

**ASSEMBLY BILL**

**No. 2086**

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**Introduced by Assembly Members Cooley and Mathis**

February 17, 2016

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An act to amend Section 139.2 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, as introduced, Cooley. Workers' compensation: neuropsychologists.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires the Administrative Director of the Division of Workers' Compensation to appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues, including medical doctors and osteopaths who meet specified requirements, including, among others, that the evaluator is board certified in a specialty by a board recognized by the administrative director and the appropriate regulatory board, or the evaluator has successfully completed a residency training program accredited by the Accreditation Council for Graduate Medical Education. Existing law also provides that the requirements for a psychologist to be appointed as an evaluator include either being board certified in clinical psychology by a board recognized by the administrative director, holding a doctoral degree in psychology or a doctoral degree sufficient for licensure, and having at least 5 years of specified experience, or

having at least 5 years of postdoctoral experience and having previously served as a medical evaluator.

This bill would provide that a medical doctor or osteopath who has successfully completed a residency or fellowship program accredited by an organization that is a predecessor to the Accreditation Council for Graduate Medical Evaluation would satisfy the residency training requirement. The bill would delete the requirement that the appropriate regulatory board approve the board certification of an evaluator who is a medical doctor or doctor of osteopathy. The bill would provide that a person who is certified in neuropsychology by specified boards or organizations, or who is a clinical psychologist licensed to practice in the state, holds a doctoral degree in psychology, and has at least 2 years of specified experience and training, and has served as an agreed medical evaluator in neuropsychology on 5 or more occasions may be appointed by the administrative director as a qualified medical evaluator in neuropsychology.

The bill would state findings and declarations of the Legislature relative to the need for neuropsychologists in the workers' compensation system. The bill would make additional technical, nonsubstantive changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Section 4 of Article XIV of the California Constitution grants
- 4 the Legislature plenary power to create a workers' compensation
- 5 system that includes adequate provision for the comfort, health
- 6 and safety, and general welfare of workers and their dependents
- 7 to relieve them of the consequences of any work-related injury or
- 8 death, irrespective of the fault of any party and requires the
- 9 administration of the workers' compensation system to accomplish
- 10 substantial justice in all cases expeditiously, inexpensively, and
- 11 without encumbrance of any character, all of which matters are
- 12 expressly declared to be the social public policy of this state.

1 (b) Because current state law requires high school athletes  
2 suffering traumatic brain injuries and concussions be evaluated by  
3 specially-trained healthcare professionals, California workers  
4 suffering similar injuries also need to be treated and evaluated by  
5 appropriate healthcare professionals such as neuropsychologists.

6 (c) For more than 23 years, the State of California recognized  
7 neuropsychology as a separate and distinct specialty for qualified  
8 medical evaluators in the workers' compensation system,  
9 permitting injured workers to receive prompt and appropriate  
10 assessment of their traumatic brain injuries.

11 (d) Even though the former Industrial Medical Council and the  
12 current Division of Workers' Compensation have recognized  
13 various health care specialties for more than two decades, health  
14 care licensing boards such as the Medical Board of California, the  
15 Osteopathic Medical Board of California, and the Board of  
16 Psychology, have never recognized separate specialties and  
17 subspecialties within their respective licensing jurisdictions.

18 (e) Pursuant to the plenary power granted by the Constitution,  
19 the Legislature hereby establishes the criteria for the Administrative  
20 Director of the Division of Workers' Compensation to appoint  
21 qualified medical evaluators in the specialty category of  
22 neuropsychology.

23 SEC. 2. Section 139.2 of the Labor Code is amended to read:

24 139.2. (a) The administrative director shall appoint qualified  
25 medical evaluators in each of the respective specialties as required  
26 for the evaluation of medical-legal issues. The appointments shall  
27 be for two-year terms.

28 (b) The administrative director shall appoint or reappoint as a  
29 qualified medical evaluator a physician, as defined in Section  
30 3209.3, who is licensed to practice in this state and who  
31 demonstrates that he or she meets the requirements in paragraphs  
32 (1), (2), (6), and (7), and, if the physician is a medical doctor,  
33 doctor of osteopathy, doctor of chiropractic, or a psychologist, that  
34 he or she also meets the applicable requirements in paragraph (3),  
35 (4), or (5).

36 (1) Prior to his or her appointment as a qualified medical  
37 evaluator, passes an examination written and administered by the  
38 administrative director for the purpose of demonstrating  
39 competence in evaluating medical-legal issues in the workers'  
40 compensation system. Physicians shall not be required to pass an

1 additional examination as a condition of reappointment. A  
2 physician seeking appointment as a qualified medical evaluator  
3 on or after January 1, 2001, shall also complete prior to  
4 appointment, a course on disability evaluation report writing  
5 approved by the administrative director. The administrative director  
6 shall specify the curriculum to be covered by disability evaluation  
7 report writing courses, which shall include, but is not limited to,  
8 12 or more hours of instruction.

9 (2) Devotes at least one-third of total practice time to providing  
10 direct medical treatment, or has served as an agreed medical  
11 evaluator on eight or more occasions in the 12 months prior to  
12 applying to be appointed as a qualified medical evaluator.

13 (3) Is a medical doctor or doctor of osteopathy and meets one  
14 of the following requirements:

15 (A) Is board certified in a specialty by a board recognized by  
16 the administrative director and either the Medical Board of  
17 California or the Osteopathic Medical Board of California. ~~director.~~

18 (B) Has successfully completed a residency *or fellowship*  
19 training program accredited by the Accreditation Council for  
20 Graduate Medical Education *or a predecessor organization*, or  
21 the osteopathic equivalent.

22 (C) Was an active qualified medical evaluator on June 30, 2000.

23 (D) Has qualifications that the administrative director ~~and either~~  
24 ~~the Medical Board of California or the Osteopathic Medical Board~~  
25 ~~of California, as appropriate, both deem~~ *deems* to be equivalent to  
26 board certification in a specialty.

27 (4) Is a doctor of chiropractic and has been certified in California  
28 workers' compensation evaluation by a provider recognized by  
29 the administrative director. The certification program shall include  
30 instruction on disability evaluation report writing that meets the  
31 standards set forth in paragraph (1).

32 (5) Is a psychologist and meets one of the following  
33 requirements:

34 (A) Is board certified in clinical psychology by a board  
35 recognized by the administrative director.

36 (B) Holds a doctoral degree in psychology, or a doctoral degree  
37 deemed equivalent for licensure by the Board of Psychology  
38 pursuant to Section 2914 of the Business and Professions Code,  
39 from a university or professional school recognized by the  
40 administrative director and has not less than five years'

1 postdoctoral experience in the diagnosis and treatment of emotional  
2 and mental disorders.

3 (C) Has not less than five years' postdoctoral experience in the  
4 diagnosis and treatment of emotional and mental disorders, and  
5 has served as an agreed medical evaluator on eight or more  
6 occasions prior to January 1, 1990.

7 (D) *Is certified in clinical neuropsychology by the American*  
8 *Board of Clinical Neuropsychology, the American Board of*  
9 *Professional Neuropsychology, or another organization recognized*  
10 *by the administrative director. A psychologist who meets the*  
11 *requirements of this subparagraph may be appointed as a qualified*  
12 *medical evaluator in neuropsychology.*

13 (E) *Is licensed to practice psychology in this state and has a*  
14 *doctoral degree in psychology, or a doctoral degree deemed*  
15 *equivalent for licensure by the Board of Psychology pursuant to*  
16 *Section 2914 of the Business and Professions Code, from an*  
17 *accredited university or college training program, has completed*  
18 *an internship or its equivalent in a clinically relevant area of*  
19 *professional psychology, has at least two years of experience and*  
20 *specialized training, at least one year of which is at the*  
21 *post-doctoral level, in the study and practice of clinical*  
22 *neuropsychology and related neurosciences under the supervision*  
23 *of a clinical neuropsychologist, and has served as an agreed*  
24 *medical evaluator in neuropsychology on five or more occasions.*  
25 *A psychologist who satisfies the requirements of this subparagraph*  
26 *may be appointed as a qualified medical evaluator in*  
27 *neuropsychology.*

28 (6) Does not have a conflict of interest as determined under the  
29 regulations adopted by the administrative director pursuant to  
30 subdivision (o).

31 (7) Meets any additional medical or professional standards  
32 adopted pursuant to paragraph (6) of subdivision (j).

33 (c) The administrative director shall adopt standards for  
34 appointment of physicians who are retired or who hold teaching  
35 positions who are exceptionally well qualified to serve as a  
36 qualified medical evaluator even though they do not otherwise  
37 qualify under paragraph (2) of subdivision (b). A physician whose  
38 full-time practice is limited to the forensic evaluation of disability  
39 shall not be appointed as a qualified medical evaluator under this  
40 subdivision.

(d) (1) The qualified medical evaluator, upon request, shall be reappointed if he or she meets the qualifications of subdivision (b) and meets all of the following criteria:

~~(1)~~

(A) Is in compliance with all applicable regulations and evaluation guidelines adopted by the administrative director.

~~(2)~~

(B) Has not had more than five of his or her evaluations that were considered by a workers' compensation administrative law judge at a contested hearing rejected by the workers' compensation administrative law judge or the appeals board pursuant to this section during the most recent two-year period during which the physician served as a qualified medical evaluator. If the workers' compensation administrative law judge or the appeals board rejects the qualified medical evaluator's report on the basis that it fails to meet the minimum standards for those reports established by the administrative director or the appeals board, the workers' compensation administrative law judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the administrative director. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

~~(3)~~

(C) Has completed within the previous 24 months at least 12 hours of continuing education in impairment evaluation or workers' compensation-related medical dispute evaluation approved by the administrative director.

~~(4)~~

(D) Has not been terminated, suspended, placed on probation, or otherwise disciplined by the administrative director during his or her most recent term as a qualified medical evaluator.

~~H~~

(2) If the evaluator does not meet any one of these criteria, the administrative director may in his or her discretion reappoint or deny reappointment according to regulations adopted by the administrative director. A physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) because his or her license has been revoked or terminated by the licensing authority shall not be reappointed.

1 (e) The administrative director may, in his or her discretion,  
2 suspend or terminate a qualified medical evaluator during his or  
3 her term of appointment without a hearing as provided under  
4 subdivision (k) or (l) whenever either of the following conditions  
5 occurs:

6 (1) The evaluator's license to practice in California has been  
7 suspended by the relevant licensing authority so as to preclude  
8 practice, or has been revoked or terminated by the licensing  
9 authority.

10 (2) The evaluator has failed to timely pay the fee required by  
11 the administrative director pursuant to subdivision (n).

12 (f) The administrative director shall furnish a physician, upon  
13 request, with a written statement of its reasons for termination of,  
14 or for denying appointment or reappointment as, a qualified  
15 medical evaluator. Upon receipt of a specific response to the  
16 statement of reasons, the administrative director shall review his  
17 or her decision not to appoint or reappoint the physician or to  
18 terminate the physician and shall notify the physician of its final  
19 decision within 60 days after receipt of the physician's response.

20 (g) The administrative director shall establish agreements with  
21 qualified medical evaluators to ensure the expeditious evaluation  
22 of cases assigned to them for comprehensive medical evaluations.

23 (h) (1) When requested by an employee or employer pursuant  
24 to Section 4062.1, the medical director appointed pursuant to  
25 Section 122 shall assign three-member panels of qualified medical  
26 evaluators within five working days after receiving a request for  
27 a panel. Preference in assigning panels shall be given to cases in  
28 which the employee is not represented. If a panel is not assigned  
29 within 20 working days, the employee shall have the right to obtain  
30 a medical evaluation from any qualified medical evaluator of his  
31 or her choice within a reasonable geographic area. The medical  
32 director shall use a random selection method for assigning panels  
33 of qualified medical evaluators. The medical director shall select  
34 evaluators who are specialists of the type requested by the  
35 employee. The medical director shall advise the employee that he  
36 or she should consult with his or her treating physician prior to  
37 deciding which type of specialist to request.

38 (2) The administrative director shall promulgate a form that  
39 shall notify the employee of the physicians selected for his or her  
40 panel after a request has been made pursuant to Section 4062.1 or

1 4062.2. The form shall include, for each physician on the panel,  
2 the physician's name, address, telephone number, specialty, number  
3 of years in practice, and a brief description of his or her education  
4 and training, and shall advise the employee that he or she is entitled  
5 to receive transportation expenses and temporary disability for  
6 each day necessary for the examination. The form shall also state  
7 in a clear and conspicuous location and type: ~~"You~~

8 "You have the right to consult with an information and assistance  
9 officer at no cost to you prior to selecting the doctor to prepare  
10 your evaluation, or you may consult with an attorney. If your claim  
11 eventually goes to court, the workers' compensation administrative  
12 law judge will consider the evaluation prepared by the doctor you  
13 select to decide your claim."

14 (3) When compiling the list of evaluators from which to select  
15 randomly, the medical director shall include all qualified medical  
16 evaluators who meet all of the following criteria:

17 (A) He or she does not have a conflict of interest in the case, as  
18 defined by regulations adopted pursuant to subdivision (o).

19 (B) He or she is certified by the administrative director to  
20 evaluate in an appropriate specialty and at locations within the  
21 general geographic area of the employee's residence. An evaluator  
22 shall not conduct qualified medical evaluations at more than 10  
23 locations.

24 (C) He or she has not been suspended or terminated as a  
25 qualified medical evaluator for failure to pay the fee required by  
26 the administrative director pursuant to subdivision (n) or for any  
27 other reason.

28 (4) When the medical director determines that an employee has  
29 requested an evaluation by a type of specialist that is appropriate  
30 for the employee's injury, but there are not enough qualified  
31 medical evaluators of that type within the general geographic area  
32 of the employee's residence to establish a three-member panel,  
33 the medical director shall include sufficient qualified medical  
34 evaluators from other geographic areas and the employer shall pay  
35 all necessary travel costs incurred in the event the employee selects  
36 an evaluator from another geographic area.

37 (i) The medical director appointed pursuant to Section 122 shall  
38 continuously review the quality of comprehensive medical  
39 evaluations and reports prepared by agreed and qualified medical  
40 evaluators and the timeliness with which evaluation reports are



1 prepared and submitted. The review shall include, but not be  
2 limited to, a review of a random sample of reports submitted to  
3 the division, and a review of all reports alleged to be inaccurate  
4 or incomplete by a party to a case for which the evaluation was  
5 prepared. The medical director shall submit to the administrative  
6 director an annual report summarizing the results of the continuous  
7 review of medical evaluations and reports prepared by agreed and  
8 qualified medical evaluators and make recommendations for the  
9 improvement of the system of medical evaluations and  
10 determinations.

11 (j) After public hearing pursuant to Section 5307.3, the  
12 administrative director shall adopt regulations concerning the  
13 following issues:

14 (1) (A) Standards governing the timeframes within which  
15 medical evaluations shall be prepared and submitted by agreed  
16 and qualified medical evaluators. Except as provided in this  
17 subdivision, the timeframe for initial medical evaluations to be  
18 prepared and submitted shall be no more than 30 days after the  
19 evaluator has seen the employee or otherwise commenced the  
20 medical evaluation procedure. The administrative director shall  
21 develop regulations governing the provision of extensions of the  
22 30-day period in both of the following cases:

23 (i) When the evaluator has not received test results or consulting  
24 physician's evaluations in time to meet the 30-day deadline.

25 (ii) To extend the 30-day period by not more than 15 days when  
26 the failure to meet the 30-day deadline was for good cause.

27 (B) For purposes of subparagraph (A), "good cause" means any  
28 of the following:

29 (i) Medical emergencies of the evaluator or evaluator's family.

30 (ii) Death in the evaluator's family.

31 (iii) Natural disasters or other community catastrophes that  
32 interrupt the operation of the evaluator's business.

33 (C) The administrative director shall develop timeframes  
34 governing availability of qualified medical evaluators for  
35 unrepresented employees under Section 4062.1. These timeframes  
36 shall give the employee the right to the addition of a new evaluator  
37 to his or her panel, selected at random, for each evaluator not  
38 available to see the employee within a specified period of time,  
39 but shall also permit the employee to waive this right for a specified  
40 period of time thereafter.

(2) Procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury in a manner consistent with Sections 4660 and 4660.1.

(3) Procedures governing the determination of any disputed medical treatment issues in a manner consistent with Section 5307.27.

(4) Procedures to be used in determining the compensability of psychiatric injury. The procedures shall be in accordance with Section 3208.3 and shall require that the diagnosis of a mental disorder be expressed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(5) Guidelines for the range of time normally required to perform the following:

(A) A medical-legal evaluation that has not been defined and valued pursuant to Section 5307.6. The guidelines shall establish minimum times for patient contact in the conduct of the evaluations, and shall be consistent with regulations adopted pursuant to Section 5307.6.

(B) Any treatment procedures that have not been defined and valued pursuant to Section 5307.1.

(C) Any other evaluation procedure requested by the Insurance Commissioner, or deemed appropriate by the administrative director.

(6) Any additional medical or professional standards that a medical evaluator shall meet as a condition of appointment, reappointment, or maintenance in the status of a medical evaluator.

(k) (1) Except as provided in this subdivision, the administrative director may, in his or her discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the administrative director, after hearing pursuant to subdivision (l), determines, based on substantial evidence, that a qualified medical evaluator:

(1)

(A) Has violated any material statutory or administrative duty.

(2)

1 (B) Has failed to follow the medical procedures or qualifications  
2 established pursuant to paragraph (2), (3), (4), or (5) of subdivision  
3 (j).

4 ~~(3)~~

5 (C) Has failed to comply with the timeframe standards  
6 established pursuant to subdivision (j).

7 ~~(4)~~

8 (D) Has failed to meet the requirements of subdivision (b) or  
9 (c).

10 ~~(5)~~

11 (E) Has prepared medical-legal evaluations that fail to meet the  
12 minimum standards for those reports established by the  
13 administrative director or the appeals board.

14 ~~(6)~~

15 (F) Has made material misrepresentations or false statements  
16 in an application for appointment or reappointment as a qualified  
17 medical evaluator.

18 ~~A~~

19 (2) A hearing shall not be required prior to the suspension or  
20 termination of a physician's privilege to serve as a qualified  
21 medical evaluator when the physician has done either of the  
22 following:

23 (A) Failed to timely pay the fee required pursuant to subdivision  
24 (n).

25 (B) Had his or her license to practice in California suspended  
26 by the relevant licensing authority so as to preclude practice, or  
27 had the license revoked or terminated by the licensing authority.

28 (I) The administrative director shall cite the qualified medical  
29 evaluator for a violation listed in subdivision (k) and shall set a  
30 hearing on the alleged violation within 30 days of service of the  
31 citation on the qualified medical evaluator. In addition to the  
32 authority to terminate or suspend the qualified medical evaluator  
33 upon finding a violation listed in subdivision (k), the administrative  
34 director may, in his or her discretion, place a qualified medical  
35 evaluator on probation subject to appropriate conditions, including  
36 ordering continuing education or training. The administrative  
37 director shall report to the appropriate licensing board the name  
38 of any qualified medical evaluator who is disciplined pursuant to  
39 this subdivision.

(m) The administrative director shall terminate from the list of medical evaluators any physician where licensure has been terminated by the relevant licensing board, or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice, or of a crime of moral turpitude. The administrative director shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board. If a physician is suspended or terminated as a qualified medical evaluator under this subdivision, a report prepared by the physician that is not complete, signed, and furnished to one or more of the parties prior to the date of conviction or action of the licensing board, whichever is earlier, shall not be admissible in any proceeding before the appeals board nor shall there be any liability for payment for the report and any expense incurred by the physician in connection with the report.

(n) A qualified medical evaluator shall pay a fee, as determined by the administrative director, for appointment or reappointment. These fees shall be based on a sliding scale as established by the administrative director. All revenues from fees paid under this subdivision shall be deposited into the Workers' Compensation Administration Revolving Fund and are available for expenditure upon appropriation by the Legislature, and shall not be used by any other department or agency or for any purpose other than administration of the programs of the Division of Workers' Compensation related to the provision of medical treatment to injured employees.

(o) 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 this code. The administrative director, after consultation with the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The Administrative Director of the Division of Workers' Compensation recently abolished the recognition of neuropsychologists as Qualified Medical Evaluators in the workers'

1 compensation system based on the division's interpretation of  
2 Section 139.2 of the Labor Code. In order to permit injured workers  
3 to continue to receive medical-legal evaluation services from  
4 neuropsychologists in appropriate cases and at the earliest possible  
5 time, it is necessary for this act to take effect immediately.

O