SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS
28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, AND 127.25

SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL, AND QUALIFICATIONS
28 TAC §§127.100, 127.120, 127.130, AND 127.140

REPEAL OF 28 TAC §127.110

SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES
28 TAC §§127.200, 127.210, AND 127.220

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts amendments to 28 TAC Chapter 127, Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, 127.130, and 127.140; and Subchapter C §§127.200, 127.210, and 127.220; and the repeal of 28 TAC §127.110. The amended sections concern how the designated doctor program operates. The repealed section, §127.110, has been incorporated into amended §127.100. The amendments and repeal implement Texas Labor Code §§408.0041, 408.023, and 408.1225, which direct DWC on the operation of the designated doctor program.

The amendments to Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, and 127.140; Subchapter C §§127.200, 127.210, and 127.220; and the repeal of §127.110 are adopted without changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8495), with minor corrections to §§127.5, 127.20, and 127.200

published in the January 13, 2023, issue of the *Texas Register* (48 TexReg 169). The rules will not be republished.

The amendments to §127.130 are adopted with changes to the proposed text published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8495). In response to a public comment, DWC revised §127.130(f) by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability. The rule will be republished.

REASONED JUSTIFICATION. The amendments are necessary to maintain and increase participation in the designated doctor program and to allow better access to certain types of specialized examinations. DWC evaluated the program and identified several possible areas of improvement, including changes to address training and testing requirements; designated doctor qualifications, certification, and renewals; multiple certifications; and administrative burdens. DWC's evaluation process included multiple stakeholder meetings and two informal draft proposals to gather information and comments on possible changes to the text before writing and posting the formal proposal. DWC considered the comments and information received through the lengthy informal process, as well as the comments received in response to the formal proposal, when drafting the amendments.

The amendments move the substance of the repealed section into another section to reduce duplication and streamline and clarify the process involved, make changes to revise training and testing requirements, reduce administrative burdens, and update designated doctor qualifications to enable better access to traumatic brain injury and multiple fracture examinations for injured employees.

The amendments add new subsection headers throughout the chapter that enable readers to identify and navigate subsections more easily. They remove unnecessary and obsolete section-specific applicability and effective dates to avoid confusion and streamline rule language. They make editorial changes that clarify the rule language and organization by removing unnecessary words, simplifying sentence structure, adding references, and breaking long paragraphs into shorter paragraphs and lists. The amendments also correct typographic, grammar, and punctuation errors in the current rule text; make changes to update obsolete references; and make updates for plain language and agency style. Some examples of these amendments include changing "shall" to "must," "facsimile" to "fax," and adding "insurance" before "carrier."

Section 127.1 concerns requesting designated doctor examinations. The amendments remove language related to the multiple certification requirement to harmonize with amendments to the multiple certification process in §127.10. The amendments also update and simplify DWC's website and physical addresses, and clarify DWC's requirements for a case-specific good cause determination for scheduling an examination within 60 days. The amendments remove the provision that formerly required the requester to list all compensable injuries, because the designated doctor will

be determining what injuries are compensable when performing an extent-of-injury examination, rather than relying on information from the requester.

Section 127.5 concerns scheduling designated doctor appointments. The amendments relocate existing rule language about designated doctor certification from §127.130 for better placement in the chapter.

Section 127.10 concerns general procedures for designated doctor examinations. The amendments add a reference to Labor Code §408.0041(c), clarify that testing and referral doctors for designated doctor examinations do not have to be in the same workers' compensation network for health care as the injured employee, and clarify that the insurance carrier must pay benefits on the condition to which the designated doctor determines the compensable injury extends.

The amendments also divide subsection (d) into two subsections, remove the requirement for a designated doctor to provide multiple certifications, and add language that specifies that, for examinations conducted under subsection (d) on or after June 5, 2023, a designated doctor may provide multiple certifications of maximum medical improvement (MMI) and impairment ratings only when DWC directs.

DWC analyzed data about designated doctor examinations, benefit review conferences, and contested case hearings involving the issues of MMI, impairment rating, and extent of injury in 2019, and determined that only about 20% of designated doctor reports with multiple certifications were involved in DWC dispute resolution processes. In addition, of the 20% of claims where the parties disputed MMI, impairment rating, and

extent of injury in a DWC contested case hearing, DWC administrative law judges requested new certifications from designated doctors about 50% of the time, since the multiple certifications the designated doctor previously produced did not represent the compensable injury determined during the proceeding. DWC concluded that, where multiple certifications are appropriate, DWC administrative law judges are already directing designated doctors to provide them. As a result, the amendment that specifies that designated doctors may provide multiple certifications of MMI and impairment ratings only when directed by DWC will reduce the number of unnecessary multiple certifications that consume time and resources, while continuing to allow for necessary multiple certifications without causing unnecessary delay.

Section 127.15 concerns undue influence on a designated doctor. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.20 concerns requesting a letter of clarification regarding designated doctor reports. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.25 concerns failure to attend a designated doctor examination. The amendments clarify that the requirement applies to a designated doctor examination or a referral examination under §127.10(c).

Subchapter B concerns designated doctor certification, renewal, and qualifications. The amendments change the title of the subchapter by changing "recertification," which referred to the section being repealed, to "renewal" to describe the procedure more accurately.

Section 127.100 concerns designated doctor certification. The amendments merge the language in §127.110, which is being repealed, with §127.100 to eliminate redundancy, reduce confusion and inconsistencies, update terminology, and clarify the process for certification and renewal.

The amendments specify that the requirements for certification and renewal are now combined into §127.100, and modify the requirement for certification testing by requiring that a designated doctor complete certification on or after May 13, 2013. Designated doctors that pass or have previously passed the certification test on or after May 13, 2013, are no longer required to retest every two years when they renew their certification. However, the amendments also add §127.100(d), which allows DWC to require testing of all designated doctors on renewal of their certification if needed. Examples of when testing might be required include, but are not limited to, individual need for retesting based on substandard performance, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.

The amendments clarify that the disclosure questions on the certification application require detailed explanations, add suspension and revocation to the certification actions that require DWC to send the designated doctor written notice, and relocate existing rule requirements for certification effective and expiration dates.

The amendments add §127.100(g), which relocates existing rule requirements from §127.110. Subsection (g) explains that a designated doctor seeking to renew their certification immediately after their current term expires, without interruption, must apply for certification no later than 45 days before the end of the term. Subsection (g) also explains that DWC will not assign examinations to the designated doctor during the last 45 days of an expiring term if it does not receive an application 45 days before the end of the term, but that designated doctors may still provide services on claims DWC had previously assigned to them during this 45-day period.

The amendments add §127.100(h), which allows DWC to approve a designated doctor certification but restrict some or all appointments until the designated doctor completes additional training, testing, or other requirements. This is necessary for DWC to ensure that designated doctors are adequately trained and able to perform their duties as the Labor Code and DWC rules and guidelines require. Subsection (h) also provides a way for the designated doctor to dispute the restriction.

The amendments reletter existing subsection (f) as subsection (i). They clarify the range of possible actions that, under existing statutes, the commissioner may take on a designated doctor's certification to ensure the quality of the designated doctor's decisions and reviews. The amendments also add failure to comply with the requirements of §180.24 (relating to Financial Disclosure) as a ground for action under the subsection.

The amendments add §127.100(k), which relocates existing rule requirements for certification renewal from §127.110, to ensure consistency in the restructured process. The amendments change "informal hearing" to "informal conference" to clarify the informal nature of the discussion about a denial, suspension, or revocation of a designated doctor

certification or application for certification or renewal. Subsection (k) details the procedure for designated doctors to request an informal conference.

The amendments remove existing §127.100(h) because this subsection was added in 2012 when designated doctors were transitioning to the then-new rules for examination qualification criteria. Only one doctor used that process during that transition, and there is no longer a need for it.

The amendments remove existing §127.100(i) because DWC transitioned all designated doctor certification terms to a two-year cycle in 2012. There is no longer a need for this provision in the rules.

Section 127.110 is repealed. Certification and renewal requirements are now combined in amended §127.100 to reduce redundancy and inconsistency, and to make the requirements easier to understand and follow.

Section 127.120 concerns exception to certification as a designated doctor for out-of-state doctors. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.130 concerns qualification standards for designated doctor examinations. The amendments specify an applicability date for the section for designated doctor examination assignments made on or after June 5, 2023, to clarify which standards apply to a given assignment.

The amendments to §127.130(b)(9)(A) also update the qualification requirements for physicians examining traumatic brain injuries, including concussion and post-concussion syndrome, by adding to the list of qualifying American Board of Medical Specialties and American Osteopathic Association Bureau of Osteopathic Specialists board certifications. These amendments are necessary to ensure that injured employees with traumatic brain injuries can continue to access designated doctor examinations.

Over the past several years, DWC has experienced a marked decrease in the number of qualified board-certified physicians to examine injured employees with traumatic brain injuries. Current §127.130(d) allows DWC to exempt a designated doctor from the applicable qualification standard if no other designated doctor is qualified and available to perform the examination. Physicians are trained and tested to be able to handle designated doctor assignments for non-musculoskeletal injuries, and to recognize when an injured employee needs to be referred for ancillary testing. Due to lack of availability, within a seven-month period, DWC selected a physician with a board certification other than those currently listed in §127.130(b)(9)(A) to examine an injured employee with a traumatic brain injury 26% of the time. These designated doctors coordinated testing and referral examinations with other health care practitioners to complete their reports. Their reports were comparable to reports submitted by qualified, board-certified physicians.

As a result, DWC acknowledges the need for the rule to increase the number of board-certified physicians available to examine injured employees with traumatic brain injuries, as well as to improve the ability of physicians with a broader range of board certifications to use testing and referral resources to produce reports that meet the

requirements of the designated doctor program. Board-certified physicians are all capable of coordinating referrals of injured employees to other specialists, when necessary, regardless of the types of patients the physicians may see in their medical practice. Should a situation arise where any designated doctor does not believe they have the knowledge or training to address a specific issue in an exam, designated doctors may return the examination to DWC for reassignment.

To support those doctors, DWC will provide additional training, focused on coordinating additional testing and referrals necessary when examining injured employees, and techniques for incorporating the results of the testing and referral examinations into the overall report effectively. This will preserve the quality of the reports on traumatic brain injuries while expanding the pool of doctors able to conduct those examinations.

The amendments to §127.130(b)(9)(B) also update the qualification requirements for physicians examining injured employees with spinal cord injuries and diagnoses, a spinal fracture with documented neurological deficit, or cauda equina syndrome. The amendments change the phrase "documented neurological deficit" to "documented neurological injury, or vascular injury," to clarify what types of conditions require a designated doctor examination by a qualified, board-certified specialist. The amendments also clarify that an injured employee with more than one spinal fracture must be examined by a qualified, board-certified specialist to harmonize with the amendments to the types of multiple fractures, joint dislocation, and pelvis or hip fractures in §127.130(b)(9)(E).

The amendments to §127.130(b)(9)(E) clarify the certifications required for complex fractures. They no longer require a board-certified specialist for multiple fractures unless

they are accompanied by vascular injury or are more than one spinal fracture. Currently, a board-certified physician must examine an injured employee with multiple fractures (more than one fracture). That can create unnecessary administrative problems and delays. Sometimes, a chiropractor or physician without a board specialty listed in §127.130(b)(9)(E) is selected as a designated doctor to examine an injured employee with a single fracture. But when the designated doctor gets the medical records, they may show more than one simple, resolved fracture, which means that the designated doctor must return the examination for reassignment.

As a result, the amendments to §127.130(b)(9)(E) are necessary to clarify that an injured employee with one or more fractures with vascular injury, including crush injuries to bones, must be examined by a physician qualified under §127.130(b)(9)(E). An injured employee with more than one simple, resolved fracture (without vascular injury) may be examined by a chiropractor or a physician with a different board certification or no board certification. This amendment will reduce wasted time and resources, and increase efficiency in assigning and conducting designated doctor examinations.

The amendments also allow a chiropractor or a physician with a different board certification or no board certification to examine an injured employee with a hip fracture without vascular injury; and add multiple rib fractures, with or without vascular injury, to the types of injuries that require examination by a physician qualified under §127.130(b)(9)(E). Because multiple rib fractures may be accompanied by damage to internal organs, clarifying that their examination requires a board-certified physician is necessary.

The amendments to §127.130(c) remove language related to disqualification of a designated doctor under Labor Code §408.0041(b-1) for clarity.

The amendments to §127.130(d) clarify that the exemption from qualification standards applies to a medical doctor or doctor of osteopathy when a designated doctor is not available with the qualifications listed in subsections (b)(9)(A)-(I).

DWC has adjusted §127.130(f) in response to a comment on the proposal by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability.

The amendments to §127.130(g) remove a reference to §127.110(b) that the repeal of §127.110 makes obsolete.

Section 127.140 concerns disqualifying associations. The amendments make editorial changes.

Section 127.200 concerns duties of a designated doctor. The amendments add the requirement for a designated doctor to complete required training or pass required testing detailed in the designated doctor's approval of certification to harmonize with the amended language in §127.100(h) that allows DWC to approve a designated doctor certification but restrict some or all appointments for a designated doctor until the

designated doctor completes additional training, testing, or other requirements. The amendments are necessary to enhance and preserve the integrity of the program.

Section 127.210 concerns designated doctor administrative violations. The amendments clarify that a designated doctor's failure to attend an examination or comply with rescheduling requirements may be grounds for revoking or suspending a certification or sanctioning a designated doctor. The amendments are necessary to ensure the quality and efficiency of the designated doctor program.

Section 127.220 concerns designated doctor reports. The amendments add the requirements for a designated doctor to specify the date the additional testing or referral examination was completed, and to provide the total amount of time required for the designated doctor to review the medical records. They are necessary for DWC to administer the designated doctor program effectively by ensuring a more complete and descriptive record that provides the required information and better reflects the amount of work involved in producing the report.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received three written comments on the proposal by the January 30, 2023, deadline, and no oral comments at the January 18, 2023, hearing. DWC will address any remarks about associated forms and non-rule matters outside of the rulemaking process. Commenters in support of the proposal with changes were: Gary W. Floyd, M.D., Texas Medical Association; and Barbara K. Salyers, Texas Mutual Insurance Company. A

commenter against the proposal was: Benjamin de Leon, Office of Injured Employee Counsel (OIEC).

Comment on §127.1. A commenter stated that DWC should not remove the requirement to list injuries determined to be compensable because it may create confusion and mistakes, increase the administrative burden in the system, negatively impact the dispute resolution process, and potentially delay medical and income benefits for injured employees. The commenter also disagreed with the change to replace "parties" with "insurance carrier, the claimant, or the claimant's representative" because it does not account for OIEC assistance, and suggested that DWC add language to include OIEC in the rule.

Agency Response to Comment on §127.1. DWC appreciates the comment but declines to make the suggested changes. On the list of compensable injuries, DWC disagrees that removing the requirement would create confusion and mistakes because §130.1 of this title, concerning certification of maximum medical improvement and evaluation of permanent impairment, already states that the certifying doctor--which can be a treating doctor, a designated doctor, or a required medical examination doctor--certifies maximum medical improvement, determines whether there is permanent impairment, and assigns an impairment rating. Designated doctors are trained to define the compensable injury, taking into consideration the injured employee's history, examination, and medical records. The designated doctor takes into account the information on the examination request but is not limited to this information in evaluating the injured employee. In addition, the treating doctor and the insurance carrier can still

provide an analysis letter to the designated doctor, and the injured employee can talk directly to the designated doctor at the examination if clarification is needed.

Although DWC does not believe that a change to the rule to retain the list of compensable injuries is necessary or advisable, DWC may adjust the associated form, DWC Form-032, *Request for Designated Doctor Examination*, to include a question about whether there has been an approved DWC Form-024, *Benefit Dispute Agreement*, final decision, or final court order to determine the compensable injury. That adjustment would allow DWC, on receiving the form, to investigate the documents indicated on the form and provide that information to the assigned designated doctor.

DWC also disagrees that the changes will increase the overall administrative burden in the system, negatively impact dispute resolution, or delay medical and income benefits. While it is true that requiring a Presiding Officer's Directive (POD) for multiple certifications will result in more PODs, it doesn't necessarily follow that more PODs increases inefficiency and confusion. Instead, PODs that are focused on the specific injury and that direct designated doctors to perform multiple certifications only when needed should reduce confusion and duplication, which is a problem in the current system. DWC is also working to streamline the POD process for multiple certifications to ensure that they are processed as efficiently as possible and minimize delays.

On the word "parties," DWC disagrees that the clarification to replace it with "insurance carrier, the claimant, or the claimant's representative" excludes OIEC. Section 150.3(a)(3) of this title (Representatives: Written Authorization Required) allows a representative, as defined in the Texas Workers' Compensation Act (recodified at Labor Code §401.011(37)) to provide unpaid services in workers' compensation matters if the

person who is not either an adjuster or attorney files with DWC a written power of attorney, or written authorization from the claimant, allowing that person access to confidential records. Labor Code §401.011(37) defines "representative" as a person, including an attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation. Labor Code §404.101 requires OIEC to provide assistance to workers' compensation claimants and assist injured employees through the ombudsman program in DWC's dispute resolution system and with resolving complaints.

Comments on §127.10. A commenter stated that DWC should add language like the language in §127.200(a)(10) to §127.10(c)(3) to clarify that reimbursement for additional testing and examinations performed by referral doctors is subject to Chapters 133 and 134 to make it clear that DWC's medical billing requirements and reimbursement rates still apply to any testing or referral services a designated doctor orders in the same way as designated doctor examinations.

The commenter stated that the proposed change to §127.10(d), which provides that only DWC may direct a designated doctor to provide multiple MMI/impairment rating certifications, would reduce opportunities for the parties to resolve disputes regarding extent of injury, MMI, and impairment rating without the need for dispute resolution. The commenter asked that, if DWC adopts the change, DWC add language to §127.10(d) to allow adequate time for parties to seek their own opinions through the treating doctor, referral doctor, or required medical examination doctor before initiating

the dispute resolution process. The commenter stated that providing alternate certifications does not require additional examination time, as the designated doctor has already evaluated the extent of the compensable injury; and that providing multiple certifications requires adding or subtracting diagnoses and their corresponding percentage of impairment from the whole person impairment rating calculations.

Another commenter stated that DWC should not eliminate multiple certifications when a designated doctor is requested to address issues of MMI, impairment rating, and extent of injury in the same examination because they are helpful and save time, and because injured employees rely on them.

Agency Response to Comments on §127.10. DWC appreciates the comment but declines to make the requested changes. The fee rules and guidelines in Chapters 133 and 134 of this title already apply to testing and referral services that are ordered by a designated doctor, so an additional mandate would be unnecessary and could cause confusion.

Based on DWC's data, of the designated doctor reports with multiple certifications that go to a contested case hearing, DWC administrative law judges had to request new certifications from designated doctors about half the time because the multiple certifications that the designated doctor had produced previously did not represent the compensable injury during the proceeding. As a result, DWC administrative law judges are already directing designated doctors to provide multiple certifications when appropriate, so avoiding producing multiple certifications that will not ultimately be useful in resolving the dispute should make the process more efficient. DWC recognizes that for the cases that do end up in a contested case hearing, having the administrative law judge

direct a designated doctor to provide multiple certifications may add some time. Because of that, DWC is adjusting its process to mitigate the time loss by adding benefit review officers to work with the parties to get a POD for multiple certifications, when needed, before the first benefit review conference.

Comment on §127.20. A commenter stated that DWC should amend §127.20(a) to require DWC to request clarification of a designated doctor opinion if both parties agree that clarification of an issue or issues is needed. The commenter stated that, too often, DWC automatically rejects such requests, only for the parties to re-urge the request during the dispute resolution process, which requires the administrative law judge to seek clarification.

Agency Response to Comment on §127.20. DWC appreciates the comment but declines to make the requested change. Because of the fact-specific nature of the matter, and the analysis involved, it is important that DWC have the discretion to determine when a letter of clarification is an appropriate and efficient use of system resources. Requests cannot be leading or inflammatory, and clarification must be necessary and appropriate to resolve a future or pending dispute. Those are qualitative determinations that require careful consideration, which a mandatory rubber stamp would remove.

Comment on §127.100. A commenter stated that DWC should not eliminate the requirement for a designated doctor to test every two years. The commenter agreed with requiring additional certification testing for substandard performance but requests that DWC keep a testing requirement to prevent substandard performance.

Agency Response to Comment on §127.100. DWC appreciates the comment but declines to make the requested change. The education and performance review requirements to ensure consistent designated doctor training and to maintain performance standards remain. The amendments to §127.100(d) allow DWC to require testing at renewal of a designated doctor's certification, when indicated. Examples of when testing might be required include not only identified performance issues, but also changes in the duties of a designated doctor in general, updates to the guidelines, and legislative changes. DWC expects that the additional testing on an as-needed basis will be sufficient to ensure that designated doctors are trained and able to perform their duties to the standard DWC sets.

Comment on §127.120. A commenter stated that, for an out-of-state doctor in §127.120, there are no express restrictions or parameters on the out-of-state doctor's qualifications. The commenter recommended changes to §127.120(a) to require the out-of-state doctor to have equivalent applicable qualifications to the standards in §127.130.

Agency Response to Comment on §127.120. DWC appreciates the comment but declines to make this change. DWC has the discretion to evaluate which requirements to waive, and does so on a case-by-case basis to ensure that an out-of-state examination is conducted timely and to the required standard. Restricting DWC's discretion to assign out-of-state examinations to qualified doctors could make it difficult to find a doctor willing to do the examination and create unnecessary delays and costs.

Comments on §127.130. A commenter expressed appreciation for DWC's inclusion of previously holding a board certification in the definition of "board certified," as consistent with other laws that prohibit differentiation between physicians on the basis of maintenance of certification for paying, reimbursing, or contracting with a physician to provide services.

Another commenter disagreed with allowing doctors not board-certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry to evaluate and rate a traumatic brain injury. The commenter recommended that DWC continue using only the doctors currently listed in §127.130(b)(9)(A) to evaluate traumatic brain injuries. The commenter also recommended that DWC add a testing requirement to increase the number of doctors that can examine traumatic brain injuries and maintain injury examination quality standards. The commenter agreed with DWC's clarification of who may examine spinal cord injuries and complex fractures because it benefits injured employees to have board-certified specialists examining those medically complex injuries.

Agency Response to Comments on §127.130. DWC appreciates the comments. DWC agrees with the commenter's observation that the act of initially getting board-certified is what demonstrates qualification in the field. DWC disagrees with the recommendation to not expand the list of doctors that may examine traumatic brain injuries. DWC may exempt a designated doctor from the applicable qualification standard if no other doctor is qualified and available to perform the examination. In the past, when a designated doctor with one of the listed board specialties has not been available, DWC has assigned traumatic brain injury evaluations to physicians with other specialty certifications and informed them that they can refer the injured employee to another doctor if needed as

part of the designated doctor evaluation. DWC has found that in this situation, the appropriate referrals and tests are conducted, and the reports produced are of comparable quality to reports produced by the listed specialties.

DWC has worked to recruit new designated doctors, especially those with board certifications that are more specific to examine traumatic brain injuries, and hopes that program improvements will increase physician participation of neurologists, neurosurgeons, physical medicine and rehabilitation doctors, and psychiatrists, but assigning examinations for traumatic brain injuries only to those specialties would result in unacceptable and unreasonable delays for those injured employees' examinations for no real benefit. DWC expects that the board-certified doctors qualified to perform traumatic brain injury examinations under the amended rule will coordinate testing and referral doctors in the same way that the doctors that DWC exempted from the qualification standard out of necessity, and will produce reports of comparable quality. To further ensure this, DWC will require additional training for designated doctors with board certifications, focusing on coordinating additional testing and referrals that are needed when examining injured employees with brain injuries, as well as techniques for effectively incorporating the results of the testing and referrals into the overall report.

Comment on §§127.130 and 127.200. A commenter stated that there are places in Chapter 127 where the terminology for the services that a designated doctor provides and the underlying standards may unintentionally be confused with expanding the scope of a person's practice as established by the Texas Legislature. The commenter recommended changes to §§127.130 and 127.200 to prevent unintended consequences.

Agency Response to Comment on §§127.130 and 127.200. DWC appreciates the comment. DWC does not have the authority to expand or decrease a persons' scope of practice, so any attempt to do so in this rule would be ineffective. However, in response to the comment, DWC revised §127.130(f) by adding a reference to the designated doctor's duty in §127.200(a)(12) to notify DWC if continuing to participate on a claim would exceed their scope of practice, to note that DWC's assignment of a designated doctor examination does not alter the scope of practice authorized by the designated doctor's professional license, and to make editorial adjustments for readability.

Comment on §127.210(b). A commenter stated that the liability language in §127.210(b) is broadly drafted and not tailored to DWC's authority and suggested alternative language. The commenter stated that the lack of qualifying language on liability that limits it to DWC's sanction powers could be misconstrued as grounds for civil liability or an administrative enforcement action by another agency, that the provision is also not properly limited to an act committed at the direction of the designated doctor, and that sanctioning a doctor for an unknown action by his or her agent is unfair and may deter an individual from registering as a designated doctor.

Agency Response to Comment on §127.210(b). DWC appreciates the comment but declines to make this change. Modifying the liability language as the commenter suggests would essentially absolve health care providers of misconduct for the actions of their lawful agents. Many designated doctors employ staff and other agents, such as scheduling companies, under employment relationships or general contracts that delegate to the agent the designated doctor's duties to perform services in the Texas

workers' compensation system that are not within the specific knowledge or direction of the designated doctor. The suggested language would create ambiguity in situations where designated doctors have such agency relationships. This would, in turn, interfere with DWC's ability to monitor and enforce compliance with Texas laws and DWC rules.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS. SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS. 28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, AND 127.25.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including

a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

TEXT.

§127.1. Requesting Designated Doctor Examinations.

(a) Initiating an examination. At the request of the insurance carrier, an injured employee, the injured employee's representative, or on its own motion, the division may order a medical examination by a designated doctor to resolve questions about:

(1) the impairment caused by the injured employee's compensable injury;

(2) the attainment of maximum medical improvement (MMI);

(3) the extent of the injured employee's compensable injury;

(4) whether the injured employee's disability is a direct result of the work-related injury;

(5) the ability of the injured employee to return to work; or

(6) issues similar to those described by paragraphs (1) - (5) of this subsection.

(b) Requirements for a request. To request a designated doctor examination, a requester must:

(1) provide a specific reason for the examination;

(2) report the injured employee's current diagnosis or diagnoses and body part or body parts affected by the injury;

(3) provide general information about the identity of the requester, injured employee, treating doctor, and insurance carrier;

(4) identify the workers' compensation health care network certified under Insurance Code Chapter 1305 through which the injured employee is receiving treatment, if applicable;

(5) identify whether the claim involves medical benefits provided through a political subdivision under Labor Code §504.053(b)(2) and the name of the health plan, if applicable;

(6) submit the request on the form prescribed by the division under this section. A copy of the prescribed form is:

(A) on the division's website at www.tdi.texas.gov/wc; or

(B) at the division's headquarters in Austin, Texas, or any division field office location;

(7) submit the request to the division and a copy of the request to each party listed in subsection (a) of this section who did not request the designated doctor examination;

(8) provide all information listed in subparagraphs (A) - (G) of this paragraph that applies to the type of examination the requester seeks:

(A) if the requester seeks an examination on the attainment of MMI, include the statutory date of MMI, if any;

(B) if the requester seeks an examination on the impairment rating of the injured employee, include the date of MMI that has been determined to be valid by a final decision of the division or a court or by agreement of the parties, if any;

(C) if the requester seeks an examination on the extent of the compensable injury, include a description of the accident or incident that caused the claimed injury and a list of all injuries in question;

(D) if the requester seeks an examination on whether the injured employee's disability is a direct result of the work-related injury, include the beginning

and ending dates for the claimed periods of disability and state if the injured employee is either not working or is earning less than pre-injury wages as defined by Labor Code §401.011(16);

(E) if the requester seeks an examination on the injured employee's ability to return to work in any capacity and the activities the injured employee can perform, include the beginning and ending dates for the periods to be addressed. If no dates are included, the designated doctor must examine the injured employee's work status as of the date of the examination;

(F) if the requester seeks an examination to determine whether an injured employee entitled to supplemental income benefits may return to work in any capacity for the identified period, include the beginning and ending dates for the qualifying periods to be addressed and whether this period involves the ninth quarter or a subsequent quarter of supplemental income benefits;

(G) if the requester seeks an examination on topics under subsection (a)(6) of this section, specify the issue in sufficient detail for the designated doctor to identify and answer the questions; and

(9) provide a signature to attest that every reasonable effort has been made to ensure the accuracy and completeness of the information in the request.

(c) Scheduling an examination within 60 days. The division will not schedule a designated doctor examination within 60 days of the most recent designated doctor examination absent a showing of good cause.

(1) Good cause requires the requester to show that the requested examination is reasonably necessary to resolve the submitted questions and that it will affect entitlement to benefits.

(2) If the requester already asked for an examination on the claim, they must also show that the submitted questions could not reasonably have been included in the previous examination.

(d) Denial of a request. The division will determine whether good cause exists on a case-by-case basis. The division will deny a request for a designated doctor examination and provide a written explanation for the denial to the requester if:

(1) the request does not comply with any of the requirements of subsection (b) or (c) of this section;

(2) the request would require the division to schedule an examination that violates Labor Code §§408.0041, 408.123, or 408.151;

(3) there is an unresolved dispute about compensability reported under §124.2 of this title (relating to Insurance Carrier Reporting and Notification Requirements); or

(4) the request lacks any legal or factual basis that would reasonably merit approval.

(e) Examination ordered during a dispute. During a dispute on the compensability of a claim as a whole, if a division administrative law judge or benefit review officer determines that an expert medical opinion would be necessary to resolve a dispute about whether the claimed injury resulted from the claimed incident, the administrative law

judge or benefit review officer may order the injured employee to attend a designated doctor examination to address that issue.

(f) Disputes about designated doctor requests. The dispute resolution processes in Chapters 140 - 144 and 147 of this title (relating to dispute resolution processes, proceedings, and procedures) govern disputes about designated doctor requests.

(1) The insurance carrier, an injured employee, or the injured employee's representative may dispute the division's approval or denial of a designated doctor examination request.

(2) Until the division has either approved or denied the request, a party may not dispute the designated doctor examination request itself or the accuracy of any information on the request.

(3) To dispute an approved or denied request for a designated doctor examination, a party may seek an expedited contested case hearing under §140.3 of this title (relating to Expedited Proceedings). The party must file the request within three working days of receiving the order under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments).

(4) If the division receives and approves a timely request for expedited proceedings to dispute a designated doctor examination, the division will stay the disputed examination pending the outcome of the expedited contested case hearing.

§127.5. Scheduling Designated Doctor Appointments.

(a) Order assigning a designated doctor. Within 10 days after approving a valid request, the division will issue an order that assigns a designated doctor and will notify

the designated doctor, the treating doctor, if any, the injured employee, the injured employee's representative, if any, and the insurance carrier that the designated doctor is directed to examine the injured employee. The order will:

(1) indicate the designated doctor's name, license number, examination address, fax number, telephone number, and the date and time of the examination or the date range for the examination to be conducted;

(2) explain the purpose of the designated doctor examination;

(3) require the injured employee to submit to an examination by the designated doctor;

(4) require the designated doctor to perform the examination at the indicated examination address; and

(5) require the treating doctor, if any, and insurance carrier to forward all medical records to the designated doctor in compliance with §127.10(a)(3) of this title (relating to General Procedures for Designated Doctor Examinations).

(b) Change of examination address. The examination address indicated on the order in subsection (a)(4) of this section may not be changed by any party or by an agreement of any parties without good cause and the division's approval.

(c) Availability of designated doctor. Except as provided in subsection (g) of this section, the division will select the next available doctor on the designated doctor list for a medical examination requested under §127.1 of this title (relating to Requesting Designated Doctor Examinations). A designated doctor is available to perform an examination at any address the doctor has filed with the division if the doctor:

(1) does not have any disqualifying associations as described in §127.140 of this title (relating to Disqualifying Associations);

(2) is appropriately qualified to perform the examination in accordance with §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations);

(3) is certified on the day the examination is offered and has not failed to timely file for renewal under §127.100 of this title (relating to Designated Doctor Certification), if applicable;

(4) has not treated or examined the injured employee in a different health care provider role:

(A) within the past 12 months; or

(B) for a medical condition being evaluated in the designated doctor examination.

(d) Designated doctor lists. To select the next available doctor, the division will maintain two independent designated doctor lists for each county in Texas.

(1) One list will consist of designated doctors qualified to perform examinations under §127.130(b)(1) - (4) of this title.

(2) The other list will consist of designated doctors qualified to perform examinations under §127.130(b)(5) - (9) of this title.

(3) Nothing in this section prevents a qualified designated doctor from being on both lists.

(4) A designated doctor will be added to the appropriate designated doctor list for the county of each address the doctor has filed with the division.

(5) When a designated doctor adds an address for a county the doctor is not currently listed in, the doctor will be placed at the bottom of the appropriate list for that county.

(6) When a designated doctor removes the only address for a county the doctor is currently listed in, the designated doctor will be removed from the list for that county.

(e) Assignment of designated doctor examinations. Except as provided in subsection (f) of this section, the division will assign designated doctor examinations as follows:

(1) Each working day, all examination requests within a county will be sorted and distributed to the appropriate list based on the designated doctor qualification standards.

(2) Depending on the volume of requested examinations, the division will assign up to five examinations to the next available designated doctor at the top of the appropriate list.

(3) An examination assignment moves the designated doctor receiving the assignment to the bottom of the list from which the designated doctor was selected. Receipt of an assignment on one list does not change a designated doctor's position on the other list.

(4) The division may choose not to offer a designated doctor an examination if it is reasonably probable that the designated doctor will not be certified on the date of the examination.

(f) Exemptions. Nothing in this section prevents the division from exempting a designated doctor from the applicable qualification standard under §127.130(d) of this title. If there is no available designated doctor in the county of the injured employee, the division may assign a designated doctor as necessary.

(g) Subsequent examinations. If the division has previously assigned a designated doctor to the claim at the time a request is made, the division will assign the same doctor to a subsequent examination for that claim unless the division has authorized or required the doctor to stop providing services on the claim in accordance with §127.130 of this title. Examinations under this subsection must be conducted at the same examination address as the designated doctor's previous examination of the injured employee or at another examination address approved by the division.

(h) Mutual agreement required to reschedule. The designated doctor's office and the injured employee must contact each other if there is a scheduling conflict. The designated doctor or the injured employee who has the scheduling conflict must contact the other at least one working day before the appointment. The one working day requirement is waived in an emergency situation. An examination cannot be rescheduled without the mutual agreement of the designated doctor and the injured employee. The designated doctor must maintain and document:

(1) the date and time of the designated doctor examination listed on the division's order;

(2) the date and time of the agreement to reschedule with the injured employee;

(3) how contact was made to reschedule, indicating the telephone number, fax number, or email used to make contact;

(4) the reason for the scheduling conflict; and

(5) the date and time of the rescheduled designated doctor examination.

(i) Documentation required. Failure to document and maintain the information in subsection (h) of this section creates a rebuttable presumption that the examination was rescheduled without mutual agreement of the designated doctor and injured employee.

(j) Rescheduling timeframes. The rescheduled examination must be set to occur no later than 21 days after the originally scheduled examination date. It may not be rescheduled to occur before the originally scheduled examination date.

(1) Within one working day of rescheduling, the designated doctor must provide the time and date of the rescheduled examination to the division, the injured employee or the injured employee's representative, if any, the injured employee's treating doctor, and the insurance carrier.

(2) If the examination cannot be rescheduled to occur within 21 days of the originally scheduled examination date, or if the injured employee fails to attend the rescheduled examination, the designated doctor must notify the division within 21 days of the originally scheduled examination date.

(3) After receiving this notice, the division may select a new designated doctor.

§127.10. General Procedures for Designated Doctor Examinations.

(a) Authorization to receive documents. The designated doctor is authorized under Labor Code §408.0041(c) to receive the injured employee's confidential medical records and analyses of the injured employee's medical condition, functional abilities, and return-to-work opportunities without a signed release from the injured employee to help resolve a dispute under this subchapter. The following requirements apply to the designated doctor's receipt of medical records and analyses:

(1) The treating doctor and insurance carrier must provide the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor.

(A) For subsequent examinations with the same designated doctor, the treating doctor and insurance carrier must provide only those medical records not previously sent.

(B) The cost of copying must be reimbursed in accordance with §134.120 of this title (relating to Reimbursement for Medical Documentation).

(2) The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(A) The analysis sent by any party may only cover the injured employee's medical condition, functional abilities, and return-to-work opportunities as provided in Labor Code §408.0041. The analysis may include supporting information, such as videotaped activities of the injured employee and marked copies of medical records.

(B) If the insurance carrier sends an analysis to the designated doctor, the insurance carrier must send a copy to the treating doctor, the injured employee, and the injured employee's representative, if any.

(C) If the treating doctor sends an analysis to the designated doctor, the treating doctor must send a copy to the insurance carrier, the injured employee, and the injured employee's representative, if any.

(3) The treating doctor and insurance carrier must ensure that the designated doctor receives the required records and analyses (if any) no later than three working days before the date of the designated doctor examination.

(A) If the designated doctor has not received the medical records or any part of them at least three working days before the examination, the designated doctor must report this violation to the division within one working day of not timely receiving the records.

(B) Once notified, the division will take action necessary to ensure that the designated doctor receives the records.

(C) If the designated doctor does not receive the medical records within one working day of the examination or does not have sufficient time to review the late medical records before the examination, the designated doctor must reschedule the examination to occur no later than 21 days after receiving the records.

(b) Requirement to review information. Before examining an injured employee, the designated doctor must review the injured employee's medical records, including any analysis of the injured employee's medical condition, functional abilities, and return to

work opportunities that the insurance carrier and treating doctor provide in accordance with subsection (a) of this section, and any materials the division submits to the doctor.

(1) The designated doctor must also review the injured employee's medical condition, history, and any medical records the injured employee provides and must perform a complete physical examination of the injured employee.

(2) The designated doctor must give the medical records reviewed the weight the designated doctor determines to be appropriate.

(c) Additional testing and referrals. The designated doctor must perform additional testing when necessary to resolve the issue in question. The designated doctor must also refer an injured employee to other health care providers when the referral is necessary to resolve the issue in question, and the designated doctor is not qualified to fully resolve it.

(1) Any additional testing or referrals required for the evaluation are not subject to preauthorization requirements.

(2) Payment for additional testing or referrals that the designated doctor has determined are necessary under this subsection must not be denied prospectively or retrospectively, regardless of any potential disagreements about medical necessity, extent of injury, or compensability.

(3) Any additional testing or referrals required for the evaluation are subject to the requirements of §180.24 of this title (relating to Financial Disclosure).

(4) Any additional testing or referrals required for the evaluation of an injured employee under a certified workers' compensation network under Insurance Code Chapter 1305 or a political subdivision under Labor Code §504.053(b):

(A) are not required to use a provider in the same network as the injured employee; and

(B) are not subject to the network or out-of-network restrictions in Insurance Code §1305.101 (relating to Providing or Arranging for Health Care).

(5) Any additional testing or referral examination and the designated doctor's report must be completed within 15 working days of the designated doctor's physical examination of the injured employee unless the designated doctor receives division approval for additional time before the 15 working days expire.

(6) If the injured employee fails or refuses to attend the designated doctor's requested additional testing or referral examination within 15 working days or within the additional time the division approved, the designated doctor must complete the report based on the designated doctor's examination of the injured employee, the medical records received, and other information available to the doctor and indicate the injured employee's failure or refusal to attend the testing or referral examination in the report.

(d) MMI and impairment ratings. Any evaluation relating to either MMI, an impairment rating, or both, must be conducted in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment). For examinations conducted under this subsection on or after June 5, 2023, the designated doctor may provide multiple certifications of MMI and impairment ratings only when directed by the division.

(e) Reports on MMI and impairment ratings. A designated doctor who determines the injured employee has reached MMI, assigns an impairment rating, or determines the injured employee has not reached MMI, must complete and file a report as required by

§§130.1 and 130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor Other than the Treating Doctor).

(1) If the designated doctor provides multiple certifications of MMI and impairment ratings, the designated doctor must file a Report of Medical Evaluation under §130.1(d) of this title for each assigned impairment rating and a designated doctor examination data report under §127.220 of this title (relating to the Designated Doctor Reports) for the doctor's extent of injury determination.

(2) The designated doctor must submit only one narrative report required by §130.1(d)(1)(B) of this title on all assigned impairment ratings and extent of injury findings.

(3) All designated doctor narrative reports submitted under this subsection must comply with the requirements of §127.220(a) of this title (relating to Designated Doctor Reports).

(f) Reports on return to work. A designated doctor who examines an injured employee for any question relating to return to work must complete a Work Status Report that complies with §129.5 of this title (relating to Work Status Reports) and a narrative report that complies with the requirements of §127.220(a) of this title. The designated doctor must file the work status report and the narrative report together within seven working days of the date the designated doctor examines the injured employee.

(1) The designated doctor must file the reports with the treating doctor, the division, and the insurance carrier by fax or electronic transmission.

(2) The designated doctor must file the reports with the injured employee and the injured employee's representative (if any) by fax or electronic transmission if the designated doctor has a fax number or email for the recipient.

(3) If the designated doctor has no fax number or email for a recipient, the designated doctor must send them the reports by other verifiable means.

(g) Report on other issues. A designated doctor who resolves questions on issues other than those listed in subsections (d), (e), and (f) of this section must file a designated doctor examination data report that complies with §127.220(c) of this title and a narrative report that complies with §127.220(a) of this title within seven working days of the date the designated doctor examines the injured employee.

(1) The designated doctor must file these reports with the treating doctor, the division, and the insurance carrier by fax or electronic transmission.

(2) The designated doctor must provide these reports to the injured employee and the injured employee's representative (if any) by fax or electronic transmission if the designated doctor has a fax number or email for the recipient.

(3) If no fax number or email is provided for the recipient, the designated doctor must send the reports by other verifiable means.

(h) Presumptive weight. The designated doctor's report is given presumptive weight on the issue or issues the designated doctor was properly appointed to address, unless the preponderance of the evidence is to the contrary.

(i) Payment of benefits during dispute. The insurance carrier must pay all benefits, including medical benefits, in accordance with the designated doctor's report for the issue or issues in dispute.

(1) If the designated doctor provides multiple certifications of MMI and impairment ratings, the insurance carrier must pay benefits based on the conditions to which the designated doctor determines the compensable injury extends.

(2) For medical benefits, the insurance carrier has 21 days from receipt of the designated doctor's report to reprocess all medical bills previously denied for reasons inconsistent with the designated doctor's findings. By the end of this period, insurance carriers must pay these medical bills in accordance with the Labor Code and Chapters 133 and 134 of this title.

(3) The insurance carrier must pay all other benefits no later than five days after receiving the report.

(j) Record retention. The designated doctor must maintain accurate records for, at a minimum, five years from the anniversary date of the date of the designated doctor's last examination of the injured employee.

(1) This requirement does not reduce or replace any other record retention requirements imposed on a designated doctor by an appropriate licensing board.

(2) These records must include the injured employee's medical records, any analysis the insurance carrier or treating doctor submits (including supporting information), reports the designated doctor generates as a result of the examination, and narratives the insurance carrier and treating doctor provide, to reflect:

(A) the date and time of any designated doctor appointments scheduled with an injured employee;

(B) the circumstances for a cancellation, no-show, or other situation where the examination did not occur as initially scheduled or rescheduled, and if

applicable, documentation of the agreement to reschedule the examination and the notice that the doctor provided to the division, the injured employee's treating doctor, and the insurance carrier within 24 hours of rescheduling an appointment;

(C) the date of the examination;

(D) the date the designated doctor received medical records from the treating doctor or any other person;

(E) the date the designated doctor submitted the reports described in subsections (d), (e), and (f) of this section to all required parties and documentation that these reports were submitted to the division, treating doctor, and insurance carrier by fax or electronic transmission and to other required parties by verifiable means;

(F) if applicable, the names of any referral health care providers the designated doctor used, the dates of referral health care provider appointments, and the reason the designated doctor referred them; and

(G) if applicable, the date the doctor contacted the division for assistance in getting medical records from the insurance carrier or treating doctor.

(k) Dispute resolution. Parties may dispute any entitlement to benefits affected by a designated doctor's report through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to dispute resolution processes, proceedings, and procedures).

§127.15. Undue Influence on a Designated Doctor.

(a) Communication about medical condition or history. To avoid undue influence on the designated doctor:

(1) except as provided by §127.10(a) of this title (relating to General Procedures for Designated Doctor Examinations), only the injured employee or appropriate division staff may communicate with the designated doctor about the injured employee's medical condition or history before the designated doctor examines the injured employee;

(2) after the examination is completed, only appropriate division staff may communicate with the designated doctor about the injured employee's medical condition or history; and

(3) the designated doctor may initiate communication with:

(A) any health care provider who previously treated or examined the injured employee for the work-related injury; or

(B) a peer review doctor that the insurance carrier identifies as having reviewed the injured employee's claim or any information about that claim.

(b) Communication about administrative matters. The insurance carrier, treating doctor, injured employee, or injured employee's representative, if any, may contact the designated doctor's office to ask about administrative matters, including, but not limited to, whether the designated doctor received the records, whether the exam took place, or whether the designated doctor has filed the report, or other similar matters.

§127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports.

(a) Filing a clarification request. Parties may file a request with the division for clarification of the designated doctor's report.

(1) The requesting party must provide copies of the request to all parties.

(2) The division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report.

(3) Parties may only request clarification on issues already addressed by the designated doctor's report or on issues that the designated doctor was ordered to address but did not.

(4) A designated doctor must only respond to the questions or requests submitted to the designated doctor in the request for clarification and must not reconsider their previous decision, issue a new or amended decision, or provide clarification on their previous decision.

(b) Requirements. Requests for clarification must:

(1) include the name of the designated doctor, the reason for the examination, the date of the examination, and the requester's name and signature;

(2) explain why clarification of the designated doctor's report is necessary and appropriate to resolve a future or pending dispute;

(3) include questions for the designated doctor to answer that are not inflammatory or leading; and

(4) provide any medical records that were not previously provided to the designated doctor and explain why these records are necessary for the designated doctor to respond to the request for clarification.

(c) Requests by the division. At its discretion, the division may also request clarification from the designated doctor on any issue or issues.

(d) Responses to requests. To respond to a request for clarification, the designated doctor must be on the division's designated doctor list on the date of the request.

(1) The designated doctor must respond in writing to the request for clarification within five working days of receipt and send copies of the response to the parties listed in §127.10(g) of this title (relating to General Procedures for Designated Doctor Examinations).

(2) If the designated doctor must reexamine the injured employee to respond to the request for clarification, the doctor must:

(A) respond to the request for clarification in writing, advising of the need for an additional examination within five working days of receiving the request and provide copies of the response to the parties specified in §127.10(g) of this title;

(B) conduct the reexamination within 21 days from the date the division issues the order for the reexamination at the same address as the original examination; and

(C) respond in writing to the request for clarification based on the additional examination within seven working days of the examination and provide copies of the response to the parties specified in §127.10(g) of this title.

(e) Administrative violation. Any refusal or failure by a designated doctor to conduct a reexamination that is necessary to respond to a request for clarification is an administrative violation.

§127.25. Failure to Attend a Designated Doctor Examination.

(a) Suspension of benefits. An insurance carrier may suspend temporary income benefits (TIBs) if an injured employee fails, without good cause, to attend a designated doctor examination or a referral examination under §127.10(c) of this title.

(b) No good cause. If there is no division finding that good cause exists, an insurance carrier may presume that the injured employee did not have good cause to fail to attend the examination if, by the day the examination was originally scheduled to occur, the injured employee has both:

(1) failed to submit to the examination; and

(2) failed to contact the designated doctor's office to reschedule the examination.

(c) Rescheduling timeframe. If the injured employee contacts the designated doctor within 21 days of the scheduled date of the missed examination to reschedule the examination, the designated doctor must schedule the examination to occur as soon as possible, but no later than 21 days after the injured employee contacted the doctor.

(d) New examination request required. If the injured employee fails to contact the designated doctor within 21 days of the missed examination date but wishes to reschedule the examination, the injured employee must request a new examination under §127.1 of this title (relating to Requesting Designated Doctor Examinations).

(e) Reinitiation of benefits. The insurance carrier must reinstate TIBs effective on the date the injured employee submitted to the rescheduled examination under subsection (c) of this section or the date the examination was scheduled at the injured employee's request under subsection (d) of this section, unless the designated doctor's report indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. The reinitiation of TIBs must occur no later than the seventh day following:

(1) the date the insurance carrier was notified that the injured employee submitted to the examination; or

(2) the date the insurance carrier was notified that the division found the injured employee had good cause for not attending the examination.

(f) Benefits during suspension. An injured employee is not entitled to TIBs during the period when the insurance carrier suspended benefits under this section unless the injured employee later submits to the examination, and:

(1) the division finds that the injured employee had good cause for not attending the examination; or

(2) the insurance carrier determines that the injured employee had good cause for not attending the examination.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL, AND QUALIFICATIONS
28 TAC §§127.100, 127.120, 127.130, AND 127.140

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to the title of 28 TAC Chapter 127, Subchapter B and §§127.100, 127.120, 127.130, and 127.140 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of

the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

TEXT.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL, AND QUALIFICATIONS

§127.100. Designated Doctor Certification.

(a) Qualifications to get or renew certification. The division will not assign examinations to a designated doctor who does not meet all requirements for certification or renewal. All designated doctors must:

(1) Have a complete designated doctor certification application as described in subsection (b) of this section on file with the division.

(2) Complete all division-required trainings within 12 months of the date of application and have current documentation confirming their completion on file with the division.

(3) Pass all division-required testing on the specific duties of a designated doctor under the Labor Code and division rules and have current documentation confirming their passage on file with the division. Required testing must have been completed on or after May 13, 2013, and includes demonstrated proficient knowledge of the currently adopted edition of:

(A) the American Medical Association Guides to the Evaluation of Permanent Impairment; and

(B) the division's adopted:

(i) treatment guidelines; and

(ii) return-to-work guidelines.

(4) Have maintained an active practice for at least three years during the doctor's career. For the purposes of this subsection, a doctor has an active practice if the doctor maintains or has maintained routine office hours of at least 20 hours per week for 40 weeks per year to treat patients.

(5) For the duration of the doctor's term as a designated doctor:

(A) be licensed in Texas;

(B) own or subscribe to the current edition of the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division to assign impairment ratings and all return-to-work and treatment guidelines adopted by the division; and

(C) comply with financial disclosure requirements in §180.24 (relating to Financial Disclosure) of this title.

(b) Application. To be considered complete, an application for certification must include, and a renewal application must update or confirm:

(1) contact information for the doctor;

(2) information on the doctor's education;

(3) a description of the doctor's license or licenses, certifications, and professional specialty, if any;

(4) a description of the doctor's work history and hospital or other health care provider affiliations;

(5) a description of any affiliations the doctor has with a workers' compensation health care network certified under Insurance Code Chapter 1305 or political subdivision under Labor Code §504.053(b)(2);

(6) information on the doctor's current practice locations;

(7) detailed answers to disclosure questions on the doctor's professional background, education, training, and fitness to perform the duties of a designated doctor, including disclosure and summary of any disciplinary actions taken against the doctor by any state licensing board or other appropriate state or federal agency;

(8) the identity of any person the doctor has contracted with to assist in performing or administering the doctor's designated doctor duties;

(9) an attestation that:

(A) all information provided in the application is accurate and complete to the best of the doctor's knowledge;

(B) the doctor will inform the division of any changes to this information as required by §127.200(a)(8) of this title (relating to Duties of a Designated Doctor); and

(C) the doctor will consent to any on-site visits, as provided by §127.200(a)(15) of this title, by the division at facilities that the designated doctor uses or intends to use to perform designated doctor examinations for the duration of the doctor's certification.

(c) Retesting. If a doctor passes a division-required test, the doctor may not retest within a twelve-month period. If a doctor fails a division-required test, the doctor may not retest more than three times within a six-month period.

(1) After the first or second attempt, the doctor must wait 14 days before retaking the test.

(2) After the third attempt, the doctor must wait six months before retaking the test.

(d) Additional certification testing. On receipt of an application for designated doctor certification renewal, the division may require a designated doctor to complete additional certification testing to demonstrate proficient knowledge on the specific duties of a designated doctor under the Labor Code and division rules. Examples of circumstances that may require additional certification testing include, but are not limited to, individual need for retesting based on substandard performance, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.

(e) Notice of approval, denial, suspension, or revocation. The division will notify a doctor in writing of the commissioner's approval or denial of the doctor's application to be certified or renewed as a designated doctor; or of the division's suspension or revocation of the doctor's certification.

(f) Term and qualification. Approvals certify a doctor for a term of two years and will include:

(1) the effective date of the certification;

(2) the expiration date of the certification; and

(3) the designated doctor's examination qualifications under §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations).

(g) Renewal. A designated doctor who seeks to renew their certification immediately after their current term expires, without interruption, must apply for certification no later than 45 days before the end of the term.

(1) If the division does not receive all of the information required under subsection (b)(1) - (9) above no later than 45 days before the end of the designated doctor's term, the division will not assign examinations to the designated doctor during the last 45 days of an expiring term.

(2) The designated doctor may still provide services on claims the division had previously assigned to them during this 45-day period.

(h) Approval of renewal application with restrictions. An application for renewal may be approved with restrictions. The division may restrict a designated doctor's certification until the doctor complies with the requirements in the designated doctor's approval of certification. Designated doctors whose certification is restricted may dispute the restriction through the procedure described in subsection (k) of this section.

(i) Adverse certification actions. The division may deny, suspend, or revoke a designated doctor's certification for any of the following reasons:

(1) if the doctor did not submit a complete application for certification as required under subsection (b) of this section;

(2) for having a relevant restriction on their practice imposed by a state licensing board, certification authority, or other appropriate state or federal agency, including the division;

(3) if the doctor failed to update their application for certification properly; or

(4) for other activities, events, or occurrences that the commissioner determines warrant denial of a doctor's application for certification as a designated doctor, including, but not limited to:

(A) the quality of the designated doctor's past reports;

(B) the designated doctor's history of complaints;

(C) excess requests for deferral from the designated doctor list by the designated doctor;

(D) a pattern of overturned reports by the division or a court;

(E) a demonstrated lack of ability to apply or properly consider the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division to assign impairment ratings and all return-to-work and treatment guidelines adopted by the division;

(F) a demonstrated lack of ability to consistently perform designated doctor examinations in a timely manner;

(G) a demonstrated failure to identify disqualifying associations;

(H) a demonstrated lack of ability to ensure the confidentiality of injured employee medical records and claim information provided to or generated by a designated doctor;

(I) a history of unnecessary referral examinations or testing;

(J) a failure to comply with the requirements of §180.24 of this title (relating to Financial Disclosure) when they requested referral examinations or additional testing;

(K) applying for certification less than a year from denial of a previous designated doctor certification application; or

(L) any grounds that would allow the division to sanction a health care provider under the Labor Code or division rules.

(j) Response to denial of certification. Within 15 working days after receiving a written denial, a doctor may file a written response with the division addressing the reasons the division gave to the doctor for its denial.

(1) If the division does not receive a written response by the 15th working day after the date the doctor received the notice, the denial will be final effective the next day. The division will not send further notice.

(2) If the division timely receives a written response that disagrees with the denial, the division will review the response and notify the doctor in writing of the commissioner's final decision.

(A) If the final decision is still a denial, the division's final notice will provide the reasons the doctor's response did not change the commissioner's decision to deny the doctor's application for certification as a designated doctor.

(B) The denial will be effective the day after the doctor receives notice of the denial, unless the notice specifies otherwise.

(k) Request for informal conference. A designated doctor whose renewal application is denied, or whose certification is suspended or revoked, may either respond

in writing using the procedure in subsection (j) of this section or submit a written request for an informal conference before the division to address those reasons.

(1) If the division does not receive a written request for an informal conference by the 15th working day after the date the doctor received the notice, the denial, suspension, or revocation will be final effective the next day. The division will not send further notice.

(2) If the division timely receives a written request for an informal conference, it will set the informal conference to occur no later than 31 days after it received the request.

(A) At the informal conference, the designated doctor may present evidence that addresses the reasons the doctor was denied certification, or the reasons the doctor's certification was suspended or revoked, to the commissioner's designated representatives.

(B) The designated doctor may have an attorney present.

(C) At the end of the informal conference, the commissioner's designated representatives will provide the designated doctor with their final recommendation on the doctor's certification.

(i) If the final recommendation is still a denial, suspension, or revocation, the commissioner's designated representatives will provide the reasons for not certifying the doctor as a designated doctor.

(ii) After the informal conference, the commissioner's designated representatives will send their final recommendation to the commissioner,

who will review it and all evidence presented at the informal conference and make a final decision.

(iii) The division will notify the designated doctor of the commissioner's final decision in writing.

(iv) The decision will be effective the day after the doctor receives notice of the decision, unless the notice specifies otherwise.

§127.120. Exception to Certification as a Designated Doctor for Out-of-State Doctors.

If the injured employee is temporarily located or resides out of state, the division may waive any of the requirements in this chapter for an out-of-state doctor to serve as a designated doctor to help timely resolve a dispute or perform a particular examination.

§127.130. Qualification Standards for Designated Doctor Examinations.

(a) Applicability. This section applies to designated doctor assignments made on or after June 5, 2023.

(b) Qualification standards by type of injury or diagnosis. A designated doctor is qualified to perform a designated doctor examination on an injured employee if the designated doctor meets the appropriate qualification standard for the area of the body affected by the injury and the injured employee's diagnosis and has no disqualifying associations under §127.140 of this title (relating to Disqualifying Associations). A designated doctor's qualification standards are as follows:

(1) To examine injuries and diagnoses relating to the hand and upper extremities, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(2) To examine injuries and diagnoses relating to the lower extremities excluding feet, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(3) To examine injuries and diagnoses relating to the spine and musculoskeletal structures of the torso, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.

(4) To examine injuries and diagnoses relating to feet, including toes and heel, a designated doctor must be a licensed medical doctor, doctor of osteopathy, doctor of chiropractic, or doctor of podiatric medicine.

(5) To examine injuries and diagnoses relating to the teeth and jaw, including a temporomandibular joint, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of dental surgery.

(6) To examine injuries and diagnoses relating to the eyes, including the eye and adnexal structures of the eye, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of optometry.

(7) To examine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy.

(8) A designated doctor must be a licensed medical doctor or doctor of osteopathy to examine injuries and diagnoses relating to other body areas or systems, including, but not limited to:

(A) internal systems;

(B) ear, nose, and throat;

(C) head and face;

(D) skin;

(E) cuts to skin involving underlying structures;

(F) non-musculoskeletal structures of the torso;

(G) hernia;

(H) respiratory;

(I) endocrine;

(J) hematopoietic; and

(K) urologic.

(9) Notwithstanding paragraphs (1) - (8) of this subsection, a designated doctor must be a licensed medical doctor or doctor of osteopathy with the required board certification to examine any of the following diagnoses.

(A) For purposes of this section, a designated doctor is "board-certified" in a required specialty or subspecialty, as applicable, if they hold or previously held:

(i) a general certificate in the required specialty or a subspecialty certificate in the required subspecialty from the American Board of Medical Specialties (ABMS); or

(ii) a primary certificate in the required specialty and a certificate of special qualifications or certificate of added qualifications in the required

subspecialty from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS).

(B) To examine traumatic brain injuries, including concussion and post-concussion syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) psychiatry;

(V) orthopaedic surgery;

(VI) occupational medicine;

(VII) dermatology;

(VIII) plastic surgery;

(IX) surgery;

(X) anesthesiology with a subspecialty in pain medicine;

(XI) emergency medicine;

(XII) internal medicine;

(XIII) thoracic and cardiac surgery; or

(XIV) family medicine.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) psychiatry;

(V) orthopedic surgery;

(VI) preventive medicine/occupational-environmental medicine;

(VII) preventive medicine/occupational;

(VIII) dermatology;

(IX) plastic and reconstructive surgery;

(X) surgery (general);

(XI) anesthesiology with certificate of added qualifications in pain management;

(XII) emergency medicine;

(XIII) internal medicine;

(XIV) thoracic and cardiovascular surgery; or

(XV) family practice and osteopathic manipulative treatment.

(C) To examine spinal cord injuries and diagnoses, including a spinal fracture with documented neurological injury, or vascular injury, more than one spinal fracture, or cauda equina syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) orthopaedic surgery; or

(V) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) physical medicine and rehabilitation;

(IV) orthopedic surgery;

(V) preventive medicine/occupational-environmental medicine; or

(VI) preventive medicine/occupational.

(D) To examine severe burns, including chemical burns defined as deep partial or full thickness burns, also known as second, third, or fourth-degree burns, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) dermatology;

(II) physical medicine and rehabilitation;

(III) plastic surgery;

(IV) orthopaedic surgery;

(V) surgery; or

(VI) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) dermatology;

(II) physical medicine and rehabilitation;

(III) plastic and reconstructive surgery;

(IV) orthopedic surgery;

(V) surgery (general);

(VI) preventive medicine/occupational-environmental medicine; or

(VII) preventive medicine/occupational.

(E) To examine complex regional pain syndrome (reflex sympathetic dystrophy), a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) neurological surgery;

(II) neurology;

(III) orthopaedic surgery;

(IV) plastic surgery;

(V) anesthesiology with a subspecialty in pain medicine;

(VI) occupational medicine; or

(VII) physical medicine and rehabilitation.

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;

(II) neurology;

(III) orthopedic surgery;

(IV) plastic surgery;

(V) preventive medicine/occupational-environmental medicine;

(VI) preventive medicine/occupational;

(VII) anesthesiology with certificate of added qualifications in pain management; or

(VIII) physical medicine and rehabilitation.

(F) To examine any joint dislocation, one or more fractures with vascular injury, one or more pelvis fractures, or multiple rib fractures, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) emergency medicine;

(II) orthopaedic surgery;

(III) plastic surgery;

(IV) physical medicine and rehabilitation; or

(V) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) emergency medicine;

(II) orthopedic surgery;

(III) plastic surgery;

(IV) physical medicine and rehabilitation;

(V) preventive medicine/occupational-environmental medicine; or

(VI) preventive medicine/occupational.

(G) To examine complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, including blood borne pathogens, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine; or

(II) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) preventive medicine/occupational-environmental medicine; or

(III) preventive medicine/occupational.

(H) To examine chemical exposure, excluding chemical burns, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine;

(II) emergency medicine; or

(III) occupational medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) preventive medicine/occupational-environmental medicine; or

(IV) preventive medicine/occupational.

(I) To examine heart or cardiovascular conditions, a designated doctor must be board-certified by the ABMS or AOABOS.

(i) Qualifying ABMS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) occupational medicine;

(IV) thoracic and cardiac surgery; or

(V) family medicine.

(ii) Qualifying AOABOS certifications are:

(I) internal medicine;

(II) emergency medicine;

(III) preventive medicine/occupational-environmental medicine;

(IV) preventive medicine/occupational;

(V) thoracic and cardiovascular surgery; or

(VI) family practice and osteopathic manipulative treatment.

(c) Qualification to perform initial examination. To be qualified to perform an initial examination on an injured employee, a designated doctor, other than a chiropractor, must be qualified under Labor Code §408.0043. A designated doctor who is a chiropractor must be qualified to perform an initial designated doctor examination under Labor Code §408.0045.

(d) Exemption from qualification standards. If a designated doctor is not available with the qualifications listed in subsections (b)(9)(A) - (I), the division may exempt a medical doctor or doctor of osteopathy from any of the qualification standards specified in this chapter to serve as a designated doctor to help timely resolve a dispute or perform a particular examination.

(e) Continuity of examinations. A designated doctor who performs an initial designated doctor examination of an injured employee and meets the appropriate qualification standard to perform that examination under subsection (b) of this section will remain assigned to that claim and perform all subsequent examinations of that injured employee unless the division authorizes or requires the designated doctor to discontinue providing services on that claim.

(f) Removal of designated doctor from a claim. The division may authorize a designated doctor to stop providing services on a claim if the doctor does any of the following:

(1) decides to stop practicing in the workers' compensation system.

(2) decides to stop practicing as a designated doctor in the workers' compensation system.

(3) relocates their residence or practice.

(4) asks the division to indefinitely defer the doctor's availability on the designated doctor list.

(5) determines that examining the injured employee would exceed the scope of practice authorized by their license. The division's assignment of a designated doctor exam does not alter the scope of practice authorized by the designated doctor's

professional license. Section 127.200(a)(12) of this title requires a designated doctor to notify the division if continuing to participate on a claim would exceed their scope of practice.

(6) can otherwise demonstrate to the division that their continued service on the claim would be impracticable or could impair the quality of examinations performed on the claim.

(g) Prohibition. The division will prohibit a designated doctor from providing services on a claim if:

(1) the doctor has failed to become certified as a designated doctor;

(2) the doctor no longer meets the appropriate qualification standard under subsection (b) of this section to perform examinations on the claim;

(3) the doctor has a disqualifying association specified in §127.140 of this title that is relevant to the claim;

(4) the doctor has repeatedly failed to respond to division appointment, clarification, or document requests or other division inquiries about the claim;

(5) the doctor's continued service on the claim could endanger the health, safety, or welfare of either the injured employee or doctor; or

(6) the division has revoked or suspended the designated doctor's certification.

(h) License revoked or suspended. The division will prohibit a designated doctor from performing examinations on all new or existing claims if the designated doctor's license has been revoked or suspended, and the suspension has not been probated by an appropriate licensing authority.

§127.140. Disqualifying Associations.

(a) Definition. A disqualifying association is any association that may reasonably be perceived as having potential to influence the conduct or decision of a designated doctor. Disqualifying associations may include:

(1) receipt of income, compensation, or payment of any kind not related to health care the doctor provides;

(2) shared investment or ownership interest;

(3) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;

(4) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, billing services agents, documentation management or storage services or warranties, or any other services related to managing or operating the doctor's practice;

(5) personal or family relationships;

(6) a contract with the same workers' compensation health care network certified under Insurance Code Chapter 1305 or a contract with the same political subdivision or political subdivision health plan under Labor Code §504.053(b)(2) that is responsible for providing medical benefits to the injured employee; or

(7) any other financial arrangement that would require disclosure under the Labor Code, the Insurance Code, or applicable rules, or any other association with the injured employee, the employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.

(b) Disqualification of agent. A designated doctor also has a disqualifying association relevant to an examination or claim if an agent of the designated doctor has an association relevant to the claim that would constitute a disqualifying association under subsection (a) of this section.

(c) Prohibition. A designated doctor must not perform an examination if that doctor has a disqualifying association relevant to that claim.

(1) If a designated doctor learns of a disqualifying association relevant to a claim after accepting the examination, the designated doctor must notify the division of that disqualifying association within two working days of learning of the disqualifying association.

(2) A designated doctor who performs an examination even though the doctor has a disqualifying association relevant to that claim commits an administrative violation.

(d) Notice required. Within five days of receiving the division's order of designated doctor examination under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments), insurance carriers must notify the division of any disqualifying associations between the designated doctor and injured employee because of the network affiliations described under subsection (a)(6) of this section.

(e) Effect of disqualifying association. If the division determines that a designated doctor with a disqualifying association performed a designated doctor examination, all reports produced by that designated doctor as a result of that examination are stripped of their presumptive weight.

(f) Disputes about disqualifying associations. A party that seeks to dispute the selection of a designated doctor for a particular examination based on a disqualifying association or dispute the presumptive weight of a designated doctor's report based on a disqualifying association must do so through the division's dispute resolution processes in Labor Code Chapter 410 and Chapters 140 - 144 and 147 of this title (relating to dispute resolution processes, proceedings, and procedures).

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL, AND QUALIFICATIONS
REPEAL OF 28 TAC §127.110

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the repeal of 28 TAC §127.110 under Labor Code §§408.0041, 408.023 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those

doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

TEXT.

§127.110. Designated Doctor Recertification.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES
28 TAC §§127.200, 127.210, AND 127.220

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §§127.200, 127.210, and 127.220 under Labor Code §§408.0041, 408.023, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.023 requires in part that the commissioner by rule establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, IR testing, and disclosure of financial interests; and for monitoring of those doctors and health care providers. It also requires a doctor, including a doctor who contracts with a workers' compensation health care network, to comply with the IR training and testing requirements in the rule if the doctor intends to provide MMI certifications or assign IRs.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

TEXT.

§127.200. Duties of a Designated Doctor.

(a) Duties. All designated doctors must:

(1) Perform designated doctor examinations in a facility:

(A) currently used and properly equipped for medical examinations or other similar health care services; and

(B) that ensures safety, privacy, and accessibility for injured employees, injured employee medical records, and other records containing confidential claim information.

(2) Ensure the confidentiality of medical records, analyses, and forms provided to or generated by the designated doctor in the doctor's capacity as a designated doctor for the duration of the retention period specified in §127.10(i) of this title (relating to General Procedures for Designated Doctor Examinations) and ensure the destruction of these medical records after both this retention period expires and the designated doctor determines the information is no longer needed.

(3) Ensure that all agreements with persons that permit those parties to perform designated doctor administrative duties, including, but not limited to, billing and scheduling duties, on the designated doctor's behalf:

(A) are in writing and signed by the designated doctor and the persons with whom the designated doctor is contracting;

(B) define the administrative duties that the person may perform on behalf of the designated doctor;

(C) require the persons to comply with all confidentiality provisions of the Labor Code and other applicable laws;

(D) comply with all medical billing and payment requirements under Chapter 133 of this title (relating to General Medical Provisions);

(E) do not constitute an improper inducement relating to the delivery of benefits to an injured employee under Labor Code §415.0036 and §180.25 of this title (relating to Improper Inducements, Influence and Threats); and

(F) are made available to the division on request.

(4) Notify the division in writing and in advance if the designated doctor voluntarily defers their availability to receive any offers of examinations for personal or other reasons. The notice must specify the duration and reason for the deferral.

(5) Notify the division in writing and in advance if the designated doctor no longer wishes to practice as a designated doctor before the doctor's current certification as a designated doctor expires. A designated doctor who no longer wishes to practice before their current certification expires must expressly surrender their certification in a signed, written statement to the division.

(6) Be physically present in the same room as the injured employee for the designated doctor examination or any other health care service provided to the injured employee that is not referred to another health care provider under §127.10(c) of this title.

(7) Apply the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and division-adopted return-to-work guidelines under §137.10 (relating to Return to Work Guidelines) and consider division-adopted treatment guidelines under §137.100 (relating to Treatment Guidelines) or other evidence-based medicine when appropriate.

(8) Provide the division with updated information within 10 working days of a change in any information they provide to the division on their application for certification.

(9) Maintain a professional and courteous demeanor when performing the duties of a designated doctor, including, but not limited to, explaining the purpose of a designated doctor examination to an injured employee at the beginning of the

examination and using non-inflammatory, appropriate language in all reports and documents they produce.

(10) Bill for designated doctor examinations and receive payment for those examinations in accordance with Chapters 133 and 134 of this title (relating to Benefits--Guidelines for Medical Services, Charges, and Payments).

(11) Respond timely to all division appointments, clarifications, document requests, or other division inquiries.

(12) Notify the division if their continued participation on a claim they have already been assigned would exceed the scope of practice authorized by their license.

(13) Not perform required medical examinations, utilization reviews, or peer reviews on a claim they have been assigned as a designated doctor.

(14) Identify themselves at the beginning of every designated doctor examination.

(15) Consent to and cooperate during any on-site visits by the division under §180.4 of this title (relating to On-Site Visits).

(A) Notwithstanding §180.4(e)(2) of this title, the division's purpose for these visits is to ensure the designated doctor's compliance with the Labor Code and applicable division rules.

(B) The notice provided to the designated doctor under §180.4 of this title, either in advance or at the time of the on-site visit, will specify the duties the division will investigate during that visit.

(16) Cooperate with all division compliance audits and quality reviews.

(17) Complete required training or pass required testing detailed in the designated doctor's approval of certification.

(18) Comply with all applicable laws and rules.

(b) Agents. For the purposes of this chapter, Chapter 180 of this title (relating to Monitoring and Enforcement), and all other applicable laws and division rules, any person with whom a designated doctor contracts or otherwise permits to perform designated doctor administrative duties on behalf of the designated doctor qualifies as the doctor's "agent" as defined under §180.1 of this title (relating to Definitions).

§127.210. Designated Doctor Administrative Violations.

(a) Grounds for sanctions. In addition to the grounds for issuing sanctions against a doctor under §180.26 of this title (relating to Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies), other division rules, or the Labor Code, the commissioner may revoke or suspend a designated doctor's certification as a designated doctor or sanction a designated doctor for noncompliance with requirements of this chapter for:

(1) refusing four times within a 90-day period to accept or perform a division-offered appointment or division-ordered appointment for which the doctor is qualified and that relates to a claim to which the doctor has not been previously assigned;

(2) refusing four consecutive times to perform a division-offered appointment within the required time frames or a division-ordered appointment for which the doctor is qualified and relates to a claim the doctor has not been previously assigned to;

(3) failing to attend a designated doctor examination;

(4) not complying with the rescheduling requirements of this chapter;

(5) refusing at any time to accept or perform a division-offered appointment or division-ordered appointment that relates to a claim on which the doctor has previously performed an examination;

(6) misrepresenting or omitting pertinent facts in medical evaluation and narrative reports;

(7) submitting unnecessary referrals to other health care providers to answer any question that the division submits to the designated doctor;

(8) ordering or performing unnecessary testing of an injured employee as part of a designated doctor's examination;

(9) submitting inaccurate or inappropriate reports due to insufficient medical history or physical examination and analysis of medical records;

(10) submitting designated doctor reports that fail to include all elements required by §127.220 of this title (relating to Designated Doctor Reports), §127.10 of this title (relating to General Procedures for Designated Doctor Examinations), and other division rules;

(11) failing to timely respond to a request for clarification from the division about an examination or any other information the division requests;

(12) failing to successfully complete training and testing requirements as specified in §127.100 of this title (relating to Designated Doctor Certification);

(13) self-referring, including referring to another health care provider with whom the designated doctor has a disqualifying association, for treatment or becoming

the employee's treating doctor for the medical condition the designated doctor evaluated;

(14) behaving in an abusive or assaultive manner toward an injured employee, the division, or other system participant;

(15) failing to maintain the confidentiality of patient medical and claim file information;

(16) performing a designated doctor examination that the division did not order the doctor to perform;

(17) failing to complete required training or pass required testing detailed in the designated doctor's approval of certification; or

(18) violating other applicable statutes or rules while serving as a designated doctor.

(b) Responsibility for agents' actions. Designated doctors are liable for all administrative violations committed by their agents on the designated doctor's behalf under this section, other division rules, or any other applicable law.

(c) Notification and appeal. The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Restoration) except that suspension, revocation, or other sanctions relating to a designated doctor's certification will be in effect during the pendency of any appeal.

§127.220. Designated Doctor Reports.

(a) Format and submission. Designated doctor narrative reports must be filed in the form and manner required by the division. At a minimum, they must do all of the following:

(1) Identify the question or questions the division ordered to be addressed by the designated doctor examination.

(2) Provide a clearly defined answer for each question to be addressed by the designated doctor examination and only for each of those questions.

(3) Sufficiently explain how the designated doctor determined the answer to each question within a reasonable degree of medical probability.

(4) Demonstrate, as appropriate, application or consideration of the American Medical Association Guides to the Evaluation of Permanent Impairment, division-adopted return-to-work and treatment guidelines, and other evidence-based medicine, if available.

(5) Include general information about the identity of the designated doctor, injured employee, employer, treating doctor, and insurance carrier.

(6) State the date of the examination and the address where it took place.

(7) Summarize any additional testing conducted or referrals made as part of the evaluation, including:

(A) the identity of any health care providers to which the designated doctor referred the injured employee under §127.10(c) of this title (relating to General Procedures for Designated Doctor Examinations);

(B) the types of tests conducted or referrals made;

(C) the dates the testing or referral examinations occurred;

(D) an explanation of why the testing or referral was necessary to resolve a question at issue in the examination; and

(E) the date the testing or referral examination was completed.

(8) Include a narrative description of the medical history, physical examination, and medical decisions the designated doctor made, including the time the designated doctor began taking the medical history of the injured employee, physically examined the employee, and engaged in medical decision making, and the time the designated doctor completed these tasks.

(9) List the specific medical records or other documents the designated doctor reviewed as part of the evaluation, including the dates of those documents and which medical records were provided by the injured employee.

(10) Provide the total amount of time required for the designated doctor to review the medical records.

(11) Be signed by the designated doctor who performed the examination.

(12) Include a statement that there is no known disqualifying association as described in §127.140 of this title (relating to Disqualifying Associations) between the designated doctor and the injured employee, the injured employee's treating doctor, the insurance carrier, the insurance carrier's certified workers' compensation health care network, or a network established under Labor Code Chapter 504.

(13) Certify the date that the report was sent to all recipients as required and in the manner required by §127.10 of this title.

(14) Indicate on the report that the designated doctor reviewed and approved the final version of the report.

(b) Additional forms required. Designated doctors who perform examinations under §127.10(d) or (e) of this title must also complete and file the division forms required by those subsections with their narrative reports. Designated doctors must complete and file these forms in the manner required by applicable division rules.

(c) Designated doctor examination data report. Designated doctors who perform examinations under §127.10(f) of this title must, in addition to filing a narrative report that complies with subsection (a) of this section, also file a designated doctor examination data report in the form and manner required by the division. A designated doctor examination data report must:

(1) include general information regarding the identity of the designated doctor, injured employee, insurance carrier, as well as the identity of the certified workers' compensation health care network under Insurance Code Chapter 1305, if applicable, or whether the injured employee is receiving medical benefits through a political subdivision health care plan under Labor Code §504.053(b)(2) and the identity of that plan, if applicable;

(2) identify the question or questions the division ordered to be addressed by the designated doctor examination;

(3) provide a clearly defined answer for each question to be addressed by the designated doctor examination and only for each of those questions. For extent of injury examinations, the designated doctor should also provide, for informational purposes only, a diagnosis code for each disputed injury;

(4) state the date of the examination, the time the examination began, and the address where the examination took place;

(5) list any additional testing conducted or referrals made as part of the evaluation, including the identity of any healthcare providers to which the designated doctor referred the injured employee under §127.10(c) of this title, the types of tests conducted or referrals made and the dates the testing or referral examinations occurred; and

(6) be signed by the designated doctor who performed the examination.

CERTIFICATION. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on April 4, 2023.

Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation

The commissioner adopts amendments to 28 TAC Chapter 127, Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, 127.130, and 127.140; and Subchapter C §§127.200, 127.210, and 127.220; and the repeal of 28 TAC §127.110.

Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No. 2023-7881