

CALIFORNIA CODE OF REGULATIONS, TITLE 8  
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION  
SUBCHAPTER 1.6. PERMANENT DISABILITY RATING DETERMINATION

**§10159. Time Period for Issuing a Summary Rating Determination Pursuant to Labor Code § 4061(e)**

(a) Following the receipt of a comprehensive medical-legal evaluation from a Qualified Medical Evaluator that is eligible for rating under section 10160, the Disability Evaluation Unit shall issue a summary rating determination pursuant to Labor Code section 4061(e) within 20 days of either the date the time has passed for the filing of a request for factual correction under Labor Code section 4061(d)(1), or the date of receipt of a supplemental report submitted to the Disability Evaluation Unit in response to a request for factual correction under section 37 of Title 8 of the California Code of Regulations, whichever is later.

Authority cited: Sections 111, 133, 5307.3 and 5307.4, Labor Code.

Reference: Sections 124 and 4061, Labor Code.

**§10160. Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee.**

(a) The Disability Evaluation Unit will prepare a summary rating determination upon receipt of a properly prepared request. A properly prepared request shall consist of:

(1) A completed Request for Summary Rating Determination, DWC AD Form 101 (DEU);

(2) A completed Employee's Disability Questionnaire, DWC AD Form 100 (DEU);

(3) A comprehensive medical evaluation of an unrepresented employee from a Qualified Medical Evaluator.

(b) The insurance carrier or self-insured employer shall provide the employee with an Employee's Disability Questionnaire prior to the appointment scheduled with the Qualified Medical Evaluator. The employee will be instructed in the form and manner prescribed by the administrative director to complete the questionnaire and provide it to the Qualified Evaluator at the time of the examination.

(c) The insurance carrier, self-insured employer or injured worker shall complete a Request for Summary Rating Determination of Qualified Medical Evaluator's Report, a copy of which shall be served on the opposing party. The requesting party shall send the request, including proof of service of the request on the opposing party, to the Qualified Medical Evaluator together with all medical reports and medical records relating to the case prior to the scheduled examination with the Qualified Medical Evaluator. The request shall include the appropriate address of the Disability Evalua-

tion Unit. A listing of all of the offices of the Disability Evaluation Unit, with each office's area of jurisdiction, will be provided, upon request, by any office of the Disability Evaluation Unit or any Information and Assistance Office.

(d) When a summary rating determination has been requested, the Qualified Medical Evaluator shall submit all of the following documents to the Disability Evaluation Unit at the location indicated on the DWC AD Form 101 (DEU) and shall concurrently serve copies on the employee and claims administrator:

(1) Request for Summary Rating Determination of Qualified Medical Evaluator's Report as a cover sheet to the evaluation report;

(2) Employee's Disability Questionnaire;

(3) Comprehensive medical evaluation by the Qualified Medical Evaluator, including the Qualified Medical Evaluator's Findings Summary Form (QME Form 111).

(4) A document cover sheet and separator sheet pursuant to section 10232 (b) of title 8 of the California Code of Regulation, which shall only be served on the Disability Evaluation Unit.

(e) No request for a summary rating determination shall be considered to be received until the Employee's Disability Questionnaire, the Request for Summary Rating Determination of Qualified Medical Evaluator's Report, and the comprehensive medical evaluation have been received by the office of the Disability Evaluation Unit having jurisdiction over the employee's area of residence. In the event an employee does not have a completed Employee's Disability Questionnaire at the time of his or her appointment with a Qualified Medical Evaluator, the medical evaluator shall provide this form to the employee for completion prior to the evaluation. Any requests received on or after April 1, 1994 without all the required documents will be returned to the sender.

(f) Except for a request for factual correction filed in compliance with section 37 of title 8 of the California Code of Regulations, aAny request for the rating of a supplemental comprehensive medical evaluation report shall be made no later than twenty days from the receipt of the report and shall be accompanied by a copy of the correspondence to the evaluator soliciting the supplemental evaluation, together with proof of service of the correspondence on the opposing party.

(g) If a Qualified Medical Evaluator files a correction to the comprehensive medical evaluation previously filed pursuant to section 37(d) of title 8 of California Code of Regulation, the Disability Evaluation Unit shall consider in its summary rating the corrections indicated by the Qualified Medical Evaluator in the supplemental report.

Authority cited: Sections 133 and 5307.3, Labor Code.

Reference: Sections 124, 4061, 4062, ~~4062.01~~, 4062.1, 4062.2, 4062.5, 4064, 4067, 4660, 4662, 4663 and 4664, Labor Code.

CALIFORNIA CODE OF REGULATIONS, TITLE 8  
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS  
CHAPTER 1. DIVISION OF WORKERS' COMPENSATION  
QUALIFIED MEDICAL EVALUATOR REGULATIONS  
ARTICLE 1. General

**§ 1. Definitions**

As used in the regulations in Chapter 1:

(a) "Accreditation" means the conferring of recognized status as a provider of physician education by the Administrative Director.

~~(b) "ACOEM" shall have the same meaning as section 9792.20(a), and "ACOEM Practice Guidelines" shall have the same meaning as section 9792.20(b) of Title 8 of the California Code of Regulations.~~

(~~e~~ b) "Administrative Director" means the administrative director of the Division of Workers' Compensation of the State of California Department of Industrial Relations, and includes his or her designee.

~~(c)~~ c "Agreed Panel QME" means the Qualified Medical Evaluator described in Labor Code section 4062.2(c), that the claims administrator, or if none the employer, and a represented employee agree upon and select from a QME panel list issued by the Medical Director without using the striking process. An Agreed Panel QME shall be entitled to be paid at the same rate as an Agreed Medical Evaluator under section 9795 of Title 8 of the California Code of Regulations for medical/legal evaluation procedures and medical testimony.

(~~e~~ d) "AMA Guides" means American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition].

(~~f~~ e) "AME" means Agreed Medical Evaluator, a physician selected by agreement between the claims administrator, or if none the employer, and a represented employee to resolve disputed medical issues referred by the parties in a workers' compensation proceeding.

(~~g~~ f) "Appeals Board" means the Workers' Compensation Appeals Board within the State of California Department of Industrial Relations.

(~~h~~ g) "Audit" means a formal evaluation of a continuing education program, disability evaluation report writing course, or an accredited education provider which is conducted at the request of the Medical Director.

(~~i~~ h) "Comprehensive Medical-Legal Evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(c) of Title 8 of the California Code of Regulations.

(~~j~~ i) "Claims Administrator" means the person or entity responsible for the payment of compensation for any of the following: 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 group self-insurer, an insured employer, the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF) and for the Subsequent Injuries Benefit Trust Fund (SIBTF), a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, group self-insurer, or joint powers authority, and the California Insurance Guarantee Association (CIGA). The UEBTF shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF by joinder as a party.

(~~k~~ j) "Continuing Education Program" means a systematic learning experience (such as a course, seminar, or audiovisual or computer learning program) which serves to develop, maintain, or increase the knowledge, skills and professional performance of physicians who serve as Qualified Medical Evaluators in the California workers' compensation system.

(~~l~~ k) "Course" means the 12 hours of instruction in disability evaluation report writing which is required of a Qualified Medical Evaluator prior to appointment. A course must be approved by the Administrative Director.

(~~m~~ l) "Credit Hour" means a sixty minute hour. A credit hour may include time for questions and answers related to the presentation.

(~~n~~ m) "Direct medical treatment" means that special phase of the physician-patient relationship during which the physician: (1) attempts to clinically diagnose and to alter or modify the expression of a non-industrial illness, injury or pathological condition; or (2) attempts to cure or relieve the effects of an industrial injury.

(~~o~~ n) "Distance Learning" means an education program in which the instructor and student are in different locations, as in programs based on audio or video tapes, computer programs, or printed educational material.

(~~p~~ o) "DEU" is the Disability Evaluation Unit under the Administrative Director responsible for issuing summary disability ratings.

(~~q~~ p) "Education Provider" means the individual or organization which has been accredited by the Administrative Director to offer physician education programs. There are two categories of providers: (1) the Administrative Director; and (2) individuals, partnerships, or corporations, hospitals, clinics or other patient care facilities, educational institutions, medical or health-related organizations whose membership includes physicians as defined in Labor Code section 3209.3, organizations of non-medical participants in the California workers' compensation system, and governmental agencies. In the case of a national organization seeking accreditation, the California Chapter or organization affiliated with the national organization shall be accredited by the Administrative Director in lieu of the national organization.

(~~r~~ q) "Employer" means any employer within the meaning of Labor Code section 3300, including but not limited to, any of the following: (1) an uninsured employer and the Uninsured Employers Benefits Trust Fund (UEBTF) pursuant to Labor Code Section 3716, (2) an insured employer, (3) a self-insured employer and (4) a lawfully uninsured employer. The UEBTF shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF by joinder as a party.

(s r) "Evaluator" means any of the following: "Qualified Medical Evaluator", "Agreed Medical Evaluator", "Agreed Panel QME" or "Panel QME", as appropriate in a specific case.

(t s) "Follow-up comprehensive medical-legal evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of Section 9793(f) of Title 8 of the California Code of Regulations.

(t) "Future medical care" means medical treatment as defined in Labor Code section 4600 that is reasonably required to cure or relieve an injured worker of the effects of the industrial injury after an injured worker has reached maximum medical improvement or permanent and stationary status including a description of the type of the medical treatment which might be necessary in the future. This opinion is not binding in any proceeding concerning an injured worker's need for medical treatment.

(u) "Medical Treatment Utilization Schedule" or "MTUS" means the treatment utilization scheduled adopted by the Administrative Director of the Division of Workers' Compensation as required by Labor Code section 5307.27 and sections 9792.20 *et seq* of Title 8 of the California Code of Regulations.

(v) "Medical Director" means the Medical Director appointed by the Administrative Director pursuant to Labor Code section 122 and includes any Associate Medical Directors when acting as his or her designee.

(w) "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.

(x) "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 completion of 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.

(y) "Physician's office" means a bona fide office facility which is identified by a street address and any other more specific designation such as a suite or room number and which contains the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or practice.

(z) "Qualified Medical Evaluator (QME)" means a physician licensed by the appropriate licensing body for the state of California and appointed by the Administrative Director pursuant to Labor Code section 139.2, provided however, that acupuncturist QMEs shall not perform comprehensive medical-legal evaluations to determine disability.

(aa) "QME competency examination" means an examination administered by the Administrative Director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. This examination shall be given at least as often as twice annually.

(bb) "QME competency examination for acupuncturists" means an examination administered by the Administrative Director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system which are not pertinent to the determination of

disability, but should be understood by acupuncturist QMEs. This examination shall be given at least as often as twice annually.

(cc) "Request for factual correction" means a request by an unrepresented injured worker or a claims administrator to a panel QME to change a statement or assertion of fact contained in a comprehensive medical-legal evaluation that is capable of verification from written records submitted to a panel QME pursuant to section 35 of title 8 of the California Code of Regulations.

(~~ee~~ dd) "Significant Financial Interest or Affiliation Held by Faculty", as used in sections 11.5, 14, 55, 118 and 119 pertaining to faculty of approved disability report writing or continuing education courses under these regulations, means grant or research support; status as a consultant, member of a speakers' bureau, or major stock shareholder; or other financial or material interest for the program faculty member or his or her family.

(~~dd~~ ee) "Specified Financial Interests" means having a shared financial interest that must be reported or disclosed pursuant to sections 11, 17, 29, 50 or on the "SFI Form 124" attached to QME Form 100, 103 or 104 as required by these regulations.

(~~ee~~ ff) "Supplemental medical-legal evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(l) of Title 8 of the California Code of Regulations.

(~~ff~~ gg) "Treating physician" means a physician who has provided direct medical treatment to an employee which is reasonably required to cure or relieve the effects of an industrial injury pursuant to section 4600 of the Labor Code.

(~~gg~~ hh) "Unrepresented employee" means an employee not represented by an attorney.

Note: Authority cited: Sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3, Labor Code. Reference: Sections 139.2, 139.3, 139.31, 139.4, 139.43, 3716, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5 and 4660 through 4664, Labor Code.

## ARTICLE 2. QME Eligibility

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

The Administrative Director shall appoint as QMEs all applicants who meet the requirements set forth in Labor Code Section 139.2(b) and all applicants:

- (a) Shall submit the required supporting documentation:
  - (1) Copy of current license to practice in California;
  - (2) For Medical Doctors, or Doctors of Osteopathy:

(A) A copy of the applicant's certificate of completion of postgraduate specialty training at an institution recognized by the Accreditation Council for Graduate Medical Education or the osteopathic equivalent as defined pursuant to section 12, or;

(B) A copy of the applicant's Board certification by a specialty board recognized by the Administrative Director or as defined pursuant to section 12, or;

(C) A declaration under penalty of perjury accompanied by supporting documentation that the physician has qualifications that the Administrative Director and the Medical Board of California or the Osteopathic Medical Board of California both deem to be equivalent to board certification in a specialty.

(3) If a psychologist, (i) a copy of a doctoral degree in psychology or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to section 2914 of the Business and Professions Code, and has not had less than five years postdoctoral experience in the treatment of emotional and mental disorders or (ii) served as an AME on eight or more occasions prior to January 1, 1990 and has not less than five years postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(4) For Doctors of Chiropractic, the physician shall provide ~~(1)~~ a copy of a current or otherwise valid certificate in California Workers Compensation Evaluation by either a California professional chiropractic association or an accredited California college recognized by the Administrative Director (i.e. Workers' Compensation Evaluation Certificate with a minimum 44 hours completed), ~~or;~~ ~~(2) a certificate of completion of a chiropractic postgraduate specialty program of at least 300 hours taught by a school or college recognized by the Administrative Director, the Board of Chiropractic Examiners and the Council on Chiropractic Education.~~

(5) Or, for other physicians, a copy of the physician's professional diploma.

(b) (1) Shall, prior to appointment as a QME, complete a course of at least twelve (12) hours in disability evaluation report writing pursuant to section 11.5 of this Article. Doctors of Chiropractic who submit documentation showing compliance with section 11(a)(4)(1) are exempt from this requirement; and

(2) Shall accurately and fully report on the SFI Form 124 attached to the application (QME Form 100) to the best of the applicant's knowledge the information required by section 29 of Title 8 of the California Code of Regulations, regarding applicant's specified financial interests.

(c) Shall provide supplemental information and/or documentation to the Administrative Director after an application, QME Form 100 (see, 8 Cal. Code Regs. § 100), is submitted if requested to verify an applicant's eligibility for appointment.

(d) Shall agree that during a QME evaluation exam he or she will not treat or offer or solicit to provide medical treatment for that injury for which he or she has done a QME evaluation for an injured worker unless a medical emergency arises as defined under subdivision (a) or (b) of section 1317.1 of the Health and Safety Code. A QME may also provide treatment if requested by the employee pursuant to section 4600 of the Labor Code, but he or she shall not offer or solicit to provide it. A QME who solicits an injured worker to receive direct medical treatment or to become the primary treating physician of that employee shall be subject to disciplinary action pursuant to section 60.

(e) Shall declare under penalty of perjury on the QME application that he or she:

(1) Has an unrestricted California license and is not currently on probation from the state licensing board, or, if the applicant has a California restricted license or is currently on probation, state all the restrictions on the license and all terms of probation; and

(2) Devotes at least one-third of his or her total practice time to providing direct medical treatment during each year of the applicant's term of appointment. This requirement shall not apply if the applicant qualifies for appointment because the applicant served as an AME on 8 or more occasions in the year prior to application and in each year of the applicant's term; or if the applicant meets the requirements of section 15; and

(3) Has not performed a QME evaluation without QME certification;

(4) Has accurately and fully reported on QME Form 124 to the best of the applicant's knowledge the specified financial interest information required by section 29 of Title 8 of the California Code of Regulations.

(f) Shall pass the QME Competency Examination, or if an acupuncturist, shall pass the QME Competency Examination for acupuncturists.

(1) In order to take this examination, a physician who is not currently appointed as a QME and not exempt pursuant to Labor Code section 139(b)(1), shall be considered to have applied to take the QME competency examination upon submitting the properly-completed Application for Appointment Form in Section 100 (see, 8 Cal. Code Regs. section 100), and the Registration Form for the QME Competency Examination in section 102 (see, 8 Cal. Code Regs. § 102) and the appropriate fee as specified in section 11(f)(2).

(2) The fee for applying to take or retake the QME competency examination is \$ 125.00 and may be waived by the Administrative Director at his or her discretion for first time applicants.

(3) The Administrative Director shall give appropriate public notice of the date, time and location of the examination no fewer than sixty (60) calendar days before a competency examination is to be given.

(4) An applicant must submit the properly completed forms as required in section 11(f)(1) to the Administrative Director at least thirty (30) calendar days prior to the date of the next scheduled competency examination unless the Administrative Director finds good cause to grant an extension to the physician(s).

(5) The Administrative Director shall inform the applicant in writing whether he or she shall be allowed to take the examination within fifteen (15) calendar days from the date the Administrative Director receives the properly-completed forms and appropriate fee.

(6) The Administrative Director shall inform the applicant in writing whether or not he or she passed the examination within sixty (60) calendar days from the date the applicant takes the competency examination.

(7) An applicant who passes the QME competency examination shall file the QME Fee Assessment Form in Section 103 (see, 8 Cal. Code Regs. section 103) including the appropriate fee within thirty (30) days of the date of the notice. The physician shall not be appointed to the official QME

list until the appropriate fee is paid and has completed a disability evaluation report writing course pursuant to section 11.5. Appointments shall be for two-year terms beginning with the date of appointment by the Administrative Director.

(8) Any applicant, who upon good cause shown by the test administrator, is suspected of cheating may be disqualified from the examination and, upon a finding that the applicant did cheat in that exam, the applicant will be denied further admittance to any QME examination for a period of at least five years thereafter. Any applicant who fails to follow test instructions and/or proctor instructions either before or during or at the conclusion of an examination shall be disqualified from the examination procedure and the applicant's exam shall be nullified.

(9) If an applicant fails the competency examination or fails to appear for a noticed QME examination for which the applicant has submitted a QME Exam Registration Form 102 (see, 8 Cal. Code Regs. § 102), the applicant may apply to take any subsequent examinations, upon submission of a new test application form and a fee of \$125. An applicant who fails the exam three times shall show proof of having completed six (6) hours continuing education from a course approved by the Administrative Director prior to taking the examination again.

(10) Any applicant who receives a failing grade on a competency exam may appeal the failing grade to the Administrative Director. Appeals shall be considered on a case by case basis. Appeals will be accepted immediately after a candidate has completed the examination and until ten (10) days after the date of the examination results letter. The appeal shall state specific facts as to why the failing grade should be overturned. Pursuant to Section 6254(g) of the Government Code, the Administrative Director will consider appeals of test questions and will base his or her decision solely on the written appeal including any supporting documentation submitted by the physician. Appeals will only be accepted for the current examination period. Grounds for appeal are:

- (A) Significant procedural error in the examination process;
- (B) Unfair Discrimination;
- (C) Bias or fraud.

(g) Each applicant shall pay the annual fee required by section 17 of this Article prior to appointment.

NOTE: Forms referred to above are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2, 4060, 4062 and 5307.3, Labor Code. Reference: Section 139.2, Labor Code and Section 6254, Government Code.

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

Prior to appointment as a QME, a physician shall complete a course of at least twelve hours of instruction in disability evaluation report writing. The course curriculum shall be specified by the Administrative Director. Only report writing courses which are offered by education providers as defined in subdivision 1(q) of Title 8 of the California Code of Regulations shall qualify to satisfy this requirement.

(a) An education provider applicant shall submit:

(1) a completed QME Form 118 (Application for Accreditation) (see, 8 Cal. Code Regs. § 118) which contains:

(A) the applicant's name; address; director of education with contact information; type of organization; length of time in business; nature of business; and past experience providing continuing education courses (including a list of other accrediting agencies that have approved such courses);

(B) a description of the proposed education program or course which includes the title; type (continuing education program or disability evaluation report writing course); location(s); date(s); length of training in clock hours; educational objectives; a complete description of the program or course content; faculty; and the names of other accrediting agencies that have approved the program.

(2) A curriculum vitae for each proposed instructor. A proposed instructor shall have education and/or training and recent work experience relevant to the subject of his/her presentation.

(3) The application for accreditation as an education provider, along with all required supporting documents, shall be submitted to the Administrative Director, at least 60 calendar days before any public advertisement of the applicant's course.

(b) The Administrative Director shall accredit an applicant that: meets the definition of an education provider; submits a completed, signed and dated application which demonstrates past experience in providing continuing education programs; and proposes a program which meets the requirements of section 55(c) or a course which meets the requirements of section 11.5(a) and (i). The applicant must demonstrate that adequate time is allocated to the curriculum set forth in section 11.5 (i) for the course to be approved by the Administrative Director. Proposed content for continuing education program credit must relate directly to disability evaluation or California workers' compensation-related medical dispute evaluation. No credit shall be recognized by the Administrative Director for material primarily discussing the business aspects of workers' compensation medical practice, including but not limited to billing, coding and marketing.

(c) The Administrative Director shall notify the applicant within 20 calendar days after receipt of the application containing all the information listed in section 11.5(a) whether that education provider has been accredited for a two year period and the proposed course has been approved. Incomplete applications will be returned to the applicant.

(d) Each education provider that has been accredited by the Administrative Director will be given a number which must be displayed on course promotional material.

(e) On or before the date the course is first presented, the education provider shall submit the program syllabus (all program handouts) to the Administrative Director.

(f) An approved course may be offered for two (2) years. An accredited education provider shall notify the Administrative Director in writing of any change to the faculty in an approved course. The provider shall send the Administrative Director the program outline, promotional material and faculty for each offering of the program at least 45 days prior to the date of the presentation of the program. The Administrative Director may require submission of the program syllabi. The Administrative Director may require changes in the program based on its review of the program outline, program syllabi, promotional material or faculty if the Administrative Director finds that any aspect of the program is not in compliance with these regulations.

(g) To apply for re-accreditation, the education provider applicant must submit a completed QME Form 118 (Application for Accreditation) (see, 8 Cal. Code Regs. § 118), using the application process in 11.5(a). The applicant may complete section 2 of the form using a new program or course or one which was given by the applicant during the recent accreditation period. The Administrative Director shall give the provider 90 days' notice of the need to seek re-accreditation.

(h) Promotional materials for a course must state the education provider's educational objectives; the professional qualifications of course faculty (at the least, all relevant professional degrees); the content of course activities; and the intended audience.

(i) The minimum of 12 hours of instruction in disability evaluation report writing shall include:

(1) The Qualified Medical Evaluator's Role in the Disability Evaluation Process (minimum recommended 1 hour)

How disability evaluation reports are used

The reasons why reports must be clear, complete and timely

The QME's role as an expert witness

Impact of the QME's report on the injured worker

QME ethics and the Confidentiality of Medical Information Act

(2) Elements of the Medical-Legal Report (minimum recommended 1 hour)

The Labor Code and regulatory requirements for medical-legal reports-

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

Evaluation of disability in California (impairment and disability)

The occupational history

The physician examination and the role of testing

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

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

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

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

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

Work restrictions

Work Capabilities

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

Causation

Determination of permanent and stationary status

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

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

Future medical care ~~treatment using the Medical Treatment Utilization Schedule~~

Review of records

Providing sufficient support for conclusions

(4) The Administrative Director's Disability Evaluation Protocols (minimum recommended 1 hour)

An overview of the Neuromusculoskeletal, Pulmonary, Cardiac, Immunologic, or Psychiatric protocols, and an in-depth discussion of measurement of impairment, calculations and rationale for rating under the AMA Guides, as relevant.

(5) The Third Party Perspective (minimum recommended 1 hour)

The report from the perspective of those who read it:

Judge(s), attorney(ies), insurer(s), rater(s), employer(s), qualified rehabilitation representative(s).

(6) Anatomy of a Good Report (small group or other interactive sessions -- minimum recommended 3 hours)

Discussion of examples of good reports and identification of weaknesses in reports

Opportunities for the practitioner to critique and/or correct reports.

If feasible, physician should have the opportunity to write a sample report.

Review of results of Administrative Director's annual report review and identification of common problems with reports.

(7) Mechanics of Report Writing (minimum recommended 1 hour)

The QME Process

Face to face time

Timelines for submission of report

Completion of required forms

Service of reports

Final questions and answers

(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 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.

(j) All audio or video tapes, computer programs and printed educational material used in the course must be submitted to the Administrative Director on or before the date the course is first given. Up to the full twelve hours of instruction may be completed by distance learning whenever the Administrative Director has approved the submitted course prior to the first day the course is given. All distance learning materials shall bear a date of release and shall be updated yearly. The education provider shall notify the Administrative Director in writing of the revision.

(k) No one shall recruit members or promote commercial products or services in the instruction room immediately before, during, or immediately after the presentation of a course. Education providers or vendors may display/sell educational materials related to workers' compensation or applications for membership in an area adjoining a course. A course provider or faculty member shall disclose on QME Form 119 (Faculty Disclosure of Commercial Interest) (see, 8 Cal. Code Regs. § 119) any significant financial interest held by faculty in or affiliation with any commercial product or service which is discussed in a course and that interest or affiliation must be disclosed to all attendees. An education provider shall file every Form 119 in its possession with the Administrator Director.

(l) The provider shall maintain attendance records for each disability evaluation report writing course for a period of no less than three years after the course is given. A physician attending the course must be identified by signature. The provider must submit a copy of the signature list to the Administrative Director within 60 days of completion of the course.

(m) The provider is required to give the QME Evaluation Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (see, 8 Cal. Code Regs. § 117) to course attendees and request they submit the form to the Administrative Director. This information shall not be used in lieu of a certification of completion given by the provider, as specified pursuant to section (n). Destruction by a provider or its employee of a QME's Evaluation Form or failure by such provider or

its employee to distribute Form 117 as part of its course shall constitute grounds for revocation of a provider's accredited status. The Administrative Director shall tabulate the responses and return a summary to the provider within 90 days of completion of the course.

(n) The provider shall issue a certificate of completion to the physician that states the name of the provider, the provider's number, the date(s) and location and title of the course. To be eligible for appointment as a QME, a physician must complete no less than 12 hours of the curriculum specified in Section 11.5(i) and must submit a copy of that certificate to the Administrative Director.

(o) Joint sponsorship of courses (as between an accredited and an unaccredited provider) must be approved by the Administrative Director prior to presentation of the course.

(p) The Administrative Director may audit a provider's course(s) at the request of the medical director to determine if the provider meets the criteria for accreditation. The Administrative Director may audit courses given by providers randomly, when a complaint is received, or on the basis of responses on QME Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (see, 8 Cal. Code Regs. § 117). An auditor shall not receive QME credit for auditing a course. The Administrative Director shall make written results of the audit available to the provider no more than 30 days after the audit is completed.

(q) Accredited providers that cease to offer disability evaluation report writing courses shall notify the Administrative Director in writing no later than 60 days prior to the discontinuing an approved course.

(r) The Administrative Director may withdraw accreditation of a provider or deny such a provider's application for accreditation on the following grounds (in addition to failure to meet the relevant requirements of subsections 11.5(a):

- (1) Conviction of a felony or any offense substantially related to the activities of the provider.
- (2) Any material misrepresentation of fact made by the provider.
- (3) Failure to comply with Administrative Director regulations.
- (4) False or misleading advertising.
- (5) Failure to comply with Administrative Director's recommendations following an audit.

(6) Failure to distribute QME Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (see, 8 Cal. Code Regs. § 117) cards to course attendees.

NOTE: Forms referred to above are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3 and 4067, Labor Code.

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

(a) All doctors of chiropractic shall be certified in workers' compensation evaluation by either a California professional chiropractic association, or an accredited California college recognized by the Administrative Director. The certification program shall include instruction in disability evaluation report writing that meets the standards set forth in section 11.5.

(b) California professional chiropractic associations or accredited California colleges applying to be recognized by the Administrative Director for the purpose of providing these required courses to chiropractors in California workers' compensation evaluation, shall meet the following criteria:

(1) The provider's courses shall be administered and taught by a California professional chiropractic association or a California chiropractic college accredited by the Council on Chiropractic Education. Instructors shall be licensed or certified in their profession or if a member of a non-regulated profession have at least two years experience in their area of instruction regarding workers' compensation issues.

(2) The provider's method of instruction and testing shall include all of the following:

(A) Lecture, didactic sessions and group discussion including an initial 8 hours of overview of the workers' compensation system and 36 additional hours in medical-legal issues for total minimum class time of 44 hours. Up to 4 hours of the instruction covering the regulations affecting QMEs and/or writing ratable reports may be satisfied by distance learning. The initial 8 hours of overview are transferable to any other approved program provider for credit;

(B) Passing a written test at the completion of the program to determine proficiency and application of course material;

(C) Writing a narrative conclusion to medical-legal issues in response to facts presented or a narrative report, in appropriate format, which would meet the standards of a ratable report;

(3) The initial 8 hours of the course material shall cover the following information:

(A) Overview of California Labor Code, DWC (Division of Workers' Compensation of the California Department of Industrial Relations) and the regulations of the Division of Workers' Compensation and of the Workers' Compensation Appeals Board governing QMEs, medical-legal reports and evaluations;

(B) Obligations of the treating and evaluating physicians;

(C) Review of appropriate workers' compensation terminology;

(4) The remaining 36 hours shall include but not be limited to the following:

(A) History and examination procedure requirements, including all relevant treatment, treatment utilization and evaluation guidelines and regulations adopted by the Administrative Director;

(B) The subjects outlined in subdivision 11.5(i) not already addressed in the first 8 hours, including but not limited to, proper use of the AMA Guides, the medical treatment utilization schedule (MTUS) adopted pursuant to Labor Code section 5307.27, ~~and relevant portions of the ACOEM practice guidelines;~~

(C) Apportionment, including the changes in Labor Code sections 4660, 4663 and 4664 by SB 899 (Stats. 2004, ch. 34);

~~(D) Vocational rehabilitation;~~

~~(E D) Continued and Ffuture medical care.~~

(5) The provider's course material and tests shall be submitted to the Administrative Director for annual review and the Administrative Director shall monitor a provider's course as necessary to determine if the provider meets the criteria for recognition.

(6) The provider's course advertising shall clearly state whether or not the course is recognized to satisfy the requirement for chiropractic California workers' compensation evaluation by the Administrative Director.

(c) Course Material shall also cover at a minimum, the material within the text of the "Physicians Guide to Medical Practice in the California Workers' Compensation System (Current Edition)."

(d) No one shall recruit members or promote commercial products or services in the instruction room immediately before, during, or immediately after the presentation of a course. Education providers or vendors may display/sell educational materials related to workers' compensation or applications for membership in an area adjoining a course. A course provider or faculty member shall disclose on QME Form 119 (Faculty Disclosure of Commercial Interest) (see, 8 Cal. Code Regs. § 119) any significant financial interest held by faculty in or affiliation with any commercial product or service which is discussed in a course and that interest or affiliation must be disclosed to all attendees. An education provider shall file every Form 119 in its possession with the Administrator Director.

Note: The "Physicians' Guide" does not appear as a part of this regulation. Copies are available through the Medical Director Division of Workers' Compensation, Attention: Medical Unit, P. O. 71010, Oakland, CA 94612.

Note: Authority cited: Sections 122, 133, 139.2, 139.3 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3 and 4067, Labor Code.

## **§ 17. Fee Schedule for QME**

(a) All physicians seeking QME status shall be required to pay to the Workers' Compensation Administration Revolving Fund, the following fee:

(1) QMEs performing 0-10 comprehensive medical-legal evaluations, \$ 110 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(2) QMEs performing 11-24 comprehensive medical-legal evaluations, \$ 125 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(3) QMEs performing 25 or more comprehensive medical-legal evaluations, \$ 250 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

~~(b) Subject to the restriction in Labor Code section 139.2(h)(3)(B) of 10 offices for conducting comprehensive medical-legal evaluations, individual QMEs who perform comprehensive medical-legal evaluations at more than one physician's office location shall be required to pay an additional \$ 100 annually per additional office location. Each physician's office listed with the Medical Director must be located within California, be identified by a street address and any other more specific location such as a suite or room number, and must contain the usual and customary equipment for the type of evaluation appropriate to the QME's medical specialty or scope of practice. This requirement applies to all QMEs regardless of whether the QME is a sole practitioner, or corporation or partnership pursuant to Corporations Code Chapter 2 (sections 15501-15533), Chapter 3 (sections 15611-15723) and/or Chapter 5 (sections 16100-16962).~~

( e b ) The Administrative Director may waive or return the statutory fee in the amount of \$ 110 for the completion of a survey of QMEs to validate the QME competency examination. The term "completion of the survey" means the return of the survey to the testing agency designated by the Administrative Director on or before the date for the return of the survey.

( d c ) At the time of paying the appropriate QME annual fee, each QME shall also complete and forward to the Medical Director with the annual fee a completed QME SFI Form 124, providing updated information about the QME's specified financial interests as defined in section 29 of Title 8 of the California Code of Regulations.

Note: Authority cited: Section 133, 139.2 and 5307.3, Labor Code. Reference: Section 139.2 Labor Code.

#### ARTICLE 2.6. QME Office Locations

#### § 26. QME Office Locations and Changes of Office Locations

(a) Subject to the restriction in Labor Code section 139.2(h)(3)(B) of 10 offices for conducting comprehensive medical-legal evaluations, individual QMEs who perform comprehensive medical-legal evaluations at more than one physician's office location shall be required to pay an additional \$ 100 annually per additional office location. Each physician's office listed with the Medical Director must be located within California, be identified by a street address and any other more specific location such as a suite or room number, and must contain the usual and customary equipment for the type of evaluation appropriate to the QME's medical specialty or scope of practice. This requirement applies to all QMEs regardless of whether the QME is a sole practitioner, or corporation or partnership pursuant to Corporations Code Chapter 2 (sections 15501-15533), Chapter 3 (sections 15611-15723) and/or Chapter 5 (sections 16100-16962).

(b) Between January 1, 2013 and July 1, 2013, Aan office location shall be maintained by a QME at least 180 days from the date the Medical Unit lists the office as an available to perform comprehensive medical-legal evaluations, except upon a showing of good cause to the Medical Director. For purposes of this section the term "good cause" includes, but is not limited to:

(1) natural disasters or other community catastrophes that interrupt the operation of the evaluator's business;

(2) the expiration of a written lease agreement of not less than 12 months duration for an office location defined in Section 26(a);

(3) the sale of real property by the QME of an office location defined in Section 26(a) where the QME vacates the property.

(c) All changes of office location or requests to change office locations, except in the case of natural disaster or community catastrophes, shall be communicated to the Medical Unit at least 30 days in advance.

Authority cited: Section 133, 139.2 and 5307.3, Labor Code. Reference: Section 139.2 Labor Code.

### ARTICLE 3. Assignment of Qualified Medical Evaluators, Evaluation Procedure

#### § 30. QME Panel Requests

(a) Unrepresented cases. Whenever an injured worker is not represented by an attorney and either the employee or the claims administrator requests a QME panel pursuant to Labor Code section 4062.1, the request shall be submitted on the form in section 105 (Request for QME Panel under Labor Code Section 4062.1)(See, 8 Cal. Code Regs. § 105) . The party requesting a QME panel shall:

1) attach a written objection indicating the identity of the primary treating physician, the date of the primary treating physician's report that is the subject of the objection and a description of the medical dispute that requires a comprehensive medical/legal report to resolve or attach a request for an examination to determine the compensability under Labor Code section 4060;

2) designate a specialty for the QME panel requested.

The claims administrator (or if none the employer) shall provide Form 105 along with the Attachment to Form 105 (How to Request a Qualified Medical Evaluator if you do not have an Attorney) to the unrepresented employee by means of personal delivery or by first class or certified mailing.

(b) Represented cases. Requests for a QME panel in a represented case, for all cases with a date of injury on or after January 1, 2005, and for all other cases where represented parties agree to obtain a panel of Qualified Medical Evaluators pursuant to the process in Labor Code section 4062.2, shall be submitted on the form in section 106 (Request for a QME Panel under Labor Code Section 4062.2)(See, 8 Cal. Code Regs. § 106). The party requesting a QME panel shall:

~~1) identify the disputed issue~~ attach a written objection indicating the identity of the primary treating physician, the date of the primary treating physician's report that is the subject of the objection and a description of the medical dispute that requires a comprehensive medical/legal report to be resolved or attach a request for an examination to determine the compensability under Labor Code section 4060;

~~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~~ 2) designate a specialty for the QME panel requested;

~~4~~ 3) state the specialty preferred by the opposing party, if known; and

~~5~~ 4) 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 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.

(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 Medical Director receives additional reasonable information requested from a party or both parties, needed to resolve the panel request. Reasonable information as used in this subdivision includes but is not limited to whether a QME panel previously issued to the injured worker was used.

(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 a claim within the ninety (90) day 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 injury to 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, 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(e) and 4062.2 if represented.~~

~~(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 decision issued by a Workers' Compensation Administrative Law Judge that the presumption in section 5402(b) has been rebutted and an order that a QME panel should be issued to determine compensability. The order shall also specify the residential or, if applicable, the employment based zip code from which to select evaluators and either the medical specialty of the panel or which party may select the medical specialty.~~

(e) If the request form is submitted by or on behalf of an employee who ~~no longer~~ does not 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 or by the geographic location of the employer's place of business, and for a represented employee by the office of the employee's attorney.

(f) To compile a panel list of three (3) independent QMEs randomly selected from the specialty designated by the party holding the legal right to request a QME panel, the Medical Director shall exclude from the panel, to the extent feasible, any QME who is listed by another QME as a business partner or as having a shared specified financial interest, as those terms are defined in sections 1 and 29 of Title 8 of the California Code of Regulations.

(g) The panel request in a represented case must be sent to the Medical Unit address on the QME Form 106 by means of first class mail delivered by 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, any other person or by other commercial courier or delivery services.

(h) The time periods specified in Labor Code sections 4062.1(c) and 4062.2(c), respectively, for selecting an evaluator from a QME panel and for scheduling an appointment, shall be tolled whenever the Medical Director asks a party for additional information needed to resolve the panel request. These time periods shall remain tolled until the date the Medical Director issues either a new QME panel or a decision on the panel request.

NOTE: Forms referred to above are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

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

**~~§31.2. The Qualified Medical Evaluator Panel Selection Instruction Form. QME Office Locations.~~**

~~(a) On January 1, 2013, a QME shall notify the Medical Director of the street address of the 10 or fewer office locations where the QME will conduct qualified medical evaluations.~~

~~(b) Between January 1, 2013 and July 1, 2013, an office location maintained by a QME shall not be substituted for or exchanged for a different office location, except upon a showing of good cause to the Medical Director. For purposes of this section the term "good cause" includes, but is not limited to natural disasters or other community catastrophes that interrupt the operation of the evaluator's business.~~

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.5 and 4067, Labor Code.

### § 31.3. Scheduling Appointment with Panel QME

(a) When the employee is not represented by an attorney, the unrepresented employee shall, within ten (10) days of having been furnished with the form, 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, within ten (10) days of the issuance of a QME panel, 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.

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

Note: Authority: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code

### § 31.5. QME Replacement Requests

(a) A replacement QME to a panel, or at the discretion of the Medical Director a replacement of an entire panel of QMEs, shall be selected at random by the Medical Director and provided upon request whenever any of the following occurs:

(1) A QME on the panel issued does not practice in the specialty requested by the party holding the legal right to request the panel.

- (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 has been waived pursuant to 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.
- (3) The injured worker has changed his or her residence address since the QME panel was issued and prior to date of the initial evaluation of the injured worker.
- (4) A physician on the QME panel is a member of the same group practice as defined by Labor Code section 139.3 as another QME on the panel.
- (5) The QME is unavailable pursuant to section 33 (Unavailability of the QME).
- (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 .
- (8) The claims administrator, or if none the employer, and the employee agree in writing, for the employee's convenience only, that a new panel may be issued in the geographic area of the employee's work place and a copy of the employee's agreement is submitted with the panel replacement request.
- (9) The Medical Director, upon written request, finds good cause that a replacement QME or a replacement panel is appropriate for reasons related to the medical nature of the injury. For purposes of this subsection, "good cause" is defined as a documented medical or psychological impairment.
- (10) The Medical Director, upon written request, filed with a copy of the Doctor's First Report of Occupational Injury or Illness (Form DLSR 5021 [see 8 Cal. Code Regs. §§ 14006 and 14007] and the most recent DWC Form PR-2 ("Primary Treating Physician's Progress Report" [See 8 Cal. Code Regs. § 9785.2] or narrative report filed in lieu of the PR-2 , determines after a review of all appropriate records that the specialty chosen by the party holding the legal right to designate a specialty is medically or otherwise inappropriate for the disputed medical issue(s). The Medical Director may request either party to provide additional information or records necessary for the determination.
- (11) The evaluator has violated section 34 (Appointment Notification and Cancellation) of Title 8 of the California Code of Regulations, except that the evaluator will not be replaced for this reason whenever the request for a replacement by a party is made more than fifteen (15) calendar days from either the date the party became aware of the violation of section 34 of Title 8 of the California Code of Regulations or the date the report was served by the evaluator, whichever is earlier.
- (12) The evaluator failed to meet the deadlines 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 requesting the replacement 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.

(13) The QME has a disqualifying conflict of interest as defined in section 41.5 of Title 8 of the California Code of Regulations.

(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 otherwise appears to be qualified and competent to address all disputed medical issues refuses to provide, when requested by a party or by the Medical Director, either: A) a complete medical evaluation as provided in Labor Code sections 4062.3(i) and 4062.3(j), or B) a written statement that explains why the evaluator believes he or she is not medically qualified or medically competent to address one or more issues in dispute in the case.

(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.

(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 name 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) Form 31.5 shall be used to request a replacement QME.

NOTE: Forms referred to above are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2, 4061, 4062, 4062.3, 4062.5, 5307.3 and 5703.5, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

### **§ 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 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) 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 and the specialty that the parties have agreed upon for the additional evaluation ~~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 and the residential or employment-based zip code from which to randomly select evaluators; 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~~ Where an acupuncturist has referred the parties to the Medical Unit to receive an additional panel because disability is in dispute in the matter ; or

(3) 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 and the residential or employment-based zip code from which to randomly select evaluators ~~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 and with the assistance 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.

(c) Form 31.7 shall be used to request an additional QME panel in a different specialty.

NOTE: Forms referred to above are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

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~~ Acupuncture Referrals**

(a ) In any case where an acupuncturist has been selected by the injured worker from a three-member panel and an issue of disability is in dispute, the acupuncturist shall, notify the parties to the examination that another specialty is required to determine disability and refer the parties to the Medical Unit to request an additional panel pursuant to section 31.7(b) (2). ~~request a consult from~~

~~a QME defined under section 1(z) to evaluate the disability issue(s). The acupuncturist shall evaluate all other issues as required for a complete evaluation. If requested by the QME acupuncturist to obtain a QME to provide the consulting evaluation the Medical Director shall issue a panel within fifteen (15) days of the request in the specialty selected by the QME acupuncturist.~~

(b) Except as provided in subdivision 32(a) above, no QME may obtain a consultation for the purpose of obtaining an opinion regarding permanent disability and apportionment consistent with the requirements of Labor Code sections 4660 through 4664 and the AMA Guides .

~~(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).~~

~~(d) Whenever an Agreed Panel QME or a QME determines that a consultation is necessary pursuant to this section and the physician selected for the consultation is not selected by the parties from a QME panel issued by the Medical Director, the referring QME must arrange the consultation appointment and advise the injured employee and the claims administrator, or if none the employer, and each party's attorney if any, in writing of the appointment date, time and place by use of QME Form 110 (QME Appointment Notification Form)(See, 8 Cal. Code Regs. § 110).~~

~~(e) The consulting physician shall serve the consulting report on the referring QME. Upon receipt of the consulting physician's report, the referring evaluator shall review the consulting physician's report, incorporate that report by reference into the referring evaluator's medical-legal report and comment on the consulting physician's findings and conclusions in the discussion sections of the evaluator's report.~~

~~(f) The referring QME shall file the comprehensive medical-legal report within the time periods specified in section 38 of Title 8 of the California Code of Regulations. In the event a consulting physician's report has not been received, or will not be received, in time to comply with the time periods, the referring QME shall serve the comprehensive medical-legal report timely, and upon receipt of the consulting physician's report, the referring evaluator shall, within fifteen (15) calendar days of receipt of the consulting report, issue a supplemental report that incorporates the consulting physician's report by reference, and comments on whether and how the findings in the consulting report change the referring evaluator's opinions. The referring evaluator shall list, in the report commenting on a consulting physician's report, all reports and information received from each party for the consulting physician, indicate whether each item was forwarded to the consulting physician, and for items not forwarded the reason the referring evaluator determined it was not necessary to forward the item to the consulting physician.~~

~~(g) With the exception of verbal communications between an injured worker and the consulting physician in the course of the consulting examination, all other communications by the parties, as well as any reports and other information from the parties for the consulting physician, if any, shall be made in writing directed only to the referring QME, who may forward such communications on to the consulting physician as appropriate. With the exception of deposing the consulting physician if necessary and except as provided in this subdivision, neither party nor a party's attorney, shall communicate directly with nor send correspondence or records directly to the consulting physician.~~

NOTE: Form referred to above is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2, 4061, 4062, 4064, 5307.3 and 5703.5, Labor Code. Reference: Sections 3209.3, 4061, 4062, 4062.1, 4062.2, 4064, 4067 and 5703.5, Labor Code.

### § 33. Unavailability of QME

(a) A QME who will be unavailable to schedule or perform comprehensive medical evaluations as an Agreed Panel QME or as a Panel QME for a period of 14 days, or up to a maximum of 90 days during a one year fee period, for any reason shall notify the Medical Director by submitting the form in Section 109 (Notice of Qualified Medical Evaluator Unavailability) (see, 8 Cal. Code Regs. § 109) at least 30 days before the period of unavailability is to begin. The Medical Director may, in his or her discretion, grant unavailable status within the 30-day notice period for good cause, including but not limited to medical or family emergency.

(b) At the time of requesting unavailable status, the QME shall provide the Medical Director with a list of any and all comprehensive medical/legal evaluation examinations already scheduled during the time requested for unavailable status. The QME shall indicate whether each such examination is being rescheduled or the QME plans to complete the exam and report while in unavailable status.

(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.

(d) It shall not be an acceptable reason for unavailability that a QME does not intend to perform comprehensive medical-legal evaluations for unrepresented workers. A QME who has filed notifications for unavailability totaling more than ninety (90) days during the QME fee period calendar year without good cause may be denied reappointment subject to section 52 of Title 8 of the California Code of Regulations. Good cause includes, but is not limited to, sabbaticals, or death or serious illness of an immediate family member.

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

(~~f~~e) 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 period the evaluator becomes unavailable, 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.

(g f) Whenever the Medical Director is notified by a party seeking an appointment with a Qualified Medical Evaluator, or otherwise becomes aware, that the QME is not available and not responding to calls or mail at a location listed for the QME, a certified letter will be sent to the QME by the Medical Director regarding his/her unavailability. If the Medical Director does not receive a response within fifteen (15) days of the date the certified letter is mailed, then the QME will be made unavailable at that location. The time a QME is placed on unavailable status pursuant to this subdivision shall count toward the ninety (90) day limit in subdivision 33(a) of Title 8 of the California Code of Regulations.

~~(h) The Medical Director shall designate a QME to be unavailable if on or after January 1, 2013 the QME has not notified the Medical Director of the 10 or fewer office locations where qualified medical evaluations will be conducted as specified in section 31.2(a).~~

NOTE: Form referred to above is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.5 and 4067, Labor Code.

### **§ 34. Appointment Notification and Cancellation**

(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, if known. 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.

(b) The QME shall schedule an appointment for a the first comprehensive medical-legal examination which shall be conducted only at the medical office listed on the panel selection form. ~~However, upon written request by the injured worker and only for his or her convenience, Any subsequent~~ the evaluation appointments may be moved to performed at another medical office of the selected QME if it is listed with the Medical Director as an additional office location and which is within a reasonable geographic distance from the injured worker's residence.

(c) The QME shall include within the notification whether a Certified Interpreter, as defined by Labor Code Section 5811 and subject to the provisions of section 9795.3 of Title 8 of the California Code of Regulations, is required and specify the language. The interpreter shall be arranged by the party who is to pay the cost as provided for in Section 5811 of the Labor Code.

(d) An evaluator, whether an AME, Agreed Panel QME or QME, shall not cancel a scheduled appointment less than six (6) business days prior to the appointment date, except for good cause. Whenever an evaluator cancels a scheduled appointment, the evaluator shall advise the parties in writing of the reason for the cancellation. The Appeals Board shall retain jurisdiction to resolve disputes among the parties regarding whether an appointment cancellation pursuant to this subdivi-

sion was for good cause. The Administrative Director shall retain jurisdiction to take appropriate disciplinary action against any Agreed Panel QME or QME for violations of this section.

(e) An Agreed Panel QME or a QME who cancels a scheduled appointment shall reschedule the appointment to a date within thirty (30) calendar days of the date of cancellation. The rescheduled appointment date may not be more than sixty (60) calendar days from the date of the initial request for an appointment, unless the parties agree in writing to accept the date beyond the sixty (60) day limit.

(f) An Agreed Medical Evaluator who cancels a scheduled appointment shall reschedule the appointment within sixty (60) calendar days of the date of the cancellation, unless the parties agree in writing to accept an appointment date no more than thirty (30) calendar days beyond the sixty (60) day limit.

(g) Failure to receive relevant medical records, as provided in section 35 of Title 8 of the California Code of Regulations and section 4062.3 of the Labor Code, prior to a scheduled appointment shall not constitute good cause under this section for the evaluator to cancel the appointment, unless the evaluator is a psychiatrist or psychologist performing an evaluation regarding a disputed injury to the psyche who states in the evaluation report that receipt of relevant medical records prior to the evaluation was necessary to conduct a full and fair evaluation.

(h) An appointment scheduled with an evaluator, whether an AME, Agreed Panel QME or QME shall not be cancelled or rescheduled by a party or the party's attorney less than six (6) business days before the appointment date, except for good cause. Whenever the claims administrator, or if none the employer, or the injured worker, or either party's attorney, cancels an appointment scheduled by an evaluator, the cancellation shall be made in writing, state the reason for the cancellation and be served on the opposing party. Oral cancellations shall be followed with a written confirming letter that is faxed or mailed by first class U.S. mail within twenty four hours of the verbal cancellation and that complies with this section. An injured worker shall not be liable for any missed appointment fee whenever an appointment is cancelled for good cause. The Appeals Board shall retain jurisdiction to resolve disputes regarding whether an appointment cancellation by a party pursuant to this subdivision was for good cause.

(i) The date of cancellation shall be determined from the date of postmark, if mailed, or from the facsimile receipt date as shown on the recipient's fax copy.

NOTE: Form referred to above is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2 and 4067, Labor Code.

## § 35. Exchange of Information and Ex Parte Communications

(a) The claims administrator, or if none the employer, shall provide, and the injured worker may provide, the following information to the evaluator, whether an AME, Agreed panel QME or QME:

(1) All records prepared or maintained by the employee's treating physician or physicians;

(2) Other medical records, including any previous treatment records or information, which are relevant to determination of the medical issue(s) in dispute;

(3) A letter outlining the issues that the evaluator is requested to address in the evaluation, which shall be served on the opposing party no less than 20 days in advance of the evaluation; :

(4) Where the evaluation is for injuries that occurred before January 1, 2013, concerning a dispute over a utilization review decision if the decision is communicated to the requesting physician on or before June 30 2013, For evaluations conducted on or before June 30, 2013, ~~Whenever~~ and the treating physician's recommended medical treatment is disputed, a copy of the treating physician's report recommending the medical treatment with all supporting documents, a copy of claims administrator's, or if none the employer's, decision to approve, delay, deny or modify the disputed treatment with the documents supporting the decision, and all other relevant communications about the disputed treatment exchanged during the utilization review process required by Labor Code section 4610;

(5) Non-medical records, including films and videotapes, which are relevant to determination of medical issue(s) in dispute, after compliance with subdivision 35(c) of Title 8 of the California Code of Regulations.

(b)(1) Except as expressly provided in Labor Code section 4062.3 (f) concerning communications with an agreed medical evaluator, aAll communications by the parties with the evaluator shall be in writing and sent simultaneously to the opposing party when sent to the medical evaluator, except as otherwise provided in subdivisions (c), (k) and (l) of this section. Labor Code section 4062.3(f) allows oral or written communications with an AME physician or the physician's staff relative to nonsubstantive matters such as the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, unless the appeals board has made a specific finding of an impermissible ex parte communication.

(2) Represented parties who have selected an Agreed Medical Evaluator or an Agreed Panel QME shall, as part of their agreement, agree on what information is to be provided to the AME or the Agreed Panel QME, respectively.

(c) At least twenty (20) days before the information is to be provided to the evaluator, the party providing such medical and non-medical reports and information shall serve it on the opposing party. Mental health records that are subject to the protections of Health and Safety Code section 123115(b) shall not be served directly on the injured employee, but may be provided to a designated health care provider as provided in section 123115(b)(2), and the injured employee shall be notified in writing of this option for each such record to be provided to the evaluator. 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 represent-

ed case, the injured worker's attorney shall do the same for any records or other information to be sent to the evaluator directly from the attorney's office, if any. The claims administrator, or if none the employer, shall include a cover letter or other document when providing such information to the employee which shall clearly and conspicuously include the following language: "Please look carefully at the enclosed information. It may be used by the doctor who is evaluating your medical condition as it relates to your workers' compensation claim. If you do not want the doctor to see this information, you must let me know within 10 days."

(d) If the opposing party objects within 10 days to any non-medical records or information proposed to be sent to an evaluator, those records and that information shall not be provided to the evaluator unless so ordered by a Workers' Compensation Administrative Law Judge.

(e) In no event shall any party forward to the evaluator: (1) any medical/legal report which has been rejected by a party as untimely pursuant to Labor Code section 4062.5; (2) any evaluation or consulting report written by any physician other than a treating physician, the primary treating physician or secondary physician, or an evaluator through the medical-legal process in Labor Code sections 4060 through 4062, that addresses permanent impairment, permanent disability or apportionment under California workers' compensation laws, unless that physician's report has first been ruled admissible by a Workers' Compensation Administrative Law Judge; or (3) any medical report or record or other information or thing which has been stricken, or found inadequate or inadmissible by a Workers' Compensation Administrative Law Judge, or which otherwise has been deemed inadmissible to the evaluator as a matter of law.

(f) Either party may use discovery to establish the accuracy or authenticity of non-medical records or information prior to the evaluation.

(g) Copies of all records being sent to the evaluator shall be sent to all parties except as otherwise provided in section (d) and (e). Failure to do so shall constitute ex parte communication within the meaning of subdivision (k) below by the party transmitting the information to the evaluator.

(h) In the event that the unrepresented employee schedules an appointment within 20 days of receipt of the panel, the employer or if none, the claims administrator shall not be required to comply with the 20 day time frame for sending medical information in subsection (c) provided, however, that the unrepresented employee is served all non-medical information in subdivision (c) 20 days prior to the information being served on the QME so the employee has an opportunity to object to any non-medical information.

(i) In the event that a party fails to provide to the evaluator any relevant medical record which the evaluator deems necessary to perform a comprehensive medical-legal evaluation, the evaluator may contact the treating physician or other health care provider, to obtain such record(s). If the party fails to provide relevant medical records within 10 days after the date of the evaluation, and the evaluator is unable to obtain the records, the evaluator shall complete and serve the report to comply with the statutory time frames under section 38 of Title 8 of the California Code of Regulations. The evaluator shall note in the report that the records were not received within the required time period. Upon request by a party, or the Appeals Board, the evaluator shall complete a supplemental evaluation when the relevant medical records are received. For a supplemental report the evaluator

need not conduct an additional physical examination of the employee if the evaluator believes a review of the additional records is sufficient.

(j) The evaluator and the employee's treating physician(s) may consult as necessary to produce a complete and accurate report. The evaluator shall note within the report new or additional information received from the treating physician.

(k) The Appeals Board shall retain jurisdiction in all cases to determine disputes arising from objections and whether ex parte contact in violation of Labor Code section 4062.3 or this section of Title 8 of the California Code of Regulations has occurred. If any party communicates with an evaluator in violation of Labor Code section 4062.3, the Medical Director shall provide the aggrieved party with a new panel in which to select a new QME or the aggrieved party may elect to proceed with the original evaluator. Oral or written communications by the employee, or if the employee is deceased by the employee's dependent, made in the course of the examination or made at the request of the evaluator in connection with the examination shall not provide grounds for a new evaluator unless the Appeals Board has made a specific finding of an impermissible ex parte communication.

(l) In claims involving a date of injury prior to 1/1/2005 where the injured worker is represented by an attorney and the parties have decided to each select a separate Qualified Medical Evaluator, the provisions of this section shall not apply to the communications between a party and the QME selected by that party.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

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

(a) Each evaluation examination and report completed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067 or 5703.5 shall be performed in compliance with all appropriate evaluation procedures pursuant to this Chapter.

(b) Each reporting evaluator shall state in the body of the comprehensive medical-legal report the date the examination was completed and the street address at which the examination was performed. If the evaluator signs the report on any date other than the date the examination was completed, the evaluator shall enter the date the report is signed next to or near the signature on the report.

(c) (1) The evaluator 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 appointment with the medical evaluator that are issues within the evaluator's scope of practice and areas of clinical competence. The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator as provided in subdivision 35(a) (3).

(2) If the evaluator declares the injured worker permanent and stationary for all conditions and that the injury has caused permanent partial disability, the evaluator shall complete the Physician's Re-

turn-to-Work & Voucher Report (DWC-AD Form 10133.36) and serve it on the claims administrator together with the medical report.

(d) At the evaluator's earliest opportunity and no later than the date the report is served, the evaluator shall advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for obtaining an additional evaluation pursuant to section 4062.1 or 4062.2 of the Labor Code and these regulations in another specialty. In the case of an Agreed Panel QME or a panel QME, the evaluator shall send a copy of the written notification provided to the parties to the Medical Director at the same time. However, only a party's request for an additional panel, with the evaluator's written notice under this section attached, or an order by a Workers' Compensation Administrative Law Judge, will be acted upon by the Medical Director to issue a new QME panel in another specialty in the claim.

(e) 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 evaluator who reported previously.

(f) Unless the Appeals Board or a Workers' Compensation Administrative Law Judge orders otherwise or the parties agree otherwise, whenever a party is legally entitled to depose the evaluator, the evaluator shall make himself or herself available for deposition within at least one hundred twenty (120) days of the notice of deposition and, upon the request of the unrepresented injured worker and whenever consistent with Labor Code section 5710, the deposition shall be held at the location at which the evaluation examination was performed, or at a facility or office chosen by the deposing party that is not more than 20 miles from the location of the evaluation examination.

(g) (1) Where the evaluation is performed on or before June 30, 2013, for injuries that occurred before January 1, 2013, concerning a dispute over a utilization review decision if the decision is communicated to the requesting physician on or before June 30 2013, wWhenever 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.

(2) For any evaluation performed on or after July 1, 2013, pursuant to Labor Code Section 4061, and regardless of the date of injury, an Agreed Medical Evaluator or Qualified Medical Evaluator shall not provide an opinion on any disputed medical treatment issue, but shall provide an opinion about whether the injured worker will need future medical care to cure or relieve the effects of an industrial injury.

Note: Authority cited: Sections 133, 139.2, 4062.3 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067, 4604.5, 4610.5, 4628, 5307.27, 5703.5 and 5710, Labor Code.

**§36. Service of Comprehensive Medical-Legal Evaluation Reports by Medical Evaluators Including Reports Under Labor Code Section 4061.**

(a) (1) Whenever an injured worker is represented by an attorney, the evaluator shall serve each comprehensive medical-legal evaluation report, follow-up comprehensive medical-legal evaluation report and supplemental evaluation report on the injured worker, his or her attorney and on the claims administrator, or if none the employer, by completing QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report Form) (See, 8 Cal. Code Regs. § 122) and attaching QME Form 122 to the report, unless section 36.5 of Title 8 of the California Code of Regulations applies.

(2) If applicable in a claim involving disputed injury to the psyche, the evaluator shall comply with the requirements of section 36.5 of Title 8 of the California Code of Regulations (Service of Comprehensive Medical-Legal Report in Claims of Injury to the Psyche)(See, 8 Cal. Code Regs. §§ 36.5, 120 and 121).

(b)(1) Whenever an injured worker is not represented by an attorney, the Qualified Medical Evaluator shall serve each comprehensive medical-legal evaluation report, follow-up evaluation report or supplemental report that addresses only disputed issues outside of the scope of Labor Code section 4061, by completing the questions and declaration of service on the QME Form 111 (QME Findings Summary Form) (See, 8 Cal. Code Regs. § 111), and by serving the report with the QME Form 111 attached, on the injured worker and the claims administrator, or if none on the employer, unless section 36.5 of Title 8 of the California Code of Regulations applies.

(2) If applicable in a claim involving disputed injury to the psyche, the evaluator shall comply with the requirements of section 36.5 of Title 8 of the California Code of Regulations (Service of Comprehensive Medical-Legal Report in Claims of Injury to the Psyche)(See, 8 Cal. Code Regs. §§ 36.5, 120 and 121.)

(c) (1) Whenever the evaluator is serving a medical-legal evaluation report that addresses or describes findings and conclusions pertaining to permanent impairment, permanent disability or apportionment of an unrepresented injured worker, the evaluator shall serve the following documents:

1. the evaluation report with a separator sheet, DWC-CA Form 10232.2 (see, 8 Cal. Code Regs. § 10205.14), as required by Title 8, California Code of Regulations section 10160(d)(4);:
2. the completed QME Form 111 (QME Findings Summary Form) (See, 8 Cal. Code Regs. § 111) with a separator sheet, DWC-CA form 10232.2 (see, 8 Cal. Code Regs.

- § 10205.14), as required by Title 8, California Code of Regulations section 10160(d)(4);
3. the DWC-AD Form 100 (DEU) (Employee's Disability Questionnaire)(See, 8 Cal. Code Regs. §§ 10160 and 10161) with a separator sheet, DWC-CA form 10232.2 (see, 8 Cal. Code Regs. § 10232.2), as required by Title 8, California Code of Regulations section 10160(d)(4);
  4. ~~and the~~ DWC-AD Form 101 (DEU) (Request for Summary Rating Determination of Qualified Medical Evaluator's Report)(See, 8 Cal. Code Regs. §§10160 and 10161), with the document cover sheet, DWC-CA form 10232.1 (see, 8 Cal. Code Regs. § 10232.1), and with a separator sheet, DWC-CA form 10232.2 (see, 8 Cal. Code Regs. § 10205.14), as required by Title 8, California Code of Regulations section 10160(d)(4); ;
  5. A document cover sheet, DWC-CA form 10232.1 (see, 8 Cal. Code Regs. § 10205.13).

The documents listed above shall be simultaneously served on the local DEU office, at the same time as serving the report, ~~QME Form 111, DWC-AD Form 100 (DEU) and DWC-AD Form 101 (DEU)~~ on the claims administrator, or if none the employer, and on the unrepresented employee within the time frames specified in section 38 of Title 8 of the California Code or Regulations, unless section 36.5 of Title 8 of the California Code of Regulations applies.

(c) (2) If applicable, in cases involving disputed injury to the psyche, the evaluator shall follow the procedures described in section 36.5 of Title 8 of the California Code of Regulations (Service of Comprehensive Medical-Legal Report in Claims of Injury to the Psyche)(See, 8 Cal. Code Regs. §§ 36.5, 120 and 121).

(d) If an evaluation report is completed for an unrepresented employee, in which the QME determines that the employee's condition has not become permanent and stationary as of the date of the evaluation, the parties shall request any further evaluation from the same QME if the QME is currently an active QME and available at the time of the request for the additional evaluation. If the QME is unavailable, a new panel may be issued to resolve any disputed issue(s). If the evaluator is no longer a QME, he/she may issue a supplemental report as long as a face-to-face evaluation (as defined in section 49(b) of Title 8 of the California Code of Regulations) with the injured worker is not required. In no event shall a physician who is not a QME or no longer a QME perform a follow up evaluation on an unrepresented injured worker.

(e) Except as provided in Section 37 concerning a request for factual correction, aAfter a Qualified Medical Evaluator has served a comprehensive medical-legal report that finds and describes permanent impairment, permanent disability or apportionment in the case of an unrepresented injured worker, the QME shall not issue any supplemental report on any of those issues in response to a party's request until after the Disability Evaluation Unit has issued an initial summary rating report, or unless the evaluator is otherwise directed to issue a supplemental report by the Disability Evaluation Unit, by the Administrative Director or by

a Workers' Compensation Administrative Law Judge. A party wishing to request a supplemental report pursuant to subdivision 10160(f) of Title 8 of the California Code of Regulations, based on the party's objection to or need for clarification of the evaluator's discussion of permanent impairment, permanent disability or apportionment, may do so only by sending the detailed request, within the time limits of subdivision 10160(f), directly to the DEU office where the report was served by the evaluator and not to the evaluator until after the initial summary rating has been issued.

Authority cited: Sections 133, 139.2 and 5307.3, Labor Code.  
Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067, 4600 and 4660-4664, Labor Code.

**§ 37. –[Reserved] Request for Factual Correction of a Comprehensive Medical-Legal Report From a Panel QME .**

(a) An unrepresented employee, or the claims administrator may request the factual correction of a comprehensive medical-legal report within 30 days of the receipt of a comprehensive medical report from a panel Qualified Medical Evaluator.

(b) A request for factual correction using the form in section 37(f) of title 8 of the California Code of Regulations shall be served on the panel Qualified Medical Evaluator who examined the injured worker, the party who did not file the request and the Disability Evaluation Unit office where the comprehensive medical-legal report was served. If the request for factual correction is served by the claims administrator, the injured worker shall have five (5) days after the service of the request for factual correction to respond to the corrections mentioned in the request. The injured workers' response shall be served on the panel Qualified Medical Evaluator and the claims administrator.

(c) If the request for factual correction is filed by the injured worker the panel Qualified Medical Evaluator shall have ten days after service of the request to review the corrections requested in the form and determine if factual corrections are necessary to ensure the factual accuracy of the comprehensive medical-legal report. If the request for factual correction is filed by the claims administrator or by both parties, the time to review the request for correction shall be extended to 15 days after the service of the request for correction.

(d) At the end of the period for the panel QME to review the request for factual correction in subdivision (c), the panel QME shall file a supplemental report with the DEU office where the original comprehensive medical-legal report was filed indicating whether the factual correction of the comprehensive medical-legal report is necessary to ensure the factual accuracy of the report and, where factual corrections are necessary, if the factual changes change the opinions of the panel QME stated in the report.

(e) In no event shall a party file any documents with the panel QME other than the form indicating the facts that should be corrected; nor shall the panel QME review any documents not previously filed with the panel QME pursuant to Section 35 of these rules.

(f) Request for Factual Correction of a Unrepresented Panel QME report form. [Form 37]

NOTE: Form referred to above are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

[QME Form 37]

Note: Authority cited: Sections 133 and 4061, Labor Code.

Reference: Section 4061, Labor Code.

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

(a) The time frame for an initial or a follow-up comprehensive medical-legal evaluation report to be prepared and submitted shall not exceed thirty (30) days after the QME, Agreed Panel QME or AME has seen the employee or otherwise commenced the comprehensive medical-legal evaluation procedure.

(b) If an evaluator fails to prepare and serve the initial or follow-up comprehensive medical-legal evaluation report within thirty (30) days and the evaluator has failed to obtain approval from the Medical Director for an extension of time pursuant to this section, the employee or the employer may request a QME replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations. Neither the employee nor the employer shall have any liability for payment for the medical evaluation which was not completed within the timeframes required under this section unless the employee and the employer each waive the right to a new evaluation and elect to accept the original evaluation, in writing or by signing and returning to the Medical Director either QME Form 113 (Notice of Denial of Request For Time Extension) or QME Form 116 (Notice of Late QME/AME Report - No Extension Requested) (See, 8 Cal. Code Regs. §§ 113 and 116).

(b c) All requests by an evaluator for extensions of time shall be made on form 112 (QME/AME Time Frame Extension Request) (See, 8 Cal. Code Regs. § 112). If the evaluation will not be completed on the original due date, the evaluator may request an extension from the Medical Director, not to exceed an additional 30 days. An extension of the time for completing the report shall be approved, as follows:

(1) When the evaluator has not received test results or the report of a consulting physician, necessary to address all disputed medical issues in time to meet the initial 30-day deadline, an extension of up to thirty (30) days shall be granted;

(2) When the evaluator has good cause, as defined in Labor Code section 139.2(j)(1)(B), an extension of fifteen (15) days shall be granted.

(e d) Not later than 5 days before the initial 30-day period to complete and serve the report expires, the evaluator shall notify the Medical Director, the employee and the claims administrator, or if

none, the employer, of the request for an extension by use of QME Form 112 (QME/AME Time Extension Request) (See, 8 Cal. Code Regs. § 112).

(~~d~~ e) The Medical Director shall notify the requesting evaluator and the parties of the decision on the extension request by completion of the box at the bottom of QME Form 112 (QME/AME Time Frame Extension Request)(See, 8 Cal. Code Regs. § 112). In the event that a request for an extension of time is denied, the Medical Director shall also send the parties QME Form 113 (Notice of Denial of Request for Time Extension)(See, 8 Cal. Code Regs. § 113) to be used by each party to state whether the party wishes to request a new evaluator or to accept the late report of the original evaluator.

(~~e~~-~~f~~) Whenever the Medical Director becomes aware that the report of a Qualified Medical Evaluator or an Agreed Medical Evaluator has not been completed within the required time under section 38 and no extension of time was requested by the evaluator, the Medical Director shall send the parties a Notice of Late QME/AME Report - No Extension Requested (QME Form 116) (See, 8 Cal. Code Regs. § 116). Each party shall complete the form and return it to the Medical Director in order to indicate whether or not the party wishes to accept the late report.

(~~f~~g) Good cause, as defined in Labor Code section 139.2(j)(1)(B) and section 38(b)(2) of Title 8 of the California Code of Regulations, means:

(1) medical emergencies of the evaluator or the evaluator's family;

(2) death in the evaluator's family;

(3) natural disasters or other community catastrophes that interrupt the operation of the evaluator's office operations;

(~~g~~ h) Extensions shall not be granted because relevant medical information/records (including Disability Evaluation Form 101 (Request for Summary Determination of Qualified Medical Evaluator's Report) (See, 8 Cal. Code Regs. § 10161)) have not been received. The evaluator shall complete the report based on the information available and state that the opinions and/or conclusions may or may not change after review of the relevant medical information/records.

(~~h~~i) Except as provided in Section 37 with respect to a request for factual correction, tThe time frame for supplemental reports shall be no more than sixty (60) days from the date of a written or electronically transmitted request to the physician by a party. The request for a supplemental report, except for requests for factual correction, shall be accompanied by any new medical records that were unavailable to the evaluator at the time of the original evaluation and which were properly served on the opposing party as required by Labor Code section 4062.3. An extension of the sixty

(60) day time frame for completing the supplemental report, of no more than thirty (30) days, may be agreed to by the parties without the need to request an extension from the Medical Director.

(~~1~~) Evaluators requesting time extensions will be monitored and advised by the Medical Director when such a request appears unreasonable or excessive. Failure to comply with this section may constitute grounds for denial of the QME's request for reappointment pursuant to section 51 of Title 8 of the California Code of Regulations.

Note: Authority cited: Sections 133, 139.2(j)(1), 4061, 4062 and 5307.3, Labor Code. Reference: Sections 139.2, 4061, 4062, 4062.1, 4062.2, 4062.5, 4064 and 4067, Labor Code.

## ARTICLE 10. QME Application Forms

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

~~[Please print QME Form 100 here]~~

NOTE: Form is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.  
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, Labor Code; Sections 1798 et seq., Civil Code, and Sections 6250 et seq. Government Code

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

[QME Form 104 (Rev. ~~2/2009~~-7/2013)]

NOTE: Form is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.

## ARTICLE 10.5. QME Process Forms

**§ 105. The Request for Qualified Medical Evaluator Panel - Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney) Form 105a for dates of injury on or after Jan. 1, 2013.**

~~[Please print QME Forms 105 and 105a here]~~

NOTE: Forms are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code

**§ 106. The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case) and Form 106a for dates of injury on or after Jan. 1, 2013.**

~~[Please print QME Forms 106 and 106a here]~~

NOTE: Forms are available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

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

[QME Form 109 (Rev. ~~2/2009~~-7/2013)]

NOTE: Form is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

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

[QME Form 110 (Rev. ~~2/2009~~-7/2013)]

NOTE: Form is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2,

4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

**§ 112. The QME/AME Time Frame Extension Request Form.**

[QME Form 112 (Rev. ~~2/2009~~ 7/2013)]

NOTE: Form is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

**§ 117. Qualified Medical Evaluator Course Evaluation Form.**

[QME Form 117 (rev. ~~February~~ 2009 7/2013)]

NOTE: Form is available at no charge by downloading from the web at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.