

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

**NOTICE OF MODIFICATION TO TEXT OF
PROPOSED REGULATIONS AND FORMS
AND OTHER INFORMATION ADDED TO THE RULEMAKING FILE**

**Qualified Medical Evaluator Regulations
Disability Evaluation Unit**

**CALIFORNIA CODE OF REGULATIONS,
TITLE 8, ARTICLES 1, 2, 2.6, 3, AND 10.5 OF CHAPTER 1
AND SUBCHAPTER 1.6 OF CHAPTER 4.5**

NOTICE IS HEREBY GIVEN, pursuant to Government Code section 11346.8(c) that the Acting Administrative Director of the Division of Workers' Compensation, proposes to modify the text of the following proposed amendments to Title 8, California Code of Regulations:

| | |
|--------------|--|
| Section 1 | Definitions |
| Section 11.5 | Disability Evaluation Report for Writing Course |
| Section 13 | Physician's Specialty |
| Section 26 | QME Office Locations and Changes of Office Locations |
| Section 30 | QME Panel Requests |
| Section 33 | Unavailability of QME |
| Section 35 | Exchange of Information and Ex Parte Communication |
| Section 35.5 | Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines |
| Section 37 | Request for Factual Correction of a Comprehensive Medical-Legal Report From a Panel QME |
| 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) and Form 105a for dates of injury on or after Jan. 1, 2013 |
| Section 106 | The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case) and Form 106a for dates of injury on or after Jan. 1, 2013. |

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification. **Only comments concerning the proposed modification to the text of the regulations will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on June 18, 2013.

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@dir.ca.gov

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

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

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

NOTICE OF ADDITION OF DOCUMENTS AND INFORMATION TO THE RULEMAKING FILE

The Acting Administrative Director of the Division of Workers' Compensation hereby gives notice, pursuant to Government Code sections 11346.8(d), 11246.9(a)(1), and 11347.1, that the following document which the agency has relied upon in adopting the proposed changes to sections 1 – 106 of Title 8 of the California Code of Regulations, have been added to the

rulemaking file and are available for public inspection and comment:

- Accreditation Council for Graduate Medical Education, Glossary of Terms, June 28, 2011

FORMAT OF PROPOSED MODIFICATIONS

Text of Emergency Regulations Effective January 1, 2013:

Deletions from the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single strike-through: ~~deleted language~~.

Additions to the original codified regulatory text made by the emergency regulatory text effective January 1, 2013, are indicated by single underlining: added language.

Additional Proposed Text Noticed for 45-Day Comment Period:

Deletions from the emergency regulatory text noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~.

Additions to the original codified regulatory text and emergency regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-day comment period are indicated by double strike-through: ~~~~deleted language~~~~.

For sections that were not included in the adoption of the emergency regulatory text, deletions and additions from the original codified regulatory text are indicated by single strike-through and single underlining, respectively.

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

Deletions from the regulatory text, as proposed in this comment period, are indicated by the double strike-through and italics, thus: ~~*deleted language*~~.

Additions to the regulatory text, as proposed in this comment period, are indicated by double undulating underlining and italics, thus: *added language*.

Deletions from the text of the forms, as proposed in this comment period, are indicated by double strike-through, thus: ~~~~deleted language~~~~.

Additions to the text of the forms, as proposed in this comment period, are indicated by double underlining, thus: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to § 1 Qualified Medical Evaluator Regulations-Definitions

Subdivision 1(t) is modified to add the phrase “as described in section 10606(d) of title 8 of the California Code of Regulations” at the end of the first sentence of the subdivision. The last

sentence of this subdivision now provides, “This opinion is not binding in any proceeding concerning an injured workers’ need for medical treatment” has been deleted. The first sentence is modified and the second sentence deleted to make reference to section 10606 of the WCAB rules which governs the issue of future medical care. Thus, subdivision 1(t) as modified 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 as described in section 10606(d) of title 8 of the California Code of Regulations.”

Subdivision 1(cc) is modified to add the phrase “or their representative,” in the second line of the sentence. This addition is made in order to clarify that claims administrators and their representatives may request factual correction of the medical report subject to the summary rating process. Thus, subdivision 1(cc) now provides, “Requests 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 the DEU pursuant to Labor Code section 4061(d) 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.”

Modifications to § 11.5 Disability Evaluation Report Writing Course

The third sentence of section 11.5 is modified to substitute the letter “q” with the letter “p.” This amendment is made to correct a clerical error. Thus, the revised third sentence of this subdivision now provides, “Only report writing courses which are offered by education providers as defined in subdivision 1(p) of Title 8 of the California Code of Regulations shall qualify to satisfy this requirement.”

Modifications to § 13 Physician’s Specialty

Subdivision (b) is added to provide a mechanism for adding specialties and explicitly state that requests to add specialties must be in writing and must include documentation that establishes the physician is board certified in a specialty or sub-specialty recognized by the Administrative Director. Thus, this new subdivision now provides: “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.”

Modifications to § 26 QME Office Locations and Changes of Office Locations

Subdivision (a) is modified to add the sentence “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).” The inclusion of this sentence is necessary to clarify that this section does not apply to requests to add locations. The new sentence is placed at the end of this subdivision.

Modifications to § 30 QME Panel Requests

Subdivision (a)(1) is modified to substitute the word “dispute” with the word “determination.” This change is necessary in order to align the regulation with the language of Labor Code sections 4041 and 4062. Thus, subdivision (a)(1) now provides, “attach a written objection indicating the identity of the primary treating physician, the date of the primary treating physician’s report that is the subject of the objection and a description of the medical determination that requires a comprehensive medical/legal report to resolve or attach a request for an examination to determine the compensability under Labor Code section 4060;”

Subdivision (c) is modified to include the numerical reference (1) after (c) in order to indicate the addition of a new section 2 to the subdivision. Thus, this subdivision is now re-lettered as (c)(1).

Subdivision (c)(2) is a new subdivision being proposed that provides: “(c)(2) 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.” This new subdivision was added to allow the revocation of panels under certain circumstances.

Subdivision (e) is modified to add the phrases “if the employee resided in the state” and “where the employee was employed” within the last sentence of this subdivision. This change is necessary in order to clarify what zip code will be used if an unrepresented employee either no longer lives in the state or never lived in the state. Thus, this subdivision now provides, “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.”

Modifications to § 31.5 QME Replacement Requests

Subdivision (a) (15) is modified to change the citations to the Labor Code from 4062.3(i) to 4062.3 (j) and from 4062.3(j) to 4062.3(k).

Modifications to § 33 Unavailability of QME

Subdivision (a) is modified to substitute the phrase “one year fee period” for the phrase “calendar year.” This change is necessary in order to clarify the time period. Thus, this subdivision now provides, “A QME who will be unavailable to schedule or perform comprehensive medical evaluations as an Agreed Panel QME or as a Panel QME for a period of 14 days, or up to a maximum of 90 days during a calendar year, for any reason shall notify the Medical Director by submitting the form in Section 109 (Notice of Qualified Medical Evaluator Unavailability) (see, 8 Cal. Code Regs. § 109) at least 30 days before the period of unavailability is to begin.”

Modifications to § 35 Exchange of Information and Ex Parte Communications

Subdivision (a)(2) is modified to include the phrase “medical determination of the primary

treating physician or the compensability”. Additionally the letter “(s)” was added to end of the word “issue” in this subdivision. These additions are necessary in order to clarify the scope of the letter sent to the evaluator addressing the medical determination of the primary treating physician and the compensability issues that are in dispute. Thus, this subdivision now provides, “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;”

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

Subdivision (c)(2) is modified to substitute the phrase “the body part evaluated” with the word “all conditions,” to delete the word “that,” to include the phrase “evaluator finds” and to include the phrase “and the employee.” These changes clarify that an evaluator is required to complete and file the form identifying the workers’ work restrictions only in connection with the body parts evaluated. Thus, this subdivision now provides, “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.”

Modifications to § 37 Request for Factual Correction of a Comprehensive Medical-Legal Report From a Panel QME

Subdivision (a) is modified to include the phrase “that is required to be filed with the DEU pursuant to Labor Code section 4061(e)” at the end of this subdivision. This change is necessary in order to clarify that a factual correction may only be requested if the QME finds permanent disability. Thus, this subdivision now provides, “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 Examiner that is required to be filed with the DEU pursuant to Labor Code section 4061(e).”

Subdivision (b) is modified to delete the phrase “is served by the claims administrator” in sentence number two of this subdivision. This change eliminates duplicative language and clarifies the meaning of this subdivision. Thus, this subdivision now provides, “If the claims administrator serves the request for factual correction 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.”

Subdivision (f) is modified to add a bar code to the top of page one of the form. This change is necessary to allow for the document to be scanned and information to be extracted from the form. In addition, the form of the proof of service attached to the form was changed from the earlier version. This change provides a better, more explanatory proof of service than the original version.

Modifications to § 100 The Application for Appointment as Qualified Medical Evaluator Form

Section 1 of this form is modified to replace the term “then the” with the word “and.” Thus, the

language now states, “(Use Area Code and number).”

Section 2 of this form is modified to substitute the phrase “BLOCK 2” with the phrase “This section.” This corrects a clerical error.

Section 3 of this form is modified to relocate the column “Type” to the first column of Section 3 from the fourth column of Section 3. The first and fifth rows of requested information have been deleted leaving three middle rows remaining. In these three rows the term “Hospital /Facility” has been replaced by the phrase “Name of sponsoring institution.” Finally, the phrase “Fellowships will not be accepted in lieu of accredited residency training” has been stricken as redundant.

Section 3 of this form has been modified to include an additional reference at the end to “Indicate whether you are board certified in a specialty or subspecialty recognized by the Administrative Director.” There are now four lines underneath; two to indicate “Specialty or subspecialty certification” and the corresponding “Expiration date” and two to indicate “Specialty Certification” and the corresponding “Expiration Date.”

Section 3 of this form had replaced the phrase “APPLICANT” with the phrase “THE M.D. OR D.O.” Thus, the sentence now reads “IMPORTANT: IF THE M.D. OR D.O. IS BOARD CERTIFIED, PLEASE PROVIDE COPY OF BOARD CERTIFICATE(S).”

Section 4 and Section 6 of this form have been switched. “Section 4” of the form has been relocated and relabeled “Section 6” and “Section 6 of this form has been relocated and relabeled “Section 4.” The language remains the same.

The **Instruction Section, 2 b)**, of this form has been modified to replace the first sentence with the following language: “A copy of your board certificate(s) and certificates(s) completion of residency and fellowship training programs(s) accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association.”

Modifications to § 104 The Reappointment Application as Qualified Medical Evaluator Form

Section 1 of this form is modified to insert the phrase, “(Completion of these fields is required.)”

Section 2 of this form is modified to include four new sections; two to indicate “Specialty or subspecialty certification” and the corresponding “Expiration date” and two to indicate “Specialty Certification” and the corresponding “Expiration Date.”

Section 2 of this form is modified to strike the phrase, “(If you became board certified after your last QME appointment, you must attach a copy of the certificate of board certification.)”

Section 4 of this form is modified to include a fourth “Professional practice specialty code” field.

Modifications to § 105 The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney) and Form 105a for dates for dates of injury on or after Jan. 1, 2013

Page 1 of this form has been modified at the bottom of this page, under the signature line, to

replace the term “Requester” with the term “Filer.”

MD/DO SPECIALTY CODES section of this form has been modified to insert the term “Gastroenterology” to the MMG Code. Thus, this now provides “MMG Internal Medicine-Gastroenterology.” The reference “MMO Oncology – Orthopaedic Surgery Internal Medicine or Radiology” has been replaced by the reference “MMO Internal Medicine Oncology” and relocated to the internal medicine section.

Attachment to Form 105 is being stricken because the form to which it applies is being replaced. A replacement instruction form will be published in the near future that provides field by field instructions about how to complete the form.

Modifications to § 106 The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case) and Form 106a for dates of injury on or after Jan. 1, 2013

Page 2 of this form has been modified to add the phrase “or the written request for a QME to resolve an issue of compensability.” Thus, this now provides “Note: The party submitting this form must attach a copy of the written objection to an opinion of a treating physician identifying and issue in dispute or the written request for a QME to resolve an issue of compensability.” Completion of the fields I the section entitled “Employer and Claims Administrator Information” is not required.

MD/DO SPECIALTY CODES section of this form has been modified to insert the term “Gastroenterology” to the MMG Code. Thus, this now provides “MMG Internal Medicine-Gastroenterology.” The reference “MMO Oncology – Orthopaedic Surgery Internal Medicine or Radiology” has been replaced by the reference “MMO Internal Medicine Oncology” and relocated to the internal medicine section.

Attachment to Form 106 is being stricken because the form to which it applies is being replaced. A replacement instruction form will be published in the near future that provides field by field instructions about how to complete the form.