

CONCURRENCE IN SENATE AMENDMENTS

AB 2086 (Cooley and Mathis)

As Amended August 1, 2016

2/3 vote. Urgency

ASSEMBLY: 76-0 (April 28, 2016)

SENATE: 39-0 (August 22, 2016)

Original Committee Reference: **INS.**

SUMMARY: Provides a statutory authorization for neuropsychologists to perform the services of a qualified medical examiner (QME) in the workers' compensation system.

The Senate amendments:

- 1) Delete the listing of the organizations that issue "board certifications" to neuropsychologists, thereby qualifying the practitioner to become a QME, and instead delegate to the Administrative Director (AD) of the Division of Workers' Compensation the responsibility to determine which certifying organizations are acceptable for this purpose.
- 2) Make technical and conforming amendments.

EXISTING LAW:

- 1) 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.
- 2) Provides for a formal system of administrative dispute resolution for cases where the employer and employee are not in agreement over any issue associated with the delivery of workers' compensation benefits.
- 3) Provides for the appointment of a QME to evaluate the injured employee whenever disputed medical-legal issues arise.
- 4) Specifies the qualifications necessary for workers' compensation physicians to be appointed as QMEs, including with respect to physicians and surgeons, that they successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education (ACGME) – the body recognized as the accrediting organization for medical specialty training programs.
- 5) Authorized, until the adoption by the Division of Worker's Compensation (DWC) of a regulation in 2015, neuropsychologists to perform the function of a QME is appropriate brain trauma cases.
- 6) Provides for AMEs, who perform essentially the same functions as QMEs, but who are not selected randomly from DWC-generated lists and instead are selected by mutual agreement of the parties.

FISCAL EFFECT: According to the Senate Appropriations Committee, DIR would incur minor and absorbable costs to develop new regulations. However, DIR anticipates that the bill would result in unknown, potentially significant costs to the workers' compensation system as a consequence of an increase in requests for qualified medical examiner panels.

COMMENTS:

- 1) Purpose. According to the author, this bill is necessary because neuropsychologists provide valuable input in serious brain injury cases in the workers' compensation system. Neuropsychologists appointed as QMEs have been providing this input in workers' compensation cases for 22 years until the DWC's regulation was adopted in 2015. The bill is intended to override the regulation, and reinstate the opportunity for neuropsychologists to perform QME functions.
- 2) QME process. When a medical-legal dispute arises, a QME is appointed to evaluate the injured employee. "Medical-legal" does not refer to whether or not a treatment at issue is legally required. There is a separate medical treatment dispute resolution process. "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 dispute on an issue of this nature, 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 a neuropsychologist is the expertise required, but only general psychologists are on the QME lists, there is no guarantee that a person with the proper expertise will be the QME. In that case, the under-qualified QME will be forced, with additional expense and delay, to "consult" with a neuropsychologist. No stakeholder group involved in workers' compensation has suggested that this would be a desirable result.
- 3) ACGME. Currently, ACGME is the accepted entity that accredits medical specialty training programs, and as a consequence the Labor Code refers to completion of ACGME-accredited programs as a basis to qualify to perform QME functions. However, there are practicing physicians and surgeons who completed their residency prior to the establishment of ACGME in the early 1980's, and who could otherwise qualify as QMEs. The bill also seeks to authorize the AD to accept as QMEs those physicians who obtained their specialty training from a predecessor accrediting organization.
- 4) Prior legislation. Last year, AB 1542 (Mathis and Cooley) was substantially similar to this bill, and was unanimously approved by the Legislature. However, the Governor vetoed AB 1542.