

## TITLE 28. INSURANCE

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

#### CHAPTER 180. MONITORING AND ENFORCEMENT

#### SUBCHAPTER C. MEDICAL QUALITY REVIEW PANEL

**New: 28 TAC §§180.60, 180.62, 180.64, 180.66, 180.68,  
180.70, 180.72, 180.74, 180.76, 180.78**

#### ADOPTION

#### **1. INTRODUCTION.**

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts new Subchapter C, Medical Quality Review Panel (MQRP), §180.60, concerning Definitions; §180.62, concerning Medical Quality Review Panel; §180.64, concerning MQRP Application Process; §180.66, concerning Medical Case Review; §180.68, concerning Medical Quality Review Process; §180.70, concerning MQRP Training; §180.72, concerning Conflict of Interest; §180.74, concerning MQRP Notification of Case Status; §180.76, concerning Rights and Responsibilities of Persons Involved in the Medical Quality Review Process; and §180.78, concerning Effective Date. Sections 180.62, 180.64, 180.66, 180.70, 180.72 and 180.76 are adopted with changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 *TexReg* 5551). Sections 180.60, 180.68, 180.74 and 180.78 are adopted without changes to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 *TexReg* 5551).

The Division published an informal draft of the proposed new sections on the Division's website from May 6, 2012 until June 6, 2012, and received eight informal comments on the proposed rules. Subsequent changes were made to the draft based on the informal comments received on the draft, and the sections were proposed in the *Texas Register* on July 27, 2012 (37

TexReg 5551). A public hearing for this proposal was held on August 13, 2012. The public comment period closed on August 27, 2012. The Division received four public comments.

The Division has changed some of the proposed language in the text of the rules as adopted in response to public comments received, or for non-substantive clarification. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The changes are explained below.

## **2. REASONED JUSTIFICATION.**

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the rules, and the reasons why the Division agrees or disagrees with the comments and recommendations. These new sections are adopted to implement several statutory amendments in House Bill 2605, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011 (HB 2605).

HB 2605 added new Labor Code §§413.05115, 413.05121 and 413.05122 and amended Labor Code §413.0512 to clarify the composition and training requirements of the MQRP and establish the Quality Assurance Panel (QAP), which is a subset of the MQRP.

Labor Code §413.0512 was amended to clarify that the medical advisor must notify the Division if the medical advisor determines that a particular health care specialty field is no longer necessary for inclusion on the MQRP or if there is a need to include a particular health care specialty field that is not currently represented on the panel. This section was also amended to

clarify that the Division may enter into agreements with other state agencies, as necessary, to access particular health care expertise.

HB 2605 added new Labor Code §413.05121 to require the establishment of a QAP within the MQRP to provide an additional level of evaluation in medical case reviews, assist the medical advisor and medical quality review panel, evaluate medical care and recommend enforcement actions to the medical advisor.

HB 2605 also added new Labor Code §413.05122 to require the Commissioner of Workers' Compensation (Commissioner) to adopt rules concerning the operation of the medical quality review panel, including rules that establish the qualifications necessary for a health care provider to serve on the MQRP, the composition of the MQRP, the number of members to be included on the panel and the health care specialty fields required to be represented by the members of the panel. The rules must also set the maximum length of time a health care provider may serve on the MQRP, a policy defining situations that constitute a conflict of interest for a member of the MQRP, and procedures and grounds for removing a member of the MQRP from the panel, including as a ground for removal that a member is repeatedly delinquent in conducting case reviews. Finally, the rules must also establish a procedure through which members of the MQRP review panel are notified concerning the status and enforcement outcomes of cases resulting from the MQRP quality review process and the training requirements for members of the MQRP.

The rules must ensure that panel members are fully aware of any requirements imposed by the Labor Code concerning the medical quality review process and the Division's goals concerning the process. The rules may require members to receive training on any topic determined by the Division or the Commissioner to be relevant to the operations of the panel and must require members of the panel to receive training concerning administrative violations that affect the

delivery of appropriate medical care, the confidentiality requirements described by Labor Code §413.0513, the immunity from liability provided to members of the panel under Labor Code §413.054, and the medical quality review criteria adopted under Labor Code §413.05115.

### **3. HOW THE SECTIONS WILL FUNCTION.**

#### **Adopted New §180.60.**

Adopted new §180.60 defines the terms "doctor" and "medical case review" for purposes of this subchapter. The term "doctor" has the same definition as Labor Code §401.011(17), a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice. The term "Medical Case Review" is defined as a review of medical services or professionalism in a particular case by an MGRP member regarding the delivery of health care, or the quality of a health care practitioner's opinion, recommendation or report. Medical case review may include the review of a treating doctor, peer review doctor, designated doctor, another health care practitioner, an independent review organization, an insurance carrier, or a utilization review agent. This definition is necessary in order to provide clarity as to what constitutes a medical case review.

#### **Adopted New §180.62.**

Adopted new §180.62(a) provides that the purpose of the MGRP is to assist the medical advisor in the performance of the medical advisor's duties under Labor Code §413.0511 in accordance with the provisions of Labor Code §413.0512 and §413.05121. This provision is consistent with the purposes of the MGRP as set out in the Labor Code.

Adopted new §180.62(b) provides that members of the MGRP who prepare reports for medical case review shall be known as MGRP Experts. This language mirrors Texas Medical Board rules and helps harmonize the procedures of the two regulatory agencies, Texas Medical Board and the Division.

Adopted new §180.62(c) provides that applicants for the MQRP may be selected and appointed to the MQRP at the discretion of the medical advisor and the Commissioner in accordance with §180.62. The appointments are made by both the medical advisor and the Commissioner. This rule is necessary because Labor Code §413.0512(a) requires the medical advisor to establish the MQRP and under the Labor Code the Commissioner is given broad executive authority to enforce and administer the provisions of the Labor Code including provisions governing the operations of the MQRP. The Commissioner is the chief executive and administrative officer of the Division, Labor Code §402.00116, the Commissioner has all executive authority under Labor Code, Labor Code §402.00111, and general operational powers of the Division are vested in the Commissioner, Labor Code §402.00128.

The MQRP must have at least 25 members and must, at a minimum, have members in the health care specialty fields of orthopedic surgery, neurosurgery, chiropractic, occupational medicine and pain medicine. The MQRP may have members that include other types of health care practitioners determined to be necessary by the medical advisor and the Commissioner. This rule is necessary to fulfill the requirements of Labor Code §413.05122(a)(2). The minimum number of members was set at 25 because that was determined to be the minimum number of persons necessary to carry the workload of the MQRP. The health care specialty fields of orthopedic surgery, neurosurgery, chiropractic, occupational medicine and pain medicine were specifically enumerated because they are the most common health care specialty fields utilized by the MQRP. The language authorizing the medical advisor and the Commissioner to add other members determined to be necessary is necessary for purposes of flexibility and efficiency.

Adopted new §180.62(d) provides that, to be eligible to serve on the MQRP, a health care practitioner must possess an unrestricted license to practice in Texas with the appropriate

credentials as defined by §180.1 of this title (relating to Definitions), be board certified in a specialty or subspecialty, and have an active practice in Texas. "Active practice" means, within either of the last two calendar years, at the time of appointment to the MQRP, the applicant has actively diagnosed or treated persons at least 20 hours per week for 40 weeks duration during a given calendar year; or performed administrative, leadership, or advisory roles in the practice of medicine. The medical advisor and the Commissioner may waive these requirements if needed to adequately perform medical case review. This subsection is necessary to fulfill the requirements of Labor Code §413.05122(1) and to ensure that MQRP members have the necessary licensing and expertise to fulfill their functions. Board certification ensures a higher level of training and expertise in a given field. The active practice requirement ensures that the MQRP member is utilizing the training that they have been given. This waiver provision is necessary for situations where there is no MQRP member available for a medical case review who meets these heightened requirements, but there do exist other health care professionals who are otherwise qualified to conduct the reviews and who may be recruited to perform the review.

Adopted new §180.62(e) provides that MQRP members shall be appointed for a term of two years. They shall serve until the expiration of their term, until their resignation, or until their removal from the MQRP. An MQRP member may not serve on the panel for more than 10 years. Years served prior to September 1, 2013 do not count toward the 10-year limit. This language was modified from the proposal for clarity by removing the phrase "an appointment on or after" to remove any potential ambiguity. This subsection is necessary to fulfill the requirements of Labor Code §413.05122(a)(3). The two year term is historically the length of a term of an MQRP member. The 10 year service limit was established to fulfill the legislative requirement of a maximum term of service. It encourages stability and consistency and ensures the MQRP has

experienced members with expertise in the workers comp system. The 10 year limit begins September 1, 2013 for administrative clarity and because the previous two year appointments will expire on that date. This also allows clear notice to prospective MQRP members of the prospective limits on their appointments.

Adopted new §180.62(e) also provides that an MQRP member may resign from the MQRP at any time. Further, an MQRP member may be removed from the MQRP for cause at any time on the order of the Commissioner for failure to maintain the eligibility requirements of this title, failure to timely inform the Division of conflicts of interest, repeated failure to timely review medical case review assignments or timely submit reports to the Division, repeated failure to prepare the reports in the prescribed format; or other issues deemed sufficient by the medical advisor or the commissioner. A non-substantive clarification from the proposal was made by deleting the word "on" in subsection (e)(4) between "time" and "immediately". The removal provisions are necessary to fulfill the requirement of Labor Code §413.05122(a)(5). The removal provisions ensure that the MQRP members maintain the eligibility requirements, remain unconflicted and perform the work of the MQRP in a timely and diligent manner. The provision authorizing removal of a member who repeatedly fails to timely review medical case review assignments fulfills the requirements of Labor Code §413.05122(a)(5). The provision authorizing the removal of an MQRP member for other reasons deemed sufficient by the medical advisor or Commissioner is necessary because other reasons that are sufficient to justify removal may arise in the course of the operations of the MQRP.

Adopted new §180.62(f) provides that an MQRP member shall not use his or her position to influence an insurance carrier, agent, or other person or entity in connection with a personal or other insurance related matter beyond referring to their position to demonstrate qualifications

except as otherwise provided by this subchapter. This provision is necessary in order to ensure that MQRP members do not use their positions as MQRP members to exert undue influence in other circumstances unrelated to their duties under these rules. This provision does not prohibit MQRP members from referring to their position as an MQRP member to demonstrate their qualifications such as in an application for employment.

Adopted new §180.62(g) provides that the medical advisor shall establish the Quality Assurance Panel (QAP) within the MQRP. All members of the QAP are members of the MQRP. They perform all of the duties of an MQRP member under Labor Code §413.0512 as well as the duties of a QAP member under Labor Code §413.05121. A member of the QAP shall also be known as an Arbiter. An Arbiter serves in an informal settlement conference to help determine a resolution of the case. Arbiters may provide any services to the medical advisor provided by Labor Code §413.0512 and §413.05121, including, but not limited to serving as a representative for the medical advisor in informal settlement conferences, and serving as the chair to the quality assurance committee. Arbiters may serve as expert witnesses in enforcement actions, as appropriate, and provide an additional level of medical expertise and quality assurance to assist the medical advisor in the medical advisor's duties under Labor Code §413.0511. This subsection is necessary to fulfill the requirements of Labor Code §413.0512 and identify the functions of QAP members.

**Adopted New §180.64.**

Adopted new §180.64(a) establishes the process to apply to be a member of the MQRP. To apply to the MQRP, a person must submit an application in the form and manner required by the Division demonstrating compliance with the required qualifications. The application must contain the information required by §180.64(b). The medical advisor and the commissioner may select and appoint only qualified applicants to the Division's MQRP but are not required to accept all

applicants who meet the requirements specified in this subchapter. The phrase "The medical advisor may select" was clarified for consistency by changing the proposal language to read "The medical advisor and the commissioner may select." This change is for consistency with the language in §§180.62(c), 180.62(d)(4), and 180.64(f).

Adopted new §180.64(b) establishes the contents of the application form for the MQRP. The form must include, at a minimum, contact information for the health care practitioner, information about the health care practitioner's education, a description of the health care practitioner's license(s), certifications, and professional specialty, if any, a description of the health care practitioner's work history and hospital or other health care practitioner affiliations. The form must also contain a description of any affiliations the health care practitioner has with a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2), identification of and a description of all current and past review affiliations, including but not limited to an independent review organization (IRO), utilization review agent (URA), licensing board, and insurance carrier. In addition, the form must include information regarding the health care practitioner's current practice locations, disclosure regarding the health care practitioner's professional background, education, training, and fitness to perform the duties of an MQRP member. This must include disclosure of any disciplinary actions or other sanctions taken against the health care practitioner by any state licensing board, state or federal agency, and hospital or other health care institution, as well as disclosure of any voluntary relinquishments of license or privileges, drug and alcohol misuse, malpractice claims history and criminal history.

The form must include a description of all ownership interests or other financial arrangements, such as salaried or contract employment, involving a person or their agent subject

to the Act or a rule, order, or decision of the Commissioner. Total ownership and a share of ownership is ownership. Ownership also includes owning shares of facilities such as surgery centers.

The applicant must sign an authorization for third parties to release information relevant to the verification of the information provided on the application to the Division, an affirmation that all information provided in the application is accurate and complete to the best of the health care practitioner's knowledge; and an affirmation of understanding of the legal requirements, including confidentiality provisions, for MQRP members.

Adopted new §180.64(c) provides that a credentialing application for hospital credentialing may substitute for some items under subsection (b).

Adopted new §180.64(d) provides that the health care practitioner must inform the medical advisor of any changes to this information within 30 days after the change.

Adopted new §180.64(e) provides that the application shall be reviewed by the medical advisor.

Adopted new §180.64(f) provides that the medical advisor and the Commissioner have the discretion to select, appoint and remove an applicant to the MQRP. The language was clarified from the proposal by adding "and remove" to the text.

Adopted new §180.64(g) provides that membership in the MQRP is for a term of two years. The acceptance letter will include the effective date and expiration date.

The provisions of §180.64(a) - (g) are necessary to establish a formalized process an applicant must follow to apply for an appointment to the MQRP, a process which requires an applicant to provide the Division with information directly related to their qualifications to be a member of the MQRP. This process is necessary in order to provide the medical advisor and

Commissioner with the information they need to examine the qualifications of an applicant and to determine whether an applicant is qualified under these rules and would fill a particular need on the MQRP.

Adopted new §180.64(h) provides that membership in the MQRP is not a guarantee of any number of assignments.

Adopted new §180.64(i) provides that MQRP members are entitled to compensation for work assigned by the medical advisor at the hourly rates specified in the rule. Doctors are entitled to \$150 per hour for medical case reviews, ad hoc work groups, or special projects.

Non-doctors are entitled to \$100 per hour for medical case reviews, ad hoc work groups or special projects.

An MQRP member is limited to billing a maximum of five hours for a medical case review of a single case, five hours for ad hoc work group or special project service, or 20 hours in a given calendar month, unless the medical advisor approves additional hours in writing upon review of a submitted narrative report or a report of an ad hoc work group.

Members are entitled to compensation for hearings or trial preparation. Doctors are entitled to \$350 per hour for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial. Non-doctors are entitled to \$175 per hour for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial. An MQRP member is not entitled to payment for more than eight hours per day for a deposition, a hearing, trial preparation or court testimony. If travel is required, the Division will pay the member for travel, lodging and per diem expenses in accordance with the Texas State Travel Management Program. The Division may vary the above reimbursement provisions if deemed by the Division to be in the best interests of the Division or the State of Texas. The compensation provisions are necessary in order to

establish the compensation rates the MQRP members will be paid fairly for their work on the MQRP. The rates are the same rates that the members are currently being paid through contract.

Adopted new §180.64(j) provides that an MQRP member may not disclose confidential information, including a report or other documentation prepared by the MQRP member for the Division in accordance with Labor Code §§402.083 - 402.086, 402.091, 402.092 and 413.0513. The language was clarified from the proposal by adding the words "confidential information, including" to the text. This rule is necessary in order to ensure that MQRP members are aware of the statutory confidentiality requirements of the Labor Code that apply to information created or received by the member in the course of their activities on the MQRP.

Adopted new §180.64(k) provides that all reports and related documents prepared by or furnished to a member for the MQRP are the sole property of the Division. This provision is necessary to clarify that the Division owns all reports and related documents prepared by or furnished to a member for the MQRP. This rule also ensures that the integrity of confidential information is protected.

**Adopted New §180.66.**

Adopted new §180.66 provides that the MQRP may perform medical case review for the medical advisor. Medical case review may be performed for the purposes of the medical quality review process, designated doctor certification and recertification, performance based oversight, or any other medical case review necessary to assist the medical advisor in performing the medical advisor's duties under the Labor Code. Language was clarified from the proposal by adding the words "the medical advisor" after "assist." This provision is necessary to clarify the role of the MQRP in accordance with the provisions of Labor Code §413.0512(c).

**Adopted New §180.68.**

Adopted new §180.68(a) provides that the medical quality review process is medical case review initiated on the basis of complaints, plan-based audits, or monitoring as a result of a consent order and performed in accordance with criteria adopted under Labor Code §413.05115. The medical quality review process does not include medical case review performed for the purpose of certification and recertification of designated doctors, performance based oversight, administrative violations that do not require an expert medical opinion, or complaints regarding professionalism that do not require an expert medical opinion. This rule is necessary because it provides a definition of the medical quality review process that is consistent with the criteria adopted by the Commissioner under Texas Labor Code §413.05115 that establishes a process for handling compliant-base medical case reviews and through which the Division selects health care providers or other entities for a compliance audit or review.

Adopted new §180.68(b) provides that a complaint must be documented in accordance with the provisions of 28 TAC §180.2. This subsection is necessary because it confirms that all complaints must be documented in the same way, regardless of which program at DWC is handling the complaint.

Adopted new §180.68(c) clarifies that nothing in this subchapter prevents referrals of complaints to another licensing or law enforcement authority.

**Adopted New §180.70.**

Adopted new §180.70 provides that an MQRP member must receive training by the Division prior to any assignments and at least every two years thereafter on the requirements of the medical quality review process under §180.68, the Division's goals regarding the medical quality review process, administrative violations that affect the delivery of appropriate medical care, confidentiality requirements of Labor Code §§402.083, 402.091, 402.092 and 413.0513, immunity

from liability under Labor Code §413.054, the medical quality review criteria adopted under Labor Code §413.05115, the current Division adopted edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment and the Division's adopted treatment and return-to-work guidelines and other topics as determined by the medical advisor and Commissioner. The text was clarified by adding the reference "402.091", regarding the offense and penalty for failure to maintain confidentiality, to the list of confidentiality requirements to be trained on. The text was also clarified by replacing the acronym "AMA" with "American Medical Association." This section is necessary because Labor Code §413.05122(b) requires the Commissioner to adopt rules regarding mandatory training of MQRP members in accordance with its provisions. This rule requires training on those topics that Labor Code §413.05122(b) mandates to be addressed in the training. This rule also requires training on the current Division adopted edition of the AMA Guides to the Evaluation of Permanent Impairment and the Division's adopted treatment and return to work guidelines, because Division rules require health care providers to utilize these guides when performing their roles in the workers' compensation system, and MQRP members may be in a position where they need to examine whether the health care provider has properly utilized the AMA Guides. The rule also allows for training on other topics determined by the Medical Advisor and Commissioner in order to provide flexibility when needed under particular circumstances. Finally, this rule requires training prior to any assignments and every two years thereafter, in order to ensure that MQRP members are trained prior to performing these duties as well as kept up to date on changes and developments.

**Adopted New §180.72.**

Adopted new §180.72(a) sets forth procedures regarding MQRP members' conflicts of interest. If the selected MQRP member has a conflict of interest in a case under medical review, that member may not review the case or serve as an arbiter. If all MQRP members in a particular

health care specialty field as the subject of a medical case review have conflicts of interest in a case under medical case review, and the Division is unable to enter into an interagency agreement, then the Division may refer the case to the appropriate licensing authority. Language was clarified from the proposal by adding the words "in a case under medical review" and "or serve as an arbiter" to the text.

Adopted new §180.72(b) sets forth the conflicts of interest for MQRP members. It provides that, for the purposes of this subsection, a conflict of interest exists if the selected MQRP member has a familial relationship within the third degree of affinity with any party or witness related to the case, has a relationship with the subject beyond a mere acquaintance; has ever treated the injured employee whose records are being reviewed; has ever been a peer review doctor, a designated doctor or required medical examination doctor in regard to the particular claim; or has a financial interest in a matter as set forth in 28 TAC §180.24 (relating to Financial Disclosure). Further, a conflict of interest exists, for the purposes of this subsection, if the selected MQRP member is a medical director for an Insurance Carrier, Utilization Review Agent, or a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2). Medical directors can perform all functions of the MQRP and the QAP except performing individual medical case reviews or serving as Arbiters in a informal settlement conference (ISC). A conflict also exists, for the purposes of this subsection, if the selected MQRP member has other issues deemed to be a conflict of interest by the medical advisor. In response to a comment, language was clarified in §180.72(b)(3) by dividing it into paragraphs (3) and (4) and renumbering subsequent paragraphs accordingly. "Peer review doctor" and "required medical examination doctor" on an employee's claim were added as conflicts of interest. "Designated doctor" was added in §180.72(b)(4)(B) for purposes of

consistency. The same rationale for adding peer review doctors and required medical examination doctors on an injured employee's claim to the conflict of interest list applies to designated doctors on the injured employee's claim. The rules in paragraphs (1) - (6) are intended to be objective easy to follow guidelines that include circumstances that generally constitute a conflict of interest. There could be examples of MQRP member's who do not have a conflict of interest in a specific case but are defined by rule as having a conflict. The Division believes it is best to have the clearest possible guidelines, even if those guidelines might exclude individuals who could have participated. Paragraph (7) was included because it is impossible to envision all circumstances that might constitute a conflict.

Adopted new §180.72(c) provides that if an MQRP member selected for a medical case review has a conflict of interest, the member must notify the medical advisor of the conflict before taking any further action on the case. This subsection is necessary because it provides a process by which a conflicts of interest are brought to the medical advisor's attention. This places the responsibility of disclosing conflicts on the MQRP member because the member is in the position to know when a conflict exists. This subsection also requires disclosure to occur before taking any further action in the case in order to preserve the integrity of the process.

Adopted new §180.72(d) provides that, if the medical advisor has a conflict of interest in a case, the medical advisor must recuse himself from the case and appoint the associate medical advisor to perform the role of the medical advisor in the case, including enforcement decisions and recommendations. If the associate medical advisor also has a conflict of interest in the case, the Commissioner shall delegate the duties of the medical advisor, including enforcement decisions and recommendations, for that particular case, to a member of the QAP. This subsection is necessary because situations may arise where the medical advisor is conflicted or both the

medical advisor and the assistant medical advisor are conflicted. The rule provides a procedure that will be followed in such scenarios and ensures that there will be an individual responsible for performing the role of the medical advisor in the case.

Adopted new §180.72(e) provides that the Division may enter into agreements with other state agencies to access, as necessary, expertise in health care specialty fields as determined by the medical advisor. This subsection is necessary in order to provide the medical advisor access to needed expertise. This rule is consistent with the authority granted under Labor Code §413.0512(h).

**Adopted New §180.74.**

Adopted new §180.74 provides that the Division shall notify MQRP panel members in writing at least quarterly of the status of and enforcement outcomes resulting from cases in the medical quality review process. It also sets forth that an MQRP panel member shall comply with all confidentiality laws that apply to information provided under this section including Labor Code §§402.083 - 402.086, 402.091, 402.092 and 413.0513. This section is necessary because Labor Code §413.05122(a)(6) requires the Commissioner to adopt rules to establish a procedure through which members of the medical quality review panel are notified concerning the status and enforcement outcomes of cases resulting from the medical quality review process.

**Adopted New §180.76.**

Adopted new §180.76(a) specifies the rights and responsibilities of persons involved in the Medical Quality Review Process. The person subject to the medical quality review process has the right to be notified that the person has been selected for a review, to be notified of the disposition of the medical quality review process, and to communicate with the office of the medical advisor at any time during the medical quality review process.

The person also has a right to an informal settlement conference (ISC) in accordance with the provisions of §180.76 as well as a right to be represented by legal counsel. The ISC provides persons subject to the Medical Quality Review Process an opportunity to discuss and resolve their medical case review with Arbiters (i.e. QAP members). The word "person" was changed to "persons" for clarity and grammatical correctness. The case must have been referred to enforcement, the request for an ISC must be in writing, the Division will notify the requestor of the scheduled date of the ISC, and the requestor has the right to receive all documents given to the Arbiters for review for that particular case. All information the requestor wishes the Arbiters to consider at the ISC must be received by the Division no later than 15 days before the ISC, and the Arbiters may refuse to consider any information not timely received by the Division.

The ISC requestor may request to reschedule the scheduled date of the ISC for good cause shown, in writing, as determined by an attorney from the Division's office of general counsel. Good cause means circumstances beyond the control of the requestor that reasonably prevent the requestor from attending the ISC or from requesting the rescheduling any sooner.

If a requestor fails to attend an ISC as scheduled, the requestor forfeits his right to an ISC but does not preclude the requestor from discussing the case with the medical advisor, from entering a Consent Order, or from defending his enforcement case at the State Office of Administrative Hearings.

Adopted new §180.76(b) specifies the responsibilities of persons involved in the Medical Quality Review Process. A person subject to a medical case review must provide records and information requested from the office of the medical advisor in the format and manner specified by the Division, provide the records and information within the time period specified in the request,

and attach an accurate and completed business records affidavit to the request for records and information.

This section is necessary to consolidate for clarity and efficiency the various rights and responsibilities of a person involved in the medical quality review process. It also provides for a process that is fair, that allows for the subject's participation in the process, and that promotes the efficient resolution of medical quality reviews. This rule is also necessary because it ensures that the Office of the Medical Advisor has the authority to obtain from the subject of the review all relevant information necessary to properly perform a review in a particular case. It also allows the Office of the Medical Advisor to obtain the information in a format that may be used in court proceedings, should those proceedings occur, thereby preventing potential duplicative requests for the information.

**Adopted New §180.78.**

Adopted new §180.78 provides that this subchapter is effective on January 1, 2013. Existing members of the MGRP on that date shall continue to serve through the terms of their contracts. New terms of membership after January 1, 2013 shall be established through the process in this subchapter.

This section is necessary to coordinate the transition from the prior MGRP system to the new system established under the new rules.

**4. SUMMARY OF COMMENTS AND AGENCY RESPONSES.**

**§180.62(c)(2)(A):** A commenter suggested that the medical advisor and the commissioner of workers' compensation select an adequate number of orthopaedic surgeons to ensure that the panel has a strong understanding of the musculoskeletal system.

**Agency Response:** The Division agrees and believes the rules accomplish those objectives. The Division notes that nothing prohibits adding any additional MQRP members when needed.

**§180.62(c)(2):** A commenter requested that subparagraph (F) be added to §180.62(c)(2) to require the MQRP to include mental health professionals in its membership. The commenter stated that the number of workers' compensation injuries that contain a mental health component necessitates the inclusion of mental health professionals on the MQRP to provide meaningful oversight of the treatment provided for those injuries in the workers' compensation system.

**Agency Response:** The Division agrees that there needs to be a mental health component on the MQRP, but disagrees that additional language is needed. The Division currently has psychologists on the MQRP and will add more mental health professionals as needed under the authority of §180.62(c)(3).

**§180.62(d)(1):** A commenter recommended adding a subparagraph (A) to §180.62(d)(1) stating that MQRP members "must not have been censured by any relevant professional organization, any regulatory agency, or certifying authority, or subject to any regulatory action."

**Agency Response:** The Division disagrees and declines to make the change. Section 180.64(b)(8) requires extensive disclosure of any disciplinary actions or other sanctions taken against the health care practitioner by any state licensing board, state or federal agency, and hospital or other health care institution, as well as disclosure of any voluntary relinquishments, drug and alcohol misuse, malpractice claims history and criminal history. Whether the facts of a particular case should disqualify an applicant from serving on the MQRP is within the judgment of the medical advisor and Commissioner.

**§180.62(d)(3)(B):** A commenter suggested that §180.62(d)(3)(B) be deleted or that the Division clarify what it means to have “performed administrative, leadership, or advisory roles in the practice of medicine.” The commenter questioned how administrative, leadership, or advisory roles in the practice of medicine” can meaningfully substitute for maintaining an active practice.

**Agency Response:** The Division disagrees to delete §180.62(d)(3)(B). Part of the role of the MGRP is to advise the medical advisor on developing trends, issues and problems that exist in the workers' compensation system as a whole. This requires persons who have an overall view and perspective on the system, which may be gained through administrative and leadership roles.

**§180.62(d)(4):** A commenter requested clarification of §180.62(d)(4). The commenter does not understand why the requirements of subsection (d)(2) and (3) would need to be waived by the medical advisor and the commissioner and under what circumstances such waiver might take place.

**Agency Response:** The Division clarifies that the requirements of §180.62(d)(2) and (3), board certification and active practice, may need to be waived if there are problems with availability of health care practitioners and willingness to serve.

**§182.62(e)(2):** A commenter suggested deleting the second sentence of §182.62(e)(2) which states, “Years served prior to an appointment on or after September 1, 2013 do not count toward the 10 year limit.” In the alternative, the commenter recommends that the date in this provision be changed from September 1, 2013, to January 1, 2013, the proposed effective date of the rules.

**Agency Response:** The Division disagrees. A clear starting date for the 10 year limit was chosen for administrative clarity and efficiency. The September 1, 2013 starting date was chosen because most current MQRP contracts began on September 1.

**§180.64(i)(2) and (5)(B):** A commenter seeks clarification of §180.64(i)(2) and (5)(B) because it is unclear what role non-doctors will perform in the MQRP process. There is no description of their role in the proposal.

**Agency Response:** The Division clarifies that there may be psychologists and other health care practitioners who are not doctors as defined by the Texas Labor Code §401.011 but who have a doctoral degree whose knowledge, skills and training may be essential to the needs of the MQRP at a given time.

**§180.70(7):** A commenter supported the wording of §180.70(7).

**Agency Response:** The Division appreciates the support.

**§180.72(b)(3):** A commenter suggested that the language in §180.72(b)(3) be modified to “has ever treated the injured employee whose records are being reviewed or has served as a peer review doctor or a required medical examination doctor in the injured employee’s claim.” The commenter stated that the prohibition against having a doctor participate as an MQRP member needs to be expanded beyond doctors who have provided treatment. Questions could be raised about the ability of a doctor who has served as a peer review doctor or a required medical examination doctor in a claim to maintain the objectivity necessary to effectively serve in that role.

**Agency Response:** The Division agrees that questions of conflict of interest could arise in the situations outlined by the commenter. Section §180.72(b)(4) has been added to read:

"(4) in regard to the particular injured employee's claim, has served as a

- (A) peer review doctor;
- (B) designated doctor; or
- (C) required medical examination doctor."

**§180.76:** A commenter stated that the provisions of §180.76 appear appropriate.

**Agency Response:** The Division appreciates the support.

**§180.76:** A commenter stated that the proposed rules do not recognize any rights for persons who file complaints that result in MQRP review. The commenter recommended a new provision to address this or, in the alternative, to put a provision in the MQRP Process document.

**Agency Response:** The issue raised by the commenter is outside the scope of this rule and concerns a broader subject matter than just MQRP complaints. The Division will review the policy.

**§180.76:** A commenter recommended that the ISC process provisions that are in the MQRP process document be put in the rule instead so that any future changes will be subject to the Administrative Procedure Act.

**Agency Response:** The Division disagrees. The rights and responsibilities of parties to an ISC are set forth in the rule. Details of ISC administration are better placed in the process document, which is also being updated in conjunction with these rules for transparency and flexibility.

**General:** A commenter recommended that, to increase system transparency, the Division include in its quarterly press release on enforcement actions the information provided verbally at stakeholder meetings concerning the processing of complaints by the Office of the Medical Advisor and Texas Department of Insurance Enforcement Division.

**Agency Response:** This comment is outside the scope of the adopted sections. This is not a comment on adopted rule language but rather a policy on public information dissemination, which is best addressed in other forums. The Division will not address it as a comment on the rules.

**General:** A commenter suggested that language should be added to require the team leading the review process to be led by individuals who come from the same specialty as those who are subject to a review. For example, a case involving an orthopaedic surgeon should be led by a team of orthopaedic surgeons. Orthopaedic surgeons are the only professionals on the MGRP who have undergone the same training as the orthopaedic surgeons being reviewed.

**Agency Response:** The Division disagrees that the suggested language needs to be added to the rule. Labor Code §408.0043 provides that a doctor serving as a member of the medical quality review panel must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving. Labor Code §408.0044 and §408.0045 have licensing requirements for the review of chiropractors and dentists. The Commissioner is not involved in assigning an Expert to perform a particular medical quality review. The MGRP process document provides that the nurse investigator selects an Expert to perform a medical quality review in accordance with Texas Labor Code §§408.0043, 408.0044, or 408.0045 and that in cases where no Expert meets the requirements of those sections for a specific medical quality review, the Medical Advisor may contact appropriate medical licensing boards or other entities in

an effort to contract with a qualified individual, or contract with a health care practitioner who possesses the professional requirements for conducting the medical quality review.

**5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.**

**For:** None

**For, with changes:** Insurance Council of Texas, Medtronic Neuromodulation, Office of Injured Employee Counsel, Property and Casualty Insurers Association of America, Texas Orthopaedic Association

**Against:** None

**Neither for or Against:** None

**6. STATUTORY AUTHORITY.**

The new sections are adopted under the Labor Code §§402.00116, 402.00111, 402.061, 402.00128, 413.0511, 413.05115, 413.0512, 413.05121, 413.05122, 413.0513, 413.0514, 413.0515 and 415.021.

Labor Code §402.00116 grants the powers and duties of chief executive and administrative officer to the Commissioner and the authority to enforce the Labor Code, Title 5, and other laws applicable to the Division or Commissioner.

Labor Code §402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under the Labor Code, Title 5.

Labor Code §402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act.

Labor Code §402.00128 vests general operational powers to the Commissioner including the authority to delegate, and assess and enforce penalties as authorized by Labor Code, Title 5.

Labor Code §413.0511 requires the Division to employ or contract with a medical advisor as that term is defined by Labor Code §401.011, such person to make recommendations regarding rules adoption and policies to implement the Texas Workers' Compensation Act and the imposition of sanctions.

Labor Code §413.05115 requires the Division to develop and the Commissioner to adopt criteria concerning the medical case review process with input from potentially affected parties including health care providers and insurance carriers. The criteria developed and adopted must establish process or processes for handling complaint-based medical case reviews and through which the Division selects health care providers or other entities for compliance audit or review. The Division shall make the criteria developed and adopted available on the Division website.

Labor Code §413.0512 provides that the medical advisor shall establish an MGRP of health care providers to assist the medical advisor in performing the duties required under Labor Code §413.0511. The panel is not subject to Chapter 2110, Government Code. The medical advisor shall notify the Division if he or she determines that it is no longer necessary for the panel to include a member that practices in a particular health care specialty field; or there is a need for the panel to include a member that practices in a particular health care specialty field not represented on the panel. Further, if the Division receives notice from the medical advisor of the latter situation, the Division may enter into agreements with other state agencies to access, as necessary, expertise in that health care specialty field.

Labor Code §413.05121 requires the establishment of a QAP within the MGRP to provide an additional level of evaluation in medical case reviews, assist the medical advisor and MGRP, evaluate medical care and recommend enforcement actions to the medical advisor.

Labor Code §413.05122 requires the Commissioner to adopt rules concerning the operation of the MQRP, including rules that establish the qualifications necessary for a health care provider to serve on the MQRP and the composition of the MQRP, including the number of members to be included on the panel and the health care specialty fields required to be represented.

Labor Code §413.0513 provides that information collected, assembled, or maintained by or on behalf of the Division under Labor Code §413.0511 or §413.0512 constitutes an investigation file for purposes of Labor Code §402.092 and may not be disclosed under Labor Code §413.0511 or §413.0512 except as provided by that section.

Labor Code §413.0514 allows for information sharing with occupational licensing boards and applies to information held by or for the Division, the Texas State Board of Medical Examiners, and the Texas Board of Chiropractic Examiners that relates to a person who is licensed or otherwise regulated by any of those state agencies. This section provides sharing and access to otherwise confidential information. Information received by the Division remains confidential, and may not be disclosed by the Division except as necessary to further the investigation, and shall be exempt from disclosure under Labor Code §402.092 and §413.0513.

Labor Code §413.0515 sets forth that the Division shall report physician and chiropractic violations to the Texas State Board of Medical Examiners and the Texas Board of Chiropractic Examiners if the Division or either Board discovers an act or omission by a physician or chiropractor that may constitute a felony, misdemeanor involving fraud or abuse under Medicare or Medicare or controlled substance law or a violation under the Labor Code, Title 5.

Labor Code §415.021 provides for assessment of administrative penalties if a person violates, fails to comply with, or refuses to comply with a rule or the Texas Workers' Compensation Act.

## **7. TEXT**

### **§180.60 *Definitions***

The following terms, when used in this subchapter, shall have the following meanings:

(1) Doctor--As defined by Labor Code §401.011(17), a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(2) Medical Case Review--A review of a particular case by a Medical Quality Review Panel (MGRP) member regarding professional medical services, delivery of health care, or the quality of a health care practitioner's opinion, recommendation or report. Medical case review includes but it is not limited to review of a treating doctor, peer review doctor, designated doctor, another health care practitioner, an independent review organization, an insurance carrier, or a utilization review agent.

### **§180.62 *Medical Quality Review Panel***

(a) The purpose of the Medical Quality Review Panel (MGRP) is to assist the medical advisor in the performance of the medical advisor's duties under Labor Code §413.0511 in accordance with the provisions of Labor Code §413.0512 and §413.05121.

(b) Members of the MGRP who prepare reports for medical case review shall be known as MGRP Experts.

(c) Applicants may be selected and appointed to the MGRP at the discretion of the medical advisor and the commissioner of workers' compensation (commissioner) in accordance with this section. The MGRP shall be composed of health care practitioners appointed by the medical advisor and the commissioner in accordance with this section.

(1) The MGRP must have at least 25 members.

(2) The MQRP must, at a minimum, have members in the following health care specialty fields:

(A) Orthopedic Surgery--A medical doctor (MD) or a doctor of osteopathy (DO) with board certification in orthopedic surgery.

(B) Neurosurgery--An MD or DO with board certification in neurological surgery.

(C) Chiropractic--A licensed doctor of chiropractic.

(D) Occupational Medicine--An MD or DO with board certification in occupational medicine.

(E) Pain Medicine--An MD or DO with a board certification in a subspecialty of anesthesiology, neurology or physical medicine.

(3) The MQRP may have members that include other types of health care practitioners determined to be necessary by the medical advisor and the commissioner.

(d) To be eligible to serve on the MQRP, a health care practitioner must meet the following criteria, as applicable:

(1) Possess an unrestricted license to practice in Texas with the appropriate credentials, as defined by §180.1 of this title (relating to Definitions);

(2) Board certified in a specialty or subspecialty. An MD or DO is board certified in a specialty or subspecialty if the MD or DO holds:

(A) a general certificate in the specialty or a subspecialty certificate from one of the member boards of the American Board of Medical Specialties (ABMS); or

(B) a primary certificate in the specialty and:

(i) a certificate of special qualifications from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS); or

(ii) a certificate of added qualifications in the subspecialty from the AOABOS.

(3) An active practice in Texas. "Active practice" means, within either of the last two calendar years, at the time of appointment to the MQRP, the applicant has:

(A) actively diagnosed or treated persons at least 20 hours per week for 40 weeks duration during a given calendar year; or

(B) performed administrative, leadership, or advisory roles in the practice of medicine.

(4) The medical advisor and the commissioner may waive the requirements of paragraphs (2) and (3) of this section if needed to adequately perform medical case review.

(e) Term; Resignation; Removal.

(1) MQRP members shall be appointed for a term of two years. They shall serve until the expiration of their term, until their resignation, or until their removal from the MQRP.

(2) An MQRP member may not serve on the panel for more than 10 years. Years served prior to September 1, 2013 do not count toward the 10 year limit.

(3) An MQRP member may resign from the MQRP at any time.

(4) An MQRP member may be removed from the MQRP for cause at any time immediately upon notice to the MQRP member, or at such later date as the division may establish in such notice upon the occurrence of any of the following:

(A) Failure to maintain the eligibility requirements of this subchapter;

(B) Failure to timely inform the division of conflicts of interest;

(C) Repeated failure to timely review medical case review assignments or timely submit reports to the division;

(D) Repeated failure to prepare the reports in the prescribed format; or

(E) Other issues deemed sufficient by the medical advisor or commissioner.

(f) An MQRP member shall not use his or her position to influence an insurance carrier, agent, or other person or entity in connection with a personal or other insurance related matter beyond referring to their position to demonstrate qualifications except as otherwise provided by this subchapter.

(g) Quality Assurance Panel.

(1) The medical advisor shall establish the Quality Assurance Panel (QAP) within the MQRP. All members of the QAP are members of the MQRP. They perform all of the duties of an MQRP member under Labor Code §413.0512 as well as the duties of a QAP member under Labor Code §413.05121.

(2) A member of the QAP shall also be known as an Arbiter.

(3) QAP members may provide any services to the medical advisor provided by Labor Code §413.0512 and §413.05121, including, but not limited to:

(A) serve as the chair to the quality assurance committee;

(B) serve as expert witnesses in enforcement actions as appropriate;

(C) provide an additional level of medical expertise and quality assurance to assist the medical advisor in the medical advisor's duties under Labor Code §413.0511; and

(D) perform medical case review if no other MQRP member is available in a specific area of expertise. In this case the Arbiter would be ineligible from sitting on the ISC for the subject the Arbiter reviewed.

**§180.64 MQRP Application Process**

(a) To apply to the MQRP, a person must submit an application in the form and manner required by the division demonstrating compliance with the required qualifications. The application must contain complete information as provided by subsection (b) of this section. The medical advisor and the Commissioner may select and appoint only qualified applicants to the division's MQRP but are not required to accept all applicants who meet the requirements specified in this subchapter.

(b) The division's required application form for the MQRP, at a minimum, shall include:

- (1) contact information for the health care practitioner;
- (2) information about the health care practitioner's education;
- (3) a description of the health care practitioner's license(s), certifications, and professional specialty, if any;
- (4) a description of the health care practitioner's work history and hospital or other health care practitioner affiliations;
- (5) a description of any affiliations the health care practitioner has with a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2);
- (6) identification of and a description of all current and past medical review affiliations, including but not limited to an independent review organization (IRO), utilization review agent (URA), licensing board, and insurance carrier;
- (7) information regarding the health care practitioner's current practice locations;
- (8) disclosure regarding the health care practitioner's professional background, education, training, and fitness to perform the duties of an MQRP member, including disclosure of

any disciplinary actions or other sanctions taken against the health care practitioner by any state licensing board, state or federal agency, and hospital or other health care institution, as well as disclosure of any voluntary relinquishments, drug and alcohol misuse, malpractice claims history and criminal history;

(9) a description of all ownership interests or other financial arrangements, such as salaried or contract employment, involving a person or their agent subject to the Act or a rule, order, or decision of the commissioner;

(10) an authorization for third parties to release information relevant to the verification of the information provided on the application to the division;

(11) an affirmation that all information provided in the application is accurate and complete to the best of the health care practitioner's knowledge; and

(12) an affirmation of understanding of the legal requirements, including confidentiality provisions, for MQRP members.

(c) A credentialing application for hospital credentialing may substitute for some items under subsection (b) of this section.

(d) The health care practitioner must inform the medical advisor of any changes to this information within 30 days after the change.

(e) The application shall be reviewed by the medical advisor.

(f) The medical advisor and the commissioner have the discretion to select, appoint and remove an applicant to the MQRP.

(g) Membership in the MQRP is for a term of two years. The acceptance letter will include the effective date and expiration date.

(h) Membership in the MQRP is not a guarantee of any number of assignments.

(i) MQRP members shall be entitled to compensation for work assigned by the medical advisor at the following hourly rates:

(1) Doctors - Medical case reviews, ad hoc work groups, or special projects: \$150 per hour.

(2) Non-Doctors - Medical case reviews, ad hoc work groups or special projects: \$100 per hour.

(3) Limits on hours. A member shall not be paid for more than:

(A) five hours for a medical case review of a single case;

(B) five hours for ad hoc work group or special project service; or

(C) 20 hours in a given calendar month.

(4) The medical advisor may approve additional hours in writing upon review of a submitted narrative report or a report of an ad hoc work group.

(5) Hearings or trial preparation.

(A) Doctors - Payment for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial: \$350 per hour.

(B) Non-doctors - Payment for time spent in hearing or in trial preparation, in providing testimony in deposition, hearing or trial: \$175 per hour.

(C) An MQRP member shall not be paid for more than eight hours per day for a deposition, a hearing, trial preparation or court testimony. If travel is required, the division will pay the member for travel, lodging and per diem expenses in accordance with the Texas State Travel Management Program, 34 TAC §20.301 et seq.

(6) The division may vary the above reimbursement provisions if deemed by the division to be in the best interests of the division or the State of Texas.

(j) In accordance with Labor Code §§402.083 - 402.086, 402.091, 402.092, and 413.0513, an MQRP member may not disclose confidential information, including a report or other documentation prepared by the MQRP member for the division.

(k) All reports and related documents, including electronic and non-electronic data, prepared by or furnished to the member for the MQRP, are the sole property of the division.

#### **§180.66 *Medical Case Review***

The MQRP may perform medical case review for the medical advisor. Medical case review may be performed for the purposes of the medical quality review process, designated doctor certification and recertification, performance based oversight, or any other medical case review necessary to assist the medical advisor in performing the medical advisor's duties under the Labor Code.

#### **§180.68 *Medical Quality Review Process***

(a) The medical quality review process is medical case review initiated on the basis of complaints, plan-based audits, or monitoring as a result of a consent order and performed in accordance with criteria adopted under Labor Code §413.05115. The medical quality review process does not include medical case review performed for the purpose of:

- (1) certification and recertification of designated doctors;
- (2) performance based oversight;
- (3) administrative violations that do not require an expert medical opinion; or
- (4) complaints regarding professionalism that do not require an expert medical opinion.

(b) A complaint must be documented in accordance with the provisions of §180.2 of this title (relating to Filing a Complaint).

(c) Nothing in this subchapter prevents referrals of complaints to another licensing or law enforcement authority.

**§180.70 MQRP Training**

An MQRP member must receive training by the division prior to any assignments and at least every two years thereafter on the following topics:

- (1) The requirements of this subchapter concerning the medical quality review process under §180.68 of this title (relating to Medical Quality Review Process);
- (2) The division's goals regarding the medical quality review process;
- (3) Administrative violations that affect the delivery of appropriate medical care;
- (4) Confidentiality requirements of Labor Code §§402.083, 402.091, 402.092 and 413.0513;
- (5) Immunity from liability under Labor Code §413.054;
- (6) The medical quality review criteria adopted under Labor Code §413.05115;
- (7) The current division adopted edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and the division's adopted treatment and return-to-work guidelines; and
- (8) Other topics as determined by the medical advisor and commissioner.

**§180.72 Conflict of Interest**

(a) If the selected MQRP member has a conflict of interest in a case under medical review, that member may not review the case or serve as an arbiter. If all MQRP members in a particular health care specialty field as the subject of a medical case review have conflicts of interest in a case under medical case review, and the division is unable to enter into an interagency agreement

pursuant to subsection (e) of this section, then the division may refer the case to the appropriate licensing authority.

(b) A conflict of interest exists if the selected MQRP member:

(1) has a familial relationship within the third degree of affinity with any party or witness related to the case;

(2) has a relationship with the subject beyond a mere acquaintance;

(3) has ever treated the injured employee whose records are being reviewed;

(4) in regard to a particular injured employee's claim, has served as a:

(A) peer review doctor;

(B) designated doctor; or

(C) required medical examination doctor.

(5) has a financial interest in a matter as set forth in §180.24 of this title (relating to Financial Disclosure);

(6) is a medical director for an Insurance Carrier, Utilization Review Agent, or a workers' compensation health care network certified under Chapter 1305 of the Insurance Code or a political subdivision as described in Labor Code §504.053(b)(2). Medical directors can perform all functions of the MQRP and the QAP except performing individual medical case reviews or serving as Arbiters in a informal settlement conference (ISC); or

(7) has other issues deemed to be a conflict of interest by the medical advisor.

(c) If an MQRP member selected for a medical case review has a conflict of interest, the member must notify the medical advisor of the conflict before taking any further action on the case.

(d) If the medical advisor has a conflict of interest in a case, the medical advisor must recuse himself from the case and appoint the associate medical advisor to perform the role of the

medical advisor in the case, including enforcement decisions and recommendations. If the associate medical advisor also has a conflict of interest in the case, the commissioner shall delegate the duties of the medical advisor, including enforcement decisions and recommendations, for that particular case, to an Arbitrator.

(e) The division may enter into agreements with other state agencies to access, as necessary, expertise in health care specialty fields as determined by the medical advisor.

#### **§180.74 MQRP Notification of Case Status**

The division shall notify MQRP panel members in writing at least quarterly of the status of and enforcement outcomes resulting from cases in the medical quality review process. A MQRP panel member shall comply with all confidentiality laws that apply to information provided under this section including Labor Code §§402.083 - 402.086, 402.091, 402.092 and 413.0513.

#### **§180.76 Rights and Responsibilities of Persons Involved in the Medical Quality Review Process**

(a) The person subject to the medical quality review process has the right:

(1) to be notified that the person has been selected for the medical quality review process;

(2) to be notified of the disposition of the medical quality review process;

(3) to communicate with the office of the medical advisor at any time during the medical quality review process;

(4) to be represented by legal counsel, including legal counsel at the informal settlement process (ISC); and

(5) to an ISC in accordance with the provisions of this section. The ISC provides persons subject to the medical quality review process an opportunity to discuss and resolve their medical case review with Arbiters. An ISC is available under the following conditions:

(A) The case has been referred to enforcement.

(B) The request for an ISC must be in writing.

(C) The division will notify the requestor of the scheduled date of the ISC.

(D) The requestor has the right to receive all documents given to the Arbiters for review for that particular case.

(E) All information the requestor wishes the Arbiters to consider at the ISC must be received by the division no later than 15 days before the ISC. The Arbiters may refuse to consider any information not timely received by the division.

(F) The requestor may request to reschedule the scheduled date of the ISC for good cause shown, in writing, as determined by an attorney from the division's office of general counsel. Good cause means circumstances beyond the control of the requestor that reasonably prevent the requestor from attending the ISC and requesting that the ISC be rescheduled any sooner.

(G) If a requestor fails to attend an ISC as scheduled, the requestor forfeits his right to an ISC, but it does not preclude the requestor from discussing the requestor's case with the medical advisor as set forth in paragraph (3) of this subsection, from entering into a Consent Order with the division, or from defending an enforcement case at the State Office of Administrative Hearings.

(b) A person subject to a medical case review must:

- (1) provide records and information requested from the office of the medical advisor in the format and manner specified by the division;
- (2) provide the records and information within the time period specified in the request;
- and
- (3) attach an accurate and completed business records affidavit to the request for records and information.

**§180.78 *Effective Date***

This subchapter is effective on January 1, 2013. Existing members of the MGRP on that date shall continue to serve through the terms of their contracts. New terms of membership after January 1, 2013 shall be established through the process in this subchapter.

**8. CERTIFICATION.**

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

Issued at Austin, Texas, on \_\_\_\_\_, 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 28 TAC §180.60, concerning Definitions; §180.62, concerning Medical Quality Review Panel; §180.64, concerning MQRP Application Process; §180.66, concerning Medical Case Review; §180.68, concerning Medical Quality Review Process; §180.70, concerning MQRP Training; §180.72, concerning Conflict of Interest; §180.74, concerning MQRP Notification of Case Status; §180.76, concerning Rights and Responsibilities of Persons Involved in the Medical Quality Review Process; and §180.78, concerning Effective Date, are adopted.

AND IT IS SO ORDERED.

\_\_\_\_\_  
X  
\_\_\_\_\_

ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

X  
\_\_\_\_\_

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