

ASSEMBLY BILL

No. 1454

Introduced by Assembly Member Solorio

January 9, 2012

An act to amend Sections 139.2 and 3209.3 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1454, as introduced, Solorio. Workers' compensation: audiologists.

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.

This bill would also include doctors of audiology who meet specified requirements among those medical professionals who may be appointed by the administrative director as a qualified medical evaluator.

Existing law, for purposes of workers' compensation, defines "physician" to include physicians and surgeons holding specified degrees, psychologists, acupuncturists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice, as defined by state law.

This bill would also include licensed audiologists, as specified, within that definition of physician.

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

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 administrative director shall appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues. The appointments shall be for two-year terms.

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

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

(2) Devotes 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 appointed as a qualified medical evaluator.

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

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

1 (B) Has successfully completed a residency training program
2 accredited by the American College of Graduate Medical Education
3 or the osteopathic equivalent.

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

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

9 (4) Is a doctor of chiropractic and meets either of the following
10 requirements:

11 (A) Has completed a chiropractic postgraduate specialty program
12 of a minimum of 300 hours taught by a school or college
13 recognized by the administrative director, the *State* Board of
14 Chiropractic Examiners and the Council on Chiropractic Education.

15 (B) Has been certified in California workers' compensation
16 evaluation by a provider recognized by the administrative director.
17 The certification program shall include instruction on disability
18 evaluation report writing that meets the standards set forth in
19 paragraph (1).

20 (5) Is a psychologist and meets one of the following
21 requirements:

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

24 (B) Holds a doctoral degree in psychology, or a doctoral degree
25 deemed equivalent for licensure by the Board of Psychology
26 pursuant to Section 2914 of the Business and Professions Code,
27 from a university or professional school recognized by the
28 administrative director and has not less than five years'
29 postdoctoral experience in the diagnosis and treatment of emotional
30 and mental disorders.

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

35 (6) *Is a practicing clinical audiologist licensed by the State of*
36 *California who meets all of the following requirements:*

37 (A) *Holds a doctorate of audiology (Au.D.) or a Ph.D., or both,*
38 *in an audiology-related profession and is licensed by the*
39 *Speech-Language Pathology and Audiology and Hearing Aid*
40 *Dispensers Board pursuant to Article 3 (commencing with Section*

1 2532) of Chapter 5.3 of Division 2 of the Business and Professions
2 Code, from a university training program recognized by the board.

3 (B) Has not less than five years' postdoctoral experience in the
4 practice of audiology.

5 (C) Prior to his or her appointment as a qualified medical
6 evaluator, passed the same examination described in paragraph
7 (1) for the purpose of demonstrating competence in evaluating
8 medical-legal issues in the workers' compensation system.

9 (D) When acting as a qualified medical evaluator, bases the
10 diagnosis portion of the qualified medical evaluator report on the
11 diagnosis made by a physician who is licensed in the state to
12 practice medicine.

13 ~~(6)~~

14 (7) Does not have a conflict of interest as determined under the
15 regulations adopted by the administrative director pursuant to
16 subdivision (o).

17 ~~(7)~~

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

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

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

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

33 (2) Has not had more than five of his or her evaluations that
34 were considered by a workers' compensation administrative law
35 judge at a contested hearing rejected by the workers' compensation
36 administrative law judge or the appeals board pursuant to this
37 section during the most recent two-year period during which the
38 physician served as a qualified medical evaluator. If the workers'
39 compensation administrative law judge or the appeals board rejects
40 the qualified medical evaluator's report on the basis that it fails to

meet the minimum standards for those reports established by the administrative director or the appeals board, the workers' compensation administrative law judge or the appeals board, as the case may be, shall make a specific finding to that effect, and shall give notice to the medical evaluator and to the administrative director. Any rejection shall not be counted as one of the five qualifying rejections until the specific finding has become final and time for appeal has expired.

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

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

If the evaluator does not meet any one of these criteria, the administrative director may in his or her discretion reappoint or deny reappointment according to regulations adopted by the administrative director. ~~In no event may a~~ A physician who does not currently meet the requirements for initial appointment or who has been terminated under subdivision (e) because his or her license has been revoked or terminated by the licensing authority *shall not* be reappointed.

(e) The administrative director may, in his or her 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 either of the following conditions occurs:

(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.

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

(f) The administrative director shall furnish a physician, upon request, with 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 administrative director shall review his or her decision not to appoint or reappoint the physician or to

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

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

6 (h) (1) When requested by an employee or employer pursuant
7 to Section 4062.1, the medical director appointed pursuant to
8 Section 122 shall assign ~~a three-member panels~~ *panel* of qualified
9 medical evaluators within five working days after receiving a
10 request for a panel. If a panel is not assigned within 15 working
11 days, the employee shall have the right to obtain a medical
12 evaluation from any qualified medical evaluator of his or her
13 choice. The medical director shall use a random selection method
14 for assigning panels of qualified medical evaluators. The medical
15 director shall select evaluators who are specialists of the type
16 requested by the employee. The medical director shall advise the
17 employee that he or she should consult with his or her treating
18 physician prior to deciding which type of specialist to request.

19 (2) The administrative director shall promulgate a form that
20 shall notify the employee of the physicians selected for his or her
21 panel after a request has been made pursuant to Section 4062.1 or
22 4062.2. The form shall include, for each physician on the panel,
23 the physician's name, address, telephone number, specialty, number
24 of years in practice, and a brief description of his or her education
25 and training, and shall advise the employee that he or she is entitled
26 to receive transportation expenses and temporary disability for
27 each day necessary for the examination. The form shall also state
28 in a clear and conspicuous location and type: "You have the right
29 to consult with an information and assistance officer at no cost to
30 you prior to selecting the doctor to prepare your evaluation, or you
31 may consult with an attorney. If your claim eventually goes to
32 court, the workers' compensation administrative law judge will
33 consider the evaluation prepared by the doctor you select to decide
34 your claim."

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

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

1 (B) He or she is certified by the administrative director to
2 evaluate in an appropriate specialty and at locations within the
3 general geographic area of the employee's residence.

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 Sections 4061 and 4062. These
16 timeframes shall give the employee the right to the addition of a
17 new evaluator to his or her panel, selected at random, for each
18 evaluator not available to see the employee within a specified
19 period of time, but shall also permit the employee to waive this
20 right for a specified 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 Section 4660.

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

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

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

38 (A) A medical-legal evaluation that has not been defined and
39 valued pursuant to Section 5307.6. The guidelines shall establish
40 minimum times for patient contact in the conduct of the

1 evaluations, and shall be consistent with regulations adopted
2 pursuant to Section 5307.6.

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

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

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

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

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

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

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

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

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

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

31 No hearing shall be required prior to the suspension or
32 termination of a physician's privilege to serve as a qualified
33 medical evaluator when the physician has done either of the
34 following:

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

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

(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 Commission on Health and Safety and Workers' Compensation, shall adopt regulations to implement this subdivision.

SEC. 2. Section 3209.3 of the Labor Code is amended to read:

3209.3. (a) "Physician" includes physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, *audiologists*, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) (1) "Psychologist" means a licensed psychologist with 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, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

(c)

(2) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d)

(c) (1) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

(e)

(2) Nothing in this section shall be construed to authorize acupuncturists to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2, or under Section 2708 of the Unemployment Insurance Code.

(d) (1) "Audiologist" means a person licensed as an audiologist pursuant to Article 3 (commencing with Section 2532) of Chapter 5.3 of Division 2 of the Business and Professions Code and holds a doctorate of audiology (Au.D.) or a Ph.D. degree in an audiology-related profession.

- 1 (2) *The inclusion of audiologists in this section shall not imply*
- 2 *any right or entitle any audiologist to represent, advertise, or hold*
- 3 *himself or herself out as a physician.*