

Assembly Bill No. 1968

CHAPTER 319

An act to amend Section 139.2 of the Labor Code, relating to workers' compensation.

[Approved by Governor August 3, 1995. Filed with Secretary of State August 3, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1968, McDonald. Workers' compensation.

Existing law provides for the determination of an injured employee's permanent disability for workers' compensation purposes by the treating physician, and if the parties do not agree to the treating physician's rating, by a medical evaluator agreed to by the parties or, if there is no agreement, by a qualified medical evaluator appointed by the Industrial Medical Council. Existing law requires qualified medical evaluators to be board certified or board qualified, or to meet other requirements.

This bill would revise the definition of "board certified" and "board qualified."

Existing law provides that a qualified medical evaluator may not be terminated by the Industrial Medical Council during his or her term of office except when the evaluator's license to practice in California is suspended, revoked, or terminated, or under other specified conditions.

This bill authorizes the Industrial Medical Council to suspend or terminate a medical evaluator without a hearing if the evaluator's license to practice in California is suspended, revoked, or terminated, as specified, or if the evaluator fails to pay a required fee.

Existing law requires the Industrial Medical Council to establish timeframes for the completion of medical evaluations by agreed and qualified medical evaluators, and generally requires completion within 30 days of commencing the evaluation, but permits extensions when the evaluator has not received test results or consulting physician evaluations.

This bill would provide for extensions in certain other cases, as specified.

Existing law requires the Industrial Medical Council to terminate from the list of qualified medical evaluators a physician who is convicted of specified crimes or whose license to practice is terminated. The council is required to suspend or terminate a physician who is suspended or placed on probation by a licensing board.

This bill would provide that a report prepared by a qualified medical evaluator that is not complete prior to the date of conviction or date of action against the license of the evaluator is not to be admissible in a proceeding before the Workers' Compensation Appeals Board. The bill would also provide that there is no liability to pay for the report or for associated expenses incurred by the evaluator.

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

SECTION 1. Section 139.2 of the Labor Code is amended to read:

139.2. (a) The Industrial Medical Council shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical issues. The appointments shall be for two-year terms.

(b) The council shall appoint as qualified medical evaluators physicians, as defined in Section 3209.3, who are licensed to practice in this state and who demonstrate that they meet each of the following requirements:

(1) Pass an examination written and administered by the Industrial Medical Council for the purpose of demonstrating competence in evaluating medical issues in the workers' compensation system. The council shall administer the first examination on or before July 1, 1994. Physicians qualified immediately before the first examination is administered shall pass an examination by November 1, 1994, to meet this requirement. Any physician applying for appointment after July 1, 1994, shall pass an examination prior to his or her appointment as a qualified medical evaluator. Physicians are not required to pass an additional examination for reappointment. For preparation of the first examination, a panel of not more than 40 experts, appointed by the Industrial Medical Council, representing the physician specialties required to take the qualified medical evaluator examination, shall assist the council in determining the knowledge, skills, and abilities required by the qualified medical evaluator, writing items for the examination, and conducting pretest and posttest reviews of the items. This panel of experts shall be exempt from the requirement of having to pass the examination to be appointed as a qualified medical evaluator. This panel of experts shall include: current or past council members, or both, representatives from the professional associations of those physician specialties required for the evaluation of medical issues, or physicians deemed to be well qualified in the evaluation of medical issues and having a minimum of 10 years in practice, five years of workers' compensation evaluation, and having served as an agreed medical evaluator at least eight times in the previous 12 months.



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

(3) Meet one of the following requirements:

(A) Is board certified in a specialty by an appropriate board recognized by the council. For a physician with an M.D. or D.O. degree, “board certified” means the physician is board certified by a specialty board recognized by the council and the Medical Board of California or the Osteopathic Medical Board of California.

(B) Is board qualified, as defined in this subparagraph, for a period not to exceed seven years from the time the physician first became board qualified under this subparagraph. For a physician with an M.D. or D.O. degree, “board qualified” means the physician has completed the minimum requirements as defined by a specialty board recognized by the council for postgraduate training in the specialty at an institution recognized by the American College of Graduate Medical Education or the osteopathic equivalent. Physicians who completed the minimum postgraduate training requirements in a specialty on or after January 1, 1990, and prior to January 1, 1995, shall have until January 1, 2003, to become board certified or to become otherwise eligible under this section. A physician whose board qualification status under this subparagraph in a particular specialty expires during his or her appointment as a qualified medical evaluator shall continue to serve but shall not be reappointed by the council in that specialty until he or she becomes board certified or becomes otherwise eligible under this section.

No physician who failed a specialty certification examination after 1985 shall be reappointed pursuant to this subparagraph as a qualified medical evaluator in that specialty until the physician subsequently passes the specialty certification examination.

(C) Declares under penalty of perjury to the council that he or she wrote 100 or more ratable comprehensive medical-legal evaluation reports and served as an agreed medical evaluator on 25 or more occasions during each calendar year between January 1, 1990, and December 31, 1994.

(D) Has qualifications that the council and the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, both deem to be equivalent to board certification in a specialty.

(E) If a chiropractor, has either: (i) completed a chiropractic postgraduate specialty program of a minimum of 300 hours taught by a school or college recognized by the council, the Board of Chiropractic Examiners and the Council on Chiropractic Education; or, (ii) been certified in California workers’ compensation evaluation by an appropriate California professional chiropractic association or accredited California college recognized by the council.



(F) If a psychologist, meets one of the following requirements:

(i) Is board certified in clinical psychology by a board recognized by the council.

(ii) Holds a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, from a university or professional school recognized by the council and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

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

(G) Served as an agreed medical evaluator on eight or more occasions prior to January 1, 1970.

(4) Does not have a conflict of interest as determined under the regulations promulgated by the administrative director pursuant to subdivision (o).

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

(c) The council shall promulgate standards for appointment of physicians who are retired or who hold teaching positions who are exceptionally well qualified to serve as a qualified medical evaluator even though they do not otherwise qualify under paragraph (2) of subdivision (b). In no event shall a physician whose full-time practice is limited to the forensic evaluation of disability be appointed as a qualified medical evaluator under this subdivision.

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

(1) Is in compliance with all applicable regulations and evaluation guidelines adopted by the council.

(2) Has not had more than five of his or her evaluations which were considered by a workers' compensation judge at a contested hearing rejected by the 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 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 Industrial Medical Council or the appeals board, the 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 Industrial Medical Council. 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) 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 Industrial Medical Council.

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

If the evaluator does not meet any one of these criteria, the Industrial Medical Council may in its discretion reappoint or deny reappointment according to regulations promulgated by the council. In no event may 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 be reappointed.

(e) The council may, in its discretion, suspend or terminate a qualified medical evaluator during his or her term of appointment without a hearing as provided under subdivision (k) or (l) whenever: (1) the evaluator's license to practice in California has been suspended by the relevant licensing authority so as to preclude practice, or has been revoked or terminated by the licensing authority; or, (2) the evaluator has failed to timely pay the fee required by the council pursuant to subdivision (n).

(f) The Industrial Medical Council shall furnish a physician, upon request, a written statement of its reasons for termination of or for denying appointment or reappointment as a qualified medical evaluator. Upon receipt of a specific response to the statement of reasons, the Industrial Medical Council shall review its decision not to appoint or reappoint the physician or to terminate the physician and shall notify the physician of its final decision within 60 days after receipt of the physician's response.

(g) The council shall establish agreements with qualified medical evaluators to assure the expeditious evaluation of cases assigned to them for comprehensive medical evaluations.

(h) When the injured worker is not represented by an attorney, the medical director appointed pursuant to Section 122, shall assign three-member panels of qualified medical evaluators within five working days after receiving a request for a panel. If a panel is not assigned within 15 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice. The medical director shall use a random selection method for assigning panels of qualified medical evaluators. The medical director shall select evaluators who are specialists of the type selected by the employee. The medical director shall advise the employee that he or she should consult with his or her treating physician prior to deciding which type of specialist to request. The Industrial Medical Council shall promulgate a form which shall notify the employee of the physicians selected for his or her panel. The form shall include, for each physician on the panel, the physician's name, address, telephone number, specialty, number of years in practice,



and a brief description of his or her education and training, and shall advise the employee that he or she is entitled to receive transportation expenses and temporary disability for each day necessary for the examination. The form shall also state in a clear and conspicuous location and type: “You have the right to consult with an information and assistance officer at no cost to you prior to selecting the doctor to prepare your evaluation, or you may consult with an attorney. If your claim eventually goes to court, the judge will consider the evaluation prepared by the doctor you select to decide your claim.” When compiling the list of evaluators from which to select randomly, the medical director shall include all qualified medical evaluators who: (1) do not have a conflict of interest in the case, as defined by regulations adopted pursuant to subdivision (o); (2) are certified by the council to evaluate in an appropriate specialty and at locations within the general geographic area of the employee’s residence; and, (3) have not been suspended or terminated as a qualified medical evaluator for failure to pay the fee required by the council pursuant to subdivision (n) or for any other reason. When the medical director determines that an employee has requested an evaluation by a type of specialist which is appropriate for the employee’s injury, but there are not enough qualified medical evaluators of that type within the general geographic area of the employee’s residence to establish a three-member panel, the medical director shall include sufficient qualified medical evaluators from other geographic areas and the employer shall pay all necessary travel costs incurred in the event the employee selects an evaluator from another geographic area.

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

(j) After public hearing pursuant to Section 5307.4, the council shall promulgate rules and regulations concerning the following medical issues:

(1) Standards governing the timeframes within which medical evaluations shall be prepared and submitted by agreed and qualified medical evaluators. Except as provided in this subdivision, the timeframe for initial medical evaluations to be prepared and



submitted shall be no more than 30 days after the evaluator has seen the employee or otherwise commenced the medical evaluation procedure. The council shall develop regulations governing the provision of extensions of the 30-day period in cases: (A) where the evaluator has not received test results or consulting physician's evaluations in time to meet the 30-day deadline; and, (B) to extend the 30-day period by not more than 15 days when the failure to meet the 30-day deadline was for good cause. For purposes of this subdivision, "good cause" means: (i) medical emergencies of the evaluator or evaluator's family; (ii) death in the evaluator's family; or, (iii) natural disasters or other community catastrophes that interrupt the operation of the evaluator's business. The council shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Sections 4061 and 4062. These timeframes shall give the employee the right to the addition of a new evaluator to his or her panel, selected at random, for each evaluator not available to see the employee within a specified period of time, but shall also permit the employee to waive this right for a specified 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 order to produce complete, accurate, uniform, and replicable evaluations, the procedures shall require that an evaluation of anatomical loss, functional loss, and the presence of physical complaints be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

(3) Procedures governing the determination of any disputed medical issues.

(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. However, the council may recommend guidelines for evaluations that have been defined and valued pursuant to Section 5307.6 for the purpose of governing the appointment, reappointment, and discipline of qualified medical evaluators. 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 administrative director, the Insurance Commissioner, or the council itself.

If, without good cause, the council fails to adopt the guidelines required by subparagraph (A) or (B) by March 31, 1994, or fails, without good cause, to adopt a guideline pursuant to subparagraph (C) within six months after a request by the administrative director or the Insurance Commissioner, then the administrative director shall have the authority to adopt the guideline.

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

(k) Except as provided in this subdivision, the Industrial Medical Council may, in its discretion, suspend or terminate the privilege of a physician to serve as a qualified medical evaluator if the council, after hearing pursuant to subdivision (l), determines, based on substantial evidence, that a qualified medical evaluator:

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

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

(3) Has failed to comply with the timeframe standards established by the council pursuant to subdivision (j).

(4) Has failed to meet the requirements of subdivision (b) or (c).

(5) Has prepared medical-legal evaluations that fail to meet the minimum standards for those reports established by the Industrial Medical Council or the appeals board.

No hearing shall be required prior to the suspension or termination of a physician's privilege to serve as a qualified medical evaluator when the physician has: (A) failed to timely pay the fee required by the council pursuant to subdivision (n); or, (B) had his or her license to practice in California suspended by the relevant licensing authority so as to preclude practice, or had the license revoked or terminated by the licensing authority.

(l) The council shall cite the qualified medical evaluator for a violation listed in subdivision (k) and shall set a hearing on the alleged violation within 30 days of service of the citation on the qualified medical evaluator. In addition to the authority to terminate or suspend the qualified medical evaluator upon finding a violation listed in subdivision (k), the council may, in its discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The council shall report to the appropriate licensing board the name of



any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The council shall terminate from the list of medical evaluators any physician whose 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 council 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) Each qualified medical evaluator shall pay a fee, as determined by the Industrial Medical Council, for appointment or reappointment. Any qualified medical evaluator appointed prior to January 1, 1993, shall also pay the same fee as specified herein. These fees shall be based on a sliding scale as established by the council. All revenues from fees paid under this subdivision shall be deposited into the Industrial Medicine Fund, which is hereby created for the administration of the Industrial Medical Council. Moneys paid into the Industrial Medicine Fund for the activities of the Industrial Medical Council shall not be used by any other department or agency or for any purpose other than administration of the council. The funds provided to the council from the Industrial Medicine Fund shall not supplant any funds appropriated to the council from the Workers' Compensation Administration Revolving Fund, the General Fund, or any other governmental source. Any future annual appropriation to the council from the Workers' Compensation Administration Revolving Fund, the General Fund, or any other governmental source shall not be less than the amount appropriated or provided during the 1991-92 fiscal year.

(o) An evaluator may 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 council and the Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision on or before July 1, 1994.

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