**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**Division of Workers’ Compensation**

**NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS**

**Subject Matter of Regulations: Workers’ Compensation**

**Qualified Medical Evaluator Regulations**

**TITLE 8. CALIFORNIA CODE OF REGULATIONS**

**SECTIONS 1, 11, 11.5, 14, 33, 35, 35.5, 50, 51, 52, 54, 55, 56, 57, 63, 10133.54 & 10133.55**

**NOTICE IS HEREBY GIVEN** thatpursuant to the requirements of Government Code section 11346.8 (c), and section 44 of title I of the California Code of Regulations, the Administrative Director of the Division of Workers’ Compensation, pursuant to the authority vested in the Administrative Director by Labor Code sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3, proposes to modify the text of the following proposed regulations which were the subject of a regulatory hearing held on March 13, 2023:

Amend section 11 Eligibility Requirements for Initial Appointment as a QME

Amend section 11.5 Disability Evaluation Report Writing Course

Amend section 14 Doctors of Chiropractic Certification in Workers’ Compensation

 Evaluation

Amend section 33 Unavailability of QME

Amend section 35 Exchange of Information and Ex Parte Communications

Amend section 35.5 **Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines**

Amend section 51 Reappointment and Denial of Reappointment

Amend section 55 **Reappointment: Continuing Education Programs**

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed modifications of proposed amendments to existing Qualified Medical Evaluator regulations, to the Department of Industrial Relations, Division of Workers’ Compensation. Written comments on the proposed changes will be accepted between May 12, 2023 and May 30, 2023. The written comment period closes on May 30, 2023. The Division of Workers’ Compensation will only consider comments received at the Department of Industrial Relations, Division of Workers’ Compensation by that date.

Submit written comments concerning the modifications to the proposed regulations prior to the close of the public comment period to the DWC contact person:

Maureen Gray

Regulations Coordinator

Department of Industrial Relations

P.O. Box 420603

San Francisco, CA 94142

All written comments received by May 30, 2023, which pertain to the indicated changes will be reviewed and will be summarized and responded to in the Final Statement of Reasons as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text. Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Ms. Gray must receive all written comments no later than 11:59 p.m. on May 30, 2023.

The text of the regulations and proposed modifications can be viewed via the web at: <http://www.dir.ca.gov/dwc/DWCrulemaking.html>.

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

**Comments sent to other e-mail addresses or facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

**AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE**

Inquiries concerning this proposed action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed modifications to amendments to the regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray

Regulations Coordinator

Department of Industrial Relations

Division of Workers’ Compensation

P.O. Box 420603

San Francisco, CA 94142

**BACKUP CONTACT PERSON**

In the event the contact person is unavailable, inquiries should be directed to the following backup contact person:

Winslow F. West, Industrial Relations Counsel

 Department of Industrial Relations

 Division of Workers’ Compensation

 Post Office Box 420603

 San Francisco, CA 94142

 E-mail: (wwest@dir.ca.gov)

The telephone number of the backup contact persons is (510) 286-7100.

**FORMAT OF PROPOSED MODIFICATIONS**

**Proposed Text Noticed for 45-Day Comment Period:**

The proposed text was indicated by underlining: added language. Deletions are indicated by strikeout: ~~deleted language~~.

**Proposed Text Noticed for 15-Day Comment Period on Modified Text:**

The proposed text was indicated by double underlining: added language. Deletions are indicated by double strikeout: deleted language.

**SUMMARY OF PROPOSED CHANGES**

**1. Section 11. Eligibility Requirements for Initial Appointment as a QME.**

**Subdivision (a)(4)** is amended to add a definition of a “current or otherwise valid certificate in California Workers Compensation Evaluation". The definition is added to make sure that any certificate submitted is one that has been received within three years of the current application for appointment as a QME. The three-year time limitation will ensure that applicants have been trained in the most recent version of materials offered for Certificates in Workers Compensation Evaluation.

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

**Subdivisions (i)(4) & (i)(5)** are moved to a position directly in front of subdivision (i)(6) to provide clarity and to improve comprehension in reading the regulatory text.

**Subsection (j)** is amended to add on site instruction to the requirement for in person learning to make clear that in person learning can also include the procedure for virtual learning as provided in the description for on-site learning.

**3. Section 14 Doctors of Chiropractic Certification in Workers’ Compensation Evaluation.**

**Subdivision (b)(2)(A)** was amended to add clarity by enunciating that 13 of the 25 hours of training must be conducted either in person or on site. This amendment adds clarity to the preceding sentence that outlines the amount of training that can be accomplished through distance learning. In addition, a missing strikethrough was added to eliminate the previous indication that four hours could be accomplished by distance learning.

**4. Section** **33 Unavailability of QME.**

**Subsection (a)** was amended to change from 60 to 90 days for the time allowed for scheduling the initial appointment after a request is made for the appointment. This change is to reflect the actual new time limit allowed for making an appointment in Title 8, California Code of Regulations section 31.3(e). In order to provide clarity, this subsection was amended to add a definition for a “new medical-legal evaluation appointment”. This subsection was also amended to delete the reference to the now defunct designation of “Agreed Panel QME”.

**5. Section 35 Exchange of Information and Ex Parte Communications.**

**Subsection (a)** was amended to delete the reference to the now defunct designation of “Agreed Panel QME”.

**Subdivision (b)(2)** was amended to delete the reference to the now defunct designation of “Agreed Panel QME”.

**Subsection (i)** was amended to delete the first two sentences of that subsection as proposed by the initial amendment to the regulation. Deleting the first two sentences takes away the ability of the QME to contact the treating physician to retrieve any medical records not provided by the parties. The new first sentence is also clarified to apply to any party to the action.

**6.** **Section 35.5 Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines.**

**Subsection (d)** was amended to delete the reference to the now defunct designation of “Agreed Panel QME”.

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

**Subsection (a)** was amended to add subdivision (a)(16) establishing additional grounds for the possible denial of reappointment to a QME. The additional grounds are any that would constitute a violation of Labor Code section 139.21(a)(1).

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

**Subdivision (b)(4)** was amended to correct a typographical error.

**Subdivision (b)(6)(ii)** was amended to allow for the posting of recommended educational topics to be discretionary with the DWC.

**Subdivision (c)(5)** was amended to allow for the designee of the Executive Medical Director to provide documentation of continuing education credit earned.