TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
FINAL STATEMENT OF REASONS

Subject Matter of Regulations: Workers' Compensation Qualified Medical Evaluator Regulations

CALIFORNIA CODE OF REGULATIONS, TITLE 8 SECTIONS 1 - 159

Title 8, California Code of Regulations, sections 1 - 159.

The Acting Administrative Director of the Division of Workers' Compensation (hereafter, Administrative Director), pursuant to the authority vested in her by Labor Code sections 133, 139.2, and 5307.3, has adopted, amended and repealed regulations within Articles 1 through 15, Chapter 1 of title 8, California Code of Regulations, commencing with section 1, relating to the Qualified Medical Evaluator regulations. The list of amended regulations appears below.

Section 10159	Time Period for Issuing a Summary Rating Determination Pursuant to Labor Code section 4061(e)
Section 10160	Summary Rating Determinations, Comprehensive Medical Evaluation of Unrepresented Employee
Section 1	Definitions
Section 11	Eligibility Requirements for Initial Appointment as QME
Section 11.5	Disability Evaluation Report Writing Course
Section 13	Physician's Specialty
Section 14	Doctors of Chiropractic: Certification in Workers' Compensation Evaluation
Section 17	Fee Schedule for QME
Section 26	QME Office Locations and Changes of Office Locations
Section 30	QME Panel Requests
Section 31.2	QME Office Locations
Section 31.3	Scheduling Appointment with Panel QME
Section 31.7	Obtaining Additional QME Panel in a Different Specialty
Section 32	Consultations
Section 33	Unavailability of QME
Section 34	Appointment Notification and Cancellation
Section 35	Exchange of Information and Ex Parte Communications
Section 35.5	Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines
Section 36	Service of Comprehensive Medical-Legal Evaluation Reports by Medical Evaluators Including Reports Under Labor Code section 4061
Section 37	Request for Factual Correction of a Comprehensive Medical Report From a Panel QME.
Section 38	Medical Evaluation Time Frames; Extensions for QMEs and AMEs
Section 100	The Application for Appointment as Qualified Medical Evaluator Form

Section 104	The Reappointment Application as Qualified Medical Evaluator Form
Section 105	The Request for Qualified Medical Evaluator Panel – Unrepresented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney)
Section 106	The Request for Qualified Medical Evaluator Panel – Represented Form 106 (How to Request a QME in a Represented Case)
Section 109	The Qualified Medical Evaluator Notice of Unavailability Form
Section 110	The Appointment Notification Form
Section 112	The QME/AME Time Frame Extension Request Form
Section 117	Qualified Medical Evaluator Form

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates by reference the entire 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.

REQUEST FOR EXPEDITED REVIEW TO MEET THE OCTOBER 1, 2013 EFFECTIVE DATE.

In order to implement the provisions of SB 863, the Administrative Director requests this rulemaking be expeditiously reviewed to meet the October 1, 2013 effective date. On September 18, 2012, the Governor signed Senate Bill (SB) 863 (Chapter 363) which took effect on January 1, 2013.
SB 863 has created substantial changes in procedure regarding injured worker's medical treatment disputes. These regulations will implement the changes to processes covered by 139.2, 4061, 4062, 4062.2, 4062.3, among others, that are necessary to implement the provisions of SB 863. Continuing the emergency regulations beyond October 1, 2013 will engender confusion because the statutory provisions the regulations implement are now in effect, but the emergency regulations currently in effect were designed to be a bridge to the final regulations contained in this regulatory package and do not fully implement the statues that became operative on July 1, 2013. This regulatory package fully supports the statutes that are now in effect.

UPDATED INFORMATIVE DIGEST

There are no immediately preceding laws or regulations directly related to this proposed rulemaking action and its effect.

The following sections were amended following the public hearing and circulated for a 15-day comment period.

§ 1(t). Future medical care

Prior to the 15 day comment period a reference to section 10606 (d) of title 8 of the California Code of Regulation was inserted into the text. A commentator correctly pointed out a discrepancy between the 15 day notice of modification and the published text. The notice said the last sentence of the section was being deleted. The published text did not show the deletion. The text to be deleted states: "This opinion is not binding in any proceeding concerning an injured worker's need for medical treatment." In the final published text the sentence is being deleted to conform to the 15 day notice of modification. This deletion is necessary to carry out the intent expressed in the 15 day notice of modification.

§ 1(cc). Request for factual correction

Before the 15 day comment period, the phrase "or their representative" was inserted to make clear that the representative of a claims administrator could request a QME to review their report to determine if a factual correction is necessary to correct a factual error in the medical report. The inclusion of the phrase to the definition is necessary to clarify who may file a request for factual correction. This section now reads:

> "Request for factual correction" means a request by an unrepresented injured worker or a claims administrator, or their representative, to a panel QME to change a statement or assertion of fact contained in a comprehensive medical-legal evaluation which is filed with DEU pursuant to Labor Code section 4061(e) that is capable of verification from written records submitted to a panel QME pursuant to section 35 of title 8 of the California Code of Regulations.

§ 13. Physician's Specialty

Before the 15 day comment period, subdivision (b) was inserted to clarify all requests to add or delete a medical specialty recognized by the Administrative Director must be in writing and include documentation establishing the QME is board certified in the specialty or the subspecialty requested by the QME. The purpose of this regulation is clarify the QME must meet the requirements set by the Medical Board. The new subdivision (b) states:

> "All requests by a physician to add or remove a medical specialty shall be in writing. A physician seeking to add or change specialties shall include the documentation specified in subdivision (a) that establishes the physician is board certified in the specialty or the subspecialty recognized by the Administrative Director that the physician wishes to add. The failure to provide proof of board certification shall be grounds to deny the request."

§ 30. QME Panel Requests

Before the 15 day comment period subdivision (c) (2) was inserted to allow the Medical Director to revoke panels issued because of mistake, misrepresentation or if the parties have agreed to resolve

their dispute using an AME. This change is necessary to rescind a panel improperly issued if the Medical Director determines a panel was issued because of mistake, inadvertence, misrepresentation. Subdivision (c) (2) states:

> "If after the issuance of a panel it appears to the satisfaction of the Medical Director that the panel was issued by mistake, misrepresentation of fact contained in the forms or document filed in support of the request, or the parties have agreed to resolve their dispute using an AME or by other agreement, the issued panel may be revoked. Notice of the revocation shall be sent to parties listed on the panel request."

Before the 15 day comment period in response to a comment, subdivision (e) was amended to clarify the choice of zip code for panel selection where an unrepresented employee never resided in the state is the zip code location where the employee was employed. Subdivision (e) states:

> "If the request form is submitted by or on behalf of an employee who does not resides within the state of California, the geographic area of the QME panel selection within the state shall be determined by agreement between the claims administrator, or if none the employer, and the employee. If no agreement can be reached, the geographic area of the QME panel selection shall be determined for an unrepresented employee by the employee's former residence within the state or, if the employee never resided in the state, by the geographic location of the employer's place of business where the employee was employed, and for a represented employee by the office of the employee's attorney."

§ 33. Unavailability of QME

In subdivision (a), the phrase "one year fee period" was changed to "calendar year" to conform to the previous change in subdivision (d) of the same regulation. The purpose of these changes is making the application of the unavailability system easier to manage by the Medical Unit and easier for the QME to understand.

§ 35. Exchange of Information and Ex Parte Communications

In subdivision (a) (3) the phrase "medical determination of the primary treating physician or the compensability" was inserted to clarify the parties may write a letter to the QME or AME outlining the medical determination of the primary treating physician or the compensability issue the physician is being requested to address. Subdivision (a) (3) now states "A letter outlining the medical determination of the primary treating physician or the compensability issue (s) that the evaluator is requested to address in the evaluation, which shall be served on the opposing party no less than 20 days in advance of the evaluation;"

§ 35.5. Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines

Subdivision (c) (2) the phrase “the body part evaluated” replaced the phrase “all conditions”. In the same subdivision, the name of the form 10133.36 was changed to “the Physician’s Report of Permanent and Stationary Status and Worker Capacity and the phrase “and the employee” was added to the regulation. The change was made because multiple QMEs or AMEs may evaluate an injured worker due to injuries to different parts of the body, the result being a QME or AME may not evaluate all of the injured worker’s conditions. The evaluating QME or AME should only complete the form 10133.36 to reflect work restrictions connected to the body part evaluated. The name of the form was changed because the form name was changed in the SJDB regulations where the form is being promulgated. The reference to “the employee” was added to make sure the injured worker was served with the form outlining their work restrictions. Subdivision (c) (2) now reads:

> “If the evaluator declares the injured worker permanent and stationary for the body part evaluated and the evaluator finds injury has caused permanent partial disability, the evaluator shall complete the Physician’s Report of Permanent and Stationary Status and Work Capacity (DWC-AD Form 10133.36) and serve it on the claims administrator and the employee together with the medical report.”

§ 37. Request for Factual Correction of a Comprehensive Medical-Legal Report from a Panel QME.

Before the 15 day comment period, the phrase in subdivision (a) “that is required to be filed with the DEU pursuant to Labor Code section 4061(e)” was inserted to clarify the factual correction form shall be filed only when the QME writes a report that must be submitted to the Disability Evaluation Unit for rating. Subdivision 37(b) was also modified to make clear if the claims administrator serves a factual request form on the QME, the injured worker shall have five days to respond to the request for factual correction. Subdivisions (a) and (b) state:

> “(a) An unrepresented employee, or the claims administrator may request the factual correction of a comprehensive medical-legal report within 30 days of the receipt of a comprehensive medical report from a panel Qualified Medical Evaluator that is required to be filed with the DEU pursuant to Labor Code section 4061(e).
>
> (b) A request for factual correction using the form in section 37(f) of title 8 of the California Code of Regulations shall be served on the panel Qualified Medical Evaluator who examined the injured worker, the party who did not file the request and the Disability Evaluation Unit office where the comprehensive medical-legal report was served. If the claims administrator *serves the* request for factual on the Qualified Medical Evaluator, the injured worker shall have five (5) days after the service of the request for factual correction to respond to the corrections mentioned in the request. The injured workers’ response shall be served on the panel Qualified Medical Evaluator and the claims administrator.”

THE FOLLOWING SECTIONS WERE AMENDED FOLLOWING THE 15-DAY COMMENT PERIOD.

§ 1(t). Future medical care

The Workers' Compensation Appeals Board (WCAB) in its parallel rulemaking implementing SB 863 defined the limited the admissibility of the reports by qualified medical evaluators (QMEs) and agreed medical evaluators (AMEs) in its proposed rule, 10606 (d). On July 9, 2013, the WCAB issued a 15 day notice of modification that:

> "The WCAB intends to modify proposed Rule 10606 to entirely remove proposed subdivision (d) regarding specific circumstances under which the report of an AME or QME will be admissible….Accordingly, for now at least, the WCAB has decided to let the specific issues surrounding the admissibility of an AME or QME be resolved through case law."

Based on the action of the WCAB the removal of the reference to section 10606 (d) is necessary in the final rule to prevent confusion. The subdivision in the final rules reads:

> "Future medical care means medical treatment as defined in Labor Code section 4600 that is reasonably required to cure or relieve an injured worker of the effects of the industrial injury after an injured worker has reached maximum medical improvement or permanent and stationary status including a description of the type of the medical treatment which might be necessary in the future."

§ 11.5. Disability Evaluation Report Writing Course

In response to a comment received during the 15 day comment period, the original reference in the first paragraph to subdivision 1(q) was changed to 1 (p) because of the inclusion of additional definitions in section 1 the location of the original reference moved in the regulation. The change is necessary to cite the proper reference in the definition section, but no substantive change to the regulation was made.

§ 26. QME Office Locations and Changes of Office Locations

In response to a comment received during the 15 day comment period, a sentence was added clarifying that section 26 did not prevent a QME from adding offices to the statutory limit of ten offices. The added sentence states: "Nothing in this section shall prevent a QME from adding additional offices up to the maximum set forth in Labor Code section 139.2 (h)(3) (B)."

§ 30. QME Panel Requests

After the 15 day comment period, in response to a comment made during the comment period, the term “medical dispute” in subdivision (b) was changed to “medical determination” to conform the regulation to the terminology used in Labor Code sections 4061(b), 4061(c) and 4062(a) and in subdivision (a) (1) of these regulations which was changed before the 45 day comment period.

§ 100. The Application for Appointment as Qualified Medical Evaluator Form.

In the affirmation section, section 10, under the convictions section, section b, the word “misdemeanor” was misspelled and it is corrected in the final version of the form.

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.

• 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 reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, 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 charts contained in the rulemaking binder.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations:
February 15, 2013 through April 4, 2013.

First 15-day comment period on modifications to proposed text:
June 3, 2013 through June 18, 2013.