| QME PROCESS REGULATIONS | RULEMAKING COMMENTS  45 DAY COMMENT PERIOD | NAME OF PERSON/ AFFILIATION | RESPONSE | ACTION |
| --- | --- | --- | --- | --- |
| Labor Code section 4615 and Article 6 Discipline | Commenter would like to see Labor Code section 4615 applied to medical providers who are QME’s. Commenter recommends that upon filing of a criminal complaint or indictment for fraud, that the provider be suspended from participating in the QME process pending resolution of their criminal case. | Bill Warner, Manager  Special Investigations Unit  Intercare Holdings Insurance Services  January 23, 2023  Written Comment | The Administrative Director disagrees.  By its express terms, Labor Code § 4615 already applies to QMEs with respect to the stay provisions of any lien. In addition, in most cases QMEs suspended pursuant to Labor Code §139.21 are also suspended from the QME database. Suspension upon the filing of a criminal complaint or indictment for fraud would be a violation of the due process rights of the accused physician.  Amendments to the Labor Code are not the subject of this rulemaking and not within the jurisdiction of the DWC. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 55 | Commenter opines that adding additional hours to the current 12 hours per 24 months to the continuing education requirement is not prudent. Commenter states that there is no evidence that additional continuing education will result in improved QME report writing and would only place an addition time and expense burden upon current QME’s. Commenter states that there is no evidence that adding a 6 hour in person instructional component to the required QME report writing course (for new QMEs) would result in improved QME report quality. Commenter opines that distance learning/online instruction would be superior to live instruction. Due to the complex nature of the content, there is an advantage to be able to rewind/review content in order to learn at one’s own pace. | Michael Sparkuhl, MD  March 2, 2023  Written Comment | The Administrative Director disagrees.  Recent efforts on the part of the Administrative Director to assess medical-legal report quality have revealed an urgent need to take steps to improve the quality of medical-legal reports in the Workers’ Compensation System. The natural first step in that process is to improve and increase educational requirements that should directly effect an improvement in report quality. It is axiomatic that more educated and knowledgeable authors will produce a better quality report.  The effort to increase the required continuing education hours will also allow the physician to take courses on subject matters that have been identified as needed by the Workers’ Compensation community and the efforts of the DWC report quality committee.  The addition of in person or face-to-face instructional requirements ensures that part of the educational presentation requires the full attention of all participants and allows for the use of the Socratic method and/or interplay between the instructor and the participants. It is anticipated this will lead to a more beneficial educational experience.  In addition, the text will be updated to make clear that “in person” also encompasses the definition of on-site learning. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 55 | Commenter is a provider of QME continuing education and report writing courses. Commenter opines that adding an in person 6-hour report writing component is irresponsible in the post COVID-19 Pandemic recovery, that there is no evidence it will result in improved report quality and that his 12-hour remote learning course, that he has been providing for the past 6-years, is comprehensive and has met with considerable positive feedback from the physicians who have completed the course. Commenter opines that the additional 6-hours would be better employed in preparation of the required sample QME report that must be completed to pass the report writing course.  Commenter states that requiring physicians to attend an additional 6 hour in-person course, or otherwise, will not serve to improve report quality. Commenter lists the following advantages of remote learning:   * Distance learning via video streaming allows physicians to rewind and review complex topics and calculations. * Complex topics can more accurately be developed and presented by the lecturer. This allows course registrant physicians to gain a clear and concise understanding of the topics presented. * Physicians, by nature of their profession, work long hours. While utilizing distance learning, physicians can learn at their own time and pace. Complex topics are easier to comprehend when the mind is receptive and rested. Distance learning allows physicians to complete the required course work at times when they are best able to comprehend and retain the material presented.   Commenter requests that this proposal be removed due to the fact that it adds time and expense to physicians that are considering service as a QME and could result in a decrease in the number willing to become a QME.  Commenter notes that the proposed amendments contain no instruction as to which educational provider will be responsible for reviewing, commenting and assisting the physician completing the required sample QME report in order to pass the course. Commenter questions if the sample report review will be the responsibility of the 6-hour in person provider, or a distance learning provider. | David Buch, BS, DC, QME  March 2, 2023  Written Comment | The Administrative Director disagrees.  The addition of in person or face-to-face instructional requirements ensures that part of the educational presentation requires the full attention of all participants and allows for the use of the Socratic method and/or interplay between the instructor and the participants. It is anticipated this will lead to a more beneficial educational experience.  The hours of the initial course required in order to be certified as a QME have been expanded from 12 to 16 hours in an effort to ensure improved report quality. There is no delineation in the regulations that the provider of the in person portion of the course would be different from the provider of the distance-learning portion of the course. All of the subject matter coverage must be achieved with both the distance-learning and in person requirements of the course.  All of the benefits of distance learning are maintained and augmented by the benefits of in person training. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 55 | Commenter opines that adding additional hours to the current 12 hours per 24 months to the continuing education requirement is not prudent and should be removed. Commenter states that there is no evidence that additional continuing education will result improved QME report writing and would only serve as an additional burden of time and expense to those currently serving as QMEs.  Commenter states that there is no evidence that adding a 6 hour in person instructional component to the required QME report writing course for new QMEs would result in improved report quality. Commenter opines that distance learning/online instruction is superior to live instruction due to the complex nature of content, improved compliance, ability to rewind/review content and learn at one’s own pace. | Vance Johnson, MD  Qualified Medical Evaluator  March 2, 2023  Written Comment | The Administrative Director disagrees.  Recent efforts on the part of the Administrative Director to assess medical-legal report quality have revealed an urgent need to take steps to improve the quality of medical-legal reports in the Workers’ Compensation System. The natural first step in that process is to improve and increase educational requirements that should directly effect an improvement in report quality. It is axiomatic that more educated and knowledgeable authors will produce a better quality report.  The effort to increase the required continuing education hours will also allow the physician to take courses on subject matters that have been identified as needed by the Workers’ Compensation community and the efforts of the DWC report quality committee.  The addition of in person or face-to-face instructional requirements ensures that part of the educational presentation requires the full attention of all participants and allows for the use of the Socratic method and/or interplay between the instructor and the participants. It is anticipated this will lead to a more beneficial educational experience.  In addition, the text will be updated to make clear that “in person” also encompasses the definition of on-site learning. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 55 | Commenter recommends removing the requirement of 6-hours of in person instruction for the following reasons:   * There is no evidence that the requirement of six hours of in person instruction will improve report writing. * This is not the time for such a requirement in light of the risks associated with the spread of covid and many providers are older and at higher risk. * By comparison, the State Bar of California requires 25 hours of continuing education. A distinction is made by the State Bar between non-participatory and participatory programs. All programs can be done remotely. The focus should be on the quality of the program, not if it’s in person or provided remotely. | Johnathan Brand  March 6, 2023  Written Comment | The hours of the initial course required in order to be certified as a QME have been expanded from 12 to 16 hours in an effort to ensure improved report quality.  The addition of in person or face-to-face instructional requirements ensures that part of the educational presentation requires the full attention of all participants and allows for the use of the Socratic method and/or interplay between the instructor and the participants. It is anticipated this will lead to a more beneficial educational experience.  In addition, the text will be updated to make clear that “in person” also encompasses the definition of on-site learning. |  |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 55 | Commenter recommends that before raising the hours of QME-CME required, that DWC provide statistics that demonstrate that better QME reports equate to more education hours. Commenter suspects that this theory is untrue. | Marvin B. Zwerin, DO  March 8, 2023  Written Comment | The Administrative Director disagrees.  Recent efforts on the part of the Administrative Director to assess medical-legal report quality have revealed an urgent need to take steps to improve the quality of medical-legal reports in the Workers’ Compensation System. The natural first step in that process is to improve and increase educational requirements that should directly effect an improvement in report quality. It is axiomatic that more educated and knowledgeable authors will produce a better quality report.  Statistics on the effectiveness of a proposed change can only be ascertained after the change has been implemented and pursuant to subsequent study. | None. |
| General Comment | Commenter states that he has been a QME for 10 years and has successfully performed several hundred PsychiatricPQMEs. In the course of his work, he has come to understand many of those involved in  psychiatric QME work (psychologists and attorneys) do **not** understand the fact that psychiatric QME work is very different from QME work involving physical injuries.  Commenter alleges that both attorneys and psychologists fail to understand how causation and apportionment work in psychiatric cases. On the few occasions when he has been deposed, he alleges that the defense attorneys clearly do not understand how psychiatric injuries are caused and fail to understand how apportionment works in psychiatric cases.  Commenter submitted two attachments that provide discussions on both causation and apportionment in psychiatriccases **[available upon request]** to illustrate that the process involved in these decisions is very different from what'sinvolved in physical injury cases. Commenter would like to hear back from DWC on how to address this problem. | Joseph Nevotti, Ph.D,  Qualified Medical Evaluator  March 8, 2023  Written Comment | Noted.  A reply is not within the purview of rulemaking. | None. |
| Article 2, 11 | Commenter is a doctor of physical therapy and notes that currently, under section 11 medical doctors, osteopaths, chiropractors, dentists, optometrists, podiatrists, psychologists and acupuncturists can become a QME.  Commenter recommends that physical therapist be included in this list to become a QME as physical therapists are licensed healthcare professionals specializing in musculoskeletal system impairments and their effects on activities of daily living. Commenter opines that by including physical therapists as QMEs would be resource for alleviating the shortage of QMEs. | Alexis Sepulveda, MD  March 9, 2023  Written Comment  March 13, 2023  Oral Comment | Noted.  The request would require legislative action in the form of statutory amendment. This is beyond the scope of rulemaking. | None. |
| 1(c) | Commenter notes that the Initial Statement of Reasons (ISOR) explains the amendment to the definition of an “Agreed Panel QME” is required to ensure consistency with changes made to Labor Code section 4062.2(c), as part of SB 863. Commenter supports the proposed revised language to this definition for clarity purposes. However, commenter notes that the proposed change to the text refers to a cutoff based upon when the panel list is issued, whereas the intent stated in the ISOR refers to a cutoff based upon when the evaluation occurs. In rare situations where the parties utilized an Agreed Panel QME prior to January 1, 2013 and currently need a re-evaluation, commenter recommends that the Division consider making additional changes to this definition to align with the intent. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund  March 9, 2023  Written Comment | Noted.  The description in the Initial Statement of Reasons was not precise. The reference “to evaluations which took place prior to January 1, 2013” should have had the descriptor of “initial evaluations”. It is true that the determination of the applicability of the designation “Agreed Panel QME” refers to the time of issuance of the panel. The actual language of the regulation makes this clear. However, QMEs who have attained the status prior to the change in law are still entitled to maintain that status for any reevaluations. | None. |
| 35.5(h) | Commenter notes that this new subsection proposes an added requirement for an evaluator to include in their report a declaration under penalty of perjury of non-discrimination against the parties and/or injured worker in the evaluation process or in the content of the report.  Commenter acknowledges the DWC’s intent, as stated in the ISOR, to bring awareness to evaluators of “the possibility of implicit and explicit bias in medical-legal reporting.” Commenter notes that the ISOR is silent on how this inclusion to an evaluator’s report will impact the admissibility and reimbursement of the medical-legal report. Commenter states that this proposed added reporting guideline directly impacts the quality of the medical-legal report and may unintentionally lead to disputes regarding its admissibility and reimbursement if the requirement is not met. Commenter recommends that the DWC consider additional changes to this proposed added requirement that will address these concerns. | Andrea Guzman  Claims Regulatory Director  State Compensation Insurance Fund  March 9, 2023  Written Comment | The Administrative Director disagrees.  This requirement was not made a minimum standard pursuant to 8 CCR § 10682 and therefore should not affect the admissibility of the report. If the declaration is inadvertently missing from a report, the parties can request a factual correction pursuant to 8 CCR § 37. If the declaration is missing because the report is patently discriminatory in some fashion, then this regulation would allow submission to the Court that can then make a determination with respect to both admissibility and reimbursement. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 55 | Commenter does not want the DWC to increase continuing education hours for the QME program. Commenter opines that QMEs are leaving the program due to poor reimbursement and increased paperwork and that adding extra educational hours and the cost for these credits is an additional burden on QMEs. | Richard Koeningsberg, DPM  QME  March 10, 2023  Written Comment | The Administrative Director disagrees.  Recent efforts on the part of the Administrative Director to assess medical-legal report quality have revealed an urgent need to take steps to improve the quality of medical-legal reports in the Workers’ Compensation System. The natural first step in that process is to improve and increase educational requirements that should directly effect an improvement in report quality. It is axiomatic that more educated and knowledgeable authors will produce a better quality report.  The medical legal fee schedule was amended effective April 1, 2021, which substantially increased remuneration to QMEs. | None. |
| General Comment | Commenter supports DWCs proposed regulations but has some recommendations on the proposed text of the regulations. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment | Noted. | None. |
| General Comment | Commenter appreciates the opportunity to comment on these proposed regulations. The commenter opines that many of the proposed changes came about after discussions were held at a stakeholder meeting. Commenter appreciates DWC moving forward with these changes and her organization has been working to help improve the quality of QME reports. | Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | Noted. | None. |
| 11(f)(4) | Commenter notes that this subsection requires the physician to submit an application to take the QME test at least 45 calendar days prior to the testing date. Currently the requirement is 30 calendar days. Commenter opines that the requirement should not be increased to 45 calendar days and should stay at 30 calendar days.  Commenter states that there is a shortage of QMEs. Commenter has been encouraging their members to sit for the exam. Commenter opines that this change could cause some physicians to miss the deadline and therefore they would have to wait another 6 months to take the test. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director disagrees.  The clerical functions involved in processing the applications and accompanying documents coupled with required notifications to some applicants with regard to status, place a heavy burden on staff time. Increasing the time to accomplish the tasks enumerated improve the overall process. Any potential applicants missing the deadline should only apply to the initial testing period after adoption of the amendment to the regulation. | None. |
| 11(h) | Commenter supports anti-bias training, and his organization has incorporated a discussion about the potential for unconscious bias in their QME courses. Commenter recommends that the 2-hour requirement be reduced to 1 hour. It is the commenter’s experience that a 30-minute session does a good job of raising awareness of the potential for bias in evaluations and allows enough time to present potential examples and he opines that 2-hours would stretch the attention span of the participants and would be counter-productive.  Commenter opposes the requirement that the anti-bias training include at least one example relating to an evaluation and rating resulting from industrial breast cancer. Commenter states that all QMEs are classified as experts and their reports and testimony is considered and relied upon as an expert in their field by the court. Commenter notes that orthopaedic surgeons are not qualified nor are they seen as experts in opining on and industrial injury relating to breast cancer. Commenter does not understand how breast cancer training would be relevant to a musculoskeletal evaluation. Commenter states that section 35.5(d) supports that QMEs are not asked to evaluate issues outside of their scope of practice and clinical competency pursuant to Labor Code section 4062.1 and 4062.2.  Commenter supports requirement of two examples but requests that the Division leave the topic of these examples up to the course providers, so that the examples are most relevant to the course attendees. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director disagrees.  Elimination of bias in medical legal reporting is an important task that affects a substantial portion of the injured worker population. The two hour requirement does not have to be undertaken in one session. The requirement is for one hour of anti-bias training per year. This requirement is not onerous when viewed in relation to a yearly time requirement.  The requirement of one example involving breast cancer is instructive because it is one of the most graphic examples of bias in reporting related to apportionment, and assessment of permanent disability. Understanding the interplay of these factors can be educational even if it is not within the physician’s area of expertise. | None. |
| 11(i) | Commenter requests that the DWC be consistent in their reference to an “in-person” disability evaluation course and the definition of and “on-site” QME course in section 55(a)(1) which is defined as:  “On site programs can also be accomplished electronically where the instructor and the QME are in the same virtual location, as long as the virtual location provides a means for the instructor to continuously track who is attending the class virtually to ensure that attendees remain in the virtual location for the entirety of the actual instruction. In order to provide accreditation for virtual in person instruction, the provider and the QME must satisfy all of the requirements for distance learning as contained in subsection (a)(2) of this regulation.”  Commenter opines that this definition is more descriptive of what is allowed during an onsite course and recommends that the DWC substitute the term “on-site” for “in-person” and use the same definition as proposed in section 55(a)(1).  Commenter states that if the DWC requires only an in-person lecture, it will be difficult for course providers to immediately accommodate physicians that need to take the course. Commenter notes that the physicians would have to wait for the next scheduled in-person lecture and that it would be more costly for the physicians to attend because course providers would need to increase their registration fee to cover meeting costs (e.g., room rental, speaker expenses, food and beverage costs). Commenter opines that may delay physicians for being accredited as a QME and discourage others from applying. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director agrees. | References to “in person” will be amended to make clear that the definition of “on-site” in § 55(a)(1) also applies to “in-person”. |
| 35(i) | Commenter states that there is new language in this subsection that when a QME requests additional information from the treating physician, they are required to get the agreement of all parties that the records are relevant to settle a medical issue before they can bill for the record review.  Commenter notes there are concerns, brought up during stakeholder meetings, that some QMEs may request records that the parties do not need to settle the case. Commenter opines that it is becoming more common that that the parties send the QME no records or insufficient records for the QME to be able to evaluate the injury. Commenter states that when this occurs, his members request additional records from the treating physician – often an op-report – so that they can do a more complete job of evaluating the injury. Commenter opines that it this type of situation, it would be onerous on the physicians to get agreement of the parties and, therefore encourage the QME not to make the additional effort to obtain the records and simply state that they did not receive the needed records to evaluate the injury which will delay the resolution of the case.  Commenter opines that it is more reasonable to require the agreement when the additional record review would increase the cost to the parties.  As a compromise, commenter recommends the following revised language:  If the physician under this section is requesting records that would exceed the number of pages included in the basic fee for the specific service, the physician must first obtain agreement of the parties that the record was necessary and relevant to settle a medical issue in dispute. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | Noted.  With the advent of the new per-page reimbursement of the Medical-Legal Fee Schedule it is imperative that any records sent to the medical-legal evaluator be relevant to the issues, and satisfy the requirements of Labor Code 4062.3. Requiring the agreement of the parties to the evaluating physician seeking medical records from the treating physician has been characterized as too burdensome on the time of the physician. Therefore the regulation has been changed to remove the ability of the QME to seek records directly from the treating physician. | The proposed regulation has been changed. |
| 51(a)(4) | Commenter objects to the language in this subsection as “without good cause” is not defined. Commenter states that recently his organization has received more complaints that the injured worker is not allowing the QME to examine them during the evaluation. Commenter has heard the following feedback from its members:   * Injured worker refuses to remove their shirt for an upper extremity injury. * Injured worker is not forthcoming when the evaluator asks questions regarding their injury. * Injured workers are threating to the evaluator and/or their staff and commonly bringing weapons to their evaluation.   Commenter states these examples should constitute good cause; however, this is unclear in the proposed regulations.  Commenter requests that DWC define what would be good cause for the QME to cancel the evaluation and for clarification as to whether a QME can bill for the evaluation when there is good cause to terminate the evaluation. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director disagrees.  Giving examples of good cause in the regulation will not substitute for the use of common sense and professional judgment in ascertaining whether the injured worker is responsible for behavior that makes continuation of the evaluation either impossible or hazardous to the physician or the physician’s staff. Enumerated examples cannot cover all the possible scenarios that would determine good cause. In addition, examples of good cause are already present in title 8 CCR §§ 41 (h) & (k).  The question of billing for a terminated exam for good cause would depend on whether the circumstances fit within any of the enumerated billing codes under the new medical-legal fee schedule. For example, a medical records review report billing might be appropriate. If the injured worker is merely being uncooperative, this need not call for the cancellation of the entire evaluation. The physician can articulate in the report any impediments to a full and complete evaluation caused by the injured worker’s behavior.  Matters related to billing for a medical legal report is not the subject of this rulemaking. In addition, the WCAB would have jurisdiction over any dispute related to good cause and billing. | None. |
| 51(a)(5) | Commenter objects to the DWC citing five evaluations rejected in a two-year period as a basis for the QME to be disciplined.  Commenter notes that the number of reports generated by a QME can vary depending on the number of evaluations being performed by a QME. Commenter opines that it would be more equitable to base the disciplinary threshold on a percentage of the total number of evaluations performed by the QME. Commenter recommends that this percentage should be 10% of reports rejected within a two-year period. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director disagrees.  The rejection of five reports is a statutory impediment to reappointment pursuant to Labor Code § 139.2(d)(2) | None. |
| 55(a)(2)(B) | Commenter states the language in this subsection seems to be restricting a program to eight hours. Commenter opines that the DWC’s intention is that a program is restricted to no more than 8 hours per day – not per program and notes that a provider may want to hold a 2-day course – 8 hours each day or a total of 16 hours.  Commenter recommends the following revised language:  “Credit for distance learning course shall be granted for the actual time spent viewing, listening to or participating I the program and for reasonable and necessary time to take the examinations for up to eight hours per day.” | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director disagrees.  The only change in the regulation is the increase in hours allowed for distance learning programs based upon the increase in continuing education hours required. If a provider wants to give a two-day program, they can simply choose a different name for the second day of the program. | None. |
| 55(b)(3) | Commenter requests that the requirement be changed to one hour based on the reasoning provided under his comment regarding section 11(h). | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment | The Administrative Director disagrees.  Elimination of bias in medical legal reporting is an important task that affects a substantial portion of the injured worker population. The two hour requirement does not have to be undertaken in one session. The requirement is for one hour of anti-bias training per year. This requirement is not onerous when viewed in relation to a yearly time requirement.  The requirement of one example involving breast cancer is instructive because it is one of the most graphic examples of bias in reporting related to apportionment, and assessment of permanent disability. Understanding the interplay of these factors can be educational even if it is not within the physician’s area of expertise. | None. |
| 63(b) | Commenter notes that this proposed regulation allows the physician 30 days to submit a written appeal. Commenter requests clarification as to whether this 30-day period starts from when the notice is received by the QME or 30 days from the date of the Division’s order and if these are calendar days or workdays.  In any case, commenter opines that the 30-day time frame is too short and requests that it be changed to 90 calendar days to file an appeal. | Michael Klassen MD  President  California Orthopaedic Association (COA)  March 13, 2023  Written Comment  Diane Przepiorski  Executive Director  California Orthopaedic Association (COA)  March 13, 2023  Oral Comment | The Administrative Director disagrees.  The Code of Civil Procedure already allows for five days added to the time to perform any action based upon a mailed notice. Therefore, in actuality the physician has 35 days from the date of the notice.  Based upon prior challenges to the disciplinary process alleging a violation of due process for delays in providing adjudication of a physician’s claim, adding additional time to the beginning of the disciplinary process would only invite further litigation. The current period provided allows for timely due process and resolution of disciplinary matters. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 14(b); 55 | Commenter has represented the interests of the California Chiropractic Association and Chiropractic QMEs for many years and has repeatedly spoken of what he perceives to be the regulatory inequity of DC’s having to prove with more training hours (i.e. 44 hours of training) compared to other provider groups.  Commenter notes that the proposed regulations related to hours required to sit for the QME exam included a distinction between MD /DO physicians and doctors of chiropractic. Commenter notes that MD/DO physicians must complete 16 hours, up from 10 hours of instruction, while doctors of chiropractic are required to obtain 25 hours of instruction. Commenter questions why this inequity is being perpetuated going forward.  Commenter notes that Labor Code section 3903.2 defines health care practitioners as “physicians,” including doctors of chiropractic.  Commenters states that the revised regulations include a 2 hour requirement by the QME to demonstrate understanding and to obtain instruction under state laws dealing with the concepts to avoid bias.  Commenter opines that the DWC is creating differentiation between categories of providers without any empirical evidence that one class of providers should be shouldered with increased educational requirements for performing the activities required of a QME. Commenter states that the QME evaluation include criteria every provider must address as part of the QME rating, irrespective of licensure.  Commenter thanks the DWC for recognizing and correcting prior inequities. | Moses Jacob, DC  California Chiropractic Association  March 13, 2023  Written and Oral Comment | The Administrative Director disagrees.  Historical evidence suggests that at the beginning of the QME program, there was a perceived lack of equivalency between training of a chiropractic physician and a medical doctor. In recognition of this discrepancy, the California Chiropractic Association recommended the 44-hour certification course in Workers’ Compensation evaluation. The Industrial Medical Council accepted this proposal.  The chiropractic community has expressed disagreement with the conclusions of the historical background. Chiropractors cite the fact that they currently undergo independent continuing education requirements for their chiropractic licensing. There are also chiropractic subspecialties, which encompass some of the training required by the former 44 hour course.  The hourly requirement for this Workers’ Compensation evaluation certification is reduced for the convenience of chiropractors and to facilitate the practical continued offering of the course.  The two hours of anti-bias training is also required as a prerequisite to appointment for non-chiropractic physicians. Therefore, this does not constitute an inequity in any way. | None. |
| 1(k), 11(b) (1), 11(h), 11.5, 11.5(i), 11.5(j); 14(b); 55 | Commenter has recently become a chiropractic QME and notes that new doctors are needed in the workers’ compensation system as many are reaching retirement age. Commenter opines that the mandatory 44-hour course for chiropractors (now is 24 – thank you), prior to sitting for the QME exam, is discriminatory and creates greater barriers to injured workers’ access to quality evaluation and treatment.  Commenter states her appreciation of the DWCs long overdue attempt to improve chiropractic parity in becoming a QME, recognize that they all take the same exam, and states that all physicians under Labor Code section 3209.3 should be treated equally in terms of the requirement to become a QME. | Margaret Spicer, DC  QME  California Chiropractic Association  March 13, 2023  Written and Oral Comment | The Administrative Director disagrees.  Historical evidence suggests that at the beginning of the QME program, there was a perceived lack of equivalency between training of a chiropractic physician and a medical doctor. In recognition of this discrepancy, the California Chiropractic Association recommended the 44-hour certification course in Workers’ Compensation evaluation. The Industrial Medical Council accepted this proposal.  The hourly requirement for this Workers’ Compensation evaluation certification is reduced for the convenience of chiropractors and to facilitate the practical continued offering of the course. | None. |
| Medical Provider Network (MPN) | Commenter states that when she was a teenage competitive swimmer, she experienced bilateral rotator cuff tears and that her injury was successfully treated by a chiropractor without the need for surgery which inspired her to become a chiropractor. After treating personal injury cases for the past 6 years she decided to become a QME and researched how she could become a primary treating provider in the workers’ compensation system. Commenter discovered that to become part of an MPN, she would have to join the third-party companies that control most insurance programs and that these companies require her to dramatically reduce her fees below the OMFS. Commenter notes that many of her colleagues do not want to treat in an MPN due to the 15% to 50% transfer of funds from their pocket to the third-party companies.  While studying for the QME exam, commenter picked up additional hours as an associate in an office that accepted workers’ compensation cases. Commenter saw how claims were rejected, legitimate injuries that were delayed treatment leading to other compensatory injuries. Commenter notes that consistent with the MTUS, workers under chiropractic care demonstrably improved; however, more care was denied after the arbitrary 24-visit cap. Commenter opines that this is not enough treatment for patients and that regular chiropractic visits cost substantially less than surgeries and long-term side effects of medications. | Margaret Spicer, DC  QME  California Chiropractic Association  March 13, 2023  Written and Oral Comment | Noted. | None. |
| General Comment | Commenter represents QMEs and has been in the business of med-legal evaluations since the mid ‘80’s and has watched the industry mature. Commenter notes that the proposed regulations have no page numbers. | Steve Cattolica  SC Advocates  March 13, 2023  Oral Comment | Noted. | None. |
| 1(ff) | Commenter notes that there is a typo in this section where it makes reference to 9793(m). Remove the “/” before m. | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | The Administrative Director disagrees. | Upon close inspection and magnification of text, there is a strikeout of lowercase “l” and an underlined lowercase “m” in the parentheses after the citation of 9793. This express the intent to change the citation from “9793(l)” to “9793(m)” |
| 11(a)(2)(C) | Commenter references the following phrase in the last line:  “…both deem to be equivalent to board certification in a specialty.”  Commenter acknowledges that there are no proposed changes to this subsection but states that it may substantiate the ability of a neuropsychologist to become a QME as a neuropsychologist. Commenter encourages the DWC to consider this. | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | Noted. | None. |
| 11(a)(4)  11(b)(1) | Commenter appreciates the change the Chiropractor’s QME training requirement from 44 hours to 25 hours in this subsection. Commenter questions that structural meaning to putting documentation of the 25-hour training here. Commenter notes that this 25-hour requirement does not relieve them of the 16 hours of training cited in 11(b)(1).  Commenter questions if the required number of training hours for Chiropractors to qualify as a QME is now 25 hours of training plus 16 hours for disability report writing, which equals 41. Commenter opines that this is not much of a concession regarding hours and states that clarity is needed.  Commenter recommends restructuring the paragraphs and putting the chiropractor’s requirement where it is now titled “M.D.’s.” | Steve Cattolica  SC Advocates  March 13, 2023  Written and Oral Comment | The Administrative Director disagrees.  Regulation 11(b)(1) specifically exempts “…Chiropractors who submit documentation showing compliance with section 11(a)(4)…” Section 11(a)(4) describes the Workers’ Compensation Evaluation Certificate articulated in section 14. Therefore, the chiropractor who completes the 25 hour requirement does not have to engage in the additional 12 hour disability evaluation course described in section 11(b)(1). | None. |
| 11(i) | Commenter notes that these proposed regulations will not take effect until January 1, 2024. Commenter opines that this effective date, 10 months from now, represents a deterrent to growing the corps of evaluators. | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | Noted. | None. |
| 11.5(i)(4)  11.5(i)(5) | Commenter opines that these two subsections should be indented to match the structure of the regulation.  Commenter opines that by subsection (i)(4) referencing subsection 11(h) that it negates the need to repeat that requirement with the parenthetical “mandatory minimum of at least 2 hours.”  Regarding (i)(5), commenter recommends replacing the word “recommended” with the word “required.” Commenter opines that if two hours is merely recommended, then 30 minutes might be all that is offered. | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | Noted.  Noted.  The Administrative Director disagrees.  The use of the term “recommended” allows continuing education providers flexibility in the courses offered and allows physicians flexibility in the courses that they take. | The format will be changed.  None. |
| 11.5(i)(7) | Commenter states that the word “recommend” is not needed when speaking in terms of a minimum unless the DWC expects an education provider to spend less time. Commenter recommends that the regulations consistently speak in terms of minimum and mention a maximum only when applicable. | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | The Administrative Director disagrees.  The use of the term “recommended” allows continuing education providers flexibility in the courses offered and allows physicians flexibility in the courses that they take. | None. |
| 11.5(i)(8) | Commenter states that when he first convened the “quality report” panel and provided the group’s initial records, the goal was to define what “good” meant. Commenter opines that Labor Code section 4628 and CCR section 10682 together outline the fundamental building blocks of a “good” report and should be referenced in this subsection. | Steve Cattolica  SC Advocates  March 13, 2023  Written and Oral Comment | Noted.  The proposed regulations do not make a change to this section other than numbering. | None. |
| 33(c) | Commenter states that the word “new” is used in this subsection without definition. Commenter recommends substituting the word “new” with “previously unscheduled.” | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | The Administrative Director disagrees.  As used in the context of the regulation, “new” could very well apply to previously scheduled evaluations that went off calendar for some reason. | None. |
| 33(d) | Commenter states that this subsection addresses two situations. The first is unrepresented injured workers and the second is the limitation on filing notifications of unavailability. Commenter recommends that subsection (e) address the limitations on filing unavailability notices and subsequent paragraphs be “renumbered.” | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | Noted.  The fact that the regulation addresses two separate situations in one subsection does not render the regulation ambiguous in any way. | None. |
| 35 | Commenter states that this section continues to include reference to the non-existent “Agreed panel QME” and should be deleted. | Steve Cattolica  SC Advocates  March 13, 2023  Written Comment | Noted. | The term will be deleted. |
| 35(i) | Commenter opines that the proposed new language contemplates what may be a lengthy process and one easily obfuscated, jeopardizing the evidentiary value of the QME’s report and placing the QME in jeopardy of missing submission deadlines. Commenter states that the administrative process this would require is a new and likely expensive administrative process for QME staff, for which there is no reimbursement. Commenter recommends letting the QME get what he/she believes is needed and to let them decide the relevance. | Steve Cattolica  SC Advocates  March 13, 2023  Written and Oral Comment | The Administrative Director disagrees.  With the advent of the new per-page reimbursement of the Medical-Legal Fee Schedule it is imperative that any records sent to the medical-legal evaluator be relevant to the issues, and satisfy the requirements of Labor Code 4062.3. Requiring the agreement of the parties to the evaluating physician seeking medical records from the treating physician will satisfy both of these requirements. The parties are alerted to and agree to the physician receiving additional medical records that will then be added to the per-page billing. The notification and agreement requirements allow the parties to make the determination as to the relevancy of the records and their addition to the per-page billing. If the parties do not agree, then the physician should not review the records as part of the evaluation and is therefore spared controversy with respect to the per-page billing or objections to the relevancy of the records reviewed. |  |
| 35.5(f) | Commenter states that the content of this subsection is not in question. Commenter opines that often the QME is not at fault, but it is their management company, which has limited accountability, who is at fault for some administrative or other problem. | Steve Cattolica  SC Advocates  March 13, 2023  Oral Comment | Noted. | None. |
| 35.5(h) | Commenter recommends the following revised language:  Each reporting evaluator shall include **during** the report a declaration under penalty of perjury that the evaluator did not discriminate in any way against the parties to the action or the injured worker in the evaluation process or **within** the content of the report. | Steve Cattolica  SC Advocates  March 13, 2023  Written and Oral Comment | The Administrative Director disagrees.  The suggested language does not add clarity to the interpretation of the regulation which as written is not ambiguous. | None. |
| 50(f) | Commenter opines that the content of this paragraph is not in question; however, as the industry became very aware of the QME purge, often it was not the QME him/her-self, but their management company at fault for the administrative or other problems. Commenter states that the QME may want and expect cooperation for the staff assigned to him/her but does not have the control necessary to compel cooperation or accountability. Commenter opines that there should be formal recognition of the great value, but limited accountability assigned to management companies. | Steve Cattolica  SC Advocates  March 13, 2023  Written and Oral Comment | The Administrative Director disagrees.  The DWC does not have jurisdiction over medical management companies. The role of the medical management company is not the subject of this rulemaking.  The physician enters into an agency relationship with the medical management company. Under California law, the principle is responsible for the actions of the agent taken in in the context or fulfillment of the agency contract.  The QME is certified to perform medical-legal evaluations by the DWC and is required to follow the statutes and regulations that govern practice as a QME. Ultimately, the QME is responsible for any violation of those statutes or regulations. | None. |
| 55(b)(7) | Commenter disagrees with the proposed starting date of October 1, 2025. The commenter opines that these changes should take effect earlier. | Steve Cattolica  SC Advocates  March 13, 2023  Oral Comment | Noted.  The effective date was chosen to give the QME population adequate notice and opportunity to fulfill the terms of the educational requirements that have been enhanced. | None. |
| 1(k) | Commenter states that she supports the four-hour expansion of instruction for disability report writing. | Sara Widener-Brightwell, General Counsel  California Workers’ Compensation Institute (CWCI)  March 13, 2023  Written Comment | Noted. | None. |
| 11.5(i)(3) | Commenter recommends revising the placement of new subsections (4) and (5) so that they appear after the list of language requirements. | Sara Widener-Brightwell, General Counsel  California Workers’ Compensation Institute (CWCI)  March 13, 2023  Written Comment | Noted. | The requested action will be accomplished. |
| 33(a) | Commenter recommends replacing “60” with “90” days. Commenter states that the 60-day time frame for scheduling a new medical-legal evaluation appointment must be correct to reflect the new 90-day time frame allowed under section 31.3(e). | Sara Widener-Brightwell, General Counsel  California Workers’ Compensation Institute (CWCI)  March 13, 2023  Written Comment | Noted. | The requested action will be accomplished. |
| 51(a) | Commenter recommends restructuring this section as follows: (a)(1) The Administrative Director may deny reappointment to a QME on any one or more of the following grounds:  (1) Any grounds that would provide a basis for suspending or terminating a  Physician’s privilege to serve as a QME, as specified in paragraphs (1) through (6) of subdivision (k) of Labor Code Section 139.2 or in section 65 of Article 6 of this title.  (2) Any grounds that would provide a basis for suspending or terminating a Physician’s privilege to participate in the workers’ compensation system pursuant to section 139.21(a)(1).  Commenter recommends including reference to section 139.21(a)(1) to clarify that any physician who has been suspended form the treatment of injured workers shall also be excluded from the provision of disability evaluation services. | Sara Widener-Brightwell, General Counsel  California Workers’ Compensation Institute (CWCI)  March 13, 2023  Written Comment | Noted. | The requested action will be accomplished. |
| 55(b)(4) | Commenter recommends the following revised text: Minimum of 2 hours in instruction consisting of a review of workers’ compensation case law  Commenter supports the 2-hour minimum requirement for a review of workers’ compensation case law under section 11.5(i)(5) and recommends include the same requirement for QME reappointment criteria. | Sara Widener-Brightwell, General Counsel  California Workers’ Compensation Institute (CWCI)  March 13, 2023  Written Comment | The Administrative Director disagrees.  As drafted, the regulation already requires two hours of instruction in workers’ compensation case law as a prerequisite to reappointment. | None. |
| General Information | Commenter’s organization is the only state association approved by the DWC Medical Unit to teach the certification course required under 8 CCR section 14 Doctors of Chiropractic: Certification in Workers’ Compensation Evaluation. The course is currently at total of 44 hours. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| Section 1 – Definitions | Commenter agrees to the proposed amendment in this section. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 11(a)(4) | Commenter supports the reduction of the housr for Doctors of Chiropractic from 44 to 25 hours. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 11(f)(4) | Commenter supports the submission of the QME application from 30 days to 45 calendar days. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 11(h) | Commenter supports 2 hours in anti-bias training, as proposed. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 11(i) | Commenter supports the effective date of January 1, 2024. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 11.5(j) | Commenter supports the 6 hours live in person lecture and the 10 hours of distance learning. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 14(b)(2)(A) | Commenter states that both 44 and 4 should reflect the strikethrough. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | The requested action will be accomplished. |
| 14(E) | Commenter supports 2 hours of anti-bias training to be included in the 17 hours. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| Section 33 | Commenter agrees to the proposed amendments to this section. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 35(i) | Commenter disagrees with this proposed amendment and opines that it is contradictory. Commenter highlights the following two excerpts:  “…in the event that a party fails to provide the evaluator any relevant medical records…”  “…the physician must first obtain agreement of the parties that the record was necessary and relevant…”  Commenter states that the proposed language refers to “any relevant” record.  Commenter recommends leaving the original text as is and paying the physician for failure of the party to provide the records. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted.  With the advent of the new per-page reimbursement of the Medical-Legal Fee Schedule it is imperative that any records sent to the medical-legal evaluator be relevant to the issues, and satisfy the requirements of Labor Code 4062.3. Requiring the agreement of the parties to the evaluating physician seeking medical records from the treating physician has been characterized as too burdensome on the time of the physician. Therefore the regulation has been changed to remove the ability of the QME to seek records directly from the treating physician. | The proposed amendment to the regulation has been changed. |
| 35.5(h) | Commenter agrees with the proposed revisions. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 50(d) | Commenter agrees with the proposed language. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 50(e) | Commenter disagrees with the proposed language and opines that this lacks recourse. Commenter recommends that this subsection reference section 63. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | The Administrative Director disagrees.  Denial of appointment or reappointment automatically engages the protections of regulation 63. | None. |
| 50(f) | Commenter agrees with the proposed language and opines that this lacks recourse. Commenter recommends that this subsection reference section 63. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 50(g) | Commenter agrees with the proposed language but opines that this rule change is burdensome, especially to the DWC Medical Unit. Commenter opines that this provision should be a deterrent for poorly written reports and encourage more nonbiased report writing. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 51 | Commenter supports the proposed language in this section and opines that it is more concise. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 55 | Commenter supports the revised language in this section. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| 63 | Commenter supports the revised language in this section. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | Noted. | None. |
| General Comment regarding hours of training provided to QMEs | Commenter notes that there is a disparity in the total number of hours required between the chiropractor and all other specialties seeking application to write the QME examination. Commenter states that under the proposed regulations, there is a total of 25 hours required for the chiropractor and 16 hours for all other specialties, which is a difference of 9 hours. Commenter wonders why this is and opines that the chiropractor is proficient in neuromusculoskeletal (NMS) conditions and should be better qualified to write NMS reports. Commenter supports more education, not less, but he opines that it should be equal.  Commenters states that his organization currently offers an additional 4-hour credential as an “Industrial Injury Evaluator (I.I.E.)” (total 48 hours [8-hour basis work comp, 36-hour certification + 4-hour I.I.E. credential]). Commenter notes that the purpose of the additional 4 hours is to review an actual QME written report for quality.  The commenter is curious if the DWC Medical Unit receives quality medical legal report from 12 hours of report writing. Commenter recommends that consideration be given for a full 25 hours, plus a provision to review at least 2 written reports, by an individual trained and/or qualified by the DWC Medical Unit to consult with the new QMEs. Commenter recommends that the DWC Medical-Unit consider standardizing the report outline/format to be used as a template for all QME reports. | James E. Musick, D.C., QME  International Chiropractor Association of California (ICAC)  March 7, 2023  Written Comment | The Administrative Director disagrees.  Historical evidence suggests that at the beginning of the QME program, there was a perceived lack of equivalency between training of a chiropractic physician and a medical doctor. In recognition of this discrepancy, the California Chiropractic Association recommended the 44-hour certification course in Workers’ Compensation evaluation. The Industrial Medical Council accepted this proposal.  The hourly requirement for this Workers’ Compensation evaluation certification is reduced for the convenience of chiropractors and to facilitate the practical continued offering of the course.  The disability evaluation report writing course has been increased to 16 hours in an effort to impact report quality. |  |