

1 **CHAPTER 127: DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS**
2 **SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS**
3 **28 TAC §127.1-127.25**
4

5 **TEXT.**

6 **§127.1. Requesting Designated Doctor Examinations.**

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

- 11 (1) the impairment caused by the injured employee's compensable injury;
- 12 (2) the attainment of maximum medical improvement (MMI);
- 13 (3) the extent of the injured employee's compensable injury;
- 14 (4) whether the injured employee's disability is a direct result of the work-
15 related injury;
- 16 (5) the ability of the injured employee to return to work; or
- 17 (6) issues similar to those described by paragraphs (1)-(5) ~~[(1)-(5)]~~ of this
18 subsection.

19 (b) Requirements for a request. To request a designated doctor examination, a
20 requester ~~[requestor]~~ must:

- 21 (1) provide a specific reason for the examination;
- 22 (2) report the injured employee's current diagnosis or diagnoses and body
23 part or body parts affected by the injury;
- 24 ~~[(3) list all injuries determined to be compensable by the division or court,~~
25 ~~or all injuries accepted as compensable by the insurance carrier;]~~
- 26 (3) ~~[(4)]~~ provide general information about ~~[regarding]~~ the identity of the
27 requester ~~[requestor]~~, injured employee, ~~[employer,]~~ treating doctor, and insurance
28 carrier;

1 (4) [(5)] identify the workers' compensation health care network certified
2 under Insurance Code[,] Chapter 1305 through which the injured employee is receiving
3 treatment, if applicable;

4 (5) [(6)] identify whether the claim involves medical benefits provided
5 through a political subdivision under Labor Code §504.053(b)(2) and the name of the
6 health plan, if applicable;

7 (6) [(7)] submit the request on the form prescribed by the division under
8 this section. A copy of the prescribed form is [~~can be obtained from~~]:

9 (A) on the division's website at www.tdi.texas.gov/wc
10 [www.tdi.texas.gov/wc/indexwc.html]; or

11 (B) at the division's headquarters in Austin, Texas [~~the Texas~~
12 ~~Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive,~~
13 ~~Suite 100, Austin, Texas 78744~~] or any [~~local~~] division field office location;

14 (7) [(8)] submit the request to the division and a copy of the request to
15 each party listed in subsection (a) of this section who did not request the designated
16 doctor examination;

17 (8) [(9)] provide all information listed in subparagraphs (A)-(G) [(A)-(G)]
18 [~~of this paragraph~~] below that applies [~~applicable~~] to the type of examination the
19 requester [~~requestor~~] seeks:

20 (A) if the requester [~~requestor~~] seeks an examination on the
21 attainment of MMI, include the statutory date of MMI [~~maximum medical improvement~~],
22 if any;

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

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

4 (D) if the requester [~~requestor~~] seeks an examination on whether
5 the injured employee's disability is a direct result of the work-related injury, include the
6 beginning and ending dates for the claimed periods of disability and [;] state if the
7 injured employee is either not working or is earning less than pre-injury wages as
8 defined by Labor Code §401.011(16);

9 (E) if the requester [~~requestor~~] seeks an examination on [~~regarding~~]
10 the injured employee's ability to return to work in any capacity and the [~~what~~] activities
11 the injured employee can perform, include the beginning and ending dates for the
12 periods to be addressed. If no dates are included, [~~if the requestor is requesting for~~] the
13 designated doctor will [~~to~~] examine the injured employee's work status as of the date of
14 the examination; [~~during a period other than the current period;~~]

15 (F) if the requester [~~requestor~~] seeks an examination to determine
16 whether [~~or not~~] an injured employee entitled to supplemental income benefits may
17 return to work in any capacity for the identified period, include the beginning and
18 ending dates for the qualifying periods to be addressed and whether [~~or not~~] this period
19 involves the ninth quarter or a subsequent quarter of supplemental income benefits;

20 (G) if the requester [~~requestor~~] seeks an examination on topics
21 under subsection (a)(6) of this section, specify the issue in sufficient detail for the
22 designated doctor to identify and answer the questions; [~~question(s);~~] and

23 (9) [~~(10)~~] provide a signature to attest that every reasonable effort has
24 been made to ensure the accuracy and completeness of the information [~~provided~~] in
25 the request.

26 (c) Scheduling an examination within 60 days. The division will not schedule [~~If a~~
27 ~~party submits a request for~~] a designated doctor examination [~~under subsection (b) of~~

1 ~~this section that would require the division to schedule an examination]~~ within 60 days
2 of the most recent designated doctor ~~[a previous]~~ examination absent a showing of ~~[the~~
3 ~~injured employee that party must provide]~~ good cause. ~~[for scheduling that designated~~
4 ~~doctor examination in order for the division to approve the party's request. For the~~
5 ~~purposes of this subsection, the commissioner or the commissioner's designee shall~~
6 ~~determine good cause on a case by case basis and will require at a minimum:]~~

7 (1) Good cause requires the requester to show that the requested
8 examination ~~[if that requester also requested the previous examination, a showing by~~
9 ~~the requester that the submitted questions could not have reasonably been included in~~
10 ~~the prior examination and a designated doctor examination]~~ is reasonably necessary to
11 resolve the submitted questions ~~[question(s)]~~ and that it will affect entitlement to
12 benefits. ~~[- or]~~

13 (2) If the requester already asked for an examination on the claim, they
14 must also show that the submitted questions could not reasonably have been included
15 in the previous examination. ~~[if that requester did not request the previous examination,~~
16 ~~a showing by the requester a designated doctor examination is reasonably necessary to~~
17 ~~resolve the submitted question(s) and will affect entitlement to benefits.]~~

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

22 (1) ~~[if]~~ the request does not comply with any of the requirements of
23 subsection (b) or (c) of this section;

24 (2) ~~[if]~~ the request would require the division to schedule an examination
25 that violates ~~[in violation of]~~ Labor Code §§408.0041, 408.123, or 408.151;

26 (3) there is an unresolved dispute about compensability reported under
27 §124.2 of this title (relating to Insurance Carrier Notification Requirements); or

1 ~~(4) [if the commissioner or the commissioner's designee determines] the~~
2 request ~~[to be frivolous because it]~~ lacks ~~[either]~~ any legal or ~~[any]~~ factual basis that
3 would reasonably merit approval. ~~[- or]~~

4 ~~[(4) if the insurance carrier has denied the compensability of the claim or~~
5 ~~otherwise denied liability for the claim as a whole and reported the denial to the division~~
6 ~~in accordance with §124.2 of this title (relating to Carrier Reporting and Notification~~
7 ~~Requirements) and the dispute is not yet resolved.]~~

8 (e) Examination ordered during a dispute. During a dispute on the compensability
9 of a claim as a whole, if [if] a division administrative law judge or benefit review officer
10 determines [during a dispute regarding the compensability of a claim as a whole] that
11 an expert medical opinion would be necessary to resolve a dispute about [as to]
12 whether the claimed injury resulted from the claimed incident, the administrative law
13 judge or benefit review officer may order the injured employee to attend a designated
14 doctor examination to address that issue.

15 (f) Disputes about designated doctor requests. The [A party may dispute the
16 division's approval or denial of a designated doctor request through the] dispute
17 resolution processes in Chapters 140-144 [outlined in Chapters 140–144] and 147 of
18 this title (relating to dispute resolution processes, proceedings, and procedures) govern
19 disputes about designated doctor requests.

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

23 (2) Until the division has either approved or denied the request, a party
24 [Parties] may not dispute the [a] designated doctor examination request itself or the
25 accuracy of any information on the request [until the division has either approved or
26 denied the request].

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

7 (4) If the division receives and approves a timely [The division, upon timely
8 receipt and approval of the] request for expedited proceedings to dispute a designated
9 doctor examination, the division will [shall] stay the disputed examination pending the
10 outcome [decision and order] of the expedited contested case hearing [Parties seeking
11 expedited proceedings and the stay of an ordered examination must file their request
12 for expedited proceedings with the division within three working days of receiving the
13 order of designated doctor examination under §127.5(b) of this title (relating to
14 Scheduling Designated Doctor Appointments)].

15 ~~[(g) This section will become effective on December 6, 2018.]~~

16

1 **§127.5. Scheduling Designated Doctor Appointments.**

2 ~~[(a) Applicability. This section applies to designated doctor examination requests~~
3 ~~made on or after the effective date of this section.]~~

4 ~~(a) [(b)]~~ Order assigning a designated doctor. Within ~~[The division, within]~~ 10 days
5 after ~~approving [approval of]~~ a valid request, ~~the division will [shall]~~ issue an order that
6 assigns a designated doctor and ~~will [shall]~~ notify the designated doctor, the treating
7 doctor, if any, the injured employee, the injured employee's representative, if any, and
8 the insurance carrier that the designated doctor is ~~[will be]~~ directed to examine the
9 injured employee. The order ~~will [shall]~~:

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

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

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

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

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

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

25 ~~(c) [(d)]~~ Availability of designated doctor. Except as provided in subsection ~~(g)~~
26 ~~[(h)]~~ of this section, the division ~~will [shall]~~ select the next available doctor on the
27 designated doctor list for a medical examination requested under §127.1 of this title

1 (relating to Requesting Designated Doctor Examinations). A designated doctor is
2 available to perform an examination at any address the doctor has filed with the division
3 if the doctor:

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

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

9 (3) is ~~[a]~~ certified ~~[designated doctor]~~ on the day the examination is
10 offered and has not failed to timely file for renewal ~~[recertification]~~ under §127.100 of
11 this title (relating to Designated Doctor Certification) ~~[§127.110 of this title (relating to~~
12 ~~Designated Doctor Recertification)]~~, if applicable; ~~[and]~~

13 (4) has not treated or examined the injured employee in a different health
14 care provider role: ~~[non-designated doctor capacity]~~

15 (A) within the past 12 months; or

16 (B) for ~~[and has not examined or treated the injured employee in a~~
17 ~~non-designated doctor capacity with regard to]~~ a medical condition being evaluated in
18 the designated doctor examination.

19 (d) ~~[(e)]~~ Designated doctor lists. To select the next available doctor, the division
20 will maintain two independent designated doctor lists for each county in Texas ~~[this~~
21 ~~state]~~.

22 (1) One list will consist of designated doctors qualified to perform
23 examinations under §127.130(b)(1)-(4) ~~[§127.130(b)(1)-(4)]~~ of this title. ~~[, and the]~~

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

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

1 (4) ~~[(1)]~~ A designated doctor will be added to the appropriate designated
2 doctor list for the county of each address the doctor has filed with the division.

3 (5) ~~[(2)]~~ When a designated doctor adds an address for a county the
4 doctor is not currently listed in, the doctor will be placed at the bottom of the
5 appropriate list for that county.

6 (6) ~~[(3)]~~ When a designated doctor removes the only address for a county
7 the doctor is currently listed in, the designated doctor will be removed from the list for
8 that county.

9 (e) ~~[(f)]~~ Assignment of designated doctor examinations. Except as provided in
10 subsection (f) ~~[(h)]~~ of this section, the division will assign designated doctor
11 examinations as follows:

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

15 (2) Depending on the volume of requested examinations, the division will
16 ~~[then]~~ assign up to five examinations to the next available designated doctor at the top
17 of the appropriate list.

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

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

25 (f) ~~[(g)]~~ Exemptions. Nothing in this section prevents the division from exempting
26 a designated doctor from the applicable qualification standard under §127.130(d) of this
27 title. If there is no available designated doctor in the county of the injured employee, the

1 [The] division may assign a designated doctor as necessary [~~if there is no available~~
2 ~~designated doctor in the county of the injured employee~~].

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

11 (h) [~~(g)~~] Mutual agreement required to reschedule. The designated doctor's office
12 and the injured employee must [~~shall~~] contact each other if there is a scheduling conflict
13 [~~exists for the designated doctor appointment~~]. The designated doctor or the injured
14 employee who has the scheduling conflict must [~~make the~~] contact the other at least
15 one working day before [~~prior to~~] the appointment. The one working day requirement is
16 [~~will be~~] waived in an emergency situation. An examination cannot be rescheduled
17 without the mutual agreement of [~~both~~] the designated doctor and the injured
18 employee. The designated doctor must maintain and document:

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

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

23 (3) how contact was made to reschedule, indicating [~~indicate~~] the
24 telephone number, fax [~~facsimile~~] number, or email [~~address~~] used to make contact;

25 (4) the reason for the scheduling conflict; and

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

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

5 (j) ~~(k)~~ Rescheduling timeframes. The rescheduled examination will ~~shall~~ be set
6 to occur no later than 21 days after the originally scheduled examination date ~~[of the~~
7 ~~originally scheduled examination and]~~. It may not be rescheduled to occur before the
8 originally scheduled examination date.

9 (1) Within one working day of rescheduling, the designated doctor must
10 provide the time and date of the rescheduled examination to ~~[shall contact]~~ the division,
11 the injured employee or the injured employee's representative, if any, the injured
12 employee's treating doctor, and the insurance carrier ~~[with the time and date of the~~
13 ~~rescheduled examination]~~.

14 (2) If the examination cannot be rescheduled to occur within ~~[no later~~
15 ~~than]~~ 21 days of ~~[after]~~ the originally scheduled examination date, ~~[of the originally~~
16 ~~scheduled examination]~~ or if the injured employee fails to attend the rescheduled
17 examination, the designated doctor must ~~shall~~ notify the division within ~~[as soon as~~
18 ~~possible but not later than]~~ 21 days of ~~[after]~~ the originally scheduled examination date
19 ~~[of the originally scheduled examination]~~.

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

22 ~~[(l) This section will become effective on December 6, 2018.]~~

23

1 **§127.10. General Procedures for Designated Doctor Examinations.**

2 (a) Authorization to receive documents. The designated doctor is authorized
3 under Labor Code §408.0041(c) to receive the injured employee's confidential medical
4 records and analyses of the injured employee's medical condition, functional abilities,
5 and return-to-work opportunities without a signed release from the injured employee to
6 help resolve ~~[to assist in the resolution of]~~ a dispute under this subchapter ~~[without a~~
7 ~~signed release from the injured employee]~~. The following requirements apply to the
8 designated doctor's receipt of medical records and analyses ~~[by the designated doctor]:~~

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

12 (A) For subsequent examinations with the same designated doctor,
13 the treating doctor and insurance carrier must provide only those medical records not
14 previously sent ~~[must be provided]~~.

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

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

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

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

1 (C) If the treating doctor sends an analysis to the designated doctor,
2 the treating doctor must [~~shall~~] send a copy to the insurance carrier, the injured
3 employee, and the injured employee's representative, if any [~~The analysis sent by any~~
4 ~~party may only cover the injured employee's medical condition, functional abilities, and~~
5 ~~return to work opportunities as provided in Labor Code §408.0041~~].

6 (3) The treating doctor and insurance carrier must [~~shall~~] ensure that the
7 designated doctor receives the required records and analyses (if any) [~~are received by~~
8 ~~the designated doctor~~] no later than three working days before [~~prior to~~] the date of the
9 designated doctor examination.

10 (A) If the designated doctor has not received the medical records or
11 any part of them [~~thereof~~] at least three working days before [~~prior to~~] the examination,
12 the designated doctor must [~~shall~~] report this violation to the division within one
13 working day of not timely receiving the records.

14 (B) Once notified, the division will [~~shall~~] take action necessary to
15 ensure that the designated doctor receives the records.

16 (C) If the designated doctor does not receive the medical records
17 within one working day of the examination or [~~if the designated doctor~~] does not have
18 sufficient time to review the late medical records before the examination, the designated
19 doctor must [~~shall~~] reschedule the examination to occur no later than 21 days after
20 receiving [~~receipt of~~] the records.

21 (b) Requirement to review information. Before examining an injured employee,
22 the designated doctor must [~~shall~~] review the injured employee's medical records,
23 including any analysis of the injured employee's medical condition, functional abilities,
24 and return to work opportunities that [~~provided by~~] the insurance carrier and treating
25 doctor provide in accordance with subsection (a) of this section, and any materials the
26 division submits [~~submitted~~] to the doctor [~~by the division~~].

1 (1) The designated doctor must ~~[shall]~~ also review the injured employee's
2 medical condition, ~~[and]~~ history, and any medical records [as provided by] the injured
3 employee provides; [any medical records provided by the injured employee,] and must
4 ~~[shall]~~ perform a complete physical examination of the injured employee.

5 (2) The designated doctor must ~~[shall]~~ give the medical records reviewed
6 the weight the designated doctor determines to be appropriate.

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

12 (1) Any additional testing or referrals ~~[referral]~~ required for the evaluation
13 are ~~[is]~~ not subject to preauthorization requirements.

14 (2) Payment for additional testing or referrals that the designated doctor
15 has determined are necessary under this subsection will not ~~[nor shall those services]~~ be
16 denied prospectively or retrospectively, regardless of any potential disagreements about
17 ~~[based on]~~ medical necessity, extent of injury, or compensability. ~~[in accordance with the~~
18 ~~Labor Code §408.027 and §413.014, Insurance Code Chapter 1305, or Chapters 10, 19,~~
19 ~~133, or 134 of this title (relating to Workers' Compensation Health Care Networks,~~
20 ~~Agents' Licensing, General Medical Provisions, and Benefits—Guidelines for Medical~~
21 ~~Services, Charges, and Payments, respectively) but is]~~

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

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

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

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

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

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

17 (d) MMI and impairment ratings. Any evaluation relating to either MMI
18 ~~[maximum medical improvement (MMI)]~~, an impairment rating, or both, must [shall] be
19 conducted in accordance with §130.1 of this title (relating to Certification of Maximum
20 Medical Improvement and Evaluation of Permanent Impairment). The [If a] designated
21 doctor may [is simultaneously requested to address MMI or impairment rating and the
22 extent of the compensable injury in a single examination, the designated doctor shall]
23 provide multiple certifications of MMI and impairment ratings only when directed by the
24 division [that take into account each reasonable outcome for the extent of the injury].

25 (e) Reports on MMI and impairment ratings. A designated doctor who determines
26 the injured employee has reached MMI, ~~[or who]~~ assigns an impairment rating, or ~~[who]~~
27 determines the injured employee has not reached MMI, must [shall] complete and file a

1 report as required by §§130.1 and 130.3 [~~§130.1 of this title and §130.3~~] of this title
2 (relating to Certification of Maximum Medical Improvement and Evaluation of
3 Permanent Impairment by a Doctor Other than the Treating Doctor).

4 (1) If the designated doctor provides [~~provided~~] multiple certifications of
5 MMI and impairment ratings, the designated doctor must file a Report of Medical
6 Evaluation under §130.1(d) of this title for each assigned impairment rating [~~assigned~~
7 and a Designated Doctor Examination Data Report pursuant to §127.220 of this title
8 (relating to the Designated Doctor Reports) for the doctor's extent of injury
9 determination].

10 (2) The designated doctor must [~~however, shall only~~] submit only one
11 narrative report required by §130.1(d)(1)(B) of this title on [~~for~~] all assigned impairment
12 ratings [~~assigned~~] and extent of injury findings.

13 (3) All designated doctor narrative reports submitted under this subsection
14 must [~~shall also~~] comply with the requirements of §127.220(a) of this title (relating to
15 Designated Doctor Reports).

16 (f) [~~(e)~~] Reports on return-to-work. A designated doctor who examines an injured
17 employee for [~~pursuant to~~] any question relating to return to work must complete [~~is~~
18 ~~required to file~~] a Work Status Report that complies with [~~meets the required elements~~
19 ~~of these reports described in~~] §129.5 of this title (relating to Work Status Reports) and a
20 narrative report that complies with the requirements of §127.220(a) of this title. The
21 designated doctor must file the work status report and the narrative report together
22 within seven working days of the date the designated doctor examines [~~of the~~
23 ~~examination of~~] the injured employee.

24 (1) The designated doctor must file the reports [~~This report shall be filed~~]
25 with the treating doctor, the division, and the insurance carrier by fax [~~facsimile~~] or
26 electronic transmission.

1 (2) ~~The [In addition, the]~~ designated doctor must ~~[shall]~~ file the reports
2 with the injured employee and the injured employee's representative (if any) by fax
3 ~~[facsimile]~~ or ~~[by]~~ electronic transmission if the designated doctor has a fax ~~[been~~
4 ~~provided with a facsimile]~~ number or email ~~[address]~~ for the recipient. ~~[, otherwise,]~~

5 (3) If the designated doctor has no fax number or email for a recipient, the
6 designated doctor must ~~[shall]~~ send them the reports ~~[report]~~ by other verifiable means.

7 (g) ~~(f)~~ Report on other issues. A designated doctor who resolves questions on
8 issues other than those listed in subsections (d), ~~[and]~~ (e), and (f) of this section must file
9 ~~[, shall file a Designated Doctor Examination Data Report that complies with §127.220(c)~~
10 ~~of this title and]~~ a narrative report that complies with §127.220(a) of this title within
11 seven working days of the date the designated doctor examines ~~[of the examination of]~~
12 the injured employee.

13 (1) The designated doctor must file this report ~~[These reports shall be filed]~~
14 with the treating doctor, the division, and the insurance carrier by fax ~~[facsimile]~~ or
15 electronic transmission.

16 (2) ~~The [In addition, the]~~ designated doctor must ~~[shall]~~ provide this report
17 ~~[these reports]~~ to the injured employee and the injured employee's representative (if
18 any) by fax ~~[facsimile]~~ or ~~[by]~~ electronic transmission if the designated doctor has a fax
19 ~~[been provided with a facsimile]~~ number or email ~~[address]~~ for the recipient. ~~[,~~
20 ~~otherwise,]~~

21 (3) If no fax number or email is provided for the recipient, the designated
22 doctor must ~~[shall]~~ send the report ~~[reports]~~ by other verifiable means.

23 (h) ~~(g)~~ Presumptive weight. The designated doctor's report ~~[of the designated~~
24 ~~doctor]~~ is given presumptive weight on the issue or issues ~~[regarding the issue(s) in~~
25 ~~question]~~ the designated doctor was properly appointed to address, unless the
26 preponderance of the evidence is to the contrary.

1 (i) ~~(h)~~ Payment of benefits during dispute. The insurance carrier must ~~[shall]~~ pay
2 all benefits, including medical benefits, in accordance with the designated doctor's
3 report for the issue or issues ~~[issue(s)]~~ in dispute.

4 (1) If the designated doctor provides multiple certifications of MMI and
5 impairment ratings ~~[MMI/impairment ratings under subsection (d) of this section~~
6 ~~because the designated doctor was also ordered to address the extent of the injured~~
7 ~~employee's compensable injury,]~~ the insurance carrier must ~~[shall]~~ pay benefits based on
8 the conditions to which the designated doctor determines the compensable injury
9 extends.

10 (2) For medical benefits, the insurance carrier will ~~[shall]~~ have 21 days from
11 receipt of the designated doctor's report to reprocess all medical bills previously denied
12 for reasons inconsistent with the designated doctor's findings ~~[of the designated~~
13 ~~doctor's report]~~. By the end of this period, insurance carriers must pay ~~[shall tender~~
14 ~~payment on]~~ these medical bills in accordance with the Labor Code [Act] and Chapters
15 133 and 134 of this title.

16 (3) The ~~[For all other benefits, the]~~ insurance carrier must pay all other
17 benefits ~~[shall tender payment]~~ no later than five days after receiving ~~[receipt of]~~ the
18 report.

19 (j) ~~(i)~~ Record retention. The designated doctor must ~~[shall]~~ maintain accurate
20 records for, at a minimum, five years from the anniversary date of the date of the
21 designated doctor's last examination of the injured employee.

22 (1) This requirement does not reduce or replace any other record retention
23 requirements imposed on ~~[upon]~~ a designated doctor by an appropriate licensing
24 board.

25 (2) These records must ~~[shall]~~ include the injured employee's medical
26 records, any analysis ~~[submitted by]~~ the insurance carrier or treating doctor submits
27 (including supporting information), reports the designated doctor generates ~~[generated]~~

1 ~~by the designated doctor~~] as a result of the examination, and narratives [~~provided by~~
2 the insurance carrier and treating doctor~~;~~] provide, to reflect:

3 (A) [(4)] the date and time of any designated doctor appointments
4 scheduled with an injured employee;

5 (B) [(2)] the circumstances for [~~regarding~~] a cancellation, no-show,
6 or other situation where the examination did not occur as initially scheduled or
7 rescheduled, and~~;~~ if applicable, documentation of the agreement [~~of the designated~~
8 ~~doctor and the injured employee~~] to reschedule the examination and the notice that the
9 doctor provided to the division, the injured employee's treating doctor, and the
10 insurance carrier within 24 hours of rescheduling an appointment;

11 (C) [(3)] the date of the examination;

12 (D) [(4)] the date the designated doctor received medical records
13 [~~were received~~] from the treating doctor or any other person;

14 (E) [(5)] the date the designated doctor submitted the reports
15 described in subsections (d), (e), and (f) of this section [~~were submitted~~] to all required
16 parties and documentation that these reports were submitted to the division, treating
17 doctor, and insurance carrier by fax [~~facsimile~~] or electronic transmission and to other
18 required parties by verifiable means;

19 (F) [(6)] if applicable, the names [~~name(s)~~] of any referral health care
20 providers the designated doctor used, [~~by the designated doctor, if any;~~] the dates
21 [~~date~~] of referral health care provider appointments, [~~by referral health care providers;~~]
22 and the reason the designated doctor referred them; and [~~for referral by the designated~~
23 ~~doctor;~~]

24 (G) [(7)] if applicable, the date [~~if any;~~] the doctor contacted the
25 division for assistance in getting [~~obtaining~~] medical records from the insurance carrier
26 or treating doctor.

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

5 ~~[(k) This section will become effective on December 6, 2018.]~~

6

1 **§127.15. Undue Influence on a Designated Doctor.**

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

4 (1) except as provided by §127.10(a) of this title (relating to General
5 Procedures for Designated Doctor Examinations), only the injured employee or
6 appropriate division staff may communicate with the designated doctor about [~~prior to~~
7 ~~the examination of the injured employee by the designated doctor regarding~~] the
8 injured employee's medical condition or history before the designated doctor examines
9 the injured employee;

10 (2) after the examination is completed, only appropriate division staff may
11 communicate [~~communication~~] with the designated doctor about [~~regarding~~] the injured
12 employee's medical condition or history [~~may be made only through appropriate~~
13 ~~division staff~~]; and

14 (3) the designated doctor may initiate communication with:

15 (A) any health care provider who [~~has~~] previously treated or
16 examined the injured employee for the work-related injury; or [~~with~~]

17 (B) a peer review doctor that [~~identified by~~] the insurance carrier
18 identifies as having [~~who~~] reviewed the injured employee's claim or any information
19 about that [~~regarding the injured employee's~~] claim.

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

26 [~~(c) This section becomes effective on February 1, 2011.~~]

27

1 **§127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports.**

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

4 (1) The requesting party must provide copies of the request to all parties.
5 ~~[A copy of the request must be provided to the opposing party.]~~

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

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

11 (4) ~~A~~ ~~[Additionally, a]~~ designated doctor must ~~[shall]~~ only respond to the
12 questions or requests submitted to the designated doctor in the request for clarification
13 and must ~~[shall]~~ not ~~[otherwise]~~ reconsider their ~~[the doctor's]~~ previous decision, issue a
14 new or amended decision, or provide clarification on their ~~[the doctor's]~~ previous
15 decision.

16 (b) Requirements. Requests for clarification must:

17 (1) include the name of the designated doctor, the reason for the
18 ~~[designated doctor's]~~ examination, the date of the examination, and the requester's
19 name and signature ~~[of the requester]~~;

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

22 (3) include questions for the designated doctor to answer that are not
23 ~~[neither]~~ inflammatory or ~~[nor]~~ leading; and

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

1 (c) Requests by the division. At its discretion, the division ~~[The division, at its~~
2 ~~discretion,]~~ may also request clarification from the designated doctor on any issue or
3 ~~issues [the division deems appropriate].~~

4 (d) Responses to requests. To respond to a ~~[the]~~ request for clarification, the
5 designated doctor must be on the division's designated doctor list on the date of the
6 request ~~[at the time the request is received by the division].~~

7 (1) The designated doctor must ~~[shall]~~ respond~~[,]~~ in writing~~[,]~~ to the
8 request for clarification within five working days of receipt and send copies of the
9 response to the parties listed in §127.10(g) ~~[\$127.10(f)]~~ of this title (relating to General
10 Procedures for Designated Doctor Examinations).

11 (2) If the designated doctor must ~~[If, in order to respond to the request for~~
12 ~~clarification, the designated doctor has to]~~ reexamine the injured employee to respond
13 to the request for clarification, the doctor must ~~[shall]~~:

14 (A) ~~[(1)]~~ respond~~[,] in writing,~~ to the request for clarification in
15 writing, advising of the need for an additional examination within five working days of
16 receiving ~~[receipt of]~~ the request and provide copies of the response to the parties
17 specified in §127.10(g) ~~[\$127.10(f)]~~ of this title;

18 (B) ~~[(2) if the division orders the reexamination,]~~ conduct the
19 reexamination within 21 days from the date the division issues the order for the
20 reexamination at the same ~~[is issued by the division at the same examination]~~ address as
21 the original examination; and

22 (C) ~~[(3)]~~ respond~~[,]~~ in writing~~[,]~~ to the request for clarification based
23 on the additional examination within seven working days of the examination and
24 provide copies of the response to the parties specified in §127.10(g) ~~[\$127.10(f)]~~ of this
25 title.

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

4 ~~[(f) This section will become effective September 1, 2012.]~~

5

1 **§127.25. Failure to Attend a Designated Doctor Examination.**

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

6 (b) No good cause. If there is no division finding that good cause exists, [~~In the~~
7 ~~absence of a finding by the division to the contrary,~~] an insurance carrier may presume
8 that the injured employee did not have good cause to fail to attend the examination if,
9 by the day the examination was originally scheduled to occur, the injured employee has
10 both:

11 (1) failed to submit to the examination; and

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

14 (c) Rescheduling timeframe. If the injured employee contacts the designated
15 doctor within 21 days of the scheduled date of the missed examination to reschedule
16 the examination, the designated doctor must [~~shall~~] schedule the examination to occur
17 as soon as possible, but no [~~not~~] later than 21 days [~~the 21st day~~] after the injured
18 employee contacted the doctor.

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

24 (e) Reinitiation of benefits. The insurance carrier must [~~shall~~] reinstate TIBs
25 effective on [~~as of~~] the date the injured employee submitted to the rescheduled
26 examination under subsection (c) of this section or the date the examination was
27 scheduled at [~~pursuant to~~] the injured employee's request under subsection (d) of this

1 section, unless the designated doctor's report [~~of the designated doctor~~] indicates that
2 the injured employee has reached MMI or is otherwise not eligible for income benefits.
3 The reinitiation [~~re-initiation~~] of TIBs must [~~shall~~] occur no later than the seventh day
4 following:

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

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

9 (f) Benefits during suspension. An injured employee is not entitled to TIBs during
10 the [~~for a~~] period when [~~during which~~] the insurance carrier suspended benefits
11 pursuant to this section unless the injured employee later submits to the examination
12 and;

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

15 (2) the insurance carrier determines that the injured employee had good
16 cause for not attending [~~failure to attend~~] the examination.

17 [~~(g) This section will become effective September 1, 2012.~~]

18

1 **CHAPTER 127: DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS**
2 **SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL**
3 **[RECERTIFICATION], AND QUALIFICATIONS**
4 **28 TAC §127.100-127.140**
5

6 **TEXT.**

7 **§127.100. Designated Doctor Certification.**

8 ~~[(a) Applicability. This section applies to designated doctor applications received~~
9 ~~on or after the effective date of this section.]~~

10 (a) [(b)] Qualifications to get or renew certification. The division will not assign
11 examinations to a designated doctor who does not meet all requirements for
12 certification or renewal. All designated doctors ~~[In order to serve as a designated doctor,~~
13 ~~a doctor must be certified as a designated doctor. To be certified as a designated doctor,~~
14 ~~a doctor]~~ must:

15 (1) Have ~~[submit]~~ a complete designated doctor certification application as
16 described in ~~[by]~~ subsection (b) [(c)] of this section on file with the division. ~~;~~

17 (2) Complete all division-required trainings ~~[submit a certificate or~~
18 ~~certificates certifying that the doctor has]~~ within ~~[the past]~~ 12 months of the date of
19 application and have current documentation confirming their completion on file with
20 the division. ~~[successfully completed all division required trainings and]~~

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

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

28 (B) the division's adopted;

1 (i) treatment guidelines; and

2 (ii) return-to-work guidelines. [;]

3 [~~(3) be licensed in Texas;~~]

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

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

9 (A) be licensed in Texas;

10 (B) [~~(5)~~] own or subscribe to [~~for the duration of the doctor's term~~
11 ~~as a certified designated doctor;~~] the current edition of the American Medical
12 Association Guides to the Evaluation of Permanent Impairment adopted by the division
13 to assign [~~for the assignment of~~] impairment ratings and all return-to-work and
14 treatment guidelines adopted by the division; and

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

17 (b) [~~(c)~~] Application. To be considered complete, an application for certification [~~A~~
18 ~~complete designated doctor certification application must be completed on the~~
19 ~~division's required form for certification applications and~~] must include, and a renewal
20 application must update or confirm:

21 (1) contact information for the doctor;

22 (2) information on the doctor's education;

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

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

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

4 (6) information on [~~regarding~~] the doctor's current practice locations;

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

10 (8) the identity [~~identities~~] of any person [~~person(s) with whom~~] the doctor
11 has contracted with to assist in performing or administering [~~performance or~~
12 ~~administration of~~] the doctor's designated doctor duties;

13 (9) an attestation that:

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

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

19 (C) the doctor will [~~shall~~] consent to any on-site visits, as provided
20 by §127.200(a)(15) of this title, by the division at facilities that the designated doctor
21 uses or intends to use [~~used or intended to be used by the designated doctor~~] to
22 perform designated doctor examinations for the duration of the doctor's certification.

23 (c) [~~(d)~~] Retesting. If a doctor passes a division-required test, the doctor may not
24 retest within a twelve-month [~~twelve-month~~] period. If a doctor fails a division-required
25 test, the doctor may not retest more than three times within a six-month [~~six-month~~]
26 period.

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

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

5 (d) [~~e~~] Additional certification testing. On receipt of an application for
6 designated doctor certification renewal, the division may require a designated doctor to
7 complete additional certification testing to demonstrate proficient knowledge on the
8 specific duties of a designated doctor under the Labor Code and division rules.
9 Examples of circumstances that may require additional certification testing include, but
10 are not limited to, changes in the duties of a designated doctor, updates to the
11 guidelines, and legislative changes.

12 (e) Notice of approval, denial, suspension, or revocation. The division will [~~shall~~]
13 notify a doctor in writing of the commissioner's approval or denial of the doctor's
14 application to be certified or renewed as a designated doctor; or of the division's
15 suspension or revocation of the doctor's certification [~~in writing. Denials will include the~~
16 reason(s) for the denial].

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

19 (1) the effective date of the certification; [~~and~~]

20 (2) the expiration date of the certification; and [-]

21 (3) the designated doctor's [~~Approvals will also include the~~] examination
22 qualifications [~~qualification criteria~~] under §127.130 of this title (relating to Qualification
23 Standards for Designated Doctor Examinations) [~~that the division has assigned to the~~
24 ~~designated doctor as part of the doctor's certification~~].

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

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

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

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

12 (i) ~~(f)~~ Adverse certification actions. The division may deny, suspend, or revoke a
13 designated doctor's certification for any of the following reasons ~~[Doctors may be~~
14 denied certification as a designated doctor]:

15 ~~[(1) if the doctor did not submit the information and documentation~~
16 ~~required by subsection (b) of this section;]~~

17 (1) ~~(2)~~ if the doctor did not submit a complete application for certification
18 as required ~~under~~ ~~[by]~~ subsection ~~(b)~~ ~~[(e)]~~ of this section;

19 (2) ~~(3)~~ for having a relevant restriction on their practice imposed by a
20 state licensing board, certification authority, or other appropriate state or federal
21 agency, including the division; ~~[or]~~

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

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

1 (A) the quality of the designated doctor's past reports [~~as a certified~~
2 ~~designated doctor, if any~~];

3 (B) the [~~a history of complaints as a certified~~] designated doctor's
4 history of complaints [~~doctor, if any~~];

5 (C) excess requests for deferral from the designated doctor list by
6 the designated doctor [~~as a certified designated doctor, if any~~];

7 (D) a pattern of overturned reports by the division or a court [~~as a~~
8 ~~certified designated doctor, if any~~];

9 (E) a demonstrated lack of ability to apply or properly consider the
10 American Medical Association Guides to the Evaluation of Permanent Impairment
11 adopted by the division to assign [~~for the assignment of~~] impairment ratings and all
12 return-to-work and treatment guidelines adopted by the division [~~as a certified~~
13 ~~designated doctor, if any~~];

14 (F) a demonstrated lack of ability to consistently perform
15 designated doctor examinations in a timely manner [~~as a certified designated doctor, if~~
16 ~~any~~];

17 (G) a demonstrated failure to identify disqualifying associations [~~as~~
18 ~~a certified designated doctor, if any~~];

19 (H) a demonstrated lack of ability to ensure the confidentiality of
20 injured employee medical records and claim information provided to or generated by a
21 [~~certified~~] designated doctor[~~, if any~~];

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

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

26 (K) [~~(+)~~] applying for certification less than a year from denial of a
27 previous designated doctor certification [~~or recertification~~] application; or

1 (L) ~~(H)~~ any grounds that would allow the division to sanction a
2 health care provider under the Labor Code ~~[Act]~~ or division rules.

3 (j) ~~(g)~~ Response to denial of certification. Within 15 working days after receiving
4 a written denial, a doctor may file a written response with the division addressing [~~r,~~
5 ~~which addresses~~] the reasons the division gave ~~[given]~~ to the doctor for its denial.

6 (1) If the division does not receive a written response [~~is not received~~] by
7 the 15th working day after the date the doctor received the notice, the denial will be
8 final effective the next ~~[following]~~ day. The division will not send further notice. ~~[No~~
9 ~~further notice will be sent.]~~

10 (2) If the division timely receives a written response that ~~[which]~~ disagrees
11 with the denial [~~is timely received~~], the division will ~~[shall]~~ review the response and
12 ~~[shall]~~ notify the doctor in writing of the commissioner's final decision.

13 (A) If the final decision is still a denial, the division's final notice will
14 ~~[shall]~~ provide the reasons ~~[reason(s) why]~~ the doctor's response did not change the
15 commissioner's decision to deny the doctor's application for certification as a
16 designated doctor.

17 (B) The denial will be effective the day after ~~[following the date]~~ the
18 doctor receives notice of the denial, unless the notice specifies otherwise ~~[specified in~~
19 ~~the notice]~~.

20 (k) Request for informal conference. A designated doctor whose renewal
21 application is denied, or whose certification is suspended or revoked, may either
22 respond in writing using the procedure in subsection (j) of this section or submit a
23 written request for an informal conference before the division to address those reasons.

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

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

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

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

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

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

15 (ii) After the informal conference, the commissioner's
16 designated representatives will send their final recommendation to the commissioner,
17 who will review it and all evidence presented at the informal conference and make a
18 final decision.

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

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

23 ~~[(h) Designated doctors whose application for certification is approved but wish~~
24 ~~to dispute the examination qualification criteria under §127.130 of this title that the~~
25 ~~division assigned to the doctor may do so through the procedures described in~~
26 ~~subsection (g) of this section. Designated doctors must include in their response to the~~

1 ~~division the specific criteria they believe should be modified and documentation to~~
2 ~~justify the requested change.]~~

3 ~~[(i) Designated doctors who are designated doctors on the effective date of this~~
4 ~~section shall be considered certified for the duration of the designated doctor's current~~
5 ~~certification. Before the expiration of the designated doctor's current certification, the~~
6 ~~designated doctor must timely apply for recertification under the applicable~~
7 ~~requirements of §127.110 of this title (relating to Designated Doctor Recertification).]~~

8 ~~[(j) This section will become effective on December 6, 2018.]~~

9

1 **§127.110. Designated Doctor Recertification.** 

2 ~~[(a) Applicability. This section applies to designated doctor applications received~~
3 ~~on or after the effective date of this section.~~

4 ~~——(b) If a designated doctor's certification expires, the designated doctor must~~
5 ~~apply for recertification. Designated doctors seeking recertification must:~~

6 ~~————(1) submit to the division certificate(s) evidencing that the doctor has,~~
7 ~~within the past 12 months, successfully completed all division required trainings and~~
8 ~~passed all division required testing on the specific duties of a designated doctor under~~
9 ~~the Act and division rules, including demonstrated proficient knowledge of the current~~
10 ~~division adopted edition of the American Medical Association Guides to the Evaluation~~
11 ~~of Permanent Impairment and the division's adopted treatment and return-to-work~~
12 ~~guidelines;~~

13 ~~————(2) own or subscribe to, for the duration of the doctor's term as a certified~~
14 ~~designated doctor, the current edition of the American Medical Association Guides to~~
15 ~~the Evaluation of Permanent Impairment adopted by the division for the assignment of~~
16 ~~impairment ratings and all return-to-work and treatment guidelines adopted by the~~
17 ~~division; and~~

18 ~~————(3) submit to the division a complete application for recertification that~~
19 ~~meets the requirements of §127.100(c) of this title (relating to Designated Doctor~~
20 ~~Certification). For purposes of recertification, division required testing limitations as~~
21 ~~described in §127.100(d) of this title apply.~~

22 ~~——(c) The division will not assign examinations to a designated doctor during the 45~~
23 ~~days prior to the expiration of the designated doctor's certification if the division fails to~~
24 ~~receive the required information in subsection (b)(1) - (3) of this section from the~~
25 ~~designated doctor before that time though the designated doctor may still provide~~
26 ~~services on claims to which the designated doctor had been previously assigned during~~
27 ~~this period. A designated doctor who seeks to be recertified as a designated doctor and~~

1 who fails to apply for recertification under subsection (b)(1)–(3) of this section at least
2 45 days prior to the expiration of the designated doctor's certification commits an
3 administrative violation. A designated doctor who fails to apply for recertification under
4 this section within 30 days after the expiration of the designated doctor's certification
5 may no longer apply for recertification and must instead apply for certification of
6 §127.100 of this title.

7 ———(d) The division will notify a doctor in writing of the commissioner's approval or
8 denial of the doctor's application to be recertified as a designated doctor under
9 subsection (b) of this section. Denials will include the reason(s) for the denial. Approvals
10 recertify a doctor for a term of two years and will include the effective date and
11 expiration date of the certification. Approvals will also include the designated doctor's
12 examination qualification criteria under §127.130 of this title (relating to Qualification
13 Standards for Designated Doctor Examinations) that the division has assigned to the
14 doctor as part of the doctor's recertification.

15 ———(e) The division may deny an application for recertification under subsection (b)
16 of this section for the following reasons:

17 —————(1) the doctor did not submit the information and documentation required
18 by subsection (b) of this section;

19 —————(2) if the doctor failed to properly update the doctor's initial application for
20 certification under §127.100(c) of this title;

21 —————(3) for having a relevant restriction on their practice imposed on the
22 doctor by a state licensing board, certification authority, or other appropriate state or
23 federal agency, including the division;

24 —————(4) for requesting unnecessary referral examinations or testing or failure to
25 comply with requirements of §180.24 of this title (relating to Financial Disclosure) when
26 requesting referral examinations or additional testing; or

1 ~~_____ (5) for other activities, events, or occurrences that the commissioner~~
2 ~~determines to warrant denial of a doctor's application for recertification as a designated~~
3 ~~doctor, including but not limited to: _____~~
4 ~~_____ (A) the quality of the designated doctor's past reports;~~
5 ~~_____ (B) the designated doctor's history of complaints;~~
6 ~~_____ (C) excess requests for deferral from the designated doctor list by~~
7 ~~the doctor;~~
8 ~~_____ (D) a pattern of overturned reports by the division or a court;~~
9 ~~_____ (E) a demonstrated lack of ability to apply or properly consider the~~
10 ~~American Medical Association Guides to the Evaluation of Permanent Impairment~~
11 ~~adopted by the division for the assignment of impairment ratings and all return-to-work~~
12 ~~and treatment guidelines adopted by the division;~~
13 ~~_____ (F) a demonstrated lack of ability to consistently perform~~
14 ~~designated doctor examinations in a timely manner;~~
15 ~~_____ (G) a demonstrated failure to identify disqualifying associations;~~
16 ~~_____ (H) a demonstrated lack of ability to ensure the confidentiality of~~
17 ~~injured employee medical records and claim information provided to or generated by~~
18 ~~the designated doctor; or~~
19 ~~_____ (I) any grounds that would allow the division to sanction a health~~
20 ~~care provider under the Act or division rules.~~
21 ~~_____ (f) Within 15 working days after receiving a denial, a doctor may file a written~~
22 ~~response with the division that addresses the reasons given to the doctor for denial or~~
23 ~~may submit a written request an informal hearing before the division to address the~~
24 ~~reasons given for the denial.~~
25 ~~_____ (1) If neither a response nor a written request for informal hearing is~~
26 ~~received by the 15th working day after the date the doctor received the notice, the~~
27 ~~denial will be final effective the following day. No further notice will be sent.~~

1 ~~—————(2) If a written response which disagrees with the denial is timely received,~~
2 ~~the division will review the response and will notify the doctor of the commissioner's~~
3 ~~final decision in writing. If the final decision is still a denial, the division's final notice~~
4 ~~shall provide the reason(s) why the doctor's response did not change the~~
5 ~~commissioner's decision to deny the doctor's application for recertification as a~~
6 ~~designated doctor. The denial will be effective the day following the date the doctor~~
7 ~~receives notice of the denial unless otherwise specified in the notice.~~

8 ~~—————(3) If a written request for informal hearing is timely received, the division~~
9 ~~will set the informal hearing to occur no later than 31 days after the request is received.~~
10 ~~At the informal hearing, the designated doctor may present evidence that addresses the~~
11 ~~reasons the doctor was denied recertification to the commissioner's designated~~
12 ~~representatives. The designated doctor may have an attorney present. At the conclusion~~
13 ~~of the informal hearing, the designated representatives will provide the designated~~
14 ~~doctor with their final recommendation regarding the doctor's recertification. If the final~~
15 ~~recommendation is still a denial, the designated representatives will provide the~~
16 ~~reason(s) why they decided not to recertify the doctor as a designated doctor. After the~~
17 ~~informal hearing, the designated representatives will forward their recommendation to~~
18 ~~the commissioner who will review the final recommendation and all evidence presented~~
19 ~~at the informal hearing and make a final decision. The division shall notify the~~
20 ~~designated doctor of the commissioner's final decision in writing. The decision will be~~
21 ~~effective the day following the date the doctor receives notice of the decision unless~~
22 ~~otherwise specified in the notice.~~

23 ~~————(g) Designated doctors whose application for recertification under subsection (b)~~
24 ~~of this section is approved but wish to dispute the examination qualification criteria~~
25 ~~under §127.130 of this title that the division assigned to the doctor may do so through~~
26 ~~the procedures described in subsection (f) of this section. Designated doctors must~~

1 ~~include in their response to the division or present at the informal hearing the specific~~
2 ~~criteria they wish to be modified and documentation to justify the requested change.~~

3 ~~—— (h) This section will become effective on December 6, 2018.]~~

4


1 **§127.120. Exception to Certification as a Designated Doctor for Out-of-State**
2 **Doctors.**

3 ~~[(a) When necessary because]~~ If the injured employee is temporarily located or
4 resides out of state ~~[is residing out of state]~~, the division may waive any of the
5 requirements ~~[as specified]~~ in this chapter for an out-of-state doctor to serve as a
6 designated doctor to help timely resolve a ~~[facilitate a timely resolution of the]~~ dispute
7 or perform a particular examination.

8 ~~[(b) This section will become effective on September 1, 2012.]~~

9

1 **§127.130. Qualification Standards for Designated Doctor Examinations.**

2 (a) Applicability. This section applies to designated doctor assignments made on
3 or after DATE—probably the first Saturday of the month following adoption [the
4 effective date of this section]. 

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

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

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

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

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

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

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

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

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

10 (A) internal systems;

11 (B) ear, nose, and throat;

12 (C) head and face;

13 (D) skin;

14 (E) cuts to skin involving underlying structures;

15 (F) non-musculoskeletal structures of the torso;

16 (G) hernia;

17 (H) respiratory;

18 (I) endocrine;

19 (J) hematopoietic; and

20 (K) urologic. [~~a designated doctor must be a licensed medical~~
21 ~~doctor or doctor of osteopathy.~~]

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

25 (A) For purposes of this section, a designated doctor is "board-
26 certified" [~~"board-certified"~~] in a required specialty or subspecialty, as applicable, if they
27 hold or previously held: [~~the designated doctor holds or previously held]~~

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

4 (ii) ~~[if the designated doctor holds or previously held]~~ a
5 primary certificate in the required specialty and a certificate of special qualifications or
6 certificate of added qualifications in the required subspecialty from the American
7 Osteopathic Association Bureau of Osteopathic Specialists (AOABOS).

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

11 (i) Qualifying ABMS certifications are: ~~[in]~~

12 (I) neurological surgery; ~~;~~

13 (II) neurology; ~~;~~

14 (III) physical medicine and rehabilitation; ~~[-or]~~

15 (IV) psychiatry; ~~[by the ABMS or]~~

16 (V) orthopaedic surgery;

17 (VI) occupational medicine;

18 (VII) dermatology;

19 (VIII) plastic surgery;

20 (IX) surgery;

21 (X) anesthesiology with a subspecialty in pain

22 medicine;

23 (XI) emergency medicine;

24 (XII) internal medicine;

25 (XIII) thoracic and cardiac surgery; or

26 (XIV) family medicine.

27 (ii) Qualifying AOABOS certifications are: ~~[board-certified in]~~

- 1 (I) neurological surgery; [;]
- 2 (II) neurology; [;]
- 3 (III) physical medicine and rehabilitation; [~~or~~]
- 4 (IV) psychiatry; [~~by the AOABOS.~~]
- 5 (V) orthopedic surgery;
- 6 (VI) preventive medicine/occupational-environmental
- 7 medicine;
- 8 (VII) preventive medicine/occupational;
- 9 (VIII) dermatology;
- 10 (IX) plastic and reconstructive surgery;
- 11 (X) surgery (general);
- 12 (XI) anesthesiology with certificate of added
- 13 qualifications in pain management;
- 14 (XII) emergency medicine;
- 15 (XIII) internal medicine;
- 16 (XIV) thoracic and cardiovascular surgery; or
- 17 (XV) family practice and osteopathic manipulative
- 18 treatment.

19 (C) [~~B~~] To examine spinal cord injuries and diagnoses, including a
 20 spinal fracture with documented neurological injury [deficit], or vascular injury, more
 21 than one spinal fracture, or cauda equina syndrome, a designated doctor must be
 22 board-certified by the ABMS or AOABOS. [~~board-certified in]~~

23 (i) Qualifying ABMS certifications are:

- 24 (I) neurological surgery; [;]
- 25 (II) neurology; [;]
- 26 (III) physical medicine and rehabilitation; [;]
- 27 (IV) orthopaedic surgery; [;] or

1 (V) occupational medicine, ~~[by the ABMS or board~~
2 ~~certified in]~~

3 (ii) Qualifying AOABOS certifications are:

4 (I) neurological surgery; [;]

5 (II) neurology; [;]

6 (III) physical medicine and rehabilitation; [;]

7 (IV) orthopedic surgery; [;]

8 (V) preventive medicine/occupational-environmental
9 medicine; [;] or

10 (VI) preventive medicine/occupational ~~[by the~~
11 ~~AOABOS].~~

12 (D) ~~[(C)]~~ To examine severe burns, including chemical burns[;]
13 defined as deep partial or full thickness burns, also known as second, third, or fourth-
14 degree ~~[2nd, 3rd, or 4th degree]~~ burns, a designated doctor must be board-certified by
15 the ABMS or AOABOS. ~~[board-certified in]~~

16 (i) Qualifying ABMS certifications are:

17 (I) dermatology; [;]

18 (II) physical medicine and rehabilitation; [;]

19 (III) plastic surgery; [;]

20 (IV) orthopaedic surgery; [;]

21 (V) surgery; [;] or

22 (VI) occupational medicine, ~~[by the ABMS or]~~

23 (ii) Qualifying AOABOS certifications are: ~~[board-certified in]~~

24 (I) dermatology; [;]

25 (II) physical medicine and rehabilitation; [;]

26 (III) plastic and reconstructive surgery; [;]

27 (IV) orthopedic surgery; [;]

1 (V) surgery (general); [;]
2 (VI) preventive medicine/occupational-environmental
3 medicine; [;] or
4 (VII) preventive medicine/occupational [by the
5 AOABOS].

6 (E) [(D)] To examine complex regional pain syndrome (reflex
7 sympathetic dystrophy), a designated doctor must be board-certified by the ABMS or
8 AOABOS. [~~board-certified in~~]

9 (i) Qualifying ABMS certifications are:

- 10 (I) neurological surgery; [;]
- 11 (II) neurology; [;]
- 12 (III) orthopaedic surgery; [;]
- 13 (IV) plastic surgery; [;]
- 14 (V) anesthesiology with a subspecialty in pain
15 medicine; [;]
- 16 (VI) occupational medicine; [;] or
- 17 (VII) physical medicine and rehabilitation. [~~by the~~
18 ABMS]

19 (ii) Qualifying AOABOS certifications are: [~~or board-certified~~
20 in]

- 21 (I) neurological surgery; [;]
- 22 (II) neurology; [;]
- 23 (III) orthopedic surgery; [;]
- 24 (IV) plastic surgery; [;]
- 25 (V) preventive medicine/occupational-environmental
26 medicine; [;]
- 27 (VI) preventive medicine/occupational; [;]

1 (VII) anesthesiology with certificate of added
2 qualifications in pain management; [r] or
3 (VIII) physical medicine and rehabilitation [by the
4 AOABOS].

5 (F) [(E)] To examine any joint dislocation; one or more fractures with
6 vascular injury; one or more pelvis fractures; or multiple rib fractures, [joint dislocation,
7 and pelvis or hip fracture,] a designated doctor must be board-certified by the ABMS or
8 AOABOS. [~~board-certified in]~~

9 (i) Qualifying ABMS certifications are:

10 (I) emergency medicine; [r]

11 (II) orthopaedic surgery; [r]

12 (III) plastic surgery; [r]

13 (IV) physical medicine and rehabilitation; [r] or

14 (V) occupational medicine. [~~by the ABMS or]~~

15 (ii) Qualifying AOABOS certifications are: [~~board-certified in]~~

16 (I) emergency medicine; [r]

17 (II) orthopedic surgery; [r]

18 (III) plastic surgery; [r]

19 (IV) physical medicine and rehabilitation; [r]

20 (V) preventive medicine/occupational-environmental
21 medicine; [r] or

22 (VI) preventive medicine/occupational [~~by the~~
23 AOABOS].

24 (G) [(F)] To examine complicated infectious diseases requiring
25 hospitalization or prolonged intravenous antibiotics, including blood borne pathogens,
26 a designated doctor must be board-certified by the ABMS or AOABOS. [~~board-certified~~
27 ~~in]~~

1 (i) Qualifying ABMS certifications are:

2 (I) internal medicine; or

3 (II) occupational medicine, ~~[by the ABMS or]~~

4 (ii) Qualifying AOABOS certifications are: ~~[board-certified in]~~

5 (I) internal medicine; ~~;~~

6 (II) preventive medicine/occupational-environmental
7 medicine; ~~;~~ or

8 (III) preventive medicine/occupational ~~[by the~~
9 AOABOS].

10 (H) ~~(G)~~ To examine chemical exposure, excluding chemical burns, a
11 designated doctor must be board-certified by the ABMS or AOABOS. ~~[board-certified in]~~

12 (i) Qualifying ABMS certifications are:

13 (I) internal medicine; ~~;~~

14 (II) emergency medicine; ~~;~~ or

15 (III) occupational medicine, ~~[by the ABMS or]~~

16 (ii) Qualifying AOABOS certifications are: ~~[board-certified in]~~

17 (I) internal medicine; ~~;~~

18 (II) emergency medicine; ~~;~~

19 (III) preventive medicine/occupational-environmental
20 medicine; ~~;~~ or

21 (IV) preventive medicine/occupational ~~[by the~~
22 AOABOS].

23 (I) ~~(H)~~ To examine heart or cardiovascular conditions, a designated
24 doctor must be board-certified by the ABMS or AOABOS. ~~[board-certified in]~~

25 (i) Qualifying ABMS certifications are:

26 (I) internal medicine; ~~;~~

27 (II) emergency medicine; ~~;~~

- 1 (III) occupational medicine; [;]
- 2 (IV) thoracic and cardiac surgery; [;] or
- 3 (V) family medicine. [~~by the ABMS or~~]
- 4 (ii) Qualifying AOABOS certifications are: [~~board certified in~~]
- 5 (I) internal medicine; [;]
- 6 (II) emergency medicine; [;]
- 7 (III) preventive medicine/occupational-environmental
- 8 medicine; [;]
- 9 (IV) preventive medicine/occupational; [;]
- 10 (V) thoracic and cardiovascular surgery; or
- 11 (VI) family practice and osteopathic manipulative
- 12 treatment [~~by the AOABOS~~].

13 (c) Qualification to perform initial examination. To be qualified to perform an
14 initial examination on an injured employee, a designated doctor, other than a
15 chiropractor, must be qualified under Labor Code §408.0043. A designated doctor who
16 is a chiropractor must be qualified to perform an initial designated doctor examination
17 under Labor Code §408.0045. [~~If, however, the requirements of this subsection would~~
18 ~~disqualify a designated doctor otherwise qualified under subsection (b) of this section,~~
19 ~~pursuant to Labor Code §408.0041(b-1), does not apply.~~]

20 (d) Exemption from qualification standards. If a designated doctor is not available
21 with the qualifications listed in subsections (b)(9)(A)-(I), [~~For any particular designated~~
22 ~~doctor examination,~~] the division may exempt a medical doctor or doctor of osteopathy
23 [~~designated doctor~~] from any of the qualification standards specified in this chapter to
24 serve as a designated doctor to help timely resolve a dispute or perform a particular
25 examination [~~the applicable qualification standard if no other designated doctor is~~
26 ~~qualified and available to perform the examination. Additionally, the division may not~~]

1 offer a qualified designated doctor an examination if it is reasonably probable that the
2 designated doctor will not be qualified on the date of the examination].

3 (e) Continuity of examinations. A designated doctor who performs an initial
4 designated doctor examination of an injured employee and meets [~~had~~] the appropriate
5 qualification standard [~~criteria~~] to perform that examination under subsection (b) of this
6 section will [~~shall~~] remain assigned to that claim and perform all subsequent
7 examinations of that injured employee unless the division authorizes or requires the
8 designated doctor to discontinue providing services on that claim.

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

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

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

14 (3) relocates their [~~the doctor's~~] residence or practice;

15 (4) asks [~~has asked~~] the division to indefinitely defer the doctor's
16 availability on the designated doctor list;

17 (5) determines that examining the injured employee would [~~require the~~
18 ~~designated doctor to~~] exceed the scope of practice authorized by their [~~the doctor's~~]
19 license; or

20 (6) can otherwise demonstrate to the division that their [~~the doctor's~~]
21 continued service on the claim would be impracticable or could impair the quality of
22 examinations performed on the claim.

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

25 (1) the doctor has failed to become certified [~~recertified~~] as a designated
26 doctor [~~under §127.110(b) of this title (relating to Designated Doctor Recertification)];~~

1 (2) the doctor no longer meets [~~has~~] the appropriate qualification standard
2 [~~criteria~~] under subsection (b) of this section [,] to perform examinations on the claim;

3 (3) the doctor has a disqualifying association [~~as~~] specified in §127.140 of
4 this title that is [,] relevant to the claim;

5 (4) the doctor has repeatedly failed to respond to division appointment,
6 clarification, or document requests [,] or other division inquiries about [~~regarding~~] the
7 claim;

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

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

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

16 [~~(i) This section will become effective on December 6, 2018.~~]

17

1 **§127.140. Disqualifying Associations.**

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

5 (1) receipt of income, compensation, or payment of any kind not related to
6 health care the doctor provides [~~provided by the doctor~~];

7 (2) shared investment or ownership interest;

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

11 (4) contracts or agreements for space or equipment rentals, personnel
12 services, management contracts, referral services, billing services agents, documentation
13 management or storage services or warranties, or any other services related to
14 managing or operating [~~the management or operation of~~] the doctor's practice;

15 (5) personal or family relationships;

16 (6) a contract with the same workers' compensation health care network
17 certified under Insurance Code Chapter 1305 [~~Insurance Code~~] or a contract with the
18 same political subdivision or political subdivision health plan under Labor Code
19 §504.053(b)(2) that is responsible for providing [~~the provision of~~] medical benefits to the
20 injured employee; or

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

26 (b) Disqualification of agent. A designated doctor also has [~~For examinations~~
27 ~~performed after January 1, 2013, a designated doctor shall also have~~] a disqualifying

1 association relevant to an examination or claim if an agent of the designated doctor has
2 an association relevant to the claim that would constitute a disqualifying association
3 under subsection (a) of this section.

4 (c) Prohibition. A designated doctor must ~~[shall]~~ not perform an examination if
5 that doctor has a disqualifying association relevant to that claim.

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

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

13 (d) Notice required. Within five days of receiving the division's order of
14 designated doctor examination under §127.5(b) of this title (relating to Scheduling
15 Designated Doctor Appointments), insurance ~~[insurance]~~ carriers must ~~[shall]~~ notify the
16 division of any disqualifying associations between the designated doctor and injured
17 employee because of the network affiliations described under subsection(a)(6) of this
18 section ~~[within five days of receiving the division's order of designated doctor~~
19 ~~examination under §127.5(b) of this title (relating to Scheduling Designated Doctor~~
20 ~~Appointments)]~~.

21 (e) Effect of disqualifying association. If the division determines that a designated
22 doctor with a disqualifying association performed a designated doctor examination, all
23 reports produced by that designated doctor as a result of that examination are ~~[shall be]~~
24 stripped of their presumptive weight.

25 (f) Disputes about disqualifying associations. A party that seeks to dispute the
26 selection of a designated doctor for a particular examination based on a disqualifying
27 association or ~~[to]~~ dispute the presumptive weight of a designated doctor's report

1 based on a disqualifying association must do so through the division's dispute
2 resolution processes in Labor Code Chapter 410 [~~Labor Code~~] and Chapters 140-144
3 [~~140-144~~] and 147 of this title (relating to dispute resolution [~~Dispute Resolution~~]
4 processes, proceedings, and procedures).

5 ~~[(g) This section will become effective on December 6, 2018.]~~

6

1 **CHAPTER 127: DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS**
2 **SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES**
3 **28 TAC §127.200-127.220**
4

5 **TEXT.**

6 **§127.200. Duties of a Designated Doctor.**

7 (a) All designated doctors must [~~shall~~]:

8 (1) Perform [~~perform~~] designated doctor examinations in a facility:

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

11 (B) that ensures safety, privacy, and accessibility for injured
12 employees, [~~and~~] injured employee medical records, and other records containing
13 confidential claim information. [;]

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

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

23 (A) are in writing and signed by the designated doctor and the
24 persons [~~person(s)~~] with whom the designated doctor is contracting;

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

27 (C) require the [~~person or~~] persons to comply with all confidentiality
28 provisions of the Labor Code [~~Act~~] and other applicable laws;

1 (D) comply with all medical billing and payment requirements under
2 Chapter 133 of this title (relating to General Medical Provisions [~~Benefits~~]);

3 (E) do not constitute an improper inducement relating to the
4 delivery of benefits to an [~~and~~] injured employee under Labor Code §§415.0036
5 [~~§415.0036~~] and 180.25 [~~§180.25~~] of this title (relating to Improper Inducements,
6 Influence and Threats); and

7 (F) are made available to the division on [~~upon~~] request. [;]

8 (4) Notify [~~notify~~] the division in writing and in advance if the designated
9 doctor voluntarily defers their [~~decides to defer the designated doctor's~~] availability to
10 receive any offers of examinations for personal or other reasons. The [~~and the~~] notice
11 must specify the duration [~~of~~] and reason for the deferral. [;]

12 (5) Notify [~~notify~~] the division in writing and in advance if the designated
13 doctor no longer wishes to practice as a designated doctor before the doctor's current
14 certification as a designated doctor expires. A [~~a~~] designated doctor who no longer
15 wishes to practice [~~as a designated doctor~~] before their [~~the doctor's~~] current
16 certification expires must expressly surrender their [~~the designated doctor's~~] certification
17 in a signed, written statement to the division. [;]

18 (6) Be [~~be~~] physically present in the same room as the injured employee
19 for the designated doctor examination or any other health care [~~healthcare~~] service
20 provided to the injured employee that is not referred to another health care provider
21 under §127.10(c) of this title. [;]

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

1 (8) Provide [~~provide~~] the division with updated information within 10
2 working days of a change in any [~~of the~~] information they provide [~~provided~~] to the
3 division on their [~~the doctor's~~] application for certification. [~~or recertification as a~~
4 ~~designated doctor;~~]

5 (9) Maintain [~~maintain~~] a professional and courteous demeanor when
6 performing the duties of a designated doctor, including, but not limited to, explaining
7 the purpose of a designated doctor examination to an injured employee at the
8 beginning of the examination and using non-inflammatory, appropriate language in all
9 reports and documents they produce. [~~produced by the designated doctor;~~]

10 (10) Bill [~~bill~~] for designated doctor examinations and receive payment for
11 those examinations in accordance with Chapters [~~Chapter~~] 133 [~~of this title~~] and
12 [~~Chapter~~] 134 of this title (relating to Benefits—Guidelines for Medical Services, Charges,
13 and Payments). [;]

14 (11) Respond [~~respond~~] timely to all division appointments, clarifications,
15 [~~appointment, clarification, or~~] document requests, or other division inquiries. [;]

16 (12) Notify [~~notify~~] the division if their [~~a designated doctor's~~] continued
17 participation on a claim they have [~~to which the designated doctor has~~] already been
18 assigned would [~~required the doctor to~~] exceed the scope of practice authorized by their
19 [~~the doctor's~~] license. [;]

20 (13) Not [~~not~~] perform required medical examinations, utilization reviews,
21 or peer reviews on a claim they have [~~to which the designated doctor has~~] been
22 assigned as a designated doctor. [;]

23 (14) Identify [~~identify~~] themselves at the beginning of every designated
24 doctor examination. [;]

25 (15) Consent [~~consent~~] to and cooperate during any on-site visits by the
26 division under [~~pursuant to~~] §180.4 of this title (relating to On-Site Visits). [;]

1 (A) ~~Notwithstanding~~ ~~[notwithstanding]~~ §180.4(e)(2) of this title, the
2 division's purpose for these visits ~~is~~ ~~[will be]~~ to ensure the designated doctor's
3 compliance with the Labor Code ~~[Act]~~ and applicable division rules. ~~[, and the]~~

4 (B) The notice provided to the designated doctor under ~~[in~~
5 ~~accordance with]~~ §180.4 of this title, either in advance ~~[of]~~ or at the time of the on-site
6 visit, will specify the duties the division will investigate ~~[being investigated by the~~
7 ~~division]~~ during that visit. ~~;~~

8 (16) Cooperate ~~[cooperate]~~ with all division compliance audits and ~~;~~
9 quality reviews. ~~[, and]~~

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

12 (18) Comply ~~[otherwise comply]~~ with all applicable laws and rules.

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

18 ~~[(c) This section will become effective on September 1, 2012.]~~

1 **§127.210. Designated Doctor Administrative Violations.**

2 (a) Grounds for sanctions. In addition to the grounds for issuing sanctions against
3 a doctor under §180.26 of this title (relating to Criteria for Imposing, Recommending [;]
4 and Determining Sanctions; Other Remedies), other division rules, or the Labor Code
5 [~~Texas Workers' Compensation Act~~], the commissioner may revoke or suspend a
6 designated doctor's certification as a designated doctor or [~~otherwise~~] sanction a
7 designated doctor for noncompliance with requirements of this chapter [~~or~~] for [~~any of~~
8 ~~the following~~]:

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

13 (2) refusing four consecutive times [~~refusals~~] to perform a division-offered
14 appointment within the required time frames or a division-ordered [~~division-ordered~~]
15 appointment for which the doctor is qualified and [~~that~~] relates to a claim the doctor [~~to~~
16 ~~which the doctor~~] has not been previously assigned to;

17 (3) failing to attend a designated doctor examination;

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

19 (5) [~~(3)~~] refusing at any time [~~any refusal~~] to accept or perform a division-
20 offered [~~division-offered~~] appointment or division-ordered [~~ordered~~] appointment that
21 relates to a claim on which the doctor has previously performed an examination;

22 (6) [~~(4)~~] misrepresenting or omitting [~~misrepresentation or omission of~~]
23 pertinent facts in medical evaluation and narrative reports;

24 (7) [~~(5)~~] submitting unnecessary referrals to other health care providers to
25 answer [~~for the answering of~~] any question that the division submits [~~submitted~~] to the
26 designated doctor [~~by the division~~];

1 (8) [(6)] ordering or performing unnecessary testing of an injured
2 employee as part of a designated doctor's examination;

3 (9) [(7)] submitting [~~submission of~~] inaccurate or inappropriate reports due
4 to insufficient medical history or physical examination and analysis of medical records;

5 (10) [(8)] submitting [~~submission of~~] designated doctor reports that fail to
6 include all elements required by §127.220 of this title (relating to Designated Doctor
7 Reports), §127.10 of this title (relating to General Procedures for Designated Doctor
8 Examinations), and other division rules;

9 (11) [(9)] failing [~~failure~~] to timely respond to a request for clarification
10 from the division about [~~regarding~~] an examination or any other information the division
11 requests [~~request by the division~~];

12 (12) [(10)] failing [~~failure~~] to successfully complete training and testing
13 requirements as specified in §127.100 of this title (relating to Designated Doctor
14 Certification) [~~§127.110 of this title (relating to Designated Doctor Recertification)~~];

15 (13) [(11)] self-referring, including referring [~~referral~~] to another health care
16 provider with whom the designated doctor has a disqualifying association, for treatment
17 or becoming the employee's treating doctor for the medical condition the designated
18 doctor evaluated [~~by the designated doctor~~];

19 (14) [(12)] behaving in an abusive or assaultive manner toward an injured
20 employee, the division, or other system participant;

21 (15) [(13)] failing to maintain the confidentiality of patient medical and
22 claim file information;

23 (16) [(14)] performing a designated doctor examination that the division
24 did not order the doctor [~~which the designated doctor was not ordered by the division~~]
25 to perform;

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

1 (18) ~~[(15)]~~ violating other ~~[violations of]~~ applicable statutes or rules while
2 serving as a designated doctor.

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

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

10 ~~[(d) This section will become effective on September 1, 2012.]~~

11

1 **§127.220. Designated Doctor Reports.**

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

5 (1) Identify the question or questions ~~[identify the question(s)]~~ the division
6 ordered to be addressed by the designated doctor examination. ~~;~~

7 (2) Provide ~~[provide]~~ a clearly defined answer for each question to be
8 addressed by the designated doctor examination and only for each of those questions.
9 ~~;~~

10 (3) Sufficiently ~~[sufficiently]~~ explain how the designated doctor determined
11 the answer to each question within a reasonable degree of medical probability. ~~;~~

12 (4) Demonstrate ~~[demonstrate]~~, as appropriate, application or
13 consideration of the American Medical Association Guides to the Evaluation of
14 Permanent Impairment, division-adopted return-to-work and treatment guidelines, and
15 other evidence-based medicine, if available. ~~;~~

16 (5) Include ~~[include]~~ general information about ~~[regarding]~~ the identity of
17 the designated doctor, injured employee, employer, treating doctor, and insurance
18 carrier. ~~;~~

19 (6) State ~~[state]~~ the date of the examination and the address where it ~~[the~~
20 ~~examination]~~ took place. ~~;~~

21 (7) Summarize ~~[summarize]~~ any additional testing conducted or referrals
22 made as part of the evaluation, including:

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

26 (B) the types of tests conducted or referrals made; ~~[and]~~

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

1 (D) an explanation of ~~[explain]~~ why the testing or referral was
2 necessary to resolve a question at issue in the examination; and

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

4 (8) Include ~~[include]~~ a narrative description of the medical history, physical
5 examination, and medical decisions the designated doctor made ~~[decision-making~~
6 ~~performed by the designated doctor]~~, including the time the designated doctor began
7 taking the medical history of the injured employee, physically examined ~~[examining]~~ the
8 employee, and engaged ~~[engaging]~~ in medical decision making, and the time the
9 designated doctor completed these tasks. ~~;~~

10 (9) List ~~[list]~~ the specific medical records or other documents the
11 designated doctor reviewed as part of the evaluation, including the dates of those
12 documents and which ~~[-if any,]~~ medical records were provided by the injured employee.
13 ~~;~~

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

16 (11) ~~[(10)]~~ Be ~~[be]~~ signed by the designated doctor who performed the
17 examination. ~~;~~

18 (12) ~~[(11)]~~ Include ~~[include]~~ a statement that there is no known
19 disqualifying association as described in §127.140 of this title (relating to Disqualifying
20 Associations) between the designated doctor and the injured employee, the injured
21 employee's treating doctor, the insurance carrier, the insurance carrier's certified
22 workers' compensation health care network, or a network established under Labor Code
23 Chapter 504. ~~[-Labor Code;]~~

24 (13) ~~[(12)]~~ Certify ~~[certify]~~ the date that the report was sent to all recipients
25 as required ~~[by]~~ and in the manner required by §127.10 of this title. ~~[-and]~~

26 (14) ~~[(13)]~~ Indicate ~~[indicate]~~ on the report that the designated doctor
27 reviewed and approved the final version of the report.

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

5 ~~[(c) Designated doctors who perform examinations under §127.10(f) of this title
6 must, in addition to filing a narrative report that complies with subsection (a) of this
7 section, also file a Designated Doctor Examination Data Report in the form and manner
8 required by the Division. A Designated Doctor Examination Data Report must:]~~

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

15 ~~[(2) identify the question(s) the division ordered to be addressed by the
16 designated doctor examination;]~~

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

21 ~~[(4) state the date of the examination, the time the examination began,
22 and the address where the examination took place;]~~

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

1 [~~(6) be signed by the designated doctor who performed the examination.~~]

2 [~~(d) This section will become effective on December 6, 2018.~~]

3

1 **CHAPTER 180: MONITORING AND ENFORCEMENT**
2 **SUBCHAPTER B. MEDICAL BENEFIT REGULATION**
3 **28 TAC §180.23**
4

5 **TEXT.**

6 **§180.23. Division-Required Training for Doctors.**

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

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

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

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

6 [~~e) This section is effective September 1, 2012.~~]

7