

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

Article 5.1

Spinal Surgery Second Opinion Procedure

Section 9788.01. Definitions.

As used in this Article:

- (a) "Agreed second opinion physician" is a physician agreed upon by an employer and represented employee pursuant to Labor Code Section 4062 subdivision (b).
- (b) "Completion of the second opinion process" occurs on the forty-fifth day after the receipt of the treating physician's report by the employer, unless the time has been extended by mutual written consent of the parties as provided in these regulations, or unless the time has been extended as provided in these regulations because the employee failed to attend an examination with the second opinion physician or agreed second opinion physician.
- (c) "CPT®" means the procedure codes set forth in the American Medical Association's Physicians' Current Procedural Terminology (CPT) 1997, copyright 1996, American Medical Association.
- (d) "Income" of a person includes the income of that person's business partner, physician member of the office of a group practice as defined in Labor Code section 139.3, spouse, cohabitant, and immediate family. Income of a second opinion physician does not include income from employment which had terminated prior to the time the physician was selected as a second opinion physician where there is no reasonable prospect of future employment.
- (e) "Material familial affiliation" means a relationship in which one of the persons or entities listed in subdivision (c) of Labor Code section 4062 is the parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew, niece, spouse, or cohabitant of the second opinion physician. For entities of the employer, insurer, physician, medical group, independent practice association, administrator, utilization review entity, facility, or institution mentioned in subdivision (c) of Labor Code section 4062, which are not persons, the familial affiliation shall be determined by considering the relationship of all

of the officers, directors, owners and management employees, and individual claims administrators and supervisors to the second opinion physician.

(f) "Material financial affiliation" includes all of the following financial relationships between the second opinion physician and another person or entity listed in subdivision (c) of Labor Code section 4062, or parent or subsidiary or otherwise related business entity of a person or entity:

(1) One has a direct or indirect investment worth two thousand dollars or more in the other;

(2) One is a director, officer, partner, trustee, employee, or holds any position of management in the other;

(3) One has a direct or indirect interest worth two thousand dollars or more in fair market value in an interest in real estate owned or controlled by the other;

(4) One has received income of any kind, including gifts, from the other, aggregating three hundred dollars or more within the twelve months prior to the time of selection as a second opinion physician, except that the following income shall not be counted for this purpose:

A. income for services as a second opinion physician;

B. income for services as a treating physician;

C. income for services as an agreed medical examiner;

D. income for services as a panel Qualified Medical Evaluator selected for unrepresented employees;

E. income from services as a Qualified Medical Evaluator for represented employees.

F. income for services as a Qualified Medical Evaluator for an employer from the first five cases in any twelve month period for the same employer, carrier, or administrator.

(5) One has an employment or promise of employment relationship with the other.

(g) "Material professional affiliation" is any relationship in which the second opinion physician shares office space with, or works in the same office of, any of the other persons or entities listed in subdivision (c) of Labor Code section 4062.

(h) "Parent, subsidiary, and otherwise related business entity" have the same meanings as in Section 18703.1, Title 2, Division 6 of the California Code of Regulations.

(i) "Receipt of the treating physician's report" is the day it was first received by the employer, insurance carrier, or administrator.

(j) "Retired spinal surgeon" is a physician currently licensed in the State of California who once had, but no longer has, hospital privileges to perform spinal surgery described in Section 9788.2 (c)(2). "Retired spinal surgeon" does not include a physician whose hospital privileges to perform spinal surgery were either surrendered by the physician or

were terminated or not renewed by the hospital, after disciplinary charges were filed or after a disciplinary investigation was commenced.

(k) “Second opinion physician” is the physician who is randomly selected pursuant to subdivision (b) of Labor Code section 4062 to render the second opinion on a treating physician’s recommendation of spinal surgery.

(l) “Spinal surgery” includes:

(1) any of the procedures listed in the Official Medical Fee Schedule denominated by the following CPT[®] procedure code numbers:

22100, 22101, 22102, 22103, 22110, 22112, 22114, 22116, 22210, 22212, 22214, 22216, 22220, 22222, 22224, 22226, 22548, 22554, 22556, 22558, 22585, 22590, 22595, 22600, 22610, 22612, 22614, 22630, 22632, 22800, 22802, 22804, 22808, 22810, 22812, 22830, 22840, 22841, 22842, 22843, 22844, 22845, 22846, 22847, 22848, 22849, 22850, 22851, 22852, 22855; 22899; 62287, 62292, 63001 through 63615; and,

(2) any other procedure, which is not listed in subdivision (l)(1), which is a non-diagnostic invasive procedure to the spine or associated anatomical structures to perform an operative or curative procedure which is not primarily an analgesic procedure; and,

(3) any procedure which involves the introduction of energy, a foreign substance, or a device that destroys tissue in the spine and/or associated structures, including nerves and disks, or involves the implantation of devices into the spine and associated structures, including nerves and disks, and which is not primarily an analgesic procedure;

(4) Notwithstanding subdivisions (1) through (3), “spinal surgery” does not include penetration of the body by needles in the performance of acupuncture by a practitioner whose license permits the performance of acupuncture, nor does “spinal surgery” include surgery which is required because of a bona fide medical emergency.

Authority: Sections 133, 5307.1 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.1. Employer's Objection To Report Of Treating Physician Recommending Spinal Surgery.

~~(a) An employer who objects to the treating physician’s recommendation for spinal surgery shall serve the objection, by mail or other rapid means of delivery, on the Administrative Director, the employee, the employee’s attorney, if any, and on the treating physician within 10 days of receipt of the treating physician’s report containing the recommendation. The objection shall be written on the form prescribed by the~~

~~Administrative Director in Section 9788. The employer shall include with the objection a copy of the treating physician's recommendation to which the employer objects. The objection shall include the employer's reasons, specific to the injured worker, for the objection to the recommended procedure. The employer's objection shall include a declaration made under penalty of perjury in the following form, of the date the report was first received by the employer, employer's insurance carrier, or administrator, date and time the objection~~

~~was sent, and the manner in which the objection was sent:~~

~~I declare under penalty of perjury of the laws of the State of California on (date) _____, that the enclosed physician's report was first received by the employer, insurance carrier or administrator on (date) _____, and that on (date) _____, I served the enclosed objection on (names of persons served) and on the Administrative Director by (means of service)_____.~~

~~The declaration and form must be executed by a principal or employee of the employer, insurance carrier, or administrator. The employer shall serve the original and one photocopy, or two originals, of the objection on the Administrative Director.~~

An objection to the treating physician's recommendation for spinal surgery shall be written on the form prescribed by the Administrative Director in Section 9788.11. The employer shall include with the objection a copy of the treating physician's report containing the recommendation to which the employer objects. The objection shall include the employer's reasons, specific to the employee, for the objection to the recommended procedure. The form must be executed by a principal or employee of the employer, insurance carrier, or administrator.

(b) Declarations.

(1) Declaration as to receipt of treating physician's recommendation.

The employer's objection shall include one of two versions of a declaration made under penalty of perjury regarding the date the report containing the treating physician's recommendation was first received by the employer, employer's insurance carrier, or administrator, in the format of the form prescribed by Section 9788.11.

Version A of the declaration shall be used if the declarant has personal knowledge of all the facts. Version B of the declaration may be used if the recipient employer, insurance carrier or administrator has a written policy of date-stamping every piece of mail on the date it was delivered to its office, this policy is consistently followed, the declarant is knowledgeable about the policy, and the report bears a legible date stamp showing when it was received in the office.

The declaration must be executed by a principal or employee of the employer, insurance carrier, or administrator.

(2) Declaration as to service of objection.

The employer's objection shall include a declaration made under penalty of perjury, in the format of the form prescribed by Section 9788.11 as to the date and time the objection was served, and the manner in which the objection was served.

The declaration must be executed by a principal or employee of the employer, insurance carrier, or administrator.

(c) Service of Objection.

(1) The employer shall serve the objection and the report containing the treating physician's recommendation on the Administrative Director, the employee, the employee's attorney, if any, and on the treating physician within 10 days of receipt of the treating physician's report containing the recommendation. An objection which is mailed to the Administrative Director and is received more than ten days after the date of receipt of the treating physician's report is untimely unless it bears a postmark date no later than the tenth day after the date of receipt of the treating physician's report. The employer shall serve the original of the objection on the Administrative Director.

(2) Service on the Administrative Director shall be by mail or physical delivery. Service on the employee, employee's attorney, and treating physician shall be by mail or physical delivery or, if prior consent has been obtained from the recipient to be served by fax, may be by fax.

~~(b)~~ d) If after an employer has served the objection on the Administrative Director, either the employer and a represented employee agree to an agreed second opinion physician or the employer withdraws its objection to the treating physician's recommendation for spinal surgery, the employer shall notify the Administrative Director within one working day of the agreement or withdrawal of objection. This notification may be by fax.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.11. Form for Employer's Objection To Report Of Treating Physician Recommending Spinal Surgery.

[DWC Form 233]

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.2. Qualifications of Spinal Surgery Second Opinion Physicians.

(a) An agreed second opinion physician may be any California licensed board-certified or board-eligible orthopaedic surgeon or neurosurgeon.

(b) The Administrative Director shall maintain a list of qualified surgeons who have applied, and whom the Administrative Director has found to be eligible to give second opinions under Labor Code § 4062 (b) after random selection by the Administrative Director.

(c) To apply to be on the Administrative Director's list, a physician shall demonstrate to the satisfaction of the Administrative Director that the physician:

- (1) Is currently board certified either as a neurosurgeon by the American Board of Neurological Surgery or the American Osteopathic Board of Surgery, or as an orthopaedic surgeon by either the American Board of Orthopaedic Surgery or the American Osteopathic Board of Orthopedic Surgery;
- (2) Has current hospital privileges in good standing at an accredited hospital in California to perform spinal surgery without proctoring;
- (3) Has an unrestricted license as a physician and surgeon in California;
- (4) Has no record of previous discipline by any governmental physician licensing agency, and is not then under accusation by any governmental physician licensing agency;
- (5) Has not been terminated or had discipline imposed by the Industrial Medical Council or Administrative Director in relation to the physician's role as a Qualified Medical Evaluator; is not then under accusation by the Industrial Medical Council or Administrative Director; has not been denied renewal of Qualified Medical Evaluator status, except for non-completion of continuing education or for non-payment of fees; has neither resigned nor failed to renew Qualified Medical Evaluator status while under accusation or probation by the Industrial Medical Council or Administrative Director or after notification that reappointment as a Qualified Medical Evaluator may or would be denied for reasons other than non-completion of continuing education or non-payment of fees; and has not filed any applications or forms with the Industrial Medical Council or Administrative Director which contained any untrue material statements; and
- (6) Has not been convicted of any crime involving dishonesty or any crime of moral turpitude.

(d) The Administrative Director may also accept to be on the list a retired spinal surgeon who does not meet the qualifications of subdivision (c)(2), but who does meet the qualifications of subdivisions (c)(1), (c)(3), (c)(5), (c)(6), and either (c)(4) or (e), if the retired spinal surgeon met the qualifications of subdivision (c)(2) within three years of application . The qualification of such physician shall not extend longer than three years from the last time the physician met the requirements of subdivision (c)(2).

(e) The Administrative Director may also accept to be on the list a physician who does not meet the qualifications of subdivision (c)(4), but who does meet the qualifications of subdivisions (c)(1), (c)(2), (c)(5), (c)(6), and either (c)(3) or (d), if at least five years have elapsed since discipline was imposed, the physician is not currently the subject of a

discipline accusation, and the Administrative Director finds that the physician has been rehabilitated.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.3. Application Procedures.

Physicians seeking to serve as a second opinion physician shall:

- (a) Make application to the Administrative Director on the form prescribed by the Administrative Director in Section 9788.31;
- (b) Furnish certified copies of their board certification and hospital privileges, and shall submit other documentation of their qualifications as the Administrative Director may require.
- (c) Both after making application, and after being notified by the Administrative Director that the application has been accepted, the physician shall keep the Administrative Director informed of any change of address, telephone, or fax number.
- (d) The physician shall also notify the Administrative Director within 10 days, if the California Medical Board, or any other state medical board from whom the physician is licensed, files any accusation or charges against the physician, or imposes any discipline.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.31. Application Form.

[DWC Form 232]

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code

Section 9788.32. Administrative Director's Action on Application.

- (a) After reviewing a completed application, if the Administrative Director finds that the applicant meets the qualifications, he/she shall notify the applicant by mail, and add the applicant's name to the list of second opinion physicians.
- (b) If a physician applicant does not qualify only because the physician has a record of previous discipline by a governmental physician licensing agency and if at least five years have elapsed since discipline was imposed, the Administrative Director shall notify the physician that the physician may within ninety days submit written evidence of the physician's rehabilitation from the offenses or inadequacies for which discipline was

imposed. If no evidence is submitted within that time period, the Administrative Director shall reject the application. If the physician submits evidence, the Administrative Director shall consider any written evidence submitted by the physician along with any other evidence the Administrative Director may obtain through investigation. The Administrative Director shall make a finding as to whether the physician has been rehabilitated from the offenses or inadequacies for which discipline was imposed. If the Administrative Director does not find that the physician has been rehabilitated, the Administrative Director shall reject the application.

(c) If the Administrative Director finally determines that an applicant does not meet the qualifications, he/she shall notify the applicant by mail that the application is rejected.

(d) An applicant whose application has been rejected may, within 30 days of the mailing of the notice of rejection, request a hearing by filing a written request for hearing with the Administrative Director. If a written request for hearing is not received by the Administrative Director within 30 days of the mailing of the notice of rejection, the applicant shall be deemed to have waived any appeal or request for hearing.

(e) Upon receipt of a written request for hearing, the Administrative Director shall serve a statement of issues, as provided in Government Code section 11504.

(f) Hearings shall be held under the procedures of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11500) and the regulations of the Office of Administrative Hearings (California Code of Regulations, Title 1, Division 2).

(g) Failure to file timely a mailed notice of defense or failure to appear at a noticed hearing or conference shall constitute a waiver of a right to a hearing.

(h) An applicant whose application has been rejected may reapply after:

1. one year has elapsed from the date his application was rejected; or
2. the time when the deficiencies which were the reasons for rejection have been corrected;

whichever occurs first.

Authority: Sections 133 and 5307.3, Labor Code; Sections 11400.20, 11415.10, Government Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.4. Removal of Physicians from the Spinal Surgery Second Opinion Physician List.

(a) The Administrative Director may remove from the list any physician whenever the Administrative Director learns:

- (a 1) That the physician no longer meets the qualifications to be on the list; or
- (b 2) That the California Medical Board, or any other state medical board from whom the physician is licensed, has filed any accusation against the physician; or
- (c 3) That the physician, having been notified by the Administrative Director of the physician's selection to render a second opinion in any case, has not served the second opinion report in that case within forty-five days after the receipt of the treating physician's report by the employer, unless the employee failed to attend an examination the time limits prescribed in these regulations; or
- (d 4) That the physician's application to be on the list contained statements which were not true; or
- (e 5) That the physician has at any time failed to disclose to the Administrative Director that the physician had a material professional, familial, or financial affiliation with any of the persons or entities listed in subdivision (c) of Labor Code section 4062 in any case in which the physician had been selected as a second opinion physician.
- (6) That the physician has declined to accept assignment as a second opinion physician at any time except during a period for which the physician had notified the Administrative Director of unavailability per Section 9788.45.
- (7) That the physician has filed notifications of unavailability for more than 120 days of any one year period. The first one year period shall commence with the date the physician was added to the list of spinal surgery second opinion physicians by the Administrative Director.
- (f b) Upon removal of a physician from the list, the Administrative Director shall advise the physician by mail of the removal, the Administrative Director's reasons for removal, and the right to request a hearing on the removal.
- (g c) A physician who has been mailed a notice of removal from the list may, within 30 days of the mailing of the notice of removal, request a hearing by filing a written request for hearing with the Administrative Director. If a written request for hearing is not received by the Administrative Director within 30 days of the mailing of the notice of removal, the physician shall be deemed to have waived any appeal or request for hearing.
- (h d) Upon receipt of a written request for hearing, the Administrative Director shall serve an accusation, as provided in Government Code section 11503.
- (i e) Hearings shall be held under the procedures of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code (commencing with section 11500) and the regulations of the Office of Administrative Hearings (California Code of Regulations, Title 1, Division2).

(j f) Failure to file timely a mailed notice of defense or failure to appear at a noticed hearing or conference shall constitute a waiver of a right to a hearing.

(k g) A physician who has been removed from the list may petition for reinstatement after one year has elapsed since the effective date of the decision on the physician's removal. The provisions of Government Code section 11522 shall apply to such petition.

Authority: Sections 133 and 5307.3, Labor Code, Sections 11400.20, 11415.10, 11522, Government Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.45. Unavailability of Second Opinion Physician.

A physician who will be unavailable to accept assignments for a period of 30 days or more for any reason, shall, at least 30 days prior to a period of unavailability, notify the Administrative Director in writing of the dates of the physician's unavailability.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.5. Random Selection of Second Opinion Physician.

(a) Within five (5) working days of the Administrative Director's receipt of an objection to a recommendation for spinal surgery, the Administrative Director shall randomly select a physician from those listed physicians located within a thirty (30) mile radius of the employee's address, provided that six physicians are located within that radius; and if six are not located within that radius, using ever increasing radii, until at least six (6) physicians are located from which a random selection may be made. The Administrative Director shall not include among the six physicians any physician that the Administrative Director has determined, from the information submitted to the Administrative Director by the physician and by the employer objecting to the treating physician's recommendation, has a material affiliation prohibited by subdivision (c) of Labor Code section 4062. The selected second opinion physician shall notify the Administrative Director if he/she has a material professional, familial, or financial affiliation with any of the persons or entities listed in subdivision (c) of Labor Code section 4062, within five working days of the physician's receipt of notification of selection. Upon such notification, the Administrative Director shall immediately select a replacement second opinion physician.

(b) Until the Administrative Director shall have a computerized system for random selection of physicians, the Administrative Director shall manually make random selections as in subdivision (a), except that instead of using an initial thirty mile radius, the Administrative Director shall select from those physicians located within the same zipcode as the employee's address, or if there are not at least six physicians located

within that zipcode, then additional adjacent zipcodes shall be used until there are at least six physicians found within the geographic area of selection.

(c) Upon selection by the Administrative Director, the second opinion physician shall, unless the physician notifies the Administrative Director of a material professional, familial, or financial affiliation, notify the parties within five working days of the physician's receipt of notification of selection of the date and time of any appointment for examination of the employee. If the physician arranges an appointment with the employee by telephone, the physician shall thereafter send the employee a written notice containing the details of the appointment.

(d) Within ten days of the selection of a second opinion physician, either the employer or the employee may object to the selection on the basis that the second opinion physician has a material professional, familial, or financial affiliation with any of the persons or entities listed in subdivision (c) of Labor Code section 4062, by filing a written objection with the Administrative Director and serving the other parties. The Administrative Director may either sustain the objection, in which case a new selection shall be made, or deny the objection.

(e) The Administrative Director shall exclude from the selection process any physician who has notified the Administrative Director of unavailability pursuant to Section 9788.45.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.6 Examination by Second Opinion Physician or Agreed Second Opinion Physician.

(a) The second opinion physician or agreed second opinion physician may physically examine the patient-employee, if the second opinion physician or agreed second opinion physician determines in his or her sole discretion that an examination of the patient-employee is required, but nevertheless must physically examine the patient-employee before finally rendering a second opinion in all cases in which the second opinion physician or agreed second opinion physician disagrees with the recommendation of the treating physician. If there is to be a physical examination of the patient-employee, the second opinion physician or agreed second opinion physician shall schedule the examination, and shall, at least ten days in advance of the scheduled examination, send written notice of the date, time, and place of the examination to the employee, the employee's attorney, if any, and the party who objected to the recommended surgery.

(b) The employer shall, and the employee may, furnish all relevant medical records to the second opinion physician or agreed second opinion physician, including x-ray, MRI, CT, and other diagnostic films, and any medical reports which describe the employee's current spinal condition or contain a recommendation for treatment of the employee's

spinal diagnoses. The employer shall serve all reports and records on the employee, except for x-ray, MRI, CT and other diagnostic films and for other records which have been previously served on the employee. If a special form of transportation is required because of the employee's medical condition, it is the obligation of the employer to arrange for it. The employer shall furnish transportation expense in advance of the examination. Except for during the examination itself, the a second opinion physician or agreed second opinion physician shall have no ex parte contact with any party.

(1) In the case of a represented employee, Except for matters dealing with the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, all communications between ~~the~~ a second opinion physician or agreed second opinion physician and any party shall be in writing, with copies served on the other parties.

(2) In the case of an unrepresented employee, except for during the examination and for matters dealing with the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, there shall be no communications between any party and a second opinion physician until after the report has been served.

(c) If the employee fails to attend an examination with a second opinion physician or agreed second opinion physician, and the physician is unable to reschedule the employee's appointment before the 35th day after receipt of the treating physician's report, the time to complete the second opinion process shall be extended for an additional ~~45~~ 30 days. If a second opinion physician is unable to schedule another examination within the ~~45~~ 30 additional days, the Administrative Director, upon request, will select another second opinion physician.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.7. Contents Of Second Opinion And Agreed Second Opinion Physician Reports.

(a) If the second opinion physician or agreed second opinion physician disagrees with the recommendation of the treating physician, the second opinion physician's or agreed second opinion physician's report may include a recommendation for a different treatment or therapy.

(b) Reports of second opinion physicians and agreed second opinion physicians shall include, where applicable:

(1) The date of the examination;

- (2) The patient's complaints;
- (3) A listing of all information received from the parties reviewed in preparation of the report or relied upon for the formulation of the physician's opinion;
- (4) The patient's medical history relevant to the treatment determination;
- (5) Findings on record review or examination;
- (6) The relevant diagnosis;
- (7) The physician's opinion whether or not the proposed spinal surgery is appropriate or indicated, and any alternate treatment recommendations;
- (8) The reasons for the opinion, including a reference to any treatment guidelines referred to or relied upon in assessing the proposed medical care;
- (9) The signature of the physician.

(c) Second opinion physicians and agreed second opinion physicians shall serve with each report the following executed declaration made under penalty of perjury:

"In connection with the preparation and submission of the attached report of second opinion on recommended spinal surgery, I declare, on the date next written, under penalty of perjury of the laws of the State of California, that I have no material familial affiliation, material financial affiliation, or material professional affiliation prohibited by Labor Code Section 4062, subdivision (c).

_____ date

_____ signature"

Authority: Sections 133 and 5307.3, Labor Code.
Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.8. Time Limits For Providing Reports.

Second opinion physicians and agreed second opinion physicians shall simultaneously serve the report on the Administrative Director, the employer, the employee, and the employee's attorney, if any, as soon as possible, but in any event within forty-five days of receipt of the treating physician's report (as defined herein), unless the parties have agreed in writing to extend the time to a later date.

Authority: Sections 133 and 5307.3, Labor Code.
Reference: Sections 4062 (b) and 4600, Labor Code

Section 9788.9. Charges for Services of Second Opinion Physician and Agreed Second Opinion Physician

Payment for the services of the second opinion physician shall be made by the employer. The fee shall be:

- (a) if the physician examines the injured worker, the same as the fee allowed under Section 9795 for a Basic Comprehensive Medical-Legal Evaluation, without modifiers which might otherwise be allowed under Section 9795(d); or,

(b) if the physician does not examine the injured worker, one half of the fee allowed under Section 9795 for a Basic Comprehensive Medical-Legal Evaluation, without modifiers which might otherwise be allowed under Section 9795(d).

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.

Section 9788.91. Filing of a Declaration of Readiness to Proceed.

(a) If the report of the second opinion physician or agreed second opinion physician concurs with the treating physician's recommendation for surgery, the employer shall authorize the surgery and communicate that authorization to the treating physician within three working days of receipt of the second opinion physician's report.

(b) If the report of the second opinion physician or agreed second opinion physician does not concur with the treating physician's recommendation for surgery, the employer shall file a declaration of readiness to proceed within 14 days of receipt of the second opinion physician's report, unless the parties agree with the determination of the second opinion physician or agreed second opinion physician, or unless the employer has authorized the surgery.

Authority: Sections 133 and 5307.3, Labor Code.

Reference: Sections 4062 (b) and 4600, Labor Code.