

Qualified Medical Evaluator Regulations	RULEMAKING COMMENTS 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>100, 104, 105, 106</p> <p>NOTE: could be considered a late 45 Day comment. Included it here because it arrived at the beginning of the fifteen day comment period</p>	<p>Commenter is concerned regarding the proposal to delete the specialty of Neuropsychology from the listing. Commenter opines that combining the Neuropsychology list under the general heading of Psychology is inappropriate in place injured workers, their attorneys, employers and others at undue and foreseeable hardship and risk.</p> <p>Commenter states that critical to this change and important for rule makers to understand is that Neuropsychology is a distinct specialty within the general field of Clinical Psychology. Neuropsychology is now widely recognized, especially at the level of forensic-type assessments as are common with the QME process, as an increasingly complex specialty.</p> <p>Commenter states that qualified Neuropsychologists often begin as doctoral-level Clinical Psychologists. Thereafter, their training involves an additional 2 years or equivalent of full-time training and supervision. That specialize training involves: Basic Neurosciences,</p>	<p>John Knippa, PhD, ABN June 5, 2015 Written Comment</p>	<p>Disagree. The California Board of Psychology, the licensing board for psychologists, does not recognize subspecialties. The Administrative Director under Labor Code section 139.2(a) has the authority to decide which specialties to recognize as part of the QME process; the Administrative Director chose to recognize only those specialty boards recognized by the respective physician licensing boards. The California Board of Psychology has jurisdiction to recognize specialty areas of practice and it does not recognize neuropsychology boards. In the event that a psychologist is unable to perform the necessary evaluation, the psychologist QME can arrange for diagnostic tests with a neuropsychologist. This will give injured workers wider access to a wider geographic area. According to the DWC</p>	<p>None.</p>

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	<p>Neuropsychological Assessment techniques, neuro pathology, clinical neurology, specialize psychological assessment intervention, neuroanatomy, specialized psychopathology, neurodiagnostics and related content areas. Practical training involves study and differential diagnosis in a variety of areas including not limited to: Brain trauma, dementia, stroke, epilepsy, genetic conditions, toxicology, neuropsychological impact of psychiatric conditions, neurodevelopmental disorders, etc. Board Certified Neuropsychologist are also required to maintain continuing education in this fast advancing and increasingly complex field of study and practice.</p> <p>Commenter states that while general clinical psychology training may give brief or cursory attention to the latter content areas, general clinical psychology training does not remotely approach satisfying the specialty content and skills development required for forensic-level or general neuropsychology work.</p>		<p>database, in 2013, of the 120,000 panels requested, only 381 were requested in neuropsychology.</p> <p>See response above.</p>	

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	<p>Commenter states that the deletion of the PSN specialty designation raises strong concerns not limited to the following: 1) Injured workers with neuropsychological considerations will be at increased risk of misdiagnosis and erred treatment recommendations, 2) injured workers with neuropsychological considerations will be at increased risk of erroneous determinations of status, P&S versus not, 3) injured workers with neuropsychological considerations will be at increased risk of inappropriate/inaccurate ratings, 4) injured workers with neuropsychological considerations will be at increased risk of inappropriate/inaccurate return to work and functional recommendations with corresponding concerns for risks of repeat injury claims and/or work adjustment problems, etc. Importantly, injured workers and attorneys attempting to select an appropriate QME for an injured worker with concern for neuropsychological conditions would be at great disadvantage and extreme</p>		See response above.	

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	<p>risk of selecting an unqualified evaluator.</p> <p>Commenter states that it would be readily recognized that the specialty of orthopedics would not be eliminated and combined under general medicine. Commenter states that it would be appropriate to consider the same in this case.</p> <p>Commenter notes that in form 100 that only the American Board of Clinical Neuropsychology (ABCN) is listed. It is understood that this take designation comes from another source.</p> <p>Commenter states that the record should also list the American Board of Professional Neuropsychology (i.e., ABN, www.abn-board.com) which has comparable high training and qualification standards and which was formed at near the same time, having recognized as Board Certified Neuropsychologists approximately 57 practitioners licensed at the time in California, with additional practitioners licensed in California and having primary addresses neighboring states or elsewhere.</p>		<p>See response above.</p> <p>Disagree. This form lists only the American Board of Professional Psychology, not ABCN.</p>	

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30(b)	<p>Commenter has concern over the possible delay in the adjustment of a claim if a QME panel cannot be requested between the time period of September 3, 2015 and October 1, 2015 (start of online panel request for represented claims with dates of injuries after January 1, 2005).</p> <p>Commenter recommends that the Medical Director extend the time period to mail in the QME panel requests to a minimum of September 17, 2015, if not through September 30, 2015, to mitigate any delay in the adjustment of a claim to the benefit of both the injured worker and the claims administrator.</p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund June 19, 2015 Written Comment</p>	<p>Disagree. There will be no delay because a panel request submitted on September 3, 2015 takes up to 30 days to process. On October 1, 2015, once the online process is in place, panels will be generated automatically without delay.</p> <p>See response above. This will also cause an overlap of the paper requests and online requests, causing confusion and duplication.</p>	None.
30(b)(3)	<p>Commenters states that this section does not clearly indicate when the Panel QME list and Declaration of Service must be served upon the opposing party. For example, if a party were to request and obtain a Panel QME</p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund June 19, 2015 Written Comment</p>	Agree.	Section 30(b)(3) is amended to state “after” instead of “on.”

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	<p>list at 4:59 p.m. on a Friday, would the party be responsible for serving that list the same day or the next business day, on a Monday?</p> <p>Commenter recommends that the DWC modify the text as follows (changes indicated by strike-out and underline): “Print and Service... within 1(one) working day of <u>after</u> generating the QME panel list”. This will help ensure clarity of the required timeframe for serving the Panel QME list and avoid potential litigation of the issue at the Workers’ Compensation Appeals Board (WCAB).</p>			
31.1	<p>Commenter acknowledges the transition to online QME panel requests for represented cases. However, the proposed regulations do not address the time period in which either party can appeal the Medical Director’s decision on the appropriateness of the specialty with a WCAB Judge.</p> <p>Commenter recommends that the</p>	<p>Robyn Stryd Claims Operations Manager State Compensation Insurance Fund June 19, 2015 Written Comment</p>	<p>Any disputes, including the timeliness of objection will be adjudicated by a Workers’ Compensation Appeals Judge.</p>	<p>None.</p>

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	time period in which any party can appeal the Medical Director's decision on the appropriateness of the specialty be incorporated into the proposed QME regulations.			
30(b)	<p>Commenter recommends the following revised language:</p> <p>(b) Represented cases. Effective October 1, 2015, requests for an initial QME panel in a represented case, for all cases with a date of injury on or after January 1, 2005, shall be submitted electronically utilizing the Division of Workers' Compensation internet site at www.dwc.ca.gov. The Medical Unit will not accept or process panel requests on the QME Form 106 postmarked after September 30, 2015, except as to those cases with dates of injury prior to January 1, 2005 where represented parties agree on the form in section 106 to obtain a panel of Qualified Medical Evaluators pursuant to the process in Labor Code section 4062.2</p> <p>Commenter notes that there appears to be an error with the final postmark</p>	Stacy L. Jones Senior Research Associate California Workers' Compensation Institute (CWCI)	<p>This will also cause an overlap of the paper requests and online requests, causing confusion and duplication.</p> <p>A panel request submitted by mail on September 3, 2015</p>	<p>None.</p> <p>None.</p>

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	<p>date for submission of paper QME Form 106 for represented workers. The date should be corrected to state September 30, 2015 instead of September 3, 2015. Commenter states that without this correction, paper forms submitted during the month of September would be rejected. The date for mandatory electronic filing is stated as October 1, 2015.</p>		<p>takes up to 30 days to process. This will allow the Medical Unit to process all paper requests up to that point so there is no overlap in systems. On October 1, 2015, once the online process is in place, panels will be generated automatically without delay.</p>	
<p>30(b)(1)(A) 30(b)(2) 30(b)(3) 30.5</p>	<p>Commenter notes that the most current version of the proposed regulations prevents the requesting party from “designating” the type of specialist the Medical Director shall utilize when issuing a panel of Qualified Medical Evaluators. Section 30(b)(1)(A) requires the requesting party to indicate three specialties—“Specialty of Treating Physician; “QME Specialty Requested;” and, “Opposing Party’s QME Specialty Preferred (if know).” The proposed regulations omit the requirement that the requesting party “designate a specialty for the QME panel requested,” (Section 30(b)(2) and (3)). Commenter opines that by removing the requesting</p>	<p>Joseph M. Roberts, Esq. Law Office of Robin Jacobs June 20, 2015 Written Comment</p>	<p>Disagree. The regulations did not remove this requirement. The regulations state, “QME Specialty Requested.” This is the designation of the specialty by the requesting party.</p>	<p>None.</p>

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	<p>party's ability to designate the specialty for the QME panel requested, and by leaving Section 30.5, the proposed regulations may violate the Labor Code by precluding the party holding the legal right to designate a specialty from doing so. Commenter states that Section 30.5 only requires that the "Medical Director shall utilize in the QME panel selection process the type of specialist(s) indicated by the requestor online." Since the requestor will be required to indicate three QME specialties, it appears the Medical Director will be able to choose any one of the three that must be identified in Section 30(b)(1). Commenter opines that by removing the requesting party's ability to clearly designate the specialty, the proposed regulations serve to confuse rather than clarify Labor Code section 4062.2(b).</p>			
30(b)(1)(C)(3)	<p>Commenter opines that the revised proposed-regulations add language that may create unnecessary litigation. For example, the text indicates that a panel will be generated automatically whenever a party requests one, but states "After issuance of a panel, any</p>	<p>Joseph M. Roberts, Esq. Law Office of Robin Jacobs June 20, 2015 Written Comment</p>	<p>Disagree. A duplicate request, by definition, will be rejected and no panel issued.</p>	<p>None.</p>

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	subsequent request on the same claim whether made on the same day or not, is a duplicate request.” Commenter opines that the language should be modified to preclude or prevent the automatic issuance of a second panel if a panel has already been generated. Commenter states that if this is not done, WCJs will be forced to constantly resolve dispute regarding the validity of panel requests.			
30(c)	Commenter states that the proposed regulations allow the Medical Director to revoke a panel if it “appears... the panel was issued by mistake, misrepresentation of fact contained in the forms or document filed in support of the request...” conflicts with Section 31.1(a). Commenter opines that a mistake or misrepresentation of fact contained in the forms or documents filed in support of the request would be an issue of validity not appropriateness of the specialty.	Joseph M. Roberts, Esq. Law Office of Robin Jacobs June 20, 2015 Written Comment	Disagree. This allows Medical Director to correct mistakes.	None.
30(a)(2) and (3)	Commenter states that this portion of the regulations conflict with the recently revised benefit notice regulations. Commenter recommends a grace period of 90 days to align with benefit notice regulations.	Jason Schmelzer California Coalition on Workers’ Compensation (CCWC) June 22, 2015	Disagree. It is unclear which portion the commenter is referring to and appears to be referring to current proposed amendments. There is no conflict with the benefit notice	None.

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30(b)(1)(C)	<p>Commenter notes that this subparagraph requires service to the opposing party within one day of generating a Panel QME list. While this may be reasonable for small law offices, commenter states that it will create operational and procedural challenges for larger claims operations. Commenter strongly recommends allowing service within 5-days to allow for internal claims segmentation process to prioritize more important functions that directly impact benefit-delivery.</p>	<p>Written Comment Jason Schmelzer California Coalition on Workers' Compensation (CCWC) June 22, 2015 Written Comment</p>	<p>currently in effect. The online process is intended to be a quick and efficient method of providing a panel list. Currently, the Medical Unit serves the panel list on the same day that the list is generated. A 5-day period to serve the opposing party will undermine the purpose of the online system.</p>	None.
31.1(a)	<p>In cases where there is a dispute over the QME specialty commenter supports a quick and effective resolution of that conflict by a Workers' Compensation Administrative Law Judge. Commenter recommends that the DWC ensure that any disputes of this nature be resolved quickly.</p>	<p>Jason Schmelzer California Coalition on Workers' Compensation (CCWC) June 22, 2015 Written Comment</p>	<p>This is comment is beyond the scope of this rulemaking.</p>	None.