3) The employee's condition permits return to modified or regular work;

(4) The employee's condition requires him or her to leave work, or requires changes in work restrictions or modifications;

(5) The employee is released from care;

(6) The primary treating physician concludes that the employee's permanent disability precludes, or is likely to preclude, the employee from engaging in the employee's usual occupation or the occupation in which the employee was engaged at the time of the injury;

(7) The claims administrator reasonably requests appropriate additional information that is necessary to administer the claim. “Necessary” information is that which directly affects the provision of compensation benefits as defined in Labor Code Section 3207.

(8) When continuing medical treatment is provided, a progress report shall be made no later than forty-five days from the last report of any type under this section even if no event described in paragraphs (1) to (7) has occurred. If an examination has occurred, the report shall be signed and transmitted within 20 days of the examination.

Except for a response to a request for information made pursuant to subdivision (f)(7), reports required under this subdivision shall be submitted on the “Primary Treating Physician's Progress Report” form (Form PR-2) contained in Section 9785.2, or in the form of a narrative report. If a narrative report is used, it must be entitled “Primary Treating Physician's Progress Report” in bold-faced type, must indicate clearly the reason the report is being submitted, and must contain the same information using the same subject headings in the same order as Form PR-2. A response to a request for information made pursuant to subdivision (f)(7) may be made in letter format. A narrative report and a letter format response to a request for information must contain the same declaration under penalty of perjury that is set forth in the Form PR-2: “I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code §139.3.”

By mutual agreement between the physician and the claims administrator, the physician may make reports in any manner and form.

(g) As applicable in section 9792.9.1, a written request for authorization of medical treatment for a specific course of proposed medical treatment, or a written confirmation of an oral request for a specific course of proposed medical treatment, must be set forth on the “Request for Authorization of Medical Treatment,” DWC Form RFA, contained in section 9785.5. A written confirmation of an oral request shall be clearly marked at the top that it is written confirmation of an oral request. The DWC Form RFA must include as an attachment documentation substantiating the need for the requested treatment.

(h) When the primary treating physician determines that the employee's condition is permanent and stationary, the physician shall, unless good cause is shown, report within 20 days from the date of examination any findings concerning the existence and extent of permanent impairment and limitations and any need for continuing and/or future medical care resulting from the injury. The information may be submitted on the “Primary Treating Physician's Permanent and Stationary Report” form (DWC Form PR-3 or DWC Form PR-4) contained in section 9785.3 or section 9785.4, or in such other manner which provides all the information required by Title 8, California Code of Regulations, section 10606. For permanent disability evaluation performed pursuant to the permanent disability evaluation schedule adopted on or after January 1, 2005, the primary treating physician's reports concerning the existence and extent of permanent

impairment shall describe the impairment in accordance with the AMA Guides to the Evaluation on Permanent Impairment, 5th Edition (DWC Form PR-4). Qualified Medical Evaluators and Agreed Medical Evaluators may not use DWC Form PR-3 or DWC Form PR-4 to report medical-legal evaluations.

(i) The primary treating physician, upon finding that the employee is permanent and stationary as to all conditions and that the injury has resulted in permanent partial disability, shall complete the "Physician's Return-to-Work & Voucher Report" (DWC-AD 10133.36) and attach the form to the report required under subdivision (h).

(j) Any controversies concerning this section shall be resolved pursuant to Labor Code Section 4603 or 4604, whichever is appropriate.

(k) Claims administrators shall reimburse primary treating physicians for their reports submitted pursuant to this section as required by the Official Medical Fee Schedule.

Authority: Sections 133, 4603.5 and 5307.3, Labor Code.
Reference: Sections 4061, 4061.5, 4062, 4600, 4600.3, 4603.2, 4604.5, 4610.5, 4658.7, 4660, 4662, 4663 and 4664, Labor Code.