

**STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION**

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED  
REGULATIONS**

**PRIMARY TREATING PHYSICIAN REPORTING REQUIREMENTS;  
PETITION FOR CHANGE OF PRIMARY TREATING PHYSICIAN**

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 9785 and 9785.3.**

**NOTICE IS HEREBY GIVEN** that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 133, 4061.5, 4603.2, 4603.5, 4627 and 5307.3, proposes to amend and adopt regulations contained in Title 8, California Code of Regulations, commencing with Section 9785.

The regulations concern the reporting duties of the primary treating physician, the "Primary Treating Physician's Progress Report" (DWC Form PR-2), and the "Primary Treating Physician's Permanent and Stationary Report" (DWC Form PR-3).

In addition, the regulations address the Petition for Change of Primary Treating Physician process before the Administrative Director pursuant to Labor Code Section 4603, as well as appeals from the Administrative Director's decisions on Petitions for Change of Primary Treating Physician. This Notice proposes further modifications to Sections 9785 and 9785.3.

**PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR  
SUBMISSION OF WRITTEN COMMENTS**

Members of the public are invited to present written comments regarding these proposed modifications to:

Ms. Mary Leeman,  
Regulations Coordinator  
Department of Industrial Relations  
Division of Workers' Compensation  
455 Golden Gate Avenue, 9<sup>th</sup> Floor  
San Francisco, CA 94102  
or  
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 Monday, January 6, 2003. **Written comments may be submitted** by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: [dwcrules@hq.dir.ca.gov](mailto:dwcrules@hq.dir.ca.gov).

## **AVAILABILITY OF TEXT OF REGULATIONS**

Copies of the original text and modified text with modifications clearly indicated are available for public review between the hours of 8:00 AM to 5:00 PM, Monday through Friday, excluding legal holidays, at the office of the Division of Workers' Compensation, located at 455 Golden Gate Avenue, 9<sup>th</sup> Floor, San Francisco, CA 94102.

Copies of the regulations and any supplemental information contained in the rulemaking file may be requested in writing from Ms. Mary Leeman, Regulation Coordinator. Please contact the Division's regulations coordinator, Ms. Mary Leeman, at (415) 703-4600 to arrange to inspect the rulemaking file.

The specific modifications proposed include changes to the text of the proposed amendments to Title 8, California Code of Regulations, Section 9785, "Reporting Duties of the Primary Treating Physician," and Title 8, California Code of Regulations, Section 9785.3, "Primary Treating Physician's Permanent and Stationary Report" (DWC Form PR-3). A copy of the proposed modified regulations is attached to this Notice.

## **NOTICE OF THE ADDITION OF MATERIAL TO THE RULEMAKING FILE**

New items introduced into the rulemaking file after the close of the comment period on September 13, 2002, and which constitute part of the basis for the current proposal, consist of the following:

Item 1: Correspondence from the California Applicant's Attorney's Association directed to the Administrative Director, dated December 8, 2000, and attached opinion in *Tenet/Centinela Hospital Medical Center v. Workers' Comp. Appeals Bd. (Rushing)* (2000) 80 Cal.App.4<sup>th</sup> 1041, 65 Cal.Comp.Cases 477.

Item 2: Memorandum from Michael D. Roback, M.D. directed to the Industrial Medical Council Members and Staff, dated March 12, 2001, and the following attachments which Dr. Roback describes as:

"... [A] copy of the published report of the Tenant [sic] case, the current page from the IMC Physician[s] Guide, a correction for our current text, and a copy of the Reg. 9785 (3) (b), and the initial suggestions for change of Reg. 9785 (3) (b) and motions discussing the corrections."

Item 3: Memorandum from D. Allan Mackenzie, Executive Medical Director of the Industrial Medical Council, directed to the Administrative Director, dated May 1, 2001.

Item 4: Excerpt of Minutes of April 2001 Meeting of the Industrial Medical Council.

These items may be reviewed in the rulemaking file beginning immediately by contacting the Regulations Coordinator listed above.

## **FORMAT OF PROPOSED MODIFICATIONS**

### **Proposed Text Noticed for 45-Day Comment Period:**

Deletions from the codified regulatory text are indicated by strike-through, thus: ~~deleted language~~.

Additions to the codified regulatory text are indicated by underlining, thus: underlined language.

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

Deletions from the amended regulatory text as proposed in July 2002, are indicated by double strike-through under-line, thus: ~~deleted language~~.

Additions to the regulatory text as proposed in July 2002, are indicated by a double underline, thus: added language.

## **SUMMARY OF PROPOSED CHANGES**

### **1. Modifications to Section 9785—Reporting Duties of the Primary Treating Physician**

Labor Code section 4600 provides that “[a]fter 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice ....” Labor Code section 4061.5 requires a primary treating physician to render opinions on all medical issues necessary to determine the employee’s eligibility for compensation in compliance with regulations promulgated by the Administrative Director. Labor Code sections 4061 and 4062 specify procedures to be followed when a party disputes a medical determination of the treating physician.

Proposed amendments to Section 9785 clarify when an employee may change his or her primary treating physician, and further clarify the process which must be followed when disputes arise regarding medical determinations made by the primary treating physician.

Further, proposed amendments to Section 9785 clarify the reporting requirements of the primary treating physician with respect to the obligations regarding the service of the reports, the dates for submission of the reports, and appropriate format of the reports.

### **Modifications to Section 9785—Heading**

The heading of Title 8, California Code of Regulations, Chapter 4.5, Subchapter 1, Administrative Director – Administrative Rules, Article 5, has been amended in response to comments that the heading contained a clerical error. The heading has been amended to correctly state: “Transfer of Medical Treatment.”

### **Modifications to Section 9785**

#### **Section 9785(a)**

This subdivision defines key terms used in this regulation to ensure the meaning will be clear to the regulated public. The proposed amendments in this subdivision will clarify terms used in the current regulation and further define key terms that are contained in the proposed amendments.

#### **Section 9785(a)(1)**

Subdivision 9785(a)(1) has been amended to delete the word “injured” when referring to the term “employee.” The amended is in response to comments that the word “injured” should be deleted from this subdivision when referring to the term “employee” for consistency purposes.

#### **Section 9785(a)(4)**

Proposed definition of the term “medical determination” defines when the primary treating physician makes a medical decision which affects the employee’s eligibility for compensation. In response to comments, this proposed definition has been amended to include the primary treating physician’s “decision whether to release an employee from care” as part of the proposed definition of “medical determination.”

#### **Section 9785(a)(6)**

Proposed definition of the term “continuing medical treatment” defines presently planned treatment that in the opinion of the primary treating physician is reasonably required to cure or relieve the employee from the effects of the injury. In response to comments, this proposed definition is modified to include the term “occurring” as part of the definition. Thus, the proposed subdivision now states that the term “continuing medical treatment” is “occurring” or presently planned treatment that is reasonably required to cure or relieve the employee from the effects of the injury.

#### **Section 9785(a)(7)**

Proposed definition of the term “future medical treatment” defines medical treatment which in the opinion of the primary treating physician may be required or anticipated in the future. In response to comments, this proposed definition has been modified to delete the phrase “not presently planned.” Further, the proposed definition has been amended for consistency purposes with the Labor Code to include the phrase “reasonably required.” Thus, the proposed subdivision now states that “future medical treatment” is treatment which is anticipated at some time in the future and is “reasonably required to cure or relieve the employee from the effects of the injury.

**Section 9785(c)**

In response to comments, this subdivision is modified to delete the proposed requirement that the primary treating physician provide a copy of the required reports under this section to the employee, or to the employee’s attorney if represented, in addition to the claims administrator.

**Section 9785(d)**

In response to comments, this subdivision is modified to delete proposed amendment requiring the primary treating physician to also transmit the required reports to the employee, or to the employee’s attorney if represented, by mail or FAX or by any other means satisfactory to the employee or to the employee’s attorney.

**Section 9785(e)(4)**

In response to comments, this subpart is amended to delete the requirement that the primary treating physician is required to “promptly” incorporate, or comment upon, the findings and opinions of secondary physicians in the treating reports. The subpart has been modified to require that the primary treating physician is required, unless good cause is shown, to incorporate or comment upon, the findings and opinions of secondary physicians in the treating reports within 20 days of receipt of each report.

This subpart is further modified to delete the requirement that the primary treating physician submit the secondary physicians’ reports to the employee, or to the employee’s attorney if represented, in addition to the claims administrator.

**Section 9785(f)**

In response to comments, this subdivision is amended to delete the requirement that the primary treating physician promptly submit reports when certain enumerated conditions occur. The subdivision has been modified to require that the primary treating physician submit these reports, unless good cause is shown, within 20 days when the enumerated conditions occur.

This subdivision is further modified to delete the requirement that the primary treating physician submit the required reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator.

**Section 9785(g)**

In response to comments, this subdivision is amended to delete the requirement that the primary treating physician promptly submit the permanent and stationary report. The subdivision has been modified to require that the primary treating physician submit the permanent and stationary report, unless good cause is shown, within 20 days from the date of examination.

This subdivision is further modified to delete the requirement that the primary treating physician submit the permanent and stationary report to the employee, or to the employee's attorney if represented, in addition to the claims administrator

**2. Modifications to Section 9785.3—Primary Treating Physician's Permanent and Stationary Report**

Primary treating physicians may submit their permanent and stationary reports by using the Primary Treating Physician's Permanent and Stationary Report form (DWC Form PR-3) as set forth in Section 9785.3.

In response to comments, a field for the claim number has been added at page one (1) of the DWC Form PR-3. Further, the description of "future medical treatment," as set forth in page four (4) of the DWC Form PR-3, has been modified to be consistent with the modified definition of this term in Section 9785(a)(7).

Dated: \_\_\_\_\_

\_\_\_\_\_  
RICHARD P. GANNON  
Administrative Director