

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

NOTICE OF RULEMAKING

**Workers' Compensation – Qualified Medical Evaluator Regulations
(Title 8, California Code of Regulations sections 1- 159)**

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation (hereafter "Administrative Director"), proposes to adopt, amend and repeal regulations to implement the provisions of Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, and 4660 through 4663 regarding the examination, appointment, reappointment and discipline of Qualified Medical Evaluators and the procedures for obtaining QME medical-legal evaluations, that are used to resolve disputes in the workers' compensation system. This action is taken pursuant to the authority vested in the Administrative Director by Labor Code sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

When adopted, the proposed regulations will constitute title 8, California Code of Regulations, Division 1, Chapter 1, Articles 1 through 15, sections 1 through 159. The regulations implement, interpret and make specific the manner in which the Administrative Director will exercise the authority under Labor Code sections 139.2, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, and 4660 regarding the appointment of Qualified Medical Evaluators and the procedures concerning medical evaluations.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt, amend or repeal the following regulations in Division 1, Chapter 1, Articles 1 through 15, of Title 8, California Code of Regulations, commencing with Sections 1 through Section 159. The proposed changes involve both changes without regulatory effect ("non-substantive" changes) within the meaning of section 100 of Title 1 of the California Code of Regulations (e.g. grammatical, capitalization, punctuation, syntax, numbering and lettering sequencing and corrections of cross references), as well as substantive changes. A comprehensive summary of the proposed change to each affected section is set out in the Initial Statement of Reasons, which is not printed here but will be available at no charge upon written request made to Regulations Coordinator below or via the web at: <http://www.dir.ca.gov/dwc/DWCrulemaking.html>.

Notice of Proposed Rulemaking – Qualified Medical Evaluator Regulations 8 CCR §§ 1 - 159

QME Reg Notice1 – November 30, 2007

PUBLIC HEARING

A public hearing has been scheduled in Los Angeles and Oakland to permit all interested persons the opportunity to present statements or argument, either orally or in writing, about the subjects noted above. The hearings will be held at the following times and places:

Date: Monday, January 14, 2008
Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business
Place: Ronald Reagan State Office Building – Auditorium
300 South Spring Street
Los Angeles, California 90013

Date: Thursday, January 17, 2008
Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

The State Office Buildings and its Auditoriums are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 A.M. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

In order to ensure unimpeded access for disabled individuals wishing to present comments and facilitate the accurate transcription of public comments, camera usage will be allowed in only one area of the hearing room. To provide everyone a chance to speak, public testimony will be limited to 10 minutes per speaker and should be specific to the proposed regulations. Testimony which would exceed 10 minutes may be submitted in writing.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 P.M., on Thursday, January 17, 2008. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 P.M. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

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

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 P.M. on Thursday, January 17, 2008.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code section 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3.

Reference is made to Labor Code sections 139.2, 139.4, 139.45, 3716, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5, 4628 and 4660; Government Code sections 6254, 14755; Business and Professions Code section 730

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend, repeal and add to various regulations that govern the examination, appointment, reappointment and discipline of physicians who are certified as Qualified Medical Evaluators ('QME's') and that govern procedures for obtaining QME panels (lists of 3 QMEs), as provided in sections 1 through 159 of Title 8 of the California Code of Regulations. These changes are needed to conform to statutory made changes to the Labor Code by SB 228 [Stats. 2003, ch. 639 (SB 228) (Alarcon)], SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], AB 1756 [Stats. 2003, ch. 228 (AB 1756), effective August 11, 2003], AB 776[Stats. 2000, ch. 54 (AB 776)]. In addition, other changes are proposed to improve the QME system for those who must use it. A fuller summary of the proposed changes is provided in the Initial Statement of Reasons.

SB 228 [Stats. 2003, ch. 639 (SB 228) (Alarcon)], among other things, repealed Labor Code section 139, thereby eliminating the Industrial Medical Council ("IMC" or "council"), and amended Labor Code section 139.2 to transfer all authority to the Administrative Director of the Division of Workers' Compensation to regulate (examine, appoint, reappoint, and discipline) physicians who are Qualified Medical Evaluators. This rulemaking eliminates all references to the IMC and replaces those references with the Administrative Director.

SB 228 also repealed Labor Code section 139(e) (8), by which authority the IMC had adopted medical treatment guidelines for common industrial injuries. SB 228 added Labor Code sections 5307.27 and 4604.5, to require the Administrative Director to adopt a medical treatment utilization schedule that addresses the frequency, duration, intensity and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases (Lab. Code § 5307.27) and to provide that until the medical treatment utilization schedule has been adopted the updated medical practice guidelines of the American College of Occupational and Environmental Medicine ("ACOEM") shall be presumptively correct on this issue of extent and scope of medical treatment. This rulemaking deletes Article 7 ("Practice Parameters for the Treatment of Common Industrial Injuries"), sections 70 – 77 of Title 8 of the California Code of Regulations, and makes other amendments to the regulations to make appropriate reference to the medical treatment utilization schedule (MTUS) and the ACOEM guidelines consistent with Labor Code sections 4604.5 and 5307.27.

AB 776 [Stats. 2000, ch. 54 (AB 776)] amended Labor Code section 139.2(b) to delete wording pertaining to physicians who were 'board qualified' and physicians who failed board specialty certification examinations. This rulemaking deletes wording from QME Form 100 (section 100) that was based on the deleted statutory language.

Section 35 of AB 1756 [Stats. 2003, ch. 228 (AB 1756), effective August 11, 2003], amended Labor Code section 62.5 to create the Uninsured Employers Benefit Trust Fund, and section 37 of AB 1756 made conforming amendments referring to the Uninsured Employers Benefit Trust Fund. This rulemaking amends the definitions in section 1 to

refer correctly to the Uninsured Employers Benefit Trust Fund. The rulemaking also changes the way the Uninsured Employers Benefit Trust Fund is referenced in the definition of ‘employer’ in section 1.

SB 899 [Stats. 2004, ch. 34 (SB 899) (Poochigian), effective April 19, 2004], among other things, amended the Labor Code in ways that changed both what Qualified Medical Evaluators must use in evaluating whether medical treatment is reasonable and necessary, the nature and extent of permanent impairment and permanent disability and the procedures for obtaining an evaluator in represented cases with a date of injury on or after January 1, 2005.

- 1) Labor Code section 4660(d) was amended to require that the description of the nature of physical injury or disfigurement must incorporate the descriptions and measurements of the physical impairments and corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th edition) (the “AMA Guides”). Labor Code section 4663 was added, to require among other things, that for a physician’s report to be complete on the issue of permanent disability the report must include an apportionment determination and the section specifies how the physician is expected to calculate apportionment. This rulemaking amends the disability writing course requirements, the continuing education course requirements and the regulations that govern the procedures for evaluating various common industrial injuries to refer to these changes and to the requirement to use the AMA guides.
- 2) Labor Code section 4604.5 was amended to provide, among other things, that medical treatment, consistent with the updated American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines (the “ACOEM guidelines”) shall be presumptively correct on the issue of the intent and scope of medical treatment, regardless of the date of injury, until the Administrative Director adopts a medical treatment utilization schedule pursuant to Labor Code section 5307.27. The Medical Treatment Utilization Schedule (MTUS) was adopted in regulation by the Administrative Director effective June 15, 2007 as sections 9792.20 *et seq* of Title 8 of the California Code of Regulations. This rulemaking amends the disability writing course requirements, the continuing education course requirements and the regulations that govern the procedures for evaluating disputes over reasonable and necessary medical treatment to refer to the MTUS and relevant portions of the ACOEM Practice guidelines.
- 3) Labor Code section 4600(b) was amended to provide 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.” Because Qualified Medical Evaluators must offer medical opinions on disputes regarding whether medical treatment is or was

reasonably required to cure or relieve from the effects of industrial injury, this rulemaking amends various QME regulations to refer to the MTUS and relevant portions of the ACOEM Practice guidelines.

- 4) The Labor Code sections that govern the process for obtaining evaluators, either Agreed Medical Evaluators (“AME’s”) or Qualified Medical Evaluators (“QME’s”), were changed by amendments to Labor Code sections 4060, 4061, and 4062 and due to the addition of Labor Code sections 4062.1 and 4062.2. Prior to these amendments by SB 899, in a case in which the injured worker was not represented by an attorney, the parties were required to obtain a QME panel (list of 3 QMEs) from the Division of Workers’ Compensation. The QME selected from the panel would examine the injured worker and address the disputed issues in single comprehensive medical legal report that would be used to resolve the case. In represented cases, the parties were required first to attempt to agree on an Agreed Medical Evaluator within a specified period of time. If that effort failed, each party was entitled to select a QME which resulted in two medical-legal reports. SB 899 changed the procedure in *unrepresented* cases to allow the employer to request a QME panel, select the specialty of the QME and schedule the appointment, only after the injured worker fails to do so after being given the appropriate form and a specified amount of time to request a QME panel and to select a QME. SB 899 changed the procedure in *represented cases with dates of injury on or after January 1, 2005*, to require that when the represented parties fail to agree on an Agreed Medical Evaluator within a specified time, either party may request a QME panel. The party requesting the panel is entitled to select the specialty of the QME. The represented parties then have a specified number of days to select one of the listed QMEs to function as an AME, and if no agreement on an AME is reached, each party is required to strike one QME name. The remaining QME becomes the evaluator in the case so that only one comprehensive medical-legal report is issued. This rulemaking amends the regulations that govern the panel selection process, the criteria for obtaining a replacement QME or a replacement QME panel, the procedures for scheduling, conducting and for reporting the findings after the QME examination, the procedures for a QME to obtain an extension of time to complete a report, the QME ethical obligations, and the QME disciplinary sections to conform to changes made by SB 899.

Pursuant to Labor Code section 139.2(o) the Administrative Director is required, after consultation with the Commission of Health, Safety and Workers’ Compensation, to adopt a regulation to implement section 139.2(o). This section provides, in pertinent part, 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...” On March 19, 2007, the Administrative Director forwarded a proposed regulation, section 41.5 of Title 8 of the California Code of Regulations, seeking the Commission’s comments pursuant to Labor Code section 139.2(o). The Administrative Director received comments and suggestions from the staff of the Commission on April

2, 2007, and incorporated many of the suggestions into the proposed sections 41.5 and 41.6 included in this rulemaking.

Finally, this rulemaking proposes numerous “changes without regulatory effect”, within the meaning of section 100 of Title 1 of the California Code of Regulations, because the proposed amendments correct the punctuation, capitalization, grammar, syntax, number or letter sequencing, or cross references in the text.

In addition to these non-substantive changes, the following substantive changes are proposed:

CHAPTER 1

The title of this chapter is changed from ‘Industrial Medical Council’ to ‘Division of Workers’ Compensation – Qualified Medical Evaluator Regulations’, due to the repeal of Labor Code section 139 and transfer to the Administrative Director of the Division of Workers’ Compensation of all authority to regulate Qualified Medical Evaluators by SB 228 [Stats. 2003, ch. 639, § 52 (SB 228)(Alarcon)].

Article 1. General (§1)

Section 1: The definitions section, which applies to §§ 1 through 122, is amended by adding new definitions for the terms “ACOEM” and “ACOEM Practice Guidelines”, “AMA Guides”, “AOE/COE”, “education provider”, “follow-up comprehensive medical-legal evaluation”, “Medical Treatment Utilization Schedule (MTUS)”, “primary practice location”, “QME competency exam for acupuncturists”, and “supplemental medical-legal evaluation” and “specified financial interests”.

In addition the existing definitions for “Council”, “provider”, “qualified injured worker”, and “treatment guideline” are deleted.

The proposed rulemaking also amends existing definitions for “Administrative Director”, to add ‘or his or her designee’; “Agreed Medical Evaluator”; “claims administrator”, to add the phrase ‘the person or entity responsible for the payment of compensation for’ and to add ‘the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefit Trust Fund (UEBTF), as well as limiting language that provides the UEBTF only becomes subject to the regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF; “comprehensive medical-legal report”, to add the reference to Labor Code sections 4062.1 and 4062.2; “employer”, to add the phrase ‘any employer within the meaning of Labor Code section 3300, including but not limited to, any of the following:’ as well as adding ‘an insured employer’, ‘a self-insured employer’ and ‘a lawfully uninsured employer’; and “Medical Director”, to add ‘including his or her designee Associate Medical Directors’.

Article 2. QME Eligibility (§§10 – 19)

Section 10 adds new subdivisions that state a physician applicant currently serving probation imposed by his or her licensing board shall be denied appointment as a QME; that no physician who has been convicted of a felony or misdemeanor related to his or her practice shall be appointed or reappointed as a QME; that an applicant who has been convicted of any other type of felony or misdemeanor may be denied appointment or reappointment; that any physician or applicant who resigns while a disciplinary investigation is pending or after the service of a statement of issues or accusation is subject to having the investigation or proceeding reactivated, and may be denied appointment or reappointment.

Section 10.5, and the related QME Form 101, found in section 101 of Title 8 of the California Code of Regulations, are being repealed entirely. All physicians who apply for QME status must already have a current license from a California professional licensing board, accordingly all necessary determinations regarding citizenship and visa status will already have been made by the respective licensing agencies in California.

Section 11 is amended in proposed section 11(b)(2) is added to require the physician applicant to fully and accurately report all specified financial interests on QME Form 124 (Specified Financial Interests that May Affect the Fairness of QME Panels). Section 11(e)(1) is added to require the applicant to state any license restrictions or terms of probation imposed by the physician's licensing board. Section 11(e)(2) is amended to improve clarity and syntax. Section 11(e)(3) requires the applicant to declare under penalty of perjury that he or she has not performed a QME evaluation without holding current QME certification as required by Business and Professions Code section 730. Section 11(e)(4) is added to require applicants to declare under penalty of perjury that the office locations listed as "primary practice locations" are locations at which the physician performs five or more hours per week in direct medical treatment, or other specified activities for those applying under the AME, retired or faculty status. Section 11(e)(5) is added to require the applicant declare under penalty of perjury that he or she has fully and accurately reported all specified financial interests on QME Form 124. Section 11(f) requires licensed acupuncturists applying for appointment as a QME to pass the QME competency examination for acupuncturists. Section 11(f)(8) is added to provide that any applicant who, upon good cause shown by the test administrator, is suspected of cheating may be disqualified from the examination and if a finding is made that the applicant did cheat, the applicant will be denied admittance to the exam for at least two years.

§11.5 adds language stating that only report writing courses which are offered by education providers as defined in these regulations qualify to satisfy the QME's requirement to complete 12 hours of instruction in disability evaluation report writing prior to appointment. In addition, subdivision 11.5(i) is amended to require course topics include discussion of the Medical Treatment Utilization Schedule and relevant portions of the ACOEM Practice guidelines, the AMA guides, the requirement in proposed section

35.5 to provide opinions that are consistent with the evaluation criteria specified in section 35.5(d) of Title 8 of the California Code of Regulations, and the changes in Labor Code sections 4660, 4663 and 4664 made by SB 899. Proposed § 11.5(j) adds a sentence that allows up to the full 12 hours of 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.

Section 12 is substantially amended to delete existing wording, and to provide that the Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards for physicians as defined in Labor Code section 3209.3.

Section 13 adds that to be listed as a QME in a particular specialty, the physician's licensing board must recognize the designated specialty board and the applicant must provide the Administrative Director with documentation from the relevant board of certification or qualification.

Section 14 is amended to require California professional chiropractic associations or accredited California colleges that apply to be recognized as education providers for doctors of chiropractic must include in the course curriculum the relevant regulations of the Administrative Director, the subjects outlined in Title 8 section 11.5(i) not already covered including the MTUS, relevant portions of the ACOEM Practice guidelines, the AMA guides and the changes to Labor Code sections 4660, 4663 and 4664 on apportionment.

Sections 15 and 16 are amended to improve syntax, grammar, cross reference and clarity.

Subdivision 17(b) is amended to require 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. Subdivision 17(c) is added to allow each QME to designate up to four "primary practice locations", as that term is defined in section 1 of Title 8 of the California Code of Regulations, as well as additional office locations that do not fall within the definition. Subdivision 17(e) is added to enable the Administrative Director to waive any or all QME fee for any or all QMEs when doing so is in the best interests of employers and injured employees in the California workers' compensation system. Subdivision 17(f) is added to require all QMEs, at the time of paying the annual QME fee, to complete and forward updated information about specified financial interests that may affect the fairness of QME panels.

Sections 18 and 19 are reworded to improve the syntax and cross reference.

Article 2.5. Time Periods for Processing Applications for QME Status (§20)

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§20 is edited to correct cross references and subdivision (d), which addresses the processing time in 1993, is deleted.

Article 3. Assignment of Qualified Medical Evaluators, Evaluation Procedure (§§ 29 – 39.5)

Section 29 is added. 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 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.

Section 30 has been changed to conform to the changes in the QME panel process enacted by SB 899. This section describes how parties in a workers’ compensation case obtain a panel (list of three) QME. The existing QME forms 105 and 106 are deleted in their entirety. New QME Form 105, with an attachment, and 106, with an attachment, are proposed.

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. 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 and evidence of the parties' agreement. 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. 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).

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. 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). 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. 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.

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 at this time.

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. 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.

Section 30.5 is amended to provide that the Medical Director shall issue a panel in the specialty indicated by the person requesting the panel by use of QME Form 105 or 106, unless otherwise provided in these regulations.

Section 31 has been amended to make the wording apply to requests from either the injured employee or the employer under circumstances set out in Labor Code §§ 4062.1 and 4062.2. A new subdivision 31(e) is added to specify that to issue a panel in the specialty selected by the requestor, there must be at least 5 active QMEs in the specialty, or the Medical Director will contact the requestor for an alternate specialty.

Section 31.1 QME Panel Selection Disputes in Represented Cases is added to provide that when, in a represented case, the Medical Director receives two or more panel request forms from represented parties on the same day that designate different specialties for the QME panel, the Medical Director will: 1) issue the panel in the specialty of the treating physician as requested by one represented party, unless the party requesting a different specialty presents more persuasive supporting documentation and reasons for selecting a different specialty; and 2) if no party requests the specialty of the treating physician the Medical Director will select a specialty appropriate for the medical issue in dispute. Subdivision 31.1(b) requires a represented party who designates a specialty other than the specialty of the treating physician to submit relevant supporting documentation for the other specialty. Subdivision 31.1(c) provides that if the Medical Unit is unable to issue a

panel in a represented case within 30 calendar days of receiving a request, either party may obtain an order from the Appeals Board that a QME panel be issued.

Section 31.5 QME Replacement Requests. The current regulation allows a QME's name on a QME panel to be replaced only when requested by an unrepresented injured employee, and under other conditions either party may request replacement of the QME. As proposed, the section will allow either party to request replacement of a QME for any of the reasons enumerated in the section.

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. 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 sections 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 reworded for clarity and adds the phrase 'secondary physician'. 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. 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).

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.

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.

Section 32 (Consultations) is amended. The existing wording of subdivisions 32(a) through 32(c) is deleted. 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.

Section 32.5 (Rebuttal QME Examinations) is deleted entirely. 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. The provisions of SB 899 which repealed and re-enacted Labor Code sections 4060 through 4062.2 have superseded the basis for this regulation.

New section 32.6 (Additional QME Evaluations Ordered by the Appeals Board) as proposed allows 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.

New Section 32.7 Availability of QME for Panel Assignment is proposed. 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 monthly requirements, a QME must schedule, if requested, on average during a 90 day period, 3 times the applicable number listed in the chart in subdivision (d) of the section. Subdivision 32.7(d) provides a chart of numbers (i.e. 1 for QMEs whose fee is based on 0 – 10 evaluations per year; 2 for QMEs whose fee is based on 11 – 24 evaluations per year; 3 for QMEs whose fee is based on 25 or more evaluations per year). 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.

Section 33 is amended to clarify the conditions under which a QME may be designated as 'Unavailable' for panel selection. 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. 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. 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. Subdivision 33 (f) is amended to improve cross reference, by adding in the name of form 109, and to make other minor edits for clarity. 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.

Section 34 is amended to allow a QME upon written request by the injured worker and for his or her convenience only to move the appointment to another QME office location listed with the Medical Unit. 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. 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.

Section 35 is amended to add in subdivision 35(a)(4), a provision that whenever the medical treatment recommended by the treating physician is disputed, the evaluator must be provided with a copy of the treating physician's report recommending the treatment with all supporting documentation, a copy of the employer's decision, with any supporting documentation, to approve, deny, delay or modify the disputed treatment and all other relevant communications exchanged during the utilization review process. Also a new subdivision 35(b)(1) is added that provides all communications by the parties with the AME, or QME selected from the panel, shall be in writing and sent simultaneously to the opposing party when sent to the medical evaluator, except as otherwise provided in subdivisions (c) and (k) of this section. Subdivision 35(b)(2) requires the parties using an AME to agree on what information will be provided to the AME, as required by Labor Code section 4062.3(c). Subdivision 35(d) is added to provide that once an opposing party objects within 10 days to non-medical records or information proposed to be sent to the evaluator, the records of information shall not be provided to the evaluator unless so ordered by a Worker's 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.

A new subdivision 35(f) allows either party to use discovery to establish the accuracy or authenticity of non-medical records or information. Text is added in 35(k) to specify that the Appeals Board retains jurisdiction to determine whether ex parte contact in violation with Labor Code section 4062.3 or this section has occurred. A new subdivision 35(l) requires the evaluator to address all contested medical issues arising from injuries on one or more claim forms prior to the evaluation that are within the evaluator's scope of practice and areas of clinical competency, and otherwise to advise the party in writing at the earliest opportunity of any disputed medical issues outside the scope of the evaluator's scope of practice and area of clinical competence, so the parties may obtain an additional QME.

Section 35.5 is amended to refer to all relevant Labor Code sections by which an evaluator may complete a report. 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 addressed 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.

Section 36 is amended with minor edits in subdivisions 36(a) and 36(b). Subdivision 36(c) is added to provide in cases of an unrepresented injured employee claiming an injury to the psyche which is disputed, the injured employee may voluntarily agree by completing QME Form 120 (§ 120 of Title 8) prior to or at the outset of a QME examination, to have a copy of the QME report served on a physician designated by the injured employee for the purpose of an office visit between the injured employee and the physician to review and discuss the report. The employer shall be required to pay the designated physician for one office visit at the appropriate office visit rate for reviewing the report with the injured employee. 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.

Section 37 (Treating Physician's Determination of Medical Issues Form) is deleted as redundant and duplicative.

Section 38, Medical Legal Evaluation Time Frames and Extensions, is amended. Subdivisions 38(a) and (b) as currently worded are deleted. New subdivision 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). The 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. 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 nonpayment 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.

Section 39 is amended to change the title of the section and to improve syntax in the wording text.

Section 39.5 is amended to allow QMEs to comply with the record retention requirements of the section by retaining only an electronic copy of an employee evaluation report as long as the electronic copy is a true and correct copy of the original signed by the QME when it was served on the parties. Additional language requires the QME to return

original medical records to the person who supplied the records or to the injured employee.

Article 4. Evaluation Procedures (§§ 40 – 47)

Section 40 (QME Disclosure Requirements) is amended so that it applies to both represented and unrepresented injured workers.

Section 41 (Ethical Requirements) is amended throughout to make minor corrections to grammar, syntax, punctuation and cross reference. 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’. Subdivision 41(a)(4) is added to positively state that a Qualified Medical Evaluator must refrain from treating or soliciting to provide medical treatment, medical supplies or medical devices to the injured employee. Subdivision 41(a)(5) is added to positively state 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 positively state that a QME may not 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.

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. 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. Subdivision 41(d) is amended to state positively that no evaluator shall engage in any physical contact with the injured employee that is

unnecessary to complete the examination. Subdivision 41(f) has been amended to apply to represented injured employees, as well as unrepresented employees.

Section 41.5 Conflicts of Interest by Qualified Medical Evaluator is a new section added pursuant to Labor Code § 139.2(o). New subdivision 41.5(a) states 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 under the Labor Code. 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. Significant disqualifying financial interests include employment or a promise of employment; an interest of five % or more in the fair market value of any form of business involved in workers’ compensation matters or of private real property or personal property or in a leasehold interest; five % or more of the evaluator’s income is received from direct referrals by or from one or more contracts with a person or entity listed in 41.5(c), excluding MPN contracts; a financial interest as defined in Labor Code section 139.3 that would preclude a referral; a financial interest as defined under the Physician Ownership and Referral Act of 1993 (PORA) set out in Business and Professions Code sections 650.01 and 650.02 that would preclude referral. Professional affiliations include performing services in the same medical group or other business entity comprised of medical evaluators who specialize in workers’ compensation medical – legal evaluations. Subdivision 41.5(d)(4) is any other relationship or interest not addressed above 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.

New Section 41.6, Procedures after Notice of Conflict of Interest and Waivers of Conflicts of Interest of an Evaluator, is proposed. 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.

New Section 41.7, Gifts to Medical Evaluators, is proposed. 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 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.

Sections 43, 44, 45, 46, 46.1 and 47 are all sections that describe the methods for evaluating measuring disability arising from specific common industrial injuries. Each of these sections has been amended to identify those cases which must be evaluated and rated using the AMA Guides and permanent disability rating schedule adopted by the Administrative Director applying the AMA guide impairment criteria, and those cases that may be evaluated under the evaluation guidelines and permanent disability rating schedule as they existed before the effective date of SB 899.

Subdivision 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.

Article 4.5. Minimum Time Guidelines (§§ 49 – 49.9)

All of these sections describe the minimum amount of face to face time to be spent by an evaluator with an injured worker in the course of conducting a QME examination. Each section has been amended to require the QME to report 'the amount of face to face time actually spent with the injured worker' and to explain any variance 'below the minimum amount of face to face time stated in this regulation.'

Article 5. QME Reappointment (§§ 50 – 57)

Section 50, Reappointment: Requirements and Application Form, has minor edits to correct cross reference, improve syntax and clarity. 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.

Section 51, Reappointment: Failure to Comply with Time Frames, has minor edits to improve cross reference, syntax and clarity.

Section 52, Reappointment: Unavailability Notification, has minor edits to improve cross reference, syntax and clarity.

Section 53, Reappointment: Failure of Board Certification Examination, is being deleted because the amendments to Labor Code § 139.2 by AB 776 [Stats. 200, ch. 54 (AB 776)], repealed the wording that addressed this issue.

Section 54, Reappointment: Evaluations Rejected by Appeals Board, has minor edits to improve cross reference, syntax and clarity.

Section 55, Reappointment: Continuing Education Programs, has minor edits to improve cross reference, syntax and clarity. In addition, 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.

Section 56, Reappointment: Failure to Comply with WCAB Order or Ruling, has minor edits to improve cross reference, syntax and clarity.

Section 57, Reappointment: Professional Standard – Violation of Business and Professions Code § 730, has been amended to provide that the Administrative Director may deny appointment or reappointment to any physician who performed a QME evaluation without holding QME certification at the time of examining the injured employee or the time of signing the initial or followup evaluation report because, by definition, each of these requires a physical examination.

Article 6. QME Discipline (§§ 60 – 65)

Section 60, Discipline, has minor edits to improve cross reference, syntax and clarity. In addition, 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 is reserved to the authority of the Administrative Director.

Section 61, Hearing Procedure, has minor edits to improve cross reference, syntax and clarity.

Section 62, Probation, has minor edits to improve cross reference, syntax and clarity.

Section 63, Denial of Appointment or Reappointment, is added as a new section. Subdivision 63(a) provides 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 after the Administrative Director determines the final decision, it will be issued 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.

Section 65, Sanction Guidelines, has a number of corrections to numbering, lettering, capitalization, cross reference citations, use of italics and bold lettering, and to delete references to the IMC and insert references to the Administrative Director. New text has been added to the section entitled “B. Violations of Material Statutory/Administrative Duties Which May Result in Alternative Sanctions”, as follows:

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

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

8. (Ex Parte Communication): Reference to 8 Cal. Code Regs. § 41(b) is added.

9. (Violations of QME Ethical and/or other Regulations): Reference to 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).’

Article 7. Practice Parameters for the Treatment of Common Industrial Injuries (§§ 70 – 77)

These sections are deleted in their entirety due to repeal of Labor Code § 139 by SB 228 [Stats. 2003, ch. 639 (SB 228)(Alarcon)] and by expressly repealing, in section 50 of SB

228, all of the treatment guidelines that had been adopted under section 139. However, the Article is being reserved for future rulemaking.

Article 10. QME Application Forms (§§ 100 – 104) and Article 10.5. QME Process Forms (§§ 105 – 124)

All of the existing forms have been edited; Forms 105 and 106 are changed significantly, Forms 113, 114 and 115 are being deleted and three new forms are being added: QME Form 120 (Voluntary Directive for Alternate Service of Medical-Legal Evaluation Report on Disputed Injury to Psyche), Form 123 (QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented Parties Form) and Form 124 (Specified Financial Interest Attachment to QME Forms 100, 103 or 104 [“SFI Attachment Form”]).

In addition, the following text is being added to each section from 100 through 124 for publication in Title 8 of the California Code of Regulations under the number and title of each form: “NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.”

The agency name, address, phone and fax number has been corrected on all forms. In addition, to simplify the rulemaking process regarding the changes in the forms, the text of all existing forms is being shown in ~~strikeout~~ and **all of the text in the proposed changed version or new form is shown in a camera ready format without underlining or strikeout to show where text changes to the existing forms have been made.** However, a summary of those changes to existing form language follows:

Changes made within the text of the Form 100 (QME Application Form) 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: 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. (QME Disclosure of Specified Financial Interests That May Affect the Fairness of QME Panels.) 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 are stated as they 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).

MPA (Pain Medicine and Anesthesiology) is added.

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

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 (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 does not recognize any specialties or subspecialties among licensed doctors of chiropractic:

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

Section 101, The Alien Application Form, and the attached directions, are 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.

Section 102 (The Application for QME Competency Examination Form). The following changes are incorporated into the new form 102:

The street address is corrected to show the Exam Unit's location on the 18th 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 following changes are incorporated into the new form 103 (QME Fee Assessment Form):

The Medical Unit's address, phone and fax number are corrected on the letterhead. 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.

Changes made to the text of the Form 104 (Reappointment Application) 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 for the applicant QME to use to designate the areas of specialty to be listed for reappointment.

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

QME Form 105 (Request for QME Panel under Labor Code § 4062.1 – Unrepresented and Attachment to Form 105 (How to Request a QME Panel when you do not have an Attorney): The entire text of existing form 105 is being stricken and the function of this form is being changed. The form, as proposed, will be used by parties in an unrepresented case to request a panel of Qualified Medical Evaluators. Form 105 must be provided to the unrepresented injured worker with the attachment to Form 105 which explains how the form is to be completed and discusses other topics about what happens after the panel is issued.

The 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 a 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. Under Employee Information, a line is added for the name of the employee's representative, if any, such as a union representative, paralegal or other person assisting the injured employee with the workers' compensation claim.

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 (How to Request a QME if You Do Not Have an Attorney) provides information to assist an unrepresented injured employee to complete Form 105 and to explain how the request is processed.

QME Form 106 (The Request for Qualified Medical Evaluator Panel – Represented Form and Attachment to Form 106 (How to Request a QME in a Represented Case)): The entire text of existing form 106 is being deleted and the function of this form is being changed. The new proposed QME Form 106 will be used by parties in a represented case to request a QME panel pursuant to Labor Code § 4062.2, after the parties have proposed one or more physicians to be an Agreed Medical Evaluator, but failed to agree on an AME. The Attachment to Form 106 provides information to assist a party to complete Form 106 and to explain how the request is processed.

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 only once. (See discussion above for QME Form 100 regarding changes in the specialty code list.)

The Attachment to Form 106 (How to Request a QME in a Represented Case) provides information to assist a party to complete Form 106 and to explain how the request is processed.

Changes made to the proposed version of QME Form 107 (The Qualified Medical Evaluator Panel Selection Form): 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, 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.

Changes in the text of form 108 (The Qualified Medical Evaluator Panel Selection Instruction Form):

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 section 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 § 4062.3.

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

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

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

Paragraph 8: This text was in paragraph 6 of the existing form and is consistent with QME obligations in §§11(d) and 65.B.6 of Title 8 of the California Code of Regulations.

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

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.

Other text changed on QME form 109 (The Qualified Medical Evaluator Notice of Unavailability Form):

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.

Changes made to the proposed version of QME Form 110 (Appointment Notification 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.

Changes made to the proposed version of QME Form 111 (The Qualified or Agreed Medical Evaluator Findings Summary 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 were 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.

Changes made to the proposed version of QME Form 112 (The QME/AME Time Frame Extension Request Form):

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 of time for completing the QME report. Also, 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.

Changes made to the proposed version of QME Form 113 (Notice of Denial of Request for Time Extension).

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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 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.

QME Form 114 (The Denial of Time Extension Form) is being deleted in its entirety.
QME Form 115 (Notice of Late Qualified Medical Evaluator Report Form) is being deleted in its entirety.

Changes made to the proposed version of QME Form 116 (Notice of Late QME/QME Report – No Extension Requested Form):

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.

Changes made to the proposed version of QME Form 117 (Qualified Medical Evaluator Course Evaluation Form):

The pre-printed p.o. box address, to return the form to has changed. Also the agency name has been corrected and reference to the Industrial Medical Council have been deleted and replaced with references to the Administrative Director.

Changes made to the proposed version of QME Form 118 (Application for Accreditation or Re-Accreditation as Education Provider):

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.

Changes made to the proposed version of QME Form 119 (Faculty Disclosure of Commercial Interest):

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 QME Form 120 (Voluntary Directive for Alternate Service of Medical-Legal Evaluation Report on Disputed Injury to Psyche):

This is a new form to be provided by a QME to an unrepresented injured employee who is being evaluated for a disputed injury to the psyche. By completing the form, which is voluntary, the injured employee is directing 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 being 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 out that the discussion of the employee's condition 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 for reviewing and explaining the report to the employee.

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 that is part of a statement saying the employee understands 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 on who the QME report may be served on, that it is being signed voluntarily, and that the options include sending a copy to the injured employee's home address and to the physician designated by the injured worker 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.

New QME Form 123 (QME/AME Conflict of Interest Disclosure and Objection or Waiver by Represented Parties Form)

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.

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 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.

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

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 is 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.

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 my knowledge.

Article 15. Fraudulent or Misleading Advertising (§§ 150 – 159)

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.

Sections 151 – 152: 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 complaint may be filed, is corrected.

Section 153: 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 complaint may be filed, is corrected.

Also, 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. 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. 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.

Section 154: 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 complaint may be filed, is corrected.

Also, 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.

Sections 155-156: 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.

Section 158: 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 complaint may be filed, is corrected.

Section 159: Only the citations to Authority and Reference notations have been corrected.

DISCLOSURES REGARDING THIS PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- **Determination regarding whether this rulemaking imposes a Local Mandate:**

None is imposed by these proposed regulations because no new program or higher level of service to the public is required. The regulations provide technical detail on procedures used to regulate Qualified Medical Evaluators ('QMEs') and the procedures for obtaining reports from QMEs, and impose the same requirements on all employers in California. Local government and districts as employers, like all other employers in California, are already required by law to have workers' compensation coverage, or otherwise to self administer or contract for another entity to administer the workers' compensation claims of their employees and to conform to the Labor Code in using the medical dispute resolution procedures involving QMEs and AMEs.

- **Significant statewide, adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** None.
- **Effect on Housing Costs:** None
- **Cost Impacts Incurred By Private Persons or Businesses:** The Administrative Director has determined that the proposed regulations will not have any significant cost impact on private persons or businesses.
- **Other impacts on Jobs and Businesses:** The Administrative Director has determined that the changes proposed in this rulemaking will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses in the State of California.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that this rulemaking will not have any significant impact on small business.

Physicians appointed as Qualified Medical Evaluators fall within the definition of small business, and already are required by existing law to comply with the statutes and regulations governing Qualified Medical Evaluators (QMEs). The Administrative Director is required to issue panels listing three Qualified Medical Evaluators when requested by a party to resolve a disputed issue (Lab. Code §§ 139.2(h), 4062.1, 4062.2, and 139.2(h)(3).) In compiling the panel of three QMEs, from which to select randomly, the Administrative Director must include only evaluators who do not have a conflict of interest as defined by the Administrative Director in regulations adopted pursuant to Labor Code section 139.2(o) and are in the specialty designated by the party holding the legal right to select the specialty. (Lab. Code § 139.2(h)(3)(A).) Proposed regulations 1(dd), 29 and 124 of Title 8 of the California Code of Regulations will require physicians

to complete QME Form 124 disclosing specified financial interests when the physician applies for appointment or reappointment as a QME, and on an annual basis when the physician pays the annual fee. This information will be used by the Administrative Director to issue a panel of three QMEs who are independent and do not share the specified financial interests. 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, due to the requirement by Labor Code section 139.2(o) to adopt regulations to prevent conflicts of interest by Agreed Medical Evaluators (AMEs) and QMEs, the Administrative Director has proposed in this rulemaking as sections 41.5 through 41.7 of Title 8 of the California Code of Regulations, regulations governing the types of conflicts of interest that must be disclosed by an evaluator to the parties, the procedures for such disclosures, and the procedures for the parties to either waive the conflict or to obtain another evaluator. The proposed disclosures are limited to disclosing that a conflict of interest exists, the person or entity with whom the conflict exists, and the general nature of the conflict. The regulations do not require detailed financial disclosures by the evaluator. It is expected that most Agreed Medical Evaluators and Qualified Medical Evaluator will not be affected at all by these proposed regulations. Moreover it is difficult to predict the frequency with which a given physician evaluator will be required to make such a disclosure and therefore unable to continue to perform a medical/legal evaluation for the parties. Even in such cases the potential cost to the evaluator by advising the parties of the conflict is *de minimus* since it will involve mailing a one page disclosure form, QME Form 123, to the parties at a potential cost of less than \$ 3.00 per instance. The Administrative Director finds such reporting by physician evaluators to be necessary to comply with the provisions of Labor Code section 139.2, and for the welfare of the people of the State of California who are required to use such evaluators to resolve disputes in the California workers’ compensation system.

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.

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.

All California employers, including those within the definition of small employer, are required by existing law to provide and pay for reasonable and necessary medical treatment expenses and for medical-legal expenses as part of the workers’ compensation benefit and dispute resolution system. Proposed section 36(c) of Title 8, and the related QME Form 120 (§ 120), provide that an employer may incur the cost of one office visit with a physician designated by unrepresented injured employee, for the purpose of reviewing a comprehensive medical-legal report with the employee that was written by a Qualified Medical Evaluator. This cost would only be incurred in cases in which a claimed injury to the psyche is disputed and at the time of a QME evaluation, the unrepresented injured employee uses proposed Form 120 to designate an alternate form of service of the QME report, that is to have the report sent also to the physician designated on the form by the employee. Existing law requires the QME to serve a copy of the report on the injured employee, the claims administrator and the administrative director (via the Disability Evaluation Unit). (See, Lab. Code § 4061(e); 8 Cal. Code Regs. §§ 36(a) and 10160-10161.) A number of the QMEs who have completed 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 be adversely affected from a clinical perspective. The employer would only incur the cost of the office visit if the employee filled out proposed QME Form 120 electing that the QME report be served on a physician designated on the form by the employee for this purpose. Under the Official Medical Fee Schedule, 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 by the Division of Workers’ Compensation of the number of employers potentially affected per year by this potential additional cost would range between 650 and 850, out of an estimated total of 1,231,532 employers in California. This estimate is based on comparing figures, on an annual basis, for the number of workers’ compensation claims made in that year in which injury to the psyche is alleged, to the number of requests in the same year, made by unrepresented employees for a QME panel list of physicians who evaluate injuries to the psyche. Some of the injured employees who might be eligible for this alternate service option proposed in section 36(c) may choose not to use it. Given the small dollar amount of the potential expense per affected employer (minimum \$ 98.40; maximum \$ 184.86) in a given workers’ compensation case and the small number of potentially affected employers (estimated at 7/10’s of a percent of all California employers), the Division has concluded this proposed change will not have a significant adverse expense on business.

FISCAL IMPACTS

- **Costs or savings to state agencies or costs/savings in federal funding to the State:** None
- **Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of division 4 of the Government Code:** None (See Local Mandate bullet above)
- **Other nondiscretionary costs/savings imposed upon local agencies:** None (See Local Mandate bullet above)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Administrative Director's attention, would be more effective in carrying out the purpose of this rulemaking, or would be as effective and less burdensome to the affected private persons, than the proposed action of this rulemaking.

The Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public review and comment for at least ten days through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the Regulations Coordinator named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, the proposed text of the regulations, pre-rulemaking comments and the Form 399. Also included are the documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Qualified Medical Evaluator Regulations link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 18th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the Regulations Coordinator.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Suzanne Marria
Counsel
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: smarria@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.