**STATE OF CALIFORNIA**

**DEPARTMENT OF INDUSTRIAL RELATIONS**

**DIVISION OF WORKERS’ COMPENSATION**

**FINAL STATEMENT OF REASONS**

**Subject Matter of Regulations: Workers’ Compensation**

**Qualified Medical Evaluator Regulations**

**TITLE 8 CALIFORNIA CODE OF REGULATIONS**

**DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS**

**CHAPTER 1. DIVISION OF WORKERS’ COMPENSATION**

**QUALIFIED MEDICAL EVALUATOR REGULATIONS**

**ARTICLE 3, 4 and 10.5. Assignment of Qualified Medical Evaluators,**

**Evaluation Procedure**

**Sections 31.3, 31.5, 34 and 46.3 and Forms 31.5 108**

The Administrative Director of Division of Workers’ Compensation, pursuant to the authority vested by Labor Code sections 53, 111(a), 133, 139.2 and 5307.3, has adopted the regulations described below, to implement, interpret, and make specific the provisions of Labor Code section 139.2. The regulation adopts Article 4 of Title 8, California Code of Regulations section 46.3 and amends Article 3 and 10 of Title 8, California Code of Regulations sections 31.3, 31.5, form 31.5, 34 and form 108. The regulation governs Workers’ Compensation Qualified Medical Evaluators. The regulations are:

Adopt section 46.3 Remote Health Medical-Legal Evaluations

Amend section 31.3 Scheduling Appointment with Panel QME

Amend section 31.5 QME Replacement Requests and form

Amend section 34 Appointment Notification and Cancellation

Amend section 108 Form 108

**REQUEST AND GOOD CAUSE FOR EFFECTIVE DATE UPON FILING WITH THE SECRETARY OF STATE**

The proposed regulations amends Article 4 of Title 8, California Code of Regulations to adopt section 46.3 and amends Article 3 and 10 of Title 8, California Code of Regulations sections 31.3, 31.5, form 31.5, 34 and form 108. Regulation 46.3 is in effect as an emergency regulation. A version of these regulations (with some modifications and changes) have been in effect beginning in May 2020 and are currently set to expire January 18, 2022. Stakeholders benefit from these regulations with more flexibility with scheduling medical-legal evaluations resulting in more timely medical-legal reports and timely benefits to injured workers. The language that is part of these amendments and adoption that was not part of the emergency regulation also affects the implementation of the overall amendments and adoption and provides consistency therefore adoption of this language at the same time is necessary. If the regulation does not become effective upon filing with the Secretary of State, the earliest they can take effect is April 1, 2023, which can cause delays in workers compensation. The Division provides the following reasons why there is good cause for the effective date of these regulations to become effective upon filing with the Secretary of State.

The proposed regulations reduce delays caused by replacement panels and allows injured workers, insurance carriers and physician’s maximum flexibility to schedule evaluations. Regulation section 46.3 and the substance of the amendment to regulation 34 is in effect as an emergency regulation and is helping injured workers to move their claims forward. Regulation sections 31.3 and 31.5 were in effect from May of 2020 through February 18, 2022 as emergency regulation (46.2) and the DWC saw a reduction in replacement panels, which resulted in timelier scheduling of examinations for injured workers. If the regulations do not become effective on the same date that will cause confusion by the public as to what is effective on what date and could cause increased litigation and delays.

Accordingly, for the reasons mentioned above, there is good cause for the effective date of these regulations to be effective upon filing with the Secretary of State.

**UPDATE OF INITIAL STATEMENT OF REASONS AND INFORMATIVE DIGEST**

As authorized by Government Code §11346.9(d), the Administrative Director hereby incorporates by reference the entire Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated below for any modification to the regulation as initially proposed, the necessity for the amendments to existing regulation and for the adoption of a new regulation as set forth in the Initial Statement of Reasons continues to apply to the regulations as now adopted and amended.

The following form modifications have been made:

**Section 31.3. Scheduling Appointment with Panel QME**

**Subsection (f):** This section was amended toprovide that subdivision (e) of the regulation applies to both Comprehensive and Follow Up Comprehensive Medical-Legal evaluations.

Specific Purpose:

To provide consistency with the language in title 8 California Code of Regulations section 1.

Necessity:

This amendment is necessary to clarify and provide consistency in what medical evaluations are covered by this section.

**Form 31.5 Replacement Panel Request** was modified to delete “Original” and upper case “Panel” to provide that the parties can provide the most recent panel number and not necessarily the original panel number.

Specific Purpose:

To provide parties with flexibility to provide the most recent panel number that is being replaced instead of the original panel number.

Necessity:

To provide the most up to date information as a panel is replaced a new panel number is provided so allowing the parties to provide the most recent panel number provides the most up to date information.

**Form 31.5 Replacement Panel Request** was modified to be consistent with the amendments to regulation 31.5. Specifically the update was made to delete “sixty” days and added “ninety” days. In addition, delete “60” days and change this to “90” days. Also, delete “ninety” days and add “one-hundred twenty” days.

Specific Purpose:

Update the form to provide for the new timeframes for scheduling of an evaluation based on the amendments to regulation 31.3.

Necessity:

To provide consistency with the form and the amendments to regulation 31.3.

**Form 31.5 Replacement Panel Request** was modified to include a mailing address as to where to provide the panel request form.

Specific Purpose:

To ensure proper mailing of the form to the correct location.

Necessity:

To provide information to unrepresented injured worker as to where to send the completed form.

**Form 31.5 Replacement Panel Request** was modified to add language that the requester please print their name.

Specific Purpose:

To clearly identify the name of the requestor.

Necessity:

To provide clarity to the parties and to be able to identify this person in a decision.

**Form 31.5 Replacement Panel Request** was modified to add the law firm or insurance carrier that is requesting the replacement panel.

Specific Purpose:

To identify the business profession of the requestor.

Necessity:

To provide clarity to the parties and to be able to identify this party in a decision.

**§ 34. Appointment Notification and Cancellation**

**Subsection (a) Amendments to** this section was withdrawn.

**Subsection (g) Amendments to** this section was withdrawn.

**Subsection (h): Amendments to** this section was withdrawn.

**Form 108** was amended to correct a typographical error. The letter head had “Industal” Relations and this corrected to reflect “Industrial” Relations.

Specific Purpose:

To correct typographical error.

Necessity:

To be clear that we are Industrial Relations department.

**Form 108** was amended to correct a typographical error. Section 1 identified was amendment by deleting reference to ca.gov.

Specific Purpose:

To correct typographical error.

Necessity:

To provide clarity as to the proper reference which was already in the document.

**Form 108** was amended in section 1, 2 and 4 to provide from date the panel was issued.

Specific Purpose:

To be consistent with current practice of issuance of a panel electronically.

Necessity:

This amendment is necessary as the panel can be issued either eletronicially or by US Mail so this provides a singular date.

**Form 108** was amended to from 15 business day to 20 business days.

Specific Purpose:

To provide consistency with Labor Code section 4062.1 which provides that the injured worker has 10 day to select a panel QME and if not selected then the carrier has 10 days to select the panel QME therefore this was amended to 20 days.

Necessity:

This amendment is necessary to inform injured workers of timeframe requirements.

**LOCAL MANDATES DETERMINATION**

* Local Mandate: None. The proposed regulation and amendments will not impose any new mandated programs or increased service levels on any local agency or school district.
* 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. The proposed adoption may be utilized by a local agency or school district however there is no increased cost to the agency through the enactment of the regulation and amendments.
* Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed adoption and amendments provide flexibility to the current system which will likely reduce delays however, there is no anticipated costs or savings to any local agency or school district. There may be some unquantifiable cost savings in transportation related to the adoption of regulation 46.3(a).

**CONSIDERATION OF ALTERNATIVES**

The Division considered all comments submitted during the public comment periods. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations are proposed, nor would they be as effective and less burdensome to affected private persons and businesses than the regulation that is adopted and amendments or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED**

The comments of each organization or individual are addressed in the following charts.

The public comment period was as follows:

**Initial 45-day comment period on proposed regulation:**

From September 30, 2022 to November 15, 2022.

**15-Day Comment period on proposed regulation:**

From November 21, 2022 to December 6, 2022.