

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

INITIAL STATEMENT OF REASONS

**Subject Matter of Regulations:
Qualified Medical Evaluators**

**CALIFORNIA CODE OF REGULATIONS, TITLE 8,
ARTICLES 3, 10 AND 10.5,
Sections 30, 30.5, 31.1, 100, 104, 105, 106, and 109**

Section 30	QME Panel Requests
Section 30.5	Specialist Designation
Section 31.1	QME Panel Selection Disputes in Represented Cases
Section 100	The Application for Appointment as Qualified Medical Evaluator Form
Section 104	The Reappointment Application as Qualified Medical Evaluator Form
Section 105	The Request for Qualified Medical Evaluator Panel – Unrepresented Form
Section 106	The Request for Qualified Medical Evaluator Panel – Represented Form
Section 109	The Qualified Medical Evaluator Notice of Unavailability Form

1. Introduction.

This Initial Statement of Reasons (“ISOR”) describes the purposes, rationales, and necessity of the Division of Workers’ Compensation’s (DWC) proposed amendments to the existing Qualified Medical Evaluator Regulations. This ISOR fulfills the requirements of California’s Administrative Procedure Act. (See Government Code § 11340 et seq.)

Labor Code section 133 provides that “The Division of Workers’ Compensation, including the administrative director and the appeals board, shall have power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it under this code.” Labor Code section 4062.2(c) provides that “[t]he administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection [of panel Qualified Medical Evaluators].”

Currently, California Code of Regulations (“CCR”) title 8, section 30(b) requires parties to mail in a request form to the DWC’s Medical Unit to request assignment of a panel of QMEs. The proposed regulations are an improvement to an existing panel request process that will allow parties to generate a list of QMEs automatically.

DWC welcomes comments on the ISOR and on the proposed regulations that the ISOR describes. Please see the accompanying Notice of Rulemaking for instructions on how to submit comments electronically, on paper, and orally at the DWC hearing on the proposed regulations.

2. Technical, Theoretical, or Empirical Studies, Reports, or Documents.

DWC did not rely on any technical, theoretical, or empirical studies, reports, or documents in creating this ISOR.

3. Problem Addressed with this Rulemaking.

This rulemaking is designed to implement an online panel process for represented cases. The rulemaking revises the existing process through which represented parties can request a panel of QMEs to resolve medical disputes. The online system will provide a more efficient means of requesting and receiving a QME panel. In addition, clarifying changes were made to the appointment and reappointment forms for QMEs. The form for requesting a panel in unrepresented cases has been amended to make it more user-friendly.

4. Specific Technologies or Equipment.

None.

5. Reasonable Alternatives to the Proposed Regulations and Reasons for Rejecting Those Alternatives

The Administrative Director has not identified any effective alternative, or any equally effective and less burdensome alternative to the proposed regulations at this time. The public is invited to submit such alternatives during the public comment process.

6. Duplication or Conflicts with Federal Regulations (Gov. Code section 11346.2(b)(7))

The proposed regulations do not duplicate or conflict with any federal regulations. There are no federal regulations that prescribe rules for workers' compensation panel QMEs.

7. The Specific Purpose, Rationale, and Necessity of Each Section of the Proposed Amendments (Government Code section 11346.2(b)(1))

The specific purpose, rationale, and necessity of each section of the proposed amendments, in accordance with Government Code section 11346.2(b)(1), is provided below.

Section 30. QME Panel Requests

Specific Purpose of Section 30:

The purpose of this section is to describe how parties apply to the Medical Unit to request the issuance of a panel of QMEs, in order to select one QME to do a comprehensive medical-legal evaluation and report. Subdivision (a) is amended to delete the requirement that an unrepresented party requesting a QME panel "attach a written objection indicating the identity of the primary treating physician, the date of the primary treating physician's report that is the subject of the objection and a description of the medical dispute that requires a comprehensive medical-legal report to resolve." Subdivision (a)(2) is amended to state that if the requesting

party is the claims administrator, the claims administrator must attach a written objection. Subdivision (a)(4) is amended to make clarifying changes.

Subdivision (b) is amended to require represented parties to apply for a panel of QMEs online for dates of injury on or after January 1, 2005. It also provides that the party requesting the QME panel shall submit information and generate a panel online and serve a copy of the panel and any supporting documentation. The data fields that were previously set out in the Form 106 are now listed directly in the regulatory text.

Subdivision (b)(4) is added to allow for requests to be made 24 hours a day, seven days a week, and to define the deemed date and time of receipt for requests made outside of standard business days and hours.

Subdivision (b)(5) is added to allow parties to contact the Medical Unit for technical difficulties.

Subdivision (c)(1), pertaining to the existing paper form process, is being deleted because with the online process, the Medical Unit will no longer process these requests.

Subdivision (g) is deleted as parties will no longer mail in a request for a panel of QMEs.

Necessity:

The amendments to subdivision (a) are proposed to simplify and clarify the process for parties to obtain a QME in unrepresented cases.

Amendments to subdivision (b) of this section are proposed to implement an online process for generating initial panel requests in represented cases. The online system will provide for a more efficient process in providing a panel of QMEs in represented cases.

Section 30.5. Specialist Designation

Specific Purpose of Section 30.5:

This section describes which specialty will be utilized by the Medical Director in the panel selection process. This section is amended to the online process.

Necessity:

This amendment is necessary to reflect the change in the QME panel process.

Section 31.1. QME Panel Selection Disputes in Represented Cases

Specific Purpose of Section 31.1:

This section sets forth how the Medical Director will select an appropriate medical specialty when requests for a QME panel are filed by different represented parties on the same day, and what additional information a party should supply when requesting a panel in a different medical specialty than that of the treating physician.

Subdivisions (a)(1)-(3) and (b) have been deleted because with the implementation of an online process, parties will be unable to make simultaneous requests, thus making these subdivisions inapplicable.

This section is amended to allow parties to have any disputes regarding the validity of panel requests resolved by a Workers' Compensation Administrative Law Judge. This section is also amended to provide that disputes over the appropriateness of the designated specialty shall be resolved pursuant to section 31.5(a) of Title 8 of the California Code of Regulations.

Necessity:

This amendment is necessary to reflect the change in the QME panel process.

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

Specific Purpose of Section 100:

This section is the form used to apply for appointment as a QME. This form is amended to add the heading "INITIALS" on page 2 and the top of page 3, to draw attention to the need to fill in initials in the boxes in order for the application to be complete.

Page 4 of this form is amended to delete "MMO Orthopaedic Surgery – Oncology," "MMO Radiology – Oncology," because these specialties are no longer offered to the public. The deletion of these specialties is a clarifying change.

Page 4 of this form is also amended to delete "PSN Psychology – Clinical Neuropsychology" to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code "PSY-Psychology."

Page 4 of this form is further amended to add "MOQ – Medicine Otherwise Qualified" to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any existing specialty category.

Necessity:

This amendment is necessary to clarify to the QME applicants that these particular specialty categories no longer exist. In addition, a general category is necessary for QMEs who are otherwise qualified to be QMEs but do not fall into any existing specialty category.

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

Specific Purpose of Section 104:

This section is the form to apply for reappointment as a QME.

This section is amended to add “INITIALS” on page 2 of the form to highlight the need for applicants to initial the boxes.

Page 3 of this form is amended to delete “MMO Orthopaedic Surgery – Oncology,” “MMO Radiology – Oncology,” because these specialties are no longer offered to the public. The deletion of these specialties is a clarifying change.

Page 3 of this form is also amended to delete “PSN Psychology – Clinical Neuropsychology” to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code “PSY-Psychology.”

Page 3 of this form is further amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category.

Necessity:

This amendment is proposed to clarify to the QME applicants that these particular specialty categories no longer exist. In addition, a general category is necessary for QMEs who are otherwise qualified to be QMEs but do not fall into any existing specialty category.

Section 105. The Request for Qualified Medical Evaluator Panel - Unrepresented Form

Specific Purpose of Section 105:

This section is the form used to request a QME panel for unrepresented injured workers. The form’s formatting was changed to make the form more user-friendly. Changes are also made to the attached proof of service. Page 3 of this form is amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category.

Necessity:

The amendment to the form is proposed to make it more user-friendly. Failure to fill out the form will result in rejection of the request, causing delays in obtaining a panel. In addition, a general category is necessary for QMEs who are otherwise qualified to be QMEs but do fall into any existing specialty category.

Section 106. The Request for Qualified Medical Evaluator Panel – Represented Form

Specific Purpose of Section 106:

This section was the form used to request a QME Panel for represented injured workers for all dates of injuries. This section is amended to show that this form is to be used only for injuries with dates on or before January 1, 2005. This form is amended to add “MOQ – Medicine Otherwise Qualified” to provide a general category for QMEs who are otherwise qualified to be a QME but do not fall into any other specialty category. This form is amended to delete “PSN Psychology – Clinical Neuropsychology” to conform to Labor Code section 139.2 as the California Medical Board does not recognize Clinical Neuropsychology as a specialty. The QMEs listed in this specialty code will be merged into the existing code “PSY-Psychology.” This form is amended to add “Gastroenterology” to MMG Internal Medicine.

Necessity:

This form is amended to reflect implementation of an online system and to make uniform the specialty listing codes.

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

Specific Purpose of Section 109

This section is necessary to provide a form for QMEs to request unavailability to perform medical evaluations. This form is amended to reflect that the unavailability period is during a calendar year and not during the QME fee period.

Necessity:

The proposed amendment is necessary to correct a mistake and conform to the unavailability provisions of section 33 of these rules.

8. Economic Impact Analysis

Evidence Supporting Finding of No Significant Statewide Adverse Impact Directly Affecting Business

The Administrative Director has determined that the proposed regulations will not have a significant adverse impact on business. Currently, represented parties must go to the DWC website and fill out a form to request a panel QME. The requesting party must then print out and mail in the paper form with service to the opposing party. Upon receipt by the Medical Unit of the request form, the Medical Unit generates a panel list, and the parties receive the list in the mail approximately 30 days after submission of the request. The proposed rulemaking will allow the parties to fill out the form on the DWC website and rather than mail in the request, will electronically submit the form. The online system will generate a list that the requesting party will print out and serve on the opposing party. The proposed rulemaking will eliminate the 30 day processing time of the panel request. Minor adjustments to the internal process will be required of claims adjusters and attorneys. Based upon DWC’s Uniform Assigned Name (UAN) which is assigned to law firms, TPA, insurers, and self-insured employers, the total number of

businesses impacted is 6,871. The proposed regulations will have a minimal cost impact on businesses for paper, envelope and postage. The overall reduction in delay for obtaining a list of panel QMEs will result in an overall savings to business and to the State of California by reducing paper, postage, and manpower.

Creation or Elimination of Jobs within the State of California

The Acting Administrative Director has determined that the proposed regulations will not have a significant adverse impact on jobs within the State of California. These regulations change existing procedures and forms. The regulations change only the process for requesting and obtaining an initial QME panel for represented cases by changing it from a manual process to an electronic process.

Creation of New or Elimination of Existing Business within the State of California

Businesses will not be created or eliminated. There will be no net gain or loss in revenues and no expected creation or elimination of jobs within the State of California. QMEs will continue to evaluate and issue reports to address causation and an injured worker's level of permanent disability.

Expansion of Business or Existing Businesses within the State of California

Businesses will not be expanded or eliminated. The proposed regulations improve upon an existing system by allowing represented parties to obtain a panel QME online rather than by mailing in a form. QMEs will continue to evaluate and issue reports once selected from the panel list.

Benefits of the Proposed Regulations

The Acting Administrative Director has determined that the regulations would not affect worker safety or the state's environment. However, the regulations will benefit the health and welfare of California residents by improving the process for obtaining a QME panel. The online process will prevent delays in obtaining a panel QME, ensuring that injured workers are able to resolve disputes quickly and obtain benefits that they are entitled to. Changes to the unrepresented employee form will make it user-friendly, preventing delays in obtaining a panel. Clarifying changes to the QME appointment and reappointment forms will also prevent delays in processing the forms ensuring that QMEs are appointed and reappointed and available to perform evaluations if selected.