

AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2086

Introduced by Assembly Members Cooley and Mathis

February 17, 2016

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 amended, 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 *specialty board be recognized by the administrative director. The bill would authorize as a criterion for those purposes board certification by a board approved by the American Board of Medical Specialties, a speciality board with a program accredited by the Accreditation Council for Graduate Medical Education, or other specialty boards, as specified, or approval by the appropriate regulatory board—approve the board certification—* of for 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

1 death, irrespective of the fault of any ~~party~~ party, and requires the
2 administration of the workers' compensation system to accomplish
3 substantial justice in all cases expeditiously, inexpensively, and
4 without encumbrance of any character, all of which matters are
5 expressly declared to be the social public policy of this state.

6 (b) Because current state law requires high school athletes
7 suffering traumatic brain injuries and concussions be evaluated by
8 ~~specially-trained healthcare~~ *specially trained health care*
9 professionals, California workers suffering similar injuries also
10 need to be treated and evaluated by appropriate ~~healthcare~~ *health*
11 *care* professionals such as neuropsychologists.

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

17 (d) Even though the former Industrial Medical Council and the
18 current Division of Workers' Compensation have recognized
19 various health care specialties for more than two decades, health
20 care licensing boards such as the Medical Board of California, the
21 Osteopathic Medical Board of California, and the Board of
22 ~~Psychology~~, *Psychology* have never recognized separate specialties
23 and subspecialties within their respective licensing jurisdictions.

24 (e) Pursuant to the plenary power granted by the Constitution,
25 the Legislature hereby establishes the criteria for the Administrative
26 Director of the Division of Workers' Compensation to appoint
27 qualified medical evaluators in the specialty category of
28 neuropsychology.

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

30 139.2. (a) The administrative director shall appoint qualified
31 medical evaluators in each of the respective specialties as required
32 for the evaluation of medical-legal issues. The appointments shall
33 be for two-year terms.

34 (b) The administrative director shall appoint or reappoint as a
35 qualified medical evaluator a physician, as defined in Section
36 3209.3, who is licensed to practice in this state and who
37 demonstrates that he or she meets the requirements in paragraphs
38 (1), (2), (6), and (7), and, if the physician is a medical doctor,
39 doctor of osteopathy, doctor of chiropractic, or a psychologist, that

1 he or she also meets the applicable requirements in paragraph (3),
2 (4), or (5).

3 (1) Prior to his or her appointment as a qualified medical
4 evaluator, passes an examination written and administered by the
5 administrative director for the purpose of demonstrating
6 competence in evaluating medical-legal issues in the workers'
7 compensation system. Physicians shall not be required to pass an
8 additional examination as a condition of reappointment. A
9 physician seeking appointment as a qualified medical evaluator
10 on or after January 1, 2001, shall also complete prior to
11 appointment, a course on disability evaluation report writing
12 approved by the administrative director. The administrative director
13 shall specify the curriculum to be covered by disability evaluation
14 report writing courses, which shall include, but is not limited to,
15 12 or more hours of instruction.

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

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

22 (A) Is board certified in a specialty by a board ~~recognized by~~
23 ~~the administrative director.~~ *approved by the American Board of*
24 *Medical Specialties, or a specialty board with a postgraduate*
25 *training program accredited by the Accreditation Council for*
26 *Graduate Medical Education, or a specialty board with equivalent*
27 *requirements approved by the Medical Board of California or the*
28 *Osteopathic Medical Board of California.*

29 (B) Has successfully completed a residency or fellowship
30 training program accredited by the Accreditation Council for
31 Graduate Medical Education or a predecessor organization, or the
32 osteopathic equivalent.

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

34 (D) Has qualifications that the administrative director deems to
35 be equivalent to board certification in a specialty.

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

1 (5) Is a psychologist and meets one of the following
2 requirements:

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

5 (B) Holds a doctoral degree in psychology, or a doctoral degree
6 deemed equivalent for licensure by the Board of Psychology
7 pursuant to Section 2914 of the Business and Professions Code,
8 from a university or professional school recognized by the
9 administrative director and has not less than five years'
10 postdoctoral experience in the diagnosis and treatment of emotional
11 and mental disorders.

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

16 (D) Is certified in clinical neuropsychology by the American
17 Board of Clinical Neuropsychology, the American Board of
18 Professional Neuropsychology, or another organization recognized
19 by the administrative director. A psychologist who meets the
20 requirements of this subparagraph may be appointed as a qualified
21 medical evaluator in neuropsychology.

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

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

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

3 (c) The administrative director shall adopt standards for
4 appointment of physicians who are retired or who hold teaching
5 positions who are exceptionally well qualified to serve as a
6 qualified medical evaluator even though they do not otherwise
7 qualify under paragraph (2) of subdivision (b). A physician whose
8 full-time practice is limited to the forensic evaluation of disability
9 shall not be appointed as a qualified medical evaluator under this
10 subdivision.

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

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

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

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

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

39 (2) If the evaluator does not meet any one of these criteria, the
40 administrative director may in his or her discretion reappoint or

1 deny reappointment according to regulations adopted by the
2 administrative director. A physician who does not currently meet
3 the requirements for initial appointment or who has been terminated
4 under subdivision (e) because his or her license has been revoked
5 or terminated by the licensing authority shall not be reappointed.

6 (e) The administrative director may, in his or her discretion,
7 suspend or terminate a qualified medical evaluator during his or
8 her term of appointment without a hearing as provided under
9 subdivision (k) or (l) whenever either of the following conditions
10 occurs:

11 (1) The evaluator's license to practice in California has been
12 suspended by the relevant licensing authority so as to preclude
13 practice, or has been revoked or terminated by the licensing
14 authority.

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

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

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

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

1 or she should consult with his or her treating physician prior to
2 deciding which type of specialist to request.

3 (2) The administrative director shall promulgate a form that
4 shall notify the employee of the physicians selected for his or her
5 panel after a request has been made pursuant to Section 4062.1 or
6 4062.2. The form shall include, for each physician on the panel,
7 the physician’s name, address, telephone number, specialty, number
8 of years in practice, and a brief description of his or her education
9 and training, and shall advise the employee that he or she is entitled
10 to receive transportation expenses and temporary disability for
11 each day necessary for the examination. The form shall also state
12 in a clear and conspicuous location and type:

13 “You have the right to consult with an information and assistance
14 officer at no cost to you prior to selecting the doctor to prepare
15 your evaluation, or you may consult with an attorney. If your claim
16 eventually goes to court, the workers’ compensation administrative
17 law judge will consider the evaluation prepared by the doctor you
18 select to decide your claim.”

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

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

24 (B) He or she is certified by the administrative director to
25 evaluate in an appropriate specialty and at locations within the
26 general geographic area of the employee’s residence. An evaluator
27 shall not conduct qualified medical evaluations at more than 10
28 locations.

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

33 (4) When the medical director determines that an employee has
34 requested an evaluation by a type of specialist that is appropriate
35 for the employee’s injury, but there are not enough qualified
36 medical evaluators of that type within the general geographic area
37 of the employee’s residence to establish a three-member panel,
38 the medical director shall include sufficient qualified medical
39 evaluators from other geographic areas and the employer shall pay

1 all necessary travel costs incurred in the event the employee selects
2 an evaluator from another geographic area.

3 (i) The medical director appointed pursuant to Section 122 shall
4 continuously review the quality of comprehensive medical
5 evaluations and reports prepared by agreed and qualified medical
6 evaluators and the timeliness with which evaluation reports are
7 prepared and submitted. The review shall include, but not be
8 limited to, a review of a random sample of reports submitted to
9 the division, and a review of all reports alleged to be inaccurate
10 or incomplete by a party to a case for which the evaluation was
11 prepared. The medical director shall submit to the administrative
12 director an annual report summarizing the results of the continuous
13 review of medical evaluations and reports prepared by agreed and
14 qualified medical evaluators and make recommendations for the
15 improvement of the system of medical evaluations and
16 determinations.

17 (j) After public hearing pursuant to Section 5307.3, the
18 administrative director shall adopt regulations concerning the
19 following issues:

20 (1) (A) Standards governing the timeframes within which
21 medical evaluations shall be prepared and submitted by agreed
22 and qualified medical evaluators. Except as provided in this
23 subdivision, the timeframe for initial medical evaluations to be
24 prepared and submitted shall be no more than 30 days after the
25 evaluator has seen the employee or otherwise commenced the
26 medical evaluation procedure. The administrative director shall
27 develop regulations governing the provision of extensions of the
28 30-day period in both of the following cases:

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

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

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

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

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

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

39 (C) The administrative director shall develop timeframes
40 governing availability of qualified medical evaluators for

1 unrepresented employees under Section 4062.1. These timeframes
2 shall give the employee the right to the addition of a new evaluator
3 to his or her panel, selected at random, for each evaluator not
4 available to see the employee within a specified period of time,
5 but shall also permit the employee to waive this right for a specified
6 period of time thereafter.

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

11 (3) Procedures governing the determination of any disputed
12 medical treatment issues in a manner consistent with Section
13 5307.27.

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

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

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

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

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

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

38 (k) (1) Except as provided in this subdivision, the administrative
39 director may, in his or her discretion, suspend or terminate the
40 privilege of a physician to serve as a qualified medical evaluator

1 if the administrative director, after hearing pursuant to subdivision
2 (I), determines, based on substantial evidence, that a qualified
3 medical evaluator:

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

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

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

10 (D) Has failed to meet the requirements of subdivision (b) or
11 (c).

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

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

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

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

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

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

39 (m) The administrative director shall terminate from the list of
40 medical evaluators any physician where licensure has been

1 terminated by the relevant licensing board, or who has been
2 convicted of a misdemeanor or felony related to the conduct of his
3 or her medical practice, or of a crime of moral turpitude. The
4 administrative director shall suspend or terminate as a medical
5 evaluator any physician who has been suspended or placed on
6 probation by the relevant licensing board. If a physician is
7 suspended or terminated as a qualified medical evaluator under
8 this subdivision, a report prepared by the physician that is not
9 complete, signed, and furnished to one or more of the parties prior
10 to the date of conviction or action of the licensing board, whichever
11 is earlier, shall not be admissible in any proceeding before the
12 appeals board nor shall there be any liability for payment for the
13 report and any expense incurred by the physician in connection
14 with the report.

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

26 (o) An evaluator shall not request or accept any compensation
27 or other thing of value from any source that does or could create
28 a conflict with his or her duties as an evaluator under this code.
29 The administrative director, after consultation with the Commission
30 on Health and Safety and Workers' Compensation, shall adopt
31 regulations to implement this subdivision.

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

36 The Administrative Director of the Division of Workers'
37 Compensation recently abolished the recognition of
38 neuropsychologists as ~~Qualified Medical Evaluators~~ *qualified*
39 *medical evaluators* in the workers' compensation system based
40 on the division's interpretation of Section 139.2 of the Labor Code.

1 In order to permit injured workers to continue to receive
2 medical-legal evaluation services from neuropsychologists in
3 appropriate cases and at the earliest possible time, it is necessary
4 for this act to take effect immediately.

O