California Board of
PSYCHOLOGY

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MEMORANDUM

DATE	July 7, 2016
TO	Board of Psychology
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #4(f) – AB 2086 (Cooley and Mathis) Worker's Compensation: Neuropsychologists

Background:

This bill provides that a medical doctor or osteopath who has successfully completed a residency or fellowship program accredited by an organization that is a predecessor to the Accreditation Council for Graduate Medical Evaluation would satisfy the residency-training requirement for an evaluator under the Worker's Compensation Law. Authorizes a licensed clinical psychologist meeting specified requirements to be appointed as a qualified medical evaluator in neuropsychology.

At the May Board Meeting, the Board took a Support if Amended Position on AB 2086. To date, the requested amendments have not been made.

Location: Senate Appropriations Committee

Status: 06/08/2016 From Senate Committee on Labor and Industrial Relations: Do pass to Committee on Appropriations. (4-0)

Action Requested:
This is for informational purposes only. No action is required at this time.

Attachment A is the analysis of AB 2086 (Cooley and Mathis)
Attachment B is the language of AB 2086 (Cooley and Mathis)
Attachment C is the Boards Support if Amended position letter for AB 2086 (Cooley and Mathis)
Attachment E is the Senate Labor and Industrial Relations Analysis of AB 2086 (Cooley and Mathis)

CALIFORNIA STATE BOARD OF PSYCHOLOGY
BILL ANALYSIS

BILL NUMBER:	**AB 2086**	**VERSION:**	**AMENDED: MAY 16, 2016**
AUTHOR:	**COOLEY (D) AND MATHIS (R)**	**SPONSORS:**	**CALIFORNIA SOCIETY OF INDUSTRIAL MEDICINE AND SURGERY AND CALIFORNIA PSYCHOLOGICAL ASSOCIATION**

BOARD POSITION: **SUPPORT IF AMENDED**

SUBJECT: **WORKER'S COMPENSATION: NEUROPSYCHOLOGISTS**

Overview:

This bill would restore the specialty of neuropsychology as one of the categories of Qualified Medical Evaluators (QME's) in California's workers compensation system and would allow psychologists that meet specific qualifications to be appointed as QME's in neuropsychology.

Existing Law:

Establishes a comprehensive system to provide workers' compensation benefits to employees who suffer injuries or conditions that arise out of or in the course of employment. Benefits include medical care to cure and relieve the effects of the injury or condition, temporary disability benefits for injured employees who are unable to work during the period of recovery, permanent disability benefits for injured employees who suffer permanent disabilities as a consequence of the injury or condition, among other benefits.

Provides for a formal system of administrative dispute resolution for cases where the employer and employee are not in agreement over an issue associated with the delivery of workers' compensation benefits.

QME's are appointed to evaluate medical-legal disputes (disputes over the extent to which an injured employee's injuries or conditions are disabling or are work-related), upon request of a party to a workers' compensation claim. The requesting party specifies the type of expertise needed to resolve the dispute, and the Division of Worker's Compensation (DWC) appoints a panel, from which a single QME is selected.

In 2015, the Division of Workers' Compensation (DWC) adopted regulations to eliminate recognition of neuropsychologists, prohibiting them from being appointed as QME's, because the Board of Psychology issues a general license as a psychologist and does not issue a specialty license in neuropsychology. Currently, there is no way to request a neuropsychologist as a QME.

Allows a psychologist to become appointed as a QME if they meet the following criteria:

1. Is board certified in clinical psychology by a board recognized by the administrative director.

2. 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 administrative director and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

3. 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

This Bill:

This bill would amend the labor code to allow a psychologist who meets the following additional criteria to become appointed as a QME in neuropsychology:

1. Is certified in clinical neuropsychology by the American Board of Clinical Neuropsychology, the American Board of Professional Neuropsychology, or another organization recognized by the administrative director. A psychologist who meets the requirements of this subparagraph may be appointed as a qualified medical evaluator in neuropsychology.

2. Is licensed to practice psychology in this state and has 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 an accredited university or college training program, has completed an internship or its equivalent in a clinically relevant area of professional psychology, has at least two years of experience and specialized training, at least one year of which is at the postdoctoral level, in the study and practice of clinical neuropsychology and related neurosciences under the supervision of a clinical neuropsychologist, and has served as an agreed medical evaluator in neuropsychology on five or more occasions.

Comments:

Current Position

At its May Board Meeting, the Board took a Support if Amended Position, requesting the following amendment:

Labor Code Section 139.2(b)
(5) Is a psychologist licensed in this State and meets one of the following requirements:

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

(B) ~~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 administrative~~

~~director and h~~ Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) 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.

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

(E) ~~Is licensed to practice psychology in this state and has 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 an accredited university or college training program, h~~Has completed an internship or its equivalent in a clinically relevant area of professional psychology, has at least two years of experience and specialized training, at least one year of which is at the postdoctoral level, in the study and practice of clinical neuropsychology and related neurosciences under the supervision of a clinical neuropsychologist, and has served as an agreed medical evaluator in neuropsychology on five or more occasions. A psychologist who satisfies the requirements of this subparagraph may be appointed as a qualified medical evaluator in neuropsychology.

Author's Intent.

The authors understand that there are important differences between clinical psychology and neuropsychology, and wants to create a way for neuropsychologists to be able to be appointed as QME's as had been standard practice since 1993.

Previous Legislation.

AB 1542 (Mathis) was Vetoed by Governor Brown on 10/06/2015. The Division of Workers' Compensation was opposed to a particular section of language in the bill that allowed neuropsychologists to self-certify their specialty without independent verification. The Board Supported AB 1542 and advocated by testifying, and working with the Department of Industrial Relations (DIR) on amendments, and expressed concerns to DIR regarding potential impacts to our licensees if the bill was vetoed. AB 2086 addresses this issue by requiring a non-board certified neuropsychologist to have served as an agreed medical evaluator in neuropsychology on five or more occasions.

Support

California Society of Industrial Medicine and Surgery (Co-Sponsor)
California Conference of Machinists
California Neurology Society
California Professional Firefighters
California Psychological Association
California School Employees Association
California Society of Industrial Medicine and Surgery
California Society of Physical Medicine and Rehabilitation
Voters Injured at Work
Western Occupational and Environmental Medical Association

Opposition

None at this time

History

06/21/16 In committee: Hearing postponed by committee.
06/08/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 0.) (June 8). Re-referred to Com. on APPR.
05/16/16 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on L. & I.R.
05/05/16 Referred to Com. on L. & I.R.
04/28/16 In Senate. Read first time. To Com. on RLS. for assignment.
04/28/16 Read third time. Urgency clause adopted. Passed. Ordered to the Senate. (Ayes 76. Noes 0. Page 4594.).
04/21/16 Read second time. Ordered to Consent Calendar.
04/20/16 From committee: Do pass. To Consent Calendar. (Ayes 16. Noes 0.) (April 20).
04/06/16 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To Consent Calendar. (Ayes 13. Noes 0.) (April 6). Re-referred to Com. on APPR.
03/31/16 Re-referred to Com. on INS.
03/30/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on INS. Read second time and amended.
03/28/16 Re-referred to Com. on INS. pursuant to Assembly Rule 96.
02/29/16 Referred to Com. on B. & P.
02/18/16 From printer. May be heard in committee March 19.
02/17/16 Read first time. To print.

California LEGISLATIVE INFORMATION

AB-2086 Workers' compensation: neuropsychologists. (2015-2016)

SECTION 1. *The Legislature finds and declares all of the following:*

(a) Section 4 of Article XIV of the California Constitution grants the Legislature plenary power to create a workers' compensation system that includes adequate provision for the comfort, health and safety, and general welfare of workers and their dependents to relieve them of the consequences of any work-related injury or death, irrespective of the fault of any party, and requires the administration of the workers' compensation system to accomplish substantial justice in all cases expeditiously, inexpensively, and without encumbrance of any character, all of which matters are expressly declared to be the social public policy of this state.

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

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

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

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

SEC. 2. 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), and (7), and, if the physician is a medical doctor, doctor of ~~osteopathy,~~ *osteopathic medicine,* doctor of chiropractic, or a psychologist, that he or she also meets the applicable requirements in paragraph (3), (4), or (5).

(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~~ *osteopathic medicine* and meets one of the following requirements:

(A) Is board certified in a specialty by a board ~~recognized~~ *approved* by the ~~administrative director and either~~

~~the Medical~~ *American Board of Medical Specialties, the American Osteopathic Association Bureau of Osteopathic Specialists, or a specialty board with a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or a specialty board with equivalent requirements approved by the Medical* Board of California or the Osteopathic Medical Board of California.

(B) Has successfully completed a residency *or fellowship* training program accredited by the Accreditation Council for Graduate Medical ~~Education or the osteopathic equivalent.~~ *Education, the American Osteopathic Association, or a predecessor organization.*

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

(D) Has qualifications that the administrative director and either 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.

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

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

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

(B) 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 administrative director and has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) 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.

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

(E) Is licensed to practice psychology in this state and has 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 an accredited university or college training program, has completed an internship or its equivalent in a clinically relevant area of professional psychology, has at least two years of experience and specialized training, at least one year of which is at the postdoctoral level, in the study and practice of clinical neuropsychology and related neurosciences under the supervision of a clinical neuropsychologist, and has served as an agreed medical evaluator in neuropsychology on five or more occasions. A psychologist who satisfies the requirements of this subparagraph may be appointed as a qualified medical evaluator in neuropsychology.

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

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

(c) The administrative director shall adopt 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). A physician whose full-time practice is limited to the forensic evaluation of disability shall not be appointed as a qualified medical evaluator under this subdivision.

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

~~(1)~~ *(A)* Is in compliance with all applicable regulations and evaluation guidelines adopted by the administrative director.

~~(2)~~ *(B)* Has not had more than five of his or her evaluations that were considered by a workers' compensation administrative law judge at a contested hearing rejected by the workers' compensation administrative law 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 workers' compensation administrative law 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 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)~~ *(C)* 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)~~ *(D)* 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.

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

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

(h) (1) When requested by an employee or employer pursuant to Section 4062.1, 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. Preference in assigning panels shall be given to cases in which the employee is not represented. If a panel is not assigned within 20 working days, the employee shall have the right to obtain a medical evaluation from any qualified medical evaluator of his or her choice within a reasonable geographic area. 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 requested 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.

(2) The administrative director shall promulgate a form that shall notify the employee of the physicians selected for his or her panel after a request has been made pursuant to Section 4062.1 or 4062.2. 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 workers' compensation administrative law judge will consider the evaluation prepared by the doctor you select to decide your claim."~~

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 workers' compensation administrative law judge will consider the evaluation prepared by the doctor you select to decide your

claim."

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

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

(B) He or she is certified by the administrative director to evaluate in an appropriate specialty and at locations within the general geographic area of the employee's residence. An evaluator shall not conduct qualified medical evaluations at more than 10 locations.

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

(4) When the medical director determines that an employee has requested an evaluation by a type of specialist that 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 5307.3, the administrative director shall adopt regulations concerning the following issues:

(1) (A) 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 administrative director shall develop regulations governing the provision of extensions of the 30-day period in both of the following cases:

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

(ii) 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.

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

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

(ii) Death in the evaluator's family.

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

(C) The administrative director shall develop timeframes governing availability of qualified medical evaluators for unrepresented employees under Section 4062.1. 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 a manner consistent with Sections 4660 and 4660.1.

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

(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. 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 Insurance Commissioner, or deemed appropriate by the administrative director.

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

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

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

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

~~(3)~~ *(C)* Has failed to comply with the timeframe standards established pursuant to subdivision (j).

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

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

~~(6)~~ *(F)* Has made material misrepresentations or false statements in an application for appointment or reappointment as a qualified medical evaluator.

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

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

(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 administrative director 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 administrative director may, in his or her discretion, place a qualified medical evaluator on probation subject to appropriate conditions, including ordering continuing education or training. The administrative director shall report to the appropriate licensing board the name of any qualified medical evaluator who is disciplined pursuant to this subdivision.

(m) The administrative director shall terminate from the list of medical evaluators any physician where 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 administrative director 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) A qualified medical evaluator shall pay a fee, as determined by the administrative director, for appointment or reappointment. These fees shall be based on a sliding scale as established by the administrative director. All revenues from fees paid under this subdivision shall be deposited into the Workers' Compensation Administration Revolving Fund and are available for expenditure upon appropriation by the Legislature, and shall not be used by any other department or agency or for any purpose other than administration of the programs of the Division of Workers' Compensation related to the provision of medical treatment to injured employees.

(o) An evaluator shall 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. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

California Board of
PSYCHOLOGY

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June 9, 2016

The Honorable Ricardo Lara
Chair, Senate Appropriations Committee
State Capitol
Room 5050
Sacramento, CA 95814

RE: **AB 2086 (COOLEY) – WORKER'S COMPENSATION NEUROPSYCHOLOGISTS**

Dear Senator Lara:

At its May 20, 2016 meeting, the Board of Psychology (Board) adopted a **Support if Amended** position on AB 2086 (Cooley). This bill would provide a statutory authorization for licensed psychologists who meet specified requirements to be appointed as a qualified medical evaluator (QME) in neuropsychology in the workers' compensation system.

The Board supports and agrees with author's intention to allow neuropsychologists to perform the services of a QME. However, the Board would like the following language to be considered:

Labor Code Section 139.2(b)
(5) Is a psychologist licensed in this State and meets one of the following requirements:

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

(B) ~~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 administrative director and h~~ Has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders.

(C) 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.

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

(E) ~~Is licensed to practice psychology in this state and has 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 an accredited university or college training program, h~~Has completed an internship or its equivalent in a clinically relevant area of professional psychology, has at least two years of experience and specialized training, at least one year of which is at the postdoctoral level, in the study and practice of clinical neuropsychology and related neurosciences under the supervision of a clinical neuropsychologist, and has served as an agreed medical evaluator in neuropsychology on five or more occasions. A psychologist who

satisfies the requirements of this subparagraph may be appointed as a qualified medical evaluator in neuropsychology.

The Board's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113. Thank you.

Sincerely,

STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Senate Committee on Appropriations
Assembly Member Ken Cooley
Senate Republican Caucus

SENATE COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS
Senator Tony Mendoza, Chair
2015 - 2016 Regular

Bill No:	AB 2086	**Hearing Date:**	June 8, 2016
Author:	Cooley		
Version:	May 16, 2016		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Gideon Baum		

Subject: Workers' compensation: neuropsychologists

KEY ISSUE

Should the Legislature permit the Division of Workers' Compensation to appoint qualified clinical neuropsychologists as Qualified Medical Examiners (QMEs), as well as revise and clarify the list of board certification organizations for the certification of QMEs?

ANALYSIS

Existing law:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company duly authorized by the state.

2) Requires that the administrative director (AD) appoints qualified medical evaluators (QMEs) in each of the respective specialties as required for the evaluation of medical-legal issues. In order to be appointed as a QME, the applicant must pass a written examination and meet additional requirements specific to each specialty.

For medical doctors or doctors of osteopathy, the applicant must:
a) Be board certified in a specialty by a board recognized by the AD and either the Medical Board of California or the Osteopathic Medical Board of California; or
b) Have successfully completed a residency training program accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the osteopathic equivalent.

For psychologists, the applicant must:
a) Be board certified in clinical psychology by a board recognized by the AD; or
b) Hold a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology from a university or professional school recognized by the AD **and** has not less than five years' postdoctoral experience in the diagnosis and treatment of emotional and mental disorders; or

c) 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.

(Labor Code §139.2)

This bill would:

1) Contains Legislative findings and declarations concerning the role and importance of neuropsychologists in evaluating permanent disability for injured workers who have experienced brain trauma.
2) Clarifies that a physician and surgeon can be appointed as a QME if he or she is either board certified by a specialty board recognized by the American Board of Medical Specialties (ABMS), or completed a residency program accredited by ACGME.
3) Permit a medical doctor to be appointed as a QME if his or her residency training program was certified by a predecessor to the ACGME or the American Osteopathic Association.
4) Permit the appointment of a clinical neuropsychologist as a QME if:
   a) The clinical neuropsychologist is by the American Board of Clinical Neuropsychology, the American Board of Professional Neuropsychology, or another organization recognized by the AD.
   b) The clinical neuropsychologist is licensed to practice psychology in this state and has a doctoral degree in psychology from an accredited university or college training program, has completed an internship or its equivalent in a clinically relevant area of professional psychology, and has at least two years of experience and specialized training, at least one year of which is at the post-doctoral level in the study and practice of clinical neuropsychology and related neurosciences under the supervision of a clinical neuropsychologist, and has served as an agreed medical evaluator in neuropsychology on five or more occasions.
5) Provide that the bill is an urgency measure, to take effect immediately.

COMMENTS

1. QMEs and Medical-Legal Disputes:

As was noted above, Qualified Medical Examiners (QMEs) are medical examiners who have taken an exam and met certain specific requirements that are authorized to conduct an evaluation of medical-legal issues. Medical-legal does NOT refer to if an injured worker will or will not receive medical treatment. Rather, **medical-legal relates to the legal consequences of medical conditions**, frequently the extent to which an injured employee's injuries or conditions are disabling, or whether the injuries or conditions have become permanent and stationary.

When there is a medical-legal dispute, a party can request appointment of a QME. The requesting party specifies what sort of expertise is needed to resolve the dispute, and the DWC appoints a panel, from which a single QME is selected. If both parties can agree to a single medical examiner, than the agreed upon doctor, known as an Agreed Medical Evaluator (AME), is used instead of the QME panel to resolve the Medical-legal issues.

Until recently, Clinical Neuropsychologists were included as being eligible for selection as QMEs. Generally, Clinical Neuropsychologists were selected for their expertise in cases involving head trauma. For reasons discussed below, that is no longer the case. However, Clinical Neuropsychologists may still be selected as AMEs.

2. AB 2086 and Clinical Neuropsychologists as QMEs:

According to the American Neuropsychiatric Association (ANPA), clinical neuropsychology is distinct from traditional psychology due to the focus on understanding brain function. The ANPA states:

"*A clinical neuropsychologist usually holds an advanced degree in clinical psychology (Ph.D., Psy.D.), and has completed a clinical internship and specialized post-doctoral training in clinical neuropsychology. What distinguishes a clinical neuropsychologist from other clinical psychologists is knowledge of the brain, including an understanding of areas such as neuroanatomy and neurological disease.... They use neuropsychological tests to assess cognitive deficits, and they are involved in the management, treatment and rehabilitation of cognitively impaired patients.*"

As noted above, the DWC may only certify a psychologist if the psychologist is board certified by the Board of Psychology or a board recognize by the DWC. **Currently, Clinical Neuropsychology is not a recognized specialty by the Board of Psychology.** Despite this, the DWC recognized Clinical Neuropsychologists as QMEs until recent regulations removed Clinical Neurologists from the list of potential QMEs. While this decision brought the QME regulations in line with statute, it was met with disappointment from some stakeholders.

AB 2086 would return the QME process to the prior status quo, allowing clinical neuropsychologists to be appointed as QMEs.

3. AD Discretion and Amendments from the Board of Psychology:

As noted below, AB 2086 is not the first time this Committee has heard the issue of allowing clinical neuropsychologists to serve as QMEs. In last year's AB 1542, the bill left untouched the existing discretion on the part of the administrative director (AD) to recognize board certified specialties, if the specialty has already been recognized by the California Medical Board or Osteopathic Medical Board. However, AB 2086 erodes the AD's discretion, instead requiring the AD to recognize board certified specialties if they are approved by specified organizations and recognized by either the California Medical Board or Osteopathic Medical Board.

Similarly, the California Board of Psychology has weighed in on AB 2086, asking for a different definition of a clinical psychologist QME than is currently found in existing law. This call for a revised standard of who is a qualified clinical psychologist does not directly touch on the issue of whether neuropsychologists should be QMEs. Nor is it known if the California Board of Psychology has discussed these amendments with the Division of Workers' Compensation (DWC) or the AD.

As such, AB 2086 deals with two distinct issues: neuropsychologists as QMEs and the process for recognizing QME specialties. The author and the Committee may wish to consider if it would be appropriate to separate these two issues in order to simplify the scope of the bill, as well as to allow the AD and the "House of Medicine", including the Board of Psychology, to discuss any perceived issues with existing processes for recognizing QME specialties.

4. Proponent Arguments:

Proponents note that, until recently, clinical neuropsychologists were eligible for appointment as QMEs. Proponents further note that clinical neuropsychologists are trained in understanding neuro-diseases and neuro-anatomy, differentiating neuropsychologists from traditional psychologists. Proponents argue that neuropsychologists are needed to evaluate a number of serious head and brain injuries including penetrating brain injuries, anoxia/Hypoxia, Diffuse Axonal Injury, and Coup-contrecoup injuries. Proponents also argue that denying injured workers access to neuropsychologists as QMEs will require traditional psychologists serving as QMEs to contact clinical neuropsychologists in order to adequately perform their duties as a QME, creating unnecessary delay and cost for injured workers and employers.

5. Opponent Arguments:

None on file.

6. Prior Legislation:

AB 1542 (Mathis) of 2015 was very similar to this bill, and it was vetoed by Governor Brown. The Governor's veto message stated:

"This bill requires the Division of Worker's Compensation to appoint qualified clinical neuropsychologists as Qualified Medical Examiners.

This bill undermines the Division of Workers' Compensation's authority to apply consistent standards when it determines eligible medical specialties for the Qualified Medical Evaluator panel. The Division is not in the position to determine the validity of a physician's qualifications. That power resides with the physician's licensing board. If the Board of Psychology believes there is value in recognizing neuropsychology as a subspecialty, it should do so."

SUPPORT

California Society of Industrial Medicine and Surgery (Co-Sponsor)
California Conference of Machinists
California Neurology Society
California Professional Firefighters
California Psychological Association
California School Employees Association

California Society of Industrial Medicine and Surgery
California Society of Physical Medicine and Rehabilitation
Voters Injured at Work
Western Occupational and Environmental Medical Association

OPPOSITION

-- END --