

**CALIFORNIA CODE OF REGULATIONS, TITLE 8
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 1. DIVISION OF WORKERS' COMPENSATION
QUALIFIED MEDICAL EVALUATOR REGULATIONS**

**ARTICLE 3 and 4. Assignment of Qualified Medical Evaluators,
Evaluation Procedure**

§ 31.3. Scheduling Appointment with Panel QME

(a) When the employee is not represented by an attorney, the unrepresented employee shall, within ten (10) days of having been furnished with the form, select a QME from the panel list, contact the QME to schedule an appointment and inform the claims administrator of the QME selection and the appointment.

(b) Neither the employer, nor the claims administrator nor any other representative of the employer shall discuss the selection of the QME with an unrepresented worker who has the legal right to select the QME.

(c) If, within ten (10) days of the issuance of a QME panel, the unrepresented employee fails to select a QME from the QME panel or fails to schedule an appointment with the selected QME, the claims administrator may schedule an appointment with a panel QME only as provided in Labor Code section 4062.1(c), and shall notify the employee of the appointment as provided in that section.

(d) Whenever the employee is represented by an attorney and the parties have completed the striking processes described in Labor Code section 4062.2(c), the represented employee shall schedule the appointment with the physician selected from the QME panel. If the represented employee fails to do so within ten (10) business days of the date a QME is selected from the panel, the claims administrator or administrator's attorney may arrange the appointment and notify the employee and employee's attorney.

(e) If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within ~~sixty (60)~~ ninety (90) days of the date of the appointment request, that party may waive the right to a replacement in order to accept an appointment no more than ~~ninety (90)~~ one-hundred-twenty (120) days after the date of the party's initial request for an appointment request. When the selected QME is unable to schedule the evaluation within ~~ninety (90)~~ one-hundred-twenty (120) days of the date of that party's initial request for an appointment request, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the ~~ninety (90)~~ one-hundred-twenty (120) day time limit for scheduling the initial or any subsequent evaluation.

(f) The provisions of subdivision (e) of this regulation apply to both requests for any Comprehensive Medical-Legal Evaluation by a QME and requests for any Follow Up Comprehensive Medical-Legal Evaluation by a QME.

Note: Authority: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2, 4064 and 4067, Labor Code

§ 31.5. QME Replacement Requests.

(a) A replacement QME to a panel, or at the discretion of the Medical Director a replacement of an entire panel of QMEs, shall be selected at random by the Medical Director and provided upon request whenever any of the following occurs:

- (1) A QME on the panel issued does not practice in the specialty requested by the party holding the legal right to request the panel.
- (2) A QME on the panel issued cannot schedule an examination for the employee within ~~sixty (60)~~ ninety (90) days of the initial request for an appointment, or if the ~~60~~ 90 day scheduling limit has been waived pursuant to section 31.3(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within ~~ninety (90)~~ one-hundred and twenty (120) days of the date of the initial request for an appointment.
- (3) The injured worker has changed his or her residence address since the QME panel was issued and prior to date of the initial evaluation of the injured worker.
- (4) A physician on the QME panel is a member of the same group practice as defined by Labor Code section 139.3 as another QME on the panel.
- (5) The QME is unavailable pursuant to section 33 (Unavailability of the QME).
- (6) The evaluator who previously reported in the case is no longer available.
- (7) A QME named on the panel is currently, or has been, the employee's primary treating physician or secondary physician as described in section 9785 of Title 8 of the California Code of Regulations for the injury currently in dispute.
- (8) The claims administrator, or if none the employer, and the employee agree in writing, for the employee's convenience only, that a new panel may be issued in the geographic area of the employee's work place and a copy of the employee's agreement is submitted with the panel replacement request.

(9) The Medical Director, upon written request, finds good cause that a replacement QME or a replacement panel is appropriate for reasons related to the medical nature of the injury. For purposes of this subsection, “good cause” is defined as a documented medical or psychological impairment.

(10) The Medical Director, upon written request, filed with a copy of the Doctor's First Report of Occupational Injury or Illness (Form DLSR 5021 [see 8 Cal. Code Regs. §§ 14006 and 14007) and the most recent DWC Form PR-2 (“Primary Treating Physician's Progress Report” [See 8 Cal. Code Regs. § 9785.2) or narrative report filed in lieu of the PR-2, determines after a review of all appropriate records that the specialty chosen by the party holding the legal right to designate a specialty is medically or otherwise inappropriate for the disputed medical issue(s). The Medical Director may request either party to provide additional information or records necessary for the determination.

(11) The evaluator has violated section 34 (Appointment Notification and Cancellation) of Title 8 of the California Code of Regulations, except that the evaluator will not be replaced for this reason whenever the request for a replacement by a party is made more than fifteen (15) calendar days from either the date the party became aware of the violation of section 34 of Title 8 of the California Code of Regulations or the date the report was served by the evaluator, whichever is earlier.

(12) The evaluator failed to meet the deadlines specified in Labor Code section 4062.5 and section 38 (Medical Evaluation Time Frames) of Title 8 of the California Code of Regulations and the party requesting the replacement objected to the report on the grounds of lateness prior to the date the evaluator served the report. A party requesting a replacement on this ground shall attach to the request for a replacement a copy of the party's objection to the untimely report.

(13) The QME has a disqualifying conflict of interest as defined in section 41.5 of Title 8 of the California Code of Regulations.

(14) The Administrative Director has issued an order pursuant to section 10164(c) of Title 8 of the California Code of Regulations (order for additional QME evaluation).

(15) The selected medical evaluator, who otherwise appears to be qualified and competent to address all disputed medical issues refuses to provide, when requested by a party or by the Medical Director, either: A) a complete medical evaluation as provided in Labor Code sections 4062.3(i) and 4062.3(k), or B) a written statement that explains why the evaluator believes he or she is not medically qualified or medically competent to address one or more issues in dispute in the case.

(16) The QME panel list was issued more than twenty four (24) months prior to the date the request for a replacement is received by the Medical Unit, and none of the QMEs on the panel list have examined the injured worker.

(b) Whenever the Medical Director determines that a request made pursuant to subdivision 31.5(a) for a QME replacement or QME panel replacement is valid, the time limit for an unrepresented employee to select a QME and schedule an appointment under section Labor Code section 4062.1(c) and the time limit for a represented employee to strike a QME name from the QME panel under Labor Code section 4062.2(c), shall be tolled until the date the replacement QME name or QME panel is issued.

(c) In the event the parties in a represented case have struck two QME names from a panel and subsequently a valid ground under subdivision 31.5 arises to replace the remaining QME, none of the QMEs whose names appeared on the earlier QME panel shall be included in the replacement QME panel.

(d) Form 31.5 shall be used to request a replacement QME.

Note: Authority cited: Sections 133, 139.2, 4061, 4062, 4062.3, 4062.5, 5307.3 and 5703.5, Labor Code. Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

§ 34. Appointment Notification and Cancellation

(a) Whenever an appointment for a comprehensive medical evaluation is made with a QME, the QME shall complete an appointment notification form by submitting the form in Section 110 (QME Appointment Notification Form)(See, 8 Cal. Code Regs. § 110). The completed form shall be postmarked or sent by facsimile to the employee and the claims administrator, or if none the employer, within 5 business days of the date the appointment was made. In a represented case, a copy of the completed form shall also be sent to the attorney who represents each party, if known. Failure to comply with this requirement shall constitute grounds for denial of reappointment under section 51 of Title 8 of the California Code of Regulations.

(b) The QME shall schedule an appointment for the first comprehensive medical-legal examination which shall be conducted ~~only at the~~ a medical office listed on the panel selection form or any office listed with the Medical Director provided there is written agreement by the parties to use a different office listed with the Medical Director. Any subsequent evaluation appointments may be performed at another medical office of the selected QME if it is listed with the Medical Director and is within a reasonable geographic distance from the injured worker's residence.

(c) The QME shall include within the notification whether a Certified Interpreter, as defined by Labor Code Section 5811 and subject to the provisions of section 9795.3 of

Title 8 of the California Code of Regulations, is required and specify the language. The interpreter shall be arranged by the party who is to pay the cost as provided for in Section 5811 of the Labor Code.

(d) An evaluator, whether an AME, ~~Agreed Panel QME~~ or QME, shall not cancel a scheduled appointment less than six (6) business days prior to the appointment date, except for good cause. Whenever an evaluator cancels a scheduled appointment, the evaluator shall advise the parties in writing of the reason for the cancellation. The Appeals Board shall retain jurisdiction to resolve disputes among the parties regarding whether an appointment cancellation pursuant to this subdivision was for good cause. The Administrative Director shall retain jurisdiction to take appropriate disciplinary action against any ~~Agreed Panel QME~~ or QME for violations of this section.

~~(e) An Agreed Panel QME or a QME who cancels a scheduled appointment shall reschedule the appointment to a date within thirty (30) calendar days of the date of cancellation. The re-scheduled appointment date may not be more than sixty (60) calendar days from the date of the initial request for an appointment, unless the parties agree in writing to accept the date beyond the sixty (60) day limit.~~

~~(e)(f) An Agreed Medical Evaluator~~ A QME or AME who cancels a scheduled appointment shall reschedule the appointment within sixty (60) calendar days of the date of the cancellation, unless the parties agree in writing to accept an appointment date ~~no more than thirty (30) calendar days~~ beyond the sixty (60) day limit.

~~(f)(g)~~ Failure to receive relevant medical records, as provided in section 35 of Title 8 of the California Code of Regulations and section 4062.3 of the Labor Code, prior to a scheduled appointment shall not constitute good cause under this section for the evaluator to cancel the appointment, unless the evaluator is a psychiatrist or psychologist performing an evaluation regarding a disputed injury to the psyche who states in the evaluation report that receipt of relevant medical records prior to the evaluation was necessary to conduct a full and fair evaluation.

(h) An appointment scheduled with an evaluator, whether an AME, or QME shall not be cancelled or rescheduled by a party or the party's attorney less than six (6) business days before the appointment date, except for good cause. Whenever the claims administrator, or if none the employer, or the injured worker, or either party's attorney, cancels an appointment scheduled by an evaluator, the cancellation shall be made in writing, state the reason for the cancellation and be served on the opposing party. Oral cancellations shall be followed with a written confirming letter that is faxed or mailed by first class U.S. mail within twenty four hours of the verbal cancellation and that complies with this section. An injured worker shall not be liable for any missed appointment fee whenever an appointment is cancelled for good cause. The Appeals Board shall retain jurisdiction to resolve disputes regarding whether an appointment cancellation by a party pursuant to this subdivision was for good cause.

(i) The date of cancellation shall be determined from the date of postmark, if mailed, or facsimile receipt date as shown on the recipient's fax copy.

NOTE: Form referred to above is available at no charge by [downloading from the web](http://www.dir.ca.gov/dwc/forms.html) at <http://www.dir.ca.gov/dwc/forms.html> or by requesting at 1-800-794-6900.

Note: Authority cited: Sections 133, 139.2 and 5307.3, Labor Code. Reference: Sections 4060, 4061, 4062, 4062.1, 4062.2 and 4067, Labor Code.

**DWC – Proposed QME Emergency Regulation in Response to COVID-19
Pandemic**

§ 46.3 Emergency Regulation Regarding Remote Health Medical-Legal Evaluations in Response to continued COVID-19 Pandemic

- (a) ~~During the period that this emergency regulation is in effect, a~~ A remote health evaluation by a QME, AME, or other medical-legal evaluation may be performed in the circumstance where the physician and the injured worker are not in the same physical space or site during the evaluation. The evaluation shall be performed by way of telehealth through the use of electronic means of creating a virtual meeting between the physician and the injured worker where both parties can visually see and hear each other and may not be in the same physical space or site.
- (1) Remote health means remote visits via video-conferencing, video-calling, or such similar technology that allows each party to see and converse with the other via a video and audio connection. The evaluation must be conducted with the same standard of care as in person visit and must comply with all relevant state and federal privacy laws.
- (2)(4) A QME or AME may complete a medical-legal evaluation through ~~telehealth~~ remote health when a hands on physical examination is not necessary and all of the following conditions are met:
- (A) There is a medical issue in dispute which involves whether or not the injury is AOE/COE (Arising Out of Employment / Course of Employment), or the physician is asked to address the termination of an injured worker's indemnity benefit payments or address a dispute regarding work restrictions; and
 - (B) There is agreement in writing to the ~~telehealth~~ remote health evaluation by the injured worker, the carrier or employer, and the QME. ~~Agreement to the telehealth evaluation cannot be unreasonably denied. If a party to the action believes that agreement to the telehealth evaluation has been~~

~~unreasonably denied under this section, they may file an objection with the Worker's Compensation Appeals Board, along with a Declaration of Readiness to Proceed to set the matter for a hearing;~~

- (C) ~~The telehealth~~ remote health evaluation conducted by means of a virtual meeting is consistent with appropriate and ethical medical practices and the AMA Guides 5th edition, as determined by the QME and the relevant medical licensing board; and
- (D) The QME attests in writing that the evaluation does not require an in person physical exam.

~~(2) For purposes of evaluations pursuant to subdivision (a) of this emergency regulation, telehealth means remote visits via video-conferencing, video-calling, or such similar technology that allows each party to see and converse with the other via a video and audio connection. The evaluation must be conducted with the same standard of care as an in person visit and must comply with all relevant state and federal privacy laws.~~

(b) ~~During the time this regulation is in effect, section 34(b) of title 8 of the California Code of Regulations is suspended and the following is effective:~~

~~(1) The QME shall schedule an appointment for the first comprehensive medical-legal evaluation which shall be conducted at a medical office listed on the panel selection form or any office listed with the Medical Director provided there is agreement by the parties. Any subsequent evaluation appointments may be performed at another medical office of the selected QME if it is listed with the Medical Director and is within a reasonable geographic distance from the injured worker's residence.~~

(2) For purposes of QME ~~telehealth~~ remote health evaluations conducted under this regulation, the medical office listed on the panel selection form for the QME shall be deemed the site of the ~~telehealth~~ remote health evaluation. For all other ~~telehealth~~ remote health evaluations conducted under this regulation, the medical office of the physician that is within a reasonable geographic distance from the injured worker's residence shall be deemed the site of the ~~telehealth~~ remote health evaluation.

Note: Authority Cited: Section 133, 139.2 and 4627, 5307.3 Labor Code. Reference Citations: Sections 4060; and ~~4603.5~~ 4061, Labor Code.