

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

**Workers' Compensation – Qualified Medical Evaluator Regulations  
(Title 8, California Code of Regulations sections 1- 159)**

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS AND  
FORMS and NOTICE OF AVAILABILITY OF DOCUMENTS AND OTHER  
INFORMATION ADDED TO RULEMAKING FILE**

**I. NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS  
AND FORMS – FIRST 15-DAY PUBLIC COMMENT PERIOD  
(Government Code § 11346.8(c) and 1 Cal. Code Regs. § 44)**

The Administrative Director of the Division of Workers' Compensation hereby is providing notice that changes were made to the text of the proposed regulations and forms in Title 8 of the California Code of Regulations, sections 1 through 159, pertaining to qualified medical evaluators in the workers' compensation system. Proposed changes to the existing regulations and new regulations were circulated initially for public comment from November 30, 2007, and continuing through public hearings held January 14, 2008 and January 17, 2008. The changes now proposed are being made in response to comments received during the initial 45 day public comment period.

During the 45 day public comment period, the changes proposed to the existing regulations were depicted by use of single line strikeout, for deletions (~~deletions~~), and single underlined text, for newly inserted text (newly inserted text). All forms, as proposed, were shown simply in their proposed final text and format.

Changes to the text of the regulations now proposed due to comments received during the 45 day public comment period are depicted by use of double strike out, for proposed text deletions (~~newly proposed deletions~~), and bold, underlined italicized text, for newly inserted text (***newly inserted text***).

QME Forms 105 (Request for QME Panel – Unrepresented) and 106 (Request for QME Panel – Represented) and the Attachments to Form 105 (How to Request a QME if You Do Not Have an Attorney) and to Form 106 (How to Request a QME in a Represented Case) are completely revised so the text format is now presented as it will appear in its final format if no further changes are made.

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Changes to the codes and lists of QME specialty designations for QME forms 100, 104, 105 and 106 are shown using the double strikeout and bold, underlined italic method described above.

Newly proposed QME Forms 121 (Declaration Regarding Protection of Mental Health Record) and QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report) are shown in the proposed final format.

If you wish to comment on the proposed changes to these regulations and forms, the Administrative Director will accept written comments which must be addressed as shown below and received **no later than 5 P.M. on Wednesday, July 10, 2008:**

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142

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

All written comments received by July 10<sup>th</sup>, 2008 pertaining to the changes now proposed will be reviewed and responded to by the Administrative Director as part of the rulemaking file in this matter. Please limit your comments to the newly proposed modifications to the text.

**SUMMARY OF PROPOSED CHANGES TO SECTIONS 1 – 159**

**§ 1. Definitions**

The following modifications were made in response to comments received.

A new definition for “Agreed Panel QME” has been added as subdivision 1(d). The term means the panel QME the claims administrator, or if none the employer, and a represented employee agree upon and select from a QME panel in a represented case agree to pursuant to Labor Code section 4062.2(c). It also provides that such an evaluator will be entitled to use modifier “-94” as defined in subdivision 9795(d) of Title 8 of the California Code of Regulations for medical/legal evaluation services.

Other subdivisions of section 1 have been re-lettered accordingly.

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Subdivision 1(k) "Claims administrator" has been amended to add to the list of persons or entities for which the claims administrator pays compensation: "an insured employer", "for the Subsequent Injuries Benefit Trust Fund (SIBTF)" and "the California Insurance Guarantee Association (CIGA)".

Subdivision 1(t) "Evaluator" has been amended to add: "any of the following", "Agreed Panel QME" or "Panel QME", as appropriate in a specific case."

Subdivision 1(w) "Medical Director" has been amended to read: "and includes any Associate Medical Directors when acting as his or her designee."

Prior proposed subdivision 1(x) "Primary Practice Location" has been deleted.

New subdivision 1(x) has been added and provides: "Mental health record" means a medical treatment or evaluation record created or reviewed by a licensed physician as defined in Labor Code section 3209.3 in the course of treating or evaluating a mental disorder."

Subdivision 1(y) has been added and provides: "Panel QME" means the physician, from a QME panel list provided by the Medical Director, who is selected under Labor Code section 4062.1(c) when the injured worker is not represented by an attorney, and when the injured worker is represented by an attorney, the physician whose name remains after the striking process or who is otherwise selected as provided in Labor Code section 4062.2(c) when the parties are unable to agree on an Agreed Panel QME.

The remaining subdivisions in section 1 have been re-lettered accordingly.

**§ 10. Appointment of QMEs**

The following modifications were made in response to comments received.

Subdivision 10(b) has been amended to delete proposed language that would have denied reappointment to a QME applicant serving a period of probation imposed by the physician's licensing agency until the physician's license became unrestricted. A new sentence was added that provides: "Applications for appointment or reappointment from physicians who are on probationary license status with a California licensing board or agency while the QME application is pending shall be reviewed by the Medical Director on a case-by-case basis consistent with the provisions of Labor Code section 139.2(m).

Subdivision 10(d) has been amended to read: "Any physician who, while under investigation or after the service of a statement of issues or accusation for alleged violations of these regulations or the Labor Code, withdraws his or her application for appointment or reappointment, resigns or

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fails to seek reappointment as a QME, shall be subject to having the disciplinary process reactivated whenever an application for appointment or re-appointment is subsequently filed. In the event any of the alleged violations are found to have occurred, the physician's application for appointment or reappointment may be denied by the Administrative Director."

**§ 11. Eligibility Requirements for Initial Appointment as a QME**

The following modifications were made in response to comments received.

Subdivision 11(e)(1) has been amended to add the word "California" before the word "license".

Subdivision 11(e)(4), as proposed, pertaining to spending 5 hours per week in direct medical treatment at each primary practice location has been deleted. The subdivisions that followed have been, accordingly, re-numbered.

**§ 11.5. Disability Evaluation Report Writing Course**

The following modifications were made in response to comments received.

Subdivision 11.5(i) has been amended to change the list of topics to be included in the curriculum of disability evaluation report writing courses to read:

"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"

And further down on the list:

"Vocational rehabilitation (for claims with dates of injury prior to January 1, 2004)"

In addition, a new subdivision 11.5(i)(8) has been added:

"(8) Submission and Critique of Written Medical/legal Report. As a condition of completion of the course taken to satisfy the requirements of this section, each physician enrollee

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shall draft at least one practice written medical/legal report, based on a sample case library of materials, which written report shall be critiqued with notations by the course education provider.”

**§ 12. Recognition of Specialty Boards**

The following modifications were made in response to comments received. In the Note following the section, the Labor Code sections listed for Authority were amended to add sections 139.4, 139.43 and 139.45 and the sections listed for Reference were amended to add Business and Professions Code section 651(i).

**§ 13. Physician's Specialty**

The following modifications were made in response to comments received. In the Note following the section, the Labor Code sections listed for Authority were amended to add sections 139.4, 139.43 and 139.45 and the sections listed for Reference were amended to add Business and Professions Code section 651(i).

**§ 14. Doctors of Chiropractic: Certification in Workers' Compensation Evaluation**

The following modifications were made in response to comments received.

Subdivision 14(b)(4)(E) was amended to read: “Continued and future medical care” as topics to be included in the final 36 hours of instruction in such courses.

**§ 17. Fee Schedule for QME**

The following modifications were made in response to comments received.

Proposed subdivision 17(c), pertaining to certifying up to four primary practice locations, has been deleted. The remaining subdivisions have been re-lettered accordingly.

**§ 30. QME Panel Requests**

The following modifications were made in response to comments received.

Subdivision 30(b) has been reworded for clarity to provide, among other things:

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“The party requesting a QME panel shall: 1) identify the disputed issue that requires a comprehensive medical/legal report to be resolved; 2) attach a copy of the written proposal, naming one or more physicians to be an Agreed Medical Evaluator, that was sent to the opposing party once the dispute arose; 3) designate a specialty for the QME panel requested; 4) state the specialty preferred by the opposing party, if known; and 5) state the specialty of the treating physician. In represented cases with dates of injury prior to January 1, 2005, and only upon the parties’ agreement to obtain a QME panel pursuant to Labor Code section 4062.2, the party requesting a QME panel shall submit QME Form 106 in compliance with this section and provide written evidence of the parties’ agreement. Once such a panel request in a represented case with a date of injury prior to January 1, 2005, is issued the parties shall be bound by the timelines and process as described in Labor Code section 4062.2.”

Subdivision 30(c) has been reworded to provide:

“(c) In the event a request form is incomplete, or improperly completed so that a QME panel selection cannot properly be made, the request form shall be returned to the requesting party with an explanation of why the QME panel selection could not be made. The Medical Director also may delay issuing a new QME panel, if necessary, until the parties answer a request from the Medical Director for information about whether a QME panel previously issued to the injured worker was used. The time periods for selecting a QME from the panel and scheduling an appointment shall be tolled until the Medical Director takes action on such a panel request, unless otherwise ordered by a Workers’ Compensation Administrative Law Judge.”

Subdivision 30(d) has been reworded to provide:

“(d)(1) After a claim form has been filed, the claims administrator, or if none the employer, may request a panel of Qualified Medical Evaluators only as provided in Labor Code section 4060, to determine whether to accept or reject part or all of a claim within the period for rejecting liability in Labor Code section 5402(b), and only after providing evidence of compliance with Labor Code Section 4062.1 or 4062.2.

(d)(2) Once the claims administrator, or if none the employer, has accepted as compensable any body part in the claim, a request for a panel QME may only be filed based on a dispute arising under Labor Code section 4061 or 4062.

(d)(3) Whenever an injury or illness claim of an employee has been denied entirely by the claims administrator, or if none by the employer, within the time allowed under Labor Code section 5402(b), only the employee may request a panel of Qualified Medical Evaluators, as provided in Labor Code sections 4060(d) and 4062.1 if unrepresented or as provided in Labor Code sections 4060(c) and 4062.2 if represented.

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(d)(4) After the ninety (90) day period specified in Labor Code section 5402(b) for denying liability has expired, a request from the claims administrator, or if none from the employer, for a QME panel to determine compensability shall only be issued upon presentation of a finding and order issued by a Workers' Compensation Administrative Law Judge that the presumption in section 5402(b) has been rebutted and that a QME panel should be issued for this purpose. The order shall also specify the medical specialty of the panel or which party may select the medical specialty."

Subdivision 30(e) has been amended to provide:

"(e) If the request form is submitted by or on behalf of an employee who no longer resides within the state of California, the geographic area of the QME panel selection within the state shall be determined by agreement between the claims administrator, or if none the employer, and the employee. If no agreement can be reached, the geographic area of the QME panel selection shall be determined for an unrepresented employee by the employee's former residence within the state, and for a represented employee by the office of the employee's attorney."

Subdivision 30(f) which proposed to give 1.5 times the weight to primary practice locations has been deleted. The following subdivisions have been re-lettered accordingly.

A new subdivision 30(g) is being proposed that provides: "(g) The panel request in a represented case must be sent to the Medical Unit address on the QME Form 106 by means of the United States postal service. The Medical Unit will not accept panel requests in represented cases that are delivered in person by a party, the party's attorney or by other commercial courier or delivery services."

### **§ 31. QME Panel Selection**

The following modifications were made in response to comments received.

Subdivision 31(b), pertaining to making appointments with a panel QME and not discussing the selection of a QME with an unrepresented injured worker, is being deleted from this section and is now addressed in a new proposed section 31.3, discussed below. The remaining subdivisions of section 31 have been re-lettered accordingly.

Subdivision 31(c) has been reworded for clarity to provide:

"(c) Any physician who has served as a primary treating physician or secondary physician and who has provided treatment to the employee in accordance with section 9785 Title 8 of the

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California Code of Regulations for the disputed injury shall not perform a QME evaluation on that employee. If that physician appears on a QME panel, he or she shall notify both parties of this reason for disqualifying him or herself, and either party may request a replacement QME pursuant to section 31.5 of Title 8 of the California Code of Regulations.”

The remaining subdivisions of section 31 have been re-lettered accordingly.

**§31.1 QME Panel Selection Disputes in Represented Cases**

The following modifications were made in response to comments received.

Subdivision 31.1(c) has been amended to add the following sentence: “Any such order shall specify the specialty of the QME panel or the party to be designated to select the specialty.”

**§31.3. Scheduling Appointment with Panel QME**

In response to comments received, a new section 31.3 is proposed which provides:

“§31.3. Scheduling Appointment with Panel QME

(a) When the employee is not represented by an attorney, the unrepresented employee shall select a QME from the panel list, contact the QME to schedule an appointment and inform the claims administrator of the QME selection and the appointment.

(b) Neither the employer, nor the claims administrator nor any other representative of the employer shall discuss the selection of the QME with an unrepresented worker who has the legal right to select the QME.

(c) If the unrepresented employee fails to select a QME from the QME panel or fails to schedule an appointment with the selected QME, the claims administrator may schedule an appointment with a panel QME only as provided in Labor Code section 4062.1(c), and shall notify the employee of the appointment as provided in that section.

(d) Whenever the employee is represented by an attorney and the parties have completed the conferring and striking processes described in Labor Code section 4062.2(c), the represented employee shall schedule the appointment with the physician selected from the QME panel. If the represented employee fails to do so within ten (10) business days of the date a QME is selected from the panel, the claims administrator or administrator’s attorney may arrange the appointment and notify the employee and employee’s attorney.

Note: Authority: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.2, 4064 and 4067, Labor Code.”

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**§ 31.5. QME Replacement Requests**

The following modifications were made in response to comments received.

Subdivision 31.5(a) has been amended to read:

“(2) A QME on the panel issued cannot schedule an examination for the employee within sixty (60) days of the initial request for an appointment, or if the 60 day scheduling limit was waived under section 33(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within ninety (90) days of the date of the initial request for an appointment.

....

(6) The evaluator who previously reported in the case is no longer available.

(7) A QME named on the panel is currently, or has been, the employee's primary treating physician or secondary physician as described in section 9785 of Title 8 of the California Code of Regulations for the injury currently in dispute .

....

(11) The evaluator has violated section 34 (Appointment Notification by the QME) of Title 8 of the California Code of Regulations. Failure by a party to object to an evaluator's report within fifteen (15) days of the date the report was served by the evaluator on the grounds of a violation of section 34 shall be deemed a waiver of the objection, unless otherwise ordered by a Workers' Compensation Administrative Law Judge.

(12) The evaluator failed to meet the deadlines as specified in Labor Code section 4062.5 and section 38 (Medical Evaluation Time Frames) of Title 8 of the California Code of Regulations, and the party asking for the replacement requested objected to the report on the grounds of lateness prior to the date the evaluator served the report. A party requesting a replacement on this ground shall attach to the request for a replacement a copy of the party's objection to the untimely report.

....

(14) The Administrative Director has issued an order pursuant to section 10164(c) of Title 8 of the California Code of Regulations (order for additional QME evaluation).

(15) The selected medical evaluator, who is otherwise qualified and competent to address all disputed medical issues from all injuries reported on one or more claim forms prior to the initial evaluation, fails or refuses to provide a complete medical evaluation as provided in Labor Code section 4062.3(i).

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(16) The QME panel list was issued more than twenty four (24) months prior to the date the request for a replacement is received by the Medical Unit, and none of the QMEs on the panel list have examined the injured worker.”

In addition, the following new subdivisions to section 31.5 are proposed:

“(b) Whenever the Medical Director determines that a request made pursuant to subdivision 31.5(a) for a QME replacement or QME panel replacement is valid, the time limit for an unrepresented employee to select a QME and schedule an appointment under section Labor Code section 4062.1(c) and the time limit for a represented employee to strike a QME name from the QME panel under Labor Code section 4062.2(c), shall be tolled until the date the replacement QME or QME panel is issued.

(c) In the event the parties in a represented case have struck two QME names from a panel and subsequently a valid ground under subdivision 31.5 arises to replace the remaining QME, none of the QMEs whose names appeared on the earlier QME panel shall be included in the replacement QME panel.

(d) Whenever a party requests the Medical Director to replace an evaluator after the medical/legal report has been served by the evaluator, on the grounds that the report is untimely, the Medical Director shall not replace the evaluator unless ordered to do so by a Workers’ Compensation Administrative Law Judge or unless the parties agree in writing that the evaluator be replaced for this reason.”

The wording previous proposed for subdivision 31.5(b), pertaining to conditions in which a party may obtain an additional QME panel in a different medical specialty, has been moved to a new section 31.7, discussed below. The following subdivisions of 31.5 accordingly were re-lettered.

The wording previously proposed for subdivision 31.5(c), pertaining to objections to QMEs in represented cases being made at least two days prior to the QME examination, has been deleted.

**§ 31.7. Obtaining Additional QME Panel in a Different Specialty**

In response to comments received, the wording previously proposed as 31.5(b) was moved to this new section and additional wording was added, such that the proposed new section provides:

“§ 31.7. Obtaining Additional QME Panel in a Different Specialty

(a) Once an Agreed Medical Evaluator, an Agreed Panel QME, or a panel Qualified Medical Evaluator has issued a comprehensive medical/legal report in a case and a new medical dispute

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arises, the parties, to the extent possible, shall obtain a follow-up evaluation or a supplemental evaluation from the same evaluator.

(b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:

(1) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected; or

(2) The AME or QME selected advises the parties and the Medical Director, or his or her designee, that she or he has completed or will complete a timely evaluation of the disputed medical issues within his or her scope of practice and areas of clinical competence but recommends that a new evaluator in another specialty is needed to evaluate one or more remaining disputed medical conditions, injuries or issues that are outside of the evaluator's areas of clinical competence, and either the injured worker is unrepresented or the parties in a represented case have been unable to select an Agreed Medical Evaluator for that purpose; or

(3) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical legal report by an evaluator in a different specialty, that attempts to select an Agreed Medical Evaluator pursuant to Labor Code section 4062.2 for that purpose have failed and the specialty that the parties have agreed upon for the additional evaluation; or

(4) In an unrepresented case, that the parties have conferred with an Information and Assistance Officer, have explained the need for an additional QME evaluator in another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of the Officer on the specialty requested for the additional QME panel. The parties may confer with the Information and Assistance Officer in person or by conference call.

Note: Authority cited: Sections 133, 139.2, 4061, 4062, 4062.3, 4062.5, 5307.3 and 5703.5, Labor Code. Reference: Sections 139.2, 4062, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.”

**§ 32. Consultations**

The following modifications were made in response to comments received.

Subdivision 32(c) has been re-added to the section without the reference to a prior treating physician and, as amended, reads:

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“(c) For injuries occurring on or after January 1, 1994, a QME may obtain a consultation from any physician as reasonable and necessary pursuant to Labor Code section 4064(a) or upon agreement by a party to pay the cost.”

**§ 32.6 Additional QME Evaluations Ordered by the Appeals Board**

Subdivision 32.6 was amended to read, in pertinent part: “The Medical Director shall issue a panel of Qualified Medical Evaluators upon receipt of an order of a Workers’ Compensation Administrative Law Judge or the Appeals Board, with a finding that an additional evaluation is reasonable...”

**§ 32.7 Availability of QME for Panel Assignment**

In response to comments received, this entire proposed section is being deleted.

**§ 33. Unavailability of QME**

The following modifications were made in response to comments received.

Subdivision 33(a) has minor wording changes for clarity.

Subdivision 33(c) deletes the reference to “or AME” such that the subdivision as proposed now provides:

“(c) A QME who is unavailable as provided in subdivision (a) shall not perform any new evaluation examinations as a QME until the physician returns to active QME status. Such a QME may complete medical-legal examinations and reports already scheduled and reported to the Medical Director, as well as reports for evaluation examinations performed prior to becoming unavailable under subdivision (a). Such a QME also may complete supplemental reports.”

Subdivision 33(e) has been amended to provide:

“(e) If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within 60 days of the date of the appointment request, that party may waive the right to a replacement in order to accept an appointment no more than ninety (90) days after the date of the party’s initial appointment request. When the selected QME is unable to schedule the evaluation within ninety (90) days of the date of that party’s initial appointment request, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of Title 8 of the California

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Code of Regulations upon request, unless both parties agree in writing to waive the ninety (90) day time limit for scheduling the initial evaluation.”

Subdivision 33(f) has been amended to provide:

“(f) If a QME fails to notify the Medical Director, by submitting the form in section 109 (Notice of Qualified Medical Evaluator Unavailability) (see, 8 Cal. Code Regs. § 109), of his or her unavailability at a medical office at least thirty (30) days prior to the change, the Medical Director may designate the QME to be unavailable at that location for thirty (30) days from the date the Medical Director learns of the unavailability.”

Subdivision 33(g) has been amended to reduce the time for a QME to respond to a certified letter from the Medical Director, regarding the QME’s unavailability and failure to respond to calls or mail at a given location, from 30 days to 15 days. As proposed, the QME would be made unavailable at that location for failing to respond within 15 days of the date of the certified letter.

**§ 34. Appointment Notification and Cancellation**

The following modifications were made in response to comments received.

The title of this section has been amended to add the words “and Cancellation”.

Subdivision 34(a) has been amended to read as follows:

“(a) Whenever an appointment for a comprehensive medical evaluation is made with a QME, the QME shall complete an appointment notification form by submitting the form in Section 110 (QME Appointment Notification Form)(See, 8 Cal. Code Regs. § 110). The completed form shall be postmarked or sent by facsimile to the employee and the claims administrator, or if none the employer, within 5 business days of the date the appointment was made. In a represented case, a copy of the completed form shall also be sent to the attorney who represents each party. Failure to comply with this requirement shall constitute grounds for denial of reappointment under section 51 of Title 8 of the California Code of Regulations.”

A new subdivision 34(d) had been added:

“(d) An appointment scheduled with a panel QME shall not be cancelled or rescheduled by the QME or by any party less than three (3) business days before the date scheduled. Whenever the claims administrator, or if none the employer, or the injured worker, or either party’s attorney, cancels an appointment scheduled by a panel QME, the cancellation shall be made in writing and state the reason for the cancellation. Oral cancellations shall be followed with a written confirming letter that complies with this section.”

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Necessity: The proposed requirement requires the evaluator and the parties to making cancellations or rescheduling appointments four or more days before the scheduled examination is made in response to two kinds of complaints received by the Medical Director: 1) complaints from injured workers who do not receive adequate notice that the evaluator has cancelled the appointment and learn of the cancellation only upon arriving at the scheduled time and location; and 2) complaints by QMEs of claims administrators calling in appointment cancellations without adequately explaining the reason the appointment is being cancelled or without sufficient notice to enable the QME to schedule a different patient into the cancelled appointment time.

**§ 35. Exchange of Information and Ex Parte communications**

The following modifications were made in response to comments received.

Subdivision 35(a) was re-worded to clarify that the claims administrator, or if none the employer, must provide, and the injured employee may provide, to the QME or AME the types of records, documents and other things listed in the remainder of the section.

Subdivision 35(a)(3) was amended to insert the words “AME or”, so the subdivision applies to both AMEs and QMEs.

Subdivision 35(c) has been amended to add the following sentences: “In both unrepresented and represented cases the claims administrator shall attach a log to the front of the records and information being sent to the opposing party that identifies each record or other information to be sent to the evaluator and lists each item in the order it is attached to or appears on the log. In a represented case, the injured worker’s attorney shall do the same for any records or other information to be sent to the evaluator.”

Subdivision 35(d) has been amended for clarity.

Subdivision 35(e) has been amended to delete “QME” and replace it with “evaluator” and to add: “or (4) any third party medical or consulting report obtained outside of the process in Labor Code section 4610 that addresses issues presented to the evaluator for evaluation, unless the third party medical or consulting report has been ruled admissible by a Workers’ Compensation Administrative Law Judge .”

Subdivisions 35(g), (i), (j) and (k) have been amended to replace the word “QME” with the word “evaluator” in order to clarify that those subdivisions also apply to AME cases.

Subdivision 35(l) has been amended to add the words “and no later than the date the report is served”, in order to clarify that at least as of the date a report is served the evaluator must notify

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the parties about outstanding disputed medical issues outside of the evaluator's scope of practice or area of clinical competence, so that the parties may obtain another evaluator in a different specialty.

Subdivision 35(m) has been added and provides: "(m) The provisions of this regulation shall apply in the same manner to each consulting evaluator selected by an AME or QME."

**§ 35.5. Compliance by AMEs and QMEs with IMC Administrative Director Evaluation and Reporting Guidelines**

The following modifications were made in response to comments received.

Subdivision 35.5(c) has been amended to add the sentence: "The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator as required by subdivision 35(a)(3)."

A new subdivision 35.5(d) has been added, which provides:

"(d) In the event a new injury or illness is claimed involving the same type of body part or body system and the parties are the same, or in the event either party objects to any new medical issue within the evaluator's scope of practice and clinical competence, the parties shall utilize to the extent possible the same QME or AME who reported previously."

The remaining subdivisions of section 35.3 have been re-lettered.

Subdivision 35.5(f) has been amended to read:

"(f) Whenever an Agreed Medical Evaluator or Qualified Medical Evaluator provides an opinion in a comprehensive medical/legal report on a disputed medical treatment issue, the evaluator's opinion shall be consistent with and apply the standards of evidence-based medicine set out in Division 1, Chapter 4.5, Subchapter 1, sections 9792.20 et seq of Title 8 of the California Code of Regulations (Medical Treatment Utilization Schedule). In the event the disputed medical treatment, condition or injury is not addressed by the Medical Treatment Utilization Schedule, the evaluator's medical opinion shall be consistent with and refer to other evidence-based medical treatment guidelines, peer reviewed studies and articles, if any, and otherwise shall explain the medical basis for the evaluator's reasoning and conclusions.

**~~§ 36. Summary Form for Comprehensive Medical Legal Evaluation Performed Pursuant to Labor Code Section 4061 by QMEs or AMEs; Service of Form and Evaluation Service of~~**

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**Comprehensive Medical-Legal Evaluation Reports by Medical Evaluators Including Reports Under Labor Code section 4061**

The following modifications were made in response to comments received. The section title has been changed for clarity.

This section has been amended to clarify that the QME is only required to use QME Form 111 when serving a comprehensive medical/legal report that discusses disputed issues under Labor Code section 4061, such as permanent impairment or permanent disability, in a cases involving an unrepresented injured worker.

A new subdivision 36(c) has been added that provides:

“(c) Whenever the injured worker is represented by an attorney, a comprehensive medical/legal report that addresses disputes under Labor Code section 4061 shall be served, within the time frames specified in Section 38 of Title 8 of the California Code of Regulations, on each party and on the party’s attorney with QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report), except as provided in subdivision 36.5.”

Subdivision 36(c), as previously proposed, addressed service of reports in cases involving a disputed injury to the psyche. That subdivision has been deleted and the topic is now addressed in a new section 36.5 discussed below. The remaining subdivisions in section 36 have been re-lettered.

**§ 36.5 Service of Comprehensive Medical/Legal Report in Claims of Injury to the Psyche**

In response to comments received, this new section is proposed to address service of a medical/legal report in cases involving a disputed injury to the psyche. The section, as now proposed, gives the AME or QME two options for serving the report on the injured worker. Due to the length of the section, the public is directed to review the wording as now proposed.

In cases in which the evaluator makes a determination as provided under Health and Safety Code section 123115(b), that the evaluation report or other medical records reviewed by the evaluator should not be seen directly by the injured worker due to a substantial risk of significant adverse or detrimental medical consequences, the evaluator is directed to serve the report only on a physician designated by the injured worker who will be paid for one office visit to discuss the report without allowing the injured worker to review it personally. The physician need not be the primary treating physician in the workers’ compensation claim. The claims administrator, or if none the employer, is required to pay for such an office visit. A new proposed QME Form 121 is being proposed for the evaluator to use when he or she makes such a determination.

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As previously proposed in subdivision 36(c) during the initial 45 day public comment period, whenever the evaluator does not make the specific determination required by Health and Safety Code section 123115(b), but is concerned the injured worker may misinterpret part or all of the comprehensive medical/legal report, the evaluator may ask the injured worker if he or she wishes to use a method of voluntary alternate service in which the worker will designate a physician to whom the report will be served and who will be paid for one office visit to review the report with the injured worker prior to giving the worker his or her copy. The physician need not be the primary treating physician in the workers' compensation claim. The wording of proposed QME Form 120 has been amended to reflect this process.

Subdivision 36.5(a) requires an evaluator who makes a determination under Health and Safety Code section 123115(b) to complete the declaration on proposed QME Form 121, advise the injured worker that such a determination has been made and that the report itself can only be provided to a physician designated by the injured worker, permit inspection and copying of the report only by a licensed physician, as defined in Labor Code section 3209.3 or a health care provider as defined in Health and Safety Code section 123105(a), attach a copy of the completed QME Form 121 to the medical/legal report or other medical record it pertains to, and only serve the completed medical/legal report with the Form 121 attached on the physician designated by the injured worker, on the claims administrator, or if none the employer, on the DWU when the report addresses permanent impairment or permanent disability, and on the party's attorneys, if any.

Subdivision 36.5(b) defines 'mental health record' for the purposes of this subdivision.

Subdivision 36.5(c) provides that service in compliance with this section shall be deemed to satisfy the evaluator's obligation to serve the report under Labor Code sections 139.2(j)(1) and 4061(c) and under section 36 of Title 8 of the California Code of Regulations.

Subdivision 36.5(d) requires the claims administrator and all parties and their attorneys to keep mental health records subject to a determination under Health and Safety Code section 123115(b) and this subdivision confidential, and when filing such a report at the Workers' Compensation Appeals Board to request and obtain a protective order from a Workers' Compensation Administrative Law Judge that specifies the manner in which the record may be inspected, copied and entered into evidence.

Subdivision 36.5(e) provides that when injury to the psyche is in dispute and the evaluator does not make a determination as described in 36.5(a) above, but is concerned the injured worker may misinterpret part or all of the report, the evaluator may ask the injured worker whether the individual wishes to voluntarily direct that an alternate method of service of the report be used, by completing QME Form 120 prior to the end of the evaluation visit.

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Subdivision 36.5(f) provides that upon receipt of a QME Form 120 completed by the injured worker, the evaluator shall serve the report on the physician designated by the employee. Service by the evaluator in compliance with this subdivision shall be deemed to satisfy the evaluator's obligation to serve the report under Labor Code sections 139.2(j)(1) and 4061(c) and under section 36 of Title 8 of the California Code of Regulations.

Subdivision 36.5(g) provides that as an additional medical expense incurred in the claim, the claims administrator, or if none the employer, shall reimburse the physician designated by the injured worker on QME Form 120 or 121, for once office visit, when used for the purpose of reviewing and discussing the evaluator's report with the injured worker, at the OMFS rate for an office visit and may include, as appropriate, record review, any necessary, face-to-face time during the visit in excess of that specified in the CPT office visit code and charges, if necessary, for time required to prepare a treatment report.

Subdivision 36.5(h) provides that when the injured worker directs alternate service on QME Form 120 that the evaluator serve two copies of the report, one of which will be provided to the injured employee during the visit with the physician designated on the form.

Necessity: In addition to the request from several commenter's to address the issue of a Health and Safety Code 123115(b) determination and how it would apply as an alternate form of service of a medical/legal report in a disputed injury to the psyche claim, the provisions of section 123115(b) provide for a very specific action.

Health and Safety Code section 123115(b) expressly forbids a health care provider who makes a medical determination that allowing a patient to view or copy the designated mental health record involves a substantial risk of significant adverse or detrimental medical consequences, from releasing the record to anyone other than a licensed physician or health care provider.

At the same time, due process requires that the evaluator's report, which made be used in a contested claim to determine the injured worker's entitlement to various benefits, must be made available to the injured worker's attorney, if any, and to the claims administrator, or if none the employer.

The regulation, as proposed, attempts to ensure that all persons given access to the report handle it in a manner consistent with the Health and Safety Code section, whenever such a determination has been made.

**§ 38. Medical Evaluation Time Frames; Extensions for QMEs and AMEs**

The following modifications were made in response to comments received.

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Subdivision 38(a) has been amended to provide that parties who elect to waive the untimeliness of completion and service of a medical/legal report may do so in writing or by use of QME Form 113 or QME Form 116.

Subdivision 38(d) provides that when the Medical Director sends the parties either QME Form 113 or QME Form 116 due to a late report, the form sent is to be used by each party to indicate their decision.

Subdivision 38 (h) has been amended to add the phrase “and which were properly served on the opposing party as required by Labor Code section 4062.3”.

Subdivision 38(j) has been amended to provide:

“(j) The failure of a party to object to an evaluator’s report, on the grounds of untimeliness under this section, prior to the date the report is served shall be deemed a waiver of the objection, unless otherwise ordered by a Workers’ Compensation Administrative Law Judge.”

**§ 40. Disclosure Requirements: ~~Unrepresented~~ Injured Workers**

The following modifications were made in response to comments received.  
Subdivision 40(a)(2) has been amended to add:

“(B) abusive, hostile or rude behavior including behavior that clearly demonstrates a bias against injured workers...”

**§ 41. Ethical Requirements**

The following modifications were made in response to comments received.

Subdivision 41(a)(7) has been amended to provide that an evaluator shall refrain from “...unilaterally rescheduling a panel QME examination more than 2 times in the same case.”

Subdivision 41(b)(2) has been amended to add the sentence: “The report must list and summarize all medical and non-medical records reviewed as part of the evaluation.”

Subdivision 41(b)(8) has been added and provides: “(8) Serve the report at the same time as provided in these regulations on the employee and the claims administrator, or if none the employer, or on their attorney, respectively.”

**§ 41.5 Conflicts of Interest by Medical Evaluators**

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The following modifications were made in response to comments received.

Subdivision 41.5(c)(7) has been added to provide:

“(7) Other purveyor of medical goods or medical services, only if the medical necessity for using such goods or services is in dispute in the case.”

**§ 41.6 Procedures after Notice of Conflict of Interest and Waivers of Conflicts of Interest of an Evaluator**

The following modifications were made in response to comments received.

**§§ 43 through 47 (Evaluation Guidelines – Various)**

The following modifications were made in response to comments received. The phrase “claims administrator, or if none the” was added before the word “employer”, as appropriate.

**§ 50. Reappointment: Requirements and Application Form**

The following modifications were made in response to comments received.

Subdivision 50(b) was amended by deleting the words “Upon its” and replacing them with “As part of”.

Subdivision 50(c)(4), pertaining to direct medical treatment at a primary practice location, was deleted.

Subdivisions 50(c)(4) through (6) were added to the list of statements made under penalty of perjury:

“(4) attesting that the physician’s license to practice as a physician, as defined under Labor Code section 3209.3, is neither restricted nor encumbered by suspension or probation, nor has the physician been convicted of a misdemeanor or felony related to the physician’s practice or a crime of moral turpitude, and that the physician will notify the Administrative Director if the physician’s license to practice is subsequently suspended or placed on probation or if the physician is convicted of a misdemeanor or felony related to the physician’s practice or of a crime of moral turpitude; and

(5) attesting that the physician shall abide by all regulations of the Administrative Director and shall refrain from making referrals in violation of those regulations; and

(6) attesting that the physician has not performed a QME evaluation during a time when the physician was not appointed as a QME.”

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

The following modifications were made in response to comments received.

Subdivision 55(d) was amended to add “an education” before the word “provider”. Also a cross reference to a subdivision was corrected.

**§ 65. Sanction Guidelines for Qualified Medical Evaluators**

The following modifications were made in response to comments received.

The following text was added to the list of types of evaluation report deficiencies that could result in discipline after three or more instances are established in “16. Report Deficiencies:”

“-Other report deficiencies that affect the substantial rights of a party and are in violation of the regulations governing QMEs;”

**Changes to Sections 100 through 124 (QME Forms)**

The revision date at the bottom of each form has been changed to “June 2008”. In addition, the changes discussed below have been made.

**§ 100. The Application for Appointment as Qualified Medical Evaluator Form.**

The following modifications were made in response to comments received.

On page 2, block 5, item one, the following phrase was added to the statement used by applicant Ph.D.'s: “and have five (5) or more years of post doctoral experience.”

Page 4 block 10, paragraph A and B: the word “California” was inserted before the word “license” .

Page 4, block 10, paragraph C, the declaration statement about spending 5 or more hours per week in direct patient treatment at each primary practice location, has been deleted.

On page 6, which lists QME specialty codes, the following corrections have been made:

“MTT” has replaced the code MPT for General Preventive Medicine-Toxicology in order that all physicians who are certified specialists in toxicology will be listed under this code. MOS now reads “Orthopaedic Surgery (other than Spine or Hand)” for those orthopaedic surgeons who do not wish to evaluate spine or hand injuries.

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MPS now reads "Plastic Surgery (other than Hand)" for those surgeons who do not wish to evaluate spine or hand injuries.

MPD now reads "Psychiatry (other than Pain Medicine)" for those psychiatrist who do not wish to evaluate disputes involving pain problems.

"MPA Psychiatry – Pain Medicine" is added for those psychiatrists who wish to evaluate disputes involving pain problems.

MSY now reads "Surgery (other than Spine or Hand)".

The codes for Pediatrics (MEP) and Pediatrics – Allergy & Immunology (MAI) are being deleted because there are no such QMEs at this time and since injured workers who are under 21 can be sent to the appropriate specialist in any event.

**§ 103. The QME Fee Assessment Form.**

The following modifications were made in response to comments received.

All text referring to or pertaining to "primary practice locations" has been deleted.

**§ 104. The Reappointment Application as Qualified Medical Evaluator Form.**

The following modifications were made in response to comments received.

On page 3, block 5, the first paragraph has been amended to read:

"Affirmations: (Initialing each box affirms that you have read and agree to each of the statements. **Do not initial if your statement is untrue; attach explanation on a separate piece of paper. Failure to do so may result in disciplinary action by the Administrative Director.**"

Also, the word "California" has been inserted before the word "license" in paragraphs A and B.

In paragraph C in block 5, the sentence pertaining to hours spent at a "primary practice location" has been deleted.

On page 5, which lists QME specialty codes, the following corrections have been made:

"MTT" has replaced the code MPT for General Preventive Medicine-Toxicology.

MOS now reads "Orthopaedic Surgery (other than Spine or Hand)".

MPS now reads "Plastic Surgery (other than Hand)".

MPD now reads "Psychiatry (other than Pain Medicine)".

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“MPA Psychiatry – Pain Medicine” is added for those psychiatrists who wish to evaluate disputes involving pain problems.

MSY now reads “Surgery (other than Spine or Hand)”.

The codes for Pediatrics (MEP) and Pediatrics – Allergy & Immunology (MAI) are being deleted because there are no such QMEs at this time and since injured workers who are under 21 can be sent to the appropriate specialist in any event.

**§ 105. The Request for Qualified Medical Evaluator Panel - Unrepresented Instruction Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney).**

In response to comments received and to facilitate more expedient processing of QME panel requests in unrepresented cases, the form has been changed. The entire text of the form as proposed during the 45 day comment period has been deleted. The text as presented during this 15 day comment period is the current proposal.

In addition to formatting changes and minor wording changes, the following new items have been added. The additional text will assist the Medical Unit in determining whether a panel may be issued without sending the request back to the requestor for additional information.

A box for disputes under both section 4061 and 4062 has been added at the top.

“Has the claims administrator or employer accepted any body part for this date of injury? Yes  
No”

Necessity: Labor Code section 4060(a) provides that section 4060 shall not apply if any part of a workers' compensation claim has been accepted. The attachment to Form 105 explains that the party must select a different reason for requesting a panel in such a case.

“Is disputed about MPN: \_\_\_ Continuity or Transfer of Care \_\_\_ Permanent Disability, Future Medical, UR decision \_\_\_\_\_ Diagnosis or Treatment”

Necessity: Labor Code section 4614.3(c) provides that when the injured employee disputes the MPN physician's diagnosis or treatment opinion, the injured worker must obtain a second or third opinion from another physician within the MPN, rather than from a QME or AME. When the dispute involves one or more of the other reasons (continuity or transfer of care; permanent disability; future medical treatment; utilization review decision), even when the injured worker receives medical treatment through an MPN, those disputes may be the basis for obtaining a QME panel.

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Section on “Prior QME Panel Information”: All of the questions in this section pertain to information the Medical Unit needs to have whenever a panel request is received but the QME database system indicates a QME panel has already been issued to the injured worker for this date of injury. Once a panel is issued, the Medical Unit does not receive further information about whether it was used or which QME may have been selected. Currently, the Medical Unit must send a letter requesting this additional information which creates delays in issuing a panel. The parties can reduce the likelihood of delay by providing this information on the form, if it is known, at the time of making the initial panel request.

Page 2 of QME Form 105 (specialty codes);

“MTT Emergency Medicine – Toxicology” is deleted as all physicians with certified specialties in Toxicology will be included under MTT Toxicology, which also is on the list.

“MHH Hand” deletes the words “orthopaedic surgery” because this code will include hand specialists from orthopedic surgery, general and plastic surgery.

“MNB Spine” deletes the words “orthopaedic surgery and neurological surgery” because both types of specialists would be qualified to evaluate spine injuries and this category would be selected by physicians in these two specialties who specifically want to evaluate spine injuries.

“MNS Neurological Surgery” adds the words “(other than Spine)” to distinguish those neurological surgeons who do not wish to evaluate spine injuries.

“MMO Oncology – Orthopaedic Surgery, Internal Medicine or Radiology” simply reduces the redundancy in the descriptor.

“MOS Orthopaedic Surgery (other than Spine or Hand)” is a re-worded descriptor to be used by those orthopaedic specialists who do not wish to evaluate spine or hand injuries.

“MPS Plastic Surgery (other than Hand)” is meant for those plastic surgeons who do not wish to evaluate hand injuries.

“MPD Psychiatry (other than Pain Medicine)” is meant for those cases requiring a psychiatrist for injuries other than pain injuries.

“MSY Surgery (other than Spine or Hand)” is for those general surgery specialist who do not wish to evaluate spine or hand injuries.

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“MTT – Toxicology” will include all medical doctors and osteopaths with certified specialties in toxicology, whether obtained through emergency medicine, general preventive medicine or occupational medicine.

The Attachment to QME Form 105 – How to Request a QME if You Do Not have an Attorney:

The text of this document has been completely re-edited for clarity and to delete material that was duplicative of the information provided to an injured worker in QME form 108.

**§ 106. The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case)**

The changes to QME Form 106 are substantially the same as those made to QME Form 105. In response to comments received and to facilitate more expedient processing of QME panel requests in unrepresented cases, the form has been changed. The entire text of the form as proposed during the 45 day comment period has been deleted. The text as presented during this 15 day comment period is the current proposal.

In addition to formatting changes and minor wording changes, the following new items have been added. The additional text will assist the Medical Unit in determining whether a panel may be issued without sending the request back to the requestor for additional information. A box for disputes under both section 4061 and 4062 has been added at the top.

“Has the claims administrator or employer accepted any body part for this date of injury? Yes  
No”

Necessity: Labor Code section 4060(a) provides that section 4060 shall not apply if any part of a workers' compensation claim has been accepted. The attachment to Form 105 explains that the party must select a different reason for requesting a panel in such a case.

“Is disputed about MPN: \_\_\_ Continuity or Transfer of Care \_\_\_Permanent Disability, Future Medical, UR decision\_\_\_\_\_ Diagnosis or Treatment”

Necessity: Labor Code section 4614.3(c) provides that when the injured employee disputes the MPN physician's diagnosis or treatment opinion, the injured worker must obtain a second or third opinion from another physician within the MPN, rather than from a QME or AME. When the dispute involves one or more of the other reasons (continuity or transfer of care; permanent disability; future medical treatment; utilization review decision), even when the injured worker receives medical treatment through an MPN, those disputes may be the basis for obtaining a QME panel.

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Section on “Prior QME Panel Information”: All of the questions in this section pertain to information the Medical Unit needs to have whenever a panel request is received but the QME database system indicates a QME panel has already been issued to the injured worker for this date of injury. Once a panel is issued, the Medical Unit does not receive further information about whether it was used or which QME may have been selected. Currently, the Medical Unit must send a letter requesting this additional information which creates delays in issuing a panel. The parties can reduce the likelihood of delay by providing this information on the form, if it is known, at the time of making the initial panel request.

Page 2 of QME Form 106 (specialty codes):

“MTT Emergency Medicine – Toxicology” is deleted as all physicians with certified specialties in Toxicology will be included under MTT Toxicology, which also is on the list.

“MHH Hand” deletes the words “orthopaedic surgery” because this code will include hand specialists from orthopedic surgery, general and plastic surgery.

“MNB Spine” deletes the words “orthopaedic surgery and neurological surgery” because both types of specialists would be qualified to evaluate spine injuries and this category would be selected by physicians in these two specialties who specifically want to evaluate spine injuries.

“MNS Neurological Surgery” adds the words “(other than Spine)” to distinguish those neurological surgeons who do not wish to evaluate spine injuries.

“MMO Oncology – Orthopaedic Surgery, Internal Medicine or Radiology” simply reduces the redundancy in the descriptor.

“MOS Orthopaedic Surgery (other than Spine or Hand)” is a re-worded descriptor to be used by those orthopaedic specialists who do not wish to evaluate spine or hand injuries.

“MPS Plastic Surgery (other than Hand)” is meant for those plastic surgeons who do not wish to evaluate hand injuries.

“MPD Psychiatry (other than Pain Medicine)” is meant for those cases requiring a psychiatrist for injuries other than pain injuries.

“MSY Surgery (other than Spine or Hand)” is for those general surgery specialist who do not wish to evaluate spine or hand injuries.

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“MTT – Toxicology” will include all medical doctors and osteopaths with certified specialties in toxicology, whether obtained through emergency medicine, general preventive medicine or occupational medicine.

The attachment to QME Form 106 has been substantially re-edited. The text as presented now is the proposed final text if no further modifications are made.

**§ 107. The Qualified Medical Evaluator Panel Selection Form.**

The following modifications were made in response to comments received.

A box for disputes under both section 4061 and 4062 has been added at the top after type of exam.

**§ 108. The Qualified Medical Evaluator Panel Selection Instruction Form.**

The following modifications were made in response to comments received.

Minor wording changes have been made throughout for clarity.

**§ 109. The ~~Notice of~~ Qualified Medical Evaluator Notice of Unavailability Form.**

The following modifications were made in response to comments received.

The words “AME or” were deleted from the Note paragraph at the bottom of the form.

**§ 110. The Appointment Notification Form.**

The following modifications were made in response to comments received.

The words “Insurer or” in the title of the third section was deleted for clarity.

The word “or” was deleted and replaced with “and” after the boxes for showing copies were sent to the Employee and the Claims Administrator at the bottom of the form above the signature line.

The words “if known” at the same spot were deleted.

**§ 111. The ~~Qualified or Agreed~~ Medical Evaluator’s Findings Summary Form.**

The following modifications were made in response to comments received.

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The title is being changed for clarity. This form has been revised to clarify that it is only required to be used when the QME is evaluating an unrepresented injured worker and the report addresses permanent impairment or permanent disability.

The words "or Agreed" have been deleted from the title of the form. "Unrepresented Injured Employee Cases Only" has been inserted below the form title to clarify when it is to be used.

In block 2, the word "/Employer" has been deleted for clarity.

In block 3, the word "AME/" has been deleted for clarity. The form should not be used by any AME.

In block 4, the word "patient's" is deleted and replaced with "injured employee's". The word "benefits" has been added at the end of the sentence, for clarity.

Page 2: The following questions have been added:

"22. Are there any unresolved disputed issues beyond the scope of our licensure or clinical competence that should be address by an evaluator in a different specialty - Yes....No...."

23. If the answer to # 22 is yes, what disputed issue(s)?"

24. Based on the answer in # 23, what specialty (or specialties)?"

Necessity: These questions are added to the form to enable the panel QME to advise the parties that another QME in a different medical specialty is needed to address issues out of the medical scope of practice or clinical competence of the panel QME. A paragraph has been added to the instruction page, page 3 of this form, that explains when this may be appropriate pursuant to Labor Code section 4062.3.

Labor Code section 4062.3(i) provides:

"Upon completing a determination of the disputed medical issue, the medical evaluator shall summarize the medical findings on a form prescribed by the administrative director and shall serve the formal medical evaluation and the summary form on the employee and the employer. The medical evaluation shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's initial appointment with the medical evaluator."

Where a disputed issue is outside the scope of the evaluator's medical license or clinical competence, the evaluator must communicate that to the parties in order that a physician in the appropriate specialty may be obtained to address those outstanding issues. The Medical Unit needs some evidence from the evaluator and the parties when this occurs. By answering these questions, the parties are provided with a statement under penalty of perjury by the evaluator,

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which may be used as supporting evidence for a request for an additional QME panel in a different medical specialty as addressed in proposed section 31.7 of Title 8 of the California Code of Regulations.

The Declaration of Service of Medical/Legal Report (Lab. Code 4062.3) has been revised for clarity.

Page 3, the Instruction Form. The words "or AME" are deleted as the form is not to be used by AMEs.

A paragraph has been added:

"Need for Additional Evaluation in Another Specialty: Labor Code section 4062.3 directs each evaluator to address all contested medical issues arising from all injuries reported on one or more claim forms prior to the evaluator's initial evaluation. Each evaluator is expected to address permanent impairment consistent with the AMA guides for the evaluator's specialty. In the event there are contested medical issues outside of the scope of your licensure or clinical competence that require evaluation by a physician in a different specialty, complete the information required in questions 22 through 24, and serve a copy of your report on the Medical Unit of DWC."

Additional minor, non-substantive edits were made to the instructions for clarity.

**§ 112. ~~The Qualified or Agreed Medical Evaluator QME/AME Time Frame Extension Request Form.~~**

The following modifications were made in response to comments received.  
The word "adjuster" is deleted and is being replaced with "administrator".  
The words "employer/insurer" are deleted in the paragraph of instructions at the bottom of the form.

**§ 113. ~~The Time Extension Approval Form. Notice of Denial of Request for Time Extension Form.~~**

The following modifications were made in response to comments received.  
The words "adjuster/employer" are deleted and are being replaced with the word "administrator" after the word "claims".  
Other minor edits are made for clarity.

**§ 116. ~~The Notice of Late Qualified Medical Evaluator Report Form Extension Not Requested Form. Notice of Late QME/AME Report – No Extension Requested Form.~~**

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The following modifications were made in response to comments received.  
The following modifications were made in response to comments received.  
The words “adjuster/employer” are deleted and are being replaced with the word “administrator” after the word “claims”.  
Other minor edits are made for clarity.

**§ 117, 118 and 119:**

The following modifications were made in response to comments received.  
Only the form revision date has been changed to “June 2008”.

**§ 120. Voluntary Directive for Alternate Service of Medical-Legal Evaluation Report on Disputed Injury to Psyche.**

The following modifications were made in response to comments received.  
The two options for the injured worker to select from now read:

“ \_\_\_ By sending my copy to the following physician who will review it with me and will be paid for an office visit for this purpose by the claims administrator, or if none the employer. The physician I name below can be my primary treating physician in this case or any other physician I wish to designate. At the end of that visit, the physician below will give me my copy of the report.”

\_\_\_ Only by sending a copy to me at my address on file. I do not wish to have a physician review it with me.”

**§ 121. Declaration Regarding Protection of Mental Health Record.**

This form is new and being proposed for the first time for use by an evaluator who makes a determination under Health and Safety Code section 123115(b). The necessity for this form and this procedure is discussed more fully under the discussion of section 36.5, above.

**§ 122. AME or QME Declaration of Service of Medical-Legal Report.**

This new form must be used by AMEs and panel QMEs in represented cases when serving any medical/legal report. In unrepresented cases, this form must be used by a panel QME when serving a medical/legal report except when QME Form 111 is used.

Necessity: Labor Code section 4062.3(i) requires all evaluators to serve a copy medical/legal evaluation report once completed. This declaration of proof of service of a medical/legal report

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provides the evaluator with the necessary language to demonstrate compliance with this requirement.

**§ 123. QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented Parties Form.**

The following modifications were made in response to comments received.

On page 1, the words “Employer/Insurer/TPA” were deleted and replaced by the words “Claims Administrator”.

On page 2, sentence 1 was edited for clarity and now reads:

A QME or AME who knows, or should know, that he or she has a disqualifying conflict of interest as defined in section 41.5 of Title 8 of the California Code of Regulations, with any person or entity listed in subdivision 41.5(c), that also is involved in the case the evaluator is handling, must notify the parties in writing of the conflict of interest.”

The following sentence is added to the summary of definitions under section 41.5 of Title 8 of the California Code of Regulations:

“Other purveyor of medical goods or medical service, only if the medical necessity for using such goods/services is disputed.”

**§ 124. Specified Financial Interest Attachment to QME Forms 100, 103 or 104 (“SFI Form 124”).**

The following modification was made for clarity. This text was added to the bottom of the form:

“\* “Specified Financial Interests” means being a general partner or limited partner in, or having an interest of 5 percent or more, or receiving or being legally entitled to receive a share of 5% or more of the profits from, any medical practice, group practice, medical group, professional corporation, limited liability corporation, clinic or other entity that provides treatment or medical evaluation goods or services for use in the California workers’ compensation system (8 Cal. Code Regs. § 29(b).)”

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**II. NOTICE OF ADDITION OF DOCUMENTS AND INFORMATION TO THE  
RULEMAKING FILE**

**(Government Code § 11347.1)**

The Administrative Director of the Division of Workers' Compensation hereby gives notice, pursuant to Government Code sections 11346.8(d), 11246.9(a)(1), and 11347.1, that the following documents and other information which the agency has relied upon in adopting the proposed changes to sections 1 – 159 of Title 8 of the California Code of Regulations, have been added to the rulemaking file and are available for public inspection and comment:

Letter dated March 11, 2008, to Brian J. Stiger, Executive Officer, Board of Chiropractic Examiners from Suzanne P. Marria, Counsel, Medical Unit, on behalf of the Administrative Director for the Division of Workers' Compensation, requesting clarification about a document and specialties recognized by the Board

Email dated April 24, 2007, and draft 'gift limits draft 4 24 2007 0800.doc

Two pages printed on February 26, 2008, from the webpage of the Medical Board of California at <http://www.medbd.ca.gov/alphalist.html>, regarding specialty board advertising and specialty boards recognized by the Medical Board

Four pages printed on February 26, 2008, from the webpage of the American Board of Medical Specialties at [http://www.abms.org/Who\\_We\\_Help/Physicians/specialties.aspx](http://www.abms.org/Who_We_Help/Physicians/specialties.aspx), listing Approved ABMS Member Board General and Subspecialty Certificates

One page printed on February 26, 2008, from the webpage of the American Board of Pain Medicine at <http://www.abpm.org/>

One page printed on February 26, 2008, from the webpage of the American Board of Facial Plastic and Reconstructive Surgery at <http://www.abfprs.org/>

Three pages printed on February 26, 2008, from the webpage of the American Board of Sleep Medicine at <http://www.absm.org/>

One page printed on February 26, 2008, from the webpage of the American Board of Spine Surgery, Inc., at <http://www.americanboardofspinesurgery.org/>

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Forty six pages printed on February 26, 2008, from the web page of the American Board of Medical Specialties at

[http://www.abms.org/Who\\_We\\_Help/Consumers/About\\_Physician\\_Specialties](http://www.abms.org/Who_We_Help/Consumers/About_Physician_Specialties) , regarding the following certified specialties: Allergy and Immunology; Anesthesiology; Colon and Rectal Surgery; Dermatology; Emergency Medicine; Family Medicine; Internal Medicine; Medical Genetics; Neurological Surgery; Neurology and Neurology with Special Qualifications in Child Neurology; Nuclear Medicine; Obstetrics and Gynecology; Ophthalmology; Orthopaedic Surgery; Otolaryngology; Pathology; Pediatrics; Physical Medicine and Rehabilitation; Plastic Surgery; Preventive Medicine; Psychiatry; Radiology; Surgery; Thoracic Surgery; Urology

Three pages printed on May 20, 2008, from the webpage of the American Board of Internal Medicine at <http://www.abim.org/certification/policies/imss/rheu.aspx>, regarding Rheumatology.

These documents are available for public inspection at the Division's Legal Unit office located at 1515 Clay Street, 18<sup>th</sup> floor, Oakland, CA 94612, from June 24, 2008 through July 10<sup>th</sup>, 2008, during normal business hours between 8:00 A.M. and 5 P.M. If you have any written comments regarding the documents and other information, written comments must be submitted by 5: P.M. on July 10<sup>th</sup> to:

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation, Legal Unit  
P.O. Box 420603  
San Francisco, CA 94142  
OR  
By fax to (510) 286-0657  
OR  
By e-mail to: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

**All written comments received by 5 P.M. on July 10<sup>th</sup>, 2008**, pertaining to the above listed documents and other information will be reviewed and responded to by the Administrative Director as part of the rulemaking file.