

TITLE 28. INSURANCE

**PART 2. TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION**

CHAPTER 130: IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS

**SUBCHAPTER A: IMPAIRMENT INCOME BENEFITS
REPEAL: §130.6**

1. INTRODUCTION.

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts the repeal of §130.6, concerning Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings. The repeal is adopted without changes to the proposal as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1165) and will become effective September 1, 2012.

2. REASONED JUSTIFICATION.

This repeal is necessary to ensure clarity and efficiency in designated doctor regulation and is adopted simultaneously with the adoption of amended §127.10 of this title (relating to General Procedures for Designated Doctor Examinations), which is published elsewhere in this issue of the *Texas Register*. Amended §127.10 of this title recodifies subsections (a), (b)(5), and (f) of repealed §130.6. The remaining subsections of §130.6 are repealed without recodification, because the provisions are either no longer applicable or redundant with other Division rules.

This repeal was formally proposed, together with proposed amended §§127.1, 127.5, 127.10, 127.20, 127.25, and 180.23 of this title; new §§127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 of this title; and repealed §180.21 of this title, in the February 24, 2012, issue of the *Texas Register*, and the Division received three formal comments on the proposal.

This repeal will take effect on September 1, 2012. This effective date for the repeal is necessary to coincide with the effective dates for amended §§127.1, 127.5, 127.10, 127.20, 127.25,

and 180.23 of this title; new §§127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 of this title; and repealed §180.21 of this title.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General: One commenter supports the Division's repeal of this section.

Agency Response: The Division appreciates the support.

General: Multiple commenters disagree with this repeal and the Division's amendment to §127.10(d), because these changes no longer permit designated doctors to provide multiple impairment ratings if the designated doctor determines a dispute regarding the extent of the compensable injury exists. The commenters state that these changes leave injured employees no means to have injured areas claimed to be compensable examined by a designated doctor if those areas are disputed by a carrier. This matter should be addressed by designated doctors regardless of whether the injured employee or insurance carrier requested an extent of injury examination. House Bill 2605 did not require the repeal of §130.6 and by repealing this rule, the Division has required injured employees to have direct knowledge of the Division's designated doctor request procedure and to understand their diagnoses. The repeal of this rule prevents designated doctors from examining disputed areas and denies due process to injured employees.

Agency Response: The Division disagrees. The requirement that designated doctors issue multiple impairment ratings if the designated doctors determines that the extent of the injured employee's compensable injury is in dispute is no longer necessary because parties can now request designated doctors to provide an opinion on the extent of an injured employee's compensable injury. When the multiple impairment rating requirement of §130.6 was adopted in 2001, designated doctors could not address that issue. Therefore, because parties can now request

that designated doctors opine on extent of injury in addition to issues regarding an injured employee's date of maximum medical improvement and/or impairment rating, it is no longer appropriate to require designated doctors to consider the extent of the injured employee's injury if the parties have not requested the designated doctor to do so.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For: Insurance Council of Texas.

Against: Genesis Medical Management Solutions.

5. STATUTORY AUTHORITY.

The repeal is adopted under the broad general authority granted to the Commissioner of Workers' Compensation by Labor Code §402.00111 and §402.061. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under the Labor Code. Section 402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Labor Code.

6. TEXT.

§130.6. *Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings.*

7. CERTIFICATION.

This agency hereby certifies that the adopted repeal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on July 09, 2012.

X

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that §130.6, specified herein, concerning the Division Designated Doctor List, is repealed.

AND IT IS SO ORDERED.

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ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

X

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO.