

**TITLE 8. INDUSTRIAL RELATIONS**  
**DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS**

**INITIAL STATEMENT OF REASONS**

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

**TITLE 8. CALIFORNIA CODE OF REGULATIONS**  
**SECTIONS 1 - 159**

**BACKGROUND TO REGULATORY PROCEEDING**

In the California workers' compensation system, the physicians who perform medical evaluation examinations and write comprehensive medical-legal reports, that are used by injured employees and employers to resolve disputes over medical issues and other benefits in a workers' compensation claim are called Agreed Medical Evaluators (AMEs) or Qualified Medical Evaluators (QMEs). This rulemaking involves amendments, repeals or additions to the regulations that govern QMEs, and some aspects of the work of AMEs, found in sections 1 through 159 in Title 8 of the California Code of Regulations.

The proposed changes to these regulations are necessary due to changes made by several reform bills, including SB 228 [Stats. 2003, ch. 639, (SB 228) (Alarcon)] and SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004]. The proposed changes are intended to allow the QME process to better meet the needs of the physicians, injured employees and employers, claims administrators, attorneys and judges who must use it.

Effective January 1, 2004, SB 228 repealed section 139 of the Labor Code, thereby eliminating the Industrial Medical Council. Its functions, and the authority to regulate (examine, appoint, reappoint and discipline) Qualified Medical Evaluators and to issue panel lists of three QMEs to parties in a workers' compensation case, were transferred to the Administrative Director of the Division of Workers' Compensation. (Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)). In addition, SB 228 amended the Labor Code, in pertinent part, to mandate use of the guidelines entitled *Occupational Medicine Practice Guidelines: Evaluations and Management of Common Health Problems and Functional Recovery in Worker* (2<sup>nd</sup> Ed.), published by the American College of Occupational and Environmental Medicine (ACOEM). These guidelines, called the ACOEM guidelines, were used to

assess the extent and scope of recommended medical treatment. Also, the Administrative Director was directed to develop a medical treatment utilization schedule. (Lab. Code §§ 4604.5, 5307.27). The Medical Treatment Utilization Schedule (also referred to as the MTUS), which incorporated relevant sections of the ACOEM Practice Guidelines, was adopted and became effective June 15, 2007, in regulations as sections 9792.20 *et seq* of Title 8 of the California Code of Regulations.

SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004] amended Labor Code section 4600(b) to provide, in pertinent part, that "...medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines." The Medical Treatment Utilization Schedule (also referred to as the MTUS) was adopted by the Administrative Director and became effective June 15, 2007, in regulations as sections 9792.20 *et seq* of Title 8 of the California Code of Regulations.

In addition, SB 899 amended Labor Code section 4660(b) to require that the methods for describing and measuring physical impairments be based on the Guides to the Evaluation of Permanent Impairment [Fifth Edition] ("AMA Guides") published by the American Medical Association, and that such impairment descriptions be applied with other specified factors to determine an injured employee's permanent disability under an amended permanent disability rating schedule.

SB 899 also made significant changes to the dispute resolution, or 'AME/QME' procedures to be used by parties in represented cases. For all cases involving dates of injury on or after January 1, 2005, the parties in a represented case are required to obtain a QME panel if they are unable to agree on an Agreed Medical Evaluator. Prior to SB 899, each party in a represented case was entitled to obtain a comprehensive medical legal report from any QME of their choice if they were unable to agree to an Agreed Medical Evaluator. Under Labor Code § 4062.2, enacted by SB 899, when the need arises for a comprehensive medical legal report pursuant to Labor Code section 4060 (to resolve 'compensability' disputes where no body part is accepted as compensable), Labor Code section 4061 (to resolve disability disputes) or Labor Code section 4062 (to resolve disputes pertaining to medical treatment and other issues not covered by sections 4060, 4061 and 4610), the parties must send the opposing party a written proposal of one or more physicians' names to serve as an Agreed Medical Evaluator. If no agreement is reached within 20 days, either party may request a QME panel from the Medical Unit of the Division of Workers' Compensation and specify the medical specialty of the panel. (Lab. Code § 4062.2(b).) Within 10 days of the issuance of the panel, the parties attempt to select one of the QMEs to serve as an AME, and if unsuccessful, each party is entitled to strike one QME name from the panel and the remaining QME must serve as the evaluator in the case. (Lab. Code § 4062.2(c).)

Finally SB 899 added section 4062.1 to the Labor Code which addresses the procedures for obtaining a QME panel in unrepresented cases. The use of a QME panel to resolve disputed

medical determinations in an unrepresented case was already required. SB 899 added provisions in section 4062.1 to allow the employer to submit the QME panel request form if the employee declines or fails to do so within 10 days after the employer furnished the form to the employee. (Lab. Code § 4062.1(b).) In addition, when the unrepresented employee fails or declines to select a QME from the QME panel and schedule an examination within 10 days of issuance of the panel, the employer may do so. (Lab. Code § 4062.1(c).)

## **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS**

MTUS (Medical Treatment Utilization Schedule), sections 9792.20 *et seq* of Title 8 of the California Code of Regulations, including relevant portions of the ACOEM Practice Guidelines entitled *Occupational Medicine Practice Guidelines: Evaluations and Management of Common Health Problems and Functional Recovery in Worker* (2<sup>nd</sup> Ed.), published by the American College of Occupational and Environmental Medicine (also called ‘ACOEM’).

Guides to the Evaluation of Permanent Impairment [Fifth Edition] (“AMA Guides”) published by the American Medical Association (also called ‘AMA guides’).

SB 228 [Stats. 2003, ch. 639, (SB 228) (Alarcon)], available on the web at <http://www.leginfo.ca.gov/bilinfo.html>.

SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], available on the web at <http://www.leginfo.ca.gov/bilinfo.html>.

AB 1756 [Stats. 2003, ch. 228 (AB1756), effective August 11, 2003], available on the web at <http://www.leginfo.ca.gov/bilinfo.html>.

AB 776 [Stats. 2000, ch. 54 (AB 776)], available on the web at <http://www.leginfo.ca.gov/bilinfo.html>.

Letter dated March 19, 2007 to Christine Baker, Executive Officer, Commission on Health, Safety and Workers’ Compensation regarding consultation, pursuant to Labor Code § 139.2(o) on proposed regulation governing Qualified Medical Evaluator conflicts, and reply on behalf of the Commission, from Workers’ Compensation Administrative Law Judge Lachlan Taylor, dated April 2, 2007.

Table 2A: Third Quarter payroll and Number of Businesses by Size Category, Classified by North American Industry Classification System (NAICS) for California, Third Quarter, 2005, from the Employment Development Department, Labor market Information Division, available at: <http://www.labormarketinfo.edd.ca.gov/cgi/databrowsing/?PageID=67&SubID=138>.

*Simmons v. State of California, Dept. of Mental Health* (2005) 70 Cal. Comp. Cases 866. Also available at: [http://www.dir.ca.gov/wcab/wcab\\_enbanc.htm](http://www.dir.ca.gov/wcab/wcab_enbanc.htm).

*Nunez v. Workers' Compensation Appeals Board* (2006) 136 Cal. App. 4<sup>th</sup> 584; 39 Cal. Rptr. 914; 71 Cal. Comp. Cases 161; *Cortez v. Workers' Compensation Appeals Board* (2006) 136 Cal. App. 4<sup>th</sup> 596; 38 Cal. Rptr. 3d 922; 71 Cal. Comp. Cases 155.

## **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

None.

## **FACTS AGENCY RELIES ON IN SUPPORT OF ITS INITIAL DETERMINATION THAT THE REGULATIONS WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON BUSINESS**

California employers are required by existing law to provide and pay for reasonable and necessary medical treatment expenses and medical-legal expenses as part of the workers' compensation system. Proposed section 36(c) of Title 8, and the related QME Form proposed in section 120, provide that an employer may incur the cost of an office visit with a physician, designated by an unrepresented injured employee, for the purpose of reviewing a comprehensive medical-legal report with the employee that was written by a Qualified Medical Evaluator, in a case involving a disputed injury to the psyche. Existing law requires the QME to serve a copy of the report on the injured employee. A number of the QME's who have performed such evaluations have expressed concern from a medical and clinical standpoint, that certain injured employees with injuries to the psyche may misunderstand parts of such a report and may be adversely affected from a clinical perspective by trying to interpret the report themselves. Under this proposal, the employer would incur the cost of the office visit only if the employee filled out proposed QME Form 120, and elected that the QME report be served on a designated physician for the purpose of reviewing the report with the injured employee. Under the Official Medical Fee Schedule found at sections 9790 *et seq* of Title 8 of the California Code of Regulations, the cost of an office visit for psychological counseling could be billed up to \$ 98.40; the cost of a 40 minute consultation could be billed at \$ 131.62 under the evaluation and management (E & M) codes; the cost of a 60 minute consult could be billed at \$ 184.86 under the evaluation and management (E & M) codes. At the current time, the best estimate of the Division of Workers' Compensation of the number of employers per year potentially affected by this additional cost would range between 650 and 850. This estimate is based on comparing figures, on an annual basis, of the claims in which injury to the psyche is alleged, to the requests by injured employees for a QME panel list for physicians who evaluate injuries to the psyche. In short the estimated exposure per employer potentially affected (650 – 850) in a calendar year could range from \$ 98.00 to \$ 185.00. Given the small dollar amount of the potential expense per affected employer in a given workers' compensation case and the small number of potentially affected employers, the Division has concluded this proposed change will not have a significant adverse expense on business. The cost of this medical visit, like other treatment visits, would be covered by the employer's workers' compensation insurance or approved system for self insurance.

Physicians appointed as Qualified Medical Evaluators (QMEs), or selected by the parties as Agreed Medical Evaluators (AMEs), fall within the definition of small business, and are already required by existing law to comply with the statutes and regulations governing the process for providing and obtaining comprehensive medical/legal evaluation reports in the workers' compensation system.

The Administrative Director is required by Labor Code sections 4062.1 and 4062.2, respectively, to issue panels (lists of 3 QME names) to the parties in a workers' compensation case who need a comprehensive medical/legal evaluation report from a QME to resolve disputed benefit issues in the case. The party holding the legal right to submit the panel request form also has the right to designate the specialty of the QMEs for the panel. (Lab. Code §§ 4062.1(b), 4062.2 (b).) The QMEs listed must be selected randomly and when compiling the list from which to select randomly, the Administrative Director must include only QMEs of the designated specialty who do not have a conflict of interest as defined by the Administrative Director in regulations (Lab. Code § 139.2(h)(3)(A) or a shared specified financial interest, as defined in proposed regulation subdivisions 1(dd), 29 and 124 of Title 8 of the California Code of Regulations. Proposed regulations 1(dd) and 29 of Title 8 of the California Code of Regulations require physicians, when applying for appointment or reappointment as QMEs, and all QMEs when paying the annual QME fee, to advise the Administrative Director on forms used for appointment, reappointment or fee payment, respectively, of specified financial interests that may be shared with another physician assigned to a QME panel. The 'specified financial interests' to be disclosed on the forms include: 1) being a general partner or limited partner in; or 2) having an interest of five percent or more in; or 3) receiving or being legally entitled to receive a share of five 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 services for use in the California workers' compensation system. Because disclosure of this information by the physician means entering the information on the proposed QME Form 124, which is then attached to other forms already being submitted by the physician, there is either no, or a *de minimus* amount of, added expense to the QME by this regulation. Therefore, the Administrative Director has concluded there is no significant adverse economic impact on QMEs as small businesses by the adoption of these proposed regulations.

In addition, the Administrative Director is required by Labor Code section 139.2(o) to develop regulations to prevent Agreed Medical Evaluators and Qualified Medical Evaluators from requesting or accepting any compensation or other thing of value that does or could create a conflict with the physician's duties as an evaluator. Proposed regulation 41.5 of Title 8 of the California Code of Regulations, if adopted, will require AMEs and QMEs who know of a disqualifying conflict of interest, as defined in section 41.5(d), with any of the persons or entities listed in section 41.5(c), to send a written notification to the injured employee and the employer or insurer, or their respective attorneys if any, within five business days of the evaluator becoming aware of the conflict. It is expected that most AMEs, and QMEs selected by the parties after being randomly selected by the Administrative Director for a QME panel, will not be affected at all by this regulation. It is very difficult to predict the frequency with which a given evaluator will need to notify the parties of a potential conflict. However, even in such cases, under the proposed

regulation if either party objects to the evaluator on that ground, the parties are entitled to select a new evaluator. The potential cost to an evaluator providing the notice of such a conflict is *de minimus*, since it involves mailing a short, one page disclosure form, to notify the parties (i.e. cost of the form and envelope [ $< \$ 1.00$ ] plus first class postage of 41 ¢) X 2 parties, or less than \$ 3.00 per instance). The Administrative Director finds it necessary to require this reporting apply to Qualified Medical Evaluators and Agreed Medical Evaluators, who may fall within the definition of small businesses, for the welfare of the people of the State of California, in order to provide evaluators who are independent and not subject to conflicts of interest in disputed workers' compensation claims. In addition, to ensure an expeditious system for resolving disputes in workers' compensation, as required by Article XIV, section 4 of the California Constitution, based on unbiased, expert medical opinions from such evaluators, it is important that potential objections based on a conflict of interest are raised and addressed as soon as the alleged conflict is disclosed. Each award of workers' compensation benefits must be based on medical evidence that constitutes substantial evidence. To strike an evaluator's medical report on the grounds of bias and conflict of interest late in a contested case or at the point of the award, and to require the parties to obtain a new evaluator and comprehensive medical legal report that constitutes substantial evidence, would be counter to this provision.

Further, the Administrative Director is proposing in subdivision 30(f) that at the time of compiling a panel list of 3 QMEs within the designated specialty located within the specified geographic area for which the panel is requested, the Medical Director will give 1.5 times the weight to those QME locations designated as "primary practice locations". "Primary practice location" is defined in proposed section 1(x) as any location at which the physician spends at least 5 or more hours per week engaged in direct medical treatment. Proposed regulation 17(c) will enable each QME to identify up to four "primary practice locations" when listing locations for performing QME evaluations. The Administrative Director has observed a problem with the frequency in which some QMEs, who have listed multiple locations through the state in multiple specialties, are named to a panel as compared to QMEs with fewer locations. These proposed regulations allow multiple QME locations but will ensure that QMEs with fewer locations within a community due to time spent in direct medical treatment are not disadvantaged for selection for a panel, as compared to other QMEs with multiple office locations through a region or the state.

## **SUMMARY OF PROPOSED CHANGES**

### **Overview**

All of the regulations in this rulemaking regulate physicians who do forensic examinations and reports in the California workers' compensation system, principally Qualified Medical Evaluators (QMEs) and in limited ways Agreed Medical Evaluators (AMEs). Many of the sections in this rulemaking are 'changes without regulatory effect', e.g. only minor grammatical, spelling, capitalization, punctuation, or legal citation formatting changes, or other 'non substantive' changes,

within the meaning of section 100 of Title 1 of the California Code of Regulations. The summary below identifies proposed changes of both a substantive and non-substantive nature.

In the case of QME forms 100 through 119, found in sections 100 through 119 of Title 8 of the California Code of Regulations, the existing form is shown completely in strikeout and the new form is shown as a clean, camera-ready copy that is without strikeout and underlining. The proposed new version of the form is for adoption in its entirety as shown. Forms 120 through 124, found in sections 120 through 124 of Title 8 of the California Code of Regulations, are new. The text, as shown, is proposed for adoption in its entirety also. The summary paragraphs below for each form discuss what has been changed in the new proposed form text from the existing form, or what is requested on those forms being proposed for the first time.

## **CHAPTER 1 – Title Changed**

**Specific Purpose of Section:** This section identifies the part of the Department of Industrial Relations with jurisdiction over the regulations enumerated in the chapter and the general topic of the regulations. Due to SB 228 [Stats. 2003, ch. 639, § 52 (SB 228) (Alarcon)], the Industrial Medical Council was eliminated and its functions involving regulation of qualified medical evaluators were transferred to the Division of Workers’ Compensation. The chapter title is changed to ‘Division of Workers’ Compensation – Qualified Medical Evaluator Regulations’.

**Necessity:** The change is mandated by the repeal of Labor Code section 139 and amendments to Labor Code section 139.2 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], which transferred all of the functions of the Industrial Medical Council to the Administrative Director (hereafter, AD) of the Division of Workers’ Compensation (hereafter, DWC).

### **Rulemaking Authority**

The Administrative Director’s rulemaking authority is found in Lab. Code §§ 53, 111(a), 133, 139.2 and 5307.3. These sections provide that the Administrative Director has the same rulemaking authority as the ‘head of a department’ as defined by Government Code §11150 et. seq., as well as specific rulemaking authority under Division 4 of the Labor Code. Labor Code section 53 provides, in pertinent part:

“Whenever in Section 1001 or in Part 1 (commencing with Section 11000) of Division 3 of Title 2 of the Government Code “head of the department” or similar designation occurs, the same shall, for the purposes of this code, mean the director, except that in respect to matters which by the express provisions of this code are committed to or retained under the jurisdiction of the Division of Workers’ Compensation....the designation shall mean the Division of Workers’ Compensation, the Administrative Director of the Division of Workers’ Compensation....as the case may be.”

Labor Code section 111(a) provides, in pertinent part:

“(a) The Workers’ Compensation Appeals Board, consisting of seven members, shall

exercise all judicial powers vested in it under this code. In all other respects, the Division of the Workers' Compensation is under the control of the administrative director and, except as to those duties, powers, jurisdiction, responsibilities, and purposes as are specifically vested in the appeals board, the administrative director shall exercise the powers of the head of a department within the meaning of Article 1 (commencing with Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code)....”

Labor Code section 133 provides, in pertinent part:

“The Division of Workers' Compensation, including the administrative director....shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.”

Labor Code section 5307.3 provides, in pertinent part:

“The administrative director may adopt, amend, or repeal any rules and regulations that are reasonably necessary to enforce this division, except where this power is specifically reserved to the appeals board or the court administrator.”

### **Reference Authority**

Labor Code section 139.2, as amended by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], conferred the authority on the Administrative Director to appoint (Lab. Code § 139.2(a) – (c)), reappoint (Lab. Code §§ 139.2(b) and 139.2(d)), examine (Lab. Code § 139.2(b)(1)), discipline (Lab. Code §§ 139.2(e), 139.2(f), 139.2(k), 139.2(l), 139.2(m), assess fees annually (Lab. Code § 139.2(n)) and otherwise regulate the work of physicians who are appointed Qualified Medical Evaluators in the workers' compensation system (Lab. Code §§ 139.2(i), 139.2(j), 139.2(o), 139.4, 139.43, 139.45), as well as the authority to issue panels (lists naming three QMEs selected at random) in the medical specialty designated by an injured employee or the employer or employer's insurer (Lab. Code § 139.2(h)). The employee is given the first opportunity to select a QME from the panel list as the physician who will do a physical examination, review medical records and write a medical-legal report which is used to resolve a workers' compensation benefit claim. The reports are used by the parties to resolve disputes relating to compensability (i.e. whether the injury arose out of and in the course of employment) (Lab. Code § 4060), permanent disability (Lab. Code § 4061) and medical treatment issues (Lab. Code § 4062).

Reference authority is also found in Lab. Code §§ 139.2, 4060 through 4062.2 and 4628. Labor Code § 139.2(a) delegates the authority to appoint QMEs for two year terms. Labor Code § 139.2(b)(1) delegates the authority to require and administer a QME 'competency' exam to physicians prior to appointing them as QMEs. Labor Code §§ 4060 through 4062.2 describe and govern the process for "...evaluation of medical-legal issues" referenced in Labor Code § 139.2(a). Labor Code § 4628 sets out additional requirements for QMEs completing medical/legal evaluation reports. Accordingly, to *implement* the medical-legal process in the California workers' compensation system, including the part of the process that requires the Administrative Director to

assign QMEs to a panel requested by a party to a worker's compensation claim under Labor Code §§ 4060(d), 4061(c) and (d), 4062(a), 4062.1(b) and 4062.2(b), sections 4060 through 4062.2 are appropriate as reference authority within the meaning of Government Code §§ 11349(e) and 1 Cal. Code Regs. § 14. These changes do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulation provision and DWC has no discretion but to adopt these changes.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## ARTICLE 1. GENERAL

### Section 1. Definitions

**Specific Purpose of Section:** This section contains definitions for terms used in sections 1 through 159, the regulations governing QMEs, in Title 8 of the California Code of Regulations.

**Necessity:** The proposed amendments to the following subdivisions of Section 1 are effectively non substantive changes that improve the syntax, cross reference, grammar, punctuation, numbering or lettering, clarity of the definition or are required due to the transfer of mandated authority to the Administrative Director of DWC from the Industrial Medical Council (IMC) due to the elimination of the IMC by the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)]:

Introductory phrase, §§ 1(a), 1(g), 1(i), 1(k), 1(l), 1(m), 1(n), 1(o), 1(p), 1(s), 1(y), 1(z), 1(bb), 1(cc), 1(ee).

**Necessity:** The following changes are also made:

§ 1(b) [existing]: Existing subdivision (b) is re-lettered to (c).

§ 1(b)[new]: The terms "ACOEM" and "ACOEM Practice Guidelines" are defined by referring to the existing definitions in sections 9792.20(a) ["ACOEM"] and 9792.20(b) ["ACOEM Practice Guidelines"] of Title 8 of the California Code of Regulations, respectively, are added. These terms must be defined due to the adoption of Labor Code section 4604.5(c) by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], and Labor Code section 4600(b) by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. Qualified Medical Evaluators must use the Medical Treatment Utilization Schedule (MTUS), found at sections 9792.20 *et seq* of Title 8 of the California Code of Regulations, and relevant portions of the ACOEM Practice Guidelines to address disputes regarding the extent and scope of medical treatment.

§ 1(c) [existing]: Existing (c) is re-lettered to subdivision (e).

§ 1(c) [new]: The phrase, ‘and includes his or her designee’ is added to the existing definition to make clear the authority of the Administrative Director to delegate authority as needed. This authority is inherent in the powers of the Administrative Director who “... shall exercise the powers of the head of a department within the meaning of Article 1 (commencing with Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code)...” (Lab. Code § 111(a)), and who “...shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.” (Lab. Code § 133.)

§ 1(d) [existing]: Existing (d) is re-lettered as (g).

§ 1(d) [new]: A new definition for “AMA Guides” has been added. Due to amendments made to Labor Code section 4660(b) by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004], physicians are now required to describe and evaluate the nature of physical injury or disfigurement by reference to measurements and procedures set out in the Guides to Evaluation of Permanent Impairment [Fifth Edition] of the American Medical Association. Qualified Medical Evaluators must use the AMA guides in specified cases to provide opinions that resolve disputes over the nature and extent of permanent disability from industrial injury.

§ 1(e) [existing]: Existing (e) is re-lettered as (h).

§ 1(e) [new]: The word “represented” was added to the existing definition of Agreed Medical Evaluator (AME) to clarify the long standing practice that only cases in which the employee is represented by an attorney involve the use of an AME.

§ 1(f) [existing]: Existing (f) is re-lettered as (i).

§ 1(f) [new]: A new definition for “AOE/COE” is added. This term is being used on the proposed new QME forms 105 and 106 (see sections 105 and 106 of Title 8 of the California Code of Regulations), and their attachments, which will be used by parties to request a panel of Qualified Medical Evaluators from which a single QME will be selected to perform the evaluation. Qualified Medical Evaluators, and the regulated public who request panels of QMEs, use this acronym for disputes over whether the claimed injury arose out of employment and occurred in the course of employment.

§ 1(g) [existing]: Existing (g) is re-lettered as (j).

§ 1(h) [existing]: Existing (h) is re-lettered as (k).

§ 1(h) [new]: The term ‘Audit’ is amended to add the word ‘education’ between the words ‘accredited’ and ‘provider’, in order to clarify that it is referring only to audits of approved continuing education providers for QMEs (as used in Chapter 1 (articles 1 through 15) of Division 1 of Title 8 of the California Code of Regulations), which is to be distinguished from DWC audits of claims adjusters as set out in sections 10100 et seq of Chapter 4.5 of Title 8.

§1(i) [existing]: This section is repealed since the Industrial Medical Council no longer exists due to repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)].

§ 1(i) [new]: This section contains the existing definition for “Comprehensive Medical-Legal Evaluation”, except that references to Labor Code sections 4062.1, 4062.2 and 4067 have been added consistent with their adoption when SB 899 was enacted.

§ 1(j) [existing]: Existing (j) was re-lettered to (l).

§ 1(j) [new]: The definition of Claims Administrator is amended to add the phrase ‘the person or entity responsible for the payment of compensation’ and to add reference to ‘the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF).’ Also the sentence “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”. The UEBTF, acting on behalf of the director of the Department of Industrial Relations, as administrator for the fund, manages and adjusts the claims of injured workers whose employer failed to “secure the payment of compensation” for workers’ compensation injuries and illnesses, as required by Labor Code §§ 3700 et seq.

The reference to ‘Uninsured Employers Benefits Trust Fund (UEBTF)’ is added to comply with the change of the fund’s name due to AB 1756 [Stats. 2003, ch. 228 (AB 1756), effective August 11, 2003]. The additional sentence, that qualifies when the regulations apply to the director as Administrator of the UEBTF, is being moved without other amendment from existing section 1(o) to this section, for clarity.

§ 1(k) [existing]: Existing (k) was re-lettered as (m).

§ 1(l) [existing]: Existing (l) was re-lettered as (n).

§ 1 (m) [existing]: Existing (m) was re-lettered as (o).

§1 (n) [existing]: Existing (n) was re-lettered as (p).

§1 (p) [existing]: Existing (p) was re-lettered as (s).

§ 1(q) [existing]: Existing (q) was re-lettered as (v).

§ 1(q) [new]: A new definition is added for ‘Education Provider’ for clarity and to change the references from ‘the Council’ to the ‘Administrative Director’. The definition for ‘Provider’ in the existing section 1(r) was moved to become the definition of ‘Education Provider’. The change to ‘Education Provider’ is made to distinguish use of this phrase, referring to continuing education course providers approved by the Administrative Director, from use of the word ‘provider’ as a synonym for physician.

§ 1(r) [existing]: This section is deleted. However, as noted in the description of the definition of ‘Education Provider’ in section 1(q) above, the wording in this section, which

explains the definition, has been moved to section 1(q) as the definition for ‘Education Provider’.

§ 1(r) [new]: The existing definition of “Employer” is being amended for clarity and to avoid ambiguity and confusion. Previously, and in the existing section 1(o) of Title 8 of the California Code of Regulations, the term ‘employer’ was defined in these regulations governing QMEs to mean only the uninsured employer and the Uninsured Employer’s Fund (UEF), now called the Uninsured Employers Benefits Trust Fund (UEBTF). (See discussion of section 1(j), above.) The proposed amended definition adds references to section 3300 of the Labor Code, to insured, self-insured and lawfully uninsured employers in order to be consistent with other regulations of the Administrative Director in Title 8. It also corrects the name of the fund (UEBTF).

§ 1(s)[existing]: This section, defining Qualified Injured Worker, is deleted because the regulation section that provided the definition for this term was deleted from the regulations of the Administrative Director.

§ 1(t) [existing]: Existing (t) was re-lettered as (y).

§ 1(t) [new]: A new definition is added for ‘Follow-up comprehensive medical-legal evaluation’ in order to clarify that such an evaluation and report has the same meaning as section 9793(f) of Title 8 and also to distinguish this type of evaluation from a ‘Supplemental medical-legal evaluation’ which is defined now in section 1 (cc) of Title 8.

§ 1(u) [existing]: Existing (u) was re-lettered as (z).

§ 1(u) [new]: A new definition is added for ‘Medical Treatment Utilization Schedule’ or ‘MTUS’ for clarity and cross reference. It is one of the guidelines, in addition to the ACOEM guidelines, that education providers for QMEs must refer to in required QME continuing education and report writing courses. Pursuant to Labor Code sections 4600(b), 4604.5(c) and 5307.27, the MTUS is one of the treatment schedules that are given a presumption that QMEs must be familiar with in writing opinions about disputes over medical treatment.

§ 1(v)[existing]: This section, defining ‘Physician’s office’, was moved to subdivision 1(w).

§ 1(w)[existing]: This section is re-lettered to § 1(bb).

§ 1(w)[new]: This section defines ‘Physician’s office’ and uses the same text as the existing definition.

§1 (x) [existing]: This section is re-lettered to § 1(cc).

§ 1(x) [new]: A new definition for “primary practice location” is added, and states that the phrase means ‘any office location at which the physician spends at least five 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 or more hours per week performing examinations for QME 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, the phrase means location at which the physician spends at least five or more hours per week engaged in direct medical treatment or performing examinations for AME or QME evaluations. This definition is needed, in conjunction with proposed regulations 17(c) and 30(f), which state that a QME may designate up to four primary office locations and that the Administrative Director in compiling QME panels will weight primary office locations at 1.5 when compiling the list of QMEs for a given panel. These mechanisms are proposed to achieve a more fair and even distribution of the frequency with which various QMEs' names appear on panels issued by the Administrative Director.

§1(y) [existing]: This section is re-lettered to § 1(ff).

§1(y) [new]: This section is the prior section 1(t).

§ 1(z)[existing]: This section is deleted because the term as previously defined referred to treatment guidelines adopted in regulation by the Industrial Medical Council. Due to SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], the Industrial Medical Council was eliminated by the repeal of section 139 of the Labor Code. In addition by the enactment of SB 228 and additional changes by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004], the guidelines to be referred to in the resolution of disputes regarding reasonable and necessary medical treatment now are the ACOEM guidelines (defined now in section 1(b)) and the Medical Treatment Utilization Schedule (defined now in sections 1(v) and 9792.20 *et seq* of Title 8 of the California Code of Regulations.

§1(z) [new]: This section is the prior section 1(u).

§1(aa) [existing]: This section is re-lettered as section 1(gg).

§1(aa) [new]: This section adds a new definition for QME competency examination for acupuncturists". Due to the limitation in Labor Code § 3209.3( e) that precludes licensed acupuncturists from evaluating or providing opinions on disability under the California Labor Code, the Administrative Director determined a separate QME competency examination for acupuncturists should be developed and administered to satisfy the examination requirement under Labor Code section 139.2.

§1(bb) [new]: This definition is the prior section 1(w).

§ 1(cc) [new]: A new definition is added for 'Supplemental medical-legal evaluation' in order to distinguish this type of evaluation and report, as defined in section 9793(l) of Title 8 as a report produced without any physical examination of an injured employee, from the types that do, such as the initial comprehensive medical-legal report under section 9793(c) or the follow-up comprehensive medical-legal report under section 9793(f) of Title 8.

§1(dd) [new]: A new definition for ‘Specified Financial Interests’ is added. The phrase means having a shared financial interest that must be report or disclosed pursuant to sections 11, 17, 29, 50 or on the “-SFI Attachment Form” attached to the QME forms 100 (application for appointment), 103 (annual QME fee) or 104 (application for reappointment) as required by the QME regulations. As more fully explained in proposed regulation 29, specified financial interests must be disclosed because they may affect the fairness of QME panels if two QMEs sharing such financial interests are named to the same list of 3 QMEs on a panel letter. The Administrative Director will use this information to avoid assigning two QMEs with such a shared financial interest to the same QME panel.

§ 1 (ee) [new]: This section adds a new definition for ‘Supplemental medical-legal evaluation’.

§ 1 (ff) [new]: This section defines ‘Treating physician’ which previously was section 1 (y).

**Consideration of Alternatives:** No more effective alternative to these subdivisions of section 1, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 2. QME ELIGIBILITY**

### **Section 10. Appointment of QMEs:**

**Specific Purpose of Section:** The purpose of this section is to describe how to file an application to become certified as a Qualified Medical Evaluator and the conditions in which such an application may be denied by the Administrative Director.

**Necessity:** Subdivision 10(a) adds cross references to QME Form 100 (section 100 of Title 8 of the California Code of Regulations), replaces the word ‘council’ with ‘Administrative Director’ and makes other minor word edits to improve the syntax and grammar.

Subdivision 10(b) is added to clarify that a physician on probation from his or her licensing agency will not be appointed and a physician convicted of a felony or misdemeanor related to his or her practice will be denied appointment or reappointment as a QME. In addition, any applicant who has been convicted of any other type of felony or misdemeanor may be denied appointment or reappointment as a QME.

Subdivision 10(c) is added to provide that a physician who resigns or fails to renew his or her QME appointment while the physician is currently under investigation or has been served a statement of issues by the Administrative Director, may be denied appointment or reappointment if the alleged violations are found to have occurred.

Subdivision 10(d) is added to provide that no physician already convicted of a felony or misdemeanor related to his or her practice shall be appointed or reappointed as a QME and that the applicant may be denied reappointment.

Subdivision 10(e) is added to provide that if a physician applies to be appointed as a QME, after resigning as a QME or failing to renew his or her QME status, during a period in which the physician was under investigation or had already been served with a statement of issues or accusation for alleged violations of the QME regulations, the Administrative Director may reactivate the investigation or disciplinary proceeding and if any alleged violations are found to have occurred the physician's application may be denied.

A Note is added to advise the regulated public that the form referred to in the section, Form 100, may be downloaded from the Division's website at no charge or may be requested by phone.

**Necessity:** These changes are made to clarify for the regulated public how to apply for appointment as a Qualified Medical Evaluator and the conditions under which the Administrative Director will or may deny an appointment or reappointment as a QME.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 10.5 Limitations on Certification as Qualified Medical Evaluators:**

**Specific Purpose of Section:** The purpose of this section is to set out the conditions and procedures for determining whether applicants for QME appointment and reappointment have appropriate citizenship or immigration eligibility status.

This entire section, and the related QME form, Form 101, is being deleted. Because all physicians who apply for QME status must first be licensed by the appropriate licensing board in California in their scope of practice, and each of the state agency licensing boards must check the immigration eligibility status of each such physician, there is no need to duplicate that process upon the filing of an application for appointment or reappointment as a QME.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

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

**Specific Purpose of Section:** The purpose of this section is to set out with specificity the criteria for eligibility for appointment as a QME for various types of health care providers within the definition of 'physician' under Labor Code section 3209.3, consistent with the conditions specified in Labor Code section 139.2.

Except as discussed below, the proposed edits throughout this section are made to improve the cross-reference, syntax or grammar of the section, or are required by statute due to elimination of the Industrial Medical Council and transfer of the authority to examine and appoint QMEs to the Administrative Director of DWC under Labor Code section 139.2 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)].

Subdivision 11(b)(2) adds the requirement that the physician applying for appointment report accurately and fully on the application to the best of the applicant's knowledge the information required by section 29 of Title 8 of the California Code of Regulations regarding the applicant's specified financial interests that may affect the fairness of QME panels.

**Necessity:** This added requirement will enable the Administrative Director, by using the information supplied by applicants, to avoid placing two QMEs who have shared financial interests on the same QME panel of 3 QMEs, which the parties must use to select a single QME to perform a medical/legal evaluation. The Administrative Director is required by Labor Code sections 4062.1 and 4062.2, respectively, to issue panels (lists of 3 QME names) to the parties in a workers' compensation case who need a comprehensive medical/legal evaluation report from a QME to resolve disputed benefit issues in the case. The party holding the legal right to submit the panel request form also has the right to designate the specialty of the QMEs for the panel. (Lab. Code §§ 4062.1(b), 4062.2 (b).) The QMEs listed must be selected randomly and when compiling the list from which to select randomly, the Administrative Director must include only QMEs of the designated specialty who do not have a conflict of interest as defined by the Administrative Director in regulations (Lab. Code § 139.2(h)(3)(A).)

Subdivision 11(e)(1) adds to the existing wording the requirement to state any medical license restrictions or current terms of probation on the QME application, if any.

**Necessity:** This clarifies the requirement and expectation that applicant's provide such information as part of the QME application process to assure that only physicians with unrestricted medical licenses and with suitable qualifications are appointed as QMEs.

Subdivision 11(e)(2) adds wording to improve the clarity and syntax of the subdivision.

Subdivision 11(e)(3) adds wording that requires the applicant to declare under penalty of perjury that he or she has not performed a QME evaluation without QME certification. Business and Professions Code § 730 prohibits such activity.

**Necessity:** QMEs may be disciplined for any material statutory violation (Lab. Code section 139.2(k).) The Administrative Director does not wish to appoint as a QME any physician who has violated this provision of the Business and Professions Code.

Subdivisions 11(e)(4) adds wording to require applicants to declare under penalty of perjury that the office locations that the applicant designates as 'primary office locations' are locations at which the physician indeed spends five hours or more per week providing direct medical treatment. Proposed

section 30(f) will give such primary practice locations 1.5 times the weight in the process used to select among QMEs practicing in the designated specialty within a given geographic radius of the injured employee's residence, for placement on the QME panel list of 3 QMEs. The information must be accurate for the weighting system to be fair.

**Necessity:** The Administrative Director is required by Labor Code section 139.2 to select QMEs who meet specified qualifications for QME panels. QMEs are generally required to treat injured employees at least one-third of their total practice time. By more heavily weighting 'primary practice locations', the Administrative Director intends that physicians with treatment practices in a given geographic areas be given a fair chance for selection for a QME panel in that area.

Subdivision 11(e)(5) adds wording to require the applicant to declare under penalty of perjury that he or she has accurately and fully reported the specified financial interest information required by section 29 of Title 8 of the California Code of Regulations.

**Necessity:** The Administrative Director is required to issue panel lists of three QMEs who are randomly chosen within a designated specialty, from which the parties (the employer/insurer and injured employee) must select one QME to perform a medical/legal evaluation to resolve disputed issues. (Lab. Code §§ 139.2(h)(3); 4062.1 and 4062.2.) The Administrative Director needs accurate and full reporting by QMEs of the specified financial interests, in order to use the information to avoid placing two or more QMEs who have specified shared financial interests on the same panel list, and also to avoid having QMEs with conflicts of interest from being the assigned evaluator (Lab. Code §§ 139.2(h)(3)(A); 139.2(o)).

Subdivision 11(f) adds wording to require licensed acupuncturists who apply for QME certification to first pass a QME competency examination designed to be taken only by acupuncturists. The Administrative Director has developed a separate QME competency examination for applicant acupuncturists because in accordance with Labor Code section 3209.3, acupuncturists are within the definition of 'physician' types who are eligible for appointment as a QME but as provided in Labor Code section 139.3(e), acupuncturists cannot determine disability, and therefore do not need to be tested in the QME competency exam on disability subjects.

**Necessity:** This addition helps clarify for acupuncturist applicants which QME exam to apply for and also clarifies the scope of the QME exam and certification for acupuncturists.

Subdivision 11(f)(8) is added to clarify that an applicant for QME status,+ who is suspected of cheating at the exam, may be disqualified from the examination upon good cause shown by the QME test administrator. Upon a finding that the applicant did cheat, the applicant will be denied any further admittance to any QME examination for at least two years.

**Necessity:** The Administrative Director is required by Labor Code section 139.2(b) to administer a competency examination to all applicants for QME certification prior to their appointment. This language clarifies the consequences of cheating on the exam and the period during which no new application will be entertained from an applicant found to have cheated.

**Consideration of Alternatives:** No more effective alternatives to this section, nor equally effective and less burdensome alternatives, have been identified at this time by the Administrative Director.

**§ 11.5. Disability Evaluation Report Writing Course**

**Specific Purpose of Section:** The purpose of this section is to set out the requirements for the accreditation of education providers and the course curriculum expectations for the disability writing course that all QMEs must take and pass prior to appointment, as required by Labor Code section 139.2(b)(1).

A sentence is added to the beginning of the section to explain that only report writing courses offered by accredited ‘education providers’ as defined in subdivision 1 of Title 8 of the California Code of Regulations may be used to satisfy the QME report writing requirement.

**Necessity:** This sentence clarifies those course providers and courses that will be accepted for compliance with the disability evaluation report writing course requirement for QME applicants under Labor Code section 139.2(b)(1).

Subdivision 11.5(i) adds to the list of topics to be included in the disability evaluation report writing course required of all QMEs the following additional topics:

- 1) the Medical Treatment Utilization Schedule (MTUS) in section 9792.20 *et seq* of Title 8 of the California Code of Regulations, adopted by the Administrative Director, including relevant portions of the ACOEM Practice Guidelines;
- 2) the requirement to provide opinions on disputed medical treatment that are consistent with the evaluation criteria specified in section 35.5(d) of Title 8 of the California Code of Regulations;
- 3) the cross reference to sections 43 through 47 and 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);
- 4) the AMA guides;
- 5) the changes in Labor Code sections 4663 and 4664 by SB 899 (Stats. 2004, ch. 34) in the discussion of apportionment; and
- 6) an in-depth discussion of measurement of impairment under the AMA guides.

**Necessity:** Due to changes in Labor Code sections 4600, 4604.5, 4660 – 4664, and 5307.27 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228) (Alarcon)] and SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], these additional topics must be incorporated into the mandatory curriculum of the disability evaluation report writing courses.

Subdivision 11.5(j) has been amended to allow up to the full twelve (12) hours of required disability report instruction to be completed by distance learning whenever the Administrative Director has approved the submitted course prior to the first day the course is given.

**Necessity:** This change will allow QME applicants to fulfill this requirement without the additional cost of travel and, in some cases, lodging in addition to the fee charged for course registration. The Administrative Director will be able to control the course quality through the education provider course approval process that must be completed before the course can be used to fulfill the requirement.

**Consideration of Alternatives:** No more effective alternatives to this section, nor equally effective and less burdensome alternatives, have been identified at this time by the Administrative Director.

### **Section 12. Recognition of Specialty Boards:**

**Specific Purpose of Section:** This section identifies the practice specialty boards that the Administrative Director will recognize for the purposes of assigning physicians to QME panels for selection by injured employees and their employers. As amended, the wording will state that the Administrative Director recognizes only those specialty boards that are recognized by the respective California licensing boards for physicians, as defined in Labor Code section 3209.3, who may be appointed as QMEs.

**Necessity:** This amendment is necessary to clarify that only the California physician licensing boards have jurisdiction to recognize specialty areas of practice. This change will reduce confusion regarding certified specialty designation for both QMEs and the public who must choose among QMEs to do forensic evaluations.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 13. Physician's Specialty:**

**Specific Purpose of Section:** The purpose of this section is to explain the criteria to be used in listing a physician under the various QME specialty designations and the documentation of such certification or qualifications that a QME must provide. A phrase has been added which states that for a physician to be listed as a QME in a particular specialty, the physician's licensing board must recognize the designated specialty board.

**Necessity:** This change will make the criteria for being listed as a QME in a particular specialty transparent and consistent with the jurisdiction exercised by the respective California physician licensing boards. Although it will reduce the list of QME specialty choices, it also will reduce the distances an injured employee must travel to a QME selected on a panel.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

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

**Specific Purpose of Section:** This section outlines the required course content for doctors of chiropractic who seek appointment as a QME on the basis of completion of an approved course in disability evaluation report writing, as permitted by Labor Code section 139.2(b)(4)(B). Wording is added in section 14(b)(4) to cross reference course content requirements under section 11.5(i) of Title 8 of the California Code of Regulations. Additional edits throughout section 14 are made to improve syntax, grammar, punctuation and cross-references without otherwise changing the existing requirements, or to change references from the Industrial Medical Council to the Administrative Director due to the repeal of Labor Code section 139 and the transfer of authority to the Administrative Director by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)].

**Necessity:** This change will promote consistency in the education among QME candidates who must complete disability writing course requirements for appointment and reappointment as QMEs.

Subdivision 14(d) is added to limit the times and places near a certification course that vendors and organizations seeking doctors of chiropractic may recruit, promote or display products or services. This subdivision also adds the requirement, already applicable to other continuing education providers for QMEs, that faculty teaching such a certification course disclose on QME Form 119 'significant financial interests held by faculty' and also that the course manager forward those forms to the Administrative Director.

**Necessity:** This requirement will promote consistency in the regulation of different types of 'education providers' for QMEs.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 15. Appointment of Retired or Teaching Physicians:**

**Specific Purpose of Section:** This section sets out the criteria for physicians who have retired or who have recently held teaching positions to qualify for appointment as a QME as provided in Labor Code section 139.2(c). Additional edits throughout section 14 are made to improve syntax, grammar, punctuation and cross-references without otherwise changing the existing requirements, or to change references from the Industrial Medical Council to the Administrative Director due to the repeal of Labor Code section 139 and the transfer of authority to the Administrative Director by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)].

**Necessity:** The proposed amendments will improve grammar, syntax, punctuation and cross reference.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 16. Determination of Fees for QME Eligibility:**

Only changes without regulatory effect are made in this section, such as:

(1) Removing ‘Industrial Medical Council’, or ‘IMC’, or ‘council’ and replacing it with ‘Administrative Director’, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred all the authority to regulate Qualified Medical Evaluators that was previously held by the IMC to the Administrative Director of the Division of Workers’ Compensation. The word substitutions are consistent with these statutory amendments and the Administrative Director has no discretion in making this change. (1 Cal. Code Regs. § 100(a)(6));

(2) Minor corrections to grammar, syntax, punctuation and cross reference (1 Cal. Code Regs. § 100(a)(4)).

**Section 17. Fee Schedule for QME:**

**Specific Purpose of Section:** This section describes the manner in which QME fees are calculated based on the number of comprehensive medical-legal evaluations performed in the prior year and in relation to the number of office locations listed as a QME. Minor edits are made in section 17 to improve syntax, consistency, or cross reference, without changing the substance of the existing section. References to the Industrial Medical Council are changed to the Administrative Director due to the repeal of Labor Code section 139 and the transfer of authority to the Administrative Director by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)].

Subdivision 17(b) is amended to add a sentence that specifies that QME office locations must be in California, be identified by a street address and any other more specific location such as a suite 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.

**Necessity:** The new wording proposed in section 17(b) is needed to ensure that the office locations listed by QMEs, which are used on the panel letters sent to parties who select the QME, contain the appropriate evaluation and treatment equipment for the specialty of the QME.

**New subdivision 17(c):** This subdivision allows each QME to designate up to four locations as primary office locations as long as the QME can certify that he or she spends at least 5 or more hours at that location providing direct medical treatment services. It also provides the QME may designate as many other locations as desired but limits the number of primary practice locations to 4. As provided in proposed subdivision 30(f), when compiling panel lists of 3 QMEs in a designated specialty, the Administrative Director will give 1.5 times the weight to offices designated as primary practice locations.

**Necessity:** This definition and limitation on the number of designated primary practice locations is needed to assure fairness in the assignment of QMEs to QME panel lists, such that QMEs with more than 4 office locations, some of which may be used only for forensic evaluations, have no advantage over QMEs with 1 – 4 treatment practice locations in a given geographic area.

**New subdivision 17(e):** This subdivision is added to enable the Administrative Director to waive any or all annual QME fee for any QME or all QMEs, whenever it is in the best interests of employers and injured employees in the California workers' compensation system.

**Necessity:** This addition would enable the Administrative Director to waive fees when it is appropriate.

**New subdivision 17(f):** This subdivision is added to require all QMEs at the time of paying their annual fee to also complete and forward updated information about specified financial interests that may affect the fairness of QME panels.

**Necessity:** This information will assist the Administrative Director avoid assigning two or more QMEs with shared financial interests to the same 3 name QME panel issued to parties in a disputed case.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 18. QME Fee Due Dates:**

Only changes without regulatory effect are made in this section, such as:

(1) Removing 'Industrial Medical Council', or 'IMC', or 'council' and replacing it with 'Administrative Director', due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred all the authority to regulate Qualified Medical Evaluators that was previously held by the IMC to the Administrative Director of the Division of Workers' Compensation. The word substitutions are consistent with these statutory amendments and the Administrative Director has no discretion in making this change. (1 Cal. Code Regs. § 100(a)(6));

(2) Minor corrections to grammar, syntax, punctuation and cross reference (1 Cal. Code Regs. § 100(a)(4)).

### **Section 19. Certificate of QME Status:**

Only changes without regulatory effect are made in this section, such as:

(1) Removing 'Industrial Medical Council', or 'IMC', or 'council' and replacing it with 'Administrative Director', due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred all the authority to regulate Qualified Medical Evaluators that was previously held by the IMC to the Administrative Director of the Division of Workers' Compensation. The word substitutions are consistent with these statutory amendments and the Administrative Director has no discretion in making this change. (1 Cal. Code Regs. § 100(a)(6));

(2) Minor corrections to grammar, syntax, punctuation and cross reference (1 Cal. Code Regs. § 100(a)(4)).

## **ARTICLE 2.5. TIME PERIODS FOR PROCESSING APPLICATIONS FOR QME STATUS**

### **Section 20. Time Periods:**

**Specific Purpose of Section:** This section explains the time taken by this agency to process applications for QME status. Subdivision 20(d) is being deleted because it states the rate of application processing for the two years immediately preceding October 1, 1993, which is no longer relevant.

In addition, other changes without regulatory effect are made in this section, such as:

(1) Removing 'Industrial Medical Council', or 'IMC', or 'council' and replacing it with 'Administrative Director', due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred all the authority to regulate Qualified Medical Evaluators that was previously held by the IMC to the Administrative Director of the Division of Workers' Compensation. The word substitutions are consistent with these statutory amendments and the Administrative Director has no discretion in making this change. (1 Cal. Code Regs. § 100(a)(6));

(2) Minor corrections to grammar, syntax, punctuation and cross reference (1 Cal. Code Regs. § 100(a)(4)).

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

### **Section 29: Specified Financial Interests that May Affect the Fairness of QME Panels**

**Specific Purpose of Section:** The purpose of this section is to obtain from QMEs only specified financial information necessary to assure that two or more QMEs with shared financial interests are not assigned to the same QME panel (list of 3 QMEs in a specialty) issued to parties in a disputed claim. The section requires physicians to disclose the specified financial information when applying for appointment or reappointment and also when paying the annual QME fee.

Subdivision 29(a) requires every physician who applies for appointment or reappointment as a QME to disclose specified financial interests.

Subdivision 29(b) defines 'specified financial interests' as including: 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 services for use in the California workers' compensation system.

Subdivision 29(c) explains that the ‘SFI Form 124’ as used in the QME regulations means the QME Form 124 that is completed and filed by a physician with any of the following forms: QME Form 100, 103 or 104.

Subdivision 29(d) requires that specified financial interests be disclosed, respectively, when a physician is 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.

Subdivision 29(e) requires the completed SFI Form 124 to 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.

Subdivision 29(f) provides that failure to complete and file a ‘SFI Form 124’ when required shall be grounds for disciplinary action.

Subdivision 29(g) states that the Administrative Director shall use the information provided to avoid assigning QMEs who share specified financial interests to the a same QME panel. When two or more QMEs assigned to a panel share specified financial interests, any party may request a replacement QME. The Medical Director shall randomly select one QME from among QMEs with shared specified financial interests to be replaced.

**Necessity:** This subdivision will help the Administrative Director ensure the parties who receive QME panels have 3 QMEs who are independent and do not have shared financial interests.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 30: QME Panel Requests**

**Specific Purpose of Section:** The purpose of this section is to describe how parties apply to the Medical Unit of the Division of Workers’ Compensation to request the issuance of a panel (list of 3 names) of Qualified Medical Evaluators (QMEs), in order to select one QME to do a comprehensive medical legal evaluation and report. Amendments are proposed to this section to implement changes made in the QME panel process by SB 899.

**Necessity:** SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian)] amended the Labor Code sections pertaining to obtaining medical-legal evaluations and reports by adding Labor Code sections 4062.1, to govern procedures in cases in which the employee is not represented by an attorney, and 4062.2, to govern procedures when both parties are represented by attorneys. Labor Code sections 4060, 4061 and 4062 address the conditions under which an injured employee or the employer (or the employer’s insurer or third party administrator) may obtain a medical legal evaluation to address disputes over various issues in a worker’s compensation claim. Labor Code § 4060 governs

disputes over compensability, i.e. whether the claimed injury or illness arose out of and in the course of employment; Labor Code § 4061 governs disputes over permanent impairment and disability; Labor Code § 4062 governs disputes over medical treatment and other medical determinations made by the treating physician.

Prior to SB 899, the procedures for obtaining evaluations by Agreed Medical Evaluators (AMEs) or Qualified Medical Evaluators (QMEs) differed depending on whether the injured worker was unrepresented or represented by an attorney and the procedures were included in each of those sections. Also prior to SB 899, only in cases of unrepresented employees, the parties were required to request a panel of three QMEs, from which one was selected to do the evaluation and report. Once the QME panel was issued, the injured employee selected one QME from the panel to perform the evaluation. In represented cases, however each party was allowed to select a separate QME from the list of all certified QMEs to do an evaluation and report if they had not already agreed to an AME to do so.

Per SB 899, effective April 14, 2004, Labor Code section 4062.1 sets out the procedures, for the parties in a case of an *unrepresented* employee, to obtain a QME to resolve any dispute under Labor Code sections 4060 through 4062. Labor Code section 4062.2 sets out procedures for the parties in a *represented* case to either agree on an AME or, if that is not done within prescribed time limits, to obtain a QME panel. The represented parties then use a prescribed procedure to strike names from the list of 3 QMEs, leaving a single QME to perform the evaluation and report. Section 4062.2 specifically requires this new procedure, resulting in a single evaluator report for both parties, to be used in all represented cases with dates of injury *on or after January 1, 2005*. The requirement to obtain a QME panel in a represented case by this method is triggered after at least one party who disputes an opinion of the treating physician has sent the other party a written request naming one or more physicians to serve as an Agreed Medical Evaluator and at least 10 days has elapsed but the parties failed to agree on an Agreed Medical Evaluator.

**Subdivision 30(a)** is amended to direct the parties in an unrepresented case to apply for a QME panel by submitting QME form 105 to the Medical Unit of the Division of Workers' Compensation. As required by Labor Code section 4062.1, the claims administrator is required to provide QME Form 105 (Request for QME Panel under Labor Code Section 4062.1) and its attachment (How to Request a Qualified Medical Evaluator if you do not have an Attorney), an informational page, to the unrepresented injured employee.

**Existing subdivision (b)** is re-lettered as new subdivision (c). **Newly proposed subdivision 30(b)** directs the parties in a represented case with a date of injury on or after January 1, 2005, and for all other cases where represented parties agree to obtain a QME panel pursuant to the process in Labor Code section 4062.2, to apply for a QME panel by submitting QME Form 106 (Request for QME Panel under Labor Code Section 4062.2) with: 1) a statement of the disputed issue or issues; 2) a copy of the first written proposal for an AME; 3) a specialty selected for the QME panel, as well as the specialty of the treating physician and the specialty preferred by the opposing party, if known. Subdivision 30(b) also provides that when parties represented by an attorney in a case with a date of injury prior to January 1, 2005, agree to use the QME panel process under Labor Code section 4062.2, either party may request a QME panel upon submission of the documents required

by section 30(b) and evidence of the parties' agreement.

**Existing subdivision 30(c)** is deleted because the instruction sheet referred to in that section has been revised as an attachment to QME forms 105 and 106, respectively, and is already referred to in proposed subdivisions 30(a) and 30(b). **New Subdivision 30(c)**, the former subdivision 30(b), has been amended to add a sentence allowing the Medical Director to delay issuing a new QME panel, if necessary, until the parties answer a request from the Medical Director for information about whether a QME panel previously issued in the case was used.

**Necessity:** A party entitled to a QME panel is required to select one from the three QMEs listed. The party is entitled to only one QME panel, unless there is a basis for replacing one or more QMEs listed on a panel due to the reasons specified in section 31.5 of Title 8 of the California Code of Regulations. Once the Medical Director has issued a QME panel in the case, the Medical Unit does not know whether the panel issued was used or which QME was selected. In order to assure that only one panel is issued to parties in a given case, when the Medical Unit receives a request for a panel and the records show that a panel was already issued for the same disputed injury claim, the Medical Director may need to contact the parties to find out whether the first panel issued was used or whether there are grounds for issuing a new panel, as requested.

**Existing subdivisions 30 (d)(1) and 30(d)(2)** are deleted because they applied to unrepresented cases with dates of injury between January 1, 1991 and December 31, 1993, or dates of injury on or after January 1, 1994, respectively. Due to the amendments by SB 899, in all unrepresented cases, regardless of the date of injury, the procedures in Labor Code section 4062.1 apply.

**Necessity:** Section 47 of SB 899, which became effective April 19, 2004, provides: "The amendment, addition, or repeal of, any provision of law made by this act shall apply prospectively from the date of enactment of this act, regardless of the date of injury, unless otherwise specified, but shall not constitute good cause to reopen or rescind, alter, or amend any existing order, decision, or award of the Workers' Compensation Appeals Board." Unlike the wording in Labor Code section 4062.2 for represented cases, which specifies dates of injury on or after January 1, 2005, the wording enacted by SB 899 in Labor Code section 4062.1 that governs QME panel procedures in cases in which the injured employee is not represented by an attorney, has no language limiting or specifying its application based on dates of injury.

**New subdivision 30(d)(1)** is added to provide that after a claim form is filed, an employer, or the employer's claims administrator, may request a panel of Qualified Medical Evaluators as provided in Labor Code section 4060, to determine whether to accept or reject part or all of a claim within the period for rejecting liability in Labor Code section 5402(b).

**Necessity:** Labor Code section 5402(b) provides, if liability for a claimed industrial injury is not rejected within 90 days after the date a claim form is filed with the employer, the injury shall be presumed compensable, and the presumption is rebuttable only by evidence discovered subsequent to the 90-day period. SB 899 added Labor Code sections 5402(c) and 5402(d). Section 5402(c) provides that within "...one working day after an employee files a claim form under 5401, the

employer shall authorize the provision of all treatment consistent with ... (the Medical Treatment Utilization Schedule (MTUS), adopted by the Administrative Director pursuant to Labor Code section 5307.27... (or ACOEM practice guidelines), for the alleged injury and shall continue to provide treatment until the date that liability for the claim is accepted or rejected. Until the date the claim is accepted or rejected, liability for medical treatment shall be limited to...\$ 10,000.” Labor Code section 5402(d) provides, “Treatment provided under subdivision (c) shall not give rise to a presumption of liability on the part of the employer.” Labor Code section 4060(c) and 4060(d) set out procedures for obtaining an evaluation to determine whether the claim arose out of and occurred in the course of employment. They differ based on whether the injured employee is represented or not represented, respectively. In the case of an unrepresented employee, “...the employer shall provide the employee with notice either that the employer requests a comprehensive medical evaluation to determine compensability or that the employer has not accepted liability and the employee may request a comprehensive medical evaluation to determine compensability.” (Lab. Code § 4060(d).) This proposed subdivision makes clear that the claims administrator or employer may request and obtain an evaluation during the 90 day period for investigating the claim, in order to decide whether to accept any part of or the entire claim or to reject part or all of the claim.

**New subdivision 30(d)(2)** is added to provide that once a claim administrator, or if none, the employer has accepted as compensable 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.

**Necessity:** Labor Code section 4060(a) by its express terms provides “This section shall not apply where injury to any part or parts of the body is accepted as compensable by the employer.” The language in Labor Code section 4060(a) was the same before and after SB 899. Therefore, once compensability for any part of a *claim* is accepted, the disputes between, and remedies for, the parties arise under Labor Code sections 4061 or 4062.

Labor Code section 4061 addresses disputed issues over the existence or extent of permanent impairment, permanent disability and the payment of permanent disability indemnity. If either party disagrees with the opinion of the treating physician regarding whether the injury caused permanent disability or the extent of any permanent disability, the dispute is resolved by obtaining a comprehensive medical/legal evaluation as allowed under Labor Code section 4061 and either sections 4062.1, for unrepresented employees, or 4062.2 for represented employees.

Labor Code section 4062(a) provides in pertinent part, “If either the employee or employer objects to a medical determination made by the treating physician concerning any *medical issues not covered by Section 4060 or 4061 and not subject to Section 4610*, the objecting party shall notify the other party within 20 days of receipt of the report if the employee is represented by an attorney or within 30 days of receipt of the report if the employee is not represented...” and obtain a comprehensive medical evaluation pursuant to Labor Code section 4062.1, if unrepresented, or 4062.2, if represented, and in either case “...no other medical evaluation shall be obtained.” Claims which are accepted in part while the employer rejects liability for other body parts are *not* covered by Labor Code section 4060 due to the express wording in subdivision 4060(a) quoted above. Medical determinations by a treating physician such as whether or not the injured employee’s condition has become ‘permanent and stationary’, or the need for medical treatment in the future, or the existence of new and further disability, or regarding the employee’s work restrictions or preclusion to engage in his or her usual occupation, are all medical determinations that are *not* covered by Labor Code section 4061 and also *not* subject to Labor Code section 4610.

Labor Code section 4610 governs the procedures an employer must use in deciding whether to approve, deny, modify or delay medical treatment recommended by the primary treating physician.

Labor Code section 4062(a) also provides that, “If the employee objects to a decision made pursuant to Labor Code section 4610 to modify, delay or deny a treatment recommendation, the employee shall notify the employer of the objection in writing within 20 days of receipt of that decision.” Depending on whether the employee is represented, the objecting employee then obtains a comprehensive medical evaluation pursuant to Labor Code section 4062.1 (unrepresented) or 4062.2 (represented) to resolve the dispute.

In cases in which the employer objects to treating physician’s recommendation for spinal surgery, the parties must use the process in Labor Code section 4062(b) and (c).

**New Subdivision 30(d)(3)** is added to provide that whenever an injury or illness claim 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 QMEs pursuant to Labor Code sections 4060(d) and 4062.1(b), if unrepresented, or as provided in Labor Code sections 4060(c) and 4062.2, if represented.

**Necessity:** Once the claims administrator or employer has denied all liability for a claimed industrial injury or illness, only the injured employee needs a remedy in order to secure medical treatment and indemnity benefits. The employer’s denial may or may not be based on medical considerations. For example, the employer may deny that the claimant was an employee or the employer may have independent evidence that the events the employee claims caused the injury did not occur. The employer may have multiple grounds for denying the entire claim. The legislature has allowed the employer up to ninety days, under Labor Code section 5402(b), to investigate the claim and either accept or reject liability. While Labor Code section 5402(c) requires the employer to “...authorize (pay for)... treatment consistent with the MTUS or ACOEM *until the date liability for the claim is accepted or rejected...*” the employer is entitled to use the utilization review process under Labor Code section 4610 to obtain an opinion from a reviewing physician of the employer’s choice regarding whether the medical treatment recommended by the treating physician is consistent with the MTUS or ACOEM. Labor Code section 4610, and its implementing regulations in sections 9792.6 *et seq* of Title 8 of the California Code of Regulations, describes the procedures the employer must use when, based on the opinion of the reviewing utilization review physician, the employer decides to modify, delay or deny the treatment. In other words, from the utilization review process even while the employer is still investigating the claim to determine whether to accept or reject liability, the employer may deny medical treatment recommended by the treating physician that is not consistent with MTUS or the ACOEM practice guidelines, even prior to deciding whether to accept or reject the entire claim.

If the employer believes a comprehensive medical/legal evaluation is needed during the 90 day period under Labor Code section 5402(b) to determine compensability, as discussed above, the employer may initiate the AME/QME process to obtain evaluator under Labor Code section 4060 and proposed subdivision 30(d)(1) of Title 8 of the California Code of Regulations.

However, once the employer denies the entire claim, only the employee, whether represented or not, needs to initiate the AME/QME process to determine compensability.

For example, if the employer is first alerted by the reviewing physician in the utilization review process that even though the recommended medical treatment *is medically necessary* and consistent with the MTUS or ACOEM, the reviewing UR physician questions whether the need for the treatment arises from the claimed industrial injury, the employer may use the UR physician's report to have the claims administrator deny the requested treatment in reliance on the attached UR physician report and object to the treatment under Labor Code section 4062. The objection triggers the AME/QME process for obtaining an admissible report on the now disputed issue of compensability.

The Workers' Compensation Appeals Board held and explained in the en banc decision in *Simmons v. State of California, Dept. of Mental Health* (2005) 70 Cal. Comp. Cases 866, 2005 Cal. Wrk. Comp. LEXIS 149:

“Where a utilization review physician finds that a treatment is medically necessary but questions whether the need for that treatment is causally related to the industrial injury, the defendant must either: (a) authorize the treatment; or (2) timely deny authorization based on causation within the deadlines set forth in [Labor Code section] 4610(g)(1); timely communicate the denial based on causation to both the treating physician and the applicant within the deadlines set forth in 4610(g)(3)(A); and timely communicate the AME/QME process within twenty days of receipt of the utilization review physician's report, if the employee is represented by an attorney, or within 30 days, if the employee is unrepresented, in accordance with Labor Code section 4062(a);...”

The Board also explained in *Simmons* that the UR physician does not have the “authority” to determine causation and that the UR physician's report is not admissible on the issue of causation, but the report may be used to deny the recommended treatment and to object and initiate the AME/QME process under Labor Code section 4062(a).

**New Subdivision 30(d)(4)** is added to provide that 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 subdivision 30(d)(4) includes 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 after the 90 day investigation period has expired.

**Necessity:** The proposed subdivision allows a party to initiate the AME/QME process when, based on the discovery of new evidence that was not available during the 90 day investigation period, there is a need for a compensability evaluation.

For example, if the employer is first alerted by the reviewing physician in the utilization review process that even though the recommended medical treatment *is medically necessary* and consistent with the MTUS or ACOEM, the reviewing UR physician questions whether the need for the treatment arises from the claimed industrial injury, the employer may use the UR physician's report to have the claims administrator deny the requested treatment *in reliance on the attached UR physician report* and object to the treatment under Labor Code section 4062, thereby initiating the AME/QME process to obtain an admissible report on the now disputed issue of compensability.

The Workers' Compensation Appeals Board held and explained in the en banc decision in *Simmons v. State of California, Dept. of Mental Health* (2005) 70 Cal. Comp. Cases 866, 2005 Cal. Wrk. Comp. LEXIS 149:

“Where a utilization review physician finds that a treatment is medically necessary but questions whether the need for that treatment is causally related to the industrial injury, the defendant must either: (a) authorize the treatment; or (2) timely deny authorization based on causation within the deadlines set forth in [Labor Code section] 4610(g)(1); timely communicate the denial based on causation to both the treating physician and the applicant within the deadlines set forth in 4610(g)(3)(A); and timely communicate the AME/QME process within twenty days of receipt of the utilization review physician's report, if the employee is represented by an attorney, or within 30 days, if the employee is unrepresented, in accordance with Labor Code section 4062(a);...”

The Board also explained in *Simmons* that the UR physician does not have the “authority” to determine causation and that the UR physician's report is not admissible on the issue of causation, but the report may be used to deny the recommended treatment and to object and initiate the AME/QME process under Labor Code section 4062(a).

Like the employer in *Simmons*, where an employer has already accepted a claim or, as a matter of law, has become liable for a claimed injury under Labor Code section 5402(b), but later receives evidence giving rise to a compensability dispute, proposed subdivision 30(d)(4) will enable the employer, or employer's claims administrator to obtain a QME panel to resolve the dispute.

Similarly, an employee may seek to initiate the AME/QME process if, for example, the employer has already accepted a claim and has been providing treatment recommended by the employer-selected treating physician, but at the point in time that the treating physician issues the permanent and stationary report, the treating physician concludes, for the first time, that the entire claimed injury and need for treatment was due to a different, prior industrial injury.

The proposed subdivision 30(d)(4) requires the parties to first return to the evaluator, AME or QME, who already reported in the case, to the extent feasible, consistent with Labor Code section 4062.3(j), which was enacted by SB 899. Labor Code section 4062.3(i) provides, “If, after a medical evaluation is prepared, the employer of the employee subsequently objects to any new medical issue, the parties, to the extent possible, shall utilize the same medical evaluator who prepared the previous evaluation to resolve the medical dispute.” The proposed subdivision allows for either a “follow up evaluation”, which as defined in subdivisions 1(t) and 9793(f) of Title 8 of the California Code of Regulations, includes a physical examination, or a “supplemental evaluation”, which as defined in subdivisions 1(ee) and 9793(l) of Title 8 of the California Code of Regulations, does not involve a physical examination. Finally, the proposed subdivision also directs the parties on the procedures to follow in the event that the evaluator who previously

reported in the case is no longer available or is not medically qualified to address the disputed issue, or in the event that no prior evaluation has been conducted in the case.

**Subdivision 30(e)** contains minor edits to allow parties in both unrepresented and represented cases to agree, when the injured employee has moved out of state, on the geographic area for the QME panel selection.

**New Subdivision 30(f)** is added to provide that the Medical Director shall give 1.5 times the weight to those QME locations identified as “primary practice locations” as defined in section 1(x) of Title 8 of the California Code of Regulations, when the Medical Director compiles a panel list of three QMEs.

**Necessity:** This provision is designed to ensure that QMEs, who as treating physicians within a community have a limited number of office locations, are not disadvantaged in being named to a QME panel as compared to QMEs with multiple office locations throughout a region or the state.

**New Subdivision 30(g)** is added to provide that to compile a panel list of three independent QMEs randomly selected in the designated specialty, 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) and 29 of Title 8 of the California Code of Regulations.

**Necessity:** This provision is needed to ensure that parties in a given case have a choice among three independent QMEs, by providing that QMEs with shared specified financial interests are not named to the same QME panel from which a party must select.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 30.5. Specialist Designation:**

**Specific Purpose of Section:** This section provides the Medical Director shall use the type of specialist indicated on a QME panel request form. The wording has been modified to refer to both QME Form 105 and 106, since separate panel request forms exist for parties in unrepresented and represented cases.

**Necessity:** The wording change was needed to implement the addition of Labor Code sections 4062.1 and 4062.2, as explained above.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 31. QME Panel Selection**

**Specific Purpose of Section:** This section describes conditions governing the random selection of QMEs for placement on a panel of three QMEs to be provided to a party requesting a panel.

Minor edits have been made in subdivisions 31(a) and 31(b) to implement changes in SB 899, which now requires parties in both represented and unrepresented cases to request and use QME panels.

Minor edits have been made in subdivisions 31(c) and 31(d) to provide accurate cross references to other regulations.

New subdivision 31(e) is added to address the circumstance that the specialty requested for a QME panel is one in which there are less than 5 active QMEs from which to make a random selection. In such a case, the Medical Director will contact the party who designated the specialty to select a different medical specialty for the panel.

**Necessity:** The new wording in subdivision 31(e) is necessary to support the random selection process for assigning individual QMEs to QME panel lists.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 31.1 QME Panel Selection Disputes in Represented Cases**

**Specific Purpose of Section:** This section explains how the Medical Director will select among requests for a QME panel filed by different *represented* parties that are received by the Medical Unit on the same day, and what additional information the party should supply when requesting a panel in a medical specialty different from that of the treating physician.

**Necessity:** Labor Code section 4062.2(b) provides, in pertinent part, that when the parties have failed to agree on an AME within the time specified, "...either party may request..." a panel of QMEs and "The party submitting the request shall designate the specialty of..." the QME panel. In some cases, the Medical Director has received separate requests from each party on the same day, designating a different specialty for the QME panel. This proposed section provides if one party requests the same specialty as the treating physician, that specialty will be used unless other documentation in support of a request for a different specialty is more persuasive to the Medical Director of the Division of Workers' Compensation.

Proposed subdivision (c) provides that in the event the Medical Unit 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.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 31.5. QME Replacement Requests**

**Specific Purpose of Section:** This section describes the conditions under which a QME name on the QME panel may be replaced with a new QME selected at random or the entire QME panel may be replaced.

**Necessity: Subdivision 31.5(a)** is amended to add wording that allows the Medical Director to replace an entire panel of QMEs rather than simply replacing one QME named on an initial panel. This is necessary because SB 899 amended Labor Code section 4062.2 to require parties in a represented case to use a procedure of each striking one name from the three panel list, leaving the remaining QME to be designated to do the evaluation. Once the parties have stricken the names of the other two QMEs, if the remaining QME is unavailable or unable to perform the evaluation, it is more fair and consistent with the legislative intent of the striking process to allow the parties to have a new list of 3 QMEs from which to obtain an evaluator.

**Subdivision 31.5(a)(1)** deletes the word ‘employee’ and inserts instead ‘party holding the legal right to request the panel’, because the amendments by SB 899 now allow the employer to designate the specialty of a QME panel when the employee fails to do so, under the circumstances set out in Labor Code 4062.1(b) and 4062.1(c).

**Subdivision 31.5(a)(2)** strikes out the word ‘employee’s’, because when the employee fails to select a QME and schedule an appointment, the employer may do so. Also, the words ‘for an appointment’ were added for clarity.

**Subdivision 31.5(a)(5)** added the phrase ‘Unavailability of the QME’, which is the topic of section 33 of Title 8 of the California Code of Regulations.

**Subdivision 31.5(a)(6)** (former 31.5(b)(1)) is re-worded for clarity and adds the phrase ‘secondary physician’. The role of the QME is to resolve disputed medical issues arising from a dispute over the treating physician’s opinion. A secondary physician, as defined by section 9785(a)(2) of Title 8 of the California Code of Regulations, is another physician who treats the injured employee without being primarily responsible for the care and coordination of care of the employee. Accordingly, the secondary physician’s opinions and findings are incorporated into the opinion of the primary treating physician that gave rise to the disputed medical issue that created the need for a QME, and therefore should be excluded from the role of QME in that case.

**Subdivision 31.5(a)(7)** (former 31.5(b)(2)) is amended to strike ‘unrepresented’, in order that this reason may also apply in represented cases, and is amended to add ‘in writing’, to require a written agreement of the parties for obtaining a panel closer to the employee’s workplace than his or her place of residence.

**Subdivision 31.5(a)(8)**(former 31.5(b)(3)) adds ‘or a replacement panel’ to address cases in which the wrong specialty was requested.

**Subdivision 31.5(a)(9)**(former 31.5(b)(4)) deletes ‘injured workers’ and adds instead ‘party holding the legal right to designate the specialty’. This is needed to apply to both represented and unrepresented cases since both types of cases may request QME panels.

**Subdivision 31.5(a)(10)**(former 31.5(b)(5)) adds the topic of regulation 34 and the full citation to Title 8 of the California Code of Regulations.

**Subdivision 31.5(a)(11)** is new language that would permit a party to obtain a replacement QME or QME panel if the selected QME failed to complete the evaluation and report on time and both parties do not waive the right to a new QME, as provided under Labor Code section 4062.5.

**Subdivision 31.5(a)(12)** is new language added to enable a party to obtain a replacement QME if a QME on the panel has a disqualifying conflict of interest as defined in section 41.5 of the regulations.

**Subdivision 31.5(a)(13)** is new language added to enable a party to obtain a replacement QME after the Administrative Director has ordered that a new evaluation by a different QME be obtained due to the AD's grant of a petition for a rating reconsideration pursuant to section 10164 of Title 8 of the California Code of Regulations.

**Subdivision 31.5(a)(14)** is new language added to enable a party to obtain a replacement QME when the existing QME, who is otherwise qualified and competent to address all disputed medical issues, fails or refuses to provide a complete medical evaluation as required in Labor Code section 4062.3(i). Such a failure or refusal by a QME may lead to disciplinary action, but this language will enable the parties to obtain a replacement QME or panel to resolve disputed issues in the case without waiting until a finding supporting discipline of the first QME is made.

**Existing subdivision 31.5(b)** is deleted since all reasons for replacement requests apply regardless of the party requesting the panel. **A new proposed subdivision 31.5(b)** has new language added to address the circumstances under which the parties may obtain an additional QME panel in a different specialty from the first QME, for good cause. Good cause is defined as: 1) an order by the Workers' Compensation Appeals Board specifying the specialty for an additional QME panel; 2) when the existing AME or QME advises the parties and the Medical Director that some disputed medical issues should be addressed by a physician of another specialty and either the injured employee is unrepresented or the represented parties have been unable to agree on an AME for that purpose; 3) in a represented case, where the parties agree there is a need for an additional evaluation and agree on the specialty but have been unable to select an AME; or 4) in an unrepresented case, when the parties have met with an Information and Assistance Officer, explained the need for another evaluation in a different specialty, the parties agree, in the presence of that Officer, on the specialty to be requested for the additional QME panel.

Based on staff experience in receiving requests from QMEs or the parties for an additional QME panel of a different specialty, the Administrative Director has proposed wording in this section to cover a limited set of circumstances in which the Administrative Director will issue an additional QME panel. Parties seeking an additional QME panel for other reasons will be directed to the Appeals Board to obtain an order from a Workers' Compensation Administrative Law Judge.

**Subdivision 31.5(c)** is new language added to provide, 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 not the basis for a replacement QME or QME panel.

**Necessity:** This new wording is needed to assure expeditious and inexpensive resolution of disputes requiring a QME report. Pursuant to section 4 of Article XIV of the California Constitution, the Legislature is “vested with plenary power...to create and enforce a complete system of workers’ compensation ...” and “to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively and without incumbrance of any character.” The Legislature exercised that plenary power by creating the AME/QME process and, more specifically, with the changes enacted under SB 899 which limit represented parties to one AME or panel QME report. When a represented party waits until after the QME examination, and in some cases until a hearing before a Workers’ Compensation Administrative Law Judge, to raise an objection to the QME based on events that occurred before the examination, in support of the party’s motion to strike a QME report and obtain an order for a new QME evaluation, the directives in section 4 of Article XIV of the Constitution are thwarted.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 32. Consultations**

**Specific Purpose of Section:** This section specifies the conditions under which a consulting report may be obtained by a QME from another physician. The existing wording of subdivisions 32(a) through 32(c) is deleted.

**Necessity:** SB 899, which became effective April 19, 2004, provides that the procedures set out in Labor Code sections 139.2 and 4060 through 4062.1, as amended and adopted in that bill, apply to all cases regardless of date of injury unless otherwise specified. The only specification applies to represented cases with dates of injury on or after January 1, 2005, which must use the procedures set out in Labor Code section 4062.2. Accordingly, all cases of all dates of injury involving unrepresented employees are subject to the provisions of Labor Code sections 139.2 and 4060 through 4062.1. The existing wording of sections 32(a) through (c) no longer applies.

**Subdivision 32(d)** is re-lettered to become subdivision 32(a).

**New subdivision 32(b)** is added to provide that except for a QME acupuncturist, no other QME may obtain a consultation from another physician to have that physician evaluate impairment using the AMA guides or to determine permanent disability and apportionment consistent with the changes enacted by SB 899.

**Necessity:** Except for QMEs who are acupuncturists, a QME is expected to be able to evaluate impairment and determine permanent disability and apportionment within his or her functions as the QME.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 32.5 Rebuttal QME Examinations**

**Specific Purpose of this Section:** The existing section specified when rebuttal QME examinations could be obtained by unrepresented employees with dates of injury between January 1, 1991, and December 31, 1993, and upon request by the Appeals Board for injuries occurring on or after January 1, 1994.

This section is being repealed entirely.

**Necessity:** The provisions of SB 899 which repealed and re-enacted Labor Code sections 4060 through 4062.2 have superseded the basis for this regulation.

### **Section 32.6 Additional QME Examinations Ordered by the Appeals Board**

**Specific Purpose of this Section:** This section implements the provision of Labor Code section 4064(a) which allows for a reasonable and necessary comprehensive medical-legal report to resolve disputed issues under Labor Code sections 4060, 4061 or 4062, at the employer's expense.

Proposed section 32.6 would only allow an additional QME panel to be issued if ordered by a Workers' Compensation Administrative Law Judge or the Appeals Board upon finding that an additional QME evaluation is reasonable and necessary to resolve a disputed issue arising under Labor Code sections 4060, 4061 or 4062. The order shall specify the specialty of the QME panel or shall designate the party to select the specialty of the QME panel.

**Necessity:** Labor Code section 40604(a) provides, in pertinent part, "The employer shall be liable for the cost of each reasonable and necessary comprehensive medical-legal evaluation obtained by the employee pursuant to Sections 4060, 4061 or 4062."

When the Workers' Compensation Administrative Law Judge or the Appeals Board finds that an additional evaluation is reasonable and necessary to resolve a disputed issue and the existing medical record provides insufficient evidence to decide the issue, this regulation will enable the Medical Director to issue a QME panel upon the Judge's or the Appeals Board's order.

### **Section 32.7 Availability of QME for Panel Assignment**

**Specific Purpose of Section:** The purpose of this new section is to clarify for Qualified Medical Evaluators the minimum amount of appointment calendar time that must be made available on average each month for panel QME appointments.

**Subdivision 32.7(a)** requires each QME to 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) of the section.

**Subdivision 32.7(b)** provides that 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).

**Subdivision 32.7(c)** provides that 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 (d) of the section.

**Subdivision 32.7(d)** provides a chart of the minimum number of panel examinations to be scheduled per month.

**Subdivision 32.7(e)** provides that whenever the injured employee fails to attend an examination without notice, the scheduled appointment shall be counted as though the examination had occurred.

**Subdivision 32.7(f)** provides that 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 and shall also indicate which of the scheduled examinations was performed and the date the examination was done.

**Necessity:** Section 32.7 is proposed pursuant to the authority in Labor Code section 139.2(j)(1)(C) for the Administrative Director to develop timeframes for the availability of QMEs for panel QME examinations.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 33. Unavailability of QME**

**Specific Purpose of Section:** This section describes the circumstances in which a QME may request and obtain a change of status from 'active' to 'unavailable' for a period up to 90 days. It also describes the rights and procedures of a party to obtain a replacement QME when he or she finds that the selected QME is not available to schedule an appointment within at least 60 days of the request for an appointment.

**Necessity: Subdivision 33(a)** has been amended to specify that unavailable status may be granted for up to 90 days during a one year fee payment period. Additional edits to improve syntax, grammar and to add the name of the form used to apply for such status are also made. If the form is not submitted 30 days in advance of the period of unavailability, the Medical Director may approve the request upon a showing of good cause.

**Subdivision 33(b)** is added as new wording to require the QME to submit, at the time of applying for unavailable status, a list of evaluation examinations already scheduled during the time requested for unavailable status and to indicate whether each such examination is being rescheduled or the QME plans to complete the exam and report while on unavailable status.

**Subdivision 33(c)** has been added to provide that a QME granted unavailable status may, during that time, complete reports for examinations already performed and complete supplemental reports which do not require an examination, but shall not perform new evaluation examinations as a QME or AME until the physician returns to active QME status.

**Subdivision 33(d)** makes minor edits for clarity that the party with the legal right to select the QME may decide to waive his or her right to a replacement QME and wait for an appointment with the selected QME. Wording has been amended to reflect the statutory changes of SB 899 that now require parties in both unrepresented and represented cases to use panel QMEs and schedule appointments.

**Subdivision 33(e)** is amended to provide that whenever a party with the legal right to schedule an examination with a QME is unable to obtain an appointment within 60 days of the request, the party may report the unavailability of the QME to the Medical Director and obtain a replacement QME name. Additional minor edits are made to improve syntax, consistency, cross reference and to replace 'IMC' with 'Medical Director' due to repeal of Labor Code section 139 by SB 228.

**Subdivision 33 (f)** is amended to improve cross reference, by adding the name of form 109, and to make other minor edits for clarity. The last sentence of the existing subdivision is moved to a new subdivision (g).

**Subdivision 33(g)** is added to describe the procedure the Medical Director will use to notify a QME by certified letter when the Medical Director becomes aware of the QME's unavailability at a specific location and the QME is otherwise not responding to calls or mail at that location.

**Necessity for changes in 33(b) through 33(g):** Pursuant to the authority under Labor Code section 139.2(j)(1)(C) to develop guidelines for the availability of QMEs for unrepresented employees, the procedures are needed to assure QMEs will be available to perform evaluations in unrepresented cases.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 34. Appointment Notification**

**Specific Purpose of Section:** This section describes the manner by which a QME selected from a panel must notify the parties of the date of the physical examination, by use of QME form 110 (QME Appointment Notification Form).

**Necessity:** **Subdivision 34(a)** has been amended to apply to both unrepresented and represented cases and to allow the QME to serve the appointment notification form on the parties' attorneys in a represented case. The word 'working' is changed to 'business' day. Additional edits to improve cross reference are also made.

**Subdivision 34(b)** is amended to add language allowing the injured worker, for his or her convenience, to make a written request to the QME to move the appointment to another office of that QME as long as that office location is certified with the Medical Unit of the DWC.

**Subdivision 34(c)** also has minor edits to improve cross reference.

**Necessity:** The added language proposed for subdivision 34(b) limits the option to change the location of the QME exam to another QME location already listed by the physician with the Medical Unit is required because QMEs may not perform evaluations at any location not listed with the Medical Unit. Under the existing regulations, the QME evaluation may only be performed at the location address specified on the QME panel list. The proposed change will allow the applicant to agree to another location for his or her own convenience but still ensure that the location is a known and certified physician's office location that meets the standards for such an office and that is known to the Medical Unit and the parties.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 35. Exchange of Information**

**Specific Purpose of Section:** This section regulates communication between the parties and the QME selected from a QME panel. It identifies the types of medical and non-medical records, reports and other evidence either party may send to the panel QME or AME for consideration as part of the evaluation. It also specifies the procedures by which each party must advise the other, prior to sending such information to the evaluator, of the nature of the medical and non-medical records and the period for a party to object to any such information. It requires the parties to communicate in writing with the QME or AME while simultaneously sending a copy of such communication to the opposing party.

**Necessity:** **Subdivision 35(a)** has minor edits to improve syntax and clarity.

**Subdivision 35(a)(4)** is added to require that whenever the treating physician's recommended treatment is disputed, the evaluator must be provided with a copy of the treating physician's report recommending the disputed treatment along with all supporting documentation, a copy of the employer's decision to approve, delay, deny or modify the disputed treatment with all supporting documentation, and all other relevant communications exchanged during the utilization review process regarding the disputed treatment.

**Necessity:** The proposed wording is needed to ensure that QME asked to address disputes arising from the denial or modification during utilization review of treatment recommended by the treating physician has the full record of communications regarding the disputed medical issue.

**Subdivision 35(a)(5)** is added to specify that relevant non-medical records may include films and videotapes, as previously provided under this regulation in subdivision 35(a)(2).

**Subdivision 35(b)(1)** is added to require all communications by either party with the AME or QME to be writing and sent simultaneously to the opposing party, except as provided in subdivisions (c) and (k). **Subdivision 35(b)(2)** requires represented parties who have selected an AME to agree on what information will be provided to the AME, as specified in Labor Code section 4062.3(c).

**Necessity:** This section is required by the wording of Labor Code section 4062.3(e) as amended by SB 899.

**Subdivision 35(c)** has minor amendments to improve syntax and cross reference.

**Subdivision 35(d)** is added to clarify that once a party has objected to the evaluator's consideration of non-medical records or information, the records or information shall not be provided to the evaluator unless so ordered by a Workers' Compensation Administrative Law Judge.

**Subdivision 35(e)** is added to clarify that no party may forward any medical/legal report which was rejected as untimely pursuant to Labor Code section 4062.5, 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, or which was otherwise stricken or found inadequate by a Workers' Compensation Administrative Law Judge.

**Subdivision 35(f)** is added to clarify that either party may use discovery to establish the accuracy or authenticity of non-medical records or information prior to the evaluation.

**Subdivisions 35(g), (h), (i) and (j)** have minor edits to improve cross references or re-lettering.

**Subdivision 35(k)** is amended to clarify that the Appeals Board retains jurisdiction to determine disputes arising from objections and whether *ex parte* contact in violation of Labor Code section 4062.3 or this regulation has occurred. Additional edits are made to provide either party a remedy for *ex parte* communications. New language, consistent with Labor Code section 4062.3(h), allowing oral or written communications by the employee in the course of the examination or at the request of the evaluator is added.

**Subdivision 35(l)** is added to provide that the evaluator must address all contested medical issues arising from all injuries reported on one or more claim forms, consistent with Labor Code section 4062.3(i), as long as the issues are within the evaluator's scope of practice and area of clinical competency. Where the disputed medical issues are outside of the scope of practice and area of clinical competency, the evaluator must notify the parties in writing at the earliest opportunity in order that the parties may initiate the process for obtaining an additional QME or AME evaluation. 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.

**Necessity:** Subdivisions 35(a) through (k) are needed to clarify the requirements of Labor Code section 4062.3 regarding communications with the evaluator. Subdivision 35(l) is needed to implement the provisions of Labor Code section 4062.3(i) and (j).

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

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

**Specific Purpose of Section:** This section describes general guidelines for AMEs and QMEs to use in evaluating and reporting on disputed issues in a workers' compensation claim. Pursuant to Labor Code section 139.2(j)(2) and 139.2(j)(3), the Administrative Director must adopt regulations concerning the procedures to be followed by all physicians in evaluating, respectively, the existence and extent of permanent impairment and limitations from industrial injury consistent with Labor Code section 4660, and disputed medical issues in a manner consistent with Labor Code section 5307.27 (Medical Treatment Utilization Schedule).

**Subdivision 35.5(a)** is amended to add appropriate cross references.

**Subdivision 35.5(b)** is added to require the reporting evaluator to state in the body of the report the date the examination was completed and the street address at which the evaluation 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.

**Subdivision 35.5(c)** is added to require that any deposition of the evaluator be held at the location where the examination was performed and that the evaluator be available for a deposition within at least 120 days of the party's initial deposition request or notice.

**Subdivision 35.5(d)** requires an AME or QME, when providing an opinion on a disputed medical treatment issue, to apply and be consistent with the standards of evidence-based medicine set out in the Medical Treatment Utilization Schedule (sections 9792.20 *et seq* of Title 8 of the California Code of Regulations). In the event the disputed medical treatment, condition or injury is not address by the MTUS, the evaluator's medical opinion must be consistent with section 9792.20 *et seq* of Title 8 of the California Code of Regulations, regarding other scientifically and evidence-based medical treatment guidelines, rating randomized controlled trials and rating the strength of the evidence.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 36. Summary Form for Comprehensive Medical-Legal Evaluation Performed Pursuant to Labor Code Section 4061 by QMEs or AMEs; Service of Form and Evaluation**

**Specific Purpose of Section:** This section directs the evaluator to complete a summary form of his or her findings and serve it, attached to the comprehensive medical/legal report, on the parties, and in unrepresented cases, on the Disability Evaluation Unit.

**Necessity: Subdivisions 36(a) and (b)** are amended to add cross references.

**Subdivision 36(c)** is added to provide that in the case of an evaluation involving a disputed claim of injury to the psyche, the evaluator may ask the injured employee at the outset of the exam whether he or she would prefer an alternative form of service of the completed report. This alternate form of service allows the injured employee to designate a physician to be served with the report at the same time it is sent to the parties, in order that the injured employee may meet with and review the report

with the named physician during one office visit, at the employer's expense. An injured employee who seeks this form of alternative service of the report must complete QME form 120 (section 120 of Title 8 of the California Code of Regulations) at the evaluator's office. This proposed subdivision is added to address the clinical concern raised by a number of QME evaluators that an injured employee with a disputed injury to the psyche may misunderstand the evaluation report or be adversely clinically affected by the evaluation report, unless a physician is able to help the injured employee interpret the report.

**New Subdivision 36(d)** provides that 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, 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.

**Necessity:** Labor Code sections 4061(e) and section 10160 of Title 8 of the California Code of Regulations, require a Qualified Medical Evaluator who evaluated an unrepresented injured employee to serve the comprehensive medical legal report and report summary form on the employee, the employer and the Administrative Director's Disability Evaluation Unit (DEU) for a summary rating. Labor Code section 4061(g) and section 10164 of Title 8 of the California Code of Regulations describe a petition process in which either party may request that the Administrative Director reconsider the recommended summary rating or obtain additional information from the QME to address issues not addressed or not completely addressed in the original evaluation report or not prepared in accordance with subdivisions 139.2(j)(2) or (j)(3) of the Labor Code. This new wording is needed to direct the QME not to respond to requests from the parties for supplemental reports on these rating and apportionment issues until the parties have used the petition process and the QME is directed to issue a supplemental report by the DEU, the Administrative Director or by a Workers' Compensation Administrative Law Judge.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 37. Treating Physician's Determination of Medical Issues Form**

The title and wording of this section are deleted because it duplicates the requirement and the forms in sections 9785.3 and 9785.4 of Title 8 of the California Code of Regulations. These are the forms that treating physicians are required to use to report their findings and conclusions once an injured employee's condition becomes permanent, stationary and ratable. The section number is being reserved.

### **Section 38. Medical Evaluation Time Frames; Extensions for QMEs and AMEs**

**Specific Purpose of Section:** This section describes the time limits for an evaluator to issue a comprehensive medical/legal report and the conditions and procedures for obtaining an extension of time to complete the report.

**Necessity: Subdivisions 38(a) and (b)** as currently worded are deleted. The new section 38(a) provides that the time frame for both initial and follow up comprehensive medical-legal evaluation reports is 30 days from the commencement of the evaluation, unless the evaluator requests and is granted an extension of time. Wording is added to provide that when the evaluator fails to issue the report within this timeframe and fails to obtain an extension of time from the Medical Director, either party may request a replacement QME under section 31.5 of Title 8 and neither party shall be liable for the cost of the late report. The wording also permits the QME to complete the report beyond the 30 day time limit only if both parties waive their right to a replacement QME. The wording explains the use of QME Form 113 (Notice of Denial of Request for Time Extension) and QME Form 116 (Notice of Late QME/AME Report – No Extension Requested).

**New Subdivision 38(b)** directs the evaluator to request an extension of time using QME form 112 (see section 112 of Title 8 of the California Code of Regulations), and provides that an extension of up to 30 days may be granted. As expressly stated in the Labor Code section 139.2(j)(1)(B), when the evaluator’s reason for the extension request is for good cause as defined in that section, an extension of 15 days may be granted.

**New Subdivision 38(c)** provides the evaluator must notify the Medical Director, the employee and the claims administrator not later than five days before the initial 30 day deadline to complete the report, of the request for an extension of time.

**New Subdivision 38(d)** provides that the Medical Director will notify the parties of the decision to grant or deny the request on QME form 112. When the request is denied, the Medical Director will also send the parties QME form 113, found at section 113 of Title 8, to use in the event the parties wish to waive their right to a replacement QME and wait for the late report from the original QME.

**New Subdivision 38(e)** provides that when the Medical Director becomes aware of a late report and the evaluator never requested an extension of time, the Medical Director will notify the parties by use of QME form 116 (section 116 of Title 8). The parties are able to complete part of form 116 and return it to the Medical Director to indicate whether the party wishes to accept the late report.

**Remaining subdivisions in section 38** are re-lettered and have minor edits to improve cross reference.

**Subdivision 38(h)** amended to provide that the time frame, of 60 days for completion of supplemental reports, applies to both unrepresented and represented cases.

**New Subdivision 38(j)** provides that a party wishing to object to an evaluator’s report for failure to complete the report within the time required under section 38 must file the objection 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 – No Extension Requested). This time limit for objections that could result in non-payment for the late evaluation report, replacement of the evaluator and a new

examination and evaluation report, is needed to implement the legislative intent in Labor Code section 139.2(j) and 4062.5, as amended by SB 899.

**Necessity:** Section 139.2(j) requires the Administrative Director to adopt time limits, consistent with wording in that section, for both AMEs and QMEs to complete and serve evaluation reports. Section 4062.5 was amended by SB 899 to remove wording that previously limited application of the section to late panel QME reports in cases in which the employee was unrepresented. The amendments to section 4062.5 by SB 899 make its provisions applicable to all panel QME reports effective April 19, 2004, regardless of the date of injury. Therefore either party is now allowed to obtain a new evaluator and evaluation report if the original QME or AME report is late and unless both parties waive the right to a new report on forms adopted by the Administrative Director neither party is liable for payment for a late report. To accomplish substantial justice and expeditious resolution of disputes requiring the report of a QME or AME, and because both AMEs and QMEs are subject to the time limits adopted by the Administrative Director pursuant to Labor Code § 139.2(j), the Administrative Director proposes the same remedy to the parties in cases that involve late AME reports.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 39. Destruction of Records By the Medical Director**

**Specific Purpose of Section:** This section provides that the Medical Director may destroy forms received pursuant to these regulations five years after the date of receipt.

**Necessity:** Minor edits to improve syntax and cross reference are made.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 39.5. Retention of Records by QMEs**

**Specific Purpose of Section:** This section directs QMEs to keep a copy of all comprehensive medical-legal reports for 5 years from the date of the report, to return original imaging studies and medical records upon written request and to submit a copy of any such report to the Medical Director upon request.

**Necessity: Subdivision 39.5(a)** was amended to add a sentence allowing a QME to satisfy the report retention requirement by retaining a true and correct electronic copy of the original report that was signed and served on the parties. Other minor edits to improve syntax were also made to the existing wording.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## ARTICLE 4. EVALUATION PROCEDURES

### Section 40. Disclosure Requirements to Injured Workers:

**Specific Purpose of Section:** This section describes the advisements the evaluator is required to give an injured worker at the outset of an evaluation, including the worker's right to ask questions about the evaluation process, what constitutes good cause for discontinuing the evaluation, that QMEs on probation must disclose this status when required to do so as part of the terms of probation, and that an injured worker who declines to ask questions cannot later object to the evaluation.

**Necessity:** **Section 40** is amended to extend each of these disclosure requirements to cases involving represented workers, as well as the unrepresented workers. The title wording is being amended to delete 'unrepresented'. Other minor edits to improve cross reference and to substitute 'Administrative Director' for 'Council' are made to conform to the amendments under SB 228 which eliminated the Industrial Medical Council and transferred its authority and functions to the Administrative Director. Further, pursuant to the addition of Labor Code sections 4062.1 and 4062.2, QMEs selected from a panel may be used in both unrepresented and represented cases involving dates of injury on or after January 1, 2005.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### Section 41. Ethical Requirements

**Specific Purpose of Section:** This section describes ethical standards expected of all Qualified Medical Evaluators.

**Necessity:** **Subdivision 41(a)(1)** is amended to substitute 'physician' for 'medical' in referring to the office at which evaluations are performed. In addition, wording is added to specify the evaluator must maintain for such an office a 'functioning business office phone with the phone number listed with the Medical Director for that location'. The additional wording is needed to eliminate the practice of listing office locations without having a functioning business phone parties may use to schedule QME appointments.

**Subdivision 41(a)(4)** is added to state affirmatively that a Qualified Medical Evaluator must refrain from treating or soliciting to provide medical treatment, medical supplies or medical devices to the injured employee. This section was added to clarify a range of actions considered treatment that will result in discipline if done by a QME during an evaluation.

**Subdivision 41(a)(5)** is added to state affirmatively that a QME must communicate in a respectful, courteous and professional manner with the injured employee.

**Subdivision 41(a)(6)** is added to clarify that a violation of section 41.5 of Title 8, involving a conflict of interest, is an ethical violation that will result in discipline of a QME.

**Subdivision 41(a)(7)** is added to state affirmatively that a QME may not unilaterally re-schedule a panel evaluation examination 3 or more times in the same case. This section was added due to complaints of such a practice.

**Subdivision 41(a)(8)** is added to prohibit panel QMEs from cancelling an evaluation exam less than 14 days from the exam date without good cause and without providing a new examination date within thirty calendar days of the date of cancellation. This section is added to avoid repeated delays due to examination rescheduling.

**Subdivision 41(b)** is amended to replace ‘council’ with ‘Administrative Director’, due to the amendments by SB 228 discussed above, and to make the section apply to QMEs selected from panels issued to both unrepresented employees and represented employees, due to the amendments by SB 899 discussed above. In addition, the cross reference to the section of the Labor Code prohibiting *ex parte* communication with the evaluator was corrected to section 4062.3.

**Subdivision 41(c)(1) – (c)(4)** has minor edits to correct syntax, grammar and cross reference.

**Subdivision 41(c)(5)** is amended to replace ‘Industrial Medical Council’ with ‘Administrative Director’ due to elimination of the council by SB 228. Several minor edits to improve clarity are also made.

**Subdivision 41(c)(6)** This subdivision is added to clarify that the date on the evaluator’s report must be the same as the date the evaluator has signed and the report is being served on the parties. This requirement is added due to problems arising from significant discrepancies on the date of the report and the date it is received, which cause confusion about when the time for actions and obligations contingent on the report begin to run.

**Subdivision 41(c)(7)** is added to require the evaluator to actually write the portions of the report involving discussion of medical issues, medical research relied upon, medical determinations and medical conclusions, and to further require that when more than one evaluator signs a report, the report contain a clear description and disclosure of the portions of the report written by each signatory. Language is also added to require that an evaluator, who relies upon and incorporates by reference the entirety of the consulting report of a physician in another specialty, may do so only if the consulting physician has signed under penalty of perjury and in compliance with the attestations made under penalty of perjury required by Labor Code section 4628 regarding the preparation of the consulting report. This requirement is added to clarify that the consulting physician must be held to the same standard in his or her report preparation and report writing as that of the QME who relies on the consulting physician’s opinion and report.

**Subdivision 41(d)** is amended to state affirmatively that no evaluator shall engage in any physical contact with the injured employee that is unnecessary to complete the examination. This requirement is added due to complaints from injured workers.

**Subdivision 41(e)** has minor edits to improve syntax and to replace ‘IMC’ with ‘Administrative Director’ due to elimination of the IMC by SB 228.

**Subdivision 41(f)** has been amended to apply to represented injured employees, as well as unrepresented employees, and to improve syntax and cross reference.

**Subdivision 41(g)** has been amended to correctly list relevant cross references.

**Subdivisions 41(h) and (i)** have minor edits to improve syntax and cross reference.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 41.5 Conflicts of Interest by Qualified Medical Evaluators**

**Specific Purpose of Section:** This section is intended to identify when an Agreed or Qualified Medical Evaluator has a conflict of interest with one of the parties or entities associated with a disputed issue in the case, which the evaluator must disclose, and when the evaluator must disqualify him or herself as the evaluator due to the conflict.

**Necessity:** Labor Code § 139.2(o) provides “An evaluator may 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 this code. The administrative director, after consultation with the Commission on Health and Safety and Workers’ Compensation, shall adopt regulations to implement this subdivision.” On March 19, 2007, the Administrative Director forwarded a proposed draft regulation to the Commission. Lachlan Taylor, the Workers’ Compensation Administrative Law Judge on the Commission staff, replied on behalf of the Commission with comments and recommended changes. This correspondence is included in the rulemaking file and is referred to under the heading of documents relied on in this rulemaking.

**New subdivision 41.5(a)** provides that 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, as required by Labor Code section 139.2(o).

**Subdivision 41.5(b)** provides that a conflict with the duties of the evaluator for the purposes of section 139.2(o) means having and failing to disclose a disqualifying conflict of interest.

**Subdivision 41.5(c)** lists the parties and entities with whom a disqualifying conflict of interest may exist, i.e. the parties, their attorneys, if any, primary or secondary treating physicians in the case if treatment is in dispute, the reviewing utilization review physician or utilization review organization if the UR decision is in dispute, and the surgical center if the need for the surgery is in dispute.

**Subdivision 41.5(d)** defines ‘disqualifying conflict of interest’ and lists the types of familial relationships, significant disqualifying financial interests, professional affiliations, and other relationships 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.

**Subdivision 41.5(e)** allows an AME or QME to disqualify himself or herself on the basis of a disqualifying conflict of interest as defined in subdivision 41.5 as well as whenever the evaluator has a relationship 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.

**Subdivision 41.5(f)** outlines how the evaluator is to give written notice to the parties. It also provides that whenever the evaluator declines to do the evaluation due to disqualifying himself or herself, the parties are entitled to a replacement QME or QME panel. If the evaluator notifies the parties of a disqualifying conflict but declines to disqualify himself or herself, the parties shall follow the procedures in section 41.6 of Title 8 of the California Code of Regulations. If the injured employee is not represented by an attorney, the evaluator must 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.

**Subdivision 41.5(g)** requires each party who knows of or becomes aware of a potential disqualifying conflict of interest as defined in section 41.5 to notify the evaluator at the earliest opportunity and no later than five business days of becoming aware of the potential conflict, to enable the evaluator to determine whether a conflict exists. Notice of the alleged conflict must be served on the other party at the time the evaluator is notified.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 41.6 Procedures after Notice of Conflict of Interest and Waivers of Conflicts of Interest of an Evaluator**

**Specific Purpose of Section:** The purpose of this section is to describe procedures to be used by parties to obtain a replacement evaluator after notice of a disqualifying conflict of interest has been given by an evaluator.

**Subdivision 41.6(a)** provides that whenever an AME or QME notifies the parties of a disqualifying conflict of interest, the parties must follow the procedures in this section.

**Subdivision 41.6(b)** requires the evaluator to proceed with a scheduled evaluation unless the evaluator declines and disqualifies himself or herself under section 41.5 or any party is entitled to a replacement QME.

**Subdivision 41.6(c)** provides that within five business days of receipt of the evaluator's notice of conflict, in a unrepresented case, the parties shall obtain a replacement. In a represented case, each party is required to notify the other and the evaluator whether the party objects to the evaluator on the grounds of the conflict or wishes to waive the conflict. To be valid, a represented party's waiver must be written on a page that states the nature of the conflict, that the party understands that the evaluator has a conflict and the nature of the conflict, and the party wishes to waive the opportunity to obtain another evaluator. Attorneys may sign such a waiver for their clients as long as the signed waiver is served on the party by the attorney.

**Subdivision 41.6(d)** provides that any dispute over whether a conflict of interest may affect the integrity and impartiality of the evaluator with respect to an evaluation report or supplemental report, and any dispute over waiver under this section, shall be determined by a Workers' Compensation Administrative Law Judge.

**Necessity:** The provisions of this section are needed to allow for resolution of disputes arising from the disclosure of a conflict of interest by an evaluator.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 41.7 Gifts to Medical Evaluators**

**Specific Purpose of the Section** is to clarify when aggregate gifts in a twelve month period to an evaluator could create a conflict with the duties of an evaluator within the meaning of Labor Code section 139.2(o).

**Subdivision 41.7(a)** provides that no AME or QME shall accept gifts for a single source in a twelve month period that have a total fair market value in the aggregate of \$ 360 or more. Single source is defined as source that handles workers' compensation matters and includes but is not limited to one or more attorneys, physicians, employers, claims administrators, medical or health care or insurance or utilization review business entities. The section excludes 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, or reasonable and appropriate income paid for services performed as an AME or QME.

**Subdivision 41.7(b)** defines the term 'gift' under this section to mean any payment to the extent that consideration of equal or greater value is not received. The definition also 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.

**Subdivision 41.7(c)** provides that any person who claims that a payment, rebate, discount, loan, forgiveness, or other thing of value is not a gift has the burden of proving that the consideration received is of equal or greater value.

**Necessity:** As required by Labor Code section 139.2, this section defines when a gift to an evaluator could create a conflict with the evaluator's duties.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 43. Method of Measurement of Psychiatric Disability**

**Specific Purpose of Section:** This section specifies the guidelines to be used by evaluators in cases of claimed injury to the psyche.

**Necessity: Section 43(a)** has been amended to add the phrase ‘For all claims arising before January 1, 2005, not subject to § 43(b),’. This modifying phrase is needed to clarify that the evaluation protocols adopted by the Industrial Medical Council for evaluation of psychiatric disability still apply to those claims not subject to section 43(b). This amendment is required due to amendments to Labor Code section 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. In addition, a sentence is added to the section stating that the full text of the evaluation guideline is available at no charge on the web at <http://www.dir.ca.gov/IMC/guidelines.html> or by calling the Medical Unit at 1-800-794-6900.

**Section 43(b)** is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for 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. This amendment is required due to amendments to Labor Code section 4660(b) and 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 44. Method of Evaluation of Pulmonary Disability**

**Specific Purpose of Section:** This section specifies the guidelines to be used by evaluators in cases of claimed injury resulting in pulmonary disability.

**Necessity: Section 44(a)** has been amended to add the phrase ‘For all claims arising before January 1, 2005, not subject to § 44 (b),’. This modifying phrase is needed to clarify that the evaluation protocols adopted by the Industrial Medical Council for evaluation of pulmonary disability still apply to those claims not subject to section 44(b). This amendment is required due to amendments to Labor Code section 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. In addition, a sentence is added to the section stating that the full text of the evaluation guideline is available at no charge on the web at <http://www.dir.ca.gov/IMC/guidelines.html> or by calling the Medical Unit at 1-800-794-6900.

**Section 44(b)** is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for evaluating and reporting permanent impairment must be as described in the Guides to Evaluation of Permanent Impairment [Fifth Edition] of the American Medical Association (hereafter, AMA Guides). Additional text directs that permanent disability must be described by the evaluator 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. This amendment is required due to amendments to Labor Code section 4660(b) and 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 45. Method of Evaluation of Cardiac Disability**

**Specific Purpose of Section:** This section specifies the guidelines to be used by evaluators in cases of claimed injury resulting in cardiac disability.

**Necessity:** **Section 45(a)** has been amended to add the phrase ‘For all claims arising before January 1, 2005, not subject to § 45(b),’. This modifying phrase is needed to clarify that the evaluation protocols adopted by the Industrial Medical Council for evaluation of cardiac disability still apply to those claims not subject to section 45(b). This amendment is required due to amendments to Labor Code section 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. In addition, a sentence is added to the section stating that the full text of the evaluation guideline is available at no charge on the web at <http://www.dir.ca.gov/IMC/guidelines.html> or by calling the Medical Unit at 1-800-794-6900.

**Section 45(b)** is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for evaluating and reporting permanent impairment must be as described in the Guides to Evaluation of Permanent Impairment [Fifth Edition] of the American Medical Association (hereafter, AMA Guides). Additional text directs that permanent disability must be described by the evaluator 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. This amendment is required due to amendments to Labor Code section 4660(b) and 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 46. Method of Evaluation of Neuromusculoskeletal Disability**

**Specific Purpose of Section:** This section specifies the guidelines to be used by evaluators in cases of claimed injury to the neuromusculoskeletal system.

**Necessity:** **Section 46(a)** has been amended to add the phrase ‘For all claims arising before January 1, 2005, not subject to § 46(b),’. This modifying phrase is needed to clarify that the evaluation protocols adopted by the Industrial Medical Council for evaluation of neuromusculoskeletal disability still apply to those claims not subject to section 46(b). This amendment is required due to amendments to Labor Code section 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. In addition, a sentence is added to the section stating that the full text of the evaluation guideline is available at no charge on the web at <http://www.dir.ca.gov/IMC/guidelines.html> or by calling the Medical Unit at 1-800-794-6900.

**Section 46(b)** is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for evaluating and reporting permanent impairment must be as described in the Guides to Evaluation of Permanent Impairment [Fifth Edition] of the American Medical Association (hereafter, AMA Guides). Additional text directs that permanent disability must be described by the evaluator 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. This amendment is required due to amendments to Labor Code section 4660(b) and 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 46.1. Guidelines for the Evaluation of Foot and Ankle Disability**

**Specific Purpose of Section:** This section specifies the guidelines to be used by evaluators in cases of claimed injury causing foot and ankle disability.

**Necessity:** **Section 46.1(a)** has been amended to add the phrase ‘For all claims arising before January 1, 2005, not subject to § 46.1(b),’. This modifying phrase is needed to clarify that the evaluation protocols adopted by the Industrial Medical Council for evaluation of foot and ankle disability still apply to those claims not subject to section 46.1(b). This amendment is required due to amendments to Labor Code section 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. In addition, a sentence is added to the section stating that the full text of the evaluation guideline is available at no charge on the web at <http://www.dir.ca.gov/IMC/guidelines.html> or by calling the Medical Unit at 1-800-794-6900. Finally, the text of the actual evaluation guideline is deleted from the regulation.

**Section 46.1(b)** is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for evaluating and reporting permanent impairment must be as described in the Guides to Evaluation of Permanent Impairment [Fifth Edition] of the American Medical Association (hereafter, AMA Guides). Additional text directs that permanent disability must be described by the evaluator 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. This amendment is required due to amendments to Labor Code section 4660(b) and 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

#### **Section 47. Method of Evaluation of Immunologic Disability**

**Specific Purpose of Section:** This section specifies the guidelines to be used by evaluators in cases of claimed injury causing immunologic disability.

**Necessity:** Section 47(a) has been amended to add the phrase ‘For all claims arising before January 1, 2005, not subject to § 47(b),’. This modifying phrase is needed to clarify that the evaluation protocols adopted by the Industrial Medical Council for evaluation of immunologic disability still apply to those claims not subject to section 47(b). This amendment is required due to amendments to Labor Code section 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004]. In addition, a sentence is added to the section stating that the full text of the evaluation guideline is available at no charge on the web at <http://www.dir.ca.gov/IMC/guidelines.html> or by calling the Medical Unit at 1-800-794-6900.

**Section 47(b)** is added to specify that for all claims having dates of injury on or after January 1, 2005, and for specified claims having a date of injury prior to January 1, 2005, the method for evaluating and reporting permanent impairment must be as described in the Guides to Evaluation of Permanent Impairment [Fifth Edition] of the American Medical Association (hereafter, AMA Guides). Additional text directs that permanent disability must be described by the evaluator 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. This amendment is required due to amendments to Labor Code section 4660(b) and 4660(d) made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 4.5. MINIMUM TIME GUIDELINES**

### **Section 49. Definitions**

**Specific Purpose of Section:** This section provides definitions for the regulations in Article 4.5 of Chapter 1, of Division 1 of Title 8 of the California Code of Regulations. The regulations in Article 4.5 state the minimum amount of time an evaluator must spend in face-to-face contact with the injured employee during the evaluation examination.

**Necessity:** Minor edits to sections 49(b) and (e) are made to improve syntax and cross reference. In addition, section 49(g) is amended to delete ‘Council’ and insert ‘Administrative Director’ due to elimination of the council by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 49.2. Neuromusculoskeletal Evaluation**

**Specific Purpose of Section:** This section states the minimum number of minutes of face to face time to be spent by the QME in the course of a neuromusculoskeletal evaluation examination.

**Necessity:** The wording is clarified to require the evaluator to state in the evaluation report the amount of face to face time actually spent with the injured worker and to explain any variance below the minimum required. The additional wording is necessary because some evaluators were simply stating in the report they had spent the ‘required time’.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 49.4. Cardiovascular Evaluation**

**Specific Purpose of Section:** This section states the minimum number of minutes of face to face time to be spent by the QME in the course of an evaluation examination for cardiovascular disability.

**Necessity:** The wording is clarified to require the evaluator to state in the evaluation report the amount of face to face time actually spent with the injured worker and to explain any variance below the minimum required. The additional wording is necessary because some evaluators were simply stating in the report they had spent the ‘required time’.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 49.6. Pulmonary Evaluation**

**Specific Purpose of Section:** This section states the minimum number of minutes of face to face time to be spent by the QME in the course of an evaluation examination for pulmonary disability.

**Necessity:** The wording is clarified to require the evaluator to state in the evaluation report the amount of face to face time actually spent with the injured worker and to explain any variance below the minimum required. The additional wording is necessary because some evaluators were simply stating in the report they had spent the ‘required time’.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 49.8. Psychiatric Evaluation**

**Specific Purpose of Section:** This section states the minimum number of minutes of face to face time to be spent by the QME in the course of an evaluation examination for disability to the psyche.

**Necessity:** The wording is clarified to require the evaluator to state in the evaluation report the amount of face to face time actually spent with the injured worker and to explain any variance below the minimum required. The additional wording is necessary because some evaluators were simply stating in the report they had spent the ‘required time’.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 49.9. Other Evaluation**

**Specific Purpose of Section:** This section states the minimum number of minutes of face to face time to be spent by the QME in the course of an evaluation examination for all other types of disability not addressed by subdivisions 49 – 49.8 above.

**Necessity:** The wording is clarified to require the evaluator to state in the evaluation report the amount of face to face time actually spent with the injured worker and to explain any variance below the minimum required. The additional wording is necessary because some evaluators were simply stating in the report they had spent the ‘required time’.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 5. QME REAPPOINTMENT**

### **Section 50. Reappointment: Requirements and Application Form**

**Specific Purpose of Section:** This section describes the requirements for QMEs to apply for reappointment.

**Necessity:** Minor edits are made in subdivisions 50(a) and 50 (b) to correct and improve cross reference and syntax. In addition, the words ‘Council’ are deleted and the words ‘Administrative Director’ inserted in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Subdivision 50(c)(1) and (c)(2)** minor edits are made to improve clarity and syntax.

**Subdivision 50(c)(3)** is added to require the QME reappointment applicant to attest that the physician has accurately reported on the QME Form 104-SFI to the best of the QME’s knowledge the information required by section 29 regarding the QME’s specified financial interest that may affect the fairness of QME panels.

**Subdivision 50(c)(4)** is added to require QME reappointment applicants to attest 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 (e.g. AME or retired or faculty applicants), at each office location identified to the Medical Director as a “primary practice location” as set out in section 1(s) of Title 8 of the California Code of Regulations.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 51. Reappointment: Failure to Comply with Time Frames**

**Specific Purpose of Section:** This section states that failure of a QME to comply with the timeframes in section 34 (Appointment Notification) and 38 (time for completion of the report) on three occasions in a year may result in denial of reappointment.

**Necessity:** The phrase ‘after hearing pursuant to Section 61’ is deleted as redundant. This phrase is unnecessary due to the proposed addition of a new section 63, “Denial of Appointment or

Reappointment”, which describes the procedures for a physician to obtain a hearing upon notice of the decision of the Administrative Director to deny reappointment. As set out in proposed section 63, upon receipt of the Administrative Director’s decision not to grant reappointment and notice of the procedures to request a hearing, if the physician does not submit a written request within 30 days, no hearing will be held. Minor edits also are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 52. Reappointment: Unavailability Notification**

**Specific Purpose of Section:** This section states that a QME who fails to file a notice of unavailability may be denied reappointment.

**Necessity:** The phrase ‘after hearing pursuant to Section 61’ is deleted as redundant. This phrase is unnecessary due to the proposed addition of a new section 63, “Denial of Appointment or Reappointment”, which describes the procedures for a physician to obtain a hearing upon notice of the decision of the Administrative Director to deny reappointment. As set out in proposed section 63, upon receipt of the Administrative Director’s decision not to grant reappointment and notice of the procedures to request a hearing, if the physician does not submit a written request within 30 days, no hearing will be held. Minor edits also are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 53. Reappointment: Failure of Board Certification Examination [Reserved]**

This section and its title are being deleted entirely and the section number is being reserved for future rulemaking.

**Necessity:** Upon passage of AB 776[Stats. 200, ch. 54 (AB 776)] wording in Labor Code section 139.2(b)(3), that had prohibited the reappointment of physicians who were not board certified because of failure of the board certification exam, was repealed.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 54. Reappointment: Evaluations Rejected by Appeals Board**

**Specific Purpose of Section:** This section prohibits reappointment of a QME who has had five or more evaluation reports rejected by a Workers’ Compensation Appeals Administrative Law Judge or the Appeals Board at a contested hearing.

**Necessity:** The phrase ‘after hearing pursuant to Section 61’ is deleted as redundant. This phrase is unnecessary due to the proposed addition of a new section 63, “Denial of Appointment or Reappointment”, which describes the procedures for a physician to obtain a hearing upon notice of the decision of the Administrative Director to deny reappointment. As set out in proposed section 63, upon receipt of the Administrative Director’s decision not to grant reappointment and notice of the procedures to request a hearing, if the physician does not submit a written request within 30 days, no hearing will be held. Minor edits also are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 55. Reappointment: Continuing Education Programs**

**Specific Purpose of Section:** This section explains the requirement that Qualified Medical Evaluators must complete 12 hours of approved continuing education within the 24 month period before applying for reappointment, how the QME may satisfy that requirement, and how providers of continuing education may apply for approval to provide such education hours.

**Necessity:** Throughout the section, minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], or to correct or clarify cross references.

**Subdivision 55(c)(4)** is added to require the education provider of a continuing education course that is seeking accreditation to submit 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.

**Subdivision 55(l)** is amended to add the phrase ‘held by faculty’. This amendment simply improves syntax in the subdivision.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 56. Reappointment: Failure to Comply with WCAB Order or Ruling**

**Specific Purpose of Section:** The purpose of this section is to state affirmatively the authority of the Administrative Director to deny reappointment to any QME who has been found in violation of any order or ruling by a Workers’ Compensation Judge or by the Appeals Board.

**Necessity:** The phrase ‘after hearing pursuant to Section 61’ is deleted as redundant. This phrase is unnecessary due to the proposed addition of a new section 63, “Denial of Appointment or Reappointment”, which describes the procedures for a physician to obtain a hearing upon notice of the decision of the Administrative Director to deny reappointment. As set out in proposed section

63, upon receipt of the Administrative Director’s decision not to grant reappointment and notice of the procedures to request a hearing, if the physician does not submit a written request within 30 days, no hearing will be held. Minor edits also are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 57. Reappointment: Professional Standard--Violation of Business and Professions**

**Code Section 730**

**Specific Purpose of Section:** This section implements the provisions of Business and Professions Code that forbid a physician who is not certified as a Qualified Medical Evaluator from performing an evaluation.

**Necessity:** Amendments are made to this section to provide that both appointment and reappointment as a QME may be denied for a violation. The phrase ‘after hearing pursuant to Section 61’ is deleted as redundant. This phrase is unnecessary due to the proposed addition of a new section 63, “Denial of Appointment or Reappointment”, which describes the procedures for a physician to obtain a hearing upon notice of the decision of the Administrative Director to deny reappointment. The wording is amended to specify that the violation pertains to performing a QME evaluation without having QME certification at the time of examining the injured employee or at the time of writing the initial or follow up evaluation report, since both by definition require a physical examination. Although Business and Professions Code § 730 states that signing a report even without being a certified QME may not be grounds for disciplinary action by the *professional licensing* board, the medical dispute resolution system in workers’ compensation relies completely on the reports of QMEs and AMEs who sign their reports under penalty of perjury, but do not appear or testify at trial. Accordingly, having current, active QME status at the time of conducting the face-to-face examination and at the time of signing the report with the attestations under penalty of perjury, is essential to the integrity of the report as admissible evidence of the QME’s opinion as an expert witness. Finally, as set out in proposed section 63, upon receipt of the Administrative Director’s decision not to grant reappointment and notice of the procedures to request a hearing, if the physician does not submit a written request within 30 days, no hearing will be held.

Also, minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. Also, the phrase ‘after hearing pursuant to Section 61’ is deleted. This change is proposed so that if the Administrative Director notifies a QME that his or her reappointment is being denied due to the prohibited behavior in this section and, after being notified of the right to a hearing pursuant to Labor Code section 139.2(k) the QME elects not to request a hearing, it is not necessary to hold the hearing.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 6. QME DISCIPLINE**

### **Section 60. Discipline**

**Specific Purpose of Section:** This section states the various grounds for disciplinary action to be charged against a QME.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition, edits are made to correct or clarify cross references.

**Subdivision 60(b)(9)** is added to provide that failure to disclose a disqualifying conflict of interest as required by section 41.5 of Title 8 of the California Code of Regulations is a violation that could, after hearing, result in disciplinary action.

**Subdivision 60(b)(10)** is added to provide that failure to disclose a significant financial interest that may affect the fairness of a QME panel, as defined in section 1(dd) of Title 8 of the California Code of Regulations, is a violation that could, after hearing, result in disciplinary action.

**Subdivision 60(d)** is added to expressly delegate from the Administrative Director to the Medical Director, or designated Associate Medical Director, the powers and discretion to conduct investigations, assign investigators, issue subpoenas, propound interrogatories, receive and file requests for hearing and notices of defense, set and calendar cases for hearing, issue notices of hearing, assign counsel and perform all other functions related to QME discipline except for issuing statements of issues, accusations or disciplinary orders after hearing, which are reserved to the authority of the Administrative Director.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 61. Hearing Procedure**

**Specific Purpose of Section:** This section sets out the procedures to be used in conducting a disciplinary hearing, making findings and issuing a decision, imposing disciplinary sanctions, responding to a petition for reconsideration and seeking judicial review of any such decision.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition, edits are made to correct or clarify cross references.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **Section 62. Probation**

**Specific Purpose of Section:** This section describes matters relating to QME probationary status.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition, edits are made to correct or clarify cross references.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **Section 63. Denial of Appointment or Reappointment**

**Specific Purpose of Section:** Section 63 is intended to clarify the procedures that govern the denial, and any appeal of the denial, of an application filed with the Administrative Director. This section applies to all applications for appointment or reappointment as a Qualified Medical Evaluator.

**Subdivision 63(a)** provides that whenever the Administrative Director determines that an application for appointment or reappointment as a QME will be denied, the AD shall notify the applicant in writing of the reasons and the decision to deny the application and provide notice that if the applicant submits a specific written response to the notice of denial within 30 days, the AD will review the decision and within 60 days of receipt of the response notify the applicant of a final decision.

**Subdivision 63(b)** provides that if the applicant fails to respond to the notice of denial within 30 days, the decision to deny shall become final.

**Subdivision 63(c)** provides that if the applicant files a timely specific, written response, and the Administrative Director finally determines the application should be denied, the notice of final decision shall be provided in the form of a statement of issues and notice of the right to a hearing.

**Subdivision 63(d)** provides that notices and responses must be made by certified mail.

**Necessity:** This section clarifies the procedures to be used when applications for appointment or reappointment are being denied, while ensuring that applicants who wish to proceed to a full evidentiary hearing to contest the denial may still do so.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **Section 65. Sanction Guidelines for Qualified Medical Evaluators**

**Specific Purpose of Section:** This section consists of the guidelines for imposing disciplinary sanctions and terms of probation, if appropriate, on a QME found to be in violation of the QME regulations.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition, edits are made to correct or clarify cross references. Numerous corrections are made to capitalization, punctuation, numbering or lettering, and cross reference.

New text has been added to the section entitled “B. Violations of Material Statutory/Administrative Duties Which May Result in Alternative Sanctions”, for completeness of cross references, as follows:

6. (Soliciting or Providing Treatment in the Course of a QME Evaluation): Reference to section 8 Cal. Codes Regs. § 41(a)(4) have been added;

7. (Self Interested Referral): References to Labor Code § 139.2(o) and section 8 Cal. Codes Regs. § 41.5 have been added;

9. (Violations of QME Ethical and/or other Regulations): Reference to section 8 Cal. Codes Regs. § 41(f) is added. In addition, the list of conduct under this category includes added statements of ‘Failure to timely notify the parties of a disqualifying conflict of interest (8 Cal. Code Regs. § 41.5)’ and ‘Failure to report specified financial interests that may affect the fairness of QME panels (8 Cal. Code Regs. §§ 1(dd) and 29).’

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 7. [RESERVED]** **PRACTICE PARAMETERS FOR THE** **TREATMENT OF COMMON INDUSTRIAL INJURIES**

~~§ 70. Treatment Guideline for Low Back Problems.~~

~~§ 71. Treatment Guideline for Industrial Neck Injuries.~~

~~§ 72. Treatment Guideline for Occupational Asthma.~~

~~§ 73. Treatment Guideline for Contact Dermatitis.~~

~~§ 74. Treatment Guideline for Post-Traumatic Stress Disorder.~~

~~§ 75. Treatment Guidelines for Shoulder Problems.~~

~~§ 76. Treatment Guideline for Knee Problems.~~

~~§ 76.5 Treatment Guideline for Elbow Problems.~~

~~§ 77. Treatment Guideline for Problems of the Hand and Wrist.~~

The individual sections in this article, including sections 70 through 77, are being deleted in their entirety.

**Necessity:** SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)] repealed Labor Code section 139, thereby eliminating the Industrial Medical Council as well as expressly repealing, in section 50 of SB 228, all of the treatment guidelines it had adopted. SB 228 also added sections 4604.5 and 5307.27 to the Labor Code. As enacted by SB 228, Labor Code section 4604.5(c) provided, in pertinent part, that effective January 1, 2004, three months after the updated American College of

Occupational and Environmental Medicine's Occupational Medicine (hereafter, ACOEM) Practice Guidelines were published, those ACOEM guidelines "...shall be presumptively correct on the issue of extent and scope of medical treatment...". Further section 4604.5(c) provided that the ACOEM guidelines would remain in effect "...until the effective date of a medical treatment utilization schedule" adopted by the Administrative Director pursuant to Labor Code section 5307.27. Labor Code section 5307.27, as enacted by SB 228, directed the Administrative Director to adopt, after consultation with another part of this agency and after public hearings, a medical treatment utilization schedule that incorporates evidence-based, peer-reviewed, nationally recognized standards of care and that address, at a minimum the frequency, duration, intensity and appropriateness of treatment procedures and modalities commonly performed in workers' compensation cases. That medical treatment utilization schedule (MTUS) became effective on June 15, 2007 in regulations as sections 9792.20 *et seq* of Title 8 of the California Code of Regulations.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 10. QME APPLICATION FORMS**

### **Section 100. The Application for Appointment as Qualified Medical Evaluator Form.**

**Specific Purpose of Section:** This section consists of the form that physicians applying to become certified as a Qualified Medical Evaluator must complete and file with the Medical Unit. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under 'Necessity' below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

"NOTE: Form 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."

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes made within the text of the Form 100 itself:

Throughout the form, all references to the 'council' have been deleted and the words 'Administrative Director' have been inserted, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. SB 228 transferred the authority in Labor Code section 139.2 for regulating QMEs to the Administrative Director of the Division of Workers' Compensation. Also, the revision date on the bottom of each page has been updated. Additional changes are:

Page 1, heading: The address of the agency has been updated to the current address.

Page 1, Block 1: The requested phone number is now labeled as 'business phone'. Also a new box for business e-mail has been added to the form. Completing this box is optional.

Page 1, Block 2: The reference to boxes on the form to be completed by PhD's, Psy. D's and Ed.D's has been corrected by adding '10' to the list of boxes.

Page 2, Block 4: The reference to 'IDE' has been changed to "Industrial Disability Evaluation" for clarity and the words 'eff. 4/15/99' are deleted as unnecessary. These changes do not change the existing requirements.

Page 2, Box 5, line 1: ', Inc.' are deleted as unnecessary.

Page 3, Block 8: the words 'College of' are deleted and replaced by the word 'Council on' to correct the name of the accreditation body reference.

Also, the line requiring doctors of chiropractic to submit a copy of the certificate received from a postgraduate specialty diplomate program is deleted in its entirety. As discussed below under 5 (QME Specialty Code List), the list of specialty codes for chiropractors is being deleted so there is no need for copies of these certificates to support the designation selected in box 8 by a doctor of chiropractic.

Page 3, block in the middle of the page, line 2.b.: The words 'College of' are deleted and replaced by 'Council on', to correct the name of the accreditation body.

Page 4, Item C: Additional text is added: I declare I spend five or more hours per week in direct medical treatment (or, for applicants under the AME, retired, or faculty status, in other specified activity) at each location I have listed as a "primary practice" location. I have accurately and fully reported all specified financial interest that may affect the fairness of QME panels, as required on the attached QME SFI Form 124.

Page 5: a new item 2.g. is added in the instructions: g) A completed, signed QME SFI Form 124. (Specified Financial Interests Attachment to QME Forms 100, 103 and 104.) This document must be submitted prior to obtaining your appointment as a QME.

Page 6: List of QME Specialty Codes (for use with the QME Application Form): The following QME specialty codes have been deleted:

MRS (Colon & Rectal Surgery) because no physicians were certified as QMEs in this specialty.

MNM (Nuclear Medicine) because no physicians were certified as QMEs in this specialty.

MOQ (Medicine Otherwise Qualified) because no physicians were certified as QMEs in this specialty.

The following QME specialty codes were merged into another specialty code because too few QMEs were listed in the specialty to randomly select a three name QME panel in some areas of the state, as required by Labor Code section 139.2(h). The wording of the specialty codes created by such merging is shown as it will appear on the QME panel request forms used by injured employees or claims adjusters:

MAA (Anesthesiology) is deleted and the QMEs listed in this specialty code will be merged into a new code of MPA (Pain Medicine and Anesthesiology).

OFP (Family Practice – DO) is deleted and the QMEs listed in this specialty code will be merged into MFP (Family Practice).

OFM (Family Practice – DO including Osteopathic manipulation) is deleted and the QMEs listed in this specialty code will be merged into MFP (Family Practice).

MHH (Hand – Orthopaedic Surgery, Surgery and Plastic Surgery) is added.

MOH (Hand – Orthopaedic Surgery) is deleted and the QMEs listed in this specialty code will be merged into a new code MHH (Hand – Orthopaedic Surgery, Surgery and Plastic Surgery).

MPH (Hand – Plastic Surgery) is deleted and the QMEs listed in this specialty code will be merged into a new code MHH (Hand – Orthopaedic Surgery, Surgery and Plastic Surgery).

MSH (Hand – Surgery) is deleted and the QMEs listed in this specialty code will be merged into a new code MHH (Hand – Orthopaedic Surgery, Surgery and Plastic Surgery).

MNB (Spine – Orthopaedic and Neurological Surgery) is added.

MOB (Orthopaedic Surgery – Including Back) is deleted and the QMEs listed in this specialty code will be merged into a new code MNB (Spine – Orthopaedic and Neurological Surgery).

MPB (Neurological Surgery – Including Back) is deleted and the QMEs listed in this specialty code will be merged into a new code MNB (Spine – Orthopaedic and Neurological Surgery).

MAP (Pain Management – Anesthesiology) is deleted but the QMEs listed in this specialty code will be merged into a new code MPA (Pain Medicine and Anesthesiology).

MMO is added for (Internal Medicine – Oncology), (Orthopedic Surgery – Oncology) and (Radiology – Oncology).

MPA (Pain Medicine and Anesthesiology) is added.

MPP (Pain Management – Pain Medicine) is deleted but the QMEs listed in this specialty code will be merged into a new code MPA (Pain Medicine and Anesthesiology).

MPT (Toxicology – Occupational Medicine) is deleted but the QMEs listed in this specialty code will be merged into a new code MTT (Toxicology – Occupational Medicine and Emergency Medicine).

MET (Toxicology – Emergency Medicine) is deleted but the QMEs listed in this specialty code will be merged into a new code MTT (Toxicology – Occupational Medicine and Emergency Medicine).

MRY (Radiology) is deleted but the two QMEs listed in this specialty code will be merged into the existing code MMO (Radiology - Oncology).

The following QME specialty code designations were deleted and the QMEs listed in these specialty codes will be merged into the existing code of DCH (Chiropractic). This change is made because the Administrative Director recognizes only those specialties in a California licensed health profession that are recognized by the physician's licensing board. The Board of Chiropractic Examiners currently does not recognize any specialties or subspecialties among licensed doctors of

chiropractic in California. In addition, it will reduce the distance an injured employee must travel to the selected QME. However, any certified post graduate diplomate program completed by the doctor of chiropractic QME will be listed under the the heading “Physician’s Education” on QME Form 107, the QME panel list letter sent to the parties by the Medical Unit.:

- DCN (Chiropractic – Neurology)
- DCO (Chiropractic – Orthopaedic)
- DCR (Chiropractic – Radiology)
- DCS (Chiropractic – Sports Medicine)
- DCT (Chiropractic – Rehabilitation)

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 101. The Alien Application Form.**

**Specific Purpose of Section:** This form, and attached directions, pertaining to citizenship and immigration status, is being deleted entirely since as a condition of appointment as a Qualified Medical Evaluator each applicant must be licensed by a professional licensing agency of the State of California. The determination regarding the individual’s citizenship and immigration status will already have been made by the professional licensing body.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 102. The Application for QME Competency Examination Form.**

**Specific Purpose of Section:** This form is completed by physicians who seek appointment as a QME and who must register for the QME competency examination required by Labor Code section 139.2 as a condition of appointment as a QME. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

The following changes are incorporated into the new form 102:

The street address is corrected to show the Exam Unit’s location on the 18<sup>th</sup> floor at 1515 Clay Street in Oakland.

The applicant physician is asked to provide a business email address on the form, although providing this information is optional. This will improve the means of communications with applicants in the event registration forms or materials are missing from their application packet.

The form revision date is corrected.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 103. The QME Fee Assessment Form.**

**Specific Purpose of Section:** This form is used to explain to each QME the criteria to be used in assessing annual QME fees and for the QME to report the proper fee to be assessed when returning the fee payment. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

The following changes are incorporated into the new form 103:  
The Medical Unit’s address, phone and fax number are corrected.

Throughout the form, all references to the ‘Industrial Medical Council’ or ‘council’ have been deleted and the words ‘Administrative Director’ have been inserted, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred the authority in Labor Code section 139.2 to regulate Qualified Medical Evaluators to the Administrative Director. SB 228 transferred the authority in Labor Code section 139.2 for regulating QMEs to the Administrative Director of the Division of Workers’ Compensation.

The phrase ‘and Independent Medical Evaluator’ is deleted throughout the form, because this designation of forensic evaluator is no longer used in the California workers’ compensation system. In addition, minor edits are made throughout the form to correct cross references, syntax, grammar and punctuation.

New text is added to the bottom of page 1 that states: PRIMARY PRACTICE LOCATIONS; QMEs may designate only up to four (4) “primary practice” locations. A “primary practice” location is an office at which the QME spends at least five (5) or more hours per week engaged in direct medical treatment. QMEs appointed on the basis of AMEs performed or as qualified retired or faculty must perform the other activity specified in section 1 (x) of Title 8 of the California Code of Regulations (8 Cal. Code Regs. §§ 1(x), 17.) Misrepresentations of the number of evaluations performed, of the “primary practice” locations or of the number of additional locations shall constitute grounds for disciplinary proceedings (8 Cal. Code Regs. § 60).

The form identifier on page two and the form revision date are corrected. Also, new text is added so locations designated as primary practice locations are listed separately from other QME locations not primary practice locations, and the definition of primary practice locations is provided at the bottom of the page.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 104. The Reappointment Application as Qualified Medical Evaluator Form.**

**Specific Purpose of Section:** This section consists of the form to be used by QMEs seeking reappointment. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes made to the text of the Form 104 itself:

Page 1: At the top of the form, the agency name and address are corrected. Throughout the form, all references to the ‘Industrial Medical Council’ or ‘council’ have been deleted and the words ‘Administrative Director’ have been inserted, due to the repeal of Labor Code section 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which eliminated the Industrial Medical Council and transferred the authority in Labor Code section 139.2 to regulate Qualified Medical Evaluators to the Administrative Director. SB 228 transferred the authority in Labor Code section 139.2 for regulating QMEs to the Administrative Director of the Division of Workers’ Compensation. In addition, the form identifier and revision date are corrected at the bottom of each page of the form. Page 1, Block 1: A box for ‘Business Email Address’ is added and is optional. Other minor word substitutions are made to the boxes for phone number and license number. The requested business email address is to ease communication between the applicant and the Medical Unit staff who process the reappointment applications.

Page 1, Block 2: The word ‘council’ is deleted and replaced with ‘Administrative Director’. This is due to elimination of the IMC or council and transfer of its authority to regulate QMEs to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

Page 2, Block 3, item 5. Minor edits are made to correct the cross reference to the Government Code and to correct grammar in the paragraph.

Page 3, Block 5: The word ‘IMC’ is deleted and replaced with ‘Administrative Director’. This is due to elimination of the IMC or council and transfer of its authority to regulate QMEs to the

Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. New wording is added to paragraph C: I have accurately and fully reported all specified financial interest that may affect the fairness of QME panels, as required on the attached QME SFI Form 124. I declare I spend five or more hours per week in direct medical treatment (or, for QMEs appointed under the AME, retired or faculty status, in other specified activity) at each location I have listed as a “primary practice” location.

Page 4: The word ‘IMC’ is deleted and replaced with ‘Administrative Director’. This is due to elimination of the IMC or council and transfer of its authority to regulate QMEs to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition, the Medical Unit’s address, phone, fax number and email address are corrected. Also, the amount charged by the agency per page for copies of public documents is reduced to \$ .10 per page, consistent with Division policy.

Page 5: List of QME Specialty Codes to be used by the applicant to designate the areas of specialty the applicant is qualified to evaluate upon reappointment.

This list has been modified in exactly the same way as described for QME Form 100 above.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **ARTICLE 10.5. QME PROCESS FORMS**

### **Section 105. The Request for Qualified Medical Evaluator ~~Instruction~~ Panel – Unrepresented Form and Attachment to Form 105 (How to Request a QME if You Do Not Have an Attorney).**

**Specific Purpose of Section:** This form has been changed completely. The old form (an instruction sheet for Form 106) is being deleted. The new form will be used to request a QME panel (a list of three randomly selected QMEs of a specified specialty) by parties in an unrepresented case.

**Necessity:** SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004] made significant changes to the rules governing the process for obtaining a comprehensive medical-legal report in represented cases and certain procedural rule changes in unrepresented cases.

Effective April 19, 2004, once a dispute occurs over an opinion of the primary treating physician, the parties in a represented case must first attempt to agree on an Agreed Medical Evaluator to perform an evaluation. If the parties are unable to do so within the prescribed period of time, in all cases with a date of injury on or after January 1, 2005, the represented parties must request a panel of QMEs pursuant to Labor Code section 4062.2. The party who requests a QME panel first is entitled to designate the specialty from which the QMEs will be selected (Labor Code § 4062.2(b)). From the QME panel received, the represented parties are given 10 days from the date the QME panel is issued to attempt to select one of the named QMEs to serve as an Agreed Medical Evaluator and if they are unable to agree, then each party may strike one of the QME names listed

on the panel and the remaining QME shall do the evaluation (Labor Code § 4062.2(c)). For represented cases involving a date of injury prior to 1/1/2005, each party is allowed to select a QME independently when they are unable to agree to an Agreed Medical Evaluator.

In unrepresented cases, pursuant to Labor Code § 4062.1 as enacted by SB 899, when a dispute arises that requires either party to obtain a medical/legal evaluation and report, the employer, or claims administrator, is forbidden from entering into discussions about an Agreed Medical Evaluator. Instead, the employer or claims administrator is required to send a QME panel request form to the unrepresented employee with a letter explaining why there is a need for a QME evaluation and containing notices, as required. Even if the employer or claims administrator has determined as part of its defense in the claim that the employer has a basis to request a QME panel, the employer or claims administrator must first send the QME panel request form and instructions to the unrepresented injured employee to allow the employee to designate the specialty of the QME panel. (See, Lab. Code § 4062.1(b).) If the injured employee fails to submit a request for a QME panel within 10 days after the employer has furnished the form to the unrepresented employee, the *employer* may submit the form to request a QME panel and "...the party submitting the request form shall designate the specialty" of the QME panel. Further, if the unrepresented employee fails to select a QME within 10 days after the QME panel is issued by the DWC Medical Unit, the employer may select the QME. If the unrepresented employee fails to make an appointment for an evaluation examination with the selected QME, the employer is entitled to schedule the appointment (Lab. Code § 4062.1(c)). These rules became effective April 19, 2004 to apply to cases involving all dates of injury, pursuant to section 47 of SB 899, which provided, "The amendment to § 4062.1 made by this act shall apply prospectively from the date of enactment of this act, regardless of the date of injury unless otherwise specified, but shall not constitute good cause to reopen or rescind, alter, or amend any existing order, decision, or award of the Workers' Compensation Appeals Board."

For clarity, QME Form 105 (section 105) will be used by parties in an unrepresented case to request a QME panel and QME Form 106 (section 106), discussed below, will be used by parties in a represented case to request a QME panel. Each form also has an attachment explaining topics related to use of the form.

In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

"NOTE: Form 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."

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8. Pursuant to Labor Code § 4062.1(b), the employer or claims administrator must always furnish the form to the unrepresented employee and request the employee complete and mail the form to the Medical Unit of DWC when either party wants to resolve a dispute under Labor Code §§ 4060 (on compensability), 4061 (permanent disability) or 4062 (medical treatment disputes).

**Necessity** for the information requested on the form:

Request Date is needed to determine whether the employer/insurer who requests a panel in an unrepresented case has complied with the pre-condition in Labor Code § 4062.1(b) that 10 days must have passed since the time the employer furnished the form to the injured employee with a request to the employee to complete and file the form.

Party Requesting the Panel is needed to know which pre-conditions apply to processing the form and who to contact if additional information is needed.

Checking box to indicate the dispute giving rise to the request for a panel is needed because different supporting evidence is needed for each type of dispute before a panel can be issued.

Employee Information and Employer/Insurer or Claims Administrator information is needed in order to send out the panel to the employee and to notify the employer, insurer or claims administrator that a panel was issued.

The Medical Specialty Requested is needed to select QMEs within the specialty.

The list of QME Specialty Codes on page 2 of the form lists the specialties available by code. It is the same as the list on the QME Application Form (QME Form 100) and QME Reappointment Application (QME Form 104), except that each code on this form is listed alphabetically and only once. (See discussion above for QME Form 100 regarding changes in the specialty code list.)

The Attachment to Form 105 provides information to assist a party to complete Form 105 and to explain how the request is processed.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 106. The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case).**

**Specific Purpose of Section:** This form has been changed significantly. The old form (a form used to request a QME panel in an unrepresented case) is being deleted. The new form will be used to request a QME panel (a list of three randomly selected QMEs of a specified specialty) by parties in a represented case. In addition to filing the form, the requesting party, as directed on the form, must attach a copy of the party's written proposal to the opposing party of one or more physician's names to serve as an Agreed Medical Evaluator.

**Necessity:** SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004] made significant changes to the rules governing the process for obtaining a comprehensive medical-legal report in represented cases and certain procedural rule changes in unrepresented cases.

When a dispute exists in a workers' compensation claim with a date of injury on or after January 1, 2005, the parties in a represented case must first attempt to agree on an Agreed Medical Evaluator (See, Lab. Code §§ 4062.2(b)). If the parties are unable to do so within the prescribed period of time (10 days), in all cases with a date of injury on or after January 1, 2005, the represented parties must request a panel of QMEs pursuant to Labor Code section 4062.2. A written request to use an Agreed Medical Evaluator, naming one or more physicians, must be sent to the opposing party prior to being eligible to request a QME panel (Lab. Code § 4062.2(b).). The party who requests a QME panel first from the Medical Unit of DWC is entitled to designate the specialty from which the

QMEs will be selected (Labor Code § 4062.2(b)). The represented parties are given 10 days from the date the QME panel is issued to attempt to select one of the named QMEs to serve as an Agreed Medical Evaluator and if they are unable to agree, then each party may strike one of the QME names listed on the panel and the remaining QME shall do the evaluation (Labor Code § 4062.2(c)). For represented cases involving a date of injury prior to 1/1/2005, each party is allowed to select a QME independently when they are unable to agree to an Agreed Medical Evaluator, therefore there is no need to request a QME panel. (See, *Nunez v. Workers' Compensation Appeals Board* (2006) 136 Cal. App. 4<sup>th</sup> 584; 39 Cal. Rptr. 914; 71 Cal. Comp. Cases 161; *Cortez v. Workers' Compensation Appeals Board* (2006) 136 Cal. App. 4<sup>th</sup> 596; 38 Cal. Rptr. 3d 922; 71 Cal. Comp. Cases 155.) Should the parties in such a represented case decide to request a panel, the requesting party will be asked to use QME Form 106.

In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Information requested on the form itself:

Request Date is needed to determine whether the party who requests a panel in an represented case has complied with the pre-condition in Labor Code § 4062.2 to send a written proposal to the opposing party with the name of one or more physicians to serve as Agreed Medical Evaluator at least 10 days prior to applying for a QME panel.

Party Making Request is needed to know which pre-conditions apply to processing the form and who to contact if additional information is needed.

Checking box to indicate the dispute giving rise to the request for a panel is needed because different supporting evidence is needed for each type of dispute before a panel can be issued.

Employee Information and Employer/Insurer or Claims Administrator information is needed in order to send out the panel to the employee and to notify the employer, insurer or claims administrator that a panel was issued.

Attorney name, address, phone and fax number information is also requested, in order that the parties' attorneys, respectively, may be contacted in the event additional information is needed.

The Medical Specialty Requested is needed to select QMEs within the specialty.

The Treating Physician's Specialty and the Specialty Preferred by the other party (if known) are requested pursuant to Labor Code § 4062.2(b), which requires the requesting party to supply such information.

The list of QME Specialty Codes on page 2 of the form lists the specialties available by code. It is the same as the list on the QME Application Form (QME Form 100) and QME Reappointment Application (QME Form 104), except that each code on this form is listed alphabetically and only once. (See discussion above for QME Form 100 regarding changes in the specialty code list.)

The Attachment to Form 106 provides information to assist a party to complete Form 106 and to explain how the request is processed.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 107. The Qualified Medical Evaluator Panel Selection Form.**

**Specific Purpose of Section:** This form depicts the panel letter that is issued by the Medical Unit, listing three QMEs, in fulfilling a request made by a party using either QME Form 105 or QME Form 106. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes made to the proposed version of QME Form 107:  
The agency’s name, address, and phone numbers have been corrected.

Under the Injured Worker Information and Panel number, the Date the panel request was received and the date the form was mailed, will be shown, since these dates each trigger time periods under the Labor Code. In addition, the name of the employer is shown to help Medical Unit staff and the regulated public to identify the parties in the case, the insurance adjuster or agency is requested instead of the claims administrator and who requested the panel is identified.

Above the list of QMEs selected for the panel, the type of exam is identified, based on the information provided by the party requesting a panel.

The form identifier and revision date are corrected.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 108. The Qualified Medical Evaluator Panel Selection Instruction Form.**

**Specific Purpose of Section:** This form is used by the Medical Unit of DWC as an insert with the QME panel (list of 3 QMEs) which is sent to the injured employee. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes in the text of form 108:

The agency’s name, address, phone and fax number are corrected.

Paragraph 1: The ten day time limit for selecting a QME from the panel list is added, consistent with the wording of Labor Code § 4062.1(b). Additional information is added to the paragraph to provide phone numbers and internet addresses. Pursuant to section 31.5 of Title 8 of the California Code of Regulations, when the employee’s treating physician’s name appears on the QME panel list, that is a ground for obtaining a replacement QME. The function of the QME in Labor Code sections 4060 through 4062.2 is to provide a medical opinion about a disputed opinion of the treating physician so the treating physician cannot also be the QME for the case.

Paragraph 2: The ten day limit is added, consistent with Labor Code section 4062.1(b).

Paragraph 3: The ten day limit is added, consistent with Labor Code section 4062.1(b).

Paragraph 4: Minor edits to the language were made, consistent with Labor Code section 4062.3.

Paragraph 5: This text was added regarding ex parte communications proscribed by Labor Code section 4062.3.

Paragraph 6: The text was edited for clarity to explain the expenses to be paid by the employer, consistent with Labor Code sections 4062.1 and 4620 – 4625.

Paragraph 7: This text was in paragraph 5 of the existing form and is consistent with Labor Code section 139.2(h)(1).

Paragraph 8: This text was in paragraph 6 of the existing form and is consistent with QME obligations in sections 11(d) and 65 (under section B.6) of Title 8 of the California Code of Regulations. Also, text regarding the options for an employee covered by an MPN is added.

Paragraph 9: This text was in paragraph 8 of the existing form and is consistent with Labor Code section 139.2(j) and section 38 of Title 8 of the California Code of Regulations.

Paragraph 10: This text was in paragraph 5 of the existing form but has been corrected to reflect the current text names and web addresses.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 109. The Qualified Medical Evaluator Notice of Unavailability Form.**

**Specific Purpose of Section:** This form is used by QMEs who wish to change status to “unavailable” as a QME for a limited period of time up to 90 days. The conditions for doing so are set out in section 33 of Title 8. During this period of unavailability, the QME’s name will not be issued on QME panels. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Other text changed on QME form 109:

The agency name, address, phone and fax number are corrected.

The wording has been corrected to show that the maximum time allowed for unavailable status is 90 days in a fee period.

A fuller explanation of the activities a QME on unavailable status may perform is provided in the paragraph under the QME’s signature.

Text is added stating: To complete this application, attach a list of all QME and AME examinations scheduled for the period of unavailability. For each case, state whether the exam is being rescheduled or whether you plan to complete the exam and report during the period of unavailability.

The form name and revision date are corrected.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 110. The Appointment Notification Form.**

**Specific Purpose of Section:** This form is used by the QME to notify the claims adjuster/employer that an injured employee has selected the QME and scheduled an appointment for an evaluation examination. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Modifications to the text of the form:

The agency name, address, phone and fax number have been corrected.

References on the form to the ‘Industrial Medical Council’ have been deleted and the words ‘Administrative Director’ have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 111. The Qualified or Agreed Medical Evaluator Findings Summary Form.**

**Specific Purpose of Section:** This form is attached to a medical/legal report by the QME or AME who wrote the report, to summarize the contents of the report. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes in the text of the form:

The agency name, address and phone number have been corrected.

The evaluator no longer will be asked to write the page numbers in the report for specific information.

The order of questions 13. a. and 13.b. on the form was reversed.

The text of 13.b. was reworded and new items were added as 16 and 17, to conform with the amendments to Labor Code § 4660 made by SB 899 [Stats. 2004, ch. 34 (SB 899)(Poochigian), effective April 19, 2004], which now requires permanent impairment to be evaluated and reported consistent with the AMA guides.

Text providing for a declaration of service by mail or delivery by courier was added to the form for ease of completion by the evaluator's office staff.

On the Instructions page, references on the form to the 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004. Also a paragraph explaining the declaration of service on the form has been added.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 112. The QME/AME Time Frame Extension Request Form.**

**Specific Purpose of Section:** This form is used by an evaluator to request an extension of time for completing the medical/legal report. As amended, this form will now be used by the Medical Unit to advise the QME and the parties of the decision to approve or deny the request for an extension. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under 'Necessity' below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

"NOTE: Form 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."

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes to the text of the form:

The agency name, address, phone and fax number were corrected.

The order of information provided and to be completed on the form has been reorganized.

References to 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 113. ~~The Time Extension Approval Form.~~ Notice of Denial of Request for Time Extension.**

**Specific Purpose of Section:** This form will be used by the Medical Unit to notify the parties of the decision to deny a request by an evaluator for an extension of time to complete a medical/legal report, to advise the parties of their options and for the parties to report which option they prefer. The existing form is shown completely in strike out because it has been used to notify the parties of an approval of a request to extend time. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

The agency name, address, phone and fax number were corrected. References to ‘Industrial Medical Council’ have been deleted and the words ‘Administrative Director’ have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

The new text advises the parties that the request for an extension of time to complete the AME or QME report has been denied. It will be sent by the Medical Unit to the evaluator and both parties. New lines are added to be completed by the parties if they wish to waive the right to a new QME or AME report and accept the late report instead. Each party would complete the form and return it to the Medical Unit within 15 days. This form and process is needed pursuant to the procedures specified in Labor Code § 4062.5, which provide that when an QME or AME report is late, neither party will be liable for payment for the late report unless both parties waive the right to a new evaluation report and elect to accept the late report.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 114. The Denial of Time Extension Form.**

This form is being deleted in its entirety.

**Section 115. The Notice of Late Qualified Medical Evaluator Report Form.**

This form is being deleted in its entirety.

**Section 116. The Notice of Late Qualified Medical Evaluator Report Form-Extension Not Requested Form. Notice of Late QME/QME Report – No Extension Requested Form.**

**Specific Purpose of Section:** This form is used by the Medical Unit to advise the parties that the Medical Unit has become aware that an AME or QME’s report is late, that no extension of time was requested and to advise the parties of their options. The parties then will complete the form and

return it to the Medical Unit to indicate the action they wish to pursue within 15 days. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under 'Necessity' below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes to the text of the form:

The agency name, address, phone and fax number were corrected.

References to 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

New lines are added to be completed by each party to indicate whether the party wishes to waive the right to a new QME or AME report and accept the late report instead. Each party would complete the form and return it to the Medical Unit. This form and process is needed pursuant to the procedures specified in Labor Code § 4062.5, which provide that when an QME or AME report is late, neither party will be liable for payment for the late report unless both parties waive the right to a new evaluation report and elect to accept the late report.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 117. Qualified Medical Evaluator Course Evaluation Form.**

**Specific Purpose of Section:** This form is a postage prepaid post card QMEs are to be given by providers of continuing medical education, in order for the QME to complete and mail after evaluating the course taken. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under 'Necessity' below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes to the text of the form:

The P.O. Box address to return the form has changed.

The agency name, address, phone and fax number were corrected.

References to 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 118. Application for Accreditation or Re-Accreditation as Education Provider.**

**Specific Purpose of Section:** This form is used by a person applying to become accredited or re-accredited by the Medical Unit as an education provider for QMEs. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under 'Necessity' below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

"NOTE: Form 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."

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes to the text of the form:

The agency name, address, phone and fax number were corrected.

References to 'Industrial Medical Council' have been deleted and the words 'Administrative Director' have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

Page 1: a box is added for those applying for re-accreditation to enter their education provider number, issued by the Medical Unit.

Page 4, Last paragraph: A sentence is added stating that the applicant may submit the course syllabus and handouts on a CD in lieu of hard copies, for the Medical Unit's review.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 119. Faculty Disclosure of Commercial Interest.**

**Specific Purpose of Section:** This form is provided to the faculty of a QME education course by the accredited education provider to complete regarding any financial interests the faculty member must disclose in the course. Although the existing form is shown completely in strike out, the new version of the form is substantially the same as the existing version. The changes incorporated into the new version of the form are summarized under ‘Necessity’ below.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

Changes to the text of the form:

The agency name, address, phone and fax number were corrected.

References to ‘Industrial Medical Council’ have been deleted and the words ‘Administrative Director’ have been inserted due to elimination of the Council by repeal of Labor Code § 139 and transfer of the authority to regulate QMEs to the Administrative Director by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)], which became effective 1/1/2004.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 120. Voluntary Directive for Alternate Service of Medical-Legal Evaluation Report on Disputed Injury to Psyche.**

**Specific Purpose of Section:** This is a new form to be provided by a QME or AME to a unrepresented injured employee who is being evaluated for a disputed injury to the psyche. By completing the form, which is voluntary, the injured employee directs the evaluator to serve the evaluator’s report on a physician designated by the injured employee, such as the treating physician, at the same time it is served on the parties. The Medical Unit has received numerous requests from evaluators in disputed psyche cases for a waiver from the requirement in Labor Code § 4062.3(i) to serve the evaluation report directly on the injured employee as a party in the case. Such physicians have expressed concern that the discussion of the employee’s condition in the report may be misunderstood or cause an adverse psychological reaction if interpreted only by the employee, without the assistance of his or her physician to explain the interpretation. As provided in proposed regulation § 36(c) of Title 8 of the California Code of Regulations, when the unrepresented injured employee elects such alternate service, the employer or claims administrator shall be responsible to pay for one treatment visit to the designated physician to review and explain the report to the employee.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

The form asks for identifying information about the case (injured employee name, date of injury, claim number, WCAB case number, employer/insurer, name of QME, date of evaluation exam). The employee will print his or her name on a line within a statement that says the employee understands that he or she has a right to be served with the medical-legal report to be done by the QME, that by signing the form he or she is giving direction regarding to whom to serve the QME report, that it is being signed voluntarily, and that the options include sending a copy to the injured employee’s home address and to the designated-physician who will be paid for an office visit by the employer for the purpose of reviewing the report with the injured employee, or only sending a copy to the injured employee.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**§ 123. QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented Parties Form**

**Specific Purpose of the Section:** This new form will be used by evaluators to notify parties of a conflict of interest, as defined in section 41.5 of Title 8 of the California Code of Regulations, with one of the parties or entities involved in a specific case.

The form asks for identifying information (QME/AME name; injured employee name; employer/insurer/TPA; Claim number; WCAB Case number (if known); QME Panel number (if applicable); and date scheduled for medical/legal examination.

The evaluator must check the applicable box. One choice states: I, the undersigned evaluator, have determined I have a disqualifying conflict of interest as defined in section 41.5 of the QME regulations (8 Cal. Code Regs.) in this case. The evaluator states the name of the person/entity with whom conflict exists and checks one or more categories of conflicts (familial; professional; significant financial; or other and describes the nature of the conflict). The other choice states: I have reviewed the information sent by (blank line for entering name of sender). I do not believe that any disqualifying conflict of interest, as defined in 8 Cal. Code Regs. § 41.5, exists.

The evaluator signs under a declaration under penalty of perjury, enters the date, and print his or her name.

At the bottom of the form, parties in a represented case are given choices to check. One choice states: I wish to object to the evaluator due to the conflict. The other choice states: I wish to waive the conflict and continue using the QME/AME in this case in spite of this conflict.

The party signs, dates and prints his or her name, and if the form is signed by a party's attorney, the attorney must also enter the name of the party.

The back of the form contains instructions.

The evaluator is advised of the duty to disclose disqualifying conflicts of interest to the parties in writing within five business days of becoming aware of the conflict. If the injured employee is not represented, the evaluator is instructed to fax the completed form to the Medical Unit at 5120-622-3467. The evaluator is also advised that upon notice from any party that the party believes the evaluator has a disqualifying conflict of interest, the evaluator must review the information submitted and advise the parties within five (5) business days of receipt of the notice whether a conflict exists. The evaluator is instructed to use the form to disclose any conflict or to indicate no conflict exists.

A text box on the form summarizes the definitions from section 41.5 of the persons and entities with whom a conflict may exist and the categories of familial relationships, significant financial interests, professional affiliations, and other relationships that must be disclosed under section 41.5

Parties in a represented case are instructed that within five business days of receiving a notice of conflict on QME Form 123 from an evaluator, each party must complete the bottom portion of the form to indicate whether the party objects to the evaluator or wishes to waive the disclosed conflict. The represented parties are instructed to serve the form on the evaluator and the opposing party. A party objecting to the evaluator is instructed to mail the form to the Medical Unit with a request for a replacement QME.

**Necessity:** Labor Code section 139.2(o) directs the Administrative Director to adopt regulations to implement the provision that an evaluator may 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. This form implements the provisions of sections 41.5 and 41.6 of Title 8 of the California Code of Regulations by providing the evaluator and the parties to notify each other of conflicts.

In Title 8 of the California Code of Regulations only the title of the section and the following text will appear:

“NOTE: Form 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.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**§ 124. Specified Financial Interest Attachment to QME Forms 100, 103 or 104 (“SFI Attachment Form”).**

**Specific Purpose of Section:** This form requires a physician to disclose specified financial interests, as defined in subdivision 1(x) of Title 8 of the California Code of Regulations, that the Administrative Director has determined may affect the fairness of QME panels when two or more QMEs with such shared financial interests are assigned to the same QME panel. To the extent feasible, the Administrative Director will use the information disclosed to avoid assigning two or more QMEs with such shared financial interests to the same panel list when it is issued to parties in a given case.

**Necessity:** In Title 8 of the California Code of Regulations only the title of the section and the following text will appear: 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 Specified Financial Interest Attachment form, in order to disclose specified financial interest 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](http://www.dir.ca.gov/dwc/forms.html) or by requesting at 1-800-794-6900.”

This addition will enable the regulated public to find copies of the required form at no cost. The form itself will not be printed in Title 8.

The form requires the QME to enter in designated boxes: identifying information (name, professional license number, business address, business telephone number, fax number, QME number, if applicable); partnership interests (name of business entity in which have limited or full partnership interest, address of business entity, names of partners who are physicians); interests of 5% or more in medical practice, medical group or other medical or medical/legal business entity in California workers’ compensation system (name of medical practice/group/business entity; address of business entity; names of participating physicians); receipt of 5% or more of profits from medical practice, medical group or other medical or medical/legal business entity in California workers’ compensation system (name of medical practice/group/business entity; address of business entity; names of participating physicians). The QME declares under penalty of perjury that the foregoing information is current, complete and accurate to the best of his or her knowledge.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**ARTICLE 15. FRAUDULENT OR MISLEADING ADVERTISING**  
**Section 150. Definitions**

**Specific Purpose of Section:** This section sets out definitions that apply on to Article 15 of Division 1 of Title 8 of the California Code of Regulations, sections 150 – 159.

**Necessity:**

**Section 150(a)** is added to provide a definition for ‘Administrative Director’. SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)] repealed section 139 of the Labor Code, thereby eliminating the Industrial Medical Council, and transferred the authority to regulate Qualified Medical Evaluators under Labor Code 139.2 to the Administrative Director of the Division of Workers’ Compensation. **Section 150(b)** is deleted due to the elimination of by Industrial Medical Council by SB 228.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 151. Filing of Documents**

**Specific Purpose of Section:** This section specifies the date on which documents are deemed filed.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 152. Statement of Intent**

**Specific Purpose of Section:** This section states nothing in these regulations is intended to alter the interpretation or application of Business and Professions Code Section 651, which is enforced by physician licensing bodies in California.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

**Section 153. False or Misleading Advertising Copy Prohibited**

**Specific Purpose of Section:** This section describes what acts involving advertising are prohibited.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **Section 154. Permissible Advertising Content**

**Specific Purpose of Section:** This section describes permissible advertising content.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Subdivision 153(b)** is amended to clarify that a physician who is currently or was previously certified as a QME may state this fact in advertising copy, a curriculum vitae or descriptive text only for the period of time that is true and correct.

**Subdivision 153(e)** is amended to clarify that only individual physicians who are currently certified as a QME may use that designation or the phrase “Qualified Medical Evaluator” in advertising copy.

**Necessity:** The wording change in the section is made for clarity.

**Subdivision 153(f)** is amended to clarify that no physician subject to these regulations shall use the phrases “Qualified Medical Examiner”, “Agreed Medical Evaluator”, “Agreed Medical Examiner”, “Independent Medical Examiner”, “Independent Medical Evaluator” or “AME” as part of a firm name, trade name or fictitious business name in advertising copy.

**Necessity:** These additional phrases are added to the section for clarity and to correct cross reference.

**Subdivision 153(h)** is added to prohibit that 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.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

## **Section 154. Permissible Advertising Content**

**Specific Purpose of Section:** This section lists and describes the content of advertising that is permissible for QMEs.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition the address of the Medical Unit, where the complaint may be filed, is corrected.

**Subdivision 154(a)(4)** is amended to provide that a physician who is not currently certified by the Administrative Director as a QME may in a curriculum vitae or descriptive text state any periods in the past during which the physician was certified as a QME.

**Necessity:** This wording clarifies the permissible advertising content pertaining to past appointments as a QME.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 155. Filing of Complaints**

**Specific Purpose of Section:** This section explains how complaints about QME advertising may be made.

**Necessity:** Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)]. In addition the address of the Medical Unit, where the complaint may be filed, is corrected.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 156. Requests to Review Advertising Copy**

**Specific Purpose of Section:** This section explains how complaints about QME advertising will be reviewed.

**Necessity:** Minor edits are made to the title of this section and to the text to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 157. Determinations**

**Specific Purpose of Section:** The purpose of this section is to describe the hearing and appeal process when the agency determines a QME has violated the advertising regulations.

**Necessity:** Extensive edits have been made to this section so that the hearing procedures to be used conform with the hearing procedures for other disciplinary matters involving QMEs, as set out in sections 60 through 65 of Title 8 of the California Code of Regulations.

Minor edits are made to delete the words ‘Council’ and to insert the words ‘Administrative Director’ in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Section 157** is amended to provide if the Medical Director, after reviewing a physician’s advertising

copy, determines the advertising violates Business and Professions Code § 650 or these regulations and that the physician is currently a Qualified Medical Evaluator, the disciplinary and hearing procedures set forth in section 60 through 65 of Title 8 shall apply and that the Medical Director shall forward a copy of any final decision of such a violation to the physician's licensing board for such proceedings as that board may deem proper. Existing wording of subdivisions 157(c) through 157(d)(6) are deleted.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 158. Penalties**

**Specific Purpose of Section:** This section describes the penalties for violations of the advertising regulations.

**Necessity:** Minor edits are made to delete the words 'Council' and to insert the words 'Administrative Director' in its place, due to elimination of the Council and transfer of its authority and functions to the Administrative Director, by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)].

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.

### **Section 159. Severability**

**Specific Purpose of Section:** This section states that if any part of this chapter of Title 8 is held invalid, the remainder shall not be affected.

**Necessity:** Only the citations to Authority and Reference notations have been corrected.

**Consideration of Alternatives:** No more effective alternative to this section, nor equally effective and less burdensome alternative, has been identified at this time by the Administrative Director.