

AMENDED IN SENATE MAY 16, 2016

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 the American Osteopathic Association or by an organization that is a predecessor to the Accreditation Council for Graduate Medical Evaluation or the American Osteopathic Association* 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, *the American Osteopathic Association Bureau of Osteopathic Specialists*, a specialty board with a program accredited by the Accreditation Council for Graduate Medical Education, *the American Osteopathic Association*, or other specialty boards, as specified, or approval by the appropriate regulatory board for an evaluator who is a medical doctor or doctor of ~~osteopathy~~ *osteopathic medicine*. *The bill would also authorize as a criterion, for those purposes, having qualifications that the administrative director and either the Medical Board of California or the Osteopathic Medical Board of California both deem are equivalent to board certification, as specified.* 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.

13 (b) Because current state law requires high school athletes
14 suffering traumatic brain injuries and concussions be evaluated by
15 specially trained health care professionals, California workers
16 suffering similar injuries also need to be treated and evaluated by
17 appropriate health care professionals such as neuropsychologists.

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

23 (d) Even though the former Industrial Medical Council and the
24 current Division of Workers' Compensation have recognized
25 various health care specialties for more than two decades, health
26 care licensing boards such as the Medical Board of California, the
27 Osteopathic Medical Board of California, and the Board of
28 Psychology have never recognized separate specialties and
29 subspecialties within their respective licensing jurisdictions.

30 (e) Pursuant to the plenary power granted by the Constitution,
31 the Legislature hereby establishes the criteria for the Administrative
32 Director of the Division of Workers' Compensation to appoint
33 qualified medical evaluators in the specialty category of
34 neuropsychology.

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

36 139.2. (a) The administrative director shall appoint qualified
37 medical evaluators in each of the respective specialties as required

1 for the evaluation of medical-legal issues. The appointments shall
2 be for two-year terms.

3 (b) The administrative director shall appoint or reappoint as a
4 qualified medical evaluator a physician, as defined in Section
5 3209.3, who is licensed to practice in this state and who
6 demonstrates that he or she meets the requirements in paragraphs
7 (1), (2), (6), and (7), and, if the physician is a medical doctor,
8 doctor of ~~osteopathy~~, *osteopathic medicine*, doctor of chiropractic,
9 or a psychologist, that he or she also meets the applicable
10 requirements in paragraph (3), (4), or (5).

11 (1) Prior to his or her appointment as a qualified medical
12 evaluator, passes an examination written and administered by the
13 administrative director for the purpose of demonstrating
14 competence in evaluating medical-legal issues in the workers'
15 compensation system. Physicians shall not be required to pass an
16 additional examination as a condition of reappointment. A
17 physician seeking appointment as a qualified medical evaluator
18 on or after January 1, 2001, shall also complete prior to
19 appointment, a course on disability evaluation report writing
20 approved by the administrative director. The administrative director
21 shall specify the curriculum to be covered by disability evaluation
22 report writing courses, which shall include, but is not limited to,
23 12 or more hours of instruction.

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

28 (3) Is a medical doctor or doctor of ~~osteopathy~~ *osteopathic*
29 *medicine* and meets one of the following requirements:

30 (A) Is board certified in a specialty by a board approved by the
31 American Board of Medical Specialties, *the American Osteopathic*
32 *Association Bureau of Osteopathic Specialists*, or a specialty board
33 with a postgraduate training program accredited by the
34 Accreditation Council for Graduate Medical Education, *the*
35 *American Osteopathic Association*, or a specialty board with
36 equivalent requirements approved by the Medical Board of
37 California or the Osteopathic Medical Board of California.

38 (B) Has successfully completed a residency or fellowship
39 training program accredited by the Accreditation Council for
40 Graduate Medical Education or a predecessor organization, or the

1 ~~osteopathic equivalent. Education, the American Osteopathic~~
2 ~~Association, or a predecessor organization.~~

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

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

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

13 (5) Is a psychologist and meets one of the following
14 requirements:

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

17 (B) Holds a doctoral degree in psychology, or a doctoral degree
18 deemed equivalent for licensure by the Board of Psychology
19 pursuant to Section 2914 of the Business and Professions Code,
20 from a university or professional school recognized by the
21 administrative director and has not less than five years'
22 postdoctoral experience in the diagnosis and treatment of emotional
23 and mental disorders.

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

28 (D) Is certified in clinical neuropsychology by the American
29 Board of Clinical Neuropsychology, the American Board of
30 Professional Neuropsychology, or another organization recognized
31 by the administrative director. A psychologist who meets the
32 requirements of this subparagraph may be appointed as a qualified
33 medical evaluator in neuropsychology.

34 (E) Is licensed to practice psychology in this state and has a
35 doctoral degree in psychology, or a doctoral degree deemed
36 equivalent for licensure by the Board of Psychology pursuant to
37 Section 2914 of the Business and Professions Code, from an
38 accredited university or college training program, has completed
39 an internship or its equivalent in a clinically relevant area of
40 professional psychology, has at least two years of experience and

1 specialized training, at least one year of which is at the postdoctoral
2 level, in the study and practice of clinical neuropsychology and
3 related neurosciences under the supervision of a clinical
4 neuropsychologist, and has served as an agreed medical evaluator
5 in neuropsychology on five or more occasions. A psychologist
6 who satisfies the requirements of this subparagraph may be
7 appointed as a qualified medical evaluator in neuropsychology.

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

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

13 (c) The administrative director shall adopt standards for
14 appointment of physicians who are retired or who hold teaching
15 positions who are exceptionally well qualified to serve as a
16 qualified medical evaluator even though they do not otherwise
17 qualify under paragraph (2) of subdivision (b). A physician whose
18 full-time practice is limited to the forensic evaluation of disability
19 shall not be appointed as a qualified medical evaluator under this
20 subdivision.

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

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

26 (B) Has not had more than five of his or her evaluations that
27 were considered by a workers' compensation administrative law
28 judge at a contested hearing rejected by the workers' compensation
29 administrative law judge or the appeals board pursuant to this
30 section during the most recent two-year period during which the
31 physician served as a qualified medical evaluator. If the workers'
32 compensation administrative law judge or the appeals board rejects
33 the qualified medical evaluator's report on the basis that it fails to
34 meet the minimum standards for those reports established by the
35 administrative director or the appeals board, the workers'
36 compensation administrative law judge or the appeals board, as
37 the case may be, shall make a specific finding to that effect, and
38 shall give notice to the medical evaluator and to the administrative
39 director. Any rejection shall not be counted as one of the five

1 qualifying rejections until the specific finding has become final
2 and time for appeal has expired.

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

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

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

17 (e) The administrative director may, in his or her discretion,
18 suspend or terminate a qualified medical evaluator during his or
19 her term of appointment without a hearing as provided under
20 subdivision (k) or (l) whenever either of the following conditions
21 occurs:

22 (1) The evaluator's license to practice in California has been
23 suspended by the relevant licensing authority so as to preclude
24 practice, or has been revoked or terminated by the licensing
25 authority.

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

28 (f) The administrative director shall furnish a physician, upon
29 request, with a written statement of its reasons for termination of,
30 or for denying appointment or reappointment as, a qualified
31 medical evaluator. Upon receipt of a specific response to the
32 statement of reasons, the administrative director shall review his
33 or her decision not to appoint or reappoint the physician or to
34 terminate the physician and shall notify the physician of its final
35 decision within 60 days after receipt of the physician's response.

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

39 (h) (1) When requested by an employee or employer pursuant
40 to Section 4062.1, the medical director appointed pursuant to

1 Section 122 shall assign three-member panels of qualified medical
2 evaluators within five working days after receiving a request for
3 a panel. Preference in assigning panels shall be given to cases in
4 which the employee is not represented. If a panel is not assigned
5 within 20 working days, the employee shall have the right to obtain
6 a medical evaluation from any qualified medical evaluator of his
7 or her choice within a reasonable geographic area. The medical
8 director shall use a random selection method for assigning panels
9 of qualified medical evaluators. The medical director shall select
10 evaluators who are specialists of the type requested by the
11 employee. The medical director shall advise the employee that he
12 or she should consult with his or her treating physician prior to
13 deciding which type of specialist to request.

14 (2) The administrative director shall promulgate a form that
15 shall notify the employee of the physicians selected for his or her
16 panel after a request has been made pursuant to Section 4062.1 or
17 4062.2. The form shall include, for each physician on the panel,
18 the physician's name, address, telephone number, specialty, number
19 of years in practice, and a brief description of his or her education
20 and training, and shall advise the employee that he or she is entitled
21 to receive transportation expenses and temporary disability for
22 each day necessary for the examination. The form shall also state
23 in a clear and conspicuous location and ~~type~~:

24 ~~"You type:~~

25
26 "You have the right to consult with an information and assistance
27 officer at no cost to you prior to selecting the doctor to prepare
28 your evaluation, or you may consult with an attorney. If your claim
29 eventually goes to court, the workers' compensation administrative
30 law judge will consider the evaluation prepared by the doctor you
31 select to decide your ~~claim.~~"

32 ~~(3) When claim."~~

33
34 (3) When compiling the list of evaluators from which to select
35 randomly, the medical director shall include all qualified medical
36 evaluators who meet all of the following criteria:

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

39 (B) He or she is certified by the administrative director to
40 evaluate in an appropriate specialty and at locations within the

1 general geographic area of the employee's residence. An evaluator
2 shall not conduct qualified medical evaluations at more than 10
3 locations.

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

8 (4) When the medical director determines that an employee has
9 requested an evaluation by a type of specialist that is appropriate
10 for the employee's injury, but there are not enough qualified
11 medical evaluators of that type within the general geographic area
12 of the employee's residence to establish a three-member panel,
13 the medical director shall include sufficient qualified medical
14 evaluators from other geographic areas and the employer shall pay
15 all necessary travel costs incurred in the event the employee selects
16 an evaluator from another geographic area.

17 (i) The medical director appointed pursuant to Section 122 shall
18 continuously review the quality of comprehensive medical
19 evaluations and reports prepared by agreed and qualified medical
20 evaluators and the timeliness with which evaluation reports are
21 prepared and submitted. The review shall include, but not be
22 limited to, a review of a random sample of reports submitted to
23 the division, and a review of all reports alleged to be inaccurate
24 or incomplete by a party to a case for which the evaluation was
25 prepared. The medical director shall submit to the administrative
26 director an annual report summarizing the results of the continuous
27 review of medical evaluations and reports prepared by agreed and
28 qualified medical evaluators and make recommendations for the
29 improvement of the system of medical evaluations and
30 determinations.

31 (j) After public hearing pursuant to Section 5307.3, the
32 administrative director shall adopt regulations concerning the
33 following issues:

34 (1) (A) Standards governing the timeframes within which
35 medical evaluations shall be prepared and submitted by agreed
36 and qualified medical evaluators. Except as provided in this
37 subdivision, the timeframe for initial medical evaluations to be
38 prepared and submitted shall be no more than 30 days after the
39 evaluator has seen the employee or otherwise commenced the
40 medical evaluation procedure. The administrative director shall

1 develop regulations governing the provision of extensions of the
2 30-day period in both of the following cases:

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

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

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

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

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

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

13 (C) The administrative director shall develop timeframes
14 governing availability of qualified medical evaluators for
15 unrepresented employees under Section 4062.1. These timeframes
16 shall give the employee the right to the addition of a new evaluator
17 to his or her panel, selected at random, for each evaluator not
18 available to see the employee within a specified period of time,
19 but shall also permit the employee to waive this right for a specified
20 period of time thereafter.

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

25 (3) Procedures governing the determination of any disputed
26 medical treatment issues in a manner consistent with Section
27 5307.27.

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

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

39 (A) A medical-legal evaluation that has not been defined and
40 valued pursuant to Section 5307.6. The guidelines shall establish

1 minimum times for patient contact in the conduct of the
2 evaluations, and shall be consistent with regulations adopted
3 pursuant to Section 5307.6.

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

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

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

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

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

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

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

24 (D) Has failed to meet the requirements of subdivision (b) or
25 (c).

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

29 (F) Has made material misrepresentations or false statements
30 in an application for appointment or reappointment as a qualified
31 medical evaluator.

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

36 (A) Failed to timely pay the fee required pursuant to subdivision
37 (n).

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

1 (l) The administrative director shall cite the qualified medical
2 evaluator for a violation listed in subdivision (k) and shall set a
3 hearing on the alleged violation within 30 days of service of the
4 citation on the qualified medical evaluator. In addition to the
5 authority to terminate or suspend the qualified medical evaluator
6 upon finding a violation listed in subdivision (k), the administrative
7 director may, in his or her discretion, place a qualified medical
8 evaluator on probation subject to appropriate conditions, including
9 ordering continuing education or training. The administrative
10 director shall report to the appropriate licensing board the name
11 of any qualified medical evaluator who is disciplined pursuant to
12 this subdivision.

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

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

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

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

11 The Administrative Director of the Division of Workers'
12 Compensation recently abolished the recognition of
13 neuropsychologists as qualified medical evaluators in the workers'
14 compensation system based on the division's interpretation of
15 Section 139.2 of the Labor Code. In order to permit injured workers
16 to continue to receive medical-legal evaluation services from
17 neuropsychologists in appropriate cases and at the earliest possible
18 time, it is necessary for this act to take effect immediately.