

AMENDED IN ASSEMBLY MAY 6, 1999
AMENDED IN ASSEMBLY APRIL 26, 1999
CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 776

Introduced by Assembly Member Calderon

February 24, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

AB 776, as amended, Calderon. Workers' compensation: medical evaluators: reappointment.

Existing law for purposes of workers' compensation requires the Industrial Medical Council to appoint *qualified* medical evaluators *for the evaluation of medical issues*, and these appointments are for a 2-year term. Existing law permits a medical evaluator to request reappointment if he or she meets specified qualifications that include having completed within the previous 24 months 12 hours of continuing education, as specified.

This bill would *require the appointment of qualified medical evaluators for the evaluation of medical-legal issues. The bill would clarify who is a physician for purposes of appointment or reappointment as a qualified medical evaluator. The bill would revise the qualifications for the appointment and reappointment of medical evaluators, including, among other changes, a requirement that*



appointees complete a course approved by the Industrial Medical Council of 12 or more hours on disability evaluation report writing. The bill would reduce the hours of required continuing education for reappointment to 8 hours.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

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

3 139.2. (a) The Industrial Medical Council shall
4 appoint qualified medical evaluators in each of the
5 respective specialties as required for the evaluation of
6 medical-legal issues. The appointments shall be for
7 two-year terms.

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

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



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

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

8 (A) Is board certified in a specialty by a board
9 recognized by the council and either the Medical Board
10 of California or the Osteopathic Medical Board of
11 California.

12 (B) Has successfully completed a residency training
13 program accredited by the American College of
14 Graduate Medical Education or the osteopathic
15 equivalent.

16 (C) Has served as an active qualified medical
17 evaluator any time between and including January 1 and
18 December 31, 2000.

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

23 (4) Is a doctor of chiropractic and meets either of the
24 following requirements:

25 (A) Has completed a chiropractic postgraduate
26 specialty program of a minimum of 300 hours taught by
27 a school or college recognized by the council, the Board
28 of Chiropractic Examiners and the Council on
29 Chiropractic Education.

30 (B) Has been certified in California workers'
31 compensation evaluation by a provider recognized by the
32 council.

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

35 (A) Is board certified in clinical psychology by a board
36 recognized by the council.

37 (B) Holds a doctoral degree in psychology, or a
38 doctoral degree deemed equivalent for licensure by the
39 Board of Psychology pursuant to Section 2914 of the
40 Business and Professions Code, from a university or



1 professional school recognized by the council and has not
2 less than five years' postdoctoral experience in the
3 diagnosis and treatment of emotional and mental
4 disorders.

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

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

13 (7) Meets any additional medical or professional
14 standards adopted pursuant to paragraph (6) of
15 subdivision (j).

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

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

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

30 (2) Has not had more than five of his or her evaluations
31 which were considered by a workers' compensation
32 judge at a contested hearing rejected by the judge or the
33 appeals board pursuant to this section during the most
34 recent two-year period during which the physician
35 served as a qualified medical evaluator. If the judge or the
36 appeals board rejects the qualified medical evaluator's
37 report on the basis that it fails to meet the minimum
38 standards for those reports established by the Industrial
39 Medical Council or the appeals board, the judge or the
40 appeals board, as the case may be, shall make a specific



1 finding to that effect, and shall give notice to the medical
2 evaluator and to the Industrial Medical Council. Any
3 rejection shall not be counted as one of the five qualifying
4 rejections until the specific finding has become final and
5 time for appeal has expired.

6 (3) Has completed within the previous 24 months at
7 least eight hours of continuing education in impairment
8 evaluation or workers' compensation-related medical
9 dispute evaluation approved by the Industrial Medical
10 Council.

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

15 If the evaluator does not meet any one of these criteria,
16 the Industrial Medical Council may in its discretion
17 reappoint or deny reappointment according to
18 regulations promulgated by the council. In no event may
19 a physician who does not currently meet the
20 requirements for initial appointment or who has been
21 terminated under subdivision (e) because his or her
22 license has been revoked or terminated by the licensing
23 authority be reappointed.

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

34 (f) The Industrial Medical Council shall furnish a
35 physician, upon request, a written statement of its reasons
36 for termination of or for denying appointment or
37 reappointment as a qualified medical evaluator. Upon
38 receipt of a specific response to the statement of reasons,
39 the Industrial Medical Council shall review its decision
40 not to appoint or reappoint the physician or to terminate



1 the physician and shall notify the physician of its final
2 decision within 60 days after receipt of the physician's
3 response.

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

8 (h) When the injured worker is not represented by an
9 attorney, the medical director appointed pursuant to
10 Section 122, shall assign three-member panels of qualified
11 medical evaluators within five working days after
12 receiving a request for a panel. If a panel is not assigned
13 within 15 working days, the employee shall have the right
14 to obtain a medical evaluation from any qualified medical
15 evaluator of his or her choice. The medical director shall
16 use a random selection method for assigning panels of
17 qualified medical evaluators. The medical director shall
18 select evaluators who are specialists of the type selected
19 by the employee. The medical director shall advise the
20 employee that he or she should consult with his or her
21 treating physician prior to deciding which type of
22 specialist to request. The Industrial Medical Council shall
23 promulgate a form which shall notify the employee of the
24 physicians selected for his or her panel. The form shall
25 include, for each physician on the panel, the physician's
26 name, address, telephone number, specialty, number of
27 years in practice, and a brief description of his or her
28 education and training, and shall advise the employee
29 that he or she is entitled to receive transportation
30 expenses and temporary disability for each day necessary
31 for the examination. The form shall also state in a clear
32 and conspicuous location and type: "You have the right
33 to consult with an information and assistance officer at no
34 cost to you prior to selecting the doctor to prepare your
35 evaluation, or you may consult with an attorney. If your
36 claim eventually goes to court, the judge will consider the
37 evaluation prepared by the doctor you select to decide
38 your claim." When compiling the list of evaluators from
39 which to select randomly, the medical director shall
40 include all qualified medical evaluators who: (1) do not



1 have a conflict of interest in the case, as defined by
2 regulations adopted pursuant to subdivision (o); (2) are
3 certified by the council to evaluate in an appropriate
4 specialty and at locations within the general geographic
5 area of the employee's residence; and, (3) have not been
6 suspended or terminated as a qualified medical evaluator
7 for failure to pay the fee required by the council pursuant
8 to subdivision (n) or for any other reason. When the
9 medical director determines that an employee has
10 requested an evaluation by a type of specialist which is
11 appropriate for the employee's injury, but there are not
12 enough qualified medical evaluators of that type within
13 the general geographic area of the employee's residence
14 to establish a three-member panel, the medical director
15 shall include sufficient qualified medical evaluators from
16 other geographic areas and the employer shall pay all
17 necessary travel costs incurred in the event the employee
18 selects an evaluator from another geographic area.

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

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

38 (1) Standards governing the timeframes within which
39 medical evaluations shall be prepared and submitted by
40 agreed and qualified medical evaluators. Except as



1 provided in this subdivision, the timeframe for initial
2 medical evaluations to be prepared and submitted shall
3 be no more than 30 days after the evaluator has seen the
4 employee or otherwise commenced the medical
5 evaluation procedure. The council shall develop
6 regulations governing the provision of extensions of the
7 30-day period in cases: (A) where the evaluator has not
8 received test results or consulting physician's evaluations
9 in time to meet the 30-day deadline; and, (B) to extend
10 the 30-day period by not more than 15 days when the
11 failure to meet the 30-day deadline was for good cause.
12 For purposes of this subdivision, "good cause" means: (i)
13 medical emergencies of the evaluator or evaluator's
14 family; (ii) death in the evaluator's family; or, (iii) natural
15 disasters or other community catastrophes that interrupt
16 the operation of the evaluator's business. The council shall
17 develop timeframes governing availability of qualified
18 medical evaluators for unrepresented employees under
19 Sections 4061 and 4062. These timeframes shall give the
20 employee the right to the addition of a new evaluator to
21 his or her panel, selected at random, for each evaluator
22 not available to see the employee within a specified
23 period of time, but shall also permit the employee to
24 waive this right for a specified period of time thereafter.

25 (2) Procedures to be followed by all physicians in
26 evaluating the existence and extent of permanent
27 impairment and limitations resulting from an injury. In
28 order to produce complete, accurate, uniform, and
29 replicable evaluations, the procedures shall require that
30 an evaluation of anatomical loss, functional loss, and the
31 presence of physical complaints be supported, to the
32 extent feasible, by medical findings based on
33 standardized examinations and testing techniques
34 generally accepted by the medical community.

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

37 (4) Procedures to be used in determining the
38 compensability of psychiatric injury. The procedures
39 shall be in accordance with Section 3208.3 and shall
40 require that the diagnosis of a mental disorder be



1 expressed using the terminology and criteria of the
2 American Psychiatric Association's Diagnostic and
3 Statistical Manual of Mental Disorders, Third
4 Edition-Revised, or the terminology and diagnostic
5 criteria of other psychiatric diagnostic manuals generally
6 approved and accepted nationally by practitioners in the
7 field of psychiatric medicine.

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

10 (A) A medical-legal evaluation that has not been
11 defined and valued pursuant to Section 5307.6. However,
12 the council may recommend guidelines for evaluations
13 that have been defined and valued pursuant to Section
14 5307.6 for the purpose of governing the appointment,
15 reappointment, and discipline of qualified medical
16 evaluators. The guidelines shall establish minimum times
17 for patient contact in the conduct of the evaluations, and
18 shall be consistent with regulations adopted pursuant to
19 Section 5307.6.

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

22 (C) Any other evaluation procedure requested by the
23 administrative director, the Insurance Commissioner, or
24 the council itself.

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

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

36 (k) Except as provided in this subdivision, the
37 Industrial Medical Council may, in its discretion, suspend
38 or terminate the privilege of a physician to serve as a
39 qualified medical evaluator if the council, after hearing



1 pursuant to subdivision (l), determines, based on
2 substantial evidence, that a qualified medical evaluator:

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

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

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

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

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

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

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

37 (m) The council shall terminate from the list of
38 medical evaluators any physician where licensure has
39 been terminated by the relevant licensing board, or who
40 has been convicted of a misdemeanor or felony related to



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

14 (n) Each qualified medical evaluator shall pay a fee, as
15 determined by the Industrial Medical Council, for
16 appointment or reappointment. Any qualified medical
17 evaluator appointed prior to January 1, 1993, shall also pay
18 the same fee as specified herein. These fees shall be based
19 on a sliding scale as established by the council. All
20 revenues from fees paid under this subdivision shall be
21 deposited into the Industrial Medicine Fund, which is
22 hereby created for the administration of the Industrial
23 Medical Council. Moneys paid into the Industrial
24 Medicine Fund for the activities of the Industrial Medical
25 Council shall not be used by any other department or
26 agency or for any purpose other than administration of
27 the council. The funds provided to the council from the
28 Industrial Medicine Fund shall not supplant any funds
29 appropriated to the council from the Workers'
30 Compensation Administration Revolving Fund, the
31 General Fund, or any other governmental source. Any
32 future annual appropriation to the council from the
33 Workers' Compensation Administration Revolving Fund,
34 the General Fund, or any other governmental source
35 shall not be less than the amount appropriated or
36 provided during the 1991-92 fiscal year.

37 (o) An evaluator may not request or accept any
38 compensation or other thing of value from any source
39 that does or could create a conflict with his or her duties
40 as an evaluator under this code. The administrative



1 director, after consultation with the council and the
2 Commission on Health and Safety and Workers'
3 Compensation, shall adopt regulations to implement this
4 subdivision on or before July 1, 1994.

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