

**Title 8. Industrial Relations**  
**Division 1. Department of Industrial Relations**  
**Chapter 1. Division of Workers' Compensation Qualified Medical Evaluator Regulations**  
**Article 1. General; Article 2. QME Eligibility; Article 3. Assignment of Qualified Medical**  
**Evaluators, Evaluation Procedures; Article 5. QME Reappointment; Article 6 QME**  
**Discipline**  
**(Title 8, California Code of Regulations sections 1, 11, 11.5, 14, 31.3, 33, 35.5, 36.7, 50, 51,**  
**52, 54, 55, 56, 57 & 63)**

**ARTICLE 1. GENERAL**

**§ 1. Definitions.**

As used in the regulations in Chapter 1:

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

(b) "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 or their designee.

(c) "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 prior to January 1, 2013, 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 section 9795 of Title 8 of the California Code of Regulations for medical/legal evaluation procedures and medical testimony. The provisions of this subdivision related to "Agreed Panel QME" do not apply to panel lists issued after January 1, 2013.

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

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

(f) "Appeals Board" means the Workers' Compensation Appeals Board within the State of California Department of Industrial Relations.

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(g) "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.

(h) "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(c) of Title 8 of the California Code of Regulations.

(i) "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), 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.

(j) "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.

(k) "Course" means the ~~42~~ 16 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 Administrative Director.

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

(m) "Direct medical treatment" means that special phase of the physician-patient relationship 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.

(n) "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.

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(o) “DEU” is the Disability Evaluation Unit under the Administrative Director responsible for issuing summary disability ratings.

(p) “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.

(q) “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 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.

(r) “Evaluator” means any of the following: “Qualified Medical Evaluator”, “Agreed Medical Evaluator”, “Agreed Panel QME” or “Panel QME”, as appropriate in a specific case.

(s) “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.

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

(u) “Medical Treatment Utilization Schedule” or “MTUS” means the treatment utilization scheduled adopted by the Administrative Director of the Division of Workers' Compensation as required by Labor Code section 5307.27 and sections 9792.20 *et seq* of Title 8 of the California Code of Regulations.

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(v) "Medical Director" means the Medical Director appointed by the Administrative Director pursuant to Labor Code section 122 and includes any Associate Medical Directors when acting as his, ~~or her~~ or their designee.



(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.

(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.

(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.

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

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(aa) "QME competency examination" means an examination administered by the 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.

(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.

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

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(dd) "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 or their family.

(ee) "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.

(ff) "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(I) of Title 8 of the California Code of Regulations.

(gg) "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.

(hh) "Unrepresented employee" means an employee not represented by an attorney.

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

## **ARTICLE 2. QME ELIGIBILITY**

### **§ 11. Eligibility Requirements for Initial Appointment as a QME.**

The 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

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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 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 Administrative Director and the Medical Board of California 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 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 Administrative Director (i.e. Workers' Compensation Evaluation Certificate with a minimum 44 25 hours completed).

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

(b)(1) Shall, prior to appointment as a QME, complete a course of at least ~~twelve (12)~~ sixteen (16) 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) Shall provide supplemental information and/or documentation to the Administrative Director after an application, QME Form 100 (see, 8 Cal. Code Regs. § 100), is submitted if requested to verify an applicant's eligibility for 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

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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 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 an unrestricted California license and is not currently on probation from the state licensing board, 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 at least one-third of 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 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) 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 Administrative Director at his or her discretion for first time applicants.

(3) The 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.

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

(5) The 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 Administrative Director receives the properly-completed forms and appropriate fee.

(6) The 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 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 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 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 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 Administrative Director will consider appeals of test questions and will base his

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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.

(h) Shall, prior to appointment as a QME, complete a course of at least two (2) hours in anti-bias training. The course shall include the following:

(1) Instruction designed to increase awareness and understanding of differences in human experience, as well as awareness of implicit or unconscious bias, stereotyping, and discrimination, and the ways in which unconscious bias can unintentionally impact perceptions and decision-making, including in medical evaluations and reporting, and lead to disparities in health care strategies, to help eliminate or reduce implicit bias in medical evaluations and reporting.

(2) At least one example of potential gender bias in a fictitious QME evaluation in which an apportionment rating is made based on an assumption about a risk factor related solely to the injured worker's gender.

(3) At least one example relating to an evaluation and rating of permanent disability resulting from industrial breast cancer, taking into account the ways in which gender bias could potentially impact an assessment of the impairment that results from breast cancer and its treatment.

(4) The course shall include a post-course examination based on the program material. Credit for the course may be given only for a passing rate of no lower than 70 percent correct responses. The administrative director may audit physicians' examinations and scores.

Note: Authority cited: Sections 133, 139.2, 4060, 4062 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~~ sixteen hours of instruction in disability evaluation report writing. The course curriculum shall be specified by the Administrative Director. Only report writing courses which are

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offered by education providers as defined in subdivision 1(p) of Title 8 of the California Code of Regulations shall qualify to satisfy this requirement.

(a) An education provider applicant shall submit:

(1) a completed 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 or their presentation.

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

(b) The Administrative Director shall accredit an applicant that: meets the definition of an education provider; 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) for the course to be approved by the 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 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 Administrative Director shall notify the applicant within 20 calendar days after receipt of the application containing all the information listed in section 11.5(a) whether

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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 applicant.

(d) Each education provider that has been accredited by the 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 Administrative Director.



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

(g) To apply for re-accreditation, the education provider applicant must submit a completed QME Form 118 (Application for Accreditation) (see, 8 Cal. Code Regs. § 118), using the application process in 11.5(a). The applicant may complete section 2 of the form using a new program or course or one which was given by the applicant during the recent accreditation period. The 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 ~~42~~ 16 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

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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

(4) Instruction in anti-bias training which meets the qualifications outlined in Regulation 11(h) (mandatory minimum of at least 2 hours)

(5) Instruction consisting of a review workers' compensation case law (minimum recommended 2 hours)

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

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

Work restrictions

Work Capabilities

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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

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

Future medical care

Review of records

Providing sufficient support for conclusions

~~(4)~~(6) The Administrative Director's Disability Evaluation Protocols (minimum recommended 1 hour)

An overview 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)~~(7) 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)~~(8) 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.

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

~~(7)~~ (9) 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)~~ (10) 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) All audio or video tapes, computer programs and printed educational material used in the course must be submitted to the Administrative Director on or before the date the course is first given. Six (6) hours of instruction shall consist of in person lecture, didactic sessions and group discussion. Up to the full twelve ~~ten~~ 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 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. 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 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.

(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

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submit a copy of the signature list to the Administrative Director within 60 days of completion of the course.

(m) The provider is required to give the 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 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 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 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 Administrative Director.

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

(p) The 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 Administrative Director may audit courses given by providers randomly, when a complaint is received, or on the basis of responses on 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 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 Administrative Director in writing no later than 60 days prior to the discontinuing an approved course.

(r) The 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.

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- (2) Any material misrepresentation of fact made by the provider.
- (3) Failure to comply with Administrative Director regulations.
- (4) False or misleading advertising.
- (5) Failure to comply with Administrative Director's recommendations following an audit.
- (6) Failure to distribute QME 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](http://www.dir.ca.gov/dwc/forms.html) or by requesting at 1-800-794-6900.

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

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

(a) All doctors of chiropractic shall be certified in workers' compensation evaluation by either a California professional chiropractic association, or an accredited California college recognized by the 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 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:

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(A) Lecture, didactic sessions and group discussion including an initial 8 hours of overview of the workers' compensation system and ~~36~~ 17 additional hours in medical-legal issues for total minimum class time of ~~44~~ 25 hours. Up to 4 12 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) Passing a written test at the completion of the program to determine proficiency and application of course material;

(C) Writing 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) Overview of California Labor Code, DWC (Division of Workers' Compensation of the California Department of Industrial Relations) and the regulations of the Division of Workers' Compensation and of the Workers' Compensation Appeals Board governing QMEs, medical-legal reports and evaluations;

(B) Obligations of the treating and evaluating physicians;

(C) Review of appropriate workers' compensation terminology;

(4) The remaining ~~36~~ 17 hours shall include but not be limited to the following:

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

(B) The 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, and the medical treatment utilization schedule (MTUS) adopted pursuant to Labor Code section 5307.27;

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

(D) Future medical care;

(E) 2 hours of instruction in anti-bias training which meets the qualifications outlined in Regulation 11(h).

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(5) The provider's course material and tests shall be submitted to the Administrative Director for annual review and the 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 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 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 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 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 Medical Director Division of Workers' Compensation, Attention: Medical Unit, P. O. Box 71010, Oakland, CA 94612.

Note: Authority cited: Sections 122, 133, 139.2, 139.3 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3 and 4067, Labor Code.

### **ARTICLE 3. ASSIGNMENT OF QUALIFIED MEDICAL EVALUATORS, EVALUATION PROCEDURES**

#### **§ 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.

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(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 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.

(e) If 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 of the date of the appointment request, that party 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 request for an appointment request. When the selected QME is unable to schedule the evaluation within ninety (90) days of the date of that party's initial request for an 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 or subsequent evaluation. Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code.

(f) The provisions of subdivision (e) of this regulation apply to both requests for an initial examination by a QME and requests for supplemental examinations by a QME.

Note: Authority cited: Sections 133, 139.2 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 perform comprehensive medical evaluations as an Agreed Panel QME or as a Panel QME for a period of 14 days, or up to a maximum of 90 days during a calendar year, for any reason shall notify the Medical Director by submitting the form in ~~Section 109~~ (Notice of Qualified Medical Evaluator Unavailability) ~~(see, 8 Cal. Code Regs. § 109)~~ at least 30 days before the period of  
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unavailability is to begin. The Medical Director may, in his or her or their discretion, grant unavailable status within the 30-day notice period 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 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.

(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 totaling more than ninety (90) days during the QME calendar year without good cause may be denied reappointment subject to section 51(a)(3) ~~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.

(e) 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 or their unavailability at a medical office at least thirty (30) days prior to 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 unavailability.

(f) 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 or their unavailability. If the Medical Director does not receive a response within 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 section 33(a) of Title 8 of the California Code of Regulations.~~

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NOTE: Form referred to above is available at no charge by downloading from the web at [www.dir.ca.gov/dwc/forms.html](http://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 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.5 and 4067, Labor Code.

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

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

(c)(1) 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 appointment with the medical evaluator that are issues within the evaluator's scope of practice and areas of clinical competence. The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator as provided in subdivision 35(a)(3).

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

(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.

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(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 evaluator who reported previously.

(f) Unless the Appeals Board or a Workers' Compensation Administrative Law Judge orders otherwise or the parties agree otherwise, whenever a party is legally entitled to depose the evaluator, the evaluator shall make himself or herself available for deposition within at least one hundred twenty (120) days of the notice of deposition and, upon the request of the unrepresented injured worker and whenever consistent with Labor Code section 5710, the deposition shall be held at the location at which the evaluation examination was performed, or at a facility or office chosen by the deposing party that is not more than 20 miles from the location of the evaluation examination.

(g)(1) Where the evaluation is performed for injuries that occurred before January 1, 2013, concerning a dispute over a utilization review decision if the decision is communicated to the requesting physician on or before June 30, 2013, 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 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 and refer to other 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.

(2) For any evaluation performed on or after July 1, 2013, and regardless of the date of injury, an Agreed Medical Evaluator or Qualified Medical Evaluator shall not provide an opinion on any disputed medical treatment issue, but shall provide an opinion about whether the injured worker will need future medical care to cure or relieve the effects of an industrial injury.

(h) Each reporting evaluator shall include in the report a declaration under penalty of perjury that the evaluator did not discriminate in any way against the parties to the action or the injured worker in the evaluation process or in the content of the report.

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, 4610.5, 4628, 5703.5, 5307.27 and 5710, Labor Code.

### **§ 36.7 QME Electronic Service of Medical-Legal Reports by Medical Evaluators Emergency Regulation in Response to COVID-19**

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(a) ~~During the period that this emergency regulation is in effect, a~~ A QME- Qualified Medical Evaluation or Agreed Medical Evaluation report, AME, or other medical-legal report and required documents may be served electronically as follows:

(1) For purposes of this section:

- (A) “Electronic service” means service of the medical-legal report and all documents required by section 36, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by the physician or by an agent of the physician, or through an electronic service provider.
- (B) “Electronic transmission” means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.
- (C) “Electronic notification” means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

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- (2) Electronic service shall be permitted only where the parties agree and a written confirmation of that agreement is made. At the time of giving consent to electronic service, a party or entity shall provide the party's electronic address for the purpose of receiving electronic service.
- ~~(3) Electronic service shall not be permitted on any unrepresented party or unrepresented injured worker.~~
- ~~(4)~~ (3) For purposes of electronic service, the medical-legal report or other papers must be transmitted to an electronic address maintained by the person or entity on whom it is served, using the most recent electronic address provided to the physician by the party who consented to accept service electronically.
- ~~(5)~~ (4) Service is complete at the time of transmission. Any period of notice and any right or duty to act or make any response within any period or on a date certain after service of the document, shall be extended by two business days.

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(b) For purposes of service of a medical-legal report in claims of injury to the psyche, all of the terms of section 36.5 shall apply to electronic service, except the service requirements in section 36.5(b)(6) may be accomplished by electronic service pursuant to the terms of this regulation.

(c) For purposes of service of all medical-legal reports, all of the terms of section 36 shall apply to electronic service, except that the manner of service of the report may be accomplished by electronic transmission, where appropriate, pursuant to the terms of this regulation.

(d) For purposes of electronic service of all medical-legal reports, the mandatory form 122 (AME or QME Declaration of Service of Medical-Legal Report, see 8 Cal. Code Regs. § 122) may be replaced by an Affidavit of Proof of Electronic Service. The Affidavit of Proof of Electronic Service shall set forth the exact title of the document served in the action, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the electronic service occurs, (C) that he or she is over the age of 18 years, (D) that he or she is readily familiar with the business' practice for serving electronically, and (E) that the document would be electronically served that same day in the ordinary course of business following ordinary business practices. The Affidavit of Proof of Electronic Service shall be signed under penalty of perjury under the laws of the State of California. The Affidavit of Proof of Electronic Service shall also include all of the following:

- EXECUTIVE**  
A SEI (1) The electronic service address and the residence or business address of the person making the electronic service.
- (2) The date of electronic service.
  - (3) The name and electronic service address of the person or entity served.
  - (4) A statement that the document was served electronically.

(e) For purposes of electronic service, the physician shall maintain an original copy of all documents electronically served, pursuant to the terms of section 39.5 of title 8, California Code of Regulations. The documents maintained by the physician pursuant to this section shall contain an original signature.

Note: Authority cited: Labor Code Sections 133, 139.2, 4627 and 5307.3

## **ARTICLE 5. QME REAPPOINTMENT**

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## **§ 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 104, and the appropriate fee under section 17. The reappointment application and the appropriate fee shall be filed at the Administrative Director's headquarters office listed on the reappointment form.

(b) Any Reappointment Application Form may be rejected if it is incomplete or does not contain the required supporting documentation listed in section 11 and on the Reappointment Application Form. As part of the approval of the Reappointment Application Form, the 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 or they shall submit a statement signed under penalty of perjury:

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

(2) listing the dates, locations, and titles of the continuing education programs and the names of the providers of those programs which he or she or they 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 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 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

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

(d) The signature of the QME on the statement required by this subdivision may be an original signature, or an electronic signature as defined in Civil Code section 1633.2, subdivision (h), or a digital signature as defined in Government Code section 16.5. A QME shall not affix an original, electronic or digital signature to the statement referenced in this paragraph without having personally reviewed the content thereof and verified its truth and accuracy.

(e) A QME seeking reappointment must be in compliance with all statutes, duties and regulations relevant to the QME program in order to be reappointed as a QME. Where the Administrative Director determines that there is prima facie evidence of any violation of a statute, duty or regulation that is subject to discipline pursuant to section 65 of Title 8, California Code of Regulations, the Administrative Director may, in his or her discretion, reappoint or deny reappointment to the evaluator.

(f) A QME who has failed to cooperate with an investigation into the evaluator's practice as a QME, which was initiated by the administrative director or his or her or their appointees, may be denied reappointment as a QME, at the discretion of the Administrative Director.

(g) At the time of reappointment, along with the reappointment application, the physician shall submit their two most recent medical-legal reports in which there was a face-to-face evaluation and the injured worker was determined to have reached the status of maximum medical improvement. The physician may submit a statement of explanation in lieu of submitting the two reports only if the physician did not generate two reports in the previous two years that meet this criteria.

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

#### **§ 51. Reappointment: ~~Failure to Comply with Time Frames~~ and Denial of Reappointment.**

~~All QMEs shall comply with the time frames in sections 34 and 38 as a condition for reappointment. The Administrative Director 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.~~

a) The Administrative Director may deny reappointment to a QME on any one or more of the following grounds:

(1) Any grounds that would provide a basis for suspending or terminating a

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Physician's privilege to serve as a QME, as specified in paragraphs (1) through (6) of subdivision (k) of Labor Code Section 139.2 or in section 65 of Article 6 of this title.

(2) Failure to comply with the evaluation time frames in sections 34 or 38 on at least three occasions during the calendar year.

(3) Filing notification for unavailability under section 33 for more than 90 calendar days during the calendar year.

(4) On any single occasion, refusing without good cause to perform a medical-legal evaluation.

(5) Having had more than five evaluations rejected within a two year period, by a Workers' Compensation Judge or the Appeals Board originally submitted at a contested hearing, subject to the following:

(A) The rejection was 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 Administrative Director pursuant to Labor Code section 139.2(j); and

(B) A finding that rejects an evaluation must be final and the time for appeal must have expired before any rejected evaluation shall be counted as one of the five rejections.

(6) Three or more instances during the most recent period of appointment of billing or charging for medical-legal evaluations, reports or testimony in violation of the Official Medical-Legal Fee Schedule as set forth in sections 9793-9795 of Article 5.6 in this title.

(7) A finding that the QME violated any order or ruling by a Workers' Compensation Judge or the Appeals Board, provided that the finding is final and the time for appeal has expired.

(8) Performing a QME evaluation or examination without valid QME certification at the time of examining the injured worker or the time of signing the initial or follow-up evaluation report.

(9) Providing false information on or with an application or reapplication for appointment as a QME.

(10) Failing to render expert opinions or conclusions without regard to an injured worker's race, sex, national origin, religion or sexual preference.

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(11) Participating in any activity that constitutes a violation of Labor Code Sections 4628, 139.3, or 139.31.

(12) Participating in three or more instances of activity during the most recent period of appointment that constitute a failure to communicate with the injured worker in a respectful, courteous and professional manner.

(13) Participating in any intentional act that is not a necessary part of the physical examination that causes physical harm or injury to the injured worker.

(14) Failure to notify the Administrative Director within 90 days that the physician's license to practice has been encumbered by suspension or probation by the relevant licensing authority. The 90 days to notify the Administrative Director shall run from the effective date of the order imposing the suspension or probation.

(b) Denial of reappointment shall be subject to the notice and appeal procedures in sections 61 and 63.

(c) In lieu of denial, the Administrative Director may reappoint the physician to a probationary status, in accordance with the terms, conditions, and requirements set forth in subsections (b) through (e) of section 62.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 139.2(d)(1), 4628, 139.3, 139.31.

#### **~~§52. Reappointment: Unavailability Notification. [repealed]~~**

~~All QMEs shall comply with the unavailability notification requirements in section 33 as a condition for reappointment. The Administrative Director 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.~~

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

#### **~~§54. Reappointment: Evaluations Rejected by Appeals Board. [repealed]~~**

~~The Administrative Director 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 Administrative Director pursuant to Labor Code section~~

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~~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, her or their term of appointment 16 42 hours of continuing education in disability evaluation, or workers' compensation related medical dispute evaluation, or other workers' compensation related topics approved by the Administrative Director, given by a provider accredited by the 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 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 Administrative Director in writing of the revision.

(b) The 16 hours of continuing education shall be in disability evaluation, workers' compensation related medical dispute evaluation, or other workers' compensation related topics approved by the Administrative Director. The 16 hours of instruction in continuing education shall include, at a minimum:

(1) 4 hours of instruction in disability impairment rating;

(2) 3 hours of instruction in medical-legal report writing;

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(3) 2 hour of instruction in anti-bias training which meets the qualifications outlined in Regulation 11(h);

(4) 2 hours in of instruction consisting of a review workers' compensation case law;

(5) 1 hour of instruction in proper application of the medical-legal fee schedule or in QME adherence to regulatory clerical requirements;

(6) The remaining 4 hours may include credit earned as follows:

(i) A physician may earn no more than 1 hour of credit for having their report reviewed by an approved educational provider.

(ii) The DWC will provide on its website annually a list of recommended educational topics for QME certification based on review of medical-legal reports in the previous year.

(iii) Credit may be received for physician time spent in activities enumerated in section (c).

~~(b)~~ (c) In addition to granting credit for attending a course or program which it gives, the 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 Administrative Director.

(2) Instructing in a program given for QME credit by a provider accredited by the 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 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;

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(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.

(5) Participating in a panel created by the DWC Medical Director to review medical-legal reports for quality. A physician may receive one hour credit for each hour of participation on a panel not to exceed 5 hours in a calendar year. The QME shall obtain documentation of participation from the Medical Director for submission to the Administrative Director.

~~(e)~~ (d) To apply to the Administrative Director for accreditation, a provider shall submit to the 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)~~ (e) The Administrative Director shall accredit an applicant who meets the definition of an education provider in Section 1(q); 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(e d) 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 Administrative Director for material solely discussing the business aspects of workers' compensation medical practice such as billing, coding and marketing that is not regulated or described in a regulation related to practice as a QME that is promulgated by the Administrative Director.

~~(e)~~ (f) The Administrative Director shall notify the applicant within 30 calendar days after receipt of the application containing all the information listed in section 55(e d) whether

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that provider has been accredited for a two year period. Incomplete applications will be returned to the applicant.

(f) (g) A provider that has been accredited by the 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 Division of Workers' Compensation for Qualified Medical Evaluator continuing education. Physicians may report up to \_\_\_\_ hours of credit for QME reappointment."

(g) (h) On or before the date the program is first presented or distributed, the provider shall submit the program syllabus (all program handouts) to the 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) (i) 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 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 Administrative Director may require submission of program syllabi. The Administrative Director may require changes in the program based on its review of the program outline, program syllabi, promotional material or faculty if the Administrative Director finds that any aspect of the program is not in compliance with these regulations.

(i) (j) Promotional materials for a program must state the 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) (k) Joint sponsorship of education programs (as between an accredited and an unaccredited provider) must be approved by the Administrative Director prior to presentation of the program.

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

(l) (m) 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 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), 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

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interest or affiliation must be disclosed to all attendees. A provider shall file every Form 119 in its possession or in its control with the Administrative Director.

~~(m)~~ (n) 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)~~ (o) To apply for re-accreditation, a provider must submit a completed 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 Administrative Director shall give the provider ninety (90) days' notice of the need to seek re-accreditation.

~~(o)~~ (p) 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 Administrative Director within sixty (60) days of completion of the program.

~~(p)~~ (q) The provider is required to give the 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 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 Administrative Director shall tabulate the responses and return a summary to the provider within ninety (90) days of completion of the program.

~~(q)~~ (r) The 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 Administrative Director may audit programs randomly, when a complaint is received, or on the basis of responses on 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 Administrative Director shall make written results of the audit available to the provider no more than thirty (30) days after the audit is complete.

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(f) (s) The 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 Administrative Director regulations.
- (4) False or misleading advertising.
- (5) Failure to comply with Administrative Director recommendations following an audit.
- (6) Failure to distribute 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](http://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 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4067 and 4628, Labor Code.

#### **~~§56. Reappointment: Failure to Comply with WCAB Order or Ruling. [repealed]~~**

~~The Administrative Director 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. [repealed]~~**

~~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 worker or the time of signing the initial or follow-up evaluation report.~~

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~~Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code; and Section 730, Business and Professions Code.~~

## ARTICLE 6. QME DISCIPLINE

### § 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 or that appointment or reappointment will be to a probationary status, the Administrative Director shall notify the applicant in writing of the decision, including the grounds and reasons for the decision, and of the applicant's right to appeal and to obtain a hearing in accordance with the provisions of section 61(b).

~~(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) The applicant shall have thirty (30) days to submit a written appeal, setting forth with particularity the basis for disputing the Administrative Director's decision and why the applicant believes that he or she is entitled to appointment or reappointment. If the applicant fails to submit a specific, written response to the Administrative Director's determination regarding appointment or reappointment, notice of denial within thirty (30) days, the Administrative Director's 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, timely appeal in accordance with subsection (b), and the appeal is denied by the Administrative Director, the Administrative Director shall provide the applicant with notice of this denial by means of a statement of issues and notice of right to 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. The statement of issues and notice of right to hearing shall be issued within 60 days of receipt of the timely appeal. The appeal shall be heard and decided in accordance with the procedures set forth in section 61(b), and a final decision shall be subject to judicial

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review in accordance with section 61(c). Notwithstanding the procedures specified in section 61, the Administrative Director may at any time during the pendency of an appeal reconsider the decision made under subsection (a), and for good cause issue a new decision granting appointment or reappointment or granting appointment or reappointment to probationary status in lieu of denial.

(d) All notices and responses under this section shall be made by certified mail.

(e) Notwithstanding section 51 and the other provisions of this section, any physician who (1) has failed to timely pay the fee required by Labor Code Section 139.2(n), (2) who is precluded from practice due to the suspension, revocation, or termination of his or her license to practice by the relevant licensing authority, or (3) who has been suspended from participation in the workers' compensation system pursuant to Labor Code Section 139.21 and whose suspension is final under subdivision (b) of Section 139.21, shall be ineligible for appointment or reappointment as a QME and shall have no further right to notice or appeal under this section or section 61.

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.



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