ADOPT THE FOLLOWING:

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 1. ~~INDUSTRIAL MEDICAL COUNCIL~~ DIVISION OF WORKERS' COMPENSATION – QUALIFIED MEDICAL EVALUATOR REGULATIONS
ARTICLE 1. General

NOTE: Changes to text made during the first 45 day comment period [11/30/07 through 01/17/08] for public comment are shown by simple underline for newly inserted text (like this**) and by simple strikeout (**~~like this~~**) for text being deleted.**
Changes to text made during the first 15 day comment period [6/25/08 through 7/10/08] for public comment are shown by bold, italics, underlined for newly inserted text (*like this*) and by bold, underlined double strike out (~~like this~~) for text being deleted.
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§ 1. Definitions

As used in ~~these~~ the regulations in Chapter 1:

(a) "Accreditation" means the conferring of recognized status as a provider of physician education by the ~~Industrial Medical Council~~ Administrative Director.

(b) "ACOEM" shall have the same meaning as section 9792.20(a), and "ACOEM Practice Guidelines" shall have the same meaning as section 9792.20(b) of Title 8 of the California Code of Regulations.

(~~b~~c) "Administrative Director" means the administrative director of the Division of Workers' Compensation of the State of California Department of Industrial Relations, and includes his or her designee.

(d) "Agreed Panel QME" means the Qualified Medical Evaluator described in Labor Code section 4062.2(c), that the claims administrator, or if none the employer, and a represented employee agree upon and select from a QME panel list issued by the Medical Director without using the striking process. An Agreed Panel QME shall be entitled to be paid at the same rate as an Agreed Medical Evaluator under ~~*use modifier "-94" as defined in subdi-*~~

~~vision 9795(d)~~ ***section 9795 of Title 8 of the California Code of Regulations for medical/legal evaluation*** ~~services~~ ***procedures and medical testimony.***

(~~d~~ ***e***) "AMA Guides" means American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition].

(~~e~~ ~~e~~ ***f***) "AME" means ~~Agreed Medical Examiner or~~ Agreed Medical Evaluator, a physician selected by agreement between the ***claims administrator, or if none the*** employer**,** and ~~the~~ a represented employee~~s~~ to resolve disputed medical issues referred by the parties in a workers' compensation proceeding.

(~~f~~ ~~g) "AOE/COE" means, for the purposes of regulations and forms in this Article, relating to disputes regarding the compensability of a claim, more specifically medical disputes over whether the claimed injury or illness arose out of employment and occurred in the course of employment~~

(~~d~~ ~~g~~ ~~h~~ ***g***)"Appeals Board" means the Workers' Compensation Appeals Board within the State of California Department of Industrial Relations.

(~~e~~ ~~h~~ ~~i~~ ***h***) "Audit" means a formal evaluation of a continuing education program, disability evaluation report writing course, or an accredited education provider which is conducted at the request of the Medical Director.

(~~f~~ ~~i~~ ~~j~~ ***i***) "Comprehensive Medical-Legal Evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, ~~or~~ 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(c) of ~~this~~ Title 8 of the California Code of Regulations.

(~~g~~ ~~j~~ ~~k~~ ***j***) "Claims Administrator" means the person or entity responsible for the payment of compensation for ***any of the following:*** a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a group self-insurer, ***an insured employer,*** the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF) ***and for the Subsequent Injuries Benefit Trust Fund (SIBTF),*** ~~or~~ a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, group self-insurer, or joint powers authority, ***and the California Insurance Guarantee Association (CIGA)***. The UEBTF shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF by joinder as a party.

(~~h~~ ~~k~~ ~~l~~ ***k***) "Continuing Education Program" means a systematic learning experience (such as a course, seminar, or audiovisual or computer learning program) which serves to develop, maintain, or increase the knowledge, skills and professional performance of physicians who serve as Qualified Medical Evaluators in the California workers' compensation system.

~~(i) "Council" means the Industrial Medical Council as defined in Labor Code Section 139.~~

(~~j~~ ~~l~~ ~~m~~ ***l***) "Course" means the 12 hours of instruction in disability evaluation report writing which is required of a Qualified Medical Evaluator prior to appointment. A course must be approved by the ~~Council~~ Administrative Director.

(~~k~~ ~~m~~ ~~n~~ ***m***) "Credit Hour" means a sixty minute hour. A credit hour may include time for questions and answers related to the presentation.

(~~l~~ ~~n~~ ~~o~~ ***n***) "Direct medical treatment" means that special phase of the ~~health care provider-patient~~ physician-patient relationship ~~which~~ during which the physician: (1) attempts to clinically diagnose and to alter or modify the expression of a non-industrial illness, injury or pathological condition; or (2) attempts to cure or relieve the effects of an industrial injury.

(~~m~~ ~~o~~ ~~p~~ ***o***) "Distance Learning" means an education program in which the instructor and student are in different locations, as in programs based on audio or video tapes, computer programs, or printed educational material.

(~~n~~ ~~p~~ ~~q~~ ***p***) "DEU" is the Disability Evaluation Unit under the Administrative Director responsible for issuing summary disability ratings.

(~~q~~ ~~r~~ ***q***) "Education Provider" means the individual or organization which has been accredited by the Administrative Director to offer physician education programs. There are two categories of providers: (1) the Administrative Director; and (2) individuals, partnerships, or corporations, hospitals, clinics or other patient care facilities, educational institutions, medical or health-related organizations whose membership includes physicians as defined in Labor Code section 3209.3, organizations of non-medical participants in the California workers' compensation system, and governmental agencies. In the case of a national organization seeking accreditation, the California Chapter or organization affiliated with the national organization shall be accredited by the Administrative Director in lieu of the national organization.

(~~o~~ ~~r~~ ~~s~~ ***r***) "Employer" means any employer within the meaning of Labor Code section 3300, including but not limited to, any of the following: (1) an uninsured employer and the Uninsured Employers Benefits Trust Fund (UEBTF) pursuant to Labor Code Section 3716, (2) an insured employer, (3) a self-insured employer and (4) a lawfully uninsured employer. The ~~UEF~~ UEBTF shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the ~~UEF~~ UEBTF by joinder as a party.

(~~p~~ ~~s~~ ~~t~~ ***s***) "Evaluator" means ***any of the following:*** "Qualified Medical Evaluator", ~~or~~ "Agreed Medical Evaluator~~.~~" ***, "Agreed Panel QME" or "Panel QME", as appropriate in a specific case.***

(~~t~~ ~~u~~ ***t***) "Follow-up comprehensive medical-legal evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of Section 9793(f) of Title 8 of the California Code of Regulations.

(~~u~~ ~~v~~ ***u***) "Medical Treatment Utilization Schedule" or "MTUS" means the treatment utilization scheduled adopted by the Administrative Director of the Division of Workers' Compensation as re-

quired by Labor Code section 5307.27 and sections 9792.20 *et seq* of Title 8 of the California Code of Regulations.

(~~q~~ ~~v~~ ~~w~~ ***v***) "Medical Director" means the ~~Executive~~ Medical Director appointed by the ~~Industrial Medical Council~~ Administrative Director pursuant to Labor Code section 122~~, who is Executive Secretary of the Council.~~, ~~including~~ ***and includes any*** Associate Medical Directors ***when acting as*** his or her designee.

(~~x~~ w) "Mental health record" means a medical treatment or evaluation record created or reviewed by a licensed physician as defined in Labor Code section 3209.3 in the course of treating or evaluating a mental disorder.

(~~y~~ x) "Panel QME" means the physician, from a QME panel list provided by the Medical Director, who is selected under Labor Code section 4062.1(c) when the injured worker is not represented by an attorney, and when the injured worker is represented by an attorney, the physician whose name remains after completion of the striking process or who is otherwise selected as provided in Labor Code section 4062.2(c) when the parties are unable to agree on an Agreed Panel QME.

(~~w~~ ~~z~~ ***y***) "Physician's office" means a bona fide office facility which is identified by a street address and any other more specific designation such as a suite or room number and which contains the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or practice.

~~**(x) "Primary practice location" means any office location at which the physician spends at least five (5) or more hours per week engaged in direct medical treatment. For physicians appointed as QMEs pursuant to Labor Code section 139.2(b)(2) (AME qualification) 'primary practice location' means any office location at which the physician spends at least five (5) or more hours per week performing examinations for AME evaluations. For physicians appointed as QMEs pursuant to Labor Code section 139.2(c) and section 15 of Title 8 of the California Code of Regulations, 'primary practice location' means location at which the physician spends at least five (5) or more hours per week engaged in direct medical treatment or performing examinations for AME or QME evaluations.**~~

~~(r) "Provider" means the individual or organization which has been accredited by the Council to offer physician education programs. There are two categories of providers: (1) the Council and (2) individuals, partnerships, or corporations; hospitals; clinics or other patient care facilities; educational institutions; medical or health-related organizations whose membership includes L.C. 3209.3 physicians; organizations of non-medical participants in the California workers' compensation system; and governmental agencies. In the case of a national organization seeking accreditation, the California Chapter or organization affiliated with the national organization shall be accredited by the Council in lieu of the national organization.~~

~~(s) "Qualified Injured Worker" means an employee defined pursuant to subdivision (c) of Section 10003 of this Title.~~

(~~t~~ y ~~aa~~ z) ~~"Qualified Medical Evaluator" (QME)~~ "Qualified Medical Evaluator (QME)" means a physician licensed by the appropriate licensing body for the state of California and appointed by the ~~Council~~ Administrative Director pursuant to Labor Code section 139.2, provided however, that acupuncturist QMEs shall not perform comprehensive medical-legal evaluations to determine disability.

(~~u~~ z ~~bb~~ aa) "QME competency examination" means an examination administered by the ~~Industrial Medical Council~~ Administrative Director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. This examination shall be given at least as often as twice annually.

~~(v) "Physician's office" means a bona fide office facility which is identified by a street address and any other more specific designation such as a suite or room number and which contains the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or practice.~~

(~~z aa~~ ~~cc~~ bb) "QME competency examination for acupuncturists" means an examination administered by the Administrative Director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system which are not pertinent to the determination of disability, but should be understood by acupuncturist QMEs. This examination shall be given at least as often as twice annually.

(~~w~~ bb) ~~"Rebuttal examination" means a comprehensive medical-legal evaluation performed at the request of a party concerning a disputed medical finding or conclusion by a QME concerning an unrepresented employee.~~

(~~x cc~~ ~~dd~~ cc) "Significant Financial Interest or Affiliation Held by Faculty", as used in sections 11.5, 14, 55, 118 and 119 pertaining to faculty of approved disability report writing or continuing education courses under these regulations, means grant or research support; status as a consultant, member of a speakers' bureau, or major stock shareholder; or other financial or material interest for the program faculty member or his or her family.

(~~dd~~ ~~ee~~ dd) "Specified Financial Interests" means having a shared financial interest that must be reported or disclosed pursuant to sections 11, 17, 29, 50 or on the "SFI Form 124" attached to QME Form 100, 103 or 104 as required by these regulations.

(~~ee~~ ~~ff~~ ee) "Supplemental medical-legal evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(*l*) of Title 8 of the California Code of Regulations.

(~~y ff~~ ~~gg~~ ff) "Treating physician" means a physician who has provided direct medical treatment to an employee which is reasonably required to cure or relieve the effects of an industrial injury pursuant to section 4600 of the Labor Code.

~~(z) "Treatment Guideline" means the advisory guideline issued by the Industrial Medical Council which sets out a systematic statement intended to assist health care providers in the California~~

workers' compensation community in making decisions about appropriate medical treatment for specific industrial injuries.

(**aa gg** ~~hh~~ ***gg***) "Unrepresented employee" means an employee not represented by an attorney.

Note: Authority cited: Sections ~~139,~~ 53, 133, 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2 and 5307.3, Labor Code. Reference: Sections ~~139,~~ 139.2, 139.3, 139.31, 139.4, 139.43, 3716, 4060, 4061, 4061.5, ~~and~~ 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5 and 4660 through 4664, Labor Code.

ARTICLE 2. QME Eligibility

§ 10. Appointment of QMEs

(a) Applications for appointment as a QME shall be submitted on the form in section 100 (QME Form 100). The completed application form, and any supporting documentation as required by the application, shall be filed at the ~~Council's~~ Administrative Director's ~~headquarters~~ office listed on the form in section 100. Upon ~~its~~ his or her approval of each application form and supporting documentation, the ~~Council~~ Administrative Director shall certify**,** as eligible to sit for the QME competency examination**,** those applicants who meet all of the statutory and regulatory eligibility requirements. Any application for appointment may be rejected if it is ~~incompletely filled out~~ incomplete, contains false information or does not contain the required supporting documentation listed in section 11.

(b) The Administrative Director may deny appointment or reappointment to any physician who has performed a QME evaluation or examination without valid QME certification at the time of examining the injured ~~employee~~ ***worker*** or the time of signing the initial or follow-up evaluation report. ~~**An applicant who is currently serving a period of probation imposed by the applicant's professional licensing agency shall be denied appointment as a QME until the applicant's professional license is unrestricted**~~. An applicant serving a period of probation imposed by the applicant's professional licensing ***board or*** agency may be allowed to take the QME examination while on probationary license status~~**, as long as the probationary status is scheduled to terminate within twelve (12) months of the date of the QME examination and the applicant is otherwise deemed eligible by the Administrative Director.**~~ ***Applications for appointment or reappointment from physicians who are on probationary license status with a California licensing board or agency while the QME application is pending shall be reviewed by the Medical Director on a case-by-case basis consistent with the provisions of Labor Code section 139.2(m).***

(c) No physician who has been convicted of a felony or misdemeanor related to his or her practice shall be appointed or reappointed as a QME. An applicant who has been convicted of any other type of felony or misdemeanor may be denied appointment or reappointment.

(d) Any physician who, while under investigation or ~~**following**~~ ***after*** the service of a statement of issues or accusation for alleged violations of these regulations ***or the Labor Code,***, ~~**either resigned from or failed to renew**~~ ***withdraws*** his or her ***application for*** appointment or reap-

pointment, ***resigns or fails to seek reappointment*** as a QME, shall be subject to having ~~**that action**~~ ***the disciplinary process*** reactivated ***whenever an application for appointment or reappointment is subsequently filed*** . In the event any of the alleged violations are found to have occurred, the physician's application for appointment or reappointment may be denied by the Administrative Director.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, ~~139 and~~ 139.2~~,~~ and 5307.3, Labor Code; and Section 730, Business and Professions Code. Reference: Sections 139.2, 4060, 4061, 4062, ~~and~~ 4062.1 and 4062.2, Labor Code; and Section 730, Business and Professions Code.

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~~**§ 10.5. Limitations on Certification as Qualified Medical Evaluators**~~

~~(a) All eligibility requirements contained herein shall be applied without regard to the race, creed, color, gender, religion, or national origin of the individual applying for the public benefit.~~

~~(b) Pursuant to Section 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Pub. L. No. 104-193 (PRWORA)), (8 U.S.C. § 1621), and notwithstanding any other provision of this division, aliens who are not qualified aliens, nonimmigrant aliens under the Immigration and Nationality Act (INA) (8 U.S.C. § 1101 et seq.), or aliens paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)), for less than one year, are not eligible to receive QME certification as set forth in Labor Code Section 139.2.~~

~~(c) A qualified alien is an alien who, at the time he or she applies for, receives, or attempts to receive QME certification is, under Section 431(b) of the PRWORA (8 U.S.C. § 1641(b)), any of the following:~~

~~(1) An alien who is lawfully admitted for permanent residence under the INA (8 U.S.C. § 1101 et seq.).~~

~~(2) An alien who is granted asylum under Section 208 of the INA (8 U.S.C. § 1158).~~

~~(3) A refugee who is admitted to the United States under Section 207 of the INA (8 U.S.C. § 1157).~~

~~(4) An alien who is paroled into the United States under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)) for a period of at least one year.~~

~~(5) An alien whose deportation is being withheld under Section 243(h) of the INA (8 U.S.C. § 1253(h)) (as in effect immediately before the effective date of Section 307 of division C of Public Law 104-208) or Section 241(b)(3) of such Act (8 U.S.C. § 1251(b)(3)) (as amended by Section 305(a) of division C of Public Law 104-208).~~

~~(6) An alien who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980. (8 U.S.C. § 1153(a)(7)) (See editorial note under 8 U.S.C. § 1101, "Effective Date of 1980 Amendment").~~

~~(7) An alien who is a Cuban or Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C. § 1522 note)).~~

~~(8) An alien who meets all of the conditions of subparagraphs (A), (B), (C), and (D) below:~~

~~(A) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent of the alien consented to, or acquiesced in, such battery or cruelty. For purpose of this subsection, the term "battered or subjected to extreme cruelty" includes, but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.~~

~~(B) There is a substantial connection between such battery or cruelty and the need for QME certification in the opinion of the IMC Administrative Director. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for QME certification:~~

~~(1) QME certification is needed to enable the alien to become self-sufficient following separation from the abuser.~~

~~(2) QME certification is needed to enable the alien to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien from the abuser.~~

~~(3) QME certification is needed due to a loss of financial support resulting from the alien's separation from the abuser.~~

~~(4) QME certification is needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien to lose his or her job or to earn less or to require the alien to leave his or her job for safety reasons.~~

~~(5) QME certification is needed because the alien requires medical attention, health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~(6) QME certification is needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into daycare for fear of being found by the abuser).~~

~~(7) QME certification is needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~(8) QME certification is needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien and/or to care for any resulting children.~~

~~(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien had when living with the abuser.~~

~~(C) The alien has a petition that has been approved or has a petition pending which sets forth a prima facie case for:~~

~~(1) status as a spouse or child of a United States citizen or legal permanent resident pursuant to clause (ii), (iii), or (iv) of Section 204 (a)(1)(A) of the INA (8 U.S.C. § 1154(a)(1)(A)(ii), (iii) or (iv) and (B)(i)),~~

~~(2) classification pursuant to (ii) or (iii) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(ii) or (iii)),~~

~~(3) suspension of deportation and adjustment of status pursuant to Section 244(a)(3) of the INA (8 U.S.C. § 1254) as in effect prior to April 1, 1997 [Pub. L. 104-208, § 501 (effective September 30, 1996, pursuant to § 591); Pub. L. 104-208, § 304 (effective April 1, 1997, pursuant to § 309; Pub. L. 105-33, § 5581 (effective pursuant to § 5582)] (incorrectly codified as "cancellation of removal under Section 240A of such Act [8 U.S.C. § 1229b] (as in effect prior to April 1, 1997)."~~

~~(4) status as a spouse or child of a United States citizen pursuant to clause (i) or Section 204(a)(1)(A) of the INA (8 U.S.C. § 1157(a)(1)(A)(i)) or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA (8 U.S.C. § 1154(a)(1)(B)(i)), or~~

~~(5) cancellation of removal pursuant to section 240(b)(2) of the INA (8 U.S.C. § 1229b(b)(2)).~~

~~(D) For the period for which QME certification is sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.~~

~~(9) An alien who, under Section 431(c)(2) of the PRWORA (8 U.S.C. § 1641(c)(2)), meets all of the conditions of subparagraphs (A), (B), (C), (D), and (E) below:~~

~~(A) The alien has a child who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien, and the spouse or parent consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty:" includes but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.~~

~~(B) The alien did not actively participate in such battery or cruelty.~~

~~(C) There is a substantial connection between such battery or cruelty and the need for QME certification to be provided in the opinion IMC of the Administrative Director. For purposes of this~~

~~subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:~~

~~(1) QME certification is needed to enable the alien's child to become self-sufficient following separation from the abuser.~~

~~(2) QME certification is needed to enable the alien's child to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien's child from the abuser.~~

~~(3) QME certification is needed due to a loss of financial support resulting from the alien's child's separation from the abuser.~~

~~(4) QME certification is needed because the battery or cruelty, separation from the abuser, or work absences are or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child support, child custody, and divorce actions) cause the alien's child to lose his or her job or to earn less or to require the alien's child to leave his or her job for safety reasons.~~

~~(5) QME certification is needed because the alien's child requires medical attention or mental health counseling, or has become disabled, as a result of the battery or extreme cruelty.~~

~~(6) QME certification is needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien's child's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).~~

~~(7) QME certification is needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~(8) QME certification is needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien's child and/or care for any resulting children.~~

~~(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien's child had when living with the abuser.~~

~~(D) The alien meets the requirements of subsection (c)(8)(C) above.~~

~~(E) For the period for which benefits are sought, the individual responsible for the battery or cruelty does not reside in the same household or family eligibility unit as the individual subjected to the battery or cruelty.~~

~~(10) An alien child who meets all of the conditions of subparagraphs (A), (B), and (C) below:~~

~~(A) The alien child resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty. For purposes of this subsection, the term "battered or subjected to extreme cruelty:" includes but is not limited to being the victim of any act or threatened act of violence including any forceful detention, which results or threatens to result in physical or mental injury. Rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered as acts of violence.~~

~~(B) There is a substantial connection between such battery or cruelty and the need for QME certification in the opinion of IMC the Administrative Director. For purposes of this subsection, the following circumstances demonstrate a substantial connection between the battery or cruelty and the need for the benefits to be provided:~~

~~(1) QME certification is needed to enable the alien child's parent to become self-sufficient following separation from the abuser.~~

~~(2) QME certification is needed to enable the alien child's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the alien child's parent from the abuser.~~

~~(3) QME certification is needed due to a loss of financial support resulting from the alien child's parent's separation from the abuser.~~

~~(4) QME certification is needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support, child custody, and divorce actions) cause the alien child's parent to lose his or her job or to earn less or to require the alien child's parent to leave his or her job for safety reasons.~~

~~(5) QME certification is needed because the alien child's parent requires medical attention or mental health counseling, or has become disabled, as a result or of the battery or extreme cruelty.~~

~~(6) QME certification is needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the alien child's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser).~~

~~(7) QME certification is needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser.~~

~~(8) QME certification is needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the alien child's parent and/or to care for any resulting children.~~

~~(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the alien child's parent had when living with the abuser.~~

~~(C) The alien child meets the requirements of subsection (c)(8)(C) above.~~

~~(d) For purposes of this section, "nonimmigrant" is defined the same as in Section 101(a)(15) of the INA (8 U.S.C. § 1101(a)(15)).~~

~~(e) For purposes of establishing eligibility for certification as a QME pursuant to Labor Code Section 139.2, all of the following must be met:~~

~~(1) The applicant must declare himself or herself to be a citizen of the United States or a qualified alien under subsection (c), a nonimmigrant alien under subsection (d), or an alien paroled into the United States for less than one year under Section 212(d)(5) of the INA (8 U.S.C. § 1182(d)(5)).~~

~~The applicant shall declare that status through use of the "Statement of Citizenship, Alienage, and Immigration Status for QME Certification," Form 101 (see, 8 Cal. Code Regs. § 101).~~

~~(2) The applicant must present documents of a type acceptable to the Immigration and Naturalization Service (INS) which serve as reasonable evidence of the applicant's declared status. A fee receipt from the INS for replacement of a lost, stolen, or unreadable INS document is reasonable evidence of the alien's declared status.~~

~~(3) The applicant must complete and sign Form 101 (see, 8 Cal. Code Regs. § 101) and submit the from form to the IMC Administrative Director with any other required information under Article 2 and Article 5 of this division.~~

~~(4) Where the documents presented do not on their face appear to be genuine or to relate to the individual presenting them, the government entity that originally issued the documents shall be contacted for verification. With regard to naturalized citizens and derivative citizens presenting certificates of citizenship and aliens, the INS is the appropriate government entity to contact for verification. The IMC Administrative Director shall request verification from the INS by filing INS Form G-845 with copies of the pertinent documents provided by the applicant with the local INS office. If the applicant has lost his or her original documents or presents expired documents or is unable to present any documentation evidencing his or her immigration status, the applicant shall be referred to the local INS office to obtain documentation.~~

~~(5) The type of documentation referred to the INS for verification pursuant to INS Form G-845 shall include the following:~~

~~(A) The document presented indicates immigration status but does not include an alien registration or alien admission number.~~

~~(B) The document is suspected to be counterfeit or to have been altered.~~

~~(C) The document includes an alien registration number in the A60-000-000 (not yet issued) or A80-000-000 (illegal border crossing) series.~~

~~(D) The document is one of the following: an INS Form, I-181b notification letter issued in connection with an INS Form I-181 Memorandum of Creation of Records of Permanent Residence, and Arrival-Departure Record (INS Form I-94) or an foreign passport stamped "PROCESSED FOR I-551, TEMPORARY EVIDENCE OF LAWFUL PERMANENT RESIDENCE" that INS issued more than one year before the date of application for QME certification.~~

~~(6) If the INS advises that the applicant has citizenship status or immigration status which makes him or her a qualified alien, a nonimmigrant or alien paroled for less than one year under Section 212(d)(5) of the INA, the INS verification shall be accepted. If the INS advises that it cannot verify that the applicant has citizenship status or an immigration status that makes him or her a qualified alien, a nonimmigrant or an alien paroled for less than one year under Section 212(d)(5) of the INA, QME certification shall be denied and the applicant notified pursuant to the Administrative Procedure Act (Gov't Gov. Code § 11370 et seq.) of his or her right to appeal the denial of his or her certification.~~

~~(f) Pursuant to Section 434 of PRWORA (8 U.S.C. § 1644), where the Industrial Medical Council~~ Administrative Director ~~reasonably believes that an alien is unlawfully in the State based on the failure of the alien to provide reasonable evidence of the alien's declared status, after an opportunity to do so, said alien shall be reported to the Immigration and Naturalization Service.~~

~~(g) Eligibility for QME certification is established where subsections (e)(1)-(3) are satisfied. Any alien who provides documentation specified under subsection (e)(5) shall be eligible for QME certification until and unless the Industrial Medical Council~~ Administrative Director ~~receives written confirmation from the Immigration and Naturalization Service that the alien is not eligible for QME certification.~~

~~(h) Nothing in this section shall be construed to withdraw eligibility for QME certification if any of the conditions in U.S.C. § 1621(b) are present.~~

~~(i) Any applicant who was made eligible for QME certification whose services are terminated, suspended, or reduced pursuant to subsections (b) and (e), is entitled to a hearing under Section 61 of these regulations.~~

~~NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.~~

~~Note: Authority cited: Sections 139 and~~ 133, ~~139.2.~~ and ~~5307.3, Labor Code.~~
~~Reference: 8 U.S.C. Sections 1621, 1641 and 1642; Sections 139.2, 5307.3 and 5307.4, Labor Code; and Section 11507 et seq., Government Code.~~

§ 11. Eligibility Requirements for Initial Appointment as a QME

The ~~Council~~ Administrative Director shall appoint as QMEs all applicants who meet the requirements set forth in Labor Code Section 139.2(b) and all applicants:

(a) Shall submit the required supporting documentation:

(1) Copy of current license to practice in California;

(2) For Medical Doctors, or Doctors of Osteopathy:

(A) A copy of the applicant's certificate of completion of postgraduate specialty training at an institution recognized by the Accreditation Council for Graduate Medical Education or the osteopathic equivalent as defined pursuant to section 12, or;

(B) A copy of the applicant's Board certification by a specialty board recognized by the ~~Council~~ Administrative Director or as defined pursuant to section 12, or;

(C) A declaration under penalty of perjury accompanied by supporting documentation that the physician has qualifications that the ~~Council~~ Administrative Director and the Medical Board of Cal-

ifornia or the Osteopathic Medical Board of California both deem to be equivalent to board certification in a specialty.

(3) If a psychologist, (i) a copy of a doctoral degree in psychology or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to section 2914 of the Business and Professions Code, and has not had less than five years postdoctoral experience in the treatment of emotional and mental disorders or (ii) served as an AME on eight or more occasions prior to January 1, 1990 and has not less than five years postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(4) For Doctors of Chiropractic, the physician shall provide (1) a copy of a current or otherwise valid certificate in California Workers Compensation Evaluation by either a California professional chiropractic association or an accredited California college recognized by the ~~Council~~ Administrative Director (i.e. Workers' Compensation Evaluation Certificate with a minimum 44 hours completed) or; (2) a certificate of completion of a chiropractic postgraduate specialty program of at least 300 hours taught by a school or college recognized by the ~~Council~~ Administrative Director, the Board of Chiropractic Examiners and the Council on Chiropractic Education.

(5) Or, for other physicians, a copy of the physician's professional diploma.

(b) (1) Shall, ~~Prior~~ prior to appointment as a QME, ~~each applicant shall~~ complete a course of at least twelve (12) hours in disability evaluation report writing pursuant to section 11.5 of this Article. Doctors of Chiropractic who submit documentation showing compliance with section 11(a)(4)(1) are exempt from this requirement~~.~~; and

(2) Shall accurately and fully report on the SFI Form 124 attached to the application (QME Form 100) to the best of the applicant's knowledge the information required by section 29 of Title 8 of the California Code of Regulations, regarding applicant's specified financial interests.

(c)~~(1)~~ Shall provide supplemental information and/or documentation to the ~~Council~~ Administrative Director after an application ~~form~~, QME Form 100 (see, 8 Cal. Code Regs. § 100), is submitted if requested to verify an applicant's eligibility for appointment.

~~(2) Shall declare that he or she has not performed a QME Evaluation without QME Certification. The council, after hearing pursuant to Section 61, may deny appointment to any applicant who has performed a QME Evaluation without QME Certification prior to appointment.~~

(d) Shall agree that during a QME evaluation exam he or she will not treat or offer or solicit to provide medical treatment for that injury for which he or she has done a QME evaluation for an injured worker unless a medical emergency arises as defined under subdivision (a) or (b) of section 1317.1 of the Health and Safety Code. A QME may also provide treatment if requested by the employee pursuant to section 4600 of the Labor Code, but he or she shall not offer or solicit to provide it. A QME who solicits an injured ~~employee~~ ***worker*** to receive direct medical treatment or to become the primary treating physician of that employee shall be subject to disciplinary action pursuant to section 60.

(e) Shall declare under penalty of perjury on the QME application that he or she:

(1) ~~has~~ Has an unrestricted ***California*** license ~~or~~ and is not currently on probation from the state licensing board, ~~and;~~ or, if the applicant has a ***California*** restricted license or is currently on probation, state all the restrictions on the license and all terms of probation; and

(2) ~~devotes~~ Devotes at least one-third of ~~their~~ his or her total practice time to providing direct medical treatment during each year of the applicant's term of appointment. This requirement shall not apply if the applicant qualifies for appointment because the applicant ~~has~~ served as an AME on 8 or more occasions in the year prior to application and in each year of the applicant's term; or if the applicant meets the requirements of section 15~~.~~; and

(3) Has not performed a QME evaluation without QME certification;

~~(4) Spends at least five (5) hours per week providing direct medical treatment at each office location identified to the Medical Director on the QME Fee Assessment Form (QME Form 103) [see, section 103 of Title 8 of the California Code of Regulations], as a "primary practice location" as defined in section 1(x) of Title 8 of the California Code of Regulations; and~~

~~(5)~~ ***(4)*** Has accurately and fully reported on QME Form 124 to the best of the applicant's knowledge the specified financial interest information required by section 29 of Title 8 of the California Code of Regulations.

(f) Shall pass the QME Competency Examination, or if an acupuncturist, shall pass the QME Competency Examination for acupuncturists.

(1) In order to take this examination, a physician who is not currently appointed as a QME and not exempt pursuant to Labor Code section 139(b)(1), shall be considered to have applied to take the QME competency examination upon submitting the properly-completed Application for Appointment Form in Section 100 (see, 8 Cal. Code Regs. section 100), and the Registration Form for the QME Competency Examination in section 102 (see, 8 Cal. Code Regs. § 102) and the appropriate fee as specified in section 11(f)(2).

(2) The fee for applying to take or retake the QME competency examination is $ 125.00 and may be waived by the ~~Council~~ Administrative Director at ~~its~~ his or her discretion for first time applicants.

(3) The ~~Medical Director~~ Administrative Director shall give appropriate public notice of the date, time and location of the examination no fewer than sixty (60) calendar days before a competency examination is to be given.

(4) An applicant must submit the properly completed forms as required in section 11(f)(1) to the ~~Medical Director~~ Administrative Director at least thirty (30) calendar days prior to the date of the next scheduled competency examination unless the ~~Medical Director~~ Administrative Director finds good cause to grant an extension to the physician(s).

(5) The ~~Medical Director~~ Administrative Director shall inform the applicant in writing whether he or she shall be allowed to take the examination within fifteen (15) calendar days from the date the ~~Council~~ Administrative Director receives the properly-completed forms and appropriate fee.

(6) The ~~Medical Director~~ Administrative Director shall inform the applicant in writing whether or not he or she passed the examination within sixty (60) calendar days from the date the applicant takes the competency examination.

(7) An applicant who passes the QME competency examination shall file the QME Fee Assessment Form in Section 103 (see, 8 Cal. Code Regs. section 103) including the appropriate fee within thirty (30) days of the date of the notice. The physician shall not be appointed to the official QME list until the appropriate fee is paid and has completed a disability evaluation report writing course pursuant to section 11.5. Appointments shall be for two-year terms beginning with the date of appointment by the ~~Council~~ Administrative Director.

(8) Any applicant, who upon good cause shown by the test administrator, is suspected of cheating may be disqualified from the examination and, upon a finding that the applicant did cheat in that exam, the applicant will be denied further admittance to any QME examination for a period of at least ~~two~~ ***five*** years thereafter. Any applicant who fails to follow test instructions and/or proctor instructions either before or during or at the conclusion of an examination shall be disqualified from the examination procedure and the applicant's exam shall be nullified.

(9) If an applicant fails the competency examination or fails to appear for a noticed QME examination for which the applicant has submitted a QME Exam Registration Form 102 (see, 8 Cal. Code Regs. § 102), the applicant may apply to take any subsequent examinations, upon submission of a new test application form and a fee of $125. An applicant who fails the exam three times shall show proof of having completed six (6) hours continuing education from a course approved by the ~~Council~~ Administrative Director prior to taking the examination again.

(10) Any applicant who receives a failing grade on a competency exam may appeal the failing grade to the ~~Council~~ Administrative Director. Appeals shall be considered on a case by case basis. Appeals will be accepted immediately after a candidate has completed the examination and until ten (10) days after the date of the examination results letter. The appeal shall state specific facts as to why the failing grade should be overturned. Pursuant to Section 6254(g) of the Government Code, the ~~Council~~ Administrative Director will consider appeals of test questions ~~in closed session with counsel~~ and will base his or her decision solely on the written appeal including any supporting documentation submitted by the physician. Appeals will only be accepted for the current examination period. Grounds for appeal are:

(A) Significant procedural error in the examination process;

(B) Unfair Discrimination;

(C) Bias or fraud.

(g) Each applicant shall pay the annual fee required by section 17 of this Article prior to appointment.

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Section 139.2, Labor Code and Section 6254, Government Code.

§ 11.5. Disability Evaluation Report Writing Course

Prior to appointment as a QME, a physician shall complete a course of at least twelve hours of instruction in disability evaluation report writing. The course curriculum shall be specified by the ~~Council~~ Administrative Director. Only report writing courses which are offered by education providers as defined in subdivision 1(~~q~~ ***r***) of Title 8 of the California Code of Regulations shall qualify to satisfy this requirement.

(a) ~~To apply to the Council for accreditation, a~~ An education provider applicant shall submit:

(1) a completed ~~IMC~~ QME Form 118 (Application for Accreditation) (see, 8 Cal. Code Regs. § 118) which contains:

(A) the applicant's name; address; director of education with contact information; type of organization; length of time in business; nature of business; and past experience providing continuing education courses (including a list of other accrediting agencies that have approved such courses);

(B) a description of the proposed education program or course which includes the title; type (continuing education program or disability evaluation report writing course); location(s); date(s); length of training in clock hours; educational objectives; a complete description of the program or course content; faculty; and the names of other accrediting agencies that have approved the program.

(2) A curriculum vitae for each proposed instructor. A proposed instructor shall have education and/or training and recent work experience relevant to the subject of his/her presentation.

~~(3)~~ (b) ~~To apply to the Council~~ The application for accreditation as an education provider, along with all required supporting documents, ~~an applicant~~ shall be ~~submit the application~~ submitted to the Administrative Director, at least 60 calendar days before any public advertisement of the applicant's course.

(b) The ~~Council~~ Administrative Director shall accredit an applicant that: meets the definition of an education provider ~~in Section 1(r)~~; submits a completed, signed and dated application which demonstrates past experience in providing continuing education programs; and proposes a program which meets the requirements of section 55(c) or a course which meets the requirements of section 11.5(a) and (i). The applicant must demonstrate that adequate time is allocated to the curriculum set forth in section ~~11.(5)(i)~~ 11.5 (i) for the course to be approved by the ~~Council~~ Administrative Director. Proposed content for continuing education program credit must relate directly to disability evaluation or California workers' compensation-related medical dispute evaluation. No credit shall be recognized by the ~~IMC~~ Administrative Director for material primarily discussing the business

aspects of workers' compensation medical practice, including but not limited to billing, coding and marketing.

(c) The ~~Council~~ Administrative Director shall notify the applicant within 20 calendar days ~~following the next scheduled Council meeting~~ after receipt of the application containing all the information listed in section 11.5(a) whether that education provider has been accredited for a two year period and the proposed course has been approved. Incomplete applications will be returned to the ~~provider~~ applicant.

(d) ~~A provider~~ Each education provider that has been accredited by the ~~Council~~ Administrative Director will be given a number which must be displayed on course promotional material.

(e) On or before the date the course is first presented, the education provider shall submit the program syllabus (all program handouts) to the ~~Council~~ Administrative Director.

(f) An approved course may be offered for two (2) years. ~~A provider~~ An accredited education provider shall notify the ~~Council~~ Administrative Director in writing of any change to the faculty in an approved course. The provider shall send the ~~Council~~ Administrative Director the program outline, promotional material and faculty for each offering of the program at least 45 days prior to the date of the presentation of the program. The ~~Council~~ Administrative Director may require submission of the program syllabi. The ~~Council~~ Administrative Director may require changes in the program based on its review of the program outline, program syllabi, promotional material or faculty if the ~~IMC~~ Administrative Director finds that any aspect of the program is not in compliance with these regulations.

(g) To apply for re-accreditation, ~~a provider~~ the education provider applicant must submit a completed ~~IMC~~ QME Form 118 (Application for Accreditation) (see, 8 Cal. Code Regs. § 118), using the application process in 11.5(a). The ~~provider~~ applicant may complete section 2 of the form using a new program or course or one which was given by the ~~provider~~ applicant during the recent accreditation period. The ~~Council~~ Administrative Director shall give the provider 90 days' notice of the need to seek re-accreditation.

(h) Promotional materials for a course must state the education provider's educational objectives; the professional qualifications of course faculty (at the least, all relevant professional degrees); the content of course activities; and the intended audience.

(i) The minimum of 12 hours of instruction in disability evaluation report writing shall include:

(1) The Qualified Medical Evaluator's Role in the Disability Evaluation Process (minimum recommended 1 hour)

How disability evaluation reports are used

The reasons why reports must be clear, complete and timely

The QME's role as an expert witness

Impact of the QME's report on the injured worker

QME ethics and the Confidentiality of Medical Information Act

(2) Elements of the Medical-Legal Report (minimum recommended 1 hour)

The Labor Code and regulatory requirements for medical-legal reports.

(3) The Language of Reports (minimum recommended 4 hours)

Evaluation of disability in California (impairment and disability)

The occupational history

The physician examination and the role of testing

The Medical Treatment Utilization Schedule (MTUS) adopted by the Administrative Director pursuant to Labor Code section 5307.27, found in section 9792.20 *et seq* of Title 8 of the California Code of Regulations, and relevant portions of the ACOEM Practice Guidelines

~~Labor Code requirements to use Packard Thurber's Evaluation of Industrial Disability~~

Providing opinions that resolve disputed medical treatment issues consistent with the evaluation criteria specified in section 35.5 (d) of Title 8 of the California Code of Regulations

Packard Thurber's Evaluation of Industrial Disability, section 43 through 47 and section 9725 through 9727 of Title 8 of the California Code of Regulations (for cases with dates of injury not subject to the AMA guide-based impairment rating system, described below)

Factors of disability, including subjective and objective factors***, loss of pre-injury capacity and work restrictions***, for cases involving dates of injury not subject to the AMA guide-based impairment rating system

~~Subjective~~

~~Objective~~

Activities of Daily Living, for cases subject to the AMA Guides

Work restrictions

~~**Loss of pre-injury capacity**~~

Work Capabilities

American Medical Association, Guides to the Evaluation of Permanent Impairment, [Fifth Edition] (AMA Guides) and its use in determining permanent disability in accordance with the Schedule for Rating Permanent Disabilities [effective January 1, 2005] (for all claims with dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, in which either there is no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice to the injured worker required by Labor Code section 4061)

Causation

Determination of permanent and stationary status

Vocational rehabilitation ***(for claims with dates of injury prior to January 1, 2004)***

Apportionment including the requirements of Labor Code sections 4660, 4663 and 4664 added by SB 899 (Stats. 2004, ch. 34)

Future medical treatment using the Medical Treatment Utilization Schedule

Review of records

Providing sufficient support for conclusions

(4) The ~~Council~~ Administrative Director's Disability Evaluation Protocols (minimum recommended 1 hour)

An overview of ~~the protocols and an in-depth discussion of one or more of~~ the Neuromusculoskeletal, Pulmonary, Cardiac, Immunologic, or Psychiatric protocols, and an in-depth discussion of measurement of impairment***, calculations and rationale for rating*** under the AMA Guides, as relevant.

(5) The Third Party Perspective (minimum recommended 1 hour)

The report from the perspective of those who read it:

Judge(s), attorney(ies), insurer(s), rater(s), employer(s), qualified rehabilitation representative(s).

(6) Anatomy of a Good Report (small group or other interactive sessions -- minimum recommended 3 hours)

Discussion of examples of good reports and identification of weaknesses in reports

Opportunities for the practitioner to critique and/or correct reports.

If feasible, physician should have the opportunity to write a sample report.

Review of results of ~~IMC~~ Administrative Director's annual report review and identification of common problems with reports.

(7) Mechanics of Report Writing (minimum recommended 1 hour)

The QME Process

Face to face time

Timelines for submission of report

Completion of required forms

Service of reports

Final questions and answers

(8) Submission and Critique of Written Medical/legal Report. As a condition of completion of the course taken to satisfy the requirements of this section, each physician enrollee shall draft at least one practice written medical/legal report, based on a sample case library of materials, which written report shall be critiqued with notations by the course education provider.

(j) ~~No more than four hours of the required twelve hours of instruction may be taken by distance learning.~~ All audio or video tapes, computer programs and printed educational material used in the course must be submitted to the ~~Council~~ Administrative Director on or before the date the course is first given. Up to the full twelve hours of instruction may be completed by distance learning whenever the Administrative Director has approved the submitted course prior to the first day the course is given. All distance learning materials shall bear a date of release and shall be updated yearly. The education provider shall notify the ~~Council~~ Administrative Director in writing of the revision.

(k) No one shall recruit members or promote commercial products or services in the instruction room immediately before, during, or immediately after the presentation of a course. ~~Providers~~ Education providers or vendors may display/sell educational materials related to workers' compensation or applications for membership in an area adjoining a course. A course provider or faculty member shall disclose on ~~IMC~~ QME ~~form~~ Form 119 (Faculty Disclosure of Commercial Interest) (see, 8 Cal. Code Regs. § 119) any significant financial interest held by faculty in or affiliation with any commercial product or service which is discussed in a course and that interest or affiliation must be disclosed to all attendees. ~~A provider~~ An education provider shall file every ~~form~~ Form 119 in its possession with the ~~Council~~ Administrator Director.

(l) The provider shall maintain attendance records for each disability evaluation report writing course for a period of no less than three years after the course is given. A physician attending the course must be identified by signature. The provider must submit a copy of the signature list to the ~~Council~~ Administrative Director within 60 days of completion of the course.

(m) The provider is required to give the ~~IMC's~~ QME Evaluation Form 117~~)~~ (Qualified Medical Evaluator Continuing Education Response Form) (see, 8 Cal. Code Regs. § 117) to course attendees and request they submit the form to the ~~IMC~~ Administrative Director. This information shall not be used in lieu of a certification of completion given by the provider, as specified pursuant to section (n). Destruction by a provider or its employee of a QME's Evaluation Form or failure by such provider or its employee to distribute Form 117 as part of its course shall constitute grounds for revocation of a provider's accredited status. The ~~Council~~ Administrative Director shall tabulate the responses and return a summary to the provider within 90 days of completion of the course.

(n) The provider shall issue a certificate of completion to the physician ~~which~~ that states the name of the provider, the provider's number, the date(s) and location and title of the course. To be eligible for appointment as a QME, a physician must complete no less than 12 hours of the curriculum specified in Section 11.5(i) and must submit a copy of that certificate to the ~~Council~~ Administrative Director.

(o) Joint sponsorship of courses (as between an accredited and an unaccredited provider) must be approved by the ~~Council~~ Administrative Director prior to presentation of the course.

(p) The ~~Council~~ Administrative Director may audit a provider's course(s) at the request of the medical director to determine if the provider meets the criteria for accreditation. The ~~Council~~ Administrative Director may audit courses given by providers randomly, when a complaint is received, or on the basis of responses on ~~IMC~~ QME Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (see, 8 Cal. Code Regs. § 117). An auditor shall not receive QME credit for

auditing a course. The ~~Council~~ Administrative Director shall make written results of the audit available to the provider no more than 30 days after the audit is completed.

(q) Accredited providers that cease to offer disability evaluation report writing courses shall notify the ~~Council~~ Administrative Director in writing no later than 60 days prior to the discontinuing an approved course.

(r) The ~~Council~~ Administrative Director may withdraw accreditation of a provider or deny such a provider's application for accreditation on the following grounds (in addition to failure to meet the relevant requirements of subsections 11.5(a):

(1) Conviction of a felony or any offense substantially related to the activities of the provider.

(2) Any material misrepresentation of fact made by the provider.

(3) Failure to comply with ~~Council~~ Administrative Director regulations.

(4) False or misleading advertising.

(5) Failure to comply with ~~Council~~ Administrative Director's recommendations following an audit.

(6) Failure to distribute ~~Council~~ QME ~~f~~Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (see, 8 Cal. Code Regs. § 117) cards to course attendees.

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections ~~139,~~ 133, 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2 and 5307.3, Labor Code. Reference: Sections ~~139,~~ 139.2, 4060, 4061, 4061.5, ~~and~~ 4062, 4062.1, 4062.2, 4062.3 and 4067, Labor Code.

§ 12. Recognition of Specialty Boards

The ~~Council~~ Administrative Director shall recognize ~~all~~ only those specialty boards recognized by the respective California licensing boards for physicians as defined in Labor Code section 3209.3. ~~accredited by the American Board of Medical Specialties (ABMS), the American Osteopathic Association, the American Board of Professional Psychology, Inc. and those boards either accredited or considered equivalent to ABMS recognized boards by the Medical Board, the Osteopathic Medical Board and the Board of Psychology of State of California. The Council shall recognize chiropractic diplomate boards whose programs are taught by the Council on Chiropractic Education accredited colleges.~~

Note: Authority cited: Sections ~~139~~ 133, ~~and~~ 139.2~~,~~ ***139.4, 139.43, 139.45,*** and 5307.3, Labor Code. Reference: Sections 139.2(b)(~~2~~3)(A) and 3209.3, ~~4060, 4061 and 4062,~~ Labor Code~~.~~***; Section 651(i) Business and Professions Code.***

§ 13. Physician's Specialty

A physician's specialty(ies) is one for which the physician is board certified or, one for which a medical doctor or doctor of osteopathy has completed a postgraduate specialty training as defined in Section 11(a)(2)(A)~~,~~ or held an appointment as a QME in that specialty on June 30, 2000, pursuant to Labor Code Section 139.2~~,~~ . To be listed as a QME in a particular specialty, the physician's licensing board must recognize the designated specialty board and the applicant for QME status must have ~~having~~ provided to the ~~Council~~ Administrative Director documentation from the relevant board of certification or qualification. ~~or has provided documentation which meets the requirements of Section 11.~~

Note: Authority cited: Sections ~~139~~ 133, ~~and~~ 139.2~~,~~ ***139.4, 139.43, 139.45,*** and 5307.3, Labor Code. Reference: Sections 139.2(b)(~~2~~3)(A), ~~4060, 4061 and 4062,~~ Labor Code~~.~~***; Section 651(i) Business and Professions Code.***

§ 14. Doctors of Chiropractic: Certification in Workers' Compensation Evaluation

(a) All doctors of chiropractic~~, in lieu of board certification,~~ shall be certified in workers' compensation evaluation by either a California professional chiropractic association, or an accredited California college recognized by the ~~Council~~ Administrative Director. The certification program shall include instruction in disability evaluation report writing that meets the standards set forth in section 11.5.

(b) California professional chiropractic associations or accredited California colleges applying to be recognized by the ~~Council~~ Administrative Director for the purpose of providing these required courses to chiropractors in California workers' compensation evaluation, shall meet the following criteria:

(1) The provider's courses shall be administered and taught by a California professional chiropractic association or a California chiropractic college accredited by the Council on Chiropractic Education. Instructors shall be licensed or certified in their profession or if a member of a non-regulated profession have at least two years experience in their area of instruction regarding workers' compensation issues.

(2) The provider's method of instruction and testing shall include all of the following:

(A) L~~l~~ecture, didactic sessions and group discussion including an initial 8 hours of overview of the workers' compensation system and 36 additional hours in medical-legal issues for total minimum class time of 44 hours. Up to 4 hours of the instruction covering the regulations affecting

QMEs and/or writing ratable reports may be satisfied by distance learning. The initial 8 hours of overview are transferable to any other approved program provider for credit;

(B) P~~p~~assing a written test at the completion of the program to determine proficiency and application of course material;

(C) W~~w~~riting a narrative conclusion to medical-legal issues in response to facts presented or a narrative report, in appropriate format, which would meet the standards of a ratable report;

(3) The initial 8 hours of the course material shall cover the following information:

(A) O~~o~~verview of California Labor Code, DWC (Division of Workers' Compensation of the California Department of Industrial Relations) and ~~Council~~ the regulations of the Division of Workers' Compensation and of the Workers' Compensation Appeals Board governing QMEs, medical-legal reports and evaluations;

(B) O~~o~~bligations of the treating and evaluating physicians;

(C) R~~r~~eview of appropriate workers' compensation terminology;

(4) The remaining 36 hours shall include but not be limited to the following:

(A) History ~~history~~ and examination procedure requirements, including all relevant ~~IMC~~ treatment, treatment utilization and evaluation guidelines and regulations adopted by the Administrative Director;

(B) ~~work capacity guidelines and disability ratings;~~ T~~t~~he subjects outlined in subdivision 11.5(i) not already addressed in the first 8 hours, including but not limited to, proper use of the AMA Guides, the medical treatment utilization schedule (MTUS) adopted pursuant to Labor Code section 5307.27, and relevant portions of the ACOEM practice guidelines;

(C) Apportionment ~~apportionment~~, including the changes in Labor Code sections 4660, 4663 and 4664 by SB 899 (Stats. 2004, ch. 34);

(D) V~~v~~ocational rehabilitation;

(E) C~~c~~ontinued ~~or~~ ***and*** future medical care.

(5) The provider's course material and tests shall be submitted to the ~~Council~~ Administrative Director for annual review and the ~~Council~~ Administrative Director shall monitor a provider's course as necessary to determine if the provider meets the criteria for recognition.

(6) The provider's course advertising shall clearly state whether or not the course is recognized to satisfy the requirement for chiropractic California workers' compensation evaluation ~~by the Council~~ by the Administrative Director.

(c) Course Material shall also cover at a minimum, the material within the text of the "Physicians Guide to Medical Practice in the California Workers' Compensation ~~s~~System (Current Edition)."

(d) No one shall recruit members or promote commercial products or services in the instruction room immediately before, during, or immediately after the presentation of a course. Education pro-

viders or vendors may display/sell educational materials related to workers' compensation or applications for membership in an area adjoining a course. A course provider or faculty member shall disclose on QME Form 119 (Faculty Disclosure of Commercial Interest) (see, 8 Cal. Code Regs. § 119) any significant financial interest held by faculty in or affiliation with any commercial product or service which is discussed in a course and that interest or affiliation must be disclosed to all attendees. An education provider shall file every Form 119 in its possession with the Administrator Director.

Note: The "Physicians' Guide" does not appear as a part of this regulation. Copies are available through the ~~Executive~~ Medical Director ~~of the Industrial Medical Council~~ Division of Workers' Compensation, Attention: Medical Unit~~;~~, P. O. Box ~~8888~~ 71010, ~~San Francisco~~ Oakland , CA ~~94128-8888~~ 94612.

Note: Authority cited: Sections ~~139,~~ 122, 133, 139.2, ~~and~~ 139.3~~,~~ and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4062.3 and 4067, Labor Code.

§ 15. Appointment of Retired or Teaching Physicians

In order to be considered for appointment as a QME pursuant to Labor Code Section 139.2(c), a physician shall pass the QME competency examination and submit written documentation to the ~~Council~~ Administrative Director that he or she meets either (a), (b) or (c) of this section. ~~A physician applying for appointment pursuant to this section shall also pass the QME competency examination.~~

The physician shall:

(a) Be a current salaried faculty member at an accredited university or college, have a current license to practice as a physician and ~~have been~~ be engaged in teaching, lecturing, published writing or medical research at that university or college in the area of his or her specialty for not less than one-third of his or her professional time. The physician's practice in the three consecutive years immediately preceding the time of application shall not have been devoted solely to the forensic evaluation of disability.

(b) Be retired from full-time practice~~,~~ ; ~~retaining~~ retain a current license to practice in California as a physician with his or her licensing board; and

(1) ~~Has~~ Have a minimum of 25 years' experience in his or her practice as a physician; and

(2) ~~Has~~ Have had a minimum of 10 years' experience in workers' compensation medical issues; and

(3) ~~Is currently~~ Be practicing currently fewer than 10 hours per week on direct medical treatment as a physician~~,~~ ; and~~;~~

(4) ~~Whose practice in the three consecutive years immediately preceding the time of application was not devoted solely to the forensic evaluation of disability.~~ Not have engaged in a practice devoted solely to the forensic evaluation of disability during the three consecutive years immediately preceding the time of application.

(c) Be retired from active practice due to a documented medical or physical disability as defined pursuant to ~~Gov't~~ Government Code section 12926 and currently ~~practicing~~ practice in his or her specialty fewer than 10 hours per week. The physician shall have 10 years experience in workers' compensation medical issues as a physician. The physician's practice in the three consecutive years immediately preceding the time of application shall not have been devoted solely to the forensic evaluation of disability.

(d) A physician appointed under section 11 of Title 8 of the California Code of Regulations or this section shall, notify the ~~Council~~ Administrative Director of changes in his or her status and shall complete the requirements for continuing education pursuant to section 55 of Title 8 of the California Code of Regulations prior to reappointment.

Note: Authority cited: Sections ~~139 and~~ 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Section~~s~~ 139.2, ~~4060, 4061 and 4062,~~ Labor Code.

§ 16. Determination of Fees for QME Eligibility

(a) For purposes of establishing the annual fee for any qualified medical evaluator pursuant to Article 2, physicians (as defined under Section 3209.3 of the Labor Code) shall be classified into one of three categories:

(1) QMEs who meet all applicable requirements under Article 2 and 5 and who have conducted 0-10 comprehensive medical-legal evaluations in the twelve months prior to the assessment of the fee. Comprehensive medical-legal evaluations are evaluations as defined under section (1)(~~d~~ i) of this Chapter performed by a physician.

(2) QMEs who meet all applicable requirements under Article 2 and 5 and who have conducted 11-24 comprehensive medical-legal evaluations in the twelve months prior to assessment of the fee. Comprehensive medical-legal evaluations are evaluations as defined under section (1)(~~d~~ i) of this Chapter performed by a physician.

(3) QMEs who meet all applicable requirements under Article 2 and 5 and who have conducted 25 or more comprehensive medical-legal evaluations in the twelve months prior to assessment of the fee. Comprehensive medical-legal evaluations are evaluations as defined under section (1)(~~d~~ i) of this Chapter performed by a physician.

(b) The evaluations shall be conducted in compliance with all applicable statutes and regulations.

(c) Verification of the number of examinations shall be made by the ~~Council~~ Administrative Director using The Qualified or Agreed Medical Evaluator Findings Summary Form in section ~~36.1~~ 111 (See, 8 Cal. Code Regs. § 111), as well as any other relevant records or sources of information. Misrepresentation of the number of evaluations performed for purposes of establishing a physician's QME fee shall constitute grounds for disciplinary proceedings under section 60 of this chapter.

NOTE: Form referred to above is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Section ~~139, 139.1 and~~ 139.2, Labor Code.

§ 17. Fee Schedule for QME

(a) All physicians seeking QME status shall be required to pay to the ~~Industrial Medicine~~ Workers' Compensation Administration Revolving Fund ~~within the Industrial Medical Council~~, the following fee:

(1) QMEs performing 0-10 comprehensive medical-legal evaluations, $ 110 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(2) QMEs performing 11-24 comprehensive medical-legal evaluations, $ 125 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(3) QMEs performing 25 or more comprehensive medical-legal evaluations, $ 250 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(b) Individual QMEs who perform comprehensive medical-legal evaluations at more than one ~~medical~~ physician's office location ~~within the state which is identified by a street address and any other more specific designation such as a suite or room number, and which location must contains the usual and customary equipment for the evaluations and treatment appropriate to the medical specialty or practice,~~ shall be required to pay an additional $ 100 annually per additional office location. Each physician's office listed with the Medical Director must be located within California, be identified by a street address and any other more specific location such as a suite or room number, and must contain the usual and customary equipment for the type of evaluation appropriate to the QME's medical specialty or scope of practice. This requirement applies to all QMEs regardless of whether the QME is a sole practitioner, or corporation, or partnership pursuant to Corporations Code ~~Chapter 1(sections 15001-15045),~~ Chapter 2 (sections 15501-15533), ~~and/or~~ Chapter 3 (sections 15611-15723) and/or Chapter 5 (sections 16100-16962).

~~(c) Each QME shall identify, under penalty of perjury, and the Medical Director shall certify only, up to four (4) "primary practice locations", as defined in section 1(x) of Title 8 of the~~

~~**California Code of Regulations, for each QME. A QME may also identify and perform evaluations at other locations that do not meet the definition of "primary practice locations".**~~

(~~e~~ ~~**d**~~ ***c***) The ~~IMC~~ Administrative Director may waive or return the statutory fee in the amount of $ 110 for the completion of a survey of QMEs to validate the QME competency examination. The term "completion of the survey" means the return of the survey to the testing agency designated by the ~~IMC~~ Administrative Director on or before the date for the return of the survey.

~~(e d) The Administrative Director may waive any or all of the annual statutory fee for any or all QMEs whenever the Administrative Director determines that to be in the best interests of employers and injured employees *workers* using the California workers' compensation system.~~

(~~**f**~~ ~~e~~ ***d***) At the time of paying the appropriate QME annual fee, each QME shall also complete and forward to the Medical Director with the annual fee a completed QME SFI Form 124, providing updated information about the QME's specified financial interests as defined in section 29 of Title 8 of the California Code of Regulations.

Note: Authority cited: Section 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Sections~~ 139, 139.1 and~~ 139.2 Labor Code.

§ 18. QME Fee Due Dates

(a) All physicians, regardless of the number of comprehensive medical-legal evaluations performed under section 17 of Title 8 of the California Code of Regulations shall pay the required QME fees at yearly intervals within 30 days of receipt of notice from the ~~Council~~ Administrative Director that the QME fee for the next 12 months is due and payable. No physician who has passed the competency examination shall be placed on the active QME roster until the appropriate fee under section 17~~5~~ has been paid.

(b) Any QME who fails to pay the required statutory fee within 30 days of receipt of a final notice that the fee is due shall be notified that he or she shall be terminated from the official QME roster of physicians within 30 days and shall not perform any panel QME or represented QME comprehensive medical-legal evaluation until the fee is paid. ~~If the fee is not paid within two years from the due date in the QMEs final notice from the Council that the fee is due, then the physician shall resubmit a new application pursuant to Sections 10 and 11, pass the QME competency examination and pay the appropriate fee prior to regaining QME eligibility.~~

(c) If the QME fee is not paid within two years from the due date in the ~~QMEs~~ final fee notice from the ~~Council~~ Administrative Director to the QME or QME applicant that the fee is due, then the physician shall resubmit a new application pursuant to Sections 10 and 11 of Title 8 of the California Code of Regulations, pass the QME competency examination and pay the appropriate fee prior to regaining or obtaining QME ~~eligibility~~ active status.

Note: Authority cited: Sections 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Sections ~~139 and~~ 139.2 Labor Code.

§ 19. Certificate of QME Status

(a) Upon receipt of the QME fees and review by the ~~council~~ Administrative Director to ensure current compliance with section 139.2 of Labor Code and any other applicable regulations promulgated by the ~~council~~ Administrative Director concerning QME eligibility, the ~~council~~ Administrative Director shall within 45 days send to the physician a ~~certificate of approved status as~~ Qualified Medical Evaluator certificate. The ~~certificate of~~ QME certificate ~~status~~ shall be displayed in a conspicuous manner at the QME's office location at all times during the period the QME is ~~approved~~ appointed by the ~~council~~ Administrative Director to conduct evaluations. ~~under council appointment.~~

(b) It shall be unlawful for any physician who has been terminated or suspended from the QME list or who has failed to pay the required QME fee pursuant to sections 17 and 18 of Title 8 of the California Code of Regulations to display a ~~certificate of approved status as a~~ Qualified Medical Evaluator certificate.

Note: Authority cited: Sections 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Sections ~~139 and~~ 139.2, Labor Code.

ARTICLE 2.5. Time Periods For Processing Applications For QME Status

§ 20. Time Periods

(a) Within 45 days of receipt of an application for QME status, the ~~Council~~ Administrative Director shall either inform the applicant, in writing, that the application is complete and accepted for filing, or that the application is deficient and what specific information is required.

(b) Within 45 days of receipt of a completed application, the ~~Council~~ Administrative Director shall inform the applicant, in writing, of its decision to allow or not to allow the applicant to proceed to take the required QME competency examination as per Section ~~11(c)~~ 11(f) ~~of these regulations~~ of Title 8 of the California Code of Regulations.

(c) Within 45 days of receipt of a completed application, the ~~Council~~ Administrative Director must inform the applicant, in writing, of its decision to grant or deny the application.

~~(d) Based upon the two years immediately preceding October 1, 1993, the Council's minimum time for processing an application for QME status is 14 days. The median time is 60 days. The maximum time is 2 years.~~

Note: Authority cited: Sections ~~139 and~~ 133, 139.2, 5307.3, Labor Code~~;~~. ~~and Section 15376, Government Code~~. Reference: Sections 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2 and 4067, Labor Code~~; and Section 15376, Government Code.~~

ARTICLE 3. Assignment of Qualified Medical Evaluators,
Evaluation Procedure

§ 29. Specified Financial Interests That May Affect Assignment to QME Panels

(a) Every physician seeking appointment or reappointment as a Qualified Medical Evaluator shall disclose specified financial interests, as defined in section 1 (dd) and 29(b) of Title 8 of the California Code of Regulations.

(b) "Specified Financial Interests" means being a general partner or limited partner in, or having an interest of five (5) percent or more in, or receiving or being legally entitled to receive a share of five (5) percent or more of the profits from, any medical practice, group practice, medical group, professional corporation, limited liability corporation, clinic or other entity that provides treatment or medical evaluation, ***goods or*** services for use in the California workers' compensation system.

(c) "SFI Form 124", as used in sections 1 though 159 of Title 8 of the California Code of Regulations, means the QME SFI Form 124 that is completed and filed as an attachment to QME Form 100, 103 or 104 by the physician or QME with the Medical Director of the Division of Workers' Compensation.

(d) Specified financial interests shall be disclosed on QME SFI Form 124, respectively, when applying for appointment on QME Form 100, at the time of paying the annual fee on QME Form 103 or when applying for reappointment on QME Form 104.

(e) The completed QME SFI Form 124 shall be filed along with the QME Form 100, 103 or 104, respectively, when the form is filed with the Medical Director of the Division of Workers' Compensation.

(f) Failure of a Qualified Medical Evaluator to complete and file a QME SFI Form 124 with the Medical Director when required by this section shall be grounds for disciplinary action pursuant to section 60 of Title 8 of the California Code of Regulations.

(g) The Administrative Director shall use the information provided by physicians pursuant to this section to avoid assigning QMEs who share specified financial interests to the same QME pan-

el. If two or more QMEs assigned to a panel share specified financial interests as defined in this section, any party may request a replacement QME. If three QMEs share specified financial interests as defined in this section, two of the QMEs shall be replaced. If two QMEs share specified financial interests as defined in this section, one of the QMEs shall be replaced. The QMEs that must be replaced shall be randomly selected by the Medical Director.

Note: Authority cited: Sections 133, 139.2, and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, and 4067, Labor Code.

§ 30. QME Panel Requests

(a**)** Unrepresented cases. Whenever an injured ~~employee~~ ***worker*** is not represented by an attorney and either the employee or the claims administrator requests a QME panel pursuant to Labor Code section 4062.1, the request ~~Requests for a QME panel made by an unrepresented employee pursuant to Labor Code Sections 4061 and 4062~~ shall be submitted on the form in section 105~~6~~ (Request for QME Panel under Labor Code Section 4062.1)(See, 8 Cal. Code Regs. § 105) . The claims administrator (or~~,~~ if ~~**there is**~~ none~~,~~ the employer) shall provide Form 105 along with the Attachment to Form 105 (How to Request a Qualified Medical Evaluator if you do not have an Attorney) to the unrepresented employee by means of personal delivery or by first class or certified mailing.

(b) Represented cases. Requests for a QME panel in a represented case, for all cases with a date of injury on or after January 1, 2005, and for all other cases where represented parties agree to obtain a panel of Qualified Medical Evaluators pursuant to the process in Labor Code section 4062.2, shall be submitted on the form in section 106 (Request for a QME Panel under Labor Code Section 4062.2)(See, 8 Cal. Code Regs. § 106). The party requesting a QME panel shall: 1) identify the disputed issue that requires a comprehensive medical/legal report to be resolved; 2) attach a copy of the written proposal***, naming one or more physicians to be an Agreed Medical Evaluator,*** that was sent to the opposing party ***once the dispute arose;*** ~~**for an Agreed Medical Evaluator which proposal must state one or more physician names;**~~ 3) designate a specialty for the QME panel requested; 4) state the specialty preferred by the opposing party, if known; and 5) state the specialty of the treating physician. In represented cases with dates of injury prior to January 1, 2005, and only upon the parties' agreement to obtain a QME panel pursuant to Labor Code section 4062.2, the party requesting a QME panel shall submit QME Form 106 in compliance with this section and provide ***written*** evidence of the parties' agreement. ***Once such a panel*** ~~request~~ ***in a represented case with a date of injury prior to January 1, 2005, is issued, the parties shall be bound by the timelines and process as described in Labor Code section 4062.2.***

(~~b~~c) In the event a request form is incomplete, or improperly completed so that a QME panel selection cannot properly be made, the request form shall be returned to the ~~employee~~ requesting party with an explanation of why the QME panel selection could not be made. The Medical Director also may delay issuing a new QME panel, if necessary, until ***the Medical Director receives additional reasonable information requested from a party or both parties, needed***

to resolve the panel request. Reasonable information as used in this subdivision includes but is not limited to ~~*the parties answer a request from the Medical Director for information about*~~ whether a QME panel previously issued to the injured ~~employee~~ ***worker*** was used. ~~*The time periods for selecting a QME from the panel and scheduling an appointment shall be tolled until the Medical Director takes action on such a panel request, unless otherwise ordered by a Workers' Compensation Administrative Law Judge.*~~

~~(c) The Request for Qualified Medical Evaluator Form along with the instruction form in Section 105 entitled "How to Request a Qualified Medical Evaluator" shall be provided by the claims administrator (or, if there is no claims administrator, the employer) to the unrepresented employee by personal delivery to the employee or by first class or certified mailing.~~

~~(d)(1) For admitted injuries between January 1, 1991 and December 31, 1993, a panel request form and notice in a form prescribed by the Administrative Director pursuant to Article 8 of Chapter 4.5 of this Title shall be provided to an unrepresented employee where the employee, the claims administrator or, if none, the employer, alleges a medical conclusion that the employee is no longer entitled to temporary disability indemnity and permanent disability cannot be determined or is or is not payable. The QME shall address all medical issues raised by the parties, including but not limited to the employee's permanent and stationary status, the extent and scope of medical treatment, the employee's status as a Qualified Injured Worker or the existence of new and further disability in order to produce a complete comprehensive medical-legal evaluation.~~

~~(2) For admitted injuries occurring on or after January 1, 1994, a panel request form and the Administrative Director's notice pursuant to Article 8 of Chapter 4.5 of this Title shall be provided to an unrepresented employee where a party disputes a medical conclusion by the primary treating physician. If the issues are other than the level of permanent impairment and limitations or the need for medical care, the objecting party shall, absent good cause as determined by the Appeals Board, notify the other party of the nature of the objection within 30 days of receipt of the report from the primary treating physician. The objecting party shall submit a written copy of the objection to the QME along with any medical records submitted pursuant to the requirements of Section 35. After the QME evaluation is complete, either the employee or the employer may object to any new or unresolved issue. The parties shall utilize the same QME to the extent possible. Where the issue is outside the QME's scope of practice pursuant to the QME's licensing authority, the parties may select another QME pursuant to subdivision (a) of section 4064 of the Labor Code.~~

(d)(1) After a claim form has been filed, ~~**an employer, or the employer's**~~ ***the*** claims administrator, ***or if none the employer,*** may request a panel of Qualified Medical Evaluators ***only*** as provided in Labor Code section 4060, to determine whether to accept or reject ~~*part or all of*~~ a claim within the ***ninety (90) day*** period for rejecting liability in Labor Code section 5402(b)~~.~~***, and only after providing evidence of compliance with Labor Code Section 4062.1 or 4062.2.***

(d)(2) Once the claims administrator, or if none~~,~~ the employer, has accepted as compensable ***injury to*** any body part in the claim, a request for a panel QME may only be filed based on a dispute arising under Labor Code section 4061 or 4062.

(d)(3) Whenever an injury or illness claim of an employee has been denied entirely by the claims administrator**,** or~~,~~ if none~~,~~ by the employer**,** ~~*within the time allowed under Labor Code section 5402(b)*~~, only the employee may request a panel of Qualified Medical Evaluators, as provided in Labor Code sections 4060(d) and 4062.1 if unrepresented**,** or as provided in Labor Code sections 4060(c) and 4062.2 if represented.

~~**(d)(4) After an injury or illness claim has been accepted or after the ninety (90) day period for denying liability has expired and either the employee or the claims administrator or, if none, the employer asserts for good cause that a comprehensive medical/legal evaluation is needed to determine compensability, the parties shall, to the extent feasible, obtain a follow-up evaluation or a supplemental evaluation from the Agreed Medical Evaluator or the Qualified Medical Evaluator who has already reported in the claim. "Good cause" as used in this subdivision shall include evidence discovered after the period specified in Labor Code section 5402(b). In the event the evaluator who previously reported is no longer available or is not medically qualified to address the disputed compensability issue or there has been no prior comprehensive medical/legal evaluation in the claim, the party seeking the evaluation shall follow the procedures set out in Labor Code section 4060(c) or 4060(d), as applicable. The party requesting a panel of Qualified Medical Evaluators for this reason shall attach to the QME Form 105 or QME Form 106, as applicable, submitted to the Medical Director, a description of the newly discovered evidence or other reason for an evaluation to determine compensability at this time.**~~

(d)(4) After the ninety (90) day period specified in Labor Code section 5402(b) for denying liability has expired, a request from the claims administrator, or if none from the employer, for a QME panel to determine compensability shall only be issued upon presentation of a finding and ~~*order*~~ ***decision issued by a Workers' Compensation Administrative Law Judge that the presumption in section 5402(b) has been rebutted and an order that a QME panel should be issued*** ~~*for this purpose*~~ ***to determine compensability . The order shall also specify the residential or, if applicable, the employment-based zip code from which to select evaluators and either the medical specialty of the panel or which party may select the medical specialty.***

(e) If the request form is submitted by or on behalf of an ~~unrepresented~~ employee who no longer 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**, *and for a represented employee by the office of the employee's attorney.***

~~**(f) To compile a panel list of three QMEs, in the specialty designated by the party holding the legal right to request a panel, the Medical Director shall give 1.5 times the weight to those**~~

~~**QME locations identified as "primary practice locations" within the meaning of section 1(x) of Title 8 of the California Code of Regulations.**~~

(~~g~~ ***f***) To compile a panel list of three (3) independent QMEs randomly selected from the specialty designated by the party holding the legal right to request a QME panel, the Medical Director shall exclude from the panel, to the extent feasible, any QME who is listed by another QME as a business partner or as having a shared specified financial interest, as those terms are defined in sections 1(~~dd~~ ***ee***) and 29 of Title 8 of the California Code of Regulations.

(g) The panel request in a represented case must be sent to the Medical Unit address on the QME Form 106 by means of first class mail delivered by the United States postal service. The Medical Unit will not accept panel requests in represented cases that are delivered in person by a party, the party's attorney or by other commercial courier or delivery services.

(h) The time periods specified in Labor Code sections 4062.1(c) and 4062.2(c), respectively, for selecting an evaluator from a QME panel and for scheduling an appointment, shall be tolled whenever the Medical Director asks a party for additional information needed to resolve the panel request. These time periods shall remain tolled until the date the Medical Director issues either a new QME panel or a decision on the panel request.

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections ~~139~~, 133, 139.2, 4061, ~~and~~ 4062~~,~~ and 5307.3, Labor Code. Reference: Sections 139.2, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

§ 30.5. Specialist Designation

The Medical Director shall utilize in the QME panel selection process the type of specialist(s) indicated by the requestor on the Request for Qualified Medical Evaluator Form 105 or 106 of Title 8 of the California Code of Regulations, unless otherwise provided in these regulations.

Note: Authority cited: Sections ~~139,~~ 133, 139.2, 4061, ~~and~~ 4062, 5307.3, Labor Code. Reference: Sections 139.2, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 31. QME Panel Selection

(a) The panels shall be selected randomly from the appropriate specialty ~~requested~~ identified by the ~~employee~~ party who holds the legal right to designate the specialty, with consideration given to the proximity of the QME's medical office to the employee's residence.

~~**(b) The unrepresented employee, or the employer under the circumstances set forth in Labor Code section 4062.1 and 4062.2, shall make an appointment request with a QME listed on the panel and may consult with his or her the injured worker's primary treating physician as to an appropriate QME specialist. Neither the claims representative nor a representative of the employer nor a QME may discuss or make the selection of a panel QME for an unrepresented worker at any time. In the case of an unrepresented worker, neither a QME, nor a claims representative or a representative of an employer who has not yet acquired the legal right pursuant to Labor Code section 4062.1 to request a QME panel, may discuss or make the selection of a panel QME for the unrepresented employee.**~~

(~~c~~ ***b***) The Medical Director shall exclude from the panel selection process any QME who has informed the Medical Director that he or she is unavailable pursuant to section 33 of Title 8 of the California Code of Regulations.

(~~d~~ ***c***) Any physician who has served as a primary treating physician or secondary physician and who has provided treatment ***to the employee*** in accordance with section ~~9785.5~~ 9785 ~~this~~ Title 8 of the California Code of Regulations for ~~this~~ ***the disputed*** injury ~~for an unrepresented employee~~ shall not perform a QME evaluation on that employee. ~~*If*~~ ***Whenever*** that ~~*physician*~~ ~~QME~~ ***physician's name*** appears on a QME panel, he or she shall ~~*notify both parties of this reason for*~~ disqualify~~*ing*~~ him or herself~~*, and*~~ ***if contacted by a party to perform the evaluation.*** ~~the employee the panel requestor~~ ~~*either*~~ ***Either party*** may request a replacement QME ***for this reason*** pursuant to section 31.5 of Title 8 of the California Code of Regulations.

(~~e~~ ***d***) To issue a panel in a selected specialty there shall be at least five active QMEs in the specialty at the time the panel selection is requested. In the event less than five QMEs are active in a requested specialty, the Medical Director shall contact the party who holds the legal right to designate the specialty for an alternate specialty selection.

Note: Authority cited: Sections 133, 139.2, 4061, ~~and~~ 4062, and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§31.1 QME Panel Selection Disputes in Represented Cases

(a) When the Medical Director receives two or more panel selection forms pursuant to Labor Code section 4062.2 on the same day and the forms designate different physician specialties for the QME panel, the Medical Director shall use the following procedures:

1) If one party requests the same specialty as that of the treating physician, the panel shall be issued in the specialty of the treating physician unless the Medical Director is persuaded by supporting documentation provided by the requestor that explains the medical basis for the requested specialty;
2) If no party requests a panel in the specialty of the treating physician, the Medical Director shall select a specialty appropriate for the medical issue in dispute and issue a panel in that specialty.
3) Upon request by the Medical Director, the party requesting the panel shall provide additional medical records to assist the Medical Director in determining the appropriate specialty.

(b) In the event a party in a represented case wishes to request a QME panel pursuant to Labor Code section 4062.2 in a specialty other than the specialty of the treating physician, the party shall submit with the panel request form any relevant documentation supporting the reason for requesting a different specialty.

(c) In the event the Medical Director is unable to issue a QME panel in a represented case within thirty (30) calendar days of receiving the request, either party may seek an order from a Workers' Compensation Administrative Law Judge that a QME panel be issued. ***Any such order shall specify the specialty of the QME panel or the party to be designated to select the specialty.***

Note: Authority: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.2, 4064 and 4067, Labor Code

§ 31.3. Scheduling Appointment with Panel QME

(a) When the employee is not represented by an attorney, the unrepresented employee shall, within ten (10) days of having been furnished with the form, select a QME from the panel list, contact the QME to schedule an appointment and inform the claims administrator of the QME selection and the appointment .

(b) Neither the employer, nor the claims administrator nor any other representative of the

employer shall discuss the selection of the QME with an unrepresented worker who has the legal right to select the QME.

(c) If, within ten (10) days of the issuance of a QME panel, the unrepresented employee fails to select a QME from the QME panel or fails to schedule an appointment with the selected QME, the claims administrator may schedule an appointment with a panel QME only as provided in Labor Code section 4062.1(c), and shall notify the employee of the appointment as provided in that section.

(d) Whenever the employee is represented by an attorney and the parties have completed the conferring and striking processes described in Labor Code section 4062.2(c), the represented employee shall schedule the appointment with the physician selected from the QME panel. If the represented employee fails to do so within ten (10) business days of the date a QME is selected from the panel, the claims administrator or administrator's attorney may arrange the appointment and notify the employee and employee's attorney.

Note: Authority: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062,4062.1, 4062.2, 4064 and 4067, Labor Code

§ 31.5. QME Replacement Requests

(a) A replacement QME to a panel, or at the discretion of the Medical Director a replacement of an entire panel of QMEs, shall be selected at random by the Medical Director and provided ~~to an unrepresented worker~~ upon ~~the employee's~~ request ~~if~~ whenever any of the following occurs:

(1) A QME on the panel issued does not practice in the specialty requested by the ~~employee~~ party holding the legal right to request the panel.

(2) A QME on the panel issued cannot schedule an examination for the employee within sixty (60) days of the ~~employee's~~ ***initial*** request for an appointment, ***or if the 60 day scheduling limit*** ~~*was*~~ ***has been waived*** ~~*under*~~ ***pursuant to section 33(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within ninety (90) days of the date of the initial request for an appointment***.

(3) The ~~*employee*~~ ***injured worker*** has changed his or her residence address since the QME panel was issued ***and prior to date of the initial evaluation of the injured worker***.

(4) A physician on the QME panel is a member of the same group practice as defined by Labor Code section 139.3 as another QME on the panel.

(5) The QME is unavailable pursuant to section 33 (Unavailability of the QME).

~~(b) Any party may request a replacement QME if any of the following occurs:~~

(6) The evaluator who previously reported in the case is no longer available.

(~~1~~ ~~6~~ ***7***) ~~The~~ A QME named on the panel is currently, or has been, the employee's primary treating physician or secondary physician ~~in accordance with~~ as described in section 9785 of ~~this~~ Title 8 of the California Code of Regulations ~~is on the panel~~ ***for the injury currently in dispute*** .

(~~2~~ ~~7~~ ***8***) The claims administrator**,** or~~,~~ if none~~,~~ the employer**,** and the ~~unrepresented~~ employee agree in writing***, for the employee's convenience only,*** that a new panel may be issued in the geographic area of the employee's work place ***and a copy of the employee's agreement is submitted with the panel replacement request***.

(~~3~~ ~~8~~ ***9***) The Medical Director, upon written request, finds good cause that a replacement QME or a replacement panel is appropriate for reasons related to the medical nature of the injury. For purposes of this subsection, "good cause" is defined as a documented medical or psychological impairment.

(~~4~~ ~~9~~ ***10***) The Medical Director, upon written request, filed with ~~*submission of*~~ a copy of the Doctor's First Report of Occupational Injury or Illness (Form DLSR 5021 [see 8 Cal. Code Regs. §§ 14006 and 14007) and the most recent DWC Form PR-2 ("Primary Treating Physician's Progress Report" [See 8 Cal. Code Regs. § 9785.2) or narrative report filed in lieu of the PR-2 , determines after a review of all appropriate records that the specialty chosen by the ~~injured worker~~ party holding the legal right to designate a specialty is medically or otherwise inappropriate for the ~~injury to be evaluated~~ ***disputed medical issue(s).*** The Medical Director may request either party to provide additional information or records necessary for the determination.

(~~5~~ ~~10~~ ***11***) ~~Any violation of~~ ***The evaluator has violated*** section 34 (Appointment Notification ~~*by the QME*~~ ***and Cancellation***) of Title 8 of the California Code of Regulations ~~*Failure by a party to object to an evaluator's report within fifteen (15) days of the date the report was served by the evaluator on the grounds of a violation of section 34 shall be deemed a waiver of the objection, unless otherwise ordered by a Workers' Compensation Administrative Law Judge*~~ ***, except that the evaluator will not be replaced for this reason whenever the request for a replacement by a party is made more than fifteen (15) calendar days from either the date the party became aware of the violation of section 34 of Title 8 of the California Code of Regulations or the date the report was served by the evaluator, whichever is earlier.***

(~~11~~ ***12***) ~~Failure~~ ***The evaluator failed*** to meet the deadlines ~~*as*~~ specified in Labor Code section 4062.5 and section 38 (Medical Evaluation Time Frames) of Title 8 of the California Code of Regulations ***and the party*** ~~*asking for*~~ ***requesting the replacement*** ~~*requested*~~ ***objected to the report on the grounds of lateness prior to the date the evaluator served the report. A party requesting a replacement on this ground shall attach to the request for a replacement a copy of the party's objection to the untimely report.***

(~~12~~ ***13***) The QME has a disqualifying conflict of interest as defined ***in*** section 41.5 of Title 8 of the California Code of Regulations.

(~~13~~ ***14***) ~~Due to an order of the~~ ***The Administrative*** Director ~~made~~ ***has issued an order*** pursuant to section 10164(c) of Title 8 of the California Code of Regulations (order for additional QME evaluation).

(~~14~~ ***15***) ~~Failure or refusal of the~~ ***The*** selected medical evaluator, who ~~is~~ otherwise ***appears to be*** qualified and competent to address all disputed medical issues ~~from all injuries reported on one or more claim forms prior to the initial evaluation, fails or~~ ***refuses*** to provide***, when requested by a party or by the Medical Director, either: A)*** a complete medical evaluation as provided in Labor Code section***s*** 4062.3(i) ***and 4062.3(j), or B) a written statement that explains why the evaluator believes he or she is not medically qualified or medically competent to address one or more issues in dispute in the case***.

(16) The QME panel list was issued more than twenty four (24) months prior to the date the request for a replacement is received by the Medical Unit, and none of the QMEs on the panel list have examined the injured worker.

~~(b) Upon a showing of good cause that an additional panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:~~

~~(1) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected; or~~

~~(2) The AME or QME selected advises the parties and the Medical Director, or his or her designee, that she or he has completed or will complete a timely evaluation of the disputed medical issues within his or her scope of practice and areas of clinical competence but recommends that a physician of another specialty is needed to evaluate one or more remaining disputed medical conditions, injuries or issues that are outside of the evaluator's areas of clinical competence, and either the injured employee is unrepresented or the parties in a represented case have been unable to select an Agreed Medical Evaluator for that purpose; or~~

~~(3) An agreement by the parties in a represented case that there is a need for an additional comprehensive medical legal report by an evaluator in a different specialty, that attempts to select an Agreed Medical Evaluator pursuant to Labor Code section 4062.2 for that purpose have failed and that the parties agree on the specialty to be selected; or~~

~~(4) In an unrepresented case, that the parties have met with an Information and Assistance Officer, have explained the need for an additional QME evaluator in another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of the Officer on the specialty requested for the additional QME panel.~~

~~(c) The Medical Director shall select replacement QME(s) at random.~~

~~(c) In a represented case, if a basis for an objection to the QME arises but is not provided in writing to the Medical Director at least two business days prior to the QME examination, it shall be deemed waived and shall not qualify as a basis for a replacement QME or QME panel.~~

(b) Whenever the Medical Director determines that a request made pursuant to subdivision 31.5(a) for a QME replacement or QME panel replacement is valid, the time limit for an unrepresented employee to select a QME and schedule an appointment under section Labor Code section 4062.1(c) and the time limit for a represented employee to strike a QME name from the QME panel under Labor Code section 4062.2(c), shall be tolled until the date the replacement QME name or QME panel is issued.

(c) In the event the parties in a represented case have struck two QME names from a panel and subsequently a valid ground under subdivision 31.5 arises to replace the remaining QME, none of the QMEs whose names appeared on the earlier QME panel shall be included in the replacement QME panel.

~~*(d) Whenever a party requests the Medical Director to replace an evaluator after the medical/legal report has been served by the evaluator, on the grounds that the report is untimely, the Medical Director shall not replace the evaluator unless ordered to do so by a Workers' Compensation Administrative Law Judge or unless the parties agree in writing that the evaluator be replaced for this reason.*~~

Note: Authority cited: Sections ~~139,~~ 133, 139.2, 4061, ~~and~~ 4062, 4062.3, 4062.5, 5307.3 and 5703.5, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

§ 31.7. Obtaining Additional QME Panel in a Different Specialty

(a) Once an Agreed Medical Evaluator, an Agreed Panel QME, or a panel Qualified Medical Evaluator has issued a comprehensive medical/legal report in a case and a new medical dispute arises, the parties, to the extent possible, shall obtain a follow-up evaluation or a supplemental evaluation from the same evaluator.

(b) Upon a showing of good cause that ***a*** ~~**an additional**~~ panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:

(1) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected ***and the residential or employment-based zip code from which to randomly select evaluators***; or

(2) The AME or QME selected advises the parties and the Medical Director, or his or her designee, that she or he has completed or will complete a timely evaluation of the disputed medical issues within his or her scope of practice and areas of clinical competence but recommends that a ***new evaluator*** ~~**physician**~~ ~~**of**~~ ***in*** another specialty is needed to evaluate one or more remaining disputed medical conditions, injuries or issues that are outside of the evaluator's areas of clinical competence, and either the injured ~~employee~~ ***worker*** is unrepresented or the parties in a represented case have been unable to select an Agreed Medical Evaluator for that purpose; or

(3) A~~n~~ ***written*** agreement by the parties in a represented case that there is a need for an additional comprehensive medical legal report by an evaluator in a different specialty, that attempts to select an Agreed Medical Evaluator pursuant to Labor Code section 4062.2 for that purpose have failed and ***the specialty*** that the parties ***have*** agree***d upon*** ~~on the specialty to be selected~~ ***for the additional evaluation***; or

(4) In an unrepresented case, that the parties have ~~**met**~~ ***conferred*** with an Information and Assistance Officer, have explained the need for an additional QME evaluator in another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of ***and with the assistance of*** the Officer on the specialty requested for the additional QME panel. ***The parties may confer with the Information and Assistance Officer in person or by conference call.***

Note: Authority cited: Sections ~~139,~~ 133, 139.2, 4061, ~~and~~ 4062, 4062.3, 4062.5, 5307.3 and 5703.5, Labor Code. Reference: Sections 139.2, 4062, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

§ 32. Consultations

~~(a) For injuries occurring between January 1, 1991 and December 31, 1993, a party may request the Medical Director to direct the QME to consult with a physician in an appropriate specialty to address issues outside the QME's specialty if the party believes such a consultation is necessary to provide a complete and accurate examination pursuant to section 4061 of the Labor Code. The party requesting the consultation shall specify in writing the reasons for the consultation. Valid reasons for providing the QME consultation shall include, but not be limited to, the expertise of the QME, the accuracy of the QME comprehensive medical-legal evaluation in question and the complexity of the medical issue involved.~~

~~(b) The Medical Director shall appoint a separate list of physicians for requests pursuant to subsection (a), and shall, in his or her discretion, grant or deny the request within 30 days.~~

~~(c) For injuries occurring on or after January 1, 1994, a QME may obtain a consultation from any physician who has treated the unrepresented employee for the injury listed on the panel request~~

~~form or by any physician as reasonable and necessary pursuant to Labor Code section 4064 or upon agreement by a party to pay the cost.~~

(~~d~~ a) In any case where an acupuncturist has been selected by the injured worker from a three-member panel and an issue of disability is in dispute, the acupuncturist shall request a consult from a QME defined under section 1(~~n v~~ ***aa***) to evaluate the disability issue(s). The acupuncturist shall evaluate all other issues as required for a complete evaluation. If requested by the QME acupuncturist to obtain a QME to provide the consulting evaluation, the Medical Director shall issue a panel within fifteen (15) days of the request in the specialty selected by the ~~party holding the legal right to select the specialty~~ ***QME acupuncturist***.

(b) Except as provided in subdivision 32(a) above, no QME may obtain a consultation for the purpose of obtaining an opinion regarding permanent disability and apportionment consistent with the requirements of Labor Code sections 4660 through 4664 and the AMA ~~guides~~ ***Guides*** .

(c) For injuries occurring on or after January 1, 1994, a QME may obtain a consultation from any physician as reasonable and necessary pursuant to Labor Code section 4064(a). ~~*or upon agreement by a party to pay the cost*~~

(d) Whenever an Agreed Panel QME or a QME determines that a consultation is necessary pursuant to this section and the physician selected for the consultation is not selected by the parties from a QME panel issued by the Medical Director, the referring QME must arrange the consultation appointment and advise the injured employee and the claims administrator, or if none the employer, and each party's attorney if any, in writing of the appointment date, time and place by use of QME Form 110 (QME Appointment Notification Form)(See, 8 Cal. Code Regs. § 110).

(e) The consulting physician shall serve the consulting report on the referring QME. Upon receipt of the consulting physician's report, the referring evaluator shall review the consulting physician's report, incorporate that report by reference into the referring evaluator's medical-legal report and comment on the consulting physician's findings and conclusions in the discussion sections of the evaluator's report.

(f) The referring QME shall file the comprehensive medical –legal report within the time periods specified in section 38 of Title 8 of the California Code of Regulations. In the event a consulting physician's report has not been received, or will not be received, in time to comply with the time periods, the referring QME shall serve the comprehensive medical-legal report timely, and upon receipt of the consulting physician's report, the referring evaluator shall, within fifteen (15) calendar days of receipt of the consulting report, issue a supplemental report that incorpo-

rates the consulting physician's report by reference, and comments on whether and how the findings in the consulting report change the referring evaluator's opinions.

(g) With the exception of verbal communications between an injured worker and the consulting physician in the course of the consulting examination, all other communications by the parties, as well as any reports and other information from the parties for the consulting physician, if any, shall be made in writing directed only to the referring QME, who may forward such communications on to the consulting physician as appropriate. With the exception of deposing the consulting physician if necessary and except as provided in this subdivision, neither party nor a party's attorney, shall communicate directly with nor send correspondence or records directly to the consulting physician.

NOTE: Form referred to above is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2, 4061, 4062, ~~and~~ 4064~~,~~ ~~and~~ 5307.3 ***and 5703.5*** , Labor Code. Reference: Sections 3209.3, 4061, ~~and~~ 4062, ~~4064,~~ 4062.1, 4062.2, 4064***,*** ~~and~~ 4067 ***and 5703.5***, Labor Code.

~~§ 32.5.~~ Rebuttal ~~QME Examinations~~

~~(a) For injuries occurring between January 1, 1991 and December 31, 1993, an unrepresented employee shall have the right to a QME panel for one comprehensive medical-legal evaluation to rebut the findings of a panel QME, provided however, that the rebuttal evaluation is reasonable and necessary to resolve a disputed medical fact as defined in section 9793(e) of this Title. The employee shall notify in writing the claims administrator, or if none, the employer, the justification for the rebuttal evaluation. A copy of this notice shall be submitted to the Medical Director with this request. Reasonable and necessary justification shall include but not be limited to a discrepancy between the treating physician's conclusions and the QME's conclusions as to the level of permanent impairment, the need for medical treatment or the employee's status as a Qualified Injured Worker.~~

~~(b) For injuries occurring on or after January 1, 1994, and upon request by the Appeals Board, the Medical Director shall assign a QME to address disputed issues provided, however, that the claims administrator or if none, the employer, agrees to pay for the cost of this rebuttal examination.~~

~~**Note: Authority cited: Sections 139.2, 4061, 4062 and 4064, Labor Code. Reference: Sections 4060, 4061, and 4064, Labor Code.**~~

§ 32.6 Additional QME Evaluations Ordered by the Appeals Board

The Medical Director shall issue a panel of Qualified Medical Evaluators upon ***receipt of an*** ~~the~~ order of a Workers' Compensation Administrative Law Judge or the Appeals Board, ~~**upon**~~ ~~*with*~~ ***that includes a*** finding that an additional evaluation is reasonable and necessary to resolve disputed issues under Labor Code sections 4060, 4061 or 4062. The order shall specify ***the residential or employment-based zip code from which to randomly select evaluators, specify*** the specialty for the QME panel or ~~*shall*~~ designate the party who shall select the specialty of the QME panel***, and specify who shall select a new specialty in the event there are too few QMEs in the specialty initially selected to issue a panel in accordance with section 31(d) of Title 8 of the California Code of Regulations.***

Note: Authority cited: Sections 133, 139.2, 4061, 4062, 4064***,*** ~~*and*~~ 5307.3***, 5703, and 5703.5***, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 4064, Labor Code.

~~**§ 32.7 Availability of QME for Panel Assignment**~~

~~**(a) Each QME shall ensure that sufficient calendar time is reserved each month for scheduling panel QME examinations in order to perform, if requested, the applicable number of QME panel examinations set out in subdivision (d) below.**~~

~~**(b) Once the minimum number of QME panel examinations in a given 30 day period are scheduled, an evaluator may decline to schedule additional QME panel appointments and may advise parties who call that the QME is no longer available for QME panel appointments in that 30 day period. However, if a scheduled examination is cancelled or rescheduled, the QME must, if requested, schedule new QME panel examinations to meet the minimum as provided in subdivision (c).**~~

~~**(c) To fulfill the minimum requirements, a QME must schedule, if requested, on average during a 90 day period, 3 times the applicable number of panel cases per month listed in the chart in subdivision 32.7(d).**~~

~~**(d) The minimum number of panel QME examinations scheduled, if requested, shall be as follows:**~~

~~**QMEs whose annual fee payment was based on 0 – 10 evaluations per year :**~~	~~**1 panel QME case**~~
~~**QMEs whose annual fee payment was based on 11 – 24 evaluations per year:**~~	~~**2 panel QME cases**~~
~~**QMEs whose annual fee payment was based on 25 or more evaluations per year:**~~	~~**3 panel QME cases**~~

~~**(e) Whenever an injured employee fails to attend a scheduled panel examination without notice, the scheduled appointment shall be counted, for the purposes of this regulation, as though the examination had occurred as scheduled.**~~

~~**(f) Upon request from the Medical Director, a QME shall provide a copy of the evaluator's office appointment calendar showing scheduled QME panel evaluation appointments for any period specified by the Medical Director. The evaluator shall also indicate which of the scheduled examinations were actually performed and the date the examination was done.**~~

~~**Note: Authority cited: Sections 133, 139.2, 4060, 4061, 4062 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.**~~

§ 33. Unavailability of QME

(a) A QME who will be unavailable to ***schedule or*** ~~accept appointments to a QME panel~~ perform comprehensive medical evaluations ***as an Agreed Panel QME or as a Panel QME*** for a period of 14 days, or ~~more~~ up to a maximum of 90 days during a one year fee period, for any reason ~~including a change of address, absent good cause, including but not limited to medical or family emergency,~~ 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. ~~The form shall be filed with the Medical Director 30 days prior to the period of unavailability.~~ The Medical Director may, in his or her discretion, grant ~~**a notice of unavailability**~~ ***unavailable status*** within the 30-day notice period ~~in cases of injury or illness to the QME or his or her immediate family~~ for good cause, including but not limited to medical or family emergency.

(b) At the time of requesting unavailable status, the QME shall provide the Medical Director with a list of any and all comprehensive medical/legal evaluation examinations already scheduled during the time requested for unavailable status. The QME shall indicate whether each such examination is being rescheduled or the QME plans to complete the exam and report while in unavailable status.

(c) A QME who is unavailable as provided in subdivision (a) shall not perform any new evaluation examinations~~,~~ as a QME ~~**or AME**~~ until the physician returns to active QME status. Such a QME may complete medical-legal examinations and reports already scheduled and reported to the Medical Director, as well as reports for evaluation examinations performed prior to becoming unavailable under subdivision (a). Such a QME also may complete supplemental reports.

(~~b~~ d) It shall not be an acceptable reason for unavailability that a QME does not intend to perform comprehensive medical-legal evaluations for unrepresented workers. A QME who has filed notifications for unavailability ~~for~~ totaling more than ninety (90) days during the QME fee period without good cause may be denied reappointment subject to section 52 of Title 8 of the California Code of Regulations. Good cause includes, but is not limited to, sabbaticals, or death or serious illness of an immediate family member.

(~~c~~ e) If ~~an unrepresented employee~~ a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within ***sixty (***60***)*** days ~~after~~ ***of the date of the*** ~~an~~ appointment request, ~~the employee~~ that party ~~may~~ ***may waive the right to a replacement in order to accept an appointment no more than ninety (90) days after the date of the party's initial appointment request. When the selected QME is unable to schedule the evaluation within ninety (90) days of the date of that party's initial appointment request, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the ninety (90) day time limit for scheduling the initial evaluation.*** ~~shall report the unavailability of the QME to the Medical Director. The Medical Director shall provide a replacement QME or replacement QME panel at random to be added to the employee's panel in accordance with section 31.5(d) of Title 8 of the California Code of Regulations, The employee unless the party with the legal right to schedule the QME appointment may choose decides to waive his or her right to a replacement QME and to accept a later appointment with the originally selected QME or select one of the two remaining QME's on the panel.~~

(~~d~~ f) If a QME fails to notify the Medical Director, by submitting the form in section 109 (Notice of Qualified Medical Evaluator Unavailability) (see, 8 Cal. Code Regs. § 109), of his or her unavailability at a medical office ~~due to a change in address for that office~~ ~~within~~ ***at least*** thirty (30) days ~~of~~ ***prior to*** ~~*the change*~~ ***the period the evaluator becomes unavailable***, the Medical Director may designate the QME to be unavailable at that location for thirty (30) days from the date the Medical Director learns of the ~~change in address~~ unavailability. ~~At that time, a certified letter will be sent to the QME by the IMC regarding his/her unavailability. If the IMC does not receive a response within 30 days of the date of certification of the letter, then the QME will be made inactive at that location.~~

(g) Whenever the Medical Director is notified by a party seeking an appointment with a Qualified Medical Evaluator, or otherwise becomes aware, that the QME is not available and not responding to calls or mail at a location listed for the QME, a certified letter will be sent to the QME by the Medical Director regarding his/her unavailability. If the Medical Director does not receive a response within ~~thirty (30)~~ ***fifteen (15)*** days of the date the certified letter is mailed, then the QME will be made unavailable at that location. The time a QME is placed on unavailable status pursuant to this subdivision shall count toward the ninety (90) day limit in subdivision 33(~~d~~ ***a***) of Title 8 of the California Code of Regulations.

NOTE: Form referred to above is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections ~~139 and~~ 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, ***4062.5*** and 4067, Labor Code.

§ 34. Appointment Notification *and Cancellation*

(a) Whenever an ~~unrepresented employee makes an~~ appointment for a comprehensive medical evaluation is made with a QME, the QME shall complete an appointment notification form by submitting the form in Section 110 (QME Appointment Notification Form)(See, 8 Cal. Code Regs. § 110). ~~This~~ ~~In an unrepresented case, the~~ ***The*** completed form shall be postmarked or sent by facsimile to the employee and the claims administrator, or~~,~~ if none~~,~~ the employer, within 5 ~~working~~ business days of the date the appointment was made. In a represented case, ~~this requirement may be satisfied by sending~~ ***a copy of*** the completed form ***shall also be sent*** to the attorney who represents each party***, if known***. Failure to comply with this requirement shall constitute grounds for denial of reappointment under section 51 of Title 8 of the California Code of Regulations.

(b) The QME shall schedule an appointment for a comprehensive medical-legal examination which shall be conducted only at the medical office listed on the panel selection form. However, upon written request by the injured worker and only for his or her convenience, the evaluation appointment may be moved to another medical office of the selected QME if it is listed with the Medical Director as an additional office location.

(c) The QME shall include within the notification whether a Certified Interpreter, as defined by Labor Code Section 5811 and subject to the provisions of section 9795.3 of ~~this~~ Title 8 of the California Code of Regulations , is required and specify the language. The interpreter shall be arranged by the party who is to pay the cost as provided for in Section 5811 of the Labor Code.

(d) An evaluator, whether an AME, Agreed Panel QME or QME, shall not cancel a scheduled appointment less than six (6) business days prior to the appointment date, except for good cause. Whenever an evaluator cancels a scheduled appointment, the evaluator shall advise the parties in writing of the reason for the cancellation. The Appeals Board shall retain jurisdiction to resolve disputes among the parties regarding whether an appointment cancellation pursuant to this subdivision was for good cause. The Administrative Director shall retain jurisdiction to take appropriate disciplinary action against any Agreed Panel QME or QME for violations of this section.

(e) An Agreed Panel QME or a QME who cancels a scheduled appointment shall reschedule the appointment to a date within thirty (30) calendar days of the date of cancellation. The re-scheduled appointment date may not be more than sixty

(60) calendar days from the date of the initial request for an appointment, unless the parties agree in writing to accept the date beyond the sixty (60) day limit.

(f) An Agreed Medical Evaluator who cancels a scheduled appointment shall reschedule the appointment within sixty (60) calendar days of the date of the cancellation.

(g) Failure to receive relevant medical records, as provided in section 35 of Title 8 of the California Code of Regulations and section 4062.3 of the Labor Code, prior to a scheduled appointment shall not constitute good cause under this section for the evaluator to cancel the appointment.

(~~d~~ h) An appointment scheduled with an evaluator, whether an AME, Agreed Panel QME or ~~a panel~~ QME shall not be cancelled or rescheduled ~~by the QME or by any~~ by a party or the party's attorney less than ~~three (3)~~ six (6) business days before the appointment date ~~scheduled~~, except for good cause. Whenever the claims administrator, or if none the employer, or the injured worker, or either party's attorney, cancels an appointment scheduled by ~~a panel QME~~ an evaluator, the cancellation shall be made in writing, ~~and~~ state the reason for the cancellation and be served on the opposing party. Oral cancellations shall be followed with a written confirming letter that is faxed or mailed by first class U.S. mail within twenty four hours of the verbal cancellation and that complies with this section. An injured worker shall not be liable for any missed appointment fee whenever an appointment is cancelled for good cause. The Appeals Board shall retain jurisdiction to resolve disputes regarding whether an appointment cancellation by a party pursuant to this subdivision was for good cause.

(i) The date of cancellation shall be determined from the date of postmark, if mailed, or from the facsimile receipt date as shown on the recipient's fax copy.

NOTE: Form referred to above is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections ~~139~~, 133, 139.2 and 5307.3 Labor Code. Reference: Sections 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2 and 4067, Labor Code.

§ 35. Exchange of Information *and Ex Parte communications*

(a) ~~**Any party may provide, and where the**~~ ~~Where an~~ ~~**employee is unrepresented, the**~~ ***Except as provided in subdivision 35(m) below, the*** ~~*The*~~ claims administrator, or~~,~~ if none~~,~~ the employer, shall~~, and the employee may,~~ provide***, and the injured worker may provide,*** ~~to~~ the following information to the ~~*QME or AME*~~ ***evaluator , whether an AME, Agreed panel QME or QME:***

(1) All records prepared or maintained by the employee's treating physician or physicians;

(2) Other medical records ~~in their possession~~, including any previous treatment records~~, and/or non-medical records~~ or information, which are relevant to ~~the evaluation of the employee's injury;~~ determination of the medical issue(s) in dispute;

(3) A letter outlining the issues ~~*which*~~ ***that*** the ~~*AME or QME*~~ ***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~~.~~ ;

(4) Whenever the treating physician's recommended medical treatment is disputed, ***a*** copy of the treating physician's report recommending the medical treatment with all supporting documents, a copy of ***claims administrator's, or if none*** the employer's, decision to approve, delay, deny or modify the disputed treatment with the documents supporting the ~~employer's~~ decision, and all other relevant communications about the disputed treatment exchanged during the utilization review process required by Labor Code section 4610;

(5) Non-medical records, including films and videotapes, which are relevant to determination of medical issue(s) in dispute, after compliance with subdivision ***35***(c) of Title 8 of the California Code of Regulations.

(b)(1) All communications by the parties with the ~~*AME, or QME selected from the panel*~~, ***evaluator*** shall be in writing and sent simultaneously to the opposing party when sent to the medical evaluator, except as otherwise provided in subdivision***s*** (c)***,*** ~~*and*~~ (k) ***and (l)*** of this section.

(2) Represented parties who have selected an Agreed Medical Evaluator ***or an Agreed Panel QME*** shall, as part of their agreement, agree on what information is to be provided to the AME ***or the Agreed Panel QME, respectively***.

(~~b~~)(c) ~~In no fewer than~~ At least twenty (20) days before the information is to be provided to the ~~*AME or QME*~~ ***evaluator*** , the party providing such medical and non-medical reports and information shall serve it on the opposing party.~~: the following:~~ ***In both unrepresented and represented cases the claims administrator shall attach a log to the front of the records and information being sent to the opposing party that identifies each record or other information to be sent to the evaluator and lists each item in the order it is attached to or appears on the log. In a represented case, the injured worker's attorney shall do the same for any records or other information to be sent to the evaluator directly from the attorney's office, if any.*** The claims administrator, or ***if none the*** employer, shall include a cover letter or other document when provid-

ing such information to the employee which shall clearly and conspicuously include the following language: "Please look carefully at the enclosed information. It may be used by the doctor who is evaluating your medical condition as it relates to your workers' compensation claim. If you do not want the doctor to see this information, you must let me know within 10 days."

~~(1) A copy of all medical records and medical reports to be sent.~~

~~(2) A copy of all non-medical documents or other non-medical information, including films or videotapes, to be sent~~.

(d) If the opposing party objects within 10 days to ***any*** non-medical records or information proposed to be sent to an evaluator, ~~the~~ ***those*** records ~~or~~ ***and that*** information shall not be provided to the evaluator unless so ordered by a Workers' Compensation Administrative Law Judge.

(e) In no event shall any party forward to the ~~QME~~ ***evaluator*** : (1) any medical/legal report which has been rejected by a party as untimely pursuant to Labor Code section 4062.5; (2) ~~*any evaluation report written by a physician other than the treating physician, secondary physician or evaluator obtained pursuant to Labor Code sections 4060 through 4062.2*~~;***any evaluation or consulting report written by any physician other than a treating physician, the primary treating physician or secondary physician, or an evaluator through the medical-legal process in Labor Code sections 4060 through 4062, that addresses permanent impairment, permanent disability or apportionment under California workers' compensation laws, unless that physician's report has first been ruled admissible by a Workers' Compensation Administrative Law Judge*** ; ~~or~~ ***or*** (3) any medical report or record ***or other information or thing*** which has been stricken***,*** or found inadequate ***or inadmissible,*** by a Workers' Compensation Administrative Law Judge***,*** or ***which*** otherwise ~~is~~ ***has been*** deemed inadmissible to the evaluator as a matter of law***.*** ~~*or (4) any third party medical or consulting report obtained outside of the process in Labor Code section 4610 that addresses issues presented to the evaluator for evaluation, unless the third party medical or consulting report has been ruled admissible by a Workers' Compensation Administrative Law Judge.*~~

(f) Either party may use discovery to establish the accuracy or authenticity of non-medical records or information prior to the evaluation.

~~(3)~~ (g) Copies of all records being sent to the ~~QME~~ ***evaluator*** shall be sent to all parties except as otherwise provided in section ~~(c)~~ (d) ***and (e)***. Failure to do so shall constitute ex parte communication within the meaning of subdivision (k) below by the party transmitting the information to the evaluator. ~~under section(f).~~

~~(c)~~ (h) In the event that the unrepresented employee schedules an appointment within 20 days of receipt of the panel, the employer or if none, the claims administrator shall not be required to comp-

ly with the 20 day time frame for sending medical information in subsection ~~(b)(1)~~(c) provided, however, that the unrepresented employee is served all non-medical information in subdivision ~~(b)(2)~~(c) 20 days prior to the information being served on the QME so the employee has an opportunity to object to any non-medical information.

~~(d)~~ (i) In the event that a party fails to provide to the ~~QME~~ ***evaluator*** any relevant medical record which the ~~QME~~ ***evaluator*** deems necessary to perform a comprehensive medical-legal evaluation, the ~~QME~~ ***evaluator*** may contact the treating physician or other health care provider, to obtain such record(s). If the party fails to provide relevant medical records ~~under section (a)~~ within 10 days after the date of the evaluation, and the ~~QME~~ ***evaluator*** is unable to obtain the records, the ~~QME~~ ***evaluator*** shall complete and serve the report to comply with the statutory time frames under section 38 of Title 8 of the California Code of Regulations. The ~~QME~~ ***evaluator*** shall note in the report that the records were not received within the required time period. Upon request by ~~the~~ ***a*** party, or the Appeals Board, the ~~QME~~ ***evaluator*** shall complete a supplemental evaluation when the relevant medical records are received. For a supplemental report the ~~QME~~ ***evaluator*** need not conduct an additional physical examination of the employee if the ~~QME~~ ***evaluator*** believes a review of the additional records is sufficient.

~~(e)~~ (j) The ~~QME~~ ***evaluator*** and the employee's treating physician(s) may consult as necessary to produce a complete and accurate report. The ~~QME~~ ***evaluator*** shall note within the report new or additional information received from the treating physician.

~~(f)~~ (k) The Appeals Board shall retain jurisdiction in all cases to determine disputes arising from objections and whether ex parte contact in violation of Labor Code section 4062.3 or this section of Title 8 of the California Code of Regulations has occurred. If ~~**an employer or claims administrator or the injured employee**~~ ***any party*** communicates with ~~a QME~~ ***an evaluator*** in violation of Labor Code section 4062.3, the Medical Director shall provide the ~~unrepresented employee~~ aggrieved party with a new panel in which to select a new QME or the ~~unrepresented employee~~ aggrieved party may elect to proceed with the original ~~QME~~ ***evaluator*** . ~~If an employee communicates with a QME either before or after the evaluation, in violation of Labor Code section 4062.2, the claims administrator or employer may request the Medical Director to issue a new panel to the unrepresented employee. The Appeals Board shall retain jurisdiction to determine whether ex parte contact has occurred in all cases.~~ Oral or written communications by the employee, or if the employee is deceased by the employee's dependent, made in the course of the examination or made at the request of the evaluator in connection with the examination shall not provide grounds for a new evaluator unless the Appeals Board has made a specific finding of an impermissible ex parte communication.

~~*(l) At the evaluator's earliest opportunity and no later than the date the report is served, the evaluator shall advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for obtaining an additional evaluation pursuant to section 4062.1 or 4062.2 of the Labor Code and these regulations*~~

~~*in another specialty. In the case of a panel QME, the evaluator shall notify the Medical Director at the same time as notifying the parties under this subdivision.*~~

(l) In claims involving a date of injury prior to 1/1/2005 where the injured worker is represented by an attorney and the parties have decided to each select a separate Qualified Medical Evaluator, the provisions of this section shall not apply to the communications between a party and the QME selected by that party.

Note: Authority cited: Sections ~~139,~~ 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

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

(a) ~~Any~~ Each evaluation examination and report completed pursuant to Labor Code sections 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4064, 4067 or 5703.5 shall be performed in compliance with all appropriate evaluation procedures pursuant ~~to Article 4 of~~ this Chapter.

(b) Each reporting evaluator shall state in the body of the comprehensive medical-legal report the date the examination was completed and the street address at which the examination was performed. If the evaluator signs the report on any date other than the date the examination was completed, the evaluator shall enter the date the report is signed next to or near the signature on the report.

(~~1~~ ***c***) The evaluator shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's ~~initial~~ appointment with the medical evaluator that are issues within the evaluator's scope of practice and areas of clinical ~~*competency*~~ ***competence. The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator as*** ~~*required by*~~ ***provided in subdivision 35(a)(3).***

(d) At the evaluator's earliest opportunity and no later than the date the report is served, the evaluator shall advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for obtaining an additional evaluation pursuant to section 4062.1 or 4062.2 of the Labor Code and these regulations in another specialty. In the case of an Agreed Panel QME or a panel QME, the evaluator shall send a copy of the written notification provided to the parties to the

Medical Director at the same time. However, only a party's request for an additional panel, with the evaluator's written notice under this section attached, or an order by a Workers' Compensation Administrative Law Judge, will be acted upon by the Medical Director to issue a new QME panel in another specialty in the claim.

~~(d)~~ ***(e)*** ***In the event a new injury or illness is claimed involving the same type of body part or body system and the parties are the same, or in the event either party objects to any new medical issue within the evaluator's scope of practice and clinical competence, the parties shall utilize to the extent possible the same QME or AME who reported previously.***

~~(e)~~ ***(f)*** In the event either party seeks to depose the evaluator, the deposition shall be conducted at the location at which the evaluation examination was performed. When represented parties agree to an alternate location for the deposition, the deposition may be conducted at another location. The evaluator shall be available for a deposition scheduled by a party within at least one hundred twenty (120) days of the party's initial request or notice of the deposition.

~~(f)~~ ***(g)*** Whenever an Agreed Medical Evaluator or Qualified Medical Evaluator provides an opinion in a comprehensive medical/legal report on a disputed medical treatment issue, the evaluator's opinion shall be consistent with ***and apply*** the standards of evidence-based medicine ~~as~~ set out in Division 1, Chapter 4.5, Subchapter 1, sections 9792.20 *et seq* of Title 8 of the California Code of Regulations (Medical Treatment Utilization Schedule). In the event the disputed medical treatment, condition or injury is not addressed by the Medical Treatment Utilization Schedule, the evaluator's medical opinion shall be consistent with ~~the provisions of section 9792.25 of Title 8 of the California Code of Regulations, regarding~~ ***and refer to*** other ~~scientifically and~~ evidence-based medical treatment guidelines, ***peer reviewed studies and articles, if any, and otherwise shall explain the medical basis for the evaluator's reasoning and conclusions.*** ~~rating randomized controlled trials and rating the strength of the evidence.~~

Note: Authority cited: Sections 133, 139.2***, 4062.3*** and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067, 4604.5**,** 4628**,** 5307.27 and ~~5703.1~~ 5703.5, Labor Code.

§ 36. ~~Summary Form for Comprehensive Medical-Legal Evaluation Performed Pursuant to Labor Code Section 4061 by QMEs or AMEs; Service of Form and Evaluation~~ *Service of Comprehensive Medical-Legal Evaluation Reports by Medical Evaluators Including Reports Under Labor Code section 4061*

~~(a) Upon completion of either a *each* comprehensive medical-legal evaluation or follow-up medical legal evaluation, as defined under section 9793(f) of this Title 8 of the California Code of Regulations, *that addresses disputes under Labor Code section 4061 in the claim* of an unrepresented employee, the evaluator shall complete the QME/AME Findings Summary Form in section 111~~

~~(See, 8 Cal. Code Regs. § 111). The Form *QME Form 111* shall not be required for a supplemental medical legal evaluation under 9793(k) of this Title 8 *that addresses issues other than permanent impairment or permanent disability. The QME Form 111 also is not required for a disputed claim in which the injured worker is represented by an attorney.*~~

~~*(b) In an unrepresented case, the* The evaluator shall serve the comprehensive medical-legal evaluation *report,* the summary form *(QME Form 111),* and DEU forms 100 (Employee's Disability Questionnaire)(See, 8 Cal. Code Regs. § 10161) and 101 (Request for Summary Determination of Qualified Medical Evaluator's Report) (See, 8 Cal. Code Regs. § 10161), *within the time frames specified in Section 38 of Title 8 of the California Code of Regulations,* on the unrepresented employee, and the claims administrator, or, if none, the employer, as welll as the appropriate local DEU office, *the claims administrator, or if none the employer, and the unrepresented injured worker,* within the time frames specified in Section 38 of Title 8 of the California Code of Regulations, except as provided in subdivision (c) below *in subdivision 36.5 (Service of Comprehensive Medical/Legal Report in Claims of Injury to the Psyche).*~~

~~*(c) Whenever the injured worker is represented by an attorney, a comprehensive medical/legal report that addresses disputes under Labor Code section 4061 shall be served, within the time frames specified in Section 38 of Title 8 of the California Code of Regulations, on each party and on the party's attorney with QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report), except as provided in subdivision 36.5(Service of Comprehensive Medical/Legal Report in Claims of Injury to the Psyche).*~~

(a) Whenever an injured worker is represented by an attorney, the evaluator shall serve each comprehensive medical-legal evaluation report, follow-up comprehensive medical-legal evaluation report and supplemental evaluation report on the injured worker, his or her attorney and on the claims administrator, or if none the employer, by completing QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report Form)(See, 8 Cal. Code Regs.§ 122) and attaching QME Form 122 to the report, unless section 36.5 of Title 8 of the California Code of Regulations applies. If applicable in a claim involving disputed injury to the psyche, the evaluator shall comply with the requirements of section 36.5 of Title 8 of the California Code of Regulations (Service of Comprehensive Medical-Legal Report in Claims of Injury to the Psyche)(See, 8 Cal. Code Regs.§§ 36.5, 120 and 121).

(b) Whenever an injured worker is not represented by an attorney, the Qualified Medical Evaluator shall serve each comprehensive medical-legal evaluation report, follow-up evaluation report or supplemental report that addresses only

disputed issues outside of the scope Labor Code section 4061, by completing the questions and declaration of service on the QME Form 111 (QME Findings Summary Form) (See, 8 Cal. Code Regs. § 111), and by serving the report with the QME Form 111 attached, on the injured worker and the claims administrator, or if none on the employer, unless section 36.5 of Title 8 of the California Code of Regulations applies. If applicable in a claim involving disputed injury to the psyche, the evaluator shall comply with the requirements of section 36.5 of Title 8 of the California Code of Regulations (Service of Comprehensive Medical-Legal Report in Claims of Injury to the Psyche)(See, 8 Cal. Code Regs.§§ 36.5, 120 and 121.)

(c) Whenever the evaluator is serving a medical-legal evaluation report that addresses or describes findings and conclusions pertaining to permanent impairment, permanent disability or apportionment of an unrepresented injured worker, the evaluator shall serve the evaluation report, the completed QME Form 111 (QME Findings Summary Form) (See, 8 Cal. Code Regs. § 111), DWC-AD form 100 (DEU) (Employee's Disability Questionnaire)(See, 8 Cal. Code Regs. §§ 10160 and 10161) and DWC-AD form 101 (DEU) (Request for Summary Rating Determination of Qualified Medical Evaluator's Report)(See, 8 Cal. Code Regs. §§10160 and 10161) on the local DEU office, the claims administrator, or if none the employer, and on the unrepresented employee within the time frames specified in section 38 of Title 8 of the California Code or Regulations, unless section 36.5 of Title 8 of the California Code of Regulations applies. If applicable, in cases involving disputed injury to the psyche, the evaluator shall follow the procedures described in section 36.5 of Title 8 of the California Code of Regulations (Service of Comprehensive Medical-Legal Report in Claims of Injury to the Psyche)(See, 8 Cal. Code Regs.§§ 36.5, 120 and 121).

(~~b~~ ***d***) If an evaluation ***report*** is completed ~~*under subdivision (a)*~~ for an unrepresented employee, in which the QME determines that the employee's condition has not become permanent and stationary as of the date of the evaluation, the parties shall request any further evaluation from the same QME if the QME is currently an active QME and available at the time of the request for the additional evaluation. If the QME is unavailable, a new panel may be issued to resolve any disputed issue(s). If the evaluator is no longer a QME, he/she may issue a supplemental report as long as a face-to-face evaluation (as defined in section 49(b) of ~~these regulations~~ Title 8 of the California Code of Regulations) with the injured worker is not required. In no event shall a physician who is not a QME or no longer a QME perform a follow up evaluation on an ***unrepresented*** injured worker.

~~(c) In a matter involving a disputed issue of injury to the psyche of an unrepresented employee, where the injured employee has voluntarily agreed, prior to or at the outset of the medical/legal evaluation exam, to an alternate method of service of the comprehensive medical-legal report by completing QME Form 120 (Voluntary Directive For Alternate Service of Medical-Legal Report on Disputed Injury to Psyche) (See, 8 Cal. Code Regs. § 120), the evaluator's duty to serve the comprehensive medical-legal evaluation report on the employee shall be satisfied by use of the method of service directed by the injured employee who completes the form. The evaluator shall attach the original executed Form 120 to the original medical-legal report, and provide copies of the executed Form 120 as specified on the form when serving the report on the injured employee and the designated physician. As an additional medical expense incurred in the case within the meaning of section 4600 of the Labor Code, the employer, shall pay the physician named by the injured employee for one office visit at the OMFS office visit rate for reviewing and discussing the report with the injured employee.~~

(~~d~~ ***e***) ~~A~~ ***After a*** Qualified Medical Evaluator ~~who~~ has served a comprehensive medical-legal report on an unrepresented injured worker, the claims administrator, or if none the employer, and the Disability Evaluation Unit, that addresses a disputed issue involving permanent impairment, permanent disability or apportionment, ***the QME*** shall not issue any supplemental report on that issue, unless requested to do so by the Disability Evaluation Unit, by the Administrative Director in response to a petition for reconsideration of a disability rating or by a Workers' Compensation Administrative Law Judge.

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4064, 4067, 4600 and 4660 through 4664, Labor Code. ~~, ; and~~ ~~***Sections 10160 and 10162, Title*** 8 CCR Cal. Code Regs. § 10161 .~~

§ 36.5 Service of Comprehensive Medical/Legal Report in Claims of Injury to the Psyche

(a) At the beginning of any evaluation involving a claimed or disputed injury to the psyche, the injured worker shall be advised by the evaluator that the comprehensive medical-legal report, and any follow up or supplemental reports, from the evaluation may be served either directly on the injured worker or instead on a physician designated in writing by the injured worker prior to leaving the evaluator's office, for the purpose of reviewing and discussing the evaluation report with the injured worker. The evaluator shall explain that the designated physician need not be the injured worker's primary treating physician in the workers' compensa-

tion claim and that the employer will pay for one office visit with the designated physician for this purpose.

~~(a)~~(b) Whenever injury to the psyche is claimed and ~~either the primary treating physician or~~ in the course of the evaluation, the evaluator makes a determination pursuant to Health and Safety Code section 123115(b) that there is a substantial risk of significant adverse or detrimental medical consequences to the injured worker ~~in~~ from seeing or receiving a copy of part or all of evaluation report which is a mental health record, ~~the treating physician or~~ the evaluator shall do all of the following:

(1) Complete QME Form 121 (Declaration Regarding Protection of Mental Health Record);

(2) Advise the injured worker that the determination under Health and Safety Code 123115(b) has been made regarding the evaluation report as a ~~specified~~ mental health record and that ~~the treating physician or~~ the evaluator ~~may only~~ only may ~~provide~~ serve the ~~employee's~~ injured worker's copy of the ~~mental health record to~~ evaluation report on a person~~, designated in writing by the injured worker,~~ who is a licensed physician, as defined in Labor Code section 3209.3 and whose name the injured worker designates in writing prior to leaving the evaluator's office. ~~, or a health care provider as defined in Health and Safety Code section 123105(a).~~

(3) Permit inspection and copying of the mental health record(s) subject to the Health and Safety Code section 123115(b) determination, only by a licensed physician as defined in Labor Code section 3209.3 or another health care provider as defined in Health and Safety Code section 123105(a);

(4) Complete the QME Form 121 and enter the name and address of the physician designated in writing by the injured worker on this form;

(~~4~~ 5) Attach a completed copy of QME Form 121 (Declaration Regarding Protection of Mental Health Record) to the copy of the evaluation report ~~specified mental health record~~ in the injured worker's medical or ~~medical/legal~~ medical-legal file;

(~~5~~ 6) ~~Only serve~~ Serve the completed ~~medical treatment or medical/legal~~ comprehensive medical-legal evaluation report, follow-up medical-legal report or supplemental medical-legal report(s) subject to the provisions of this ~~subdivision~~ section, with the completed QME Form 121 (Declaration Regarding Protection of Mental Health Record) attached, on the licensed physician designated by the injured worker on QME Form 121, and on the claims administrator~~, or if none on the employer~~, and on each party's at-

torney, if any, as provided in section 36, and within the time periods in section 38, of Title 8 of the California Code of Regulations. In the event the injured worker designates a physician on QME Form 121 other than the current primary treating physician in his or her workers' compensation claim, the evaluator shall also serve a copy of the report on the primary treating physician.

(7) Whenever the report addresses any permanent impairment, permanent disability or apportionment and the injured worker is not represented by an attorney, a copy of the report with the completed QME Form 121 attached shall also be served on the appropriate office of the Disability Evaluation Unit, along with the QME form Form 111 (QME's Findings Summary Form), and DWC-AD form 100 (DEU) (Employee's Disability Questionnaire)(See, 8 Cal. Code Regs. §§ 10160 and 10161) and DWC-AD form 101 (DEU) (Request for Summary Rating Determination of Qualified Medical Evaluator's Report)(See, 8 Cal. Code Regs. §§10160 and 10161). the DEU forms 100 (Employee's Disability Questionnaire)(See, 8 Cal. Code Regs. § 10161) and 101 (Request for Summary Determination of Qualified Medical Evaluator's Report) (See, 8 Cal. Code Regs. § 10161)subdivision 38, of Title 8 of the California Code of Regulations.

(8) Whenever the report addresses permanent impairment, permanent disability or apportionment and the injured worker is represented by an attorney, a copy of the report with the completed QME Form 121 attached shall be served with QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report) on the physician designated by the injured worker, the injured worker's attorney and on the claims administrator's attorney, or if none on the claims administrator.

(b) (c) "Mental health record" for the purposes of this subdivision means a medical treatment or evaluation record created by or received and reviewed by a licensed physician, as defined in Labor Code section 3209.3, in the course of treating or evaluating the injured worker in a workers' compensation claim, and includes for the purposes of this subdivision but is not limited to, treatment records and comprehensive medical/legal medical-legal reports.

(c) (d) Upon serving the employee's copy of the medical/legal medical-legal report in compliance with subdivisions 36.5(a)(5), 36.5(a)(6) or 36.5(a)(7) of Title 8 of the California Code of Regulations on the physician designated by the employee on the QME Form 121 (Declaration Regarding Protection of Mental Health Record), the evaluator's obligation to serve the report on the injured worker under Labor Code sections 139.2(j)(1) and 4061(c), and section 36 of Title 8 of the California Code of Regulation, shall be deemed satisfied.

(d) (e) Mental health records subject to a determination under Health and Safety Code section 123115(b) and this subdivision shall be kept confidential by the claims administrator and all par-

~~ties and their~~ **parties'** attorneys in the case **unless ordered otherwise by a Workers' Compensation Administrative Law Judge** . Whenever such a mental health record is filed by a party at the Workers' Compensation Appeals Board, the party filing such a record shall request and obtain a protective order from a Workers' Compensation Administrative Law Judge that shall specify in what manner the mental health record may be inspected, copied and entered into evidence.

~~(e)~~ **(f)** Whenever ~~injury to the psyche is in dispute~~ **the injured worker advises the evaluator that he or she prefers to have the evaluation report served on a designated physician as provided in subdivision 36.5(a) above,** and ~~an~~ **the** evaluator does not make a determination **pursuant to Health and Safety Code section 123115(b),** ~~as provided in subdivision 36.5(a), but is concerned that the injured worker may misinterpret part or all of the comprehensive medical/legal evaluation report prepared by the evaluator, the evaluator may ask the injured worker prior to the end of the evaluation session whether the employee wishes voluntarily to accept service of the employee's copy of the report during a visit with a physician designated by the employee who will review it with the employee. If the employee agrees,~~ **the evaluator shall provide QME Form 120 (Voluntary Directive for Alternate Service of** ~~Medical/Legal~~ **Medical-Legal** Report) (See, 8 Cal. Code Regs. § 120) to the injured worker and shall request the injured worker to complete the form before leaving the evaluator's office.

~~(f)~~**(g)** Upon receipt by the evaluator of a QME Form 120 completed by the injured worker, the evaluator shall attach the original executed QME Form 120 to the original ~~medical/legal~~ **medical-legal** report for service. The evaluator shall serve **the evaluation report with QME Form 120 attached by completing the questions and the declaration of proof of service on QME Form 111 (Qualified Medical Evaluator's Findings Summary Form)(See, 8 Cal. Code Regs. § 111) and serving it with the report in the case of an unrepresented injured worker. In the case of a represented injured worker, the evaluator shall serve the report with QME Form 120 attached, by completing the declaration of service on QME Form 122 (AME or QME Declaration of Service of Medical-Legal Report)(See, 8 Cal. Code § 122) and serving it with the report.**

(h) Whenever an evaluation report is being served with QME Form 120 (Voluntary Directive for Alternate Service of Medical-Legal Report) (See, 8 Cal. Code Regs. § 120), the evaluator shall serve two copies of the ~~medical/legal~~ **medical-legal report** with the QME Form 120 attached on the physician designated **on the form** by the injured worker, at the same time as serving **the copies of** the ~~medical/legal~~ **medical-legal** report ~~with the QME Form 120 attached~~, on the claims administrator, or if none on the employer,

~~or~~ **and** on ~~each party's~~ **the injured worker's** attorney if any~~,~~ **.** ~~along with QME Form 111 (for unrepresented cases involving permanent impairment or permanent disability) or QME Form 122, as appropriate~~. Service of a ~~medical/legal~~ **medical-legal** report by an evaluator in compliance with this subdivision shall satisfy the evaluator's obligation to serve a copy of the report on the employee under Labor Code sections 139.2(j)(1) and 4061(c,) and section 36 of Title 8 of the California Code of Regulations.

~~(g)~~**(i)** The physician designated by the injured worker **in writing and listed** on QME Form 120 or QME Form 121 is not limited to the primary treating physician in the disputed workers' compensation claim. As an additional medical **treatment** expense incurred in the claim within the meaning of section 4600 of the Labor Code, the claims administrator, or if none the employer, shall reimburse the physician designated by the injured worker **and listed** on either the QME Form 121 (Declaration Regarding Protection of Mental Health Record) or the QME Form 120 (Voluntary Directive for Alternate Service of Medical-Legal Evaluation Report on Disputed Injury to the Psyche), for one office visit, when used, for the purpose of reviewing and discussing the evaluator's report with injured worker, at the ~~OMFS~~ **applicable** rate **under section 9789.11 (Physician Services Rendered on or After July 1, 2004) of Title 8 of the California Code of Regulations** for an office visit and may include, as appropriate, record review, any necessary face-to-face time during the visit in excess of that specified in the **applicable** CPT office visit code, and charges ~~, if necessary~~, for time required to prepare a treatment report **pertaining to the office visit, if necessary**.

~~(h)~~**(j)** Whenever the comprehensive ~~medical/legal~~ **medical-legal** report is served by the evaluator on a physician pursuant to subdivision 36.5(f) with the QME Form 120 (Voluntary Directive for Alternate Service of ~~Medical/Legal~~ **Medical-Legal** Report on Disputed Injury to the Psyche) attached, one of the two copies of the ~~medical/legal~~ **medical-legal** report served on the designated physician shall be given to the injured worker by the designated physician during the office visit ~~referred to in subdivision 36.5(g)~~.

(k) In the event the injured worker declines or refuses to designate any physician in writing to be listed on either QME Form 120 or QME Form 121, the evaluator's report shall be served as appropriate under section 36, and within the time periods under section 38, of Title 8 of the California Code of Regulations. It is recommended that the evaluator serve the medical-legal evaluation report with an authorization for release of medical information signed by the injured worker. A non-mandatory Authorization for Release of Medical Information form is available as QME Form 125 (Authorization for Release of Medical Information). (See, 8 Cal. Code Regs. Section 125.)

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 56 through 56.37, Civil Code; Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067, 4600 and 4660 through 4664, Labor Code; ~~Sections 10160 and 10162, Title 8 Cal. Code Regs.;~~ Section 123115(b), Health and Safety Code.

§ 37. ~~Treating Physician's Determination of Medical Issues Form~~ Reserved

~~Pursuant to Labor Code Sections 4061.5 and 139(e)(9), this form may be used by the treating physician primarily responsible for managing the care of the injured worker, or the physician designated by that physician, when rendering opinions on all medical issues necessary to determine eligibility for compensation. The Treating Physician's Determination of Medical Issues Form (Treating Physician's Form) is as follows:~~

~~Note: Sections 139, 4061 and 4061.5, Labor Code. Reference: Sections 139(e)(9), 4061 and 4061.5, Labor Code.~~

§ 38. Medical Evaluation Time Frames; Extensions for QMEs and AMEs

~~(a) For a late report, regardless of the date of injury, if any of the following occur, the unrepresented injured worker shall be entitled to a new three-member QME panel:~~

~~(1) the QME fails to request an extension~~

~~(2) the timeframe extension is denied~~

~~(3) the QME does not issue the report by the approved extension date.~~

~~The injured worker shall have 15 days from the date of notice by the Medical Director to complete, sign and return IMC Forms 113, 115, 116 as applicable. If the employee requests a new panel, the claims administrator or, if none, the employer shall have no liability for the late report. If the employee is represented by an attorney and the extension is denied to an AME, either party may withdraw from the AME and no party shall be liable for payment to the AME.~~

~~(b) For injuries between January 1, 1991 and December 31, 1993, the time frame for comprehensive medical-legal evaluations to be prepared and submitted shall not exceed 45 days after the QME or AME has seen the employee or otherwise commenced the comprehensive medical-legal evaluation procedure. Extension of the 45-day limit shall be approved when the evaluator has good cause or has not received test results or consulting physicians' evaluations necessary to address all disputed medical issues in time to meet the initial 45-day deadline. If the evaluation is not completed on the scheduled date through no fault of the QME, the QME may request an extension not to exceed an additional 45 days from the Medical Director. The evaluator shall notify the employee and the claims administrator or, if none, the employer not later than 5 days before the initial 45-day~~

~~period expires that an extension is warranted. A copy of the notice shall be sent to the Medical Director. The notice shall be on the form in Section 112. If the extension of time requires additional days greater than 90 days from the date of the evaluation for the submission of the report, approval or denial shall be granted within 10 days by the Medical Director.~~

~~(c)~~ (a) ~~For injuries on or after January 1, 1994,~~ t The time frame for an initial or a follow-up comprehensive medical-legal evaluation~~s~~ report to be prepared and submitted shall not exceed thirty (30) days after the QME***, Agreed Panel QME*** or AME has seen the employee or otherwise commenced the comprehensive medical-legal evaluation procedure. If an evaluator fails to prepare and serve the initial or follow-up comprehensive medical-legal evaluation report within thirty (30) days and the evaluator has failed to obtain approval from the Medical Director for an extension of time pursuant to this section, the employee or the employer may request a QME replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations. Neither the employee nor the employer shall have any liability for payment for the medical evaluation which was not completed within the timeframes required under this section unless the employee and the employer each waive the right to a new evaluation and elect to accept the original evaluation ***, in writing or by*** ~~use of~~ ***signing and returning to the Medical Director*** ~~on~~ either QME Form 113 (Notice of Denial of Request For Time Extension) or QME Form 116 (Notice of Late QME/AME Report – No Extension Requested) (See, 8 Cal. Code Regs. §§ 113 and 116).

(b) All requests by an evaluator for extensions of time shall be made on form 112 (QME/AME Time Frame Extension Request) (See, 8 Cal. Code Regs. § 112). If the evaluation will not be completed on the original due date, the evaluator may request an extension from the Medical Director, not to exceed an additional 30 days. An ~~E~~ extension of the ~~30-day limit~~ time for completing the report shall be approved, as follows:

(1) ~~when~~ When the evaluator has ~~good cause or~~ not received test results or the report of a consulting ~~physicians'~~ physician ~~evaluations~~, necessary to address all disputed medical issues in time to meet the initial 30-day deadline, an extension of up to thirty (30) days shall be granted;~~.~~ ~~If the evaluation is not completed on the scheduled date through no fault of the QME, the QME may request an extension not to exceed an additional 30 days from the Medical Director~~.

(2) When the evaluator has good cause, as defined in Labor Code section 139.2(j)(1)(B), an extension of fifteen (15) days shall be granted.

(c) Not later than 5 days before the initial 30-day period to complete and serve the report expires, ~~The~~ the evaluator shall notify the Medical Director, the employee and the claims administrator, or if none, the employer, of the request for an extension by use of QME Form 112 (QME/AME Time Extension Request) (See, 8 Cal. Code Regs. § 112). ~~not later than 5 days before the initial 30-day period expires that an extension is warranted. A copy of the notice shall be sent to the Medical Director. The notice shall be on the form in Section 112~~. ~~If the extension of time requires additional days greater than 60 days from the date of the evaluation for the submission of the report, approval or denial shall be granted within 10 days by the Medical Director.~~

(d) The Medical Director shall notify the requesting evaluator and the parties of the decision on the extension request by completion of the box at the bottom of QME Form 112 (QME/AME Time

Frame Extension Request)(See, 8 Cal. Code Regs. § 112). In the event that a request for an extension of time is denied, the Medical Director shall also send the parties QME Form 113 (Notice of Denial of Request for Time Extension)(See, 8 Cal. Code Regs. § 113) to be used by ~~the~~ ***each*** party to state whether the party wishes to request a new evaluator or to accept the late report of the original evaluator.

(e) Whenever the Medical Director becomes aware that the report of a Qualified Medical Evaluator or an Agreed Medical Evaluator has not been completed within the required time under section 38 and no extension of time was requested by the evaluator, the Medical Director shall send the parties a Notice of Late QME/AME Report – No Extension Requested (QME Form 116) (See, 8 Cal. Code Regs. § 116). Each party shall complete the form and return it to the Medical Director in order to indicate whether or not the party wishes to accept the late report.

(~~d~~ f) ~~Extensions for good cause shall not exceed an additional 15 days from the date the report is to be served.~~ Good cause, as defined in Labor Code section 139.2(j)(1)(B) and section 38(b)(2) of Title 8 of the California Code of Regulations, means:

(1) medical emergencies of the evaluator or the evaluator's family;

(2) death in the evaluator's family;

(3) natural disasters or other community catastrophes that interrupt the operation of the evaluator's office operations;

(~~e~~ g) Extensions shall not be granted because relevant medical information/records (including Disability Evaluation Form 101 (Request for Summary Determination of Qualified Medical Evaluator's Report) (See, 8 Cal. Code Regs. § 10161) ~~8 CCR § 10161(b)~~) have not been received. The evaluator shall complete the report based on the information available and state that the opinions and/or conclusions may or may not change after review of the relevant medical information/records.

(~~f~~ h) The time frame for supplemental reports ~~in unrepresented cases~~ shall be no more than sixty (60) days from the date of a written or electronically transmitted request to the physician by a party. The request for a supplemental report shall be accompanied by any new medical records that were unavailable to the ~~QME~~ evaluator at the time of the original ~~QME~~ evaluation ***and which were properly served on the opposing party as required by Labor Code section 4062.3***. ~~in compliance with section 10160(f) of this Title.~~ An extension of the sixty (60) day***s time frame for completing the supplemental report, of no more than thirty (30) days, may be allowed without the need to request an extension from the Medical Director, as long as the evaluator contacts both parties at least fourteen (14) calendar days prior to the end of the sixty (60) day time frame and within seven (7) calendar days of being contacted, both parties agree to the extension in writing which is sent to the evaluator. Each party may send the evaluator their written agreement to the extension separately. However, if either party objects to the extension or if either party fails to respond to the evaluator at least seven (7) calendar days prior to the end of the sixty (60) day time frame, the evaluator must request the extension from the***

Medical Director by completing and submitting QME Form 112 (See, 8 Cal. Code Regs. § 112). The evaluator shall mail the completed QME Form 112 to the Medical Director no later than five (5) calendar days before the end of the sixty (60) day time frame above. ~~*may be agreed to by the parties in writing without the need to request an extension from the Medical Director.*~~

(~~g~~ i) Evaluators ~~giving notice~~ requesting time extensions will be monitored and advised by the Medical Director when such a ~~notices~~ request appears unreasonable or excessive. Failure to comply with this section may constitute grounds for denial of the QME's request for reappointment pursuant to section 51 of Title 8 of the California Code of Regulations.

~~(j) Any objection by a party to an evaluator's report for failure to complete the report within the time required under this section must be filed with the Medical Director, along with a request for a replacement QME or QME panel pursuant to section 31.5 of Title 8, within fifteen (15) days of the date the evaluation report was due after the expiration of an approved extension, if any, or within 15 days of the date the Medical Director notifies the parties with QME Form 113 (Notice of Denial of Request for Time Extension) or QME Form 116 (Notice of Late QME/QME Report – Not Extension Requested).~~

~~*(j) The failure of a party to object to an evaluator's report, on the grounds of untimeliness under this section, prior to the date the report is served shall be deemed a waiver of the objection, unless otherwise ordered by a Workers' Compensation Administrative Law Judge.*~~

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2(j)(1), 4061, ~~and~~ 4062, and 5307.3, Labor Code. Reference: Sections 139.2, 4061, 4062, 4062.1, 4062.2, 4062.5, 4064 and 4067, ~~4067.5~~ Labor Code.

§ 39. ~~Records~~, Destruction of Records by the Medical Director

The Medical Director may destroy any forms filed pursuant to ~~included in~~ these regulations five years after the date of receipt, provided that the completed "Application for Appointment as Qualified Medical Evaluator" form shall be preserved for each QME during the period(s) of his or her appointment as a QME. The "Request for Qualified Medical Evaluator" forms may be destroyed by the Medical Director two years after the date of receipt.

Note: Authority cited: Section~~s~~ 133, ~~139 and~~ 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061 and 4062, Labor Code; ~~and~~ Section 14755, Government Code.

§ 39.5. ~~Records,~~ Retention of Records by QMEs

(a) All QMEs shall retain a copy of all comprehensive medical-legal reports completed by the QME for a period of five years from the date of ~~the employee's~~ each evaluation report. A QME may satisfy this requirement by retaining only an electronic copy of the report, as long as the electronic copy retained is a true and correct copy of the original, showing the QME signature, that was served on the parties. Upon written request, a QME is required to return original radiological films, ~~and~~ imaging studies ~~and/or~~ and original medical records to the person who supplied the original records to the QME or to the injured ~~employee~~ ***worker***.

(b) An evaluator shall submit all comprehensive medical/legal reports performed as a QME under this article to the Medical Director upon request for a review by the Medical Director. Failure to submit evaluations upon request by the Medical Director may constitute grounds for disciplinary action pursuant to Section 60.

Note: Authority cited: Sections ~~139~~ 133, ~~and~~ 139.2(j)(1) and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4064 and 4062.5, Labor Code; and Section 14755, Government Code.~~.~~

ARTICLE 4. Evaluation Procedures

§ 40. Disclosure Requirements: ~~Unrepresented~~ Injured Workers

(a) ~~A QME~~ An evaluator selected from a QME panel shall advise an ~~unrepresented~~ injured worker prior to or at the time of the actual evaluation of the following:

(1) That he or she is entitled to ask the ~~QME~~ evaluator and the ~~QME~~ evaluator shall promptly answer questions about any matter concerning the evaluation process in which the QME and the injured worker are involved;

(2) That subject to section 41(g ~~e~~), the injured worker may discontinue the evaluation based on good cause. Good cause includes***: (A)*** discriminatory conduct by the evaluator towards the worker based on race, sex, national origin, religion, or sexual preference, ***(B) abusive, hostile or rude behavior including behavior that clearly demonstrates a bias against injured workers,*** and ***(C)*** instances where the evaluator requests the worker to submit to an unnecessary exam or procedure.

(b) When required as a condition of probation by the ~~Council~~ Administrative Director or his/her licensing authority, the QME shall disclose his/her probationary status. The QME shall be entitled

to explain any circumstances surrounding the probation. If at that time, the injured worker declines to proceed with the evaluation, such termination shall be considered by the ~~Council~~ Administrative Director to have occurred for good cause.

(c) If the injured worker declines to ask any questions relating to the evaluation procedure as set forth in section 40(a), and does not otherwise object on the grounds of good cause to the exam proceedings under section 41(a) during the exam itself, the injured worker shall have no right to object to the QME comprehensive medical-legal evaluation based on a violation of this section.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, and 4067 Labor Code.

§ 41. Ethical Requirements

(a) All QMEs, regardless of whether the injured worker is represented by an attorney, shall:

(1) Maintain a clean, professional physician's ~~medical~~ office (as defined in section 1(~~m~~ w) at all times ~~including~~ which shall contain functioning ~~evaluating~~ medical instruments and equipment appropriate to conducting the evaluation within the physician's scope of practice and a functioning business office phone with the phone number listed with the Medical Director for that location which a party may use to schedule an examination or to handle other matters related to a comprehensive medical/legal evaluation.

(2) Schedule all appointments for comprehensive medical-legal evaluations without regard to whether a worker is unrepresented or represented by an attorney. A QME shall not refuse to schedule an appointment with an injured worker solely because the worker is not represented by an attorney or because a promise to reimburse or reimbursement is not made prior to the evaluation.

(3) Not request the employee to submit to an unnecessary exam or procedure.

(4) Refrain from treating or soliciting to provide medical treatment, medical supplies or medical devices to the injured ~~employee~~ ***worker***.

(5) Communicate with the injured ~~employee~~ ***worker*** in a respectful, courteous and professional manner.

(6) Refrain from violating section 41.5 of Title 8 of the California Code of Regulations.

(7) Refrain from ***unilaterally*** rescheduling a panel QME examination ~~**three (3) or**~~ more ***than two*** times in the same case.

(8) Refrain from cancelling a ~~*panel*~~ QME examination less than ~~fourteen (14) calendar~~ ***six (6) business*** days from the date the exam is scheduled without good cause and without providing a new examination date within thirty (30) calendar days of the date of cancellation.

(b) ~~QMEs~~ Evaluators selected from a QME panel ~~selected by an unrepresented injured worker from a three member panel~~ provided by the ~~council~~ Administrative Director shall not engage in ex parte communication in violation of Labor Code section ~~4062.2~~ 4062.3.

(c) All QMEs, regardless of whether the injured worker is represented by an attorney, shall with respect to his or her comprehensive medical-legal evaluation:

(1) Refuse any compensation from any source contingent upon writing an opinion that in any way could be construed as unfavorable to a party to the case.

(2) Review all available relevant medical and non-medical records and/or facts necessary for an accurate and objective assessment of the contested medical issues in an injured ~~workers'~~ worker's case before generating a written report. ***The report must list and summarize all medical and non-medical records reviewed as part of the evaluation.***

(3) Render expert opinions or conclusions without regard to an injured ~~workers'~~ worker's race, sex, national origin, religion or sexual preference.

(4) Render expert opinions or conclusions only on issues ~~with regard to~~ which the ~~QME~~ evaluator has adequate qualifications, education, and training. All conclusions shall be based on the facts and on the ~~QME~~ evaluator's training and specialty-based knowledge and shall be without bias either for or against the injured worker or the ***claims administrator, or if none the*** employer.

(5) Present a report that addresses all relevant and contested medical issues as presented on one or more claim forms, is ratable by the DEU, if applicable, and complies with all relevant guidelines of the ~~Industrial Medical Council~~ Administrative Director.

(6) Date the report on the date it is completed and ready for signature and service on the parties. No report shall be dated on the date of the evaluation examination unless the full written text of the report is completed and ready for signature and service on that same date.

(7) Write all portions of the report that contain discussion of medical issues, medical research used as the basis for medical determinations, and medical conclusions made by the evaluator. In the event more than one evaluator signs a single report, each signing physician shall clearly state those parts of the employee evaluation examination performed and the portions of the report discussion and conclusion drafted by the signing evaluator. Where a consultation report is obtained by an evaluator from a physician in a different specialty, the consultation report ~~*shall be signed under penalty of perjury and in compliance with Labor Code section 4628, and*~~ shall be incorporated by reference into the final report and appended to the referring QME's report.

(8) Serve the report ~~*at the same time*~~ ***as provided in these regulations at the same time on the employee and the claims administrator, or if none the employer,*** ~~*or*~~ ***and on each of their attorneys, respectively.***

(d) All aspects of all physical and/or psychological comprehensive medical-legal evaluations, including history taking, shall be directly related to contested medical issues as presented by any party or addressed in the reports of treating physician(s). No evaluator shall engage in any physical contact with the injured ~~employee~~ ***worker*** which is unnecessary to complete the examination.

(e) No physician certified by the ~~IMC~~ Administrative Director as a QME, or his or her agent, shall contact ~~a QME~~ an evaluator for the purpose of influencing that ~~QME's~~ evaluator's opinions or conclusions in any ~~QME~~ comprehensive medical-legal evaluation or report.

(f) No ~~QME~~ evaluator shall schedule appointments to the extent that any injured worker will be required to wait for more than one hour at ~~a QME's~~ the evaluator's office prior to being seen for the previously agreed upon appointment time for an evaluation. ~~If the~~ An injured worker ~~is unrepresented and~~ who is not seen by the ~~QME~~ evaluator within one hour~~, he or she~~ may terminate the exam and request a replacement evaluator from the ~~Council~~ Administrative Director. No party shall be liable for the terminated exam. The ~~QME~~ evaluator may explain any reasons for the delay to the injured worker and, provided both parties agree, the evaluation may proceed or be rescheduled ~~at~~ for a later date. If the evaluation is rescheduled, the ~~QME~~ evaluator shall provide notice of the new date of the evaluation to the ~~claims administrator or, if none, the employer~~ parties within 5 business days after rescheduling the appointment.

(g) If the injured worker terminates the examination process based on an alleged violation of ~~either~~ ~~Section~~ section 35(k), 40, ~~or~~ ~~Section~~ 41(a) or 41.5 of Title 8 of the California Code of Regulations, and the Appeals Board later determines that good cause did not exist for the termination, the cost of the evaluation shall be deducted from the injured worker's award. A violation of section 40 or of any part of section 41(a) or 41.5 by the evaluator shall constitute good cause for purposes of an Appeals Board determination. No party shall be liable for any cost for medical reports or medical services delivered as a result of an exam terminated for good cause.

(h) Nothing in this section shall require ~~a QME~~ an evaluator to undertake or continue a comprehensive medical-legal evaluation where the injured worker or his/her representative uses abusive language towards the ~~QME~~ evaluator or ~~QME's~~ evaluator's staff or deliberately attempts to disrupt the operation of the ~~QME's~~ evaluator's office in any way. The ~~QME~~ evaluator shall state under penalty of perjury, the facts supporting the termination of the evaluation process. Upon request, the Medical Director shall investigate the facts and make a final determination of the issue(s).

(i) Nothing in this section shall require ~~a QME~~ an evaluator selected from a panel to undertake or continue a comprehensive medical-legal evaluation where the injured worker is intoxicated or under the influence of any medication which impairs the injured worker's ability to participate in the evaluation process. The ~~QME~~ evaluator shall state under penalty of perjury, the facts supporting the termination of the evaluation process. Upon request, the Medical Director shall investigate the facts and make a final determination of the issue(s).

Note: Authority cited: Sections 133, 139.2, 5307.3 and 5307.6, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, ***4062. 5,*** 4067 and 4628, Labor Code.

§ 41.5 Conflicts of Interest by Medical Evaluators

(a) An evaluator shall not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under the Labor

Code or the regulations of the Administrative Director (Title 8 of the California Code of Regulations, Chapters 1 through 1.8, section 1 et seq) or of the Workers' Compensation Appeals Board (Title 8 of the California Code of Regulations, Chapters 1.9, sections 10600 through 10727) .

(b) A conflict with the duties of an evaluator as used in Labor Code section 139.2(o) means having a disqualifying conflict of interest with one or more of the persons or entities described in subdivision (c) and failing to disclose the fact of the conflict.

(c) The persons or entities with whom a disqualifying conflict of interest can exist are:
(1) The injured ~~employee~~ ***worker***, or his or her attorney;
(2) The employer, or the employer's attorney;
(3) The claims adjuster or insurer or third party administrator, or their attorney, respectively;
(4) Any primary treating physician or secondary physician for the employee, if the treatment provided by that physician is disputed in the case;
(5) The utilization review physician reviewer or expert reviewer, or utilization review organization, only if the opinion of that reviewer or that utilization review organization is disputed in the case;
(6) The surgical center in which the injured ~~employee~~ ***worker*** had, or is proposed to be used to have, surgery, only if the need for surgery is disputed in the case.
(7) Other purveyor of medical goods or medical services, only if the medical necessity for using such goods or services is in dispute in the case.

(d) "Disqualifying Conflict of Interest" means the evaluator has any of the following relationships or interests with a person or entity listed in subdivision 41.5(c):
(1) A familial relationship of parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew, niece, spouse, financee or cohabitant;
(2) A significant disqualifying financial interest, as defined below, including:
    (A) Employment or a promise of employment;
    (B) An interest of five (5) % or more in the fair market value of any form of business entity involved in workers' compensation matters, or of private real property or personal property, or in a leasehold interest;
    (C) Five (5) % or more of the evaluator's income is received from direct referrals by or from one or more contracts with a person or entity listed in subdivision 41.5(c), except that contracts for participation in a Medical Provider Network as defined under Labor Code section 4616 et seq shall be excluded;
    (D) A financial interest as defined in Labor Code section 139.3 that would preclude referral by the evaluator to such a person or entity;
    (E) A financial interest as defined under the Physician Ownership and Referral Act of 1993 (PORA) set out in Business and Professions Code sections 650.01 and 650.02 that would preclude referral by the evaluator to such a person or entity.
(3) A professional affiliation which means the evaluator performs services in the same medical group or other business entity comprised of medical evaluators who specialize in workers' compensation medical - legal evaluations;

(4) Any other relationship or interest not addressed by subdivisions (d)(1) through (d)(3) which would cause a person aware of the facts to reasonably entertain a doubt that the evaluator would be able to act with integrity and impartiality.

(e) An Agreed Medical Evaluator or a Qualified Medical Evaluator may disqualify himself or herself on the basis of a conflict of interest pursuant to this section whenever the evaluator has a relationship with a person or entity in a specific case, including doctor-patient, familial, financial or professional, that causes the evaluator to decide it would be unethical to perform a comprehensive medical – legal evaluation examination or to write a report in the case.

(f) An Agreed Medical Evaluator or Qualified Medical Evaluator who knows, or should know, that he or she has a disqualifying conflict of interest with any person or entity listed in subdivision 41.5(c), that also is involved in the specific workers' compensation claim identified to the evaluator, shall send written notification to the injured ~~employee~~ ***worker*** and the ***claims administrator, or if none the*** employer***,*** ~~**or insurer,**~~ or their respective attorneys if any, within five (5) business days of the evaluator becoming aware of the conflict. The written notice shall include, at a minimum: 1) disclosure that a disqualifying conflict of interest exists; 2) the person or entity with whom the conflict arises; and 3) the category of conflict, such as familial, significant financial, or other type of ethical conflict. Whenever the evaluator declines to perform an evaluation due to disqualifying himself or herself pursuant to subdivision 41.5(e), the parties shall be entitled to a replacement QME or, in represented cases a replacement panel pursuant to section 31.5 of Title 8 of the California Code of Regulations. Whenever the evaluator notifies the parties of a conflict without stating that he or she declines to perform the evaluation, the parties shall follow the procedures set out in section 41.6 of Title 8 of the California Code of Regulations. In any case in which the injured ~~employee~~ ***worker*** is not represented by an attorney, the evaluator shall fax a copy of the notice of conflict to the Medical Unit of the Division of Workers' Compensation at the same time it is sent to the parties.

(g) Any injured ~~employee~~ ***worker***~~**, employer**~~ or claims administrator ***or if none the employer***, including his or her attorney respectively, who knows of, or becomes aware of, a potential disqualifying conflict of interest, as defined under this section, with a specific evaluator selected to perform a comprehensive medical/legal examination and report or a follow up examination and report, shall notify the selected evaluator in writing at the earliest opportunity and no later than within five (5) business days of becoming aware of the potential conflict, to enable the evaluator to determine whether the disqualifying conflict exists. The notice shall include the person with whom the alleged conflict exists and the nature of the conflict. A copy of this notice shall be served on the opposing party at the same time as it is sent to the evaluator. The evaluator shall review the information provided and advise the parties in writing within five (5) business days of receipt of the notice whether the evaluator has a conflict of interest as specified in this section.

Note: Authority cited: Sections 133, 139.2(o) and 5307.3, Labor Code. Reference: Sections 139.2 and 139.3, Labor Code, and sections 650.01 and 650.02, Business and Professions Code.

§ 41.6 Procedures after Notice of Conflict of Interest and Waivers of Conflicts of Interest of an Evaluator

(a) Whenever an Agreed or Qualified Medical Evaluator notifies the parties that a disqualifying conflict of interest exists, and even if it arises after the evaluator has performed an initial or follow up comprehensive medical-legal evaluation, the parties shall use the following procedures.

(b) An evaluator shall proceed with any scheduled evaluation involving a physical examination or ~~requested~~ supplemental report ~~needed~~ in the case, unless either the evaluator declines to ~~conduct~~ ***proceed*** ~~the evaluation or report~~ due to disqualifying himself or herself pursuant to section 41.5(e) of Title 8 of the California Code of Regulations or ***unless, pursuant to this section, the injured worker or the claims administrator*** ~~party~~ is entitled to a replacement QME ~~pursuant to this section~~.

(c) Within five (5) business days of receipt of the evaluator's notice of conflict:

(1) If the injured ~~employee~~ ***worker*** is not represented by an attorney, the parties shall obtain a new evaluator by following the procedure provided under section 31.5 of Title 8 of the California Code of Regulations and a replacement QME, or when necessary replacement QME panel, shall be issued.

(2) If the injured ~~employee~~ ***worker*** is represented by an attorney, each party shall notify the evaluator and the opposing party in writing of the party's decision either to waive the conflict or to object to the evaluator on the basis of the evaluator's conflict. Whenever either party objects to the evaluator due to a conflict, the parties shall obtain a new evaluator by following the procedures provided in Labor Code section 4062.2 and section 31.5 of Title 8 of the California Code of Regulations.

(3) In the event the parties in a represented case wish to waive a conflict of interest, any such waiver shall be valid only if the general nature of the conflict of interest is disclosed in writing and on the same document, or duplicate copies of the same document, each party has signed a statement indicating that the signing party understands that the evaluator has a conflict of interest, the party understands the nature of the conflict, and the party wishes to waive the opportunity to obtain another evaluator. The signature of an attorney shall have the same effect as the signature of the party represented by the attorney, if a copy of the document signed by the attorney is served on the represented party by the attorney or by any other party or attorney. It shall be the duty of the attorney to serve a copy of the signed document on the party-client.

(d) Any dispute over whether a conflict of interest of an evaluator may affect the integrity and impartiality of the evaluator with respect to an evaluation report or supplemental report, and any dispute over waiver of an evaluator's conflict under this section, shall be determined by a Workers' Compensation Administrative Law Judge.

Note: Authority cited: Sections 133, 139.2(o) and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067 Labor Code.

§ 41.7 Gifts to Medical Evaluators

(a) No physician reporting as an Agreed Medical Evaluator or a Qualified Medical Evaluator shall accept gifts that have a total fair market value in the aggregate of three hundred sixty dollars ($ 360) or more, from any single source that handles California workers' compensation matters, in the course of any consecutive twelve months. The sources include, but are not limited to, one or more attorneys, physicians, employers, claims administrators, medical or health care or insurance or utilization review business entities. This prohibition shall not include reasonable and appropriate income earned from a Medical Provider Network as defined in Labor Code sections 4616 et seq, from a Health Care Organization as defined in Labor Code sections 4600.3 et seq, from a Preferred Provider Organization or managed care organization as defined in Health and Safety Code sections 1340 et seq for services performed as a treating physician nor for reasonable and appropriate income paid for services performed as reviewing physician or medical director pursuant to Labor Code section 4610, or for services performed as an Agreed Medical Evaluator or Qualified Medical Evaluator.

(b) For the purposes of this section, "Gift" means any payment to the extent that consideration of equal or greater value is not received. It includes any rebate or discount in the price of anything of value, unless the rebate or discount is also made in the regular course of business to members of the public, and any loan, forgiveness or other thing of value having a fair market value in excess of $ 360 in the aggregate.

(c) Any person who claims that a payment, rebate, discount, loan, forgiveness, or other thing of value is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(d) A Qualified Medical Evaluator who violates any portion of this section shall be subject to disciplinary action pursuant to section 60 et seq of these regulations.

Note: Authority cited: Sections 133, 139.2(o) and 5307.3, Labor Code. Reference: Sections 139.2 and 139.3, Labor Code.

§ 43. Method of ~~Measurement~~ Evaluation of Psychiatric Disability

(a) For all claims arising before January 1, 2005, not subject to section 43(b), ~~The~~ the ~~Method~~ method of measuring the psychiatric elements of a disability shall be as set forth below in the "Psychiatric Protocols" as adopted by the Industrial Medical Council on July 16, 1992, and amended on

March 18 and October 25, 1993. The full text of this document is available at no charge on the web at www.dir.ca.gov/IMC/guidelines.html or by calling the Medical Unit at 1-800-794-6900.

(b) For all claims having dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the ***claims administrator, or if none the*** employer**,** is not required to provide the notice required by section 4061 to the injured worker, the method of evaluating the psychiatric elements of impairment shall include describing the employee's symptoms, social, occupational and, if relevant, school functioning, and describing the rationale for the evaluator's assignment to a level of impairment as published in the Permanent Disability Rating Schedule adopted by the Administrative Director on or after January 2005 pursuant to section 9805 of Title 8 of the California Code of Regulations.

~~[See Illustrations In Original]~~

Note: Authority cited: Section 133, 139.2(j)(4)~~,~~ and 5307.3 Labor Code. Reference: Sections 139.2(j)(4), 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code, and section 9805 of Title 8 of the California Code of Regulations.

§ 44. Method of Evaluation of Pulmonary Disability

(a) For all claims arising before January 1, 2005, not subject to section 44 (b), ~~The~~ the method of measuring the pulmonary elements of disability shall be as set forth below in the "Guidelines for Evaluation of Pulmonary Disability" as adopted by the Industrial Medical Council on December 4, 1997. The full text of this document is available at no charge on the web at www.dir.ca.gov/IMC/guidelines.html or by calling the Medical Unit at 1-800-794-6900.

~~[See Illustrations In Original]~~

(b) For all claims having dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the ***claims administrator, or if none the*** employer**,** is not required to provide the notice required by section 4061 to the injured worker, the method of measuring the pulmonary elements of impairment shall be as described in the American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition] (AMA Guides). Permanent disability shall be described by applying the provisions of the Permanent Disability Rating Schedule adopted by the Administrative Director pursuant to section 9805 of Title 8 of the California Code of Regulations.

Note: Authority cited: Section 133, 39.2(j)(2)~~,~~ and 5307.3 Labor Code. Reference: Sections 139.2(j)(2), 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628 Labor Code.

§ 45. Method of Evaluation of Cardiac Disability

(a) For all claims arising before January 1, 2005, not subject to section 45(b), ~~The~~ the method of measuring the cardiac elements of disability shall be set forth below in the "Guidelines for Evaluation of Cardiac Disability" as adopted by the Industrial Medical Council on December 4, 1997 and updated on July 19, 1998. The full text of this document is available at no charge on the web at www.dir.ca.gov/IMC/guidelines.html or by calling the Medical Unit at 1-800-794-6900.

~~[See Illustrations In Original]~~

(b) For all claims having dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the ***claims administrator, or if none the*** employer**,** is not required to provide the notice required by section 4061 to the injured worker, the method of measuring the cardiac elements of impairment shall be as described in the American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition] (AMA Guides). Permanent disability shall be described by applying the provisions of the Permanent Disability Rating Schedule adopted by the Administrative Director pursuant to section 9805 of Title 8 of the California Code of Regulations.

Note: Authority cited: Section 133, 139.2(j)(2)~~,~~ and 5307.3, Labor Code. Reference: Sections 139.2(j)(2), 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4067, 4660 and 4628 Labor Code.

§ 46. Method of Evaluation of Neuromusculoskeletal Disability

(a) For all claims arising before January 1, 2005, not subject to section 46(b), ~~The~~ the method of measuring the neuromusculoskeletal elements of disability shall be as set forth below in the "Guidelines for Evaluation of Neuromusculoskeletal Disability" as adopted by the Industrial Medical Council on October 20, 1994. The full text of this document is available on the web at no charge at www.dir.ca.gov/IMC/guidelines.html or by calling the Medical Unit at 1-800-794-6900.

~~[See Illustrations In Original]~~

(b) For all claims having dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the ***claims administrator, or if none the*** employer**,** is not required to provide the notice required by section 4061 to the injured worker, the method of measuring the neuromusculoskeletal elements of impairment shall be as described in the American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition] (AMA Guides). Permanent disability shall be described by

applying the provisions of the Permanent Disability Rating Schedule adopted by the Administrative Director pursuant to section 9805 of Title 8 of the California Code of Regulations.

Note: Authority cited: Section 133, 139.2(j)(2)~~,~~ and 5307.3 Labor Code. Reference: Sections ~~139~~, 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4067, 4660 and 4628 Labor Code.

§ 46.1. Guidelines for the Evaluation of Foot and Ankle Disability

(a) For all claims before January 1, 2005, not subject to section 46.1(b), the method of measuring the elements of foot and ankle shall be set forth below in the "Guidelines for Evaluation of Foot and Ankle Disability" as adopted by the Industrial Medical Council on October 28, 2000. The full text of this document is available on the web at no charge at www.dir.ca.gov/IMC/guidelines.html or by calling the Medical Unit at 1-800-794-6900.

(b) For all claims having dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the ***claims administrator, or if none the*** employer**,** is not required to provide the notice required by section 4061 to the injured worker, the method of measuring the elements of foot and ankle impairment shall be described in the American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition] (AMA Guides). Permanent disability shall be described by applying the provisions of the Permanent Disability Rating Schedule adopted by the Administrative Director pursuant to section 9805 of Title 8 of the California Code of Regulations.

~~I. Introduction~~

~~A. Basic Purpose of the Guidelines~~

~~The purpose of these evaluation guidelines is to develop a more uniform method of evaluating foot and ankle injuries without diminishing the individual expertise of the participating evaluator. This method will allow involved parties (particularly the WCAB) to review evaluator's reports, which employ a more standardized format.~~

~~B. General Approach~~

~~The evaluator shall personally take the history from the injured worker and perform the examination. The evaluator may have an assistant make an initial outline of the injured worker's history or take excerpts from prior medical records, however the evaluator must review the excerpts and/or outline with the injured worker. Occupational and medical questionnaires may be useful to assist the injured worker in compiling the details of the injury prior to the consultation with the evaluator. Any discrepancies in the various sources of information should be identified and clarified by the evaluator.~~

~~The injured worker shall at all times be evaluated in a compassionate and respectful manner.~~

~~The evaluator will should introduce him/herself, and explain to the injured worker the purpose and scope of the evaluation.~~

~~The evaluator must inform the injured worker of any significant medical findings, which could impact on his or her health. These findings may not be directly related to the work injury.~~

~~II. Components of the Report~~

~~A. Initial Page~~

~~Address the report to the referring party(ies) or the DEU office noted on the Request for Summary Rating form. Report on the face to face time and factors influencing the complexity of the examination, being aware that complexity factors may be medical in nature or medical-legal, such as apportionment.~~

~~Give names and professional description of any persons assisting with the report or performing diagnostic or consultative services. Note if there were communication difficulties (e.g. aphasia) or translation services required for the evaluation.~~

~~B. History~~

~~Medical records and history questionnaires shall be used only as an adjunct to the history as told by the patient to the physician. The physician shall personally take the history from the injured worker. Any discrepancies in the history between various sources must be identified and clarified. An appropriate history shall include:~~

~~D. Work history, including previous and current jobs, and some description of previous, and current job duties. Review and comment on a formal job description if it is available for review. Particular attention for the foot and ankle is placed on requirements for standing, walking (over even or uneven surfaces), running, squatting, sitting, kneeling, climbing, jumping, hopping, balancing, lifting, carrying, pushing or pulling with the legs or feet and use of foot controls.~~

~~This section is especially important, as the physician must extract sufficient history to assess the injured worker's pre-injury functional capacity for work activity. Determining the previous work capacity within the past several years best assesses this. Regular non-work activities can also be taken into account to determine previous functional levels.~~

~~E. Description of how and when the injury occurred and the type of occupational exposure.~~

~~F. Summary of the course of treatment for the injured worker since injury includes type of treatment and response to treatment to date.~~

~~G. Current treatment including type and frequency.~~

~~H. Description of pertinent past medical history including previous and or subsequent injuries or illnesses, and a description of any prior neurological or musculoskeletal disabilities particularly relating to the lower extremity.~~

~~I. Pertinent other past medical history and other contributing medical, psychological, or social concerns.~~

~~C. Current Complaints~~

~~The physician shall outline in the patient's words, his or her current complaints. This shall include all parts affected by the injury or injuries claimed, the character (quality), severity, frequency, and any radiation of symptoms, and what activities or interventions precipitate, aggravate or reduce symptoms. Delineate existing associated signs and symptoms of the injury.~~

~~NOTE: The patient's own description of symptoms shall be "translated" later by the physician into ratable language as defined by Packard Thurber.~~

~~Any subjective complaints regarding work activity or other activities of daily living (ADL's) shall be outlined in this section. For the foot and ankle, any functional complaints in such as standing, walking (over even or uneven surfaces), running, squatting, sitting, kneeling, climbing, jumping, lifting, carrying, balancing,, pushing or pulling with the legs or feet and the use of foot controls shall be listed in this section.~~

~~The use of assistive devices (if any) for mobility such as a wheelchair, cane, or crutches, shall be elicited and described as to type and frequency of use, as well as the need and type of any orthotic or prosthetic devices and special shoes.~~

~~D. Medical Records Reviewed~~

~~In this section, the physician shall list all records reviewed in the preparation of the report. Extractions from those records may be listed in this section or summarized in the History section of the report.~~

~~D. Physical Examination of the Foot and Ankle for Disability Evaluation~~

~~(1) The physical examination shall include relevant description of body habitus, and any general observations such as a limp, obvious discomfort when standing, difficulty in transferring, etc. that may be helpful in determining previous or current functional capacity. Note any assistive devices, prosthetics, orthotics, or shoes that the patient uses and describe.~~

~~(2) In all measurements or observations performed, if normal, the physician may simply state "normal". Describe tests rather than just use an acronym.~~

~~(3) Inspection: The physician shall describe any skin abnormalities, surgical scars, obvious atrophy or skeletal deformities (e.g. angulation of healed fractures, varus or valgus joint deformity, or amputation). The injured parts of the foot or ankle shall be inspected for soft tissue swelling and dislocation.~~

~~(1) Amputations shall be described anatomically.~~

~~(1) Affected areas shall be palpated for tenderness. Any painful areas shall be reported. Any alterations of skin temperature or vascular status shall be noted.~~

~~(6) Joint examination~~

~~a. The physician shall assess the affected joints and compare them to the uninjured side.~~

~~a. Joint effusion, enlargement, erythema, and instability shall be described if present. Pertinent clinical tests used in joint assessment (i.e. drawer signs, Thompson's sign, etc.) shall be described~~

~~and noted as normal or abnormal. If there is an abnormal range of motion that is not secondary to the injury, give an explanation for this finding.~~

~~b. Goniometric measurement is the accepted method of evaluation of range of motion for the foot and ankle. A description of goniometric methods of measurement and estimated normal values for the foot and ankle can be found in Packard Thurber, Evaluation of Industrial Disability, Second Edition, Oxford University Press. The physician shall measure active range of motion of all affected joints of the foot and ankle as compared to the uninjured side. Any abnormal, excessive, or limited range of motion or ankylosis shall be described.~~

~~For bilateral injuries estimate the normal range of motion. Note whether the injured worker gave full effort on active range of motion and if there was any unexplained discrepancies in formally measured versus observed range of motion, or whether limitations in active range of motion was based on pain. If so, list arc range of motion precluded or inhibited by pain. If the measurement obtained were invalid based on lack of effort, so note.~~

~~(7) Leg lengths shall be measured in inches from Anterior Superior Iliac Spine (ASIS) to medial malleolus and if appropriate, other methods of leg length measurement may be included.~~

~~D. Gait and other functional assessment: Any abnormality of gait shall be described (propulsive vs. apropulsive, angle and base of gait, etc.). Evaluate patient's ability to squat, stand, kneel, heel and toe walk.~~

~~(9) Neurological examination of the foot or ankle shall be performed for any complaints of weakness, sensory impairment or dysesthesias. This shall include assessment of:~~

~~a. Motor examination~~

~~i. Atrophy of specific muscles or muscle groups of the lower extremities or foot should be described. General muscle bulk is assessed by measurement s of the calves and thighs in inches. Circumferencial measurements of the foot and ankle should be recorded. Calf measurements are taken at the point of maximum circumference. Thigh circumferences are taken at the point one-third the distance from the upper pole of the patella to the umbilicus.~~

~~ii. Muscle tone shall be described as increased, normal or decreased.~~

~~i. Muscle strength shall be graded using a scale such as those found in Appendix A. Muscle weakness due to neurologic impairment shall be differentiated by the examiner from lack of effort due to pain, disuse or lack of effort due to other causes. In cases of questionable effort, muscle weakness due to neurologic deficit can generally be corroborated by appropriate electodiagnostic testing including needle EMG and a nerve conduction study performed by an appropriately qualified physician.~~

~~b. Sensory examination shall include a screening of touch and pain sensation (pinprick) in pertinent foot, ankle and lower extremity dermatomes/peripheral nerve distributions and of joint proprioception of any involved joints. Any abnormalities shall be described fully and correlated with peripheral nerve or dermatomal pattern. If the pattern of sensory impairment is nonphysiological, this should be noted~~

~~c. Deep tendon reflexes shall be obtained and graded as 0 (absent) to 4+ (hyperactive with clonus). Plantar responses and any other abnormal reflex responses shall be recorded.~~

~~d. Coordination shall be assessed if this is a presenting complaint, or if there is suspicion of foot, ankle or lower extremity motor coordination impairment. In this; case, finger to nose, heel to shin and gait should be described.~~

~~(10) Screening exam of remainder of neurological or musculoskeletal system if there is any evidence of more widespread involvement.~~

~~D. Diagnostic Studies in Lower Extremity Disability Evaluation~~

~~(1) Order diagnostic studies only when the studies may alter the recommended plan or the evaluator's opinion regarding factors of disability. The evaluator must document the need for these additional studies.~~

~~(2) List any diagnostic procedures performed, as well as the dates and the results of the procedures. Provide the name, specialty, qualifications and opinion of any consultants.~~

~~(3) Methods of Assessment~~

~~a. Clinical diagnosis of foot and ankle problems can usually be made on history and physical examination with the help of x-rays.~~

~~b. In addition to an x-ray, testing may include:~~

~~i. MRI~~

~~ii. CT~~

~~iii. Bone Scan~~

~~iv. Arthrogram~~

~~v. Use of mechanical devices to test strength and stability.~~

~~vi. EMG/NCV testing is appropriate only if there is a suggestion of nerve damage or nerve compression.~~

~~vii. Vascular studies are indicated only if there is associated vascular disruption/damage or a secondary vascular complication.~~

~~viii. Blood Studies~~

~~ix. Ultrasound~~

~~x. Diagnostic, but not therapeutic, blooks~~

~~y. There are other tests that may be performed with proper documentation of necessity:~~

~~G. Diagnosis~~

~~List the relevant diagnosis(es). When appropriate, state if the injury is right or left sided or bilateral.~~

~~H. Opinions & Discussion~~

~~State that the report represents your opinions and how those opinions were derived after carefully reviewing the forwarded medical information, the injured worker's subjective statements offered during consultation, and examination findings.~~

~~I. Causation~~

~~State an opinion as to whether the injury or illness that led to the disability arose out of the employment (AOE).~~

~~J. Permanent and Stationary~~

~~State whether the injured worker is permanent and stationary and reasons for that opinion. The term permanent and stationary means that the injured worker has reached maximal improvement or his condition has been stationary for a reasonable period of time.~~

~~K. Temporary Disability~~

~~If the injured worker is not permanent and stationary, describe the current work restrictions that might allow the worker to return to work immediately, any additional treatment and the anticipated length of time necessary to achieve permanent and stationary status.~~

~~L. Factors of Disability~~

~~The evaluator will describe the subjective and objective components of disability. Do not provide a "rating" but describe the medical information in such a way as to be used by raters, judges and other concerned parties. The following information shall be included:~~

~~1. Subjective Factors of Disability~~

~~Translate the injured worker's symptoms into ratable language using the terminology found in section 9727 of title 8 of the California Code of Regulations, and reproduced here in Appendix B. Subjective factors are those that cannot be directly measured or observed, such as pain, stiffness, and paresthesia. It is important to note that this is the physician's assessment of residual symptoms and is based on the examination, the physician's experience with similar injuries and his/her expert medical opinion. It is not simply a catalog of an individual's complaints, as this might inaccurately inflate the disability rating if the complaints are not consistent with the physician's findings. Statements in this part of the report should be consistent with the nature of the injury and with the objective findings. Work restrictions based on subjective factors that are out of proportion to objective findings require specific explanation.~~

~~The recommended description of subjective disability should include the activity which produces disabling symptoms; the intensity, frequency and duration of symptoms; a description of the activities that are precluded and those that can be performed with the symptoms; and the means necessary for relief.~~

~~2. Objective Factors of Disability~~

~~Note those findings which can be measured, observed or demonstrated on testing. They include, but are not limited to: range of motion, strength, sensation, reflexes, amputation, anatomical measurements, disfigurement, and radiographic or other diagnostic results.~~

~~Note if assistive devices, prosthetics, or orthotics are required and describe the device. Note if the device causes any limitation in motion.~~

~~3. Work Capacity~~

~~Report work restrictions for the activities the injured worker was performing at the time of the injury and for potential activities in the open labor market.~~

~~The evaluator will estimate the total or partial loss of the injured worker's pre-injury capacity to lift, walk, push, pull, climb, walk on uneven ground, squat, kneel, crouch, pivot, bear weight or other activities involving comparable physical strength. The best means is to describe the injured worker's loss of capacity, such as loss of one-quarter of his ability to lift.~~

~~Use of job history and/or description as well as other activities of daily living to estimate the pre-injury capacity, should be noted in the report to substantiate the evaluator's opinion on loss. Be as specific as possible, incorporating the injured worker's history, the RU-90, the DEU Form 100, and a formal job analysis, if it is available.~~

~~M. Apportionment~~

~~State if apportionment is indicated and provide reasons for the statement. Indicate in the report whether apportionment is for a pre-existing condition under Labor Code section 4750, an underlying disease process under Labor Code section 4663 or a subsequent non-industrial injury under Labor Code section 4750.5.~~

~~N. Further medical care~~

~~Give your recommendation for current and future treatment. If the injured worker is currently receiving treatment, indicate whether the treatment is necessary to either improve or prevent deterioration of the current condition. If you believe that additional treatment is indicated to reach maximum improvement, you should explain the type of treatment, the reasons for the treatment, and the possible benefits of the treatment.~~

~~O. Vocational rehabilitation~~

~~If requested, state if the injured employee is medically qualified for vocational rehabilitation based on your review of the job analysis.~~

~~P. Affirmations and signature~~

~~The following paragraph must be included and signed and dated by the evaluator. The report must contain an original signature by the evaluator.~~

~~"I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and except as noted herein, that I believe it to be true."~~

~~I have not violated Labor Code Section 139.3 and the contents of the report and bill are true and correct to the best of my knowledge.~~

~~The foregoing declaration was signed in.....County, California on ..... (date).~~

~~...~~

~~Evaluator's Signature~~

~~Appendix A~~

~~Muscle Grading Chart~~

~~Results may be reported using a verbal scale or a percentage loss of muscle strength as follows. In either case, the evaluator must still describe how a given loss of muscle strength affects the injured worker's capacity to perform work.~~

~~Muscle Gradation~~	~~Description~~
~~5-Normal~~	~~5-complete range of motion against gravity with full resistance~~
~~4-Good~~	~~4-complete range of motion against gravity with some resistance~~
~~3-Fair~~	~~3-complete range of motion against gravity~~
~~2-Poor~~	~~2-complete range of motion with gravity eliminated~~
~~1-Trace~~	~~1-reads evidence of slight contractility, no joint motion~~
~~0 (Zero)~~	~~0-no evidence of contractility~~

~~Examples of Muscle Grading Charts~~

~~Results may be reported using a verbal scale or a percentage loss of muscle strength as follows. In either case, the evaluator must still describe how a given loss of muscle strength affects the injured worker's capacity to perform work.~~

~~Muscle Gradation~~	~~Description~~
~~5-Normal~~	~~5-complete range of motion against gravity with full resistance~~
~~4-Good~~	~~4-complete range of motion against gravity with some resistance~~
~~3-Fair~~	~~3-complete range of motion against gravity~~
~~2-Poor~~	~~2-complete range of motion with gravity eliminated~~
~~1-Trace~~	~~1-reads evidence of slight contractility, no joint motion~~
~~0 (Zero)~~	~~0-no evidence of contractility~~

~~Kendall~~	~~Lovett~~	~~Description~~
~~100 %~~	~~Normal~~	~~The ability to hold the test position~~

~~Kendall~~	~~Lovett~~	~~Description~~
~~95 %~~	~~Normal –~~	~~against gravity and maximum pressure, or the ability to move the part into test position and hold against gravity and maximum pressure~~
~~90 %~~ ~~80 %~~	~~Good +~~ ~~Good~~	~~Same as above except holding against moderate pressure.~~
~~70 %~~ ~~60 %~~	~~Good –~~ ~~Fair +~~	~~Same as above except holding against minimum pressure.~~
~~50 %~~	~~Fair~~	~~The ability to hold the test position against gravity, or the ability to move the part into test position and hold against gravity.~~
~~40 %~~	~~Fair –~~	~~The gradual release from test position against gravity; or the ability to move the part toward test position against gravity almost to completion, or to completion with slight assistance or the ability to complete the arc of motion with gravity lessened.~~
~~Kendall~~	~~Lovett~~	~~Description~~
~~30 %~~ ~~20 %~~	~~Poor +~~ ~~Poor~~	~~The ability to move the part through partial arc of motion with gravity lessened; moderate arc, 30% or poor +; small arc, 20% or poor. To avoid moving a patient into gravity-lessened position, these grades may be estimated on the basis of the amount of assistance given during anti-gravity test movements: A 30% or poor + muscle requires moderate assistance, a 20% or poor muscle requires more assistance~~
~~10 %~~	~~Poor –~~	~~In muscles that can be seen or palpated, a feeble contraction may~~

~~Kendall~~	~~Lovett~~	~~Description~~
~~5 %~~	~~Trace~~	~~be felt in the muscle, or the tendon may become prominent during the muscle contraction, but there is no visible movement of the part.~~
~~0 %~~	~~Gone~~	~~No contraction felt in the muscle.~~

~~Appendix B~~

~~Subjective disability should be described in terms of location, degree, frequency, and precipitating activity. Terms describing degree and frequency are taken to have the following meanings:~~

~~Degree:~~

~~Minimal or mild pain constitutes an annoyance, but causes no handicap in the performance of activity.~~

~~Slight pain can be tolerated but causes some handicap in the performance of precipitating activity.~~

~~Moderate pain can be tolerated but causes marked handicap in the performance of precipitating activity.~~

~~Severe pain precludes precipitating activity~~

~~Frequency:~~

~~Occasional -- approximately 25% of the time~~

~~Intermittent -- approximately 50% of the time~~

~~Frequent -- approximately 75% of the time~~

~~Constant -- approximately 100% of the time~~

~~Appendix C~~

~~Description of Activities~~

~~Balancing: Maintaining body equilibrium~~

~~Bending: Angulation from neutral position about a joint (e.g. elbow) or spine (e. g. forward)~~

~~Carrying: Transporting an object, usually holding it in the hands or arms or on the shoulder.~~

~~Climbing: Ascending or descending ladders, stairs, scaffolding, ramps, poles, etc. . . using feet and legs and/or hands and arms.~~

~~Crawling: Moving about on hands and knees and feet.~~

~~Crouching: Bending body downward and forward by bending lower limbs, pelvis and spine~~

~~Jumping: Moving about suddenly by use of leg muscle, leaping from or onto the ground or from one object to another.~~

~~Kneeling Kneeling: Bending legs at knees to come to rest on knee or knees.~~

~~Lifting: Raising or lowering an object from one level to another (includes upward pulling)~~

~~Pivoting: Planting your foot and turning about that point.~~

~~Pushing: Exerting force upon an object so that the object moves away from the force (includes slapping, striking, kicking and treadle actions).~~

~~Pulling: Exerting force upon an object so that the object moves towards the force (includes jerking).~~

~~Running: Moving in a fast pace, moving the legs rapidly so that for a moment both legs are off the ground.~~

~~Sitting: Remaining in the normal seated position.~~

~~Squating: Crouching to sit on your heels, with knees bent and weight on the balls of your feet.~~

~~Standing: Remaining on one's feet in an upright position at a work station without moving about.~~

~~Stooping: Bending body downward and forward by bending spine at waist.~~

~~Turning/ Twisting: Moving about a central axis, revolve or rotate.~~

~~Use Foot Controls: Required to control a machine by use of controls.~~

~~Walking: Moving about at a moderate pace over even or uneven ground.~~

~~Note: Authority cited: Sections 139, 139.2 , 4060, 4061 and 4062, Labor Code. Reference: Sections 139, 139.2, 4060, 4061, 4061.5, and 4062, Labor Code.~~

§ 47. Method of Evaluation of Immunologic Disability

(a) For all claims before January 1, 2005, not subject to section 47(b), ~~The~~ the method of measuring the immunologic elements of disability shall be set forth below in the "Guidelines for Immunologic Testing" as adopted by the Industrial Medical Council on March 17, 1994. The full text of this document id available on the web at no charge at www.dir.ca.gov/IMC/guidelines.html or by calling the Medical Unit at 1-800-794-6900.

(b) For all claims having dates of injury on or after January 1, 2005, and for those compensable claims arising before January 1, 2005, where there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by section 4061 to the injured worker, the method of measuring the immunological elements of impairment shall be described in the

American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition] (AMA Guides). Permanent disability shall be described by applying the provisions of the Permanent Disability Rating Schedule adopted by the Administrative Director pursuant to section 9805 of Title 8 of the California Code of Regulations.

~~[See Illustrations In Original]~~

Note: Authority cited: Section 139.2(j)(2), Labor Code. Reference: Sections 139.2(j)(2), 4060, 4061 and 4062, Labor Code.

ARTICLE 4.5. Minimum Time Guidelines

§ 49. Definitions

The following definitions apply to this Article:

(a) Cardiovascular evaluation. "Cardiovascular evaluation" means the determination of disability due to pathological changes of the heart and/or the central circulatory system.

(b) Face to Face time. "Face to face time" means only that time the evaluator is present with an injured worker. This includes the time in which the evaluator performs such tasks as taking a history, performing a physical examination or discussing the worker's medical condition with the worker. Face to face time excludes time spent on research, records review and report writing. Any time spent by the injured worker with clinical or clerical staff ~~in~~ who perform~~ing~~ diagnostic or laboratory tests (~~such as~~ including blood tests or x-rays) or time spent by the injured worker in a waiting room or other area outside the evaluation room is not included in face to face time.

(c) Medical evaluation. "Medical evaluation" means a comprehensive medical-legal evaluation as defined under section 9793 of Article 5.6, Subchapter 1, Chapter 4.5 of Title 8 of the California Code of Regulations.

(d) Neuromusculoskeletal evaluation. "Neuromusculoskeletal evaluation" means the determination of disability due to injury to the central nervous systems, the spine and extremities, and the various muscle groups of the body.

(e) Psychiatric evaluation. "Psychiatric evaluation" means the determination of disability due to psychopathology, by either a psychiatrist or psychologist following the ~~IMC guidelines on psychiatric protocols, of disability due to psychopathology.~~ Method of Measurement of Psychiatric Disability set out in section 43 of Title 8 of the California Code of Regulations.

(f) Pulmonary evaluation. "Pulmonary evaluation" means the determination of disability due to pathological changes of the lungs and/or other components of the respiratory system.

(g) QME. "QME" means Qualified Medical Evaluator appointed by the ~~Council~~ Administrative Director pursuant to Labor Code section 139.2.

(h) Uncomplicated evaluation. "Uncomplicated evaluation" means a face to face evaluation in which all of the following are recorded in the medical report: Minimal or no review of records, minimal or no diagnostic studies or laboratory testing, minimal or no research, and minimal or no medical history taking.

Note: Authority cited: Sections 133, 139.2~~,~~ and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code.

§ 49.2. Neuromusculoskeletal Evaluation

A medical evaluation concerning a claim for neuromusculoskeletal injury (whether specific or cumulative in nature) shall not be completed by a QME in fewer than 20 minutes of face to face time. Twenty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of face to face time actually spent with the injured worker ~~that he or she has complied with these guidelines~~ and explain in detail any variance below the minimum amount of face to face time stated in this regulation.

Note: Authority cited: Sections 133, ~~139 and~~ 139.2(j)~~,~~ and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code.

§ 49.4. Cardiovascular Evaluation

A medical evaluation concerning a claim for cardiovascular injury (whether specific or cumulative in nature) shall not be completed by a QME in fewer than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of face to face time actually spent with the injured worker ~~that he or she has complied with these guidelines~~ and explain in detail any variance below the minimum amount of face to face time stated in this regulation.

Note: Authority cited: Sections 133~~, 139 and~~ 139.2(j)~~,~~ and 5307.3 Labor Code. Reference: Sections ~~139~~, 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code.

§ 49.6. Pulmonary Evaluation

A medical evaluation concerning a claim for pulmonary injury (whether specific or cumulative in nature) shall not be completed by a QME in fewer than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of face to face time actually spent with the injured worker ~~that he or she has complied with these guidelines~~ and explain in detail any variance below the minimum amount of face to face time stated in this regulation.

Note: Authority cited: Sections 133, ~~139 and~~ 139.2(j)~~,~~ and 5307.3 Labor Code. Reference: Sections ~~139,~~ 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code.

§ 49.8. Psychiatric Evaluation

A medical evaluation concerning a claim for psychiatric injury (whether specific or cumulative in nature) shall not be completed by a QME in less than one hour of face to face time. One hour is considered the minimum allowable face to face time for an uncomplicated evaluation. The evaluator

shall state in the evaluation report the amount of face to face time actually spent with the injured worker ~~that he or she has complied with these guidelines~~ and explain in detail any variance below the minimum amount of face to face time stated in this regulation.
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Note: Authority cited: Sections 133, ~~139 and~~ 139.2(j)~~,~~ and 5307.3 Labor Code. Reference: Sections 139, 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code.

§ 49.9. Other Evaluation

A medical evaluation concerning a claim for any injury (whether specific or cumulative in nature) not specifically included in this article shall not be completed by a QME in fewer than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of face to face time actually spent with the injured worker ~~that he or she has complied with these guidelines~~ and explain in detail any variance below the minimum amount of face to face time stated in this regulation.

Note: Authority cited: Sections 133, ~~139 and~~ 139.2(j)~~,~~ and 5307.3 Labor Code. Reference: Sections ~~139~~, 139.2~~,~~ 4060, 4061, 4062, 4062.1, 4062.2, 4067, 4660 and 4628, Labor Code.

ARTICLE 5. QME Reappointment

§ 50. Reappointment: Requirements and Application Form

(a) In addition to the eligibility requirements set forth in section 11, a physician may seek reappointment on the basis that he or she was an active QME on June 30, 2000. For all physicians, applications for reappointment shall include a Reappointment Application Form in section ~~10.1A~~ 104, ~~a statement of citizenship form 101 if not previously submitted~~, and the appropriate fee under section 17. The reappointment application and the appropriate fee ~~and~~ shall be filed at the ~~Council's~~ Administrative Director's headquarters office listed on the reappointment form.

(b) Any Reappointment Application Form may be rejected if it is ~~incompletely filled out~~ incomplete or does not contain the required supporting documentation listed in section 11 and on the Reappointment Application Form. ~~Upon its~~ ***As part of the*** approval of the Reappointment Application Form, the ~~Council~~ Administrative Director shall verify that the QME has complied with all requirements under this Article.

(c) When a QME applies for reappointment, he or she shall submit a statement signed under penalty of perjury**:**

(1) attesting that he or she has completed the applicable QME continuing education requirement**;** and

(2) ~~that lists~~ listing the dates, locations, and titles of the continuing education programs and the names of the providers of those programs which he or she has taken to meet the requirement of Labor Code section 139.2(d)(3), as well as the number of hours of attendance at each program. The ~~Council~~ Administrative Director may randomly audit QMEs for documentation of program attendance, which supports compliance with this requirement~~.~~; and

(3) attesting that the physician has accurately reported on the QME SFI Form 124 to the best of the QME's knowledge the information required by section 29 regarding the QME's specified financial interests; and

~~(4) attesting that the QME spends at least five (5) hours per week providing direct medical treatment, or other activity appropriate for the status of the reappointment applicant, at each office location identified to the Medical Director as a "primary practice location" as set out in section 1(x) of Title 8 of the California Code of Regulations.~~

(4) attesting that the physician's license to practice as a physician, as defined under Labor Code section 3209.3, is neither restricted nor encumbered by suspension or probation, nor has the physician been convicted of a misdemeanor or felony related to the physician's practice or a crime of moral turpitude, and that the physician will notify the Administrative Director if the physician's license to practice is subsequently suspended or placed on probation or if the physician is convicted of a misdemeanor or felony related to the physician's practice or of a crime of moral turpitude; and

(5) attesting that the physician shall abide by all regulations of the Administrative Director and shall refrain from making referrals in violation of those regulations; and

(6) attesting that the physician has not performed a QME evaluation during a time when the physician was not appointed as a QME.

Note: Authority cited: Sections 133, ~~139~~ 139.2, ~~4060, 4061 and 4062~~, and 5307.3, Labor Code. Reference: Sections ~~139,~~ 139.2, ~~4060, 4061, 4061.5 and 4062~~ Labor Code.

§ 51. Reappointment: Failure to Comply with Time Frames

All QMEs shall comply with the time frames in sections 34 and 38 as a condition for reappointment. The ~~Council~~ Administrative Director~~, after hearing pursuant to Section 61,~~ may deny reappointment to any QME who has failed to comply with the evaluation time frames in sections 34 and 38 on at least three occasions during the calendar year.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2(d)(1), Labor Code.

§ 52. Reappointment: Unavailability Notification

All QMEs shall comply with the unavailability notification requirements in section 33 as a condition for reappointment. The ~~Council~~ Administrative Director~~, after hearing pursuant to Section 61,~~ may deny reappointment of any QME who has filed notification for unavailability under section 33 for more than 90 calendar days during the calendar year, or who has on any single occasion refused without good cause to perform a medical-legal evaluation ~~for an unrepresented employee~~.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2(d) and 139.2(j)(6), Labor Code.

§ 53.~~ Reappointment: Failure of Board Certification Examination~~ [Reserved]

~~For Medical Doctors or Doctors of Osteopathy, in order to be reappointed, a QME shall submit a declaration under penalty of perjury that, if not board certified at the time for reappointment, he or she has not failed a board certification exam after 1985. This section shall not apply to any physician who meets the requirement of Labor Code § 139.2(b)(3)(C) (D) or (G).~~

§ 54. Reappointment: Evaluations Rejected by Appeals Board

The ~~Council~~ Administrative Director~~, after hearing pursuant to Section 61,~~ may deny reappointment to any QME who has had more than five evaluations rejected by a Workers' Compensation Judge or the Appeals Board originally submitted at a contested hearing. The rejection shall be based on the failure of the QME's evaluation to prove or disprove a contested issue or failure to comply with guidelines promulgated by the ~~Council~~ Administrative Director pursuant to Labor Code section 139.2(j)(2), (3), (4) or (5). A specific finding must become final and the time for appeal must have expired before any rejected evaluation shall be counted as one of the five rejections.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2(d) and 139.2(j)(6), Labor Code.

§ 55. Reappointment: Continuing Education Programs

A QME shall complete within the previous 24 months of his or her term of appointment 12 hours of continuing education in disability evaluation or workers' compensation related medical dispute evaluation given by a provider accredited by the ~~Council~~ Administrative Director.

(a) There are two types of continuing education programs:

(1) On-site programs, in which the instructor and QME are in the same location; and

(2) Distance learning programs.

(A) Providers of distance learning programs shall give either a pre- or post-course self-examination based on the program material. The provider shall grade the QME's test. Credit for the course can be given only for a passing rate of no lower than 70 percent correct responses. The ~~Council~~ Administrative Director may audit physicians' examinations and scores.

(B) Credit for distance learning courses shall be granted for the actual time spent viewing, listening to or participating in the program and for the reasonable and necessary time to take the examinations for up to six hours per program. Credit for the same distance learning program may be taken only once.

(C) All distance learning materials shall bear a date of release and shall be updated every three years. The provider shall notify the ~~Council~~ Administrative Director in writing of the revision.

(b) In addition to granting credit for attending a course or program which it gives, the ~~Council~~ Administrative Director may grant credit for:

(1) Participating in a panel on the development or review of the QME competency examination. A physician may receive one hour credit for each hour of participation on a panel. The QME shall obtain documentation of participation from the test administrator for submission to the ~~Council~~ Administrative Director.

(2) Instructing in a program given for QME credit by a provider accredited by the ~~Council~~ Administrative Director. The instructor may receive two hours of credit for each hour of instruction in an accredited provider's program or one hour of credit for each hour of participation on a panel. Credit for the same presentation may be taken only once during each calendar year. The QME shall submit documentation of participation from the program provider to the ~~Council~~ Administrative Director.

(3) Attending a program which is accepted by the QME's licensing board for renewal of his or her professional license, provided the subject matter is directly related to California impairment evaluation or workers' compensation medical dispute evaluation.

To request credit for this type of course, the QME must submit:

(A) proof of attendance;

(B) written material which describes the program content and program faculty; and

(C) documentation that the program is for continuing education credit by the physician's licensing board.

(4) Passing the QME competency examination. A QME may be granted six hours of continuing education credit for passing this examination for the purpose of receiving an initial appointment as a QME.

(c) To apply to the ~~Council~~ Administrative Director for accreditation, a provider shall submit to the ~~Council~~ Administrative Director, at least 60 calendar days before any public advertisement of the applicant's program or course is made:

(1) a completed form 118, in section 118 of these regulations.

(2) A curriculum vitae for each proposed instructor or author (for paper-based programs). A proposed instructor or author shall have education and/or training and recent work experience relevant to the subject of his/her presentation.

(3) The proposed promotional material for the program.

(4) An outline of course content, or actual course content, consistent with the topics in section 11.5(c) of Title 8 of the California Code of Regulations.

(d) The ~~Council~~ Administrative Director shall accredit an applicant who meets the definition of ~~a~~ ***an education*** provider in Section 1(~~r~~) ~~(s);~~ ***(r);*** submits a completed, signed and dated application which demonstrates past experience in providing continuing education programs; and proposes a program which meets the requirements of section 55(c) or a course which meets the requirements of section 11.5(a) and (i). Proposed content for continuing education program credit must relate directly to disability evaluation or California workers' compensation-related medical dispute evaluation. No credit shall be recognized by the ~~IMC~~ Administrative Director for material solely discussing the business aspects of workers' compensation medical practice such as billing, coding and marketing.

(e) The ~~Council~~ Administrative Director shall notify the applicant within 30 calendar days ~~following the next scheduled council meeting~~ after receipt of the application containing all the information listed in section 55(c) whether that provider has been accredited for a two year period. Incomplete applications will be returned to the applicant.

(f) A provider that has been accredited by the ~~Council~~ Administrative Director will be given a number which must be displayed on any public advertisements of QME continuing education programs for that provider with the statement "Accredited by the Administrative Director of the California ~~Industrial Medical Council~~ Division of Workers' Compensation for Qualified Medical Evaluator continuing education. Physicians may report up to ~~...~~ 12 hours of credit for QME reappointment."

(g) On or before the date the program is first presented or distributed, the provider shall submit the program syllabus (all program handouts) to the ~~Council~~ Administrative Director. Each distance learning program shall also submit one copy of the examinations and one copy of the audio/video tapes, computer program or each issue of the journal or newsletter for which credit is to be granted.

(h) A provider may offer different QME continuing education programs during the two-year accreditation period provided the subject matter is in disability evaluation or workers' compensation related medical dispute resolution. The provider shall send the ~~Council~~ Administrative Director the

program outlined and faculty for each new program at least forty-five (45) days prior to the date of presentation of the new program. The ~~Council~~ Administrative Director may require submission of program syllabi. The ~~Council~~ Administrative Director may require changes in the program based on its review of the program outline, program syllabi, promotional material or faculty if the ~~IMC~~ Administrative Director finds that any aspect of the program is not in compliance with these regulations.

(i) Promotional materials for a program must state the ~~provider's~~ educational objectives; the professional qualifications of program faculty (at least all relevant professional degrees); the content of program activities; the maximum number of credit hours to be granted; and the intended audience.

(j) Joint sponsorship of education programs (as between an accredited and an unaccredited provider) must be approved by the ~~Council~~ Administrative Director prior to presentation of the program.

(k) Accredited providers that cease to offer education programs shall notify the ~~Council~~ Administrative Director in writing.

(l) Instructors shall not recruit members or promote commercial products or services immediately before, during or after a course. Providers or vendors may display/sell educational ~~materials~~ related to workers' compensation or applications for membership in an area adjoining a course. A course provider or faculty member shall disclose on ~~IMC~~ QME ~~form~~ Form 119 (Faculty Disclosure of Commercial Interest), located in section 119 of Title 8 of the California Code of Regulations, any significant financial interest in or affiliation with any commercial product or service held by faculty and discussed in a course and that interest or affiliation must be disclosed to all attendees. A provider shall file every ~~form~~ Form 119 in its possession or in its control with the ~~Council~~ Administrative Director.

(m) The provider shall issue a certificate of completion to each QME who successfully completes a continuing education program. The certificate must list the provider; provider number; date(s); location and title of the continuing education program; and the number of hours in attendance for which credit is to be granted. Credit shall be granted only for the actual time of attendance at or participation in a program. Each accredited provider may in its sole discretion limit the amount of credit hours that a course will be granted to less than the amount of time actually spent in attendance in the course.

(n) To apply for re-accreditation, a provider must submit a completed ~~IMC~~ QME Form 118 (Application for Accreditation or Re-Accreditation as Education Provider) (See, 8 Cal. Code Regs. § 118). The provider may complete section 2 of the form using a new program or course or one which was given by the provider during the recent accreditation period. The ~~Council~~ Administrative Director shall give the provider ninety (90) days' notice of the need to seek re-accreditation.

(o) The provider shall maintain attendance records for each continuing education program for a period of no less than three (3) years after the program is given. A physician attending the program must be identified by signature. The provider must submit a copy of the signature list to the ~~Council~~ Administrative Director within sixty (60) days of completion of the program.

(p) The provider is required to give the ~~IMC~~ QME's Evaluation Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (See, 8 Cal. Code Regs. § 117) to program attendees and request they submit the form to the ~~IMC~~ Administrative Director. This information shall not be used in lieu of a certification of completion given by the provider, as specified pursuant to section (m). Destruction by a provider or its employee of a QME's Evaluation Form or failure by such provider or its employee to distribute Form 117 as part of its program shall constitute grounds for revocation of a provider's accredited status. The ~~Council~~ Administrative Director shall tabulate the responses and return a summary to the provider within ninety (90) days of completion of the program.

(q) The ~~Council~~ Administrative Director may audit a provider's program(s) at the request of the medical director to determine if the provider meets the criteria for accreditation. The ~~Council~~ Administrative Director may audit programs randomly, when a complaint is received, or on the basis of responses on ~~IMC~~ QME Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (See, 8 Cal. Code Regs. § 117). An auditor shall not receive QME credit for an audited program. The ~~Council~~ Administrative Director shall make written results of the audit available to the provider no more than thirty (30) days after the audit is completed.

(r) The ~~Council~~ Administrative Director may withdraw accreditation of a provider or deny such a provider's application for accreditation on the following grounds (in addition to failure to meet the relevant requirements of subdivision 11.5(a) or 55(c) of Title 8 of the California Code of Regulations):

(1) Conviction of a felony or any offense substantially related to the activities of the provider.

(2) Any material misrepresentation of fact made by the provider.

(3) Failure to comply with ~~Council~~ Administrative Director regulations.

(4) False or misleading advertising.

(5) Failure to comply with ~~Council~~ Administrative Director recommendations following an audit.

(6) Failure to distribute ~~Council~~ QME Form 117 (Qualified Medical Evaluator Continuing Education Response Form) (See, 8 Cal. Code Regs. § 117) cards to program attendees.

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, ~~139 and~~ 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4062.3, 4067 and 4628 Labor Code.

§ 56. Reappointment: Failure to Comply with WCAB Order or Ruling

The ~~Council~~ Administrative Director~~, after hearing pursuant to Section 61,~~ may deny reappointment to any QME who has been found in violation of any order or ruling by a Workers' Compensation Judge or the Appeals Board.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2(d) and 139.2(j)(6), Labor Code.

§ 57. Reappointment: Professional Standard--Violation of Business and Professions Code Section 730

The ~~Council~~ Administrative Director~~, after hearing pursuant to Section 61,~~ may deny appointment or reappointment to any ~~QME~~ physician who has performed a QME ~~Evaluation~~ evaluation or examination without valid QME ~~Certification~~ certification at the time of examining the injured ~~employee~~ ***worker*** or the time of signing the initial or follow-up evaluation report.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code; and Section 730, Business and Professions Code. Reference: Sections 139.2(d) and 139.2(j)(6), Labor Code; and Section 730, Business and Professions Code.

ARTICLE 6. QME Discipline

§ 60. Discipline

(a) The ~~Council~~ Administrative Director may, in ~~its~~ his or her discretion, suspend or terminate any physician from the QME list without hearing:

(1) whose license has been revoked;

(2) whose license has been suspended or terminated by the relevant licensing board so as to preclude practice;

(3) who has been convicted of a misdemeanor or felony related to the conduct of his or her practice or who has been suspended or placed on probation by his or her licensing board;

(4) based on a stipulation or a decision by the physician's licensing board that the physician has been placed on probation;

(5) who has failed to pay timely the appropriate fee as required under section 17 of Title 8 of the California Code of Regulations.

(b) The ~~council~~ Administrative Director may, based on a complaint by the Medical Director, and following a hearing pursuant to section 61 of Title 8 of the California Code of Regulations, suspend, terminate or place on probation a QME found in violation of a statutory or administrative duty as described in the ~~IMC~~ Administrative Director Sanction Guidelines for QMEs under section 65 of Title 8 of the California Code of Regulations ~~these regulations~~. Such violations include, but are not limited to:

(1) one violation of Labor Code section 139.3 or 4628;

(2) failure to follow the medical procedures established by the ~~Council~~ Administrative Director pursuant to Labor Code section 139.2(j)(1)(2)(3)(4)(5) or (6);

(3) failure to comply with the requirements of Labor Code section 139.2(b) or (c) and/or section 10, 10.5, 11 or 12 of Title 8 of the California Code of Regulations ~~these regulations~~;

(4) failure to comply with the unavailability notification requirements pursuant to section 33 of Title 8 of the California Code of Regulations.

(5) failure to comply with the disclosure, ~~and~~ ethical or conflict of interest requirements pursuant to sections 40, ~~and~~ 41 or 41.5, respectively, of Title 8 of the California Code of Regulations;

(6) failure to complete accurate and complete reports pursuant to Labor Code section 139.2(i) or to comply with section 39.5 of Title 8 of the California Code of Regulations ~~these regulations~~.

(7) ~~A~~ one finding by the Appeals Board of ex parte contact by the QME prohibited by Labor Code section 4062.~~2~~3.

(8) ~~A~~ one finding by the ~~Council~~ Administrative Director that the QME solicited an injured worker to take over that worker's treatment for his or her workers compensation claim.

(9) failure to disclose a disqualifying conflict of interest as required by section 41.5 of Title 8 of the California Code of Regulations;

(10) failure to disclose a significant financial interest, as defined in sections 1(~~dd~~ ***ee***) and 29 of Title 8 of the California Code of Regulations.

(c) The Medical Director may file a complaint with the ~~Council~~ Administrative Director against a QME on any of the grounds listed in subsection (b) based on a complaint from a member of the public and/or the Medical Director's own initiative. The Medical Director may assign legal counsel and investigators to conduct all matters related to this Article.

(d) The powers and discretion of the Administrative Director are hereby delegated to the Medical Director of the Division, or his or her designee Associate Medical Director, with respect to:

(1) Conducting investigations and assigning investigators;

(2) Issuing subpoenas for testimony and/or production of documents;

(3) Propounding interrogatories;

(4) Receiving and ~~F~~***f***iling requests for hearing and notices of defense;

(5) Setting and calendaring cases for hearing;

(6) Issuing ~~N~~ **n**otices of ~~H~~ **h**earing;

(7) Assigning counsel; and

(8) Performing all other functions related to QME discipline under this Article, except for issuing statements of issues, issuing accusations and issuing disciplinary orders after hearing.

(~~d~~ e) A report prepared by a QME which has not been completed and served on one or more parties prior to the date of the final decision taken by the licensing board or the date of the conviction, whichever is earlier, shall be inadmissible before the Appeals Board and no party shall have liability for payment for the report.

Note: Authority cited: Sections 11180 – 11191, Government Code; Sections 111, 133, ~~139 and~~ 139.2 and 5307.3, Labor Code. Reference: Section 139.2 and 4062.3, Labor Code.

§ 61. Hearing Procedure

(a) Where the Medical Director determines that there is ~~a~~ prima facie evidence of any violation of section 60 of Title 8 of the California Code of Regulations, he or she shall make and submit a prima facie case of the violation to ~~a committee within the Council assigned to review disciplinary matters~~ the Administrative Director.

(b) If the ~~Committee~~ Administrative Director sustains the Medical Director's prima facie case, the QME shall be notified in writing of the determination and shall also be notified of his or her right to a hearing in accordance with Chapter 4 (commencing with Section 11370) and Chapter 5 (commencing with section 11500) and Part 1 of Division 3 of the Government Code.

(1) The ~~committee~~ Administrative Director may, notwithstanding Government Code section 11502, assign the hearing to a hearing officer designated by the Medical Director who shall act as an Administrative Law Judge for the purposes of Government Code sections 11370 et. seq. and 11500 et. seq., or may delegate in whole or in part to an Administrative Law Judge the authority to conduct the hearing and decide the case. In the event of a hearing, the hearing officer or Administrative Law Judge shall fix the time and place of the hearing and notify interested parties in writing no fewer than 10 days in advance of the hearing and in accordance with Code ~~or~~ of Civil Procedure sections 1013(a) and 2015.5 specifying the time and place of the hearing.

(2) If an Administrative Law Judge conducts a hearing, the Administrative Law Judge selected to preside over the hearing shall hear the case alone, and exercise all powers related to the conduct of the hearing.

(3) ~~Upon a decision being made regarding the prima facie case,~~ At the conclusion of the hearing, the Administrative Law Judge or hearing officer shall file a written statement of findings and proposed decision~~s~~ with the ~~full Council~~ Administrative Director. The decision made pursuant to this action shall include specific findings in accordance with section 60(b) of Title 8 of the California Code of Regulations, and under section 65 of Title 8 of the California Code of ~~these~~ Regula-

tions shall recommend, but defer to the ~~Council~~ Administrative Director the final decision~~,~~ with respect to sanctions. ~~The Council shall, at the next scheduled Council meeting, accept, alter, or not adopt the proposed decision.~~

(4) The ~~Council~~ Administrative Director's decision on which sanction(s) to impose on a QME, pursuant to Labor Code section 139.2(k) or any other statute giving the ~~Council~~ Administrative Director disciplinary authority, shall be in accordance with the ~~IMC~~ Sanction Guidelines for Qualified Medical Evaluators under section 65 of Title 8 of the California Code of Regulations ~~this Title~~.

(5) In accordance with Government Code section 11517(c), if the proposed decision is not adopted by the ~~Council~~ Administrative Director, the ~~Council~~ Administrative Director shall determine ~~in accordance with Labor Code Section 139(g)~~ whether or not to decide the case ~~as a body~~, based on the record and transcript, and/or whether or not to take additional evidence or to refer the case back to the Administrative Law Judge to take additional evidence on any issue or issues requested by the ~~Council~~ Administrative Director.

(6) Within thirty (30) days of the date the written decision is served upon the QME, the QME may file a petition for reconsideration with the ~~Council~~ Administrative Director. The petition shall be governed by Government Code section 11521 and shall set forth any legal or factual basis as to why the decision should not be confirmed. ~~The Council Chairperson(s) shall appoint a three member panel, (excluding members of the committee) to review the physician's petition.~~

(c) Judicial Review of the ~~Council~~ Administrative Director's decision may be had by the filing of a petition for writ of mandate pursuant to Government Code Section 11523 no later than thirty (30) days after the last day on which the ~~Council~~ Administrative Director can order reconsideration in accordance with (b)(6) of this section.

Note: Authority cited: Sections 133, ~~139,~~ 139.2, 5307.3 and 5307.4, Labor Code; and Sections 11370 et seq. and 11500 et seq., Government Code. Reference: Section 139.2, Labor Code; and Sections 11502 et seq., Government Code.

§ 62. Probation

(a) A physician on probationary status from his or her licensing authority may be placed on probationary status by the ~~Council~~ Administrative Director in its discretion in accordance with ~~IMC~~ Sanction Guidelines for Qualified Medical Evaluators under section 65 of ~~this~~ Title 8 of the California Code of Regulations.

(b) A QME on probationary status ~~from the Council Administrative Director~~ may be required to report periodically to the Medical Director to ensure compliance with any conditions of probation that have been imposed by the ~~Council~~ Administrative Director. These conditions may include the completion of specific courses and training.

(c) A QME shall be deemed to have passed probation and be eligible for reappointment if he or she has complied with the conditions imposed by the ~~Council~~ Administrative Director during the probation period, and meets the requirements for reappointment in accordance with Article 5.

(d) A QME shall be deemed to have failed probation if upon completion of the probation period it is determined that he or she has not complied with the conditions imposed by the ~~Council~~ Administrative Director during the probation period, and/or has failed to meet the requirements for reappointment in accordance with Article 5.

(e) The ~~Council~~ Administrative Director shall terminate probation, which shall be equivalent to a failure to pass probation, before completion of the probation period if during the probation period it is determined that a QME has not complied with the conditions of probation.

Note: Authority cited: Sections 133, ~~139 and~~ 139.2 and 5307.3, Labor Code. Reference: Sections 139.2, 4060, 4061, ~~and~~ 4062, 4062.1, 4062.2, 4067 and 4628 Labor Code.

§ 63. Denial of Appointment or Reappointment

(a) Whenever the Administrative Director determines that an application for appointment or reappointment as a Qualified Medical Evaluator will be denied, the Administrative Director shall:

(1) Notify the applicant in writing of the decision to deny the application and the reasons for the denial; and
(2) Provide notice that if the applicant submits a specific, written response to the notice of denial within thirty (30) days, the Administrative Director will review the decision to deny the application, and within sixty (60) days of receipt of the response notify the applicant of the Administrative Director's final decision.

(b) If the applicant fails to submit a specific, written response to the notice of denial within thirty (30) days, the decision to deny shall become final without any further notice.

(c) If the applicant submits a specific, written response, and the Administrative Director's final decision is that the application should be denied, notice of the final decision shall be provided to the applicant by means of a statement of issues and notice of right to hearing under Chapter 5 (commencing with section 11500) of Title 2 of the Government Code.

(d) All notices and response under this section shall be made by certified mail.

Note: Authority cited: Sections 133, 139.2(f) and 5307.3, Labor Code; Section 11500 et. seq., Government Code. Reference: Section 139.2, Labor Code.

§ 65. Sanction Guidelines for Qualified Medical Evaluators

The guidelines for determining appropriate sanctions for physicians licensed as Qualified Medical Evaluators shall be set forth in the Sanction Guidelines for Qualified Medical Evaluators as adopted by the Industrial Medical Council on October 21, 1999, and re-adopted and enforced by the Administrative Director.

~~65.~~ Sanction Guidelines for Qualified Medical Evaluators

~~Part One~~

~~I.~~ PART ONE – ~~Overview~~ OVERVIEW

The purpose of these guidelines is to provide ~~a~~ the framework of the ~~Industrial Medical Council (IMC)~~ Administrative Director's (AD) disciplinary process for those affected by it - Qualified Medical Evaluators, the ~~IMC~~ Administrative Director, administrative law judges with the Office of Administrative Hearings, licensing boards and other interested parties. These guidelines are not intended to be an exhaustive list of violations or disciplinary actions that the ~~IMC~~ Administrative Director may consider against any QME. Any violation of statutory or administrative duties may constitute grounds for discipline under these guidelines.

The ~~IMC~~ Administrative Director believes that education is the most effective course of action in resolving less serious regulatory violations. These guidelines also set out the parameters for discipline for misconduct considered serious.

The ~~IMC~~ Administrative Director recognizes the need to promulgate uniform guidelines for particular violations in order to establish consistency in imposing disciplinary sanctions for similar offenses. The ~~IMC~~ Administrative Director also recognizes that mitigating or aggravating circumstances in a specific case may necessitate variance from these guidelines.

In the event of a hearing, if an administrative law judge finds that the circumstances of a particular case are not adequately addressed in these guidelines, the ~~IMC~~ Administrative Director may request that the administrative law judge include in the proposed decision an explanation of the recommended sanction and/or terms of probation, so those circumstances are better understood by the ~~IMC~~ Administrative Director during its review of the case for ultimate action.

~~II.~~ A. Factors to be Considered in Determining Disciplinary Penalties

In cases of violations of Labor Code sections 139.2(k) and 139.2(m) and/or section 60 of Title 8 of the California Code of Regulations, the ~~IMC~~ Administrative Director may impose discipline, up to and including suspension or termination, upon any physician certified by the ~~IMC~~ Administrative Director as a Qualified Medical Evaluator.

In determining the level of the penalty to be imposed in a given case pursuant to section 61 of Title 8 of the California Code of Regulations, the following factors shall be considered:

(1) the seriousness of the violation including actual or potential harm to the public and any mitigating or rehabilitation evidence;

(2) whether or not a violation is an isolated incident or part of a pattern of behavior indicative of a disregard for the QME rules; e.g. (prior warnings of record; number and/or variety of current violations, time passed since the act(s) or offense(s));

(3) whether or not a violation is intentional as opposed to negligent;

(4) whether or not there is a history of previous violations cited under this section or by another court or tribunal (e.g.: prior disciplinary record, including level of compliance with disciplinary orders, compliance with terms of any criminal sentence, overall criminal record); and

(5) whether or not further education or training would be beneficial.

~~III.~~ B. Mitigating Evidence

A respondent may present evidence at a hearing or in the settlement process and shall have the burden of demonstrating mitigating circumstances and/or any rehabilitative or corrective measures he or she has taken. The ~~IMC~~ Administrative Director does not intend, by the following references to written statements, letters, and reports, to waive any evidentiary objections to the form of such evidence. The following are examples of appropriate evidence a respondent may submit to demonstrate his/her rehabilitative efforts and competency:

~~a.~~(1) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of his or her specialty. Each statement should include the period of time and capacity in which the person worked with the respondent and should be signed under penalty of perjury. All letters will be subject to verification by ~~IMC~~ the Administrative Director's staff.

~~b.~~(2) Recent, dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, where appropriate. These should include at least a description and requirements of the program, a psychiatric diagnosis and current state of recovery and the psychiatrist's/psychologist's basis for determining need for rehabilitation.

~~c.~~(3) Recent, dated letters describing respondent's participation in support groups, (e. g. Alcoholics Anonymous, Narcotics Anonymous, Professional Support Groups, etc.), where appropriate.

~~d.~~(4) Recent, dated laboratory analyses or drug screen reports, where appropriate.

~~e.~~(5) Recent, dated performance evaluation(s) from the respondent's employer(s).

~~f.~~(6) Recent, dated physical examination or assessment report by a licensed physician, if appropriate.

In the above examples, the mitigating circumstances and/or rehabilitative efforts shall be detailed in any proposed decision or any transmittal memorandum accompanying a proposed stipulation.

~~IV.~~ C. Terms of Probation

If probation is imposed as part of a disciplinary action, the probation shall include: (1) Standard conditions, which will apply in all cases; and may include (2) Optional conditions, which will vary according to the nature of the offense(s) in the particular case.

~~A. Standard Conditions~~ **Standard Conditions:**

The number in parenthesis refers to the paragraph number found in the sample Model Disciplinary Order, found in Part ~~II~~ Two of these guidelines.

1. Obey all laws (#7);

2. File quarterly reports (#8);

3. Probation surveillance program compliance (#9);

4. Interviews with the ~~Council~~ Administrative Director's designee (#10);

5. Notation of probationary QME status (#33);

6. Tolling of probation, if out of state or while QME status inactive (#11);

7. Violation of probation extends ~~Council~~ Administrative Director jurisdiction (#13);

8. Reporting probationary status to Licensing Board (#6);

9. Reporting probationary status to parties since date of prior licensing board action or prior conviction (#6);

10. QME certificate surrender (if suspended or terminated) (#14).

~~B. Optional Sanctions and Conditions of Probation~~ **Optional Sanctions and Conditions of Probation:**

The following optional sanctions and conditions of probation may be imposed by the ~~Council~~ Administrative Director for proven or stipulated violations of the statutes or regulations cited.

Range of Optional Conditions:

1. Completion of a continuing education and/or ethics course related to the misconduct resulting in discipline (#17);

2. Completion of a QME ethics course (#17);

3. Monitoring of practice by another physician in the same area of practice, with periodic reports to the ~~IMC~~ Administrative Director (#23);

4. Pass a written exam administered by the ~~IMC~~ Administrative Director (#19);

5. Pass an oral exam administered by the ~~IMC~~ Administrative Director (#19);

6. (For sexual transgressions) Requiring the presence of a designated third person during all medical/legal exams (#21);

7. Undergo psychiatric evaluation and/or psychiatric treatment (#24, #25);

8. Structured supervised practice (#22);

9. Undergo medical evaluation or treatment (#26, #27);

10. Abstain from drugs (#30~~1~~);

11. Abstain from alcohol (#32~~3~~);

12. Biological fluid testing (#28~~9~~);

13. Maintain Controlled Substances Log (#31~~2~~);

14. Diversion program (#29~~30~~);

15. Restitution of monies received (#20);

16. Actual suspension during probation (#16);

17. Require QME to submit up to the next 5 med/legal reports to ~~IMC~~ the Administrative Director (#34);

18. Print and distribute corrected information after advertising violation (#35~~6~~).

The ~~IMC~~ Administrative Director may also impose other conditions appropriate to the case which are not contrary to public policy or existing law.

~~V.~~ Violations of ~~m~~Material ~~s~~Statutory or ~~a~~Administrative ~~d~~Duties and Recommended Sanctions:

The ~~IMC~~ Administrative Director may impose disciplinary sanctions for violations by a Qualified Medical Evaluator of any material statutory or administrative duty (Labor Code § 139.2(k)(1)).

Actions by a Qualified Medical Evaluator for which disciplinary action is appropriate are specified in the California Labor Code, the California Business and Professions Code, the California Penal Code, and Titles 8 and 16 of the ~~CCR~~ California Code of Regulations.

Accordingly, the following, disciplinary sanctions shall be applied by the ~~IMC~~ Administrative Director when a QME is found to be in violation of a material statutory and/or administrative duty.

A. Maximum Sanctions

1. ~~Maximum Sanction~~ *Maximum sanction*: Revocation of QME status.

2. Violations of material statutory administrative duties which shall result in the maximum sanctions are:

a. Professional licensure has been terminated (~~LC~~ Labor Code § 139.2(m));

b. Conviction of a felony or misdemeanor (including billing/insurance fraud) related to the conduct of the physician's practice (~~LC~~ Labor Code § 139.2(m));

c. Conviction of a felony or misdemeanor for a crime of moral turpitude (~~LC~~ Labor Code § 139.2(m));

d. Arranging for the impersonation of a QME or impersonating a physician in the QME competency exam;

e. Arranging for the impersonation of a QME or impersonating another physician during QME evaluation;

f. Performing QME evaluations without QME certificate or while knowing that their QME status is suspended;

g. Failure to file a notice of defense to an accusation filed by the ~~IMC~~ Administrative Director or failure to appear at disciplinary hearing initiated by the ~~IMC~~ Administrative Director;

h. Failure to pay the required QME fee (~~LC~~ Labor Code § 139.2(n));

i. False statements made under penalty of perjury relating to ~~applicant/QME~~ medical/QME licensing and/or specialty credentials.

3. If warranted, the maximum penalty can be imposed in any case.

B. Violations of Material Statutory/Administrative Duties Which May Result in Alternative Sanctions

~~1. Sexual Misconduct~~ **1. Sexual Misconduct** (~~LC~~ Labor Code § 139.2(k); ~~BPC~~ Bus. & Prof. Code § 726)

Minimum ~~sanction~~ *sanction:* Stayed revocation, 7 years probation and:

a~~1~~. Approved education course on sexual harassment, to be completed within 90 days (#17); and

b~~2~~. Require third party present during all workers' compensation related evaluations and treatment (# 21); and

If warranted, any or~~f~~ all of the following:

c~~1~~. Psychiatric evaluation and/or psychotherapy (#24, #25);

d~~2~~. Required supervised workers' compensation related practice environment (#22 or #23);

e~~3~~. Actual suspension at least one (1) year, under the criteria of ~~Section II~~ PART ONE A..

~~2. Abuse of Drugs or Alcohol and/or Intoxication While Evaluating or Treating Patients~~

2. Abuse of Drugs or Alcohol and/or Intoxication While Evaluating or Treating Patients (~~LC~~ Labor Code § 139.2(k); ~~BPC~~ Bus. & Prof. Code § 2239~~; BPC § 2240~~)

Minimum ~~sanction~~ *sanction:* Stayed revocation, five (5) years probation and:

a~~1~~. Evaluation by Diversion Program of appropriate licensing board and follow its recommendations;

b~~2~~. If a Diversion Program is not available through the licensing board, then will be evaluated by an alcohol/drug rehabilitation program acceptable to the ~~IMC~~ Administrative Director and will follow its recommendations;

c~~3~~. Allow the pertinent program to report on status to the ~~IMC~~ Administrative Director;

d~~4~~. Abstain from use (#30~~1~~, #32~~3~~); and

If warranted:

e~~5~~. Cease performing QME evaluation while being evaluated by the Diversion Program;

f~~6~~. Biological fluid testing (#28~~9~~);

g~~7~~. Maintain controlled substances log (#31~~2~~);

h~~8~~. Structured supervised practice (#22);

i~~9~~. Monitored practice (#23);

j~~10~~. Oral or written exam (#19);

k~~11~~. Actual suspension.

~~3. Billing/Insurance Fraud or Submitting False Documents~~ **3. Billing/Insurance Fraud or Submitting False Documents** (~~LC~~ Labor Code § 139.2(k); ~~BPC~~ Bus. & Prof. Code § 2234(e); ~~BPC~~ Bus. & Prof. Code § 2261; ~~BPC~~ Bus. & Prof. Code § 810)

Minimum ~~sanction~~ *sanction:* Stayed revocation and 5 years probation, and:

If warranted, any or all of the following:

a~~1~~. Approved ethics course within 90 days (#17);

b~~2~~. Restitution of amounts received (#20);

c~~3~~. Pass oral or written exam (#19);

d~~4~~. Actual suspension at least 6 months, under the factors of ~~Section II~~ PART ONE A.;

e~~5~~. Maximum sanctions.

~~4. False Statements Made Under Penalty of Perjury on IMC Application Forms or Other IMC Documents~~ **4. False Statements Made Under Penalty of Perjury on QME Application Forms or Other QME or DWC Documents** (~~LC~~ Labor Code § 139.2(k); 8 ~~CCR~~ Cal. Code. Regs § 11; ~~LC~~ Labor Code § 139.2(b); ~~LC~~ Labor Code § 139.2(c); ~~LC~~ Labor Code § 139.2(d); ~~BPC~~ Bus. & Prof. Code § 2234(e); ~~BPC~~ Bus. & Prof. Code § 2261)

(Ex.: False statement on QME exam application, appointment application or reappointment application regarding:

- probationary professional license status;

- past criminal conviction related to professional practice;

- completion of minimum continuing education, teaching or practice criteria for appointment or reappointment;

- time spent in direct patient treatment;

- number of QME or AME evaluations done in prior year(s) for purpose of annual fee or for reappointment;

- extent of AME work in lieu of direct patient treatment;

(Representing self as QME with active status when status lapsed).

Minimum ~~sanction~~ *sanction:* Stayed revocation and 5 years probation, and:

If warranted, any or all of the following:

a~~1~~. Actual suspension at least 90 days (#16) under the factors of ~~Section II~~ PART ONE A. ;

b~~2~~. Approved ethics course within 90 days (#17).

~~5. Advertising Violations~~ **5. Advertising Violations** (~~LC~~ Labor Code § 139.2(k); ~~LC~~ Labor Code § 139.4; ~~LC~~ Labor Code §§ 5430-5434; 8 Cal. Code Regs. § 153; 8 Cal. Code Regs. §§ 9820-9837) and conduct including:

- misleading or deceptive advertising - ~~BPC~~ Bus. & Prof. Code § 2271, 651

- failure to include required fraud warning - ~~LC~~ Labor Code §§ 5432, 5433

- anonymous advertising - ~~BPC~~ Bus. & Prof. Code § 2272

- misuse of title 'M.D.', 'D.O.', 'doctor', etc. Bus. & Prof. Code §§ 2275, 2276

- use of fictitious name without permit (~~BPC~~ Bus. & Prof. Code § 2285)

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Stayed revocation 3 years probation;

b~~2~~. Approved ethics course within 90 days (#17);

c~~3~~. Oral or written exam by ~~IMC~~ Administrative Director (#19);

d~~4~~. Print and distribute correct information (#35~~7~~);

e~~5~~. Pay for ad(s) in WC publications advising readers of statutes and regulations on permissible advertising ~~(#38)~~;

f~~6~~. Actual suspension at least 90 days (#16) under the factors of ~~Section II~~ PART ONE A;

g~~7~~. Maximum sanctions.

~~6. Soliciting or Providing Treatment in Course of QME Evaluation~~ **6. Soliciting or Providing Treatment in Course of QME Evaluation** (~~LC~~ Labor Code 139.2(k); 8 ~~CCR~~ Cal. Code Regs. §§ 11(d) and 41(a)(4))

Minimum ~~sanction~~ *sanctions:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Stayed revocation, one (1) year probation;

b~~2~~. Approved ethics course (#17) within 90 days;

c~~3~~. Restitution of amounts received for report to payor (#20);

d~~4~~. Actual suspension at least 30 days (#16) under the factors of ~~Section II~~ PART ONE A .

~~7. Self Interested Referral~~ **7. Self Interested Referral** (~~LC~~ Labor Code §§ 139.2(k) or 139.2(o); ~~LC~~ Labor Code § 3215; 8 ~~CCR~~ Cal. Code Regs. §§ 41~~(c)(1)~~ or 41.5; ~~LC~~ Labor Code § 139.3)

Minimum ~~sanction~~ *sanction:* Educational materials to be provided by ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Stayed revocation and five (5) years probation;

b~~2~~. Restitution of amounts received from unlawful referrals (#20);

c~~3~~. Approved ethics course within 90 days (#17);

d~~4~~. Actual suspension one (1) year (#16), under the factors of ~~Section II~~ PART ONE A;

e~~5~~. Maximum sanctions.

~~8. Ex Parte Communication~~ **8. Ex Parte Communication** (~~LC~~ Labor Code § 139.2(k), ~~LC~~ Labor Code § ~~4062.2~~ 4062.3, 8 ~~CCR~~ Cal. Code Regs. § 41(b))

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Stayed revocation, one (1) year probation;

b~~2~~. Approved ethics course within 90 days (#17);

c~~3~~. Restitution of amounts received for report to payor (#20);

d~~4~~. Actual suspension at least 30 days, under the factors of ~~Section II~~ PART ONE A;

e~~5~~. Maximum sanctions.

~~9. Violations of QME Ethical and/or other Regulations~~ **9. Violations of QME Ethical and/or other Regulations**

Conduct including but not limited to:

- refusing to schedule unrepresented cases (8 ~~CCR~~ Cal. Code Regs. § 41(a)(2))

- routinely requiring IWs to wait over one hour (8 ~~CCR~~ Cal. Code Regs. § 41(f))

- rescheduling panel QME exam 3 or more times per case (8 ~~CCR~~ Cal. Code Regs. § 41(a)(7))

- switching location of QME exam to address not on QME panel letter (8 ~~CCR~~ Cal. Code Regs. § 34(b))

- failing to serve QME appointment notification form/3 or more instances (8 ~~CCR~~ Cal. Code Regs. § 34(a))

- failure to submit evaluations upon request by the Medical Director

- failure to timely notify the parties of a disqualifying conflict of interest (8 Cal. Code Regs. § 41.5)

- failure to report specified financial interests (8 Cal. Code Regs. §§ 1(~~dd~~ ***ee***) and 29)

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and

If warranted, any or all of the following:

a~~1~~. Stayed revocation six (6) months probation under the factors of ~~Section II~~ PART ONE A;

b~~2~~. Approved ethics course within 90 days (#17);

c~~3~~. Oral or written exam by ~~IMC~~ Administrative Director (#19);

d~~4~~. Actual suspension up to 180 days (#16) under the criteria of ~~Section II~~ PART ONE A.

e~~5~~. Maximum sanction.

~~10. False Statements in Medical/Legal Report~~ **10. False Statements in Medical/Legal Report** (~~LC~~ Labor Code § 139.2(k); 8 ~~CCR~~ Cal. Code Regs. § 41(c)(4); ~~LC~~ Labor Code § 4628, Including Ghostwriting)

- Involving a reckless disregard for available information or facts known to the physician.

Minimum ~~sanction~~ *sanction:* Stayed revocation and five (5) years probation, with:

a~~1~~. Approved ethics course within 90 days (#17); and

If warranted, any or all of the following:

b~~2~~. Actual suspension, up to one year under the factors of ~~Section II~~ PART ONE A , ~~or ,~~

c~~3~~. Maximum sanctions.

~~11. Failure to Spend Requisite Face-to-Face Time~~ **11. Failure to Spend Required Face-to-Face Time**

- minimum face-to-face time in evaluation (~~LC~~ Labor Code § 139.2(k); ~~LC~~ Labor Code § 4628; 8 ~~CCR~~ Cal. Code Regs. § 49 et seq.)

- in billing for medical/legal report (~~LC~~ Labor Code § 139.2(k); ~~LC~~ Labor Code § 4628; 8 ~~CCR~~ Cal. Code Regs. § 9795).

Minimum ~~sanction~~ *sanction:* Educational materials to be provided by the ~~IMC~~ Administrative Director.:

If warranted, any or all of the following:

a~~1~~. Stayed revocation, up to one (1) year probation; and

b~~2~~. Approved education course on related workers' compensation billing regulations (#17);

c~~3~~. Restitution to payor (#20);

d~~4~~. Approved ethics course, to be completed within 90 days (#17);

e~~5~~. Actual suspension of at least 90 days, under the factors of ~~Section II~~ PART ONE A;

f~~6~~. Maximum sanctions.

~~12. Knowing Misrepresentation or Intentional - Failure to Disclose Roles of Others Assisting with Medical/Legal Evaluation or Report~~ **12. Knowing Misrepresentation or Intentional - Failure to Disclose Roles of Others Assisting with Medical/Legal Evaluation or Report** (~~LC~~ Labor Code § 139.2(k); ~~LC~~ Labor Code § 4628) or ~~Interference or Obstruction of an Investigation by the Medical Director into a Complaint Against a QME~~ **Interference or Obstruction of an Investigation by the Medical Director into a Complaint Against a QME** (~~LC~~ Labor Code 139.2(J)(6).)

Minimum ~~sanction~~ *sanction:* Stayed revocation, one (1) year probation, and:

If warranted, any or all of the following:

a~~1~~. Educational material to be provided by the ~~IMC~~ Administrative Director;

b~~2~~. Approved ethics course within 90 days (#17);

c~~3~~. Restitution of amounts received for report to payor (#20);

d~~4~~. Actual suspension at least 90 days, under the criteria of ~~Section II~~ PART ONE A (#16);

e~~5~~. Maximum sanctions.

~~13. Performing Unnecessary Medical Tests in Capacity as QME or AME~~ **13. Performing Unnecessary Medical Tests in Capacity as QME or AME** (~~LC~~ Labor Code § 139.2(k); 8 ~~CCR~~ Cal. Code Regs. § 41(a)(3); ~~BPC~~ Bus. & Prof. Code § 725; ~~BPC~~ Bus. & Prof. Code § 2234(e))

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Stayed revocation and up to five (5) years probation, and;

b~~2~~. Restitution of amounts received for unnecessary tests (#20);

c~~3~~. Pass oral or written exam (#19);

d~~4~~. Completion of an approved clinical course (#18);

e~~5~~. Approved ethics course within 90 days (#17);

f~~6~~. Actual suspension, at least 90 ~~days~~ under the factors of ~~Section II~~ PART ONE A ;

g~~7~~. Maximum sanctions.

~~14. Late Reports~~ **14. Late Reports** (~~LC~~ Labor Code § 139.2(k); ~~LC~~ Labor Code § 139.2(j)(1); 8 ~~CCR~~ Cal. Code Regs. § 38; 8 ~~CCR~~ Cal. Code Regs. § 60(b)(4) (3 or more instances))

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Stayed of revocation, six (6) months probation;

b~~2~~. Approved ethics and/or office management course within 90 days (#17);

c~~3~~. Suspension of 30 days (#16) under the factors of ~~Section II~~ PART ONE A .

~~15. Failure to Follow IMC Evaluation Guidelines~~ **15. Failure to Follow AD Evaluation Guidelines** (~~LC~~ Labor Code § 139.2(h); ~~LC~~ Labor Code § 139.2(k); ~~LC~~ Labor Code § 4628; 8 ~~CCR~~ Cal. Code Regs. § 41(c)(5))

- Involving 3 or more instances

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Approved course in medical/legal report writing within 90 days (#17);

b~~2~~. Stayed revocation, one (1) year probation;

c~~3~~. Actual suspension 30 days (#16), under the factors of ~~Section II~~ PART ONE A .

~~16. Report Deficiencies~~ **16. Report Deficiencies** (~~LC~~ Labor Code § 139.2(k))

- Defective declaration(s) required by ~~LC~~ Labor Code § 4628;

- Serving an unsigned report;

- Omitting discussion in a report of relevant information provided to QME;

- Inadequate or incorrect discussion of factors of disability;

- Other report deficiencies identified by ~~IMC~~ Administrative Director quality review panel;

- Other report deficiencies that affect the substantial rights of a party and are in violation of the regulations governing QMEs;

- Determinations by DEU that a report is not ratable;

- Decisions of Administrative Director granting rating reconsideration;

- Omitting declaration(s) required by ~~LC~~ Labor Code § 4628.

Minimum ~~sanction~~ *sanction:* Educational material to be provided by the ~~IMC~~ Administrative Director, and:

If warranted, any or all of the following:

a~~1~~. Require QME to submit up to five medical/legal reports to the ~~IMC~~ Administrative Director medical/legal quality review staff (#3~~4~~5);

b~~2~~. Approved course(s) in medical/legal report writing within 90 days (#17);

c~~3~~. Oral or written exam by ~~IMC~~ Administrative Director (#19);

d~~4~~. Probation (six (6) months).

~~17. Report Deficiencies Affecting Admissibility~~ **17. Report Deficiencies Affecting Admissibility** (~~LC~~ Labor Code § 139.2(k))

- Three Finding(s) by WCJ under ~~LC~~ Labor Code § 4628(e) or ~~LC~~ Labor Code § 139.2(d)(2)

Minimum ~~sanction~~ sanction: Stayed revocation, one (1) year probation, and:

If warranted, any or all of the following:

a~~1~~. Approved course(s) in medical/legal report writing within 90 days (#17);

b~~2~~. Require QME to submit next five medical/legal reports to the ~~IMC~~ Administrative Director medical/legal quality review staff (#34~~5~~);

c~~3~~. Oral or written exam by ~~IMC~~ Administrative Director (#19).

~~18. Violation of Probation~~ **18. Violation of Probation**

Minimum ~~sanction~~ sanction: Impose an actual period of suspension (Refer to #3, #4, or #5)

~~**Part Two. Sample Model Orders.**~~ **Part TWO. SAMPLE MODEL DISCIPLINARY ORDERS**

1. REVOCATION - SINGLE CAUSE

QME certificate number(s) ..... issued to Respondent ..... is/are revoked.

2. REVOCATION - MULTIPLE CAUSES

QME certificate number(s) .....issued to Respondent ..... is/are revoked, pursuant to the Determination of Issues (Ex. I, II, and III separately and for all of them.)

3. ACTUAL SUSPENSION - SINGLE CAUSE

QME certificate number(s) .....issued to Respondent ..... is/are suspended for (state time period). Actual suspension starts on the 16th day after the effective date of this decision.

4. ACTUAL SUSPENSION - MULTIPLE CAUSES (TO RUN CONCURRENTLY)

QME certificate number(s) ..... issued to Respondent ..... is/are suspended for (state time period), pursuant to Determination of Issues (enter numbers), separately and for all of them. All suspensions shall run concurrently. Actual suspension starts on the 16th day after the effective date of this decision.

5. ACTUAL SUSPENSION - MULTIPLE CAUSES (TO RUN CONSECUTIVELY)

QME certificate number(s) ..... issued to Respondent ..... is/are suspended for (state time period), pursuant to Determination of Issues (enter number(s)); and (state time period),pursuant to Determination of Issues (enter number(s)). These suspension shall run consecutively, for a total period of (enter total time period). Actual suspension starts on the 16th day after the effective date of this decision.

6. STANDARD STAY ORDER

However, (revocation/suspension) is stayed and Respondent ..... is placed on probation for (enter time period) upon the following terms and conditions. Within 15 days after the effective date of this decision, the Respondent shall provide the ~~Industrial Medical Council (IMC)~~ Administrative Director (AD), or ~~its~~ his or her designee, proof that Respondent has served a true copy of this decision on:

(a) Respondent's professional licensing board in California;

(b) Every party for whom Respondent has a pending QME or AME evaluation exam or medical/legal report due;

(c) The ~~administrative Director~~ Court Administrator of the Division of Workers' Compensation, for distribution to Workers' Compensation Administrative Law Judges;

(d) The President of the California Applicants' Attorneys Association;

(e) The President of the California Defense Attorneys Association.

In the event Respondent's probation was imposed by the ~~IMC~~ Administrative Director pursuant to Labor Code section 139.2(m), due to an order by Respondent's professional licensing board which suspended or imposed probationary status on Respondent's professional license, or due to a misdemeanor or felony conviction related to Respondent's practice or for a crime of moral turpitude, Respondent shall also provide the ~~IMC~~ Administrative Director proof that a true copy of this decision was served on every party for whom Respondent wrote a medical/legal report from the date of the licensing board action or the date of the criminal conviction until the effective date of this decision.

Other Standard Conditions of Probation

7. OBEY ALL LAWS

Respondent shall obey all federal, state and local laws and regulations, all rules governing practice as a Qualified Medical Evaluator, all rules in California governing Respondent's professional area of practice, and remain in full compliance with any court ordered criminal probation, payments and other orders.

8. QUARTERLY REPORTS

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the ~~IMC~~ Administrative Director, stating whether there has been compliance with all the conditions of probation.

9. PROBATION SURVEILLANCE PROGRAM COMPLIANCE

Respondent shall comply with the ~~IMC~~ Administrative Director's probation surveillance program. Respondent shall, at all times, keep the ~~IMC~~ Administrative Director informed of his or her addresses of business and residence which shall both serve as addresses of record. Changes of such addresses shall be immediately communicated in writing to the assigned ~~IMC~~ Administrative Director probation monitor. Under no circumstances shall a post office box serve as an address of record.

Respondent shall also immediately inform the ~~IMC~~ Administrative Director, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

10. INTERVIEW WITH THE ~~IMC, ITS~~ ADMINISTRATIVE DIRECTOR OR DESIGNEE OR ~~ITS~~ DESIGNATED PHYSICIANS

Respondent shall appear in person for interviews with the ~~IMC~~ Administrative Director, ~~its~~ his/her designee or ~~its~~ his/her designated physician(s) or medical consultant(s), upon request at various intervals and with reasonable notice.

11. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE, FOR PERIODS OF INACTIVE QME STATUS, OR FOR IN-STATE NON-PRACTICE

In the event Respondent should leave California to reside or to practice outside the State, or for any reason should Respondent's QME status become inactive in California, Respondent shall notify the ~~IMC~~ Administrative Director probation monitor in writing within ten (10) days of the dates of departure and return, or the dates of inactive QME status in California. Non practice is defined as any period of time exceeding thirty (30) days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the ~~IMC~~ Administrative Director or its designee shall be considered as time spent in practice.

Periods of temporary permanent residence or practice outside California or periods of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary period.

12. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's QME certificate(s) shall be fully restored.

13. VIOLATION OF PROBATION

If Respondent violates probation in any respect, the ~~IMC~~ Administrative Director, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the ~~IMC~~ Administrative Director shall have continuing jurisdiction until the matter is final and the period of probation shall be extended until the matter of the new accusation or petition to revoke is final.

14. QME CERTIFICATE SURRENDER

Following the effective date of this decision, if Respondent ceases practicing as a Qualified Medical Evaluator, due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may voluntarily tender his/her QME certificate(s) to the ~~IMC~~ Administrative Director. The ~~IMC~~ Administrative Director reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the ten-

dered QME certificate(s), Respondent will no longer be subject to the terms and conditions of probation.

15. NOTATION OF PROBATIONARY QME STATUS

Upon the effective date of this decision, the ~~IMC~~ Administrative Director shall make a notation on each letter sent to an unrepresented injured worker, which lists Respondent's name on a panel of QMEs, indicating that Respondent is currently on probation as a QME. ~~IMC~~ Administrative Director also shall make a notation next to Respondent's name wherever it appears in each QME roster issued during the period in which Respondent is on probation on the date the roster is issued. Respondent shall answer truthfully any questions from injured workers or other parties about Respondent's probationary QME status.

Optional Conditions of Probation

16. ACTUAL SUSPENSION AS PART OF PROBATION

As part of probation, Respondent is suspended from performing any function as a Qualified Medical Evaluator or an Agreed Medical Evaluator for (enter total time period for suspension), beginning on the sixteenth (16th) day after the effective date of this decision.

17. APPROVED ETHICS OR OTHER EDUCATIONAL COURSE

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the ~~IMC~~ Administrative Director or ~~its~~ his/her designee for ~~its~~ his/her prior approval an educational course on forensic evaluator ethics, or on matters related to the violation(s) charged in the accusation, or both. Said course(s) shall be successfully completed by Respondent (enter time for completion), and in any event no later than during the first year of probation. Respondent shall provide the ~~IMC~~ Administrative Director or its designee with proof of attendance at such course(s).

Completion of any such course required as a term of probation shall be in addition to the continuing medical education requirements for reappointment as a Qualified Medical Evaluator.

Following completion of each course ordered as a term of probation, the ~~IMC~~ Administrative Director or ~~its~~ his/her designee may administer an examination to test Respondent's knowledge of the course(s).

18. CLINICAL TRAINING

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the ~~IMC~~ Administrative Director for its prior approval a clinical training or educational program. The exact number of hours and the specific content of the program shall be determined by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee and shall be related to the violations charged in the accusation. Respondent shall successfully complete the training program and may be required to pass an examination administered by the ~~IMC~~ Administrative Director or its designee related to the program's contents prior to performing work as a Qualified Medical Evaluator or Agreed Medical Evaluator.

19. ORAL, CLINICAL OR WRITTEN EXAM

Within sixty (60) days of the effective date of this decision, (or upon completion of the required education or ethics course) (or upon completion of the required clinical training program), Respondent shall take and pass a(n) (oral, clinical and/or written) examination to be administered by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee. If Respondent fails this examination, Respondent must wait three months between reexaminations, except that after three failures Respondent must wait one year to take each necessary reexamination thereafter. Respondent shall pay the costs of all examinations.

(Use either of the following paragraphs with the above paragraph):

OPTION #1: CONDITION PRECEDENT

Respondent shall not perform any functions as a Qualified Medical Evaluator or Agreed Medical Evaluator until Respondent has passed this examination and has been so notified by the ~~IMC~~ Administrative Director in writing.

OPTION #2: CONDITION SUBSEQUENT

If Respondent fails to take and pass the first examination, Respondent shall cease performing any functions as a Qualified Medical Evaluator or an Agreed Medical Evaluator until this examination has been successfully passed and Respondent has been so notified by the ~~IMC~~ Administrative Director in writing.

20. RESTITUTION

Respondent shall provide restitution to .....in the amount of $ ..... prior to completion of the first year of probation.

21. THIRD PARTY PRESENCE - SEXUAL TRANSGRESSIONS

During probation, Respondent shall have a third party present while examining, evaluating or treating (enter appropriate: male/female/minor) injured workers. Respondent shall, within fifteen (15) days of the effective date of the decision, submit to the ~~IMC~~ Administrative Director or ~~its~~ his/her designee, for ~~its~~ his/her approval, the name(s), business and home phone number(s), and business address, of the persons who will act as the third party present. Respondent shall execute a written release authorizing the designated third party(s) to divulge any information that the ~~IMC~~ Administrative Director may request during interviews by the probation monitor on a periodic basis.

22. SUPERVISED STRUCTURED PRACTICE

Respondent is prohibited from engaging in solo practice. Within thirty (30) days of the effective date of this decision, Respondent shall submit to the ~~IMC~~ Administrative Director and receive ~~its~~ his/her prior approval for a plan of practice limited to a supervised, structured environment in which respondent's activities will be overseen and supervised by another QME, who shall provide periodic reports to the ~~IMC~~ Administrative Director.

23. MONITORED PRACTICE

Within thirty (30) days of the effective date of this decision, Respondent shall submit to the ~~IMC~~ Administrative Director and receive ~~its~~ his/her prior approval for a plan of practice in which Respondent's activities as a QME or AME will be monitored by another QME, who shall provide periodic reports to the ~~IMC~~ Administrative Director or ~~its~~ his/her designee.

If the monitor resigns or is no longer available, Respondent shall, within five (5) days, provide the ~~IMC~~ Administrative Director or ~~its~~ his/her designee the name, address and phone number of a new monitor, for the ~~IMC~~ Administrative Director's approval.

Respondent shall execute a written release authorizing the designated third party(s) to divulge any information that the ~~IMC~~ Administrative Director may request during interviews by the probation monitor on a periodic basis.

24. PSYCHIATRIC EVALUATION

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter as may be required by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee, Respondent shall undergo a psychiatric evaluation by a psychiatrist/psychologist appointed by the ~~IMC~~ Administrative Director. The appointed evaluator shall furnish a report to the ~~IMC~~ Administrative Director or ~~its~~ his/her designee.

If Respondent is required by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee to undergo psychiatric treatment, Respondent shall within thirty (30) days of the requirement notice, submit to the ~~IMC~~ Administrative Director for ~~its~~ his/her prior approval the name and qualifications of a psychotherapist of Respondent's choice. Upon approval of the treating psychotherapist, Respondent shall undergo and continue psychiatric treatment until further notice from the ~~IMC~~ Administrative Director. Respondent shall have the treating psychotherapist submit quarterly status reports to the ~~IMC~~ Administrative Director.

(OPTIONAL)

Respondent shall not perform any function as a Qualified Medical Evaluator or an Agreed Medical Evaluator until notified by the ~~IMC~~ Administrative Director of ~~its~~ his/her determination that Respondent is mentally fit to resume such forensic practice.

25. PSYCHIATRIC TREATMENT

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the ~~IMC~~ Administrative Director for ~~its~~ his/her prior approval the name and qualifications of a psychotherapist of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment until his or her treating psychotherapist (i.e. psychiatrist, psychologist, other licensed mental health practitioner) deems that no further psychiatric treatment is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the ~~IMC~~ Administrative Director. The ~~IMC~~ Administrative Director may require Respondent to undergo psychiatric evaluations by an ~~IMC~~ Administrative Director -appointed psychiatrist/psychologist.

(NOTE: This condition is for those cases where the evidence demonstrated that the respondent has had impairment [i.e. impairment by mental illness, alcohol abuse and drug self abuse] related to the violations but is not at present a danger to his/her patients.)

26. MEDICAL EVALUATION

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter as may be required by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee, Respondent shall undergo a medical evaluation by an ~~IMC~~ Administrative Director appointed physician who shall furnish a medical report to the ~~IMC~~ Administrative Director or ~~its~~ his/her designee.

If Respondent is required by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee to undergo medical treatment, Respondent shall within thirty (30) days of the requirement notice, submit to the ~~IMC~~ Administrative Director for ~~its~~ his/her prior approval the name and qualifications of a physician of Respondent's choice. Upon approval of the treating physician, Respondent shall undergo and continue medical treatment until further notice from the ~~IMC~~ Administrative Director. Respondent shall have the treating physician submit quarterly reports to the ~~IMC~~ Administrative Director.

(OPTIONAL)

Respondent shall not perform any functions as a Qualified Medical Evaluator or an Agreed Medical Evaluator until notified by the ~~IMC~~ Administrative Director of ~~its~~ his/her determination that Respondent is medically fit to resume forensic practice safely.

(NOTE: This condition is for those cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations.)

27. MEDICAL TREATMENT

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the ~~IMC~~ Administrative Director for ~~its~~ his/her prior approval the name and qualifications of a physician of Respondent's choice. Upon approval, Respondent shall undergo and continue treatment until the ~~IMC~~ Administrative Director deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly reports to a physician appointed by the ~~IMC~~ Administrative Director to evaluate Respondent. Such reports shall indicate whether Respondent is capable of practicing forensic medicine safely. The ~~IMC~~ Administrative Director may require Respondent to undergo periodic medical evaluations by an ~~IMC~~ Administrative Director appointed physician. The Respondent shall pay the costs of all required evaluations.

(NOTE: This condition is for those cases where there is evidence that medical illness or disability was a contributing cause of the violations but the Respondent is not at present a danger to his/her patients.)

28. BIOLOGICAL FLUID TESTING

Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon the request of the ~~IMC~~ Administrative Director or ~~its~~ his/her designee.

29. DIVERSION PROGRAM

Within thirty (30) days from the effective date of this decision, Respondent shall enroll and participate in a diversion program designated by the ~~IMC~~ Administrative Director or ~~its~~ his/her designee, until the ~~IMC~~ Administrative Director determines that further treatment and rehabilitation is no

longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by Respondent.

30. DRUGS - ABSTAIN FROM USE

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California ~~Uniform Controlled~~ Business and Professions Code, or any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

31. CONTROLLED DRUGS - MAINTAIN RECORD

Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by Respondent during probation, showing all the following: 1) the name and address of patient, 2) the date, 3) the character and quantity of controlled substances involved, and 4) the indications and diagnoses for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the ~~IMC~~ Administrative Director or ~~its~~ his/her designees, upon request.

32. ALCOHOL - ABSTAIN FROM USE

Respondent shall abstain completely from the use of alcoholic beverages.

33. NOTATION OF PROBATIONARY QME STATUS

Upon the effective date of this decision, the ~~IMC~~ Administrative Director shall make a notation on each letter sent to an unrepresented injured worker, which lists Respondent's name on a panel of QMEs, indicating that Respondent is currently on probation as a QME. ~~IMC~~ Administrative Director also shall make a notation next to Respondent's name wherever it appears in each QME roster issued during the period in which Respondent is on probation on the date the roster is issued. Respondent shall answer truthfully any questions from injured workers or other parties about Respondent's probationary QME status.

34. SUBMISSION OF REPORTS TO THE ~~IMC~~ ADMINISTRATIVE DIRECTOR

Respondent shall submit to the ~~IMC~~ Administrative Director copies of the next five medical/legal reports written by Respondent after the effective date of this decision, in the capacity of a Qualified Medical Evaluator. Respondent shall submit a copy of each such report to the ~~IMC~~ Administrative Director probation monitor within 10 business days of forwarding the report to any party in the case.

35. USE OF TERMINOLOGY REGARDING AREA OF PRACTICE OR SPECIALTY

Respondent shall ensure all statements regarding Respondent's professional training and area of practice, appearing on letterhead, advertising, business cards, web sites and other public communications, conform to the provisions of Business and Professions Code section 651. Further, Respondent shall refrain from using terms, including (state specific terms or phrases used which resulted in discipline). Respondent further agrees to (add specific terms as applicable to case).

Note: Authority cited: Sections 133, ~~139 and~~ 139.2 and 5307.3, Labor Code. Reference: Section 139.2, Labor Code.

ARTICLE 7. [Reserved] ~~Practice Parameters for the Treatment of Common Industrial Injuries~~

~~§ 70. Treatment Guideline for Low Back Problems.~~

~~The Industrial Medical Council recommends treatment of industrial injury to the low back, consistent with the "Treatment Guideline for Low Back Problems," as adopted by the Industrial Medical Council on April 17, 1997 as set forth below.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 71. Treatment Guideline for Industrial Neck Injuries.~~

~~The method of treating industrial injury to the neck shall be as set forth below in the "Treatment Guideline for Industrial Neck Injuries" as adopted by the Industrial Medical Council on May 15, 1997.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 72. Treatment Guideline for Occupational Asthma.~~

~~The method of treating occupational asthma shall be as set forth below in the "Treatment Guideline for Occupational Asthma" as adopted by the Industrial Medical Council on July 20, 1995.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 73. Treatment Guideline for Contact Dermatitis.~~

~~The method of treating contact dermatitis shall be as set forth below in the "Treatment Guideline for Contact Dermatitis" as adopted by the Industrial Medical Council on July 20, 1995.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 74. Treatment Guideline for Post-Traumatic Stress Disorder.~~

~~The method of treating post-traumatic stress disorder shall be as set forth below in the "Treatment Guideline for Post-Traumatic Stress Disorder" as adopted by the Industrial Medical Council on December 17, 1996.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 75. Treatment Guidelines for Shoulder Problems.~~

~~The method of treating industrial injury to the shoulder shall be as set forth below in the "Treatment Guideline for Shoulder Problems" as adopted by the Industrial Medical Council on May 15, 1997.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 76. Treatment Guideline for Knee Problems.~~

~~The method of treating industrial injury to the knee shall be as set forth below in the "Treatment Guideline for Knee Problems" as adopted by the Industrial Medical Council on March 20, 1997.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 76.5 Treatment Guideline for Elbow Problems.~~

~~The method of treating industrial injury to the elbow shall be as set forth below in the "Treatment Guideline for Elbow Problems" as adopted by the Industrial Medical Council on May 15, 1997.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

~~§ 77. Treatment Guideline for Problems of the Hand and Wrist.~~

~~The method of treating industrial injury to the hand and wrist shall be as set forth below in the "Treatment Guideline for Problems of the Hand & Wrist" as adopted by the Industrial Medical Council on May 15, 1997.~~

~~Note: Authority cited: Sections 139.2(e)(8), Labor Code. Reference: Section 139.2(e)(8), Labor Code.~~

ARTICLE 10. QME Application Forms

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

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1 and 4062.2, Labor Code; sections 1798 *et seq* Civil Code; sections 6250 *et seq* Government Code.

§ 101. ~~The Alien Application Form.~~ [**Reserved]**

~~NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.~~

~~Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.~~
~~Reference: Sections 139.2, Labor Code; section 11507 et. seq., Government Code; sections 1621, 1641 and 1642, Title 8 U. S.C.~~

§ 102. The Application for QME Competency Examination Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Section 139.2, Labor Code.

§ 103. The QME Fee Assessment Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.

Reference: Section 139.2, Labor Code.

§ 104. The Reappointment Application as Qualified Medical Evaluator Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1 and 4062.2, Labor Code; sections 1798 *et seq* Civil Code; sections 6250 *et seq* Government Code.

ARTICLE 10.5. QME Process Forms

§ 105. The Request for Qualified Medical Evaluator Panel - Unrepresented ~~Instruction~~ Form and Attachment to Form 105 (How to Request a QME If You Do Not Have an Attorney).

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code

§ 106. The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case) .

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 107. The Qualified Medical Evaluator Panel Selection Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 108. The ~~Request for~~ Qualified Medical Evaluator Panel Selection Instruction Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 109. The ~~Notice of~~ Qualified Medical Evaluator Notice of Unavailability Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 110. The Appointment Notification Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 111. The Qualified ~~or Agreed~~ Medical Evaluator's Findings Summary Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067 and 4660 through 4664, Labor Code.

§ 112. The ~~Qualified or Agreed Medical Evaluator~~ QME/AME Time Frame Extension Request Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 113. ~~The Time Extension Approval Form~~. Notice of Denial of Request for Time Extension Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 114. ~~The Denial of Time Extension Form.~~ [Reserved]

§ 115. ~~The Notice of Late Qualified Medical Evaluator Report Form~~. [Reserved]

§ 116. ~~The Notice of Late Qualified Medical Evaluator Report Form Extension Not Requested Form~~. Notice of Late QME/AME Report – No Extension Requested Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 117. Qualified Medical Evaluator ~~Continuing Education Response~~ Course Evaluation Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 118. Application for Accreditation or Re-Accreditation as Education Provider.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 119. Faculty Disclosure of Commercial Interest.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.
Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 120. Voluntary Directive for Alternate Service of Medical-Legal Evaluation Report on Disputed Injury to Psyche.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 121. Declaration Regarding Protection of Mental Health Record.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 122. AME or QME Declaration of Service of Medical-Legal Report.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 123. QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented-Parties Form.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

§ 124. Specified Financial Interest Attachment to QME Forms 100, 103 or 104 ("SFI Form 124").

Any physician who files a QME Form 100 (Application for Appointment), 103 (QME Fee Assessment Form) or 104 (Reappointment Application) with the Administrative Director also shall complete the QME SFI Form 124, in order to disclose specified financial interests that may affect the fairness of QME panels, and append it to the form 100, 103 or 104 being submitted when the form is filed.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Section 139.2, Labor Code.

§ 125. Authorization for Release of Medical Information.

The use of this form by an Agreed Medical Evaluator, Agreed Panel QME or Qualified Medical Evaluator is optional, as provided in section 36.5 of Title 8 of the California Code of Regulations.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 53, 133, 139.2 and 5307.3, Labor Code.
Reference: Sections 56 through 56.37, Civil Code; Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067, Labor Code.

ARTICLE 15. Fraudulent or Misleading Advertising

§ 150. Definitions

As used in this Article:

(a) Administrative Director - means the Administrative Director of the Division of Workers' Compensation of the State of California, Department of Industrial Relations, and includes his or her designee.

~~(a)~~(b) Advertising copy - includes any "public communication" as defined in Business and Professions Code section 651, or any other communication of any message in any form or medium regarding the availability for professional employment of any physician, which is made by or on behalf of any physician to the general public or any substantial portion thereof.

Advertising concerning medical services regarding industrial injuries or illnesses which benefits any physician, and which is placed by any medical clinic, medical service organization or other non-physician third party shall be deemed advertising copy subject to these regulations.

~~(b) Council - means the Industrial Medical Council as defined in Labor Code Section 139.~~

(c) Medical Board - means the Medical Board of California as established in Business and Professions Code section 2001.

(d) Medical Director - means the physician appointed pursuant to Labor Code section 122 or such person as he or she may designate.

(e) Physician - has the meaning defined in Labor Code section 3209.3.

(f) QME - means a Qualified Medical Evaluator as defined in Labor Code section 139.2.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.2, 139.4 and 139.45, Labor Code.

§ 151. Filing of Documents

Any document filed under these regulations shall be deemed filed on the date when it is received by the ~~Council~~ Administrative Director.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections 133, ~~139~~, 139.4 and 139.45, Labor Code.

§ 152. Statement of Intent

Nothing in these regulations is intended to alter the interpretation or application of Business and Professions Code section 651. These regulations are promulgated under the authority of Labor Code sections 139.4 and 139.45 and are intended to reflect the ~~Industrial Medical Council~~ Administrative Director's understanding of the Legislature's intent that the ~~Council~~ Administrative Director apply a higher and independent standard, pursuant to those Sections, to physician advertising which relates to industrial injuries or illnesses.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections **28,** ~~139~~, 139.4 and 139.45, Labor Code.

§ 153. False or Misleading Advertising Copy Prohibited

No physician subject to these regulations, or any person acting on his or her behalf or for his or her benefit, shall use, cause to be used, or allow to be used:

(a) Any advertising copy which, through endorsements, testimonials or other representations, makes or implies any guarantee, warranty, or prediction that is intended, or is likely, to create a false or unjustified expectation of favorable results concerning the outcome of the employment of the physician.

(b) Any advertising copy which by use of a firm name, trade name, fictitious business name, or other professional designation states or implies a relationship between any physician in private practice and any governmental agency or entity, with the exception that, as provided in section 154 below, a physician ~~designated~~ currently or previously certified by the ~~Council~~ Administrative Director as a Qualified Medical Evaluator may state this fact in advertising copy, a curriculum vitae or in descriptive text, only for the period of time that is true and correct.

(c) Any advertising copy which states or implies that a medical-legal report written by any physician, or group or association of physicians enjoys any special degree of credibility by any workers' compensation judge or judges.

(d) Any advertising copy which advises or recommends the securing of any medical-legal examination, or which suggests that a tactical advantage may be secured by obtaining any medical-legal evaluation.

(e) Any advertising copy which contains the phrase "Qualified Medical Evaluator" or the designation "QME" unless such phrase is used to identify individual physicians who ~~have been formally designated~~ are currently certified as QMEs by the ~~Industrial Medical Council~~ Administrative Director in accordance with Labor Code section 139.2.

(f) Any advertising copy which contains a firm name, trade name, or fictitious business name which contains the phrases "Qualified Medical Evaluator," "Qualified Medical Examiner", "Agreed Medical Evaluator", "Agreed Medical Examiner", "Independent Medical Examiner" , "Independent Medical Evaluator" or the designations "QME", "AME" or "IME."

(g) Any advertising copy which states or implies that any physician has an ongoing appointment, title or professional status as an "Agreed Medical Examiner," "Agreed Medical Evaluator", "Independent Medical Examiner," "AME," or "IME."

(h) Any advertising copy which states or implies that the physician is currently an "Agreed Medical Examiner" or "Independent Medical Examiner" in the California Workers' Compensation system.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections 28, ~~139,~~ 139.2, 139.4 and 139.45, Labor Code.

§ 154. Permissible Advertising Content

(a) A physician subject to these regulations, or any person acting on his or her behalf, may use, disseminate, or cause to be disseminated to the public, or any portion of the public, advertising copy which relates to any industrial injury or illness which accurately states:

(1) The name of each physician affiliated with or participating in the physician's practice.

(2) The address, telephone number and business hours of the office or offices.

(3) The areas of practice each physician engages in.

(4) An individual physician's appointment as a QME. A physician who is not currently certified by the Administrative Director as a Qualified Medical Evaluator may, in a curriculum vitae or descriptive text, state any periods in the past during which the physician was certified as a Qualified Medical Evaluator.

(5) A statement that the physician is Board Certified or limits his or her practice to specific fields as authorized by Business and Professions Code section 651. Any statement of Board Certification shall include the name of the certifying board.

(6) Any languages spoken fluently by the physician or his or her staff.

(7) A description of any diagnostic or therapeutic facilities available.

(8) The availability of surgery or hospitalization on a lien basis.

(9) The usual time frame for scheduling appointments or producing medical reports.

(10) That all billings are made in compliance with the Official Medical Fee Schedule promulgated by the Administrative Director ~~of the Division of Workers' Compensation~~.

(11) Biographic information concerning the physician's educational background, internships and residencies, hospital affiliations, professional affiliations and professional publications.

(b) Any physician who wishes to use, disseminate, or cause to be disseminated to the public, or any portion of the public, any advertising copy which relates to any industrial injury or illness which contains any material not specified in subsection (a) above, shall apply in writing to the ~~Council~~ Administrative Director for approval before using such material. The ~~Council~~ Administrative Director shall approve all requests which do not contain material which is false or likely to mislead the public with respect to workers' compensation. No advertising copy submitted to the Council pursuant to this subsection shall be used until the ~~Council~~ Administrative Director has given ~~its~~ his/her written approval.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.2, 139.4 and 139.45, Labor Code.

§ 155. Filing of Complaints

(a) Any person may file a complaint with the Medical Director, alleging that any physician is using advertising copy which violates the provisions of Business and Professions Code section 651, or the provisions of these regulations.

(b) Complaints filed with the Medical Director shall be in writing and contain the following:

(1) The full name and address of the party filing the complaint.

(2) The full name and address of the physician against whom the complaint is made, or if the complainant is unable to identify the physician using the advertising, as much information as the complainant can provide to assist the ~~Council~~ Administrative Director in identifying the physician who used the advertisement.

(3) A copy, if available to the complaining party, of the advertising copy against which the complaint is made, or a description of the medium in which the advertising copy appeared. Such description should contain sufficient details regarding the manner and form in which the advertising copy was published to allow a copy of the advertising copy to be obtained by the ~~Council~~ Administrative Director.

(4) A detailed statement of the grounds on which the advertising copy is alleged to violate Business and Professions Code section 651 or these regulations.

(5) All complaints filed under this section shall be filed with the ~~Executive~~ Medical Director, at Division of Workers' Compensation, ~~either 395 Oyster Point Blvd., South San Francisco, CA 94080, or P.O. Box 8888, San Francisco, CA 94128-8888395~~ P.O. Box 71010, Attention: Medical Unit, Oakland, CA 94612.

(6) Nothing in these regulations shall prevent the ~~Council~~ Administrative Director or Medical Director from acting independently, and without receipt of a complaint, to initiate an investigation and issue a complaint on the ~~Council~~ Administrative Director's own motion whenever the ~~Council~~ Administrative Director or Medical Director has reason to believe that there has been a violation of Business and Professions Code section 651 or these regulations.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.4 and 139.45, Labor Code.

§ 156. ~~Council~~ Requests to Review Advertising Copy

(a) Upon receipt of a complaint under section 155 of the ~~Council~~ Administrative Director shall serve a written notice of complaint on the physician against whom the complaint was filed. Such notice shall direct the physician to file a copy of his or her advertising with the Medical Director within 15 business days of the date on which the notice was served.

(b) The Medical Director may take such steps as he or she deems necessary to determine whether the complaint has merit.

(1) The Medical Director shall respond to the complaint within fifteen (15) business days of the ~~Council~~ Administrative Director's receipt of the physician's response and notify the complainant that the ~~Council~~ Administrative Director:

(A) will investigate the complaint; or

(B) will require additional time to ascertain whether the complaint has merit; or

(C) will refer a copy of the complaint to another agency which also has jurisdiction over the subject matter of the complaint; or

(D) will take no further action on the complaint because the ~~Council~~ Administrative Director lacks jurisdiction over the person or conduct complained of; or

(E) will take no further action on the complaint because the allegations of the complaint do not warrant further action by the ~~Council~~ Administrative Director for the reasons stated in the response.

(c) At the time of filing the advertising copy with the Medical Director, the physician shall also file an answer to the complaint, briefly setting forth the grounds on which the physician believes the copy to be in compliance with Business and Professions Code section 651, and the provisions of these regulations. Nothing contained in the answer shall preclude the right of the physician to present further or different grounds of defense before the ~~Council~~ Administrative Director or appropriate licensing board. Upon reviewing the physician's answer, the Medical Director may dismiss or informally resolve the complaint where he or she deems such action appropriate.

(d) The ~~Council~~ Administrative Director may, without receipt of a complaint, request a physician to provide a copy of any advertising used by that physician for review. Such a request shall be made in writing, and shall be personally served on the physician.

(e) If a physician who has been appointed as a QME fails to deliver a copy of the advertising used to the ~~Council~~ Administrative Director within fifteen (15) business days of receipt of the notice, the ~~Council~~ Administrative Director may infer from the failure to comply that the advertising material used by the QME is in violation of Business and Professions Code Section 651, or these regulations. The maximum penalty that the ~~Council~~ Administrative Director may impose for a finding of violation based solely on the negative inference created by this provision shall be suspension of the physician's appointment as a Qualified Medical Evaluator for a period of six months followed by a period of probation not to exceed one year.

(f) If a non-QME physician fails to deliver a copy of the advertising used to the ~~Council~~ Administrative Director within fifteen (15) business days of receipt of the request, the ~~Council~~ Administrative Director shall refer the matter to that physician's licensing board for such proceedings as that board may deem proper.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.4 and 139.45, Labor Code.

§ 157. Determinations

(a) If, after reviewing the physician's advertising copy and the physician's answer to the complaint, the Medical Director determines that the advertising copy violates Business and Professions Code section 651, or these regulations and that the physician is currently a Qualified Medical Evaluator, ~~he or she shall submit a preliminary determination to the Council~~ the disciplinary and hearing procedures set forth in sections 60 through 65 of Title 8 of the California Code of Regulations shall apply. The Medical Director shall forward a copy of any final decision of such violations to the physician's licensing board for such proceedings as that board may deem proper.

(b) If the ~~Council~~ Medical Director ~~sustains~~ determines ~~the Medical Director's preliminary determination, and~~ that the physician subject to the ~~complaint~~ investigation currently is not a QME, the Medical Director shall forward a copy of the preliminary determination, the complaint, and all supporting documentation to the appropriate physician's licensing board for such proceedings as that board may deem proper.

~~(c) If the Council sustains the Medical Director's preliminary determination, and the physician subject to the complaint is a QME, the Council shall hold a hearing on the complaint in accordance with Chapter 4 (commencing with Sections 11370) of Part 1 of Division 3 of the Government Code.~~

~~(1) The Council may delegate in whole or in part to the Administrative Law Judge the authority to conduct the hearing and decide upon the complaint.~~

~~(2) Upon a decision being made regarding the complaint, the Administrative Law Judge, acting alone, or as advisor to the Council, shall file a copy of the written statement of findings and decision with the Council.~~

~~(d) Within 30 days of the date the written decision is served upon the QME, the QME may file a written notice of appeal with the Council requesting reconsideration by the Council of the Administrative Law Judge's decision. Upon receipt of the notice of appeal, the Chairperson of the Council shall appoint 3 Council members to serve as an appellate panel to hear and recommend to the Council, a decision on the appeal .~~

~~(1) The appeal panel shall review the entire record and may hold a hearing thereon.~~

~~(2) In the event of a hearing, the designated chair of the appeal panel shall fix the time and place of the hearing and notify the parties to the appeal in writing not less than 15 working days in advance of the hearing in accordance with Code of Civil Procedure Sections 1013a and 2015.5.~~

~~(3) The hearing on the appeal shall be limited to a review of the record before the Administrative Law Judge and such written and/or oral argument as the parties may submit.~~

~~(4) Upon reaching a decision on the appeal, the appeal panel shall submit to the Council a copy of the record and a written report summarizing the evidence, findings of fact, and a recommended decision. The Council shall take appropriate action on the recommended decision. If, for any reason, the Council rejects the appeal panel's decision, a complete copy of the record shall be furnished to each member of the Council for independent review before any action is taken by the Council in rendering a decision.~~

~~(5) The Council shall notify the complainant and the parties to the appeal of its decision in writing in accordance with Code of Civil Procedure Sections 1013a and 2015.5.~~

~~(6) The Medical Director shall promptly forward a copy of the Council final decision to the appropriate physician's licensing board for such proceedings as that board may deem proper.~~

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.4 and 139.45, Labor Code.

§ 158. Penalties

(a) A QME who is found ~~by the Council~~ to have violated any provision of Business and Professions Code section 651, or these regulations may have his or her QME status terminated, suspended, or placed on probation by the ~~Council~~ Administrative Director. Any probation imposed may have such conditions as the ~~Council~~ Administrative Director deems reasonable, including, but not limited to the publication of corrective advertising and the submission of future advertising copy for the ~~Council~~ Administrative Director 's approval before its use.

(b) The ~~Council~~ Administrative Director shall consider the following factors in determining the appropriate penalty for a violation of Business and Professions Code section 651, or these regulations:

1. the seriousness or materiality of the misrepresentation,

2. whether the physician cooperated with the investigation,

3. whether the violation was a single event, or appeared to be part of a pattern sufficient to demonstrate a business practice,

4. whether the violator has a record of prior discipline by the ~~Council~~ Administrative Director, Medical Board, or other appropriate licensing board or authority,

5. whether the violator has a record of contempt reprimands or adjudications issued by the Workers' Compensation Appeals Board.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.4 and 139.45, Labor Code.

§ 159. Severability

If any portion of this chapter or the application of any part thereof to any person, individual, party, entity, or circumstance is held invalid, the remainder of the chapter and its application to any other person, individual, party, entity, or circumstance, shall not be affected thereby.

Note: Authority cited: Sections 133 ~~139~~, 139.4, ~~and~~ 139.45 and 5307.3, Labor Code. Reference: Sections ~~139~~, 139.4 and 139.45, Labor Code.