

TITLE 28. INSURANCE

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

CHAPTER 180: MONITORING AND ENFORCEMENT

**SUBCHAPTER B: MEDICAL BENEFIT REGULATION
AMEND: §180.23**

1. INTRODUCTION.

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §180.23, concerning Division Required Training for Doctors. These amendments are adopted with changes to the proposed text as published in the February 24, 2012, issue of the *Texas Register* (37 TexReg 1171) and shall take effect on September 1, 2012.

2. REASONED JUSTIFICATION.

These amendments primarily delete provisions of §180.23 that have become outdated because of the expiration of Labor Code §408.023(a) - (g) and (i) on September 1, 2007 and the Division's subsequent repeal of §180.20 of this title (relating to the Commission Approved Doctor List) on January 9, 2011. These amendments, however, retain certain provisions relating to impairment rating training and testing for doctors who do not seek to become certified as Division designated doctors in order to fulfill the requirements of Labor Code §408.023(n), which requires the Division to adopt such requirements by rule. The amendments to §180.23 also clarify how the training and testing under this section interplays with the testing and training requirements for designated doctors under adopted new §127.100 and §127.110 of this title (relating to Designated Doctor Certification and Designated Doctor Recertification, respectively), which are published elsewhere in this issue of the *Texas Register*. A brief description of the amendments to §180.23 is provided below.

These amendments were formally proposed, together with amended §§127.1, 127.5, 127.10, 127.20, 127.25 of this title; new §§127.100, 127.110, 127.120, 127.130, 127.140, 127.200, 127.210, and 127.220 of this title; and repealed §130.6 and §180.21 of this title, in the February 24, 2012, issue of the *Texas Register*, and the Division received one formal comment on the proposal.

The Division has also changed the text of §180.23 as proposed. Specifically, the Division has changed the title of the rule to remove "Commission" and replace it with "Division" and added a new subsection (e) to the adopted rule. The title change is necessary to remove outdated references to the former Texas Workers' Compensation Commission and replace it with the updated reference to the Division of Workers' Compensation. This change is nonsubstantive and does not impose any new requirements on system stakeholders. New subsection (e) provides that this section shall become effective on September 1, 2012. This effective date is necessary to coincide with the effective dates of amended §§127.1, 127.5, 127.10, 127.20, 127.25 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 §130.6 and §180.21 of this title.

3. HOW THESE SECTIONS WILL FUNCTION.

Amended §180.23(a) - (h).

The deletions of current subsections (a) - (h) are adopted, because these subsections pertain, primarily, to required certification levels for the performance of various health care functions that are no longer applicable after the expiration of Labor Code §408.023(a) - (g) and (i) and the repeal of §180.20 of this title.

Amended §180.23(i).

Adopted amended §180.23(i) is recodified as new §180.23(a) - (d). New §180.23(a), addresses the scope of the amended section, specifically that this section now only governs authorization relating to certification of maximum medical improvement (MMI), determination of

permanent impairment, and assignment of impairment ratings in the event that a doctor finds permanent impairment exists.

New §180.23(b) provides that full authorization to assign an impairment rating and certify MMI in an instance where the injured employee is found to have permanent impairment requires a doctor to obtain Division certification by successfully completing the Division-prescribed impairment rating training and passing the test or meeting the training and testing requirements for designated doctor certification or recertification under §127.100 and §127.110 of this title (relating to Designated Doctor Certification and Designated Doctor Recertification, respectively). Furthermore, this adopted subsection provides that for a doctor to remain certified the doctor must successfully complete follow-up training and testing at least every two years. Previously, doctors were only required to retrain and retest every four years, but this amendment is necessary to harmonize with the biannual recertification requirement for designated doctors in adopted new §127.110 of this title, so that all doctors assigning impairment rating in the workers' compensation system are equally current in training and testing.

New §180.23(c) provides that a doctor who has not completed the required training under subsection (b) of this section but who has had similar training in the *American Medical Association Guides* from a Division-approved vendor within the prior two years may submit the syllabus and training materials from that course to the Division for review. If the Division determines that the training is substantially the same as the Division-required training and the doctor passes the Division-required test, the doctor is fully authorized under this subsection. The ability to substitute training only applies to the initial training requirement, not the follow-up training. This subsection maintains the Division's current policy regarding alternative first time training for doctors seeking authorization under this section.

New §180.23(d) provides that notwithstanding any other provision of this section, a doctor who has not successfully completed training and testing required by this subsection for authorization to assign impairment ratings and certify MMI when there is permanent impairment may receive permission by exception to do so from the Division on a specific case-by-case basis. This subsection maintains the Division's current policy regarding exceptions to the authorization requirements necessary to certify MMI and assign impairment ratings.

New subsection (e) provides that "This section is effective September 1, 2012." This effective date is necessary to coincide with the effective dates of amended §§127.1, 127.5, 127.10, 127.20, 127.25 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 §130.6 and §180.21 of this title.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSES.

General: One commenter supports the Division's amendments to this section.

Agency Response: The Division appreciates the support.

General: One commenter recommends that the Division require doctors to obtain the Division's adopted impairment rating, treatment, and return-to-work guidelines as part of the training and testing under this section.

Agency Response: The Division disagrees. Treating doctors and referral doctors are already required to comply with these guidelines under the Labor Code §408.124 and §137.10 and §137.100 of this title (relating to Return-to-Work Guidelines and Treatment Guidelines, respectively), and the training and testing under this section will ensure that doctors who seek to assign impairment ratings and certify MMI will have sufficient training and knowledge to perform these functions. Thus, whether a doctor needs to acquire a personal copy of each guide is best left to the discretion of that doctor in order to avoid imposing unnecessary costs on doctors who have developed other means of

complying with these guidelines (such as sharing a single copy in an office practice). The Division further clarifies, however, that this increased burden is appropriately imposed upon designated doctors in the workers' compensation system (to whom this rule does not apply), because of the increased level of expertise required to become a designated doctor and because of the presumptive weight and binding effects of designated doctor opinions. The Division has, therefore, imposed this requirement upon designated doctors as a requirement for certification and recertification as a designated doctor under new §127.100 and §127.110 of this title (relating to Designated Doctor Certification and Designated Doctor Recertification, respectively).

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

For, with changes: Insurance Council of Texas.

Against: None.

6. STATUTORY AUTHORITY.

The amendments are adopted under Labor Code §408.023 and the broad general authority granted to the Commissioner of Workers' Compensation by Labor Code §402.00111 and §402.061. Labor Code §408.023(n) provides, in relevant part, that the Commissioner shall by rule establish reasonable requirements for doctors regarding training and impairment rating test. 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.

7. TEXT.

§180.23. Division Required Training for Doctors.

(a) This section governs authorization relating to certification of maximum medical improvement (MMI), determination of permanent impairment, and assignment of impairment ratings in the event that a doctor finds permanent impairment exists.

(b) Full authorization to assign an impairment rating and certify MMI in an instance where the injured employee is found to have permanent impairment requires a doctor to obtain division certification by successfully completing the division-prescribed impairment rating training and passing the test or meeting the training and testing requirements for designated doctor certification or recertification under §127.100 and §127.110 of this title (relating to Designated Doctor Certification and Designated Doctor Recertification, respectively). To remain certified, a doctor is required to successfully complete follow-up training and testing at least every two years.

(c) A doctor who has not completed the required training under subsection (b) of this section but who has had similar training in the American Medical Association *Guides* from a division-approved vendor within the prior two years may submit the syllabus and training materials from that course to the division for review. If the division determines that the training is substantially the same as the division-required training and the doctor passes the division-required test, the doctor is fully authorized under this section. The ability to substitute training only applies to the initial training requirement, not the follow-up training.

(d) Notwithstanding any other provision of this section, a doctor who has not successfully completed training and testing required by this section for authorization to assign impairment ratings and certify MMI when there is permanent impairment may receive permission by exception to do so from the division on a specific case-by-case basis.

(e) This section is effective September 1, 2012.

8. CERTIFICATION.

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

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

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

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that §180.23, specified herein, concerning the Division Designated Doctor List, is amended.

AND IT IS SO ORDERED.

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ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

X

Dirk Johnson
General Counsel

COMMISSIONER ORDER NO.