# STATE OF CALIFORNIA

# DEPARTMENT OF INDUSTRIAL RELATIONS

# DIVISION OF WORKERS’ COMPENSATION

# REVISED FINAL STATEMENT OF REASONS

# Subject Matter of Regulations: Workers’ Compensation

# Qualified Medical Evaluator Regulations

## TITLE 8 CALIFORNIA CODE OF REGULATIONS

## DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS

## CHAPTER 1. DIVISION OF WORKERS’ COMPENSATION

## QUALIFIED MEDICAL EVALUATOR REGULATIONS

### ARTICLES 1 – General; 2 - QME Eligibility; 3 – Assignment of Qualified Medical Evaluators, Evaluation Procedures; 5 – QME Reappointment; 6 – QME Discipline;

### 7.5 – Supplemental Job Displacement Benefit

#### Sections 1, 11, 11.5, 14, 33, 35, 35.5, 50, 51, 52, 54, 55, 55.1, 56, 57, 63, 10133.54 &

#### 10133.55

The Administrative Director of the Division of Workers’ Compensation, pursuant to the authority vested by Labor Code sections 53, 111(a), 133, 139.2 and 5307.3, has amended. added and repealed the regulations described below, to implement, interpret, and make specific the provisions of Labor Code section 139.2. The regulations govern Workers’ Compensation Qualified Medical Evaluators. The Administrative Director of the Division of Workers’ Compensation has amended and repealed the following regulations:

Amend section 1 Definitions

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 50 Reappointment Requirements and Application Form

Amend section 51 Reappointment: Failure to Comply with Time Frames

Repeal section 52 Reappointment: Unavailability Notification

Repeal section 54 Reappointment: Evaluations Rejected by Appeals Board

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

Add section 55.1 **Reappointment: Continuing Education Programs (post 4-1-26)**

Repeal section 56 Reappointment: Failure to Comply with WCAB Order or Ruling

Repeal section 57 Reappointment: Professional Standard – Violation of Business and Professions Code Section 730

Amend section 63 Denial of Appointment or Reappointment

Repeal section 10133.54 Dispute Resolution

Repeal section 10133.55 Form [DWC-AD 10133.55 “Request for Dispute Resolution Before the Administrative Director.”]

##### REQUEST AND GOOD CAUSE FOR EFFECTIVE DATE UPON FILING WITH THE SECRETARY OF STATE

Select sections of the regulations are required by legislative enactment – Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013), which made changes to the statute regarding Medical Legal QME Panel designations. The changes became effective in 2014. However, the defunct designation was still being used because it is still nominally present in the regulations. The regulations remove the defunct designation. The regulations also provide for clarity in the administration of QME discipline and reappointment requirements which is necessary to alleviate inconsistent statutory and regulatory analysis as between the DWC and physician users of the QME system. The regulations expand the number of tribunals available to hear cases of QME discipline. This expansion is necessary to provide a counter to allegations of delay amounting to a denial of due process for QMEs in the discipline proceedings. The regulations also allow for the repeal of sections related to return to work functions previously administered by the DWC which have been restricted to the WCAB as a result of a binding En Banc Panel Decision issued on April 13, 2020.

##### UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST

As authorized by Government Code section 11346.9(d), the Acting Administrative Director hereby incorporates by reference the entire the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated below for any modification to the regulations as initially proposed, the necessity for the amendments to existing regulations and for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as now adopted.

All modifications from the initially proposed text of the regulations are summarized below.

**Modifications Alter the First 15 Day Comment Period**

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

**Subdivision (a)(4)** was amended to add a definition of a “current or otherwise valid certificate in California Workers’ Compensation Evaluation".

Specific Purpose:

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.

Necessity:

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.

###### Section 11.5 Disability Evaluation Report Writing Course.

**Subdivisions (i)(4) & (i)(5)** were moved to a position directly in front of subdivision (i)(6).

Specific Purpose:

The Subdivisions were relocated to provide clarity and to improve comprehension in reading the regulatory text.

Necessity:

The relocation makes the entire regulatory text more cohesive from a formatting standpoint.

**Subsection (j)** is amended to add the facility of “on site instruction” to the requirements for “in person learning”.

Specific Purpose:

To make clear that in person learning can also include the procedure for virtual learning as provided in the description for on-site learning.

Necessity:

Despite the fact that virtual learning was implied in the former subsection, the addition of the specific language allowing on-site construction provides clarity to the application of the regulation.

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

**Subdivision (b)(2)(A)** was amended to add a provision that 13 of the 25 hours of required training must be conducted either in person or on site. In addition, a missing strikethrough was added to eliminate the previous indication that four hours could be accomplished by distance learning.

Specific Purpose:

The amendment adds clarity to the requirements in the regulation that outline the amount of training that can be accomplished through distance learning.

Necessity:

To provide specific delineation between the amounts of training that can be conducted by distance learning and the amount that must be conducted in person. In person instruction including didactic sessions in group discussion is more likely to ensure greater absorption of course content by the participants. Open discussion with course providers including feedback from instructor to participant and vice versa, will ensure incorporation of course content into the medical evaluator’s practice. As a result, a minimum in person hour requirement is designed to improve the effectiveness of the continuing education provided and therefore translate into better report quality for medical-legal evaluations.

###### Section 33 Unavailability of QME.

**Subsection (a)** was amended to change from 60 to 90 days the time allowed for scheduling the initial appointment after a request is made for the appointment. 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”.

Specific Purpose:

The change in time limits for scheduling an appointment were made to reflect the actual new time limit allowed for making an appointment in Title 8, California Code of Regulations section 31.3(e). The addition of the definition and deletion was added to provide clarity. The deletion of the defunct designation was made to conform the regulation to the changes in Labor Code § 4062.2.

Necessity:

The changes were made to conform the subsection to other regulations and the Labor Code. The changes were also made to add clarity to the regulation.

###### 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”.

Specific Purpose:

The deletion of the defunct designation was made to conform the regulation to the changes in Labor Code § 4062.2.

Necessity:

To prevent continued use of the defunct designation.

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

Specific Purpose:

The deletion of the defunct designation was made to conform the regulation to the changes in Labor Code § 4062.2.

Necessity:

To prevent continued use of the defunct designation.

**Subsection (i)** was amended to delete the first two sentences of that subsection as proposed by the initial amendment to the regulation. The new first sentence is also clarified to apply to any party to the action by replacing the word “the” with the word “any”.

Specific Purpose:

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 deletion also removes an obligation imposed upon the QME to obtain agreement from the parties that any records procured from the treating physician were relevant to settle medical issues in dispute.

Necessity:

The amendment removes the possibility to circumvent requirements of Title 8, California Code of Regulations § 9793(n) which provides requirements for records that are reviewed as part of a medical-legal evaluation. Allowing the qualified medical evaluator to procure records directly from the treating physician would bypass requirements imposed by Title 8, California Code of Regulations § 9793(n) when records are received from the parties to the action.

###### 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”.

Specific Purpose:

The deletion of the defunct designation was made to conform the regulation to the changes in Labor Code § 4062.2.

Necessity:

To prevent continued use of the defunct designation.

###### 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 as a QME. The additional grounds are any that would constitute a violation of Labor Code section 139.21(a)(1).

Specific Purpose:

The regulation allows the Administrative Director to deny reappointment as a QME to any physician who has been convicted of Medicare fraud or Medi-Cal fraud.

Necessity:

The regulation is necessary because there currently is no provision specifically allowing the Administrative Director to deny reappointment as a QME based upon a conviction involving Medicare or Medi-Cal fraud.

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

**Subdivision (b)(4)** was amended to correct a typographical error. The word “in” was removed from the sentence.

Specific Purpose:

The regulation delineates the number of hours of continuing education involving review of workers’ compensation case law that are required for reappointment as a QME.

Necessity:

Removal of the unnecessary wording was required to provide clarity to the regulation.

**Subdivision (b)(6)(ii)** was amended to allow for the posting of recommended educational topics to be discretionary with the DWC. The word “will” was replaced with the word “may” in the sentence requiring the posting of recommended educational topics.

Specific Purpose:

The posting of recommended educational topics on the DWC website is intended to inform the QME community of perceived weaknesses in report writing as a result of the audits conducted by the DWC of QME reports.

Necessity:

Allowing for the posting of educational topics to be discretionary rather than mandatory takes into account the possibility that there may be times when the posting is not necessary for any given year.

**Subdivision (c)(5)** was amended to allow for the designee of the Executive Medical Director to provide documentation of continuing education credit earned. The sentence was amended to add the words “or their designee”.

Specific Purpose:

The regulation allows for the granting of continuing education credit for participating in a panel reviewing medical-legal reports for quality assessment.

Necessity:

The amendment allows the medical directors designee to actually perform the function of granting the continuing education credit. The varying demands on the time of the Medical Director makes this ability to designate this function necessary.

##### Non-Substantive Changes after 15 Day Comment Period

Additions to the wording of the final text for non-substantive changes are posted in double underline. There are no deletions.

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

**Subdivision (b)(3)** was amended to correct a typographical error. The letter “s” was added to the word hour.

Specific Purpose:

The regulation delineates the number of hours of continuing education in anti-bias training that are required for reappointment as a QME.

Necessity:

**The change was made in order to correct a grammatical error.**

**Subdivision (b)(4)** was amended to correct a typographical error. The word “of” was added to change the phrase “review workers’ compensation law” to “review of workers’ compensation law”.

Specific Purpose:

The regulation delineates the number of hours of continuing education in review of Workers’ Compensation case law that are required for reappointment as a QME.

Necessity:

**The change was made in order to correct a grammatical error.**

**Modifications Alter the Second 15 Day Comment Period**

* **Section 1 Definitions**

**Subsection (ii)** was amended to change the language related to the reason that electronic transmissions must be encrypted. Reference to professional standards for encryption were removed and the wording of the regulation was simplified by adding the intent of encryption which is to protect the integrity of the transmission.

Specific Purpose:

The regulation defines the meaning of Electronic Address or Electronic Service Address.

Necessity:

This change was made to add clarity to the interpretation of the regulation.

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

**Subsection (i)** was deleted to remove the phase in of the amendments to section 11.

Specific Purpose:

The regulation defines the meaning of Electronic Address or Electronic Service Address.

Necessity:

The subsection was deleted because the new anticipated effective date of the regulations of April 1, 2024 made the proposed amendment unnecessary.

* **Section 33 Unavailability of QME**

**Subsection (a)** was amended to add language defining both Comprehensive Medical Legal Evaluations and Follow-Up Medical Legal Evaluations as new medical legal evaluations for purposes of this subsection.

Specific Purpose:

The regulation describes the circumstances in which a QME may request and obtain a change of status from active to unavailable for a period up to 90 days.

Necessity:

Adding the specific language provides clarity in the interpretation of the regulation.

* **Section 50 Reappointment Requirements and Application Form**

**Subsection (e)** was amended to add language that clearly delineates how the Administrative Director shall exercise discretion when it comes to determining whether a QME seeking reappointment is in compliance with all statutes duties and regulations.

Specific Purpose:

The regulation specifies that to obtain reappointment, a QME must be in compliance with all statutes, duties and regulations relevant to the QME program.

Necessity:

The amendment requires the Administrative Director to take into account the mitigation factors and sanctions guidelines in exercising discretion. Detailing the manner in which the Administrative Director shall exercise discretion in the reappointment process provides clarity to the QME community with respect to the reappointment process.

**Subsection (f)** was amended to add language that clearly delineates how the Administrative Director shall exercise discretion when it comes to determining reappointment for a QME seeking reappointment who has failed to cooperate with an investigation into the QME’s practice.

Specific Purpose:

The regulation specifies that a QME who has failed to cooperate with an investigation into the evaluator’s practice as a QME, which was initiated by the Administrative Director or his or her or their appointees, may be denied reappointment as a QME.

Necessity:

The amendment requires the Administrative Director to take into account the mitigation factors and sanctions guidelines in exercising discretion. Detailing the manner in which the Administrative Director shall exercise discretion in the reappointment process provides clarity to the QME community with respect to the reappointment process.

* **Section 51 Reappointment and Denial of Reappointment**

**Subdivision (a)(4)** was amended to add examples of “good cause” as it is used in the regulation subdivision.

Specific Purpose:

The regulation specifies some enumerated grounds upon which the Administrative Director may deny reappointment to a QME. The subdivision makes refusing without good cause to perform a medical-legal evaluation one of the reasons for discretionary denial.

Necessity:

The amendment was added to provide clarity in the interpretation of the regulation subdivision.

**Subdivision (a)(5)(A)** was amended to add specificity to the criteria for considering rejections of QME reports and to make clear that rejections of the reports for any failure to comply with any regulations adopted by the Administrative Director or the Appeals Board are covered by the regulation subdivision.

Specific Purpose:

The regulation specifies some enumerated grounds upon which the Administrative Director may deny reappointment to a QME. The subdivision specifies the reasons that must obtain for rejection of the QME report to be considered for determination of denial of reappointment.

Necessity:

The amendment was added to provide clarity in the interpretation of the regulation subdivision.

**Subdivision (a)(12)** was amended to add language referencing a regulation regarding an ethical duty and deleting descriptive language in order to make the proper interpretation of the regulation more direct and understandable.

Specific Purpose:

The regulation specifies some enumerated grounds upon which the Administrative Director may deny reappointment to a QME. The subdivision specifies that violating regulation 41(a)(5) on three or more occasions is grounds for discretionary denial of reappointment.

Necessity:

The amendment was added to provide clarity in the interpretation of the regulation subdivision. The amendment clarifies that continued unprofessional behavior by a QME can be grounds for denial of reappointment.

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

**Section 55** was amended to change it substantially back to the original text of section 55 before any proposed amendment was made to the text by virtue of this proposed regulatory action. The title of section 55 was changed to reflect the fact that section 55 only applies to applications for reappointment that are received and/or submitted before April 1, 2026. A sentence was added to the first paragraph of section 55 to reflect the fact that it will only continue to apply to applications for reappointment received and/or submitted before April 1, 2026.

Specific Purpose:

This section explains the requirement that Qualified Medical Evaluators must complete a specified number of hours of approved continuing education within the 24 month period before applying for reappointment, how the QME may satisfy that requirement, and how providers of continuing education may apply for approval to provide such education hours.

Necessity:

This change back was made to ensure that the regulations would continue to reflect the requirements for applications for reappointment received prior to the two-year phase in date for the new requirements of the added regulation 55.1. The intent to provide a phase-in period for the new hour and subject matter requirements for reappointment as a QME that match the certification period of appointment as a QME was to provide the QME population an adequate time to comply with the new requirements. The phase in period was accomplished by adding new regulation 55.1.

* **Section 55.1 Reappointment: Continuing Education Programs**

**Section 55.1** was added to incorporate the prior proposed amendments to section 55. The new section contains the amendments to old section 55 that were originally proposed and adopted as a result of the first 45 day comment period and the first 15 day comment period.

Specific Purpose of Section 55.1:

This section explains the requirement that Qualified Medical Evaluators must complete 16 hours of approved continuing education within the 24 month period before applying for reappointment, how the QME may satisfy that requirement, expands the subject matter of the continuing education requirements and details how providers of continuing education may apply for approval to provide such education hours. This is a successor regulation to section 55 as amended in the 45 day comment period and the first 15 day comment period and applies to applications received on or after April 1, 2026. It maintains the provisions of regulation 55 as amended in the 45 day comment period and the first 15 day comment period; except for the following changes proposed for purposes of the second 15 day comment period:

**Subsection (b)** was amended to delete language referring to minimum hours in each category detailed in Subdivisions (b1) through (b)(5).

Specific Purpose:

The subsection details what the content of the 16 hours of instruction must entail.

Necessity:

The reference to minimum required hours is no longer necessary due to the amendments to subdivisions (b)(1) through (b)(5).

**Subdivisions (b)(1) through (b)(5)** were amended to add language specifying that the hours delineated by each subdivision were minimum requirements.

Specific Purpose:

The subdivisions detail the amount of hours and the specific topics required in some of the component parts of the 16 hours of Continuing Education required to be complete by QMEs prior to reappointment.

Necessity:

The addition of language to each subdivision indicating that the required hours mandated by the individual subdivisions are minimums provides clarity in the interpretation of the regulation subdivisions.

**Subdivision (b)(6)(i)** was amended to replace language for purpose of clarifying the maximum amount of hours that can be earned by having a report reviewed. The subdivision was also amended to change the title of the subdivision to make it consistent with the designation protocol of the regulatory scheme.

Specific Purpose:

The subdivision details the manner in which a QME can earn Continuing Education credits for having their report or reports reviewed and critiqued by an educational provider.

Necessity:

The substitution of new language to the subdivision indicating the maximum hours that can be earned for having reports reviewed provides clarity in the interpretation of the regulation subdivisions. In addition, the amendment to the title of the subdivision brings consistency to the designation protocol of the regulatory scheme.

**Subdivision (b)(6)(ii)** was amended to change the title of the subdivision to make it consistent with the designation protocol of the regulatory scheme.

Specific Purpose:

The subdivision allows and advises that the DWC may post on its website a list of recommended educational topics for QME certification based on review of medical-legal reports in the previous year.

Necessity:

The amendment to the title of the subdivision brings consistency to the designation protocol of the regulatory scheme.

**Subdivision (b)(6)(iii)** was amended to change the title of the subdivision to make it consistent with the designation protocol of the regulatory scheme.

Specific Purpose:

The subdivision details that continuing education credit can be earned by participating in a panel on the development or review of the QME competency examination; instructing in a program given for QME credit; or attending a program which is accepted by the licensing board of the QME.

Necessity:

The amendment to the title of the subdivision brings consistency to the designation protocol of the regulatory scheme.

**Subdivision (b)(7)** was deleted as it was no longer necessary to change the effective date for implementation of the new minimum continuing education hour and content requirements for physicians seeking reappointment as QMEs.

Specific Purpose:

The subdivision specified that the new continuing education hour and subject matter requirements would not be effective until October 1, 2025.

Necessity:

The addition of new regulation 55.1 detailing that the new continuing education hour and subject matter requirements only apply to applications for reappointment submitted on or after April 1, 2026 made the phase-in requirements of previously proposed subdivision (b)(7) unnecessary.

**Subdivision (c)(5)** was amended to reduce the hours of accreditation for participation on a panel reviewing report quality from 5 to 4.

Specific Purpose:

The subdivision specifies that continuing education credits can be earned by participating in a panel sponsored by the DW C medical director to review medical legal reports for report quality.

Necessity:

The reduction in the hours that could be earned in review of report quality was necessitated by the number of minimum hours required in Subsection (b). Since that Subsection contains 12 minimum hours, providing 4 hours in report quality review makes up the total of 16 hours required for reappointment.

**Modifications Alter the Third 15 Day Comment Period**

###### Section 11.5 Disability Evaluation Report Writing Course.

**Subsection (n)** was amended to increase the hours from 12 to 16 that a candidate must complete in the disability evaluation course before an educational provider can provide a certificate of completion.

Specific Purpose:

The subsection specifies when an educational provider shall issue a certificate of completion for the disability evaluation course and what the contents of the certificate of completion must specify. The subsection also details the minimum hours of specified education requirements a physician must complete to be eligible for appointment as a QME.

Necessity:

The change in the subsection was made to conform to the change in the hours required for completion of the disability evaluation report writing course that are specified in other subsections and subdivisions of section 11.5.

##### LOCAL MANDATES DETERMINATION

* Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed amendments do not apply to any local agency or school district.
* Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
* Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed amendments do not apply to any local agency or school district.

##### CONSIDERATION OF ALTERNATIVES

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulations that were adopted or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

##### SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED

The comments of each organization or individual are addressed in the following charts.

The public comment period was as follows:

**Initial 45-day comment period on proposed regulation:**

From January 20, 2023 to March 13, 2023.

**First 15-Day Comment period on proposed regulation:**

From May 12, 2023 to May 30, 2023.

**Second 15-Day Comment period on proposed regulation:**

From November 21, 2023 to December 11, 2023.

**Third 15-Day Comment period on proposed regulation:**

From December 18, 2023 to January 5, 2024.