

**Comparison of existing text to informal draft text (not redlined for ease of reading)**

**The notes column identifies substantive changes in the rule text. Other style and editorial changes are not included in the notes column.**

| <b>§127.1. Requesting Designated Doctor Examinations</b>  |   |   |
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| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b>  |
| §127.1. Requesting Designated Doctor Examinations   | §127.1. Requesting Designated Doctor Examinations   |   |
| <p>(a) At the request of the insurance carrier, an injured employee, the injured employee's representative, or on its own motion, the division may order a medical examination by a designated doctor to resolve questions about the following:</p> <ul style="list-style-type: none"> <li>(1) the impairment caused by the injured employee's compensable injury;</li> <li>(2) the attainment of maximum medical improvement (MMI);</li> <li>(3) the extent of the injured employee's compensable injury;</li> <li>(4) whether the injured employee's disability is a direct result of the work-related injury;</li> <li>(5) the ability of the injured employee to return to work; or</li> <li>(6) issues similar to those described by paragraphs (1) - (5) of this subsection.</li> </ul> | <p>(a) <b>Initiating an examination.</b> At the request of the insurance carrier, an injured employee, the injured employee's representative, or on its own motion, the division may order a medical examination by a designated doctor to resolve questions about:</p> <ul style="list-style-type: none"> <li>(1) the impairment caused by the injured employee's compensable injury;</li> <li>(2) the attainment of maximum medical improvement (MMI);</li> <li>(3) the extent of the injured employee's compensable injury;</li> <li>(4) whether the injured employee's disability is a direct result of the work-related injury;</li> <li>(5) the ability of the injured employee to return to work; or</li> <li>(6) issues similar to those described by paragraphs (1)-(5) of this subsection.</li> </ul> | <ul style="list-style-type: none"> <li>• Added new "taglines" to identify and navigate subsections more easily.</li> </ul>  |
| <p>(b) To request a designated doctor examination a requestor must:</p> <ul style="list-style-type: none"> <li>(1) provide a specific reason for the examination;</li> <li>(2) report the injured employee's current diagnosis or diagnoses and body part or body parts affected by the injury;</li> <li><b>(3) list all injuries determined to be compensable by the division or court, or all injuries accepted as compensable by the insurance carrier;</b></li> <li>(4) provide general information regarding the identity of the requestor, injured employee, employer, treating doctor, insurance carrier;</li> </ul>   | <p>(b) <b>Requirements for a request.</b> To request a designated doctor examination, a requestor must:</p> <ul style="list-style-type: none"> <li>(1) provide a specific reason for the examination;</li> <li>(2) report the injured employee's current diagnosis or diagnoses and body part or body parts affected by the injury;</li> <li>(3) provide general information about the identity of the requestor, injured employee, treating doctor, and insurance carrier;</li> </ul>  | <ul style="list-style-type: none"> <li>• "<i>Injuries determined to be compensable by DWC, court.....</i>" is no longer required on the DWC Form-032 since multiple certifications will be ordered by DWC.</li> </ul> |

**§127.1. Requesting Designated Doctor Examinations**

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|--|---|-------|
| <p>(5) identify the workers' compensation health care network certified under Insurance Code, Chapter 1305 through which the injured employee is receiving treatment, if applicable;</p> <p>(6) identify whether the claim involves medical benefits provided through a political subdivision under Labor Code §504.053(b)(2) and the name of the health plan, if applicable;</p> <p>(7) submit the request on the form prescribed by the division under this section. A copy of the prescribed form can be obtained from:</p> <p style="padding-left: 40px;">(A) the division's website at <a href="http://www.tdi.texas.gov/wc/indexwc.html">www.tdi.texas.gov/wc/indexwc.html</a>;</p> <p>or</p> <p style="padding-left: 40px;">(B) the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite100, Austin, Texas 78744 or any local division field office location;</p> <p>(8) submit the request to the division and a copy of the request to each party listed in subsection (a) of this section who did not request the designated doctor examination;</p> <p>(9) provide all information listed in subparagraphs (A) - (G) of this paragraph below applicable to the type of examination the requestor seeks:</p> <p style="padding-left: 40px;">(A) if the requestor seeks an examination on the attainment of MMI, include the statutory date of maximum medical improvement, if any;</p> <p style="padding-left: 40px;">(B) if the requestor seeks an examination on the impairment rating of the injured employee, include the date of MMI that has been determined to be valid by a final decision of division or court or by agreement of the parties, if any;</p> <p style="padding-left: 40px;">(C) if the requestor seeks an examination on the extent of the compensable injury, include a description of the accident or incident that caused the claimed injury and a list of all injuries in question;</p> | <p>(4) identify the workers' compensation health care network certified under Insurance Code Chapter 1305 through which the injured employee is receiving treatment, if applicable;</p> <p>(5) identify whether the claim involves medical benefits provided through a political subdivision under Labor Code §504.053(b)(2) and the name of the health plan, if applicable;</p> <p>(6) submit the request on the form prescribed by the division under this section. A copy of the prescribed form is:</p> <p style="padding-left: 40px;">(A) on the division's website at <a href="http://www.tdi.texas.gov/wc/">www.tdi.texas.gov/wc/</a>; or</p> <p style="padding-left: 40px;">(B) at the division's headquarters in Austin, Texas or any division field office location;</p> <p>(7) submit the request to the division and a copy of the request to each party listed in subsection (a) of this section who did not request the designated doctor examination;</p> <p>(8) provide all information listed in subparagraphs (A)-(G) below that applies to the type of examination the requester seeks:</p> <p style="padding-left: 40px;">(A) if the requester seeks an examination on the attainment of MMI, include the statutory date of MMI, if any;</p> <p style="padding-left: 40px;">(B) if the requester seeks an examination on the impairment rating of the injured employee, include the date of MMI that has been determined to be valid by a final decision of division or court or by agreement of the parties, if any;</p> <p style="padding-left: 40px;">(C) if the requester seeks an examination on the extent of the compensable injury, include a description of the accident or incident that caused the claimed injury and a list of all injuries in question;</p> <p style="padding-left: 40px;">(D) if the requester seeks an examination on whether the injured employee's disability is a direct result of the work-related injury, include the</p> |       |

| §127.1. Requesting Designated Doctor Examinations   |   |       |
|---|---|-------|
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| <p>(D) if the requestor seeks an examination on whether the injured employee's disability is a direct result of the work-related injury, include the beginning and ending dates for the claimed periods of disability; state if the injured employee is either not working or is earning less than pre-injury wages as defined by Labor Code §401.011(16);</p> <p>(E) if the requestor seeks an examination regarding the injured employee's ability to return to work in any capacity and what activities the injured employee can perform, include the beginning and ending dates for the periods to be addressed if the requestor is requesting for the designated doctor to examine the injured employee's work status during a period other than the current period;</p> <p>(F) if the requestor seeks an examination to determine whether or not an injured employee entitled to supplemental income benefits may return to work in any capacity for the identified period, include the beginning and ending dates for the qualifying periods to be addressed and whether or not this period involves the ninth quarter or a subsequent quarter of supplemental income benefits;</p> <p>(G) if the requestor seeks an examination on topics under subsection (a)(6) of this section, specify the issue in sufficient detail for the designated doctor to answer the question(s); and</p> <p>(10) provide a signature to attest that every reasonable effort has been made to ensure the accuracy and completeness of the information provided in the request.</p> | <p>beginning and ending dates for the claimed periods of disability and state if the injured employee is either not working or is earning less than pre-injury wages as defined by Labor Code §401.011(16);</p> <p>(E) if the requestor seeks an examination on the injured employee's ability to return to work in any capacity and the activities the injured employee can perform, include the beginning and ending dates for the periods to be addressed. If no dates are included, the designated doctor will examine the injured employee's work status as of the date of the examination;</p> <p>(F) if the requestor seeks an examination to determine whether an injured employee entitled to supplemental income benefits may return to work in any capacity for the identified period, include the beginning and ending dates for the qualifying periods to be addressed and whether this period involves the ninth quarter or a subsequent quarter of supplemental income benefits;</p> <p>(G) if the requestor seeks an examination on topics under subsection (a)(6) of this section, specify the issue in sufficient detail for the designated doctor to identify and answer the questions; and</p> <p>(9) provide a signature to attest that every reasonable effort has been made to ensure the accuracy and completeness of the information in the request.</p> |       |
| <p>(c) If a party submits a request for a designated doctor examination under subsection (b) of this section that would require the division to schedule an examination within 60 days of a previous examination of the injured employee that party must provide good cause for scheduling that designated doctor</p>   | <p>(c) <b>Scheduling an examination within 60 days.</b> The division will not schedule a designated doctor examination within 60 days of the most recent designated doctor examination absent a showing of good cause.</p>  |       |

| §127.1. Requesting Designated Doctor Examinations   |  |       |
|---|--|-------|
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| <p>examination in order for the division to approve the party's request. For the purposes of this subsection, the commissioner or the commissioner's designee shall determine good cause on a case by case basis and will require at a minimum:</p> <p>(1) if that requestor also requested the previous examination, a showing by the requestor that the submitted questions could not have reasonably been included in the prior examination and a designated doctor examination is reasonably necessary to resolve the submitted question(s) and will affect entitlement to benefits; or</p> <p>(2) if that requestor did not request the previous examination, a showing by the requestor a designated doctor examination is reasonably necessary to resolve the submitted question(s) and will affect entitlement to benefits.</p>   | <p>(1) Good cause requires the requester to show that the requested examination is reasonably necessary to resolve the submitted questions and that it will affect entitlement to benefits.</p> <p>(2) If the requester already asked for an examination on the claim, they must also show that the submitted questions could not reasonably have been included in the previous examination.</p>   |       |
| <p>(d) The division shall deny a request for a designated doctor examination and provide a written explanation for the denial to the requestor:</p> <p>(1) if the request does not comply with any of the requirements of subsection (b) or (c) of this section;</p> <p>(2) if the request would require the division to schedule an examination in violation of Labor Code §§408.0041, 408.123, or 408.151;</p> <p>(3) if the commissioner or the commissioner's designee determines the request to be frivolous because it lacks either any legal or any factual basis that would merit approval; or</p> <p>(4) if the insurance carrier has denied the compensability of the claim or otherwise denied liability for the claim as a whole and reported the denial to the division in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements) and the dispute is not yet resolved.</p> | <p>(d) <b>Denial of a request.</b> The division will determine whether good cause exists on a case-by-case basis. The division will deny a request for a designated doctor examination and provide a written explanation for the denial to the requester if:</p> <p>(1) the request does not comply with any of the requirements of subsection (b) or (c) of this section;</p> <p>(2) the request would require the division to schedule an examination that violates Labor Code §§408.0041, 408.123, or 408.151;</p> <p>(3) there is an unresolved dispute about compensability reported under §124.2 of this title (relating to Insurance Carrier Notification Requirements); or</p> <p>(4) the request lacks any legal or factual basis that would reasonably merit approval.</p> |       |

| §127.1. Requesting Designated Doctor Examinations  |   |       |
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| <p>(e) If a division administrative law judge or benefit review officer determines during a dispute regarding the compensability of a claim as a whole that an expert medical opinion would be necessary to resolve a dispute as to whether the claimed injury resulted from the claimed incident, the administrative law judge or benefit review officer may order the injured employee to attend a designated doctor examination to address that issue.</p>  | <p>(e) <b>Examination ordered during a dispute.</b> During a dispute on the compensability of a claim as a whole, if a division administrative law judge or benefit review officer determines that an expert medical opinion would be necessary to resolve a dispute about whether the claimed injury resulted from the claimed incident, the administrative law judge or benefit review officer may order the injured employee to attend a designated doctor examination to address that issue.</p>  |       |
| <p>(f) A party may dispute the division's approval or denial of a designated doctor request through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution processes, proceedings, and procedures). Parties may not dispute a designated doctor examination request or any information on the request until the division has either approved or denied the request. Additionally, a party is entitled to seek an expedited contested case hearing under §140.3 of this title (relating to Expedited Proceedings) to dispute an approved or denied request for a designated doctor examination. The division, upon timely receipt and approval of the request for expedited proceedings, shall stay the disputed examination pending the decision and order of the expedited contested case hearing. Parties seeking expedited proceedings and the stay of an ordered examination must file their request for expedited proceedings with the division within three working days of receiving the order of designated doctor examination under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments).</p> | <p>(f) <b>Disputes about designated doctor requests.</b> The dispute resolution processes in Chapters 140-144 and 147 of this title (relating to Dispute Resolution processes, proceedings, and procedures) govern disputes about designated doctor requests.</p> <p>(1) The insurance carrier, an injured employee, or the injured employee's representative may dispute the division's approval or denial of a designated doctor examination request.</p> <p>(2) Until the division has either approved or denied the request, a party may not dispute the designated doctor examination request itself or the accuracy of any information on the request.</p> <p>(3) To dispute an approved or denied request for a designated doctor examination, a party may seek an expedited contested case hearing under §140.3 of this title (relating to Expedited Proceedings). The party must file the request within three working days of receiving the order under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments).</p> <p>(4) If the division receives and approves a timely request for expedited proceedings to dispute a designated doctor examination, the division will stay the disputed examination pending the outcome of the expedited contested case hearing.</p> |       |

| <b>§127.1. Requesting Designated Doctor Examinations</b>    |                            |   |
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| (g) This section will become effective on December 6, 2018. |                            | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.5. Scheduling Designated Doctor Appointments</b>   |   |   |
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| <b>Current text</b>  | <b>Informal draft text</b>  | <b>Notes</b>  |
| §127.5. Scheduling Designated Doctor Appointments  | §127.5. Scheduling Designated Doctor Appointments   |   |
| (a) Applicability. This section applies to designated doctor examination requests made on or after the effective date of this section.   |   | <ul style="list-style-type: none"> <li>• Applicability date for requests is not needed for rule changes.</li> </ul> |
| <p>(b) The division, within 10 days after approval of a valid request, shall issue an order that assigns a designated doctor and shall notify the designated doctor, the treating doctor, the injured employee, the injured employee's representative, if any, and the insurance carrier that the designated doctor will be directed to examine the injured employee. The order shall:</p> <p>(1) indicate the designated doctor's name, license number, examination address and telephone number, and the date and time of the examination or the date range for the examination to be conducted;</p> <p>(2) explain the purpose of the designated doctor examination;</p> <p>(3) require the injured employee to submit to an examination by the designated doctor;</p> <p>(4) require the designated doctor to perform the examination at the indicated examination address; and</p> <p>(5) require the treating doctor, if any, and insurance carrier to forward all medical records in compliance with §127.10(a)(3) of this title (relating to General Procedures for Designated Doctor Examinations).</p> | <p>(a) <b>Order assigning a designated doctor.</b> Within 10 days after approving a valid request, the division will issue an order that assigns a designated doctor and will notify the designated doctor, the treating doctor, if any, the injured employee, the injured employee's representative, if any, and the insurance carrier that the designated doctor is directed to examine the injured employee. The order will:</p> <p>(1) indicate the designated doctor's name, license number, examination address, fax number, telephone number, and the date and time of the examination or the date range for the examination to be conducted;</p> <p>(2) explain the purpose of the designated doctor examination;</p> <p>(3) require the injured employee to submit to an examination by the designated doctor;</p> <p>(4) require the designated doctor to perform the examination at the indicated examination address; and</p> <p>(5) require the treating doctor, if any, and insurance carrier to forward all medical records to the designated doctor in compliance with §127.10(a)(3) of this title (relating to General Procedures for Designated Doctor Examinations).</p> |   |
| (c) The examination address indicated on the order in subsection (b)(4) of this section may not be changed by any party or by an agreement of any parties without good cause and the approval of the division.   | (b) <b>Change of examination address.</b> The examination address indicated on the order in subsection (a)(4) of this section may not be changed by any party or by an agreement of any parties without good cause and the division's approval.   |   |
| (d) Except as provided in subsection (h) of this section, the division shall select the next available doctor on the designated doctor list for a medical  | (c) <b>Availability of designated doctor.</b> Except as provided in subsection (g) of this section, the division will select the next available doctor on the designated  |   |

| §127.5. Scheduling Designated Doctor Appointments   |   |       |
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| Current text  | Informal draft text   | Notes |
| <p>examination requested under §127.1 of this title (relating to Requesting Designated Doctor Examinations). A designated doctor is available to perform an examination at any address the doctor has filed with the division if the doctor:</p> <p>(1) does not have any disqualifying associations as described in §127.140 of this title (relating to Disqualifying Associations);</p> <p>(2) is appropriately qualified to perform the examination in accordance with §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations);</p> <p>(3) is a certified designated doctor on the day the examination is offered and has not failed to timely file for recertification under §127.110 of this title (relating to Designated Doctor Recertification), if applicable; and</p> <p>(4) has not treated or examined the injured employee in a non-designated doctor capacity within the past 12 months and has not examined or treated the injured employee in a non-designated doctor capacity with regard to a medical condition being evaluated in the designated doctor examination.</p> | <p>doctor list for a medical examination requested under §127.1 of this title (relating to Requesting Designated Doctor Examinations). A designated doctor is available to perform an examination at any address the doctor has filed with the division if the doctor:</p> <p>(1) does not have any disqualifying associations as described in §127.140 of this title (relating to Disqualifying Associations);</p> <p>(2) is appropriately qualified to perform the examination in accordance with §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations);</p> <p>(3) is certified on the day the examination is offered and has not failed to timely file for renewal under §127.100 of this title (relating to Designated Doctor Certification), if applicable;</p> <p>(4) has not treated or examined the injured employee in a different health care provider role:</p> <p>(A) within the past 12 months; or</p> <p>(B) for a medical condition being evaluated in the designated doctor examination.</p> |       |
| <p>(e) To select the next available doctor, the division will maintain two independent designated doctor lists for each county in this state. One list will consist of designated doctors qualified to perform examinations under §127.130(b)(1) - (4) of this title, and the other list will consist of designated doctors qualified to perform examinations under §127.130(b)(5) - (9) of this title. Nothing in this section prevents a qualified designated doctor from being on both lists.</p> <p>(1) A designated doctor will be added to the appropriate designated doctor list for the county of each address the doctor has filed with the division.</p>  | <p>(d) <b>Designated doctor lists.</b> To select the next available doctor, the division will maintain two independent designated doctor lists for each county in Texas.</p> <p>(1) One list will consist of designated doctors qualified to perform examinations under §127.130(b)(1)-(4) of this title.</p> <p>(2) The other list will consist of designated doctors qualified to perform examinations under §127.130(b)(5)-(9) of this title.</p> <p>(3) Nothing in this section prevents a qualified designated doctor from being on both lists.</p> <p>(4) A designated doctor will be added to the appropriate designated doctor list for the county of each address the doctor has filed with the division.</p>  |       |



| §127.5. Scheduling Designated Doctor Appointments   |   |   |
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| <p>(2) When a designated doctor adds an address for a county the doctor is not currently listed in, the doctor will be placed at the bottom of the appropriate list for that county.</p> <p>(3) When a designated doctor removes the only address for a county the doctor is currently listed in, the designated doctor will be removed from the list for that county.</p>  | <p>(5) When a designated doctor adds an address for a county the doctor is not currently listed in, the doctor will be placed at the bottom of the appropriate list for that county.</p> <p>(6) When a designated doctor removes the only address for a county the doctor is currently listed in, the designated doctor will be removed from the list for that county.</p>  |   |
| <p>(f) Except as provided in subsection (h) of this section, the division will assign designated doctor examinations as follows:</p> <p>(1) Each working day all examination requests within a given county will be sorted and distributed to the appropriate list based on the designated doctor qualification standards.</p> <p>(2) Depending on the volume of requested examinations, the division will then assign up to five examinations to the next available designated doctor at the top of the appropriate list.</p> <p>(3) Assignment of an examination moves the designated doctor receiving the assignment to the bottom of the list from which the designated doctor was selected. Receipt of an assignment on one list does not change a designated doctor's position on the other list.</p> | <p>(e) <b>Assignment of designated doctor examinations.</b> Except as provided in subsection (f) of this section, the division will assign designated doctor examinations as follows:</p> <p>(1) Each working day, all examination requests within a county will be sorted and distributed to the appropriate list based on the designated doctor qualification standards.</p> <p>(2) Depending on the volume of requested examinations, the division will assign up to five examinations to the next available designated doctor at the top of the appropriate list.</p> <p>(3) An examination assignment moves the designated doctor receiving the assignment to the bottom of the list from which the designated doctor was selected. Receipt of an assignment on one list does not change a designated doctor's position on the other list.</p> <p>(4) <b>The division may choose not to offer a designated doctor an examination if it is reasonably probable that the designated doctor will not be certified on the date of the examination.</b></p> | <ul style="list-style-type: none"> <li>(4) moved from existing §127.130 for better language placement.</li> </ul> |
| <p>(g) Nothing in this section prevents the division from exempting a designated doctor from the applicable qualification standard under §127.130(d) of this title. The division may assign a designated doctor as necessary if there is no available designated doctor in the county of the injured employee.</p>  | <p>(f) <b>Exemptions.</b> Nothing in this section prevents the division from exempting a designated doctor from the applicable qualification standard under §127.130(d) of this title. If there is no available designated doctor in the county of the injured employee, the division may assign a designated doctor as necessary.</p>  |   |

| §127.5. Scheduling Designated Doctor Appointments  |  |       |
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| Current text   | Informal draft text  | Notes |
| <p>(h) If the division has previously assigned a designated doctor to the claim at the time a request is made, the division shall reassign that doctor again unless the division has authorized or required the doctor to stop providing services on the claim in accordance with §127.130 of this title. Examinations under this subsection must be conducted at the same examination address as the designated doctor's previous examination of the injured employee or at another examination address approved by the division.</p>   | <p>(g) <b>Subsequent examinations.</b> If the division has previously assigned a designated doctor to the claim at the time a request is made, the division will assign the same doctor to a subsequent examination for that claim unless the division has authorized or required the doctor to stop providing services on the claim in accordance with §127.130 of this title. Examinations under this subsection must be conducted at the same examination address as the designated doctor's previous examination of the injured employee or at another examination address approved by the division.</p>   |       |
| <p>(i) The designated doctor's office and the injured employee shall contact each other if a scheduling conflict exists for the designated doctor appointment. The designated doctor or the injured employee who has the scheduling conflict must make the contact at least one working day prior to the appointment. The one working day requirement will be waived in an emergency situation. An examination cannot be rescheduled without the mutual agreement of both the designated doctor and the injured employee. The designated doctor must maintain and document:</p> <ol style="list-style-type: none"> <li>(1) the date and time of the designated doctor examination listed on the division's order;</li> <li>(2) the date and time of the agreement to reschedule with the injured employee;</li> <li>(3) how contact was made to reschedule, indicate the telephone number, facsimile number, or email address used to make contact;</li> <li>(4) the reason for the scheduling conflict; and</li> <li>(5) the date and time of the rescheduled designated doctor examination.</li> </ol> | <p>(h) <b>Mutual agreement required to reschedule.</b> The designated doctor's office and the injured employee must contact each other if there is a scheduling conflict. The designated doctor or the injured employee who has the scheduling conflict must contact the other at least one working day before the appointment. The one working day requirement is waived in an emergency situation. An examination cannot be rescheduled without the mutual agreement of the designated doctor and the injured employee. The designated doctor must maintain and document:</p> <ol style="list-style-type: none"> <li>(1) the date and time of the designated doctor examination listed on the division's order;</li> <li>(2) the date and time of the agreement to reschedule with the injured employee;</li> <li>(3) how contact was made to reschedule, indicating the telephone number, fax number, or email used to make contact;</li> <li>(4) the reason for the scheduling conflict; and</li> <li>(5) the date and time of the rescheduled designated doctor examination.</li> </ol> |       |

| §127.5. Scheduling Designated Doctor Appointments  |   |   |
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| (j) Failure to document and maintain the information in subsection (i) of this section, creates a rebuttable presumption that the examination was rescheduled without mutual agreement of both the designated doctor and injured employee.   | (i) <b>Documentation required.</b> Failure to document and maintain the information in subsection (h) of this section creates a rebuttable presumption that the examination was rescheduled without mutual agreement of the designated doctor and injured employee.   |   |
| (k) The rescheduled examination shall be set to occur no later than 21 days after the scheduled date of the originally scheduled examination and may not be rescheduled to occur before the originally scheduled examination. Within one working day of rescheduling, the designated doctor shall contact the division, the injured employee or the injured employee's representative, if any, the injured employee's treating doctor, and the insurance carrier with the time and date of the rescheduled examination. If the examination cannot be rescheduled no later than 21 days after the scheduled date of the originally scheduled examination or if the injured employee fails to attend the rescheduled examination, the designated doctor shall notify the division as soon as possible but not later than 21 days after the scheduled date of the originally scheduled examination. After receiving this notice, the division may select a new designated doctor. | (j) <b>Rescheduling timeframes.</b> The rescheduled examination will be set to occur no later than 21 days after the originally scheduled examination date. It may not be rescheduled to occur before the originally scheduled examination date.<br>(1) Within one working day of rescheduling, the designated doctor must provide the time and date of the rescheduled examination to the division, the injured employee or the injured employee's representative, if any, the injured employee's treating doctor, and the insurance carrier.<br>(2) If the examination cannot be rescheduled to occur within 21 days of the originally scheduled examination date, or if the injured employee fails to attend the rescheduled examination, the designated doctor must notify the division within 21 days of the originally scheduled examination date.<br>(3) After receiving this notice, the division may select a new designated doctor. |   |
| (l) This section will become effective on December 6, 2018.  |   | <ul style="list-style-type: none"> <li>Effective date of changes will be 20 days after rule adoption. Specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.10. General Procedures for Designated Doctor Examinations</b>   |   |   |
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| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b>  |
| §127.10. General Procedures for Designated Doctor Examinations  | §127.10. General Procedures for Designated Doctor Examinations  |   |
| <p>(a) The designated doctor is authorized to receive the injured employee's confidential medical records and analyses of the injured employee's medical condition, functional abilities, and return-to-work opportunities to assist in the resolution of a dispute under this subchapter without a signed release from the injured employee. The following requirements apply to the receipt of medical records and analyses by the designated doctor:</p> <p>(1) The treating doctor and insurance carrier shall provide to the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor. For subsequent examinations with the same designated doctor, only those medical records not previously sent must be provided. The cost of copying shall be reimbursed in accordance with §134.120 of this title (relating to Reimbursement for Medical Documentation).</p> <p>(2) The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities. The analysis may include supporting information such as videotaped activities of the injured employee, as well as marked copies of medical records. If the insurance carrier sends an analysis to the designated doctor, the insurance carrier shall send a copy to the treating doctor, the injured employee, and the injured employee's representative, if any. If the treating doctor sends an analysis to the designated doctor, the treating doctor shall send a copy to the insurance carrier, the injured employee, and the injured employee's representative, if any. The analysis sent by any party may only cover the injured employee's medical condition, functional abilities, and return-to-work opportunities as provided in Labor Code §408.0041.</p> | <p>(a) <b>Authorization to receive documents.</b> The designated doctor is authorized under Labor Code §408.0041(c) to receive the injured employee's confidential medical records and analyses of the injured employee's medical condition, functional abilities, and return-to-work opportunities without a signed release from the injured employee to help resolve a dispute under this subchapter. The following requirements apply to the designated doctor's receipt of medical records and analyses:</p> <p>(1) The treating doctor and insurance carrier must provide the designated doctor copies of all the injured employee's medical records in their possession relating to the medical condition to be evaluated by the designated doctor.</p> <p>(A) For subsequent examinations with the same designated doctor, the treating doctor and insurance carrier must provide only those medical records not previously sent.</p> <p>(B) The cost of copying must be reimbursed in accordance with §134.120 of this title (relating to Reimbursement for Medical Documentation).</p> <p>(2) The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.</p> <p>(A) The analysis sent by any party may only cover the injured employee's medical condition, functional abilities, and return-to-work opportunities as provided in Labor Code §408.0041. The analysis may include supporting information, such as videotaped activities of the injured employee and marked copies of medical records.</p> | <ul style="list-style-type: none"> <li>• Added Labor Code reference for clarity.</li> </ul> |

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

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| <p>(3) The treating doctor and insurance carrier shall ensure that the required records and analyses (if any) are received by the designated doctor no later than three working days prior to the date of the designated doctor examination. If the designated doctor has not received the medical records or any part thereof at least three working days prior to the examination, the designated doctor shall report this violation to the division within one working day of not timely receiving the records. Once notified, the division shall take action necessary to ensure that the designated doctor receives the records. If the designated doctor does not receive the medical records within one working day of the examination or if the designated doctor does not have sufficient time to review the late medical records before the examination, the designated doctor shall reschedule the examination to occur no later than 21 days after receipt of the records.</p> | <p>(B) If the insurance carrier sends an analysis to the designated doctor, the insurance carrier must send a copy to the treating doctor, the injured employee, and the injured employee’s representative, if any.</p> <p>(C) If the treating doctor sends an analysis to the designated doctor, the treating doctor must send a copy to the insurance carrier, the injured employee, and the injured employee’s representative, if any.</p> <p>(3) The treating doctor and insurance carrier must ensure that the designated doctor receives the required records and analyses (if any) no later than three working days before the date of the designated doctor examination.</p> <p>(A) If the designated doctor has not received the medical records or any part of them at least three working days before the examination, the designated doctor must report this violation to the division within one working day of not timely receiving the records.</p> <p>(B) Once notified, the division will take action necessary to ensure that the designated doctor receives the records.</p> <p>(C) If the designated doctor does not receive the medical records within one working day of the examination or does not have sufficient time to review the late medical records before the examination, the designated doctor must reschedule the examination to occur no later than 21 days after receiving the records.</p> |       |
| <p>(b) Before examining an injured employee, the designated doctor shall review the injured employee’s medical records, including any analysis of the injured employee’s medical condition, functional abilities and return to work opportunities provided by the insurance carrier and treating doctor in accordance with subsection (a) of this section, and any materials submitted to the doctor by the division. The designated doctor shall also review the injured employee’s medical condition and history as provided by the injured employee,</p>  | <p>(b) <b>Requirement to review information.</b> Before examining an injured employee, the designated doctor must review the injured employee’s medical records, including any analysis of the injured employee’s medical condition, functional abilities, and return to work opportunities that the insurance carrier and treating doctor provide in accordance with subsection (a) of this section, and any materials the division submits to the doctor.</p>  |       |

| §127.10. General Procedures for Designated Doctor Examinations  |   |  |
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| Current text  | Informal draft text   | Notes  |
| any medical records provided by the injured employee, and shall perform a complete physical examination of the injured employee. The designated doctor shall give the medical records reviewed the weight the designated doctor determines to be appropriate.   | <p>(1) The designated doctor must also review the injured employee's medical condition, history, and any medical records the injured employee provides; and must perform a complete physical examination of the injured employee.</p> <p>(2) The designated doctor must give the medical records reviewed the weight the designated doctor determines to be appropriate.</p>  |  |
| (c) The designated doctor shall perform additional testing when necessary to resolve the issue in question. The designated doctor shall also refer an injured employee to other health care providers when the referral is necessary to resolve the issue in question and the designated doctor is not qualified to fully resolve the issue in question. Any additional testing or referral required for the evaluation is not subject to preauthorization requirements nor shall those services be denied retrospectively based on medical necessity, extent of injury, or compensability in accordance with the Labor Code §408.027 and §413.014, Insurance Code Chapter 1305, or Chapters 10, 19, 133, or 134 of this title (relating to Workers' Compensation Health Care Networks, Agents' Licensing, General Medical Provisions, and Benefits--Guidelines for Medical Services, Charges, and Payments, respectively) but is subject to the requirements of §180.24 of this title (relating to Financial Disclosure). Any additional testing or referral examination and the designated doctor's report must be completed within 15 working days of the designated doctor's physical examination of the injured employee unless the designated doctor receives division approval for additional time before the expiration of the 15 working days. If the injured employee fails or refuses to attend the designated doctor's requested additional testing or referral examination within 15 working days or within the additional time approved by the division, the designated doctor shall complete the doctor's report based on the designated doctor's examination of the injured | <p>(c) <b>Additional testing and referrals.</b> The designated doctor must perform additional testing when necessary to resolve the issue in question. The designated doctor must also refer an injured employee to other health care providers when the referral is necessary to resolve the issue in question, and the designated doctor is not qualified to fully resolve it.</p> <p>(1) Any additional testing or referrals required for the evaluation are not subject to preauthorization requirements.</p> <p>(2) Payment for additional testing or referrals that the designated doctor has determined are necessary under this subsection will not be denied prospectively or retrospectively, regardless of any potential disagreements about medical necessity, extent of injury, or compensability.</p> <p>(3) Any additional testing or referrals required for the evaluation are subject to the requirements of §180.24 of this title (relating to Financial Disclosure).</p> <p>(4) <b>Any additional testing or referrals required for the evaluation of an injured employee under a certified workers' compensation network under Insurance Code Chapter 1305 or a political subdivision under Labor Code §504.053(b):</b></p> <p><b>(A) are not required to use a provider in the same network as the injured employee; and</b></p> | <ul style="list-style-type: none"> <li>Clarified that testing and referral doctors do not have to be in the same network as the injured employee.</li> </ul> |

| §127.10. General Procedures for Designated Doctor Examinations  |   |  |
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| Current text  | Informal draft text   | Notes  |
| <p>employee, the medical records received, and other information available to the doctor and indicate the injured employee's failure or refusal to attend the testing or referral examination in the report.</p>  | <p>(B) are not subject to the network or out-of-network restrictions in Insurance Code §1305.101 (relating to Providing or Arranging for Health Care).</p> <p>(5) Any additional testing or referral examination and the designated doctor's report must be completed within 15 working days of the designated doctor's physical examination of the injured employee unless the designated doctor receives division approval for additional time before the 15 working days expire.</p> <p>(6) If the injured employee fails or refuses to attend the designated doctor's requested additional testing or referral examination within 15 working days or within the additional time the division approved, the designated doctor must complete the report based on the designated doctor's examination of the injured employee, the medical records received, and other information available to the doctor and indicate the injured employee's failure or refusal to attend the testing or referral examination in the report.</p> |  |
| <p>(d) Any evaluation relating to either maximum medical improvement (MMI), an impairment rating, or both, shall be conducted in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment). If a designated doctor is simultaneously requested to address MMI or impairment rating and the extent of the compensable injury in a single examination, the designated doctor shall provide multiple certifications of MMI and impairment ratings that take into account each reasonable outcome for the extent of the injury. A designated doctor who determines the injured employee has reached MMI or who assigns an impairment rating, or who determines the injured employee has not reached MMI, shall complete and file a report as required by §130.1 of this title and §130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent</p> | <p>(d) <b>MMI and impairment ratings.</b> Any evaluation relating to either MMI, an impairment rating, or both, must be conducted in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment). <b>The designated doctor may provide multiple certifications of MMI and impairment ratings only when directed by the division.</b></p> <p>(e) <b>Reports on MMI and impairment ratings.</b> A designated doctor who determines the injured employee has reached MMI, assigns an impairment rating, or determines the injured employee has not reached MMI, must complete and file a report as required by §§130.1 and 130.3 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor Other than the Treating Doctor).</p>  | <ul style="list-style-type: none"> <li>• Change to specify that only DWC may direct a DD to provide multiple certifications of MMI and IR.</li> <li>• DD will no longer provide multiple certifications when request includes MMI, IR and extent of injury for the same exam.</li> </ul> |

| §127.10. General Procedures for Designated Doctor Examinations  |   |   |
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| Current text  | Informal draft text   | Notes   |
| <p>Impairment by a Doctor Other than the Treating Doctor). If the designated doctor provided multiple certifications of MMI and impairment ratings, the designated doctor must file a Report of Medical Evaluation under §130.1(d) of this title for each impairment rating assigned and a Designated Doctor Examination Data Report pursuant to §127.220 of this title (relating to the Designated Doctor Reports) for the doctor's extent of injury determination. The designated doctor, however, shall only submit one narrative report required by §130.1(d)(1)(B) of this title for all impairment ratings assigned and extent of injury findings. All designated doctor narrative reports submitted under this subsection shall also comply with the requirements of §127.220(a) of this title.</p>  | <p>(1) If the designated doctor provides multiple certifications of MMI and impairment ratings, the designated doctor must file a Report of Medical Evaluation under §130.1(d) of this title for each assigned impairment rating.</p> <p>(2) The designated doctor must submit only one narrative report required by §130.1(d)(1)(B) of this title on all assigned impairment ratings and extent of injury findings.</p> <p>(3) All designated doctor narrative reports submitted under this subsection must comply with the requirements of §127.220(a) of this title (relating to Designated Doctor Reports).</p>   | <ul style="list-style-type: none"> <li>DWC Form-068, <i>Designated Doctor Data Report</i> is no longer needed.</li> </ul> |
| <p>(e) A designated doctor who examines an injured employee pursuant to any question relating to return to work is required to file a Work Status Report that meets the required elements of these reports described in §129.5 of this title (relating to Work Status Reports) and a narrative report that complies with the requirements of §127.220(a) of this title within seven working days of the date of the examination of the injured employee. This report shall be filed with the treating doctor, the division, and the insurance carrier by facsimile or electronic transmission. In addition, the designated doctor shall file the reports with the injured employee and the injured employee's representative (if any) by facsimile or by electronic transmission if the designated doctor has been provided with a facsimile number or email address for the recipient, otherwise, the designated doctor shall send the report by other verifiable means.</p> | <p>(f) <b>Reports on return-to-work.</b> A designated doctor who examines an injured employee for any question relating to return to work must complete a Work Status Report that complies with §129.5 of this title (relating to Work Status Reports) and a narrative report that complies with the requirements of §127.220(a) of this title. The designated doctor must file the work status report and the narrative report together within seven working days of the date the designated doctor examines the injured employee.</p> <p>(1) The designated doctor must file the reports with the treating doctor, the division, and the insurance carrier by fax or electronic transmission.</p> <p>(2) The designated doctor must file the reports with the injured employee and the injured employee's representative (if any) by fax or electronic transmission if the designated doctor has a fax number or email for the recipient.</p> <p>(3) If the designated doctor has no fax number or email for a recipient, the designated doctor must send them the reports by other verifiable means.</p> |   |



| §127.10. General Procedures for Designated Doctor Examinations   |  |   |
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| Current text   | Informal draft text  | Notes   |
| <p>(f) A designated doctor who resolves questions on issues other than those listed in subsections (d) and (e) of this section, shall file a Designated Doctor Examination Data Report that complies with §127.220(c) of this title and a narrative report that complies with §127.220(a) of this title within seven working days of the date of the examination of the injured employee. These reports shall be filed with the treating doctor, the division, and the insurance carrier by facsimile or electronic transmission. In addition, the designated doctor shall provide these reports to the injured employee and the injured employee's representative (if any) by facsimile or by electronic transmission if the designated doctor has been provided with a facsimile number or email address for the recipient, otherwise, the designated doctor shall send the reports by other verifiable means.</p> | <p>(g) Report on other issues. A designated doctor who resolves questions on issues other than those listed in subsections (d), (e), and (f) of this section must file a narrative report that complies with §127.220(a) of this title within seven working days of the date the designated doctor examines the injured employee.</p> <p>(1) The designated doctor must file this report with the treating doctor, the division, and the insurance carrier by fax or electronic transmission.</p> <p>(2) The designated doctor must provide this report to the injured employee and the injured employee's representative (if any) by fax or electronic transmission if the designated doctor has a fax number or email for the recipient.</p> <p>(3) If no fax number or email is provided for the recipient, the designated doctor must send the report by other verifiable means.</p> | <ul style="list-style-type: none"> <li>DWC Form-068, Designated Doctor Data Report is no longer needed.</li> </ul>                    |
| <p>(g) The report of the designated doctor is given presumptive weight regarding the issue(s) in question the designated doctor was properly appointed to address, unless the preponderance of the evidence is to the contrary.</p>  | <p>(h) Presumptive weight. The designated doctor's report is given presumptive weight on the issue or issues the designated doctor was properly appointed to address, unless the preponderance of the evidence is to the contrary.</p>   |   |
| <p>(h) The insurance carrier shall pay all benefits, including medical benefits, in accordance with the designated doctor's report for the issue(s) in dispute. If the designated doctor provides multiple certifications of MMI/impairment ratings under subsection (d) of this section because the designated doctor was also ordered to address the extent of the injured employee's compensable injury, the insurance carrier shall pay benefits based on the conditions to which the designated doctor determines the compensable injury extends. For medical benefits, the insurance carrier shall have 21 days from receipt of the designated doctor's report to reprocess all medical bills previously denied for reasons inconsistent with the findings of the designated doctor's report. By the end of this period, insurance carriers shall tender payment on these medical bills in</p>                 | <p>(i) Payment of benefits during dispute. The insurance carrier must pay all benefits, including medical benefits, in accordance with the designated doctor's report for the issue or issues in dispute.</p> <p>(1) If the designated doctor provides multiple certifications of MMI and impairment ratings the insurance carrier must pay benefits based on the conditions to which the designated doctor determines the compensable injury extends.</p> <p>(2) For medical benefits, the insurance carrier will have 21 days from receipt of the designated doctor's report to reprocess all medical bills previously denied for reasons inconsistent with the designated doctor's findings. By the</p>   | <ul style="list-style-type: none"> <li>Clarifies that the insurance carrier must pay benefits based upon the DD's opinion.</li> </ul> |

| §127.10. General Procedures for Designated Doctor Examinations  |  |       |
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| <p>accordance with the Act and Chapters 133 and 134 of this title. For all other benefits, the insurance carrier shall tender payment no later than five days after receipt of the report.</p>  | <p>end of this period, insurance carriers must pay these medical bills in accordance with the Labor Code and Chapters 133 and 134 of this title.</p> <p>(3) The insurance carrier must pay all other benefits no later than five days after receiving the report.</p>  |       |
| <p>(i) The designated doctor shall maintain accurate records for, at a minimum, five years from the anniversary date of the date of the designated doctor's last examination of the injured employee. This requirement does not reduce or replace any other record retention requirements imposed upon a designated doctor by an appropriate licensing board. These records shall include the injured employee's medical records, any analysis submitted by the insurance carrier or treating doctor (including supporting information), reports generated by the designated doctor as a result of the examination, and narratives provided by the insurance carrier and treating doctor, to reflect:</p> <p>(1) the date and time of any designated doctor appointments scheduled with an injured employee;</p> <p>(2) the circumstances regarding a cancellation, no-show or other situation where the examination did not occur as initially scheduled or rescheduled and, if applicable, documentation of the agreement of the designated doctor and the injured employee to reschedule the examination and the notice that the doctor provided to the division, the injured employee's treating doctor, and the insurance carrier within 24 hours of rescheduling an appointment;</p> <p>(3) the date of the examination;</p> <p>(4) the date medical records were received from the treating doctor or any other person;</p> <p>(5) the date reports described in subsections (d), (e), and (f) of this section were submitted to all required parties and documentation that these</p> | <p>(j) <b>Record retention.</b> The designated doctor must maintain accurate records for, at a minimum, five years from the anniversary date of the date of the designated doctor's last examination of the injured employee.</p> <p>(1) This requirement does not reduce or replace any other record retention requirements imposed on a designated doctor by an appropriate licensing board.</p> <p>(2) These records must include the injured employee's medical records, any analysis the insurance carrier or treating doctor submits (including supporting information), reports the designated doctor generates as a result of the examination, and narratives the insurance carrier and treating doctor provide to reflect:</p> <p>(A) the date and time of any designated doctor appointments scheduled with an injured employee;</p> <p>(B) the circumstances for a cancellation, no-show, or other situation where the examination did not occur as initially scheduled or rescheduled, and if applicable, documentation of the agreement to reschedule the examination and the notice that the doctor provided to the division, the injured employee's treating doctor, and the insurance carrier within 24 hours of rescheduling an appointment;</p> <p>(C) the date of the examination;</p> <p>(D) the date the designated doctor received medical records from the treating doctor or any other person;</p> |       |

| §127.10. General Procedures for Designated Doctor Examinations   |  |   |
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| <p>reports were submitted to the division, treating doctor, and insurance carrier by facsimile or electronic transmission and to other required parties by verifiable means;</p> <p>(6) the name(s) of any referral health care providers used by the designated doctor, if any; the date of appointments by referral health care providers; and the reason for referral by the designated doctor; and</p> <p>(7) the date, if any, the doctor contacted the division for assistance in obtaining medical records from the insurance carrier or treating doctor.</p> | <p>(E) the date the designated doctor submitted the reports described in subsections (d), (e), and (f) of this section to all required parties and documentation that these reports were submitted to the division, treating doctor, and insurance carrier by fax or electronic transmission and to other required parties by verifiable means;</p> <p>(F) if applicable, the names of any referral health care providers the designated doctor used, the dates of referral health care provider appointments, and the reason the designated doctor referred them; and</p> <p>(G) if applicable, the date the doctor contacted the division for assistance in getting medical records from the insurance carrier or treating doctor.</p> |   |
| <p>(j) Parties may dispute any entitlement to benefits affected by a designated doctor's report through the dispute resolution processes outlined in Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution processes, proceedings, and procedures).</p>   | <p>(k) <b>Dispute resolution.</b> Parties may dispute any entitlement to benefits affected by a designated doctor's report through the dispute resolution processes outlined in Chapters 140-144 and 147 of this title (relating to dispute resolution processes, proceedings, and procedures).</p>  |   |
| <p>(k) This section will become effective on December 6, 2018.</p>   |  | <ul style="list-style-type: none"> <li>Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.15. Undue Influence on a Designated Doctor</b>  |  |   |
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| <b>Current text</b>   | <b>Informal draft text</b>   | <b>Notes</b>  |
| §127.15. Undue Influence on a Designated Doctor   | §127.15. Undue Influence on a Designated Doctor  |   |
| <p>(a) To avoid undue influence on the designated doctor:</p> <p>(1) except as provided by §127.10(a) of this title (relating to General Procedures for Designated Doctor Examinations), only the injured employee or appropriate division staff may communicate with the designated doctor prior to the examination of the injured employee by the designated doctor regarding the injured employee's medical condition or history;</p> <p>(2) after the examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff; and</p> <p>(3) the designated doctor may initiate communication with any health care provider who has previously treated or examined the injured employee for the work-related injury or with a peer review doctor identified by the insurance carrier who reviewed the injured employee's claim or any information regarding the injured employee's claim.</p> | <p>(a) <b>Communication about medical condition or history.</b> To avoid undue influence on the designated doctor:</p> <p>(1) except as provided by §127.10(a) of this title (relating to General Procedures for Designated Doctor Examinations), only the injured employee or appropriate division staff may communicate with the designated doctor about the injured employee's medical condition or history before the designated doctor examines the injured employee;</p> <p>(2) after the examination is completed, only appropriate division staff may communicate with the designated doctor about the injured employee's medical condition or history; and</p> <p>(3) the designated doctor may initiate communication with:</p> <p>(A) any health care provider who previously treated or examined the injured employee for the work-related injury; or</p> <p>(B) a peer review doctor that the insurance carrier identifies as having reviewed the injured employee's claim or any information about that claim.</p> |   |
| <p>(b) The insurance carrier, treating doctor, injured employee, or injured employee's representative, if any, may contact the designated doctor's office to ask about administrative matters, including but not limited to whether the designated doctor received the records, whether the exam took place, or whether the report has been filed, or other similar matters.</p>  | <p>(b) <b>Communication about administrative matters.</b> The insurance carrier, treating doctor, injured employee, or injured employee's representative, if any, may contact the designated doctor's office to ask about administrative matters, including, but not limited to, whether the designated doctor received the records, whether the exam took place, whether the designated doctor has filed the report, or other similar matters.</p>  |   |
| <p>(c) This section becomes effective on February 1, 2011.</p>  |  | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days</li> </ul> |

| <b>§127.15. Undue Influence on a Designated Doctor</b> |                            |   |
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| <b>Current text</b>                                    | <b>Informal draft text</b> | <b>Notes</b>  |
|  |                            | after rule adoption. A specific effective date is not needed in the rule. |

| §127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports   |  |       |
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| Current text  | Informal draft text  | Notes |
| §127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports   | §127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports  |       |
| <p>(a) Parties may file a request with the division for clarification of the designated doctor's report. A copy of the request must be provided to the opposing party. The division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report. Parties may only request clarification on issues already addressed by the designated doctor's report or on issues that the designated doctor was ordered to address but did not address. Additionally, a designated doctor shall only respond to the questions or requests submitted to the designated doctor in the request for clarification and shall not otherwise reconsider the doctor's previous decision, issue a new or amended decision, or provide clarification on the doctor's previous decision.</p> | <p>(a) <b>Filing a clarification request.</b> Parties may file a request with the division for clarification of the designated doctor's report.</p> <p>(1) The requesting party must provide copies of the request to all parties.</p> <p>(2) The division may contact the designated doctor if it determines that clarification is necessary to resolve an issue regarding the designated doctor's report.</p> <p>(3) Parties may only request clarification on issues already addressed by the designated doctor's report or on issues that the designated doctor was ordered to address but did not.</p> <p>(4) A designated doctor must only respond to the questions or requests submitted to the designated doctor in the request for clarification and must not reconsider their previous decision, issue a new or amended decision, or provide clarification on their previous decision.</p> |       |
| <p>(b) Requests for clarification must:</p> <p>(1) include the name of the designated doctor, the reason for the designated doctor's examination, the date of the examination, and the name and signature of the requestor;</p> <p>(2) explain why clarification of the designated doctor's report is necessary and appropriate to resolve a future or pending dispute;</p> <p>(3) include questions for the designated doctor to answer that are neither inflammatory nor leading; and</p> <p>(4) provide any medical records that were not previously provided to the designated doctor and explain why these records are necessary for the designated doctor to respond to the request for clarification.</p>  | <p>(b) <b>Requirements.</b> Requests for clarification must:</p> <p>(1) include the name of the designated doctor, the reason for the examination, the date of the examination, and the requester's name and signature;</p> <p>(2) explain why clarification of the designated doctor's report is necessary and appropriate to resolve a future or pending dispute;</p> <p>(3) include questions for the designated doctor to answer that are not inflammatory or leading; and</p> <p>(4) provide any medical records that were not previously provided to the designated doctor and explain why these records are necessary for the designated doctor to respond to the request for clarification.</p>  |       |

| <b>§127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports</b>   |   |   |
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| <b>Current text</b>  | <b>Informal draft text</b>  | <b>Notes</b>  |
| (c) The division, at its discretion, may also request clarification from the designated doctor on issues the division deems appropriate.   | (c) <b>Requests by the division.</b> At its discretion, the division may also request clarification from the designated doctor on any issue or issues.  |   |
| (d) To respond to the request for clarification, the designated doctor must be on the division's designated doctor list at the time the request is received by the division. The designated doctor shall respond, in writing, to the request for clarification within five working days of receipt and send copies of the response to the parties listed in §127.10(f) of this title (relating to General Procedures for Designated Doctor Examinations). If, in order to respond to the request for clarification, the designated doctor has to reexamine the injured employee, the doctor shall: <p>(1) respond, in writing, to the request for clarification advising of the need for an additional examination within five working days of receipt of the request and provide copies of the response to the parties specified in §127.10(f) of this title;</p> <p>(2) if the division orders the reexamination, conduct the reexamination within 21 days from the date the order is issued by the division at the same examination address as the original examination; and</p> <p>(3) respond, in writing, to the request for clarification based on the additional examination within seven working days of the examination and provide copies of the response to the parties specified in §127.10(f) of this title.</p> | (d) <b>Responses to requests.</b> To respond to a request for clarification, the designated doctor must be on the division's designated doctor list on the date of the request. <p>(1) The designated doctor must respond in writing to the request for clarification within five working days of receipt and send copies of the response to the parties listed in §127.10(g) of this title (relating to General Procedures for Designated Doctor Examinations).</p> <p>(2) If the designated doctor must reexamine the injured employee to respond to the request for clarification, the doctor must: <p>(A) respond to the request for clarification in writing, advising of the need for an additional examination within five working days of receiving the request and provide copies of the response to the parties specified in §127.10(g) of this title;</p> <p>(B) conduct the reexamination within 21 days from the date the division issues the order for the reexamination at the same address as the original examination; and</p> <p>(C) respond in writing to the request for clarification based on the additional examination within seven working days of the examination and provide copies of the response to the parties specified in §127.10(g) of this title.</p> </p> |   |
| (e) Any refusal or failure by a designated doctor to conduct a reexamination that is necessary to respond to a request for clarification is an administrative violation.   | (e) <b>Administrative violation.</b> Any refusal or failure by a designated doctor to conduct a reexamination that is necessary to respond to a request for clarification is an administrative violation.   |   |
| (f) This section will become effective September 1, 2012.  |   | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days</li> </ul> |

| <b>§127.20. Requesting a Letter of Clarification Regarding Designated Doctor Reports</b> |                            |   |
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| <b>Current text</b>  | <b>Informal draft text</b> | <b>Notes</b>  |
|  |                            | after rule adoption. A specific effective date is not needed in the rule. |



| <b>§127.25. Failure to Attend a Designated Doctor Examination</b>   |  |              |
|---|--|--------------|
| <b>Current text</b>   | <b>Informal draft text</b>   | <b>Notes</b> |
| §127.25. Failure to Attend a Designated Doctor Examination  | §127.25. Failure to Attend a Designated Doctor Examination   |              |
| (a) An insurance carrier may suspend temporary income benefits (TIBs) if an injured employee, without good cause, fails to attend a designated doctor examination.  | (a) <b>Suspension of benefits.</b> An insurance carrier may suspend temporary income benefits (TIBs) if an injured employee fails, without good cause, to attend a designated doctor examination or a referral examination under §127.10(c) of this title.   |              |
| (b) In the absence of a finding by the division to the contrary, an insurance carrier may presume that the injured employee did not have good cause to fail to attend the examination if by the day the examination was originally scheduled to occur the injured employee has both:<br>(1) failed to submit to the examination; and<br>(2) failed to contact the designated doctor's office to reschedule the examination. | (b) <b>No good cause.</b> If there is no division finding that good cause exists, an insurance carrier may presume that the injured employee did not have good cause to fail to attend the examination if, by the day the examination was originally scheduled to occur, the injured employee has both:<br>(1) failed to submit to the examination; and<br>(2) failed to contact the designated doctor's office to reschedule the examination. |              |
| (c) If the injured employee contacts the designated doctor within 21 days of the scheduled date of the missed examination to reschedule the examination, the designated doctor shall schedule the examination to occur as soon as possible, but not later than the 21st day after the injured employee contacted the doctor.  | (c) <b>Rescheduling timeframe.</b> If the injured employee contacts the designated doctor within 21 days of the scheduled date of the missed examination to reschedule the examination, the designated doctor must schedule the examination to occur as soon as possible, but no later than 21 days after the injured employee contacted the doctor.   |              |
| (d) If the injured employee fails to contact the designated doctor within 21 days of the scheduled date of the missed examination but wishes to reschedule the examination, the injured employee must request a new examination under §127.1 of this title (relating to Requesting a Designated Doctor Examination).  | (d) <b>New examination request required.</b> If the injured employee fails to contact the designated doctor within 21 days of the missed examination date but wishes to reschedule the examination, the injured employee must request a new examination under §127.1 of this title (relating to Requesting Designated Doctor Examinations).  |              |
| (e) The insurance carrier shall reinstate TIBs effective as of the date the injured employee submitted to the rescheduled examination under subsection (c) of this  | (e) <b>Reinitiation of benefits.</b> The insurance carrier must reinitiate TIBs effective on the date the injured employee submitted to the rescheduled examination under  |              |

| <b>§127.25. Failure to Attend a Designated Doctor Examination</b>   |   |   |
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| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b>  |
| <p>section or the examination scheduled pursuant to the injured employee's request under subsection (d) of this section unless the report of the designated doctor indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. The re-initiation of TIBs shall occur no later than the seventh day following:</p> <p>(1) the date the insurance carrier was notified that the injured employee submitted to the examination; or</p> <p>(2) the date that the insurance carrier was notified that the division found that the injured employee had good cause for not attending the examination.</p> | <p>subsection (c) of this section, or the date the examination was scheduled at the injured employee's request under subsection (d) of this section, unless the designated doctor's report indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. The reinitiation of TIBs must occur no later than the seventh day following:</p> <p>(1) the date the insurance carrier was notified that the injured employee submitted to the examination; or</p> <p>(2) the date that the insurance carrier was notified that the division found that the injured employee had good cause for not attending the examination.</p> |   |
| <p>(f) An injured employee is not entitled to TIBs for a period during which the insurance carrier suspended benefits pursuant to this section unless the injured employee later submits to the examination and the division finds or the insurance carrier determines that the injured employee had good cause for failure to attend the examination.</p>  | <p>(f) <b>Benefits during suspension.</b> An injured employee is not entitled to TIBs during the period when the insurance carrier suspended benefits pursuant to this section unless the injured employee later submits to the examination and:</p> <p>(1) the division finds that the injured employee had good cause for not attending the examination; or</p> <p>(2) the insurance carrier determines that the injured employee had good cause for not attending the examination.</p>   |   |
| <p>(g) This section will become effective September 1, 2012.</p>  |   | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>Subchapter B. Designated Doctor Certification, Recertification, and Qualifications</b> |  |              |
|---|--|--------------|
| <b>Current text</b>   | <b>Informal draft text</b>   | <b>Notes</b> |
| Subchapter B. Designated Doctor Certification, Recertification, and Qualifications        | Subchapter B. Designated Doctor Certification, Renewal, and Qualifications |              |

| <b>§127.100. Designated Doctor Certification</b>   |  |  |
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| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b>   |
| §127.100. Designated Doctor Certification  | §127.100. Designated Doctor Certification  |  |
| (a) Applicability. This section applies to designated doctor applications received on or after the effective date of this section.   |  | <ul style="list-style-type: none"> <li>• Applicability date for requests is not needed for rule changes.</li> </ul>  |
| <p>(b) In order to serve as a designated doctor, a doctor must be certified as a designed doctor. To be certified as a designated doctor, a doctor must:</p> <p>(1) submit a complete designated doctor certification application as described by subsection (c) of this section;</p> <p>(2) submit a certificate or certificates certifying that the doctor has within the past 12 months successfully completed all division required trainings and passed all division required testing on the specific duties of a designated doctor under the Act and division rules, including demonstrated proficient knowledge of the currently adopted edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and the division's adopted treatment and return-to-work guidelines;</p> <p>(3) be licensed in Texas;</p> <p>(4) have maintained an active practice for at least three years during the doctor's career. For the purposes of this subsection, a doctor has an active practice if the doctor maintains or has maintained routine office hours of at least 20 hours per week for 40 weeks per year for the treatment of patients; and</p> <p>(5) own or subscribe to, for the duration of the doctor's term as a certified designated doctor, the current edition of the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division for the assignment of impairment ratings and all return-to-work and treatment guidelines adopted by the division.</p> | <p>(a) <b>Qualifications to get or renew certification.</b> The division will not assign examinations to a designated doctor who does not meet all requirements for certification or renewal. All designated doctors must:</p> <p>(1) Have a complete designated doctor certification application as described in subsection (b) of this section on file with the division.</p> <p>(2) Complete all division-required trainings within 12 months of the date of application and have current documentation confirming their completion on file with the division.</p> <p>(3) Pass all division-required testing on the specific duties of a designated doctor under the Labor Code and division rules and have current documentation confirming their passage on file with the division. <b>Required testing must have been completed on or after May 13, 2013,</b> and includes demonstrated proficient knowledge of the currently adopted edition of:</p> <p>(A) the American Medical Association Guides to the Evaluation of Permanent Impairment; and</p> <p>(B) the division's adopted:</p> <p>(i) treatment guidelines; and</p> <p>(ii) return-to-work guidelines.</p> <p>(4) Have maintained an active practice for at least three years during the doctor's career. For the purposes of this subsection, a doctor has an active practice if the doctor maintains or has maintained routine office hours of at least 20 hours per week for 40 weeks per year to treat patients.</p> | <ul style="list-style-type: none"> <li>• All first-time and renewal certification requirements are now in one section.</li> <li>• Doctors who passed the certification test after May 13, 2013, are no longer required to retest every two years.</li> </ul> |

| §127.100. Designated Doctor Certification   |   |  |
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| Current text  | Informal draft text   | Notes  |
|   | <p>(5) For the duration of the doctor's term as a designated doctor:</p> <p>(A) be licensed in Texas;</p> <p>(B) own or subscribe to the current edition of the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division to assign impairment ratings and all return-to-work and treatment guidelines adopted by the division; and</p> <p>(C) comply with financial disclosure requirements in §180.24 (relating to Financial Disclosure) of this title.</p>   |  |
| <p>(c) A complete designated doctor certification application must be completed on the division's required form for certification applications and must include:</p> <p>(1) contact information for the doctor;</p> <p>(2) information on the doctor's education;</p> <p>(3) a description of the doctor's license(s), certifications, and professional specialty, if any;</p> <p>(4) a description of the doctor's work history and hospital or other health care provider affiliations;</p> <p>(5) a description of any affiliations the doctor has with a workers' compensation health care network certified under Chapter 1305, Insurance Code or political subdivision under Labor Code §504.053(b)(2);</p> <p>(6) information regarding the doctor's current practice locations;</p> <p>(7) disclosure questions regarding the doctor's professional background, education, training, and fitness to perform the duties of a designated doctor, including disclosure and summary of any disciplinary actions taken against the doctor by any state licensing board or other appropriate state or federal agency;</p> <p>(8) the identities of any person(s) with whom the doctor has contracted to assist in performance or administration of the doctor's designated doctor duties;</p> | <p>(b) <b>Application.</b> To be considered complete, an application for certification must include, and a renewal application must update or confirm:</p> <p>(1) contact information for the doctor;</p> <p>(2) information on the doctor's education;</p> <p>(3) a description of the doctor's license or licenses, certifications, and professional specialty, if any;</p> <p>(4) a description of the doctor's work history and hospital or other health care provider affiliations;</p> <p>(5) a description of any affiliations the doctor has with a workers' compensation health care network certified under Insurance Code Chapter 1305 or political subdivision under Labor Code §504.053(b)(2);</p> <p>(6) information on the doctor's current practice locations;</p> <p>(7) <b>detailed answers to disclosure questions</b> on the doctor's professional background, education, training, and fitness to perform the duties of a designated doctor, including disclosure and summary of any disciplinary actions taken against the doctor by any state licensing board or other appropriate state or federal agency;</p> <p>(8) the identity of any person the doctor has contracted with to assist in performing or administering the doctor's designated doctor duties;</p> | <ul style="list-style-type: none"> <li>• Clarifies that detailed explanations are needed on the certification application for disclosure questions.</li> </ul> |

| §127.100. Designated Doctor Certification   |   |  |
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| Current text  | Informal draft text   | Notes  |
| <p>(9) an attestation that:</p> <p>(A) all information provided in the application is accurate and complete to the best of the doctor's knowledge;</p> <p>(B) the doctor will inform the division of any changes to this information as required by §127.200(a)(8) of this title (relating to Duties of a Designated Doctor); and</p> <p>(C) the doctor shall consent to any on-site visits, as provided by §127.200(a)(15) of this title, by the division at facilities used or intended to be used by the designated doctor to perform designated doctor examinations for the duration of the doctor's certification.</p> | <p>(9) an attestation that:</p> <p>(A) all information provided in the application is accurate and complete to the best of the doctor's knowledge;</p> <p>(B) the doctor will inform the division of any changes to this information as required by §127.200(a)(8) of this title (relating to Duties of a Designated Doctor); and</p> <p>(C) the doctor will consent to any on-site visits, as provided by §127.200(a)(15) of this title, by the division at facilities that the designated doctor uses or intends to use to perform designated doctor examinations for the duration of the doctor's certification.</p> |  |
| <p>(d) If a doctor passes a division-required test, the doctor may not retest within a twelve month period. If a doctor fails a division-required test, the doctor may not retest more than three times within a six month period.</p> <p>(1) After the first or second attempt, the doctor must wait 14 days before retaking the test; or</p> <p>(2) After the third attempt, the doctor must wait six months before retaking the test.</p>  | <p>(c) <b>Retesting.</b> If a doctor passes a division-required test, the doctor may not retest within a twelve-month period. If a doctor fails a division-required test, the doctor may not retest more than three times within a six-month period.</p> <p>(1) After the first or second attempt, the doctor must wait 14 days before retaking the test.</p> <p>(2) After the third attempt, the doctor must wait six months before retaking the test.</p>   |  |
|   | <p>(d) <b>Additional certification testing.</b> On receipt of an application for designated doctor certification renewal, the division <b>may require a designated doctor to complete additional certification testing to demonstrate proficient knowledge on the specific duties of a designated doctor</b> under the Labor Code and division rules. Examples of circumstances that may require additional certification testing include, but are not limited to, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.</p>  | <ul style="list-style-type: none"> <li>Allows for testing of all designated doctors (DDs) in the future if conditions change.</li> </ul> |
| <p>(e) The division shall notify a doctor of the commissioner's approval or denial of the doctor's application to be certified as a designated doctor in writing. Denials</p>   | <p>(e) <b>Notice of approval, denial, suspension, or revocation.</b> The division will notify a doctor in writing of the commissioner's approval or denial of the doctor's</p>  |  |

| <b>§127.100. Designated Doctor Certification</b>   |  |   |
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| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b>  |
| <p>will include the reason(s) for the denial. Approvals certify a doctor for a term of two years and will include the effective date and expiration date of the certification. Approvals will also include the examination qualification criteria under §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations) that the division has assigned to the designated doctor as part of the doctor's certification.</p> | <p>application to be certified or renewed as a designated doctor <b>or of the division's suspension or revocation of the doctor's certification.</b></p> <p>(f) <b>Term and qualification.</b> Approvals certify a doctor for a term of two years and will include:</p> <ul style="list-style-type: none"> <li>(1) the effective date of the certification;</li> <li>(2) the expiration date of the certification; and</li> <li>(3) the designated doctor's examination qualifications under §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations).</li> </ul>   | <ul style="list-style-type: none"> <li>• Ensures consistent notice of possible certification actions.</li> </ul>  |
|  | <p>(g) <b>Renewal.</b> A designated doctor who seeks to renew their certification immediately after their current term expires, without interruption, must apply for certification <b>no later than</b> 45 days <b>before</b> the end of the term.</p> <ul style="list-style-type: none"> <li>(1) If the division does not receive all of the information required under subsection (b)(1)-(9) above <b>no later than</b> 45 days before the end of the designated doctor's term, the division will not assign examinations to the designated doctor during the last 45 days of an expiring term.</li> <li>(2) The designated doctor may still provide services on claims the division had previously assigned to them during this 45-day period.</li> </ul> | <ul style="list-style-type: none"> <li>• Requirements for renewal of certification.</li> </ul>  |
|  | <p>(h) <b>Approval of renewal application with restrictions.</b> An application for renewal may be approved with restrictions. The division may restrict a designated doctor's certification until the doctor complies with the requirements in the designated doctor's approval of certification. Designated doctors whose certification is restricted may dispute the restriction through the procedure described in subsection (k) of this section.</p>   | <ul style="list-style-type: none"> <li>• Allows DWC to approve a DD certification but restrict some or all appointments until the DD completes more training or testing.</li> </ul> |

**§127.100. Designated Doctor Certification**

| Current text   | Informal draft text  | Notes   |
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| <p>(f) Doctors may be denied certification as a designated doctor:</p> <p>(1) if the doctor did not submit the information and documentation required by subsection (b) of this section;</p> <p>(2) if the doctor did not submit a complete application for certification as required by subsection (c) of this section;</p> <p>(3) for having a relevant restriction on their practice imposed by a state licensing board, certification authority, or other appropriate state or federal agency, including the division; or</p> <p>(4) for other activities, events, or occurrences that the commissioner determines to warrant denial of a doctor's application for certification as a designated doctor, including but not limited to:</p> <p>(A) the quality of the doctor's past reports as a certified designated doctor, if any;</p> <p>(B) a history of complaints as a certified designated doctor, if any;</p> <p>(C) excess requests for deferral from the designated doctor list as a certified designated doctor, if any;</p> <p>(D) a pattern of overturned reports by the division or a court as a certified designated doctor, if any;</p> <p>(E) a demonstrated lack of ability to apply or properly consider the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division for the assignment of impairment ratings and all return-to-work and treatment guidelines adopted by the division as a certified designated doctor, if any;</p> <p>(F) a demonstrated lack of ability to consistently perform designated doctor examinations in a timely manner as a certified designated doctor, if any;</p> | <p>(i) <b>Adverse certification actions. The division may deny, suspend, or revoke a designated doctor's certification for any of the following reasons:</b></p> <p>(1) if the doctor did not submit a complete application for certification as required under subsection (b) of this section;</p> <p>(2) for having a relevant restriction on their practice imposed by a state licensing board, certification authority, or other appropriate state or federal agency, including the division;</p> <p>(3) if the doctor failed to update their application for certification properly; or</p> <p>(4) for other activities, events, or occurrences that the commissioner determines warrant denial of a doctor's application for certification as a designated doctor, including, but not limited to:</p> <p>(A) the quality of the designated doctor's past reports;</p> <p>(B) the designated doctor's history of complaints;</p> <p>(C) excess requests for deferral from the designated doctor list by the designated doctor;</p> <p>(D) a pattern of overturned reports by the division or a court;</p> <p>(E) a demonstrated lack of ability to apply or properly consider the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division to assign impairment ratings and all return-to-work and treatment guidelines adopted by the division;</p> <p>(F) a demonstrated lack of ability to consistently perform designated doctor examinations in a timely manner;</p> <p>(G) a demonstrated failure to identify disqualifying associations;</p> <p>(H) a demonstrated lack of ability to ensure the confidentiality of injured employee medical records and claim information provided to or generated by a designated doctor;</p> | <ul style="list-style-type: none"> <li>Clarifies the range of possible actions the commissioner can take to ensure the quality of designated doctor decisions and reviews.</li> </ul> |



| §127.100. Designated Doctor Certification  |   |  |
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| Current text   | Informal draft text   | Notes  |
| <p>(G) a demonstrated failure to identify disqualifying associations as a certified designated doctor, if any;</p> <p>(H) a demonstrated lack of ability to ensure the confidentiality of injured employee medical records and claim information provided to or generated by a certified designated doctor, if any;</p> <p>(I) applying for certification less than a year from denial of a previous designated doctor certification or recertification application; or</p> <p>(J) any grounds that would allow the division to sanction a health care provider under the Act or division rules.</p>   | <p>(I) a history of unnecessary referral examinations or testing;</p> <p>(J) a failure to comply with the requirements of §180.24 of this title (relating to Financial Disclosure) when they requested referral examinations or additional testing;</p> <p>(K) applying for certification less than a year from denial of a previous designated doctor certification application; or</p> <p>(L) any grounds that would allow the division to sanction a health care provider under the Labor Code or division rules.</p>  |  |
| <p>(g) Within 15 working days after receiving a denial, a doctor may file a written response with the division, which addresses the reasons given to the doctor for denial.</p> <p>(1) If a written response is not received by the 15<sup>th</sup> working day after the date the doctor received the notice, the denial will be final effective the following day. No further notice will be sent.</p> <p>(2) If a written response which disagrees with the denial is timely received, the division shall review the response and shall notify the doctor of the commissioner's final decision. If the final decision is still a denial, the division's final notice shall provide the reason(s) why the doctor's response did not change the commissioner's decision to deny the doctor's application for certification as a designated doctor. The denial will be effective the day following the date the doctor receives notice of the denial unless otherwise specified in the notice.</p> | <p>(j) <b>Response to denial of certification.</b> Within 15 working days after receiving a written denial, a doctor may file a written response with the division addressing the reasons the division gave to the doctor for its denial.</p> <p>(1) If the division does not receive a written response by the 15<sup>th</sup> working day after the date the doctor received the notice, the denial will be final effective the next day. The division will not send further notice.</p> <p>(2) If the division timely receives a written response that disagrees with the denial, the division will review the response and notify the doctor in writing of the commissioner's final decision.</p> <p>(A) If the final decision is still a denial, the division's final notice will provide the reasons the doctor's response did not change the commissioner's decision to deny the doctor's application for certification as a designated doctor.</p> <p>(B) The denial will be effective the day after the doctor receives notice of the denial, unless the notice specifies otherwise.</p> |  |
|  | <p>(k) <b>Request for informal conference.</b> A designated doctor <b>whose renewal application is denied, or whose certification is suspended or revoked,</b> may either</p>   | <ul style="list-style-type: none"> <li>Requirements for renewal of certification.</li> </ul> |

§127.100. Designated Doctor Certification

| Current text | Informal draft text   | Notes   |
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|              | <p>respond in writing using the procedure in subsection (j) of this section or submit a written request for an informal conference before the division to address those reasons.</p> <p>(1) If the division does not receive a written request for an informal conference by the 15th working day after the date the doctor received the notice, the denial, suspension, or revocation will be final effective the next day. The division will not send further notice.</p> <p>(2) If the division timely receives a written request for an informal conference, it will set the informal conference to occur no later than 31 days after it received the request.</p> <p>(A) At the informal conference, the designated doctor may present evidence that addresses the reasons the doctor was denied certification, or the reasons the doctor's certification was suspended or revoked, to the commissioner's designated representatives.</p> <p>(B) The designated doctor may have an attorney present.</p> <p>(C) At the end of the informal conference, the commissioner's designated representatives will provide the designated doctor with their final recommendation on the doctor's certification.</p> <p>(i) If the final recommendation is still a denial, suspension, or revocation, the commissioner's designated representatives will provide the reasons for not certifying the doctor as a designated doctor.</p> <p>(ii) After the informal conference, the commissioner's designated representatives will send their final recommendation to the commissioner, who will review it and all evidence presented at the informal conference and make a final decision.</p> <p>(iii) The division will notify the designated doctor of the commissioner's final decision in writing.</p> | <ul style="list-style-type: none"><li>• Informal conference procedure for designated doctors that have or have had a certification.</li></ul> |

| <b>§127.100. Designated Doctor Certification</b>   |  |  |
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| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b>   |
|  | (iv) The decision will be effective the day after the doctor receives notice of the decision, unless the notice specifies otherwise. |  |
| (h) Designated doctors whose application for certification is approved but wish to dispute the examination qualification criteria under §127.130 of this title that the division assigned to the doctor may do so through the procedures described in subsection (g) of this section. Designated doctors must include in their response to the division the specific criteria they believe should be modified and documentation to justify the requested change. |  |  |
| (i) Designated doctors who are designated doctors on the effective date of this section shall be considered certified for the duration of the designated doctor's current certification. Before the expiration of the designated doctor's current certification, the designated doctor must timely apply for recertification under the applicable requirements of §127.110 of this title (relating to Designated Doctor Recertification).                        |  | <ul style="list-style-type: none"> <li>Deleted—unnecessary with the restructured §127.100.</li> <li>The process for a DD to request a renewal of certification will not change.</li> </ul> |
| (j) This section will become effective on December 6, 2018.  |  | <ul style="list-style-type: none"> <li>Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul>                      |

| <b>§127.110. Designated Doctor Recertification</b>   |   |
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| <b>Current text</b>  | <b>Notes</b>  |
| §127.110. Designated Doctor Recertification  | <ul style="list-style-type: none"> <li>Section 127.110 combined with Section 127.100. Certification and renewal requirements are now in one section.</li> </ul> |
| (a) Applicability. This section applies to designated doctor applications received on or after the effective date of this section.   |   |
| <p>(b) If a designated doctor's certification expires, the designated doctor must apply for recertification. Designated doctors seeking recertification must:</p> <p>(1) submit to the division certificate(s) evidencing that the doctor has, within the past 12 months, successfully completed all division required trainings and passed all division required testing on the specific duties of a designated doctor under the Act and division rules, including demonstrated proficient knowledge of the current division adopted edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and the division's adopted treatment and return-to-work guidelines;</p> <p>(2) own or subscribe to, for the duration of the doctor's term as a certified designated doctor, the current edition of the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division for the assignment of impairment ratings and all return-to-work and treatment guidelines adopted by the division; and</p> <p>(3) submit to the division a complete application for recertification that meets the requirements of §127.100(c) of this title (relating to Designated Doctor Certification). For purposes of recertification, division-required testing limitations as described in §127.100(d) of this title apply.</p> |   |
| (c) The division will not assign examinations to a designated doctor during the 45 days prior to the expiration of the designated doctor's certification if the division fails to receive the required information in subsection (b)(1) - (3) of this section from the designated doctor before that time though the designated  |   |

| <b>§127.110. Designated Doctor Recertification</b>   |                            |              |
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| <b>Current text</b>  | <b>Informal draft text</b> | <b>Notes</b> |
| <p>doctor may still provide services on claims to which the designated doctor had been previously assigned during this period. A designated doctor who seeks to be recertified as a designated doctor and who fails to apply for recertification under subsection (b)(1) - (3) of this section at least 45 days prior to the expiration of the designated doctor's certification commits an administrative violation. A designated doctor who fails to apply for recertification under this section within 30 days after the expiration of the designated doctor's certification may no longer apply for recertification and must instead apply for certification of §127.100 of this title.</p> |                            |              |
| <p>(d) The division will notify a doctor in writing of the commissioner's approval or denial of the doctor's application to be recertified as a designated doctor under subsection (b) of this section. Denials will include the reason(s) for the denial. Approvals recertify a doctor for a term of two years and will include the effective date and expiration date of the certification. Approvals will also include the designated doctor's examination qualification criteria under §127.130 of this title (relating to Qualification Standards for Designated Doctor Examinations) that the division has assigned to the doctor as part of the doctor's recertification.</p>             |                            |              |
| <p>(e) The division may deny an application for recertification under subsection (b) of this section for the following reasons:</p> <ul style="list-style-type: none"> <li>(1) the doctor did not submit the information and documentation required by subsection (b) of this section;</li> <li>(2) if the doctor failed to properly update the doctor's initial application for certification under §127.100(c) of this title;</li> <li>(3) for having a relevant restriction on their practice imposed on the doctor by a state licensing board, certification authority, or other appropriate state or federal agency, including the division;</li> </ul>                                     |                            |              |

**§127.110. Designated Doctor Recertification**

**Current text**

**Informal draft text**

**Notes**

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

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

- (A) the quality of the designated doctor's past reports;
- (B) the designated doctor's history of complaints;
- (C) excess requests for deferral from the designated doctor list by the doctor;
- (D) a pattern of overturned reports by the division or a court;
- (E) a demonstrated lack of ability to apply or properly consider the American Medical Association Guides to the Evaluation of Permanent Impairment adopted by the division for the assignment of impairment ratings and all return-to-work and treatment guidelines adopted by the division;
- (F) a demonstrated lack of ability to consistently perform designated doctor examinations in a timely manner;
- (G) a demonstrated failure to identify disqualifying associations;
- (H) a demonstrated lack of ability to ensure the confidentiality of injured employee medical records and claim information provided to or generated by the designated doctor; or
- (I) any grounds that would allow the division to sanction a health care provider under the Act or division rules.

(f) Within 15 working days after receiving a denial, a doctor may file a written response with the division that addresses the reasons given to the doctor for denial or may submit a written request an informal hearing before the division to address the reasons given for the denial.

**§127.110. Designated Doctor Recertification**

**Current text**

**Informal draft text**

**Notes**

(1) If neither a response nor a written request for informal hearing is received by the 15th working day after the date the doctor received the notice, the denial will be final effective the following day. No further notice will be sent.

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

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

| <b>§127.110. Designated Doctor Recertification</b>   |                            |              |
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| <b>Current text</b>  | <b>Informal draft text</b> | <b>Notes</b> |
| <p>(g) Designated doctors whose application for recertification under subsection (b) of this section is approved but wish to dispute the examination qualification criteria under §127.130 of this title that the division assigned to the doctor may do so through the procedures described in subsection (f) of this section. Designated doctors must include in their response to the division or present at the informal hearing the specific criteria they wish to be modified and documentation to justify the requested change.</p> |                            |              |
| <p>(h) This section will become effective on December 6, 2018.</p>   |                            |              |



| <b>§127.120. Exception to Certification as a Designated Doctor for Out-of-State Doctors</b>  |   |   |
|--|---|---|
| <b>Current text</b>  | <b>Informal draft text</b>  | <b>Notes</b>  |
| §127.120. Exception to Certification as a Designated Doctor for Out-of-State Doctors   | §127.120. Exception to Certification as a Designated Doctor for Out-of-State Doctors  |   |
| (a) When necessary because the injured employee is temporarily located or is residing out-of-state, the division may waive any of the requirements as specified in this chapter for an out-of-state doctor to serve as a designated doctor to facilitate a timely resolution of the dispute or perform a particular examination. | If the injured employee is temporarily located or resides out of state, the division may waive any of the requirements in this chapter for an out-of-state doctor to serve as a designated doctor to help timely resolve a dispute or perform a particular examination. |   |
| (b) This section will become effective on September 1, 2012.   |   | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.130. Qualification Standards for Designated Doctor Examinations</b>  |   |              |
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| <b>Current text</b>  | <b>Informal draft text</b>  | <b>Notes</b> |
| §127.130. Qualification Standards for Designated Doctor Examinations   | §127.130. Qualification Standards for Designated Doctor Examinations  |              |
| (a) Applicability. This section applies to designated doctor assignments made on or after the effective date of this section.  | (a) Applicability. This section applies to designated doctor assignments made on or after [DATE—probably the first Saturday of the month following adoption].   |              |
| <p>(b) A designated doctor is qualified to perform a designated doctor examination on an injured employee if the designated doctor meets the appropriate qualification criteria for the area of the body affected by the injury and the injured employee's diagnosis and has no disqualifying associations under §127.140 of this title (relating to Disqualifying Associations). A designated doctor's qualification criteria are determined as follows:</p> <p>(1) To examine injuries and diagnoses relating to the hand and upper extremities, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.</p> <p>(2) To examine injuries and diagnoses relating to the lower extremities excluding feet, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.</p> <p>(3) To examine injuries and diagnoses relating to the spine and musculoskeletal structures of the torso, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.</p> <p>(4) To examine injuries and diagnoses relating to feet, including toes and heel, a designated doctor must be a licensed medical doctor, doctor of osteopathy, doctor of chiropractic, or doctor of podiatric medicine.</p> <p>(5) To examine injuries and diagnoses relating to the teeth and jaw, including a temporomandibular joint, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of dental surgery.</p> | <p>(b) <b>Qualification standards by type of injury or diagnosis.</b> A designated doctor is qualified to perform a designated doctor examination on an injured employee if the designated doctor meets the appropriate qualification standard for the area of the body affected by the injury and the injured employee's diagnosis and has no disqualifying associations under §127.140 of this title (relating to Disqualifying Associations). A designated doctor's qualification standards are as follows:</p> <p>(1) To examine injuries and diagnoses relating to the hand and upper extremities, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.</p> <p>(2) To examine injuries and diagnoses relating to the lower extremities excluding feet, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.</p> <p>(3) To examine injuries and diagnoses relating to the spine and musculoskeletal structures of the torso, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of chiropractic.</p> <p>(4) To examine injuries and diagnoses relating to feet, including toes and heel, a designated doctor must be a licensed medical doctor, doctor of osteopathy, doctor of chiropractic, or doctor of podiatric medicine.</p> <p>(5) To examine injuries and diagnoses relating to the teeth and jaw, including a temporomandibular joint, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of dental surgery.</p> |              |

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

| Current text   | Informal draft text  | Notes |
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| <p>(6) To examine injuries and diagnoses relating to the eyes, including the eye and adnexal structures of the eye, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of optometry.</p> <p>(7) To examine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy.</p> <p>(8) To examine injuries and diagnoses relating to other body areas or systems, including but not limited to internal systems; ear, nose, and throat; head and face; skin; cuts to skin involving underlying structures; non-musculoskeletal structures of the torso; hernia; respiratory; endocrine; hematopoietic; and urologic; a designated doctor must be a licensed medical doctor or doctor of osteopathy.</p> <p>(9) Notwithstanding paragraphs (1) - (8) of this subsection, a designated doctor must be a licensed medical doctor or doctor of osteopathy who has the required board certification to examine any of the following diagnoses. For purposes of this section, a designated doctor is "board certified" in a required specialty or subspecialty, as applicable, if the designated doctor holds or previously held a general certificate in the required specialty or a subspecialty certificate in the required subspecialty from the American Board of Medical Specialties (ABMS) or if the designated doctor holds or previously held a primary certificate in the required specialty and a certificate of special qualifications or certificate of added qualifications in the required subspecialty from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS).</p> <p>(A) To examine traumatic brain injuries, including concussion and post-concussion syndrome, a designated doctor must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, or</p> | <p>(6) To examine injuries and diagnoses relating to the eyes, including the eye and adnexal structures of the eye, a designated doctor must be a licensed medical doctor, doctor of osteopathy, or doctor of optometry.</p> <p>(7) To examine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy.</p> <p>(8) A designated doctor must be a licensed medical doctor or doctor of osteopathy to examine injuries and diagnoses relating to other body areas or systems, including, but not limited to:</p> <ul style="list-style-type: none"> <li>(A) internal systems;</li> <li>(B) ear, nose, and throat;</li> <li>(C) head and face;</li> <li>(D) skin;</li> <li>(E) cuts to skin involving underlying structures;</li> <li>(F) non-musculoskeletal structures of the torso;</li> <li>(G) hernia;</li> <li>(H) respiratory;</li> <li>(I) endocrine;</li> <li>(J) hematopoietic; and</li> <li>(K) urologic.</li> </ul> <p>(9) Notwithstanding paragraphs (1)-(8) of this subsection, a designated doctor must be a licensed medical doctor or doctor of osteopathy with the required board certification to examine any of the following diagnoses.</p> <p>(A) For purposes of this section, a designated doctor is "board-certified" in a required specialty or subspecialty, as applicable, if they hold or previously held:</p> |       |

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

| Current text  | Informal draft text  | Notes  |
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| <p>psychiatry by the ABMS or board certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry by the AOABOS.</p> <p>(B) To examine spinal cord injuries and diagnoses, a spinal fracture with documented neurological deficit, or cauda equina syndrome, a designated doctor must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, orthopaedic surgery, or occupational medicine by the ABMS or board certified in neurological surgery, neurology, physical medicine and rehabilitation, orthopedic surgery, preventive medicine/occupational-environmental medicine, or preventive medicine/occupational by the AOABOS.</p> <p>(C) To examine severe burns, including chemical burns, defined as deep partial or full thickness burns, also known as 2nd, 3rd, or 4th degree burns, a designated doctor must be board certified in dermatology, physical medicine and rehabilitation, plastic surgery, orthopaedic surgery, surgery, or occupational medicine by the ABMS or board certified in dermatology, physical medicine and rehabilitation, plastic and reconstructive surgery, orthopedic surgery, surgery (general), preventive medicine/occupational-environmental medicine, or preventive medicine/occupational by the AOABOS.</p> <p>(D) To examine complex regional pain syndrome (reflex sympathetic dystrophy), a designated doctor must be board certified in neurological surgery, neurology, orthopaedic surgery, plastic surgery, anesthesiology with a subspecialty in pain medicine, occupational medicine, or physical medicine and rehabilitation by the ABMS or board certified in neurological surgery, neurology, orthopedic surgery, plastic surgery, preventive medicine/occupational-environmental medicine, preventive medicine/occupational, anesthesiology with certificate of added qualifications in pain management, or physical medicine and rehabilitation by the AOABOS.</p> | <p>(i) a general certificate in the required specialty or a subspecialty certificate in the required subspecialty from the American Board of Medical Specialties (ABMS); or</p> <p>(ii) a primary certificate in the required specialty and a certificate of special qualifications or certificate of added qualifications in the required subspecialty from the American Osteopathic Association Bureau of Osteopathic Specialists (AOABOS).</p> <p>(B) To examine traumatic brain injuries, including concussion and post-concussion syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <ul style="list-style-type: none"> <li>(I) neurological surgery;</li> <li>(II) neurology;</li> <li>(III) physical medicine and rehabilitation;</li> <li>(IV) psychiatry;</li> <li>(V) orthopaedic surgery;</li> <li>(VI) occupational medicine;</li> <li>(VII) dermatology;</li> <li>(VIII) plastic surgery;</li> <li>(IX) surgery;</li> <li>(X) anesthesiology with a subspecialty in pain medicine;</li> <li>(XI) emergency medicine;</li> <li>(XII) internal medicine;</li> <li>(XIII) thoracic and cardiac surgery; or</li> <li>(XIV) family medicine.</li> </ul> <p>(ii) Qualifying AOABOS certifications are:</p> | <ul style="list-style-type: none"> <li>• Allows physicians with the highlighted board certifications to examine injured employees with traumatic brain injuries, including concussion and post-concussion syndrome.</li> </ul> |

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

| Current text   | Informal draft text  | Notes   |
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| <p>(E) To examine multiple fractures, joint dislocation, and pelvis or hip fracture, a designated doctor must be board certified in emergency medicine, orthopaedic surgery, plastic surgery, physical medicine and rehabilitation, or occupational medicine by the ABMS or board certified in emergency medicine, orthopedic surgery, plastic surgery, physical medicine and rehabilitation, preventive medicine/occupational-environmental medicine, or preventive medicine/occupational by the AOABOS.</p> <p>(F) To examine complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, including bloodborne pathogens, a designated doctor must be board certified in internal medicine or occupational medicine by the ABMS or board certified in internal medicine, preventive medicine/occupational-environmental medicine, or preventive medicine/occupational by the AOABOS.</p> <p>(G) To examine chemical exposure, excluding chemical burns, a designated doctor must be board certified in internal medicine, emergency medicine, or occupational medicine by the ABMS or board certified in internal medicine, emergency medicine, preventive medicine/occupational-environmental medicine, or preventive medicine/occupational by the AOABOS.</p> <p>(H) To examine heart or cardiovascular conditions, a designated doctor must be board certified in internal medicine, emergency medicine, occupational medicine, thoracic and cardiac surgery, or family medicine by the ABMS or board certified in internal medicine, emergency medicine, preventive medicine/occupational-environmental medicine, preventive medicine/occupational, thoracic and cardiovascular surgery or family practice and osteopathic manipulative treatment by the AOABOS.</p> | <p>(I) neurological surgery;</p> <p>(II) neurology;</p> <p>(III) physical medicine and rehabilitation;</p> <p>(IV) psychiatry;</p> <p>(V) orthopedic surgery;</p> <p>(VI) preventive medicine/occupational-environmental medicine;</p> <p>(VII) preventive medicine/occupational;</p> <p>(VIII) dermatology;</p> <p>(IX) plastic and reconstructive surgery;</p> <p>(X) surgery (general);</p> <p>(XI) anesthesiology with certificate of added qualifications in pain management;</p> <p>(XII) emergency medicine;</p> <p>(XIII) internal medicine;</p> <p>(XIV) thoracic and cardiovascular surgery; or</p> <p>(XV) family practice and osteopathic manipulative treatment.</p> <p>(C) To examine spinal cord injuries and diagnoses, including a spinal fracture with documented neurological injury, or vascular injury, more than one spinal fracture, or cauda equina syndrome, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <p>(I) neurological surgery;</p> <p>(II) neurology;</p> <p>(III) physical medicine and rehabilitation;</p> <p>(IV) orthopaedic surgery; or</p> | <ul style="list-style-type: none"> <li>• Clarifies certifications required for spinal cord injuries.</li> </ul> |

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

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|              | <p>(V) occupational medicine.</p> <p>(ii) Qualifying AOABOS certifications are:</p> <ul style="list-style-type: none"> <li>(I) neurological surgery;</li> <li>(II) neurology;</li> <li>(III) physical medicine and rehabilitation;</li> <li>(IV) orthopedic surgery;</li> <li>(V) preventive medicine/occupational-environmental medicine; or</li> <li>(VI) preventive medicine/occupational.</li> </ul> <p>(D) To examine severe burns, including chemical burns defined as deep partial or full thickness burns, also known as second, third, or fourth-degree burns, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <ul style="list-style-type: none"> <li>(I) dermatology;</li> <li>(II) physical medicine and rehabilitation;</li> <li>(III) plastic surgery;</li> <li>(IV) orthopaedic surgery;</li> <li>(V) surgery; or</li> <li>(VI) occupational medicine.</li> </ul> <p>(ii) Qualifying AOABOS certifications are:</p> <ul style="list-style-type: none"> <li>(I) dermatology;</li> <li>(II) physical medicine and rehabilitation;</li> <li>(III) plastic and reconstructive surgery;</li> <li>(IV) orthopedic surgery;</li> <li>(V) surgery (general);</li> </ul> |       |

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

| Current text | Informal draft text   | Notes |
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|              | <p>(VI) preventive medicine/occupational-environmental medicine; or</p> <p>(VII) preventive medicine/occupational.</p> <p>(E) To examine complex regional pain syndrome (reflex sympathetic dystrophy), a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <ul style="list-style-type: none"> <li>(I) neurological surgery;</li> <li>(II) neurology;</li> <li>(III) orthopaedic surgery;</li> <li>(IV) plastic surgery;</li> <li>(V) anesthesiology with a subspecialty in pain medicine;</li> </ul> <p>(VI) occupational medicine; or</p> <p>(VII) physical medicine and rehabilitation.</p> <p>(ii) Qualifying AOABOS certifications are:</p> <ul style="list-style-type: none"> <li>(I) neurological surgery;</li> <li>(II) neurology;</li> <li>(III) orthopedic surgery;</li> <li>(IV) plastic surgery;</li> <li>(V) preventive medicine/occupational-environmental medicine;</li> </ul> <p>(VI) preventive medicine/occupational;</p> <p>(VII) anesthesiology with certificate of added qualifications in pain management; or</p> <p>(VIII) physical medicine and rehabilitation.</p> |       |

§127.130. Qualification Standards for Designated Doctor Examinations

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|              | <p>(F) To examine any joint dislocation; one or more fractures with vascular injury; one or more pelvis fractures; or multiple rib fractures, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <ul style="list-style-type: none"> <li>(I) emergency medicine;</li> <li>(II) orthopaedic surgery;</li> <li>(III) plastic surgery;</li> <li>(IV) physical medicine and rehabilitation; or</li> <li>(V) occupational medicine.</li> </ul> <p>(ii) Qualifying AOABOS certifications are:</p> <ul style="list-style-type: none"> <li>(I) emergency medicine;</li> <li>(II) orthopedic surgery;</li> <li>(III) plastic surgery;</li> <li>(IV) physical medicine and rehabilitation;</li> <li>(V) preventive medicine/occupational-environmental medicine; or</li> <li>(VI) preventive medicine/occupational.</li> </ul> <p>(G) To examine complicated infectious diseases requiring hospitalization or prolonged intravenous antibiotics, including blood borne pathogens, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <ul style="list-style-type: none"> <li>(I) internal medicine; or</li> <li>(II) occupational medicine.</li> </ul> <p>(ii) Qualifying AOABOS certifications are:</p> <ul style="list-style-type: none"> <li>(I) internal medicine;</li> </ul> | <ul style="list-style-type: none"> <li>• Clarifies the certifications required for complex fractures.</li> </ul> |



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

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|              | <p>(II) preventive medicine/occupational-environmental medicine; or</p> <p>(III) preventive medicine/occupational.</p> <p>(H) To examine chemical exposure, excluding chemical burns, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <p>(I) internal medicine;</p> <p>(II) emergency medicine; or</p> <p>(III) occupational medicine.</p> <p>(ii) Qualifying AOABOS certifications are:</p> <p>(I) internal medicine;</p> <p>(II) emergency medicine;</p> <p>(III) preventive medicine/occupational-environmental medicine; or</p> <p>(IV) preventive medicine/occupational.</p> <p>(I) To examine heart or cardiovascular conditions, a designated doctor must be board-certified by the ABMS or AOABOS.</p> <p>(i) Qualifying ABMS certifications are:</p> <p>(I) internal medicine;</p> <p>(II) emergency medicine;</p> <p>(III) occupational medicine;</p> <p>(IV) thoracic and cardiac surgery; or</p> <p>(V) family medicine.</p> <p>(ii) Qualifying AOABOS certifications are:</p> <p>(I) internal medicine;</p> <p>(II) emergency medicine;</p> |       |

| §127.130. Qualification Standards for Designated Doctor Examinations   |  |   |
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| Current text   | Informal draft text  | Notes   |
|  | <p>(III) preventive medicine/occupational-environmental medicine;</p> <p>(IV) preventive medicine/occupational;</p> <p>(V) thoracic and cardiovascular surgery; or</p> <p>(VI) family practice and osteopathic manipulative treatment.</p>   |   |
| <p>(c) To be qualified to perform an initial examination on an injured employee, a designated doctor, other than a chiropractor, must be qualified under Labor Code §408.0043. A designated doctor who is a chiropractor must be qualified to perform an initial designated doctor examination under Labor Code §408.0045. <b>If, however, the requirements of this subsection would disqualify a designated doctor otherwise qualified under subsection (b) of this section, pursuant to Labor Code §408.0041(b-1), does not apply.</b></p> | <p>(c) <b>Qualification to perform initial examination.</b> To be qualified to perform an initial examination on an injured employee, a designated doctor, other than a chiropractor, must be qualified under Labor Code §408.0043. A designated doctor who is a chiropractor must be qualified to perform an initial designated doctor examination under Labor Code §408.0045.</p>  | <ul style="list-style-type: none"> <li>• Language removed for clarity.</li> </ul>   |
| <p>(d) For any particular designated doctor examination, the division may exempt a designated doctor from the applicable qualification standard if no other designated doctor is qualified and available to perform the examination. Additionally, the division may not offer a qualified designated doctor an examination if it is reasonably probable that the designated doctor will not be qualified on the date of the examination.</p>   | <p>(d) <b>Exemption from qualification standards. If a designated doctor is not available with the qualifications listed in subsections (b)(9)(A)-(I), the division may exempt a medical doctor or doctor of osteopathy from any of the qualification standards specified in this chapter to serve as a designated doctor to help timely resolve a dispute or perform a particular examination.</b></p>  | <ul style="list-style-type: none"> <li>• Language about physician exemption to board certification requirements revised for greater specificity.</li> </ul> |
| <p>(e) A designated doctor who performs an initial designated doctor examination of an injured employee and had the appropriate qualification criteria to perform that examination under subsection (b) of this section, shall remain assigned to that claim and perform all subsequent examinations of that injured employee unless the division authorizes or requires the designated doctor to discontinue providing services on that claim.</p>  | <p>(e) <b>Continuity of examinations.</b> A designated doctor who performs an initial designated doctor examination of an injured employee and meets the appropriate qualification standard to perform that examination under subsection (b) of this section will remain assigned to that claim and perform all subsequent examinations of that injured employee unless the division authorizes or requires the designated doctor to discontinue providing services on that claim.</p> |   |

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

| Current text  | Informal draft text  | Notes |
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| <p>(f) The division may authorize a designated doctor to stop providing services on a claim if the doctor:</p> <ul style="list-style-type: none"> <li>(1) decides to stop practicing in the workers' compensation system;</li> <li>(2) decides to stop practicing as a designated doctor in the workers' compensation system;</li> <li>(3) relocates the doctor's residence or practice;</li> <li>(4) has asked the division to indefinitely defer the doctor's availability on the designated doctor list;</li> <li>(5) determines that examining the injured employee would require the designated doctor to exceed the scope of practice authorized by the doctor's license; or</li> <li>(6) can otherwise demonstrate to the division that the doctor's continued service on the claim would be impracticable or could impair the quality of examinations performed on the claim.</li> </ul>                        | <p>(f) <b>Removal of designated doctor from a claim.</b> The division may authorize a designated doctor to stop providing services on a claim if the doctor:</p> <ul style="list-style-type: none"> <li>(1) decides to stop practicing in the workers' compensation system;</li> <li>(2) decides to stop practicing as a designated doctor in the workers' compensation system;</li> <li>(3) relocates their residence or practice;</li> <li>(4) asks the division to indefinitely defer the doctor's availability on the designated doctor list;</li> <li>(5) determines that examining the injured employee would exceed the scope of practice authorized by their license; or</li> <li>(6) can otherwise demonstrate to the division that their continued service on the claim would be impracticable or could impair the quality of examinations performed on the claim.</li> </ul>  |       |
| <p>(g) The division will prohibit a designated doctor from providing services on a claim if:</p> <ul style="list-style-type: none"> <li>(1) the doctor has failed to become recertified as a designated doctor under §127.110(b) of this title (relating to Designated Doctor Recertification);</li> <li>(2) the doctor no longer has the appropriate qualification criteria under subsection (b) of this section, to perform examinations on the claim;</li> <li>(3) the doctor has a disqualifying association, as specified in §127.140 of this title, relevant to the claim;</li> <li>(4) the doctor has repeatedly failed to respond to division appointment, clarification, or document requests, or other division inquiries regarding the claim;</li> <li>(5) the doctor's continued service on the claim could endanger the health, safety, or welfare of either the injured employee or doctor; or</li> </ul> | <p>(g) <b>Prohibition.</b> The division will prohibit a designated doctor from providing services on a claim if:</p> <ul style="list-style-type: none"> <li>(1) the doctor has failed to become certified as a designated doctor;</li> <li>(2) the doctor no longer meets the appropriate qualification standard under subsection (b) of this section to perform examinations on the claim;</li> <li>(3) the doctor has a disqualifying association specified in §127.140 of this title that is relevant to the claim;</li> <li>(4) the doctor has repeatedly failed to respond to division appointment, clarification, or document requests or other division inquiries about the claim;</li> <li>(5) the doctor's continued service on the claim could endanger the health, safety, or welfare of either the injured employee or doctor; or</li> <li>(6) the division has revoked or suspended the designated doctor's certification.</li> </ul> |       |

| <b>§127.130. Qualification Standards for Designated Doctor Examinations</b>  |  |   |
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| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b>  |
| (6) the division has revoked or suspended the designated doctor's certification.   |  |   |
| (h) The division will prohibit a designated doctor from performing examinations on all new or existing claims if the designated doctor has had the doctor's license revoked or suspended and the suspension has not been probated by an appropriate licensing authority. | (h) <b>License revoked or suspended.</b> The division will prohibit a designated doctor from performing examinations on all new or existing claims if the designated doctor's license has been revoked or suspended, and the suspension has not been probated by an appropriate licensing authority. |   |
| (i) This section will become effective on December 6, 2018.  |  | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.140. Disqualifying Associations</b>  |  |              |
|--|--|--------------|
| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b> |
| §127.140. Disqualifying Associations   | §127.140. Disqualifying Associations   |              |
| <p>(a) A disqualifying association is any association that may reasonably be perceived as having potential to influence the conduct or decision of a designated doctor. Disqualifying associations may include:</p> <ul style="list-style-type: none"> <li>(1) receipt of income, compensation, or payment of any kind not related to health care provided by the doctor;</li> <li>(2) shared investment or ownership interest;</li> <li>(3) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;</li> <li>(4) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, billing services agents, documentation management or storage services or warranties, or any other services related to the management or operation of the doctor's practice;</li> <li>(5) personal or family relationships;</li> <li>(6) a contract with the same workers' compensation health care network certified under Chapter 1305, Insurance Code or a contract with the same political subdivision or political subdivision health plan under Labor Code §504.053(b)(2) that is responsible for the provision of medical benefits to the injured employee; or</li> <li>(7) any other financial arrangement that would require disclosure under the Labor Code or applicable division rules, the Insurance Code or applicable department rules, or any other association with the injured employee, the employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.</li> </ul> | <p>(a) <b>Definition.</b> A disqualifying association is any association that may reasonably be perceived as having potential to influence the conduct or decision of a designated doctor. Disqualifying associations may include:</p> <ul style="list-style-type: none"> <li>(1) receipt of income, compensation, or payment of any kind not related to health care the doctor provides;</li> <li>(2) shared investment or ownership interest;</li> <li>(3) contracts or agreements that provide incentives, such as referral fees, payments based on volume or value, and waiver of beneficiary coinsurance and deductible amounts;</li> <li>(4) contracts or agreements for space or equipment rentals, personnel services, management contracts, referral services, billing services agents, documentation management or storage services or warranties, or any other services related to managing or operating the doctor's practice;</li> <li>(5) personal or family relationships;</li> <li>(6) a contract with the same workers' compensation health care network certified under Insurance Code Chapter 1305 or a contract with the same political subdivision or political subdivision health plan under Labor Code §504.053(b)(2) that is responsible for providing medical benefits to the injured employee; or</li> <li>(7) any other financial arrangement that would require disclosure under the Labor Code, the Insurance Code, or applicable rules, or any other association with the injured employee, the employer, or insurance carrier that may give the appearance of preventing the designated doctor from rendering an unbiased opinion.</li> </ul> |              |

| <b>§127.140. Disqualifying Associations</b>   |  |              |
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| <b>Current text</b>   | <b>Informal draft text</b>   | <b>Notes</b> |
| (b) For examinations performed after January 1, 2013, a designated doctor shall also have a disqualifying association relevant to an examination or claim if an agent of the designated doctor has an association relevant to the claim that would constitute a disqualifying association under subsection (a) of this section.   | (b) <b>Disqualification of agent.</b> A designated doctor also has a disqualifying association relevant to an examination or claim if an agent of the designated doctor has an association relevant to the claim that would constitute a disqualifying association under subsection (a) of this section.   |              |
| (c) A designated doctor shall not perform an examination if that doctor has a disqualifying association relevant to that claim. If a designated doctor learns of a disqualifying association relevant to a claim after accepting the examination, the designated doctor must notify the division of that disqualifying association within two working days of learning of the disqualifying association. A designated doctor who performs an examination even though the doctor has a disqualifying association relevant to that claim commits an administrative violation. | (c) <b>Prohibition.</b> A designated doctor must not perform an examination if that doctor has a disqualifying association relevant to that claim.<br><br>(1) If a designated doctor learns of a disqualifying association relevant to a claim after accepting the examination, the designated doctor must notify the division of that disqualifying association within two working days of learning of the disqualifying association.<br><br>(2) A designated doctor who performs an examination even though the doctor has a disqualifying association relevant to that claim commits an administrative violation. |              |
| (d) Insurance carriers shall notify the division of any disqualifying associations between the designated doctor and injured employee because of the network affiliations described under subsection (a)(6) of this section within five days of receiving the division's order of designated doctor examination under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments).  | (d) <b>Notice required.</b> Within five days of receiving the division's order of designated doctor examination under §127.5(b) of this title (relating to Scheduling Designated Doctor Appointments), insurance carriers must notify the division of any disqualifying associations between the designated doctor and injured employee because of the network affiliations described under subsection (a)(6) of this section.   |              |
| (e) If the division determines that a designated doctor with a disqualifying association performed a designated doctor examination, all reports produced by that designated doctor as a result of that examination shall be stripped of their presumptive weight.   | (e) <b>Effect of disqualifying association.</b> If the division determines that a designated doctor with a disqualifying association performed a designated doctor examination, all reports produced by that designated doctor as a result of that examination are stripped of their presumptive weight.   |              |
| (f) A party that seeks to dispute the selection of a designated doctor for a particular examination based on a disqualifying association or to dispute the  | (f) <b>Disputes about disqualifying associations.</b> A party that seeks to dispute the selection of a designated doctor for a particular examination based on a   |              |

| <b>§127.140. Disqualifying Associations</b>   |   |   |
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| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b>  |
| presumptive weight of a designated doctor's report based on a disqualifying association must do so through the division's dispute resolution processes in Chapter 410, Labor Code and Chapters 140 - 144 and 147 of this title (relating to Dispute Resolution processes, proceedings, and procedures). | disqualifying association or dispute the presumptive weight of a designated doctor's report based on a disqualifying association must do so through the division's dispute resolution processes in Labor Code Chapter 410 and Chapters 140-144 and 147 of this title (relating to dispute resolution processes, proceedings, and procedures). |   |
| (g) This section will become effective on December 6, 2018.   |   | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.200. Duties of a Designated Doctor</b>  |   |              |
|---|---|--------------|
| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b> |
| §127.200. Duties of a Designated Doctor   | §127.200. Duties of a Designated Doctor   |              |
| <p>(a) All designated doctors shall:</p> <p>(1) perform designated doctor examinations in a facility currently used and properly equipped for medical examinations or other similar health care services and that ensures safety, privacy, and accessibility for injured employees and injured employee medical records and other records containing confidential claim information;</p> <p>(2) ensure the confidentiality of medical records, analyses, and forms provided to or generated by the designated doctor in the doctor's capacity as a designated doctor for the duration of the retention period specified in §127.10(i) of this title (relating to General Procedures for Designated Doctor Examinations) and ensure the destruction of these medical records after both this retention period expires and the designated doctor determines the information is no longer needed;</p> <p>(3) ensure that all agreements with person(s) that permit those parties to perform designated doctor administrative duties, including but not limited to billing and scheduling duties, on the designated doctor's behalf:</p> <p>(A) are in writing and signed by the designated doctor and the person(s) with whom the designated doctor is contracting;</p> <p>(B) define the administrative duties that the person may perform on behalf of the designated doctor;</p> <p>(C) require the person or persons to comply with all confidentiality provisions of the Act and other applicable laws;</p> <p>(D) comply with all medical billing and payment requirements under Chapter 133 of this title (relating to General Medical Benefits);</p> | <p>(a) All designated doctors must:</p> <p>(1) Perform designated doctor examinations in a facility:</p> <p>(A) currently used and properly equipped for medical examinations or other similar health care services; and</p> <p>(B) that ensures safety, privacy, and accessibility for injured employees, injured employee medical records, and other records containing confidential claim information.</p> <p>(2) Ensure the confidentiality of medical records, analyses, and forms provided to or generated by the designated doctor in the doctor's capacity as a designated doctor for the duration of the retention period specified in §127.10(i) of this title (relating to General Procedures for Designated Doctor Examinations) and ensure the destruction of these medical records after both this retention period expires and the designated doctor determines the information is no longer needed.</p> <p>(3) Ensure that all agreements with persons that permit those parties to perform designated doctor administrative duties, including, but not limited to, billing and scheduling duties, on the designated doctor's behalf:</p> <p>(A) are in writing and signed by the designated doctor and the persons with whom the designated doctor is contracting;</p> <p>(B) define the administrative duties that the person may perform on behalf of the designated doctor;</p> <p>(C) require the persons to comply with all confidentiality provisions of the Labor Code and other applicable laws;</p> <p>(D) comply with all medical billing and payment requirements under Chapter 133 of this title (relating to General Medical Provisions);</p> |              |



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

| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b> |
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| <p>(E) do not constitute an improper inducement relating to the delivery of benefits to and injured employee under Labor Code §415.0036 and §180.25 of this title (relating to Improper Inducements, Influence and Threats); and</p> <p>(F) made available to the division upon request;</p> <p>(4) notify the division in writing and in advance if the designated doctor voluntarily decides to defer the designated doctor's availability to receive any offers of examinations for personal or other reasons and the notice must specify the duration of and reason for the deferral;</p> <p>(5) notify the division in writing and in advance if the designated doctor no longer wishes to practice as a designated doctor before the doctor's current certification as a designated doctor expires; a designated doctor who no longer wishes to practice as a designated doctor before the doctor's current certification expires must expressly surrender the designated doctor's certification in a signed, written statement to the division;</p> <p>(6) be physically present in the same room as the injured employee for the designated doctor examination or any other healthcare service provided to the injured employee that is not referred to another health care provider under §127.10(c) of this title;</p> <p>(7) apply the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and division-adopted return-to-work guidelines and consider division-adopted treatment guidelines or other evidence-based medicine when appropriate;</p> <p>(8) provide the division with updated information within 10 working days of a change in any of the information provided to the division on the doctor's application for certification or recertification as a designated doctor;</p> | <p>(E) do not constitute an improper inducement relating to the delivery of benefits to an injured employee under Labor Code §§415.0036 and 180.25 of this title (relating to Improper Inducements, Influence and Threats); and</p> <p>(F) are made available to the division on request.</p> <p>(4) Notify the division in writing and in advance if the designated doctor voluntarily defers their availability to receive any offers of examinations for personal or other reasons. The notice must specify the duration and reason for the deferral.</p> <p>(5) Notify the division in writing and in advance if the designated doctor no longer wishes to practice as a designated doctor before the doctor's current certification as a designated doctor expires. A designated doctor who no longer wishes to practice before their current certification expires must expressly surrender their certification in a signed, written statement to the division.</p> <p>(6) Be physically present in the same room as the injured employee for the designated doctor examination or any other health care service provided to the injured employee that is not referred to another health care provider under §127.10(c) of this title.</p> <p>(7) Apply the appropriate edition of the American Medical Association Guides to the Evaluation of Permanent Impairment and division-adopted return-to-work guidelines under §137.10 (relating to Return to Work Guidelines) and consider division-adopted treatment guidelines under §137.100 (relating to Treatment Guidelines) or other evidence-based medicine when appropriate.</p> <p>(8) Provide the division with updated information within 10 working days of a change in any information they provide to the division on their application for certification.</p> |              |

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

| Current text  | Informal draft text  | Notes |
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| <p>(9) maintain a professional and courteous demeanor when performing the duties of a designated doctor, including, but not limited to, explaining the purpose of a designated doctor examination to an injured employee at the beginning of the examination and using non-inflammatory, appropriate language in all reports and documents produced by the designated doctor;</p> <p>(10) bill for designated doctor examinations and receive payment for those examinations in accordance with Chapter 133 of this title and Chapter 134 of this title (relating to Benefits—Guidelines for Medical Services, Charges, and Payments);</p> <p>(11) respond timely to all division appointment, clarification, or document requests, or other division inquiries;</p> <p>(12) notify the division if a designated doctor's continued participation on a claim to which the designated doctor has already been assigned would required the doctor to exceed the scope of practice authorized by the doctor's license;</p> <p>(13) not perform required medical examinations, utilization reviews, or peer reviews on a claim to which the designated doctor has been assigned as a designated doctor;</p> <p>(14) identify themselves at the beginning of every designated doctor examination;</p> <p>(15) consent to and cooperate during any on-site visits by the division pursuant to §180.4 of this title (relating to On-Site Visits); notwithstanding §180.4(e)(2) of this title, the division's purpose for these visits will be to ensure the designated doctor's compliance with the Act and applicable division rules, and the notice provided to the designated doctor in accordance with §180.4 of this title, either in advance of or at the time of the on-site visit, will specify the duties being investigated by the division during that visit;</p> | <p>(9) Maintain a professional and courteous demeanor when performing the duties of a designated doctor, including, but not limited to, explaining the purpose of a designated doctor examination to an injured employee at the beginning of the examination and using non-inflammatory, appropriate language in all reports and documents they produce.</p> <p>(10) Bill for designated doctor examinations and receive payment for those examinations in accordance with Chapters 133 and 134 of this title (relating to Benefits—Guidelines for Medical Services, Charges, and Payments).</p> <p>(11) Respond timely to all division appointments, clarifications, document requests, or other division inquiries.</p> <p>(12) Notify the division if their continued participation on a claim they have already been assigned would exceed the scope of practice authorized by their license.</p> <p>(13) Not perform required medical examinations, utilization reviews, or peer reviews on a claim they have been assigned as a designated doctor.</p> <p>(14) Identify themselves at the beginning of every designated doctor examination.</p> <p>(15) Consent to and cooperate during any on-site visits by the division under §180.4 of this title (relating to On-Site Visits).</p> <p>(A) Notwithstanding §180.4(e)(2) of this title, the division's purpose for these visits is to ensure the designated doctor's compliance with the Labor Code and applicable division rules.</p> <p>(B) The notice provided to the designated doctor under §180.4 of this title, either in advance or at the time of the on-site visit, will specify the duties the division will investigate during that visit.</p> <p>(16) Cooperate with all division compliance audits and quality reviews.</p> |       |

| <b>§127.200. Duties of a Designated Doctor</b>   |   |   |
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| <b>Current text</b>  | <b>Informal draft text</b>  | <b>Notes</b>  |
| (16) cooperate with all division compliance audits, quality reviews; and<br>(17) otherwise comply with all applicable laws and rules.  | (17) Complete required training or pass required testing detailed in the designated doctor's approval of certification.<br>(18) Comply with all applicable laws and rules.  | <ul style="list-style-type: none"> <li>Requires DD to complete more training or testing before DWC removes restriction of some or all appointments.</li> </ul>        |
| (b) For the purposes of this chapter, Chapter 180 of this title (relating to Monitoring and Enforcement), and all other applicable laws and division rules, any person with whom a designated doctor contracts or otherwise permits to perform designated doctor administrative duties on behalf of the designated doctor qualifies as the doctor's "agent" as defined under §180.1 of this title (relating to Definitions). | (b) <b>Agents.</b> For the purposes of this chapter, Chapter 180 of this title (relating to Monitoring and Enforcement), and all other applicable laws and division rules, any person with whom a designated doctor contracts or otherwise permits to perform designated doctor administrative duties on behalf of the designated doctor qualifies as the doctor's "agent" as defined under §180.1 of this title (relating to Definitions). |   |
| (c) This section will become effective on September 1, 2012.   |   | <ul style="list-style-type: none"> <li>Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| §127.210. Designated Doctor Administrative Violations   |  |   |
|---|--|---|
| Current text  | Informal draft text  | Notes   |
| §127.210. Designated Doctor Administrative Violations   | §127.210. Designated Doctor Administrative Violations  |   |
| <p>(a) In addition to the grounds for issuing sanctions against a doctor under §180.26 of this title (relating to Criteria for Imposing, Recommending, and Determining Sanctions; Other Remedies), other division rules, or the Texas Workers' Compensation Act, the commissioner may revoke or suspend a designated doctor's certification as a designated doctor or otherwise sanction a designated doctor for noncompliance with requirements of this chapter or for any of the following:</p> <p>(1) four refusals within a 90-day period to accept or perform a division offered appointment or ordered appointment for which the doctor is qualified and that relates to a claim to which the doctor has not been previously assigned;</p> <p>(2) four consecutive refusals to perform within the required time frames a division ordered appointment for which the doctor is qualified and that relates to a claim to which the doctor has not been previously assigned;</p> <p>(3) any refusal to accept or perform a division offered appointment or ordered appointment that relates to a claim on which the doctor has previously performed an examination;</p> <p>(4) misrepresentation or omission of pertinent facts in medical evaluation and narrative reports;</p> <p>(5) submitting unnecessary referrals to other health care providers for the answering of any question submitted to the designated doctor by the division;</p> <p>(6) ordering or performing unnecessary testing of an injured employee as part of a designated doctor's examination;</p> <p>(7) submission of inaccurate or inappropriate reports due to insufficient medical history or physical examination and analysis of medical records;</p> | <p>(a) <b>Grounds for sanctions.</b> In addition to the grounds for issuing sanctions against a doctor under §180.26 of this title (relating to Criteria for Imposing, Recommending and Determining Sanctions; Other Remedies), other division rules, or the Labor Code, the commissioner may revoke or suspend a designated doctor's certification as a designated doctor or sanction a designated doctor for noncompliance with requirements of this chapter for:</p> <p>(1) refusing four times within a 90-day period to accept or perform a division-offered appointment or division-ordered appointment for which the doctor is qualified and that relates to a claim to which the doctor has not been previously assigned;</p> <p>(2) refusing four consecutive times to perform a division-offered appointment within the required time frames or a division-ordered appointment for which the doctor is qualified and relates to a claim the doctor has not been previously assigned to;</p> <p><b>(3) failing to attend a designated doctor examination;</b></p> <p><b>(4) not complying with the rescheduling requirements of this chapter;</b></p> <p>(5) refusing at any time to accept or perform a division-offered appointment or division-ordered appointment that relates to a claim on which the doctor has previously performed an examination;</p> <p>(6) misrepresenting or omitting pertinent facts in medical evaluation and narrative reports;</p> <p>(7) submitting unnecessary referrals to other health care providers to answer any question that the division submits to the designated doctor;</p> <p>(8) ordering or performing unnecessary testing of an injured employee as part of a designated doctor's examination;</p> | <ul style="list-style-type: none"> <li>Clarifies that a DD failing to attend an examination or not complying with rescheduling requirements may be grounds for revoking or suspending a certification.</li> </ul> |

**§127.210. Designated Doctor Administrative Violations**

| <b>Current text</b>   | <b>Informal draft text</b>   | <b>Notes</b>  |
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| <p>(8) submission of designated doctor reports that fail to include all elements required by §127.220 of this title (relating to Designated Doctor Reports), §127.10 of this title (relating to General Procedures for Designated Doctor Examinations), and other division rules;</p> <p>(9) failure to timely respond to a request for clarification from the division regarding an examination or any other information request by the division;</p> <p>(10) failure to successfully complete training and testing requirements as specified in §127.110 of this title (relating to Designated Doctor Recertification);</p> <p>(11) self-referring, including referral to another health care provider with whom the designated doctor has a disqualifying association, for treatment or becoming the employee's treating doctor for the medical condition evaluated by the designated doctor;</p> <p>(12) behaving in an abusive or assaultive manner toward an injured employee, the division, or other system participant;</p> <p>(13) failing to maintain the confidentiality of patient medical and claim file information;</p> <p>(14) performing a designated doctor examination which the designated doctor was not ordered by the division to perform; or</p> <p>(15) other violations of applicable statutes or rules while serving as a designated doctor.</p> | <p>(9) submitting inaccurate or inappropriate reports due to insufficient medical history or physical examination and analysis of medical records;</p> <p>(10) submitting designated doctor reports that fail to include all elements required by §127.220 of this title (relating to Designated Doctor Reports), §127.10 of this title (relating to General Procedures for Designated Doctor Examinations), and other division rules;</p> <p>(11) failing to timely respond to a request for clarification from the division about an examination or any other information the division requests;</p> <p>(12) failing to successfully complete training and testing requirements as specified in §127.100 of this title (relating to Designated Doctor Certification);</p> <p>(13) self-referring, including referring to another health care provider with whom the designated doctor has a disqualifying association, for treatment or becoming the employee's treating doctor for the medical condition the designated doctor evaluated;</p> <p>(14) behaving in an abusive or assaultive manner toward an injured employee, the division, or other system participant;</p> <p>(15) failing to maintain the confidentiality of patient medical and claim file information;</p> <p>(16) performing a designated doctor examination that the division did not order the doctor to perform;</p> <p>(17) failing to complete required training or pass required testing detailed in the designated doctor's approval of certification; or</p> <p>(18) violating other applicable statutes or rules while serving as a designated doctor.</p> | <ul style="list-style-type: none"><li>• Clarifies that if a DD fails to complete training or testing required in their approval letter may be grounds for revoking or</li></ul> |

| §127.210. Designated Doctor Administrative Violations   |  |   |
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| Current text  | Informal draft text  | Notes   |
|   |  | suspending a certification.   |
| (b) Designated doctors are liable for all administrative violations committed by their agents on the designated doctor's behalf under this section, other division rules, or any other applicable law.  | (b) <b>Responsibility for agents' actions.</b> Designated doctors are liable for all administrative violations committed by their agents on the designated doctor's behalf under this section, other division rules, or any other applicable law.  |   |
| (c) The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Restoration) except that suspension, revocation, or other sanction relating to a designated doctor's certification will be in effect during the pendency of any appeal. | (c) <b>Notification and appeal.</b> The process for notification and opportunity for appeal of a sanction is governed by §180.27 of this title (relating to Restoration) except that suspension, revocation, or other sanctions relating to a designated doctor's certification will be in effect during the pendency of any appeal. |   |
| (d) This section will become effective on September 1, 2012.  |  | <ul style="list-style-type: none"> <li>Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |

| <b>§127.220. Designated Doctor Reports</b>  |   |              |
|---|---|--------------|
| <b>Current text</b>   | <b>Informal draft text</b>  | <b>Notes</b> |
| §127.220. Designated Doctor Reports   | §127.220. Designated Doctor Reports   |              |
| <p>(a) Designated doctor narrative reports must be filed in the form and manner required by the division and at a minimum:</p> <p>(1) identify the question(s) the division ordered to be addressed by the designated doctor examination;</p> <p>(2) provide a clearly defined answer for each question to be addressed by the designated doctor examination and only for each of those questions;</p> <p>(3) sufficiently explain how the designated doctor determined the answer to each question within a reasonable degree of medical probability;</p> <p>(4) demonstrate, as appropriate, application or consideration of the American Medical Association Guides to the Evaluation of Permanent Impairment, division-adopted return-to-work and treatment guidelines, and other evidence-based medicine, if available;</p> <p>(5) include general information regarding the identity of the designated doctor, injured employee, employer, treating doctor, and insurance carrier;</p> <p>(6) state the date of the examination and the address where the examination took place;</p> <p>(7) summarize any additional testing conducted or referrals made as part of the evaluation, including the identity of any health care providers to which the designated doctor referred the injured employee under §127.10(c) of this title (relating to General Procedures for Designated Doctor Examinations), the types of tests conducted or referrals made and the dates the testing or referral examinations occurred, and explain why the testing or referral was necessary to resolve a question at issue in the examination;</p> <p>(8) include a narrative description of the medical history, physical examination, and medical decision making performed by the designated doctor,</p> | <p>(a) <b>Format and submission.</b> Designated doctor narrative reports must be filed in the form and manner required by the division. At a minimum, they must do all of the following:</p> <p>(1) Identify the question or questions the division ordered to be addressed by the designated doctor examination.</p> <p>(2) Provide a clearly defined answer for each question to be addressed by the designated doctor examination and only for each of those questions.</p> <p>(3) Sufficiently explain how the designated doctor determined the answer to each question within a reasonable degree of medical probability.</p> <p>(4) Demonstrate, as appropriate, application or consideration of the American Medical Association Guides to the Evaluation of Permanent Impairment, division-adopted return-to-work and treatment guidelines, and other evidence-based medicine, if available.</p> <p>(5) Include general information about the identity of the designated doctor, injured employee, employer, treating doctor, and insurance carrier.</p> <p>(6) State the date of the examination and the address where it took place.</p> <p>(7) Summarize any additional testing conducted or referrals made as part of the evaluation, including:</p> <p>(A) the identity of any health care providers to which the designated doctor referred the injured employee under §127.10(c) of this title (relating to General Procedures for Designated Doctor Examinations);</p> <p>(B) the types of tests conducted or referrals made;</p> <p>(C) the dates the testing or referral examinations occurred;</p> |              |

| §127.220. Designated Doctor Reports  |   |  |
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| Current text   | Informal draft text   | Notes  |
| <p>including the time the designated doctor began taking the medical history of the injured employee, physically examining the employee, and engaging in medical decision making and the time the designated doctor completed these tasks;</p> <p>(9) list the specific medical records or other documents the designated doctor reviewed as part of the evaluation, including the dates of those documents and which, if any, medical records were provided by the injured employee;</p> <p>(10) be signed by the designated doctor who performed the examination;</p> <p>(11) include a statement that there is no known disqualifying association as described in §127.140 of this title (relating to Disqualifying Associations) between the designated doctor and the injured employee, the injured employee's treating doctor, the insurance carrier, the insurance carrier's certified workers' compensation health care network, or a network established under Chapter 504, Labor Code;</p> <p>(12) certify the date that the report was sent to all recipients required by and in the manner required by §127.10 of this title; and</p> <p>(13) indicate on the report that the designated doctor reviewed and approved the final version of the report.</p> | <p>(D) an explanation of why the testing or referral was necessary to resolve a question at issue in the examination, and</p> <p>(E) the date the testing or referral examination was completed.</p> <p>(8) Include a narrative description of the medical history, physical examination, and medical decisions the designated doctor made, including the time the designated doctor began taking the medical history of the injured employee, physically examined the employee, and engaged in medical decision making, and the time the designated doctor completed these tasks.</p> <p>(9) List the specific medical records or other documents the designated doctor reviewed as part of the evaluation, including the dates of those documents and which medical records were provided by the injured employee.</p> <p>(10) Provide the total amount of time required for the designated doctor to review the medical records.</p> <p>(11) Be signed by the designated doctor who performed the examination.</p> <p>(12) Include a statement that there is no known disqualifying association as described in §127.140 of this title (relating to Disqualifying Associations) between the designated doctor and the injured employee, the injured employee's treating doctor, the insurance carrier, the insurance carrier's certified workers' compensation health care network, or a network established under Labor Code Chapter 504.</p> <p>(13) Certify the date that the report was sent to all recipients as required and in the manner required by §127.10 of this title.</p> <p>(14) Indicate on the report that the designated doctor reviewed and approved the final version of the report.</p> | <ul style="list-style-type: none"> <li>• Adds the date of the additional testing or referral.</li> </ul> |
| <p>(b) Designated doctors who perform examinations under §127.10(d) or (e) of this title shall also complete and file the division forms required by those</p>   | <p>(b) Additional forms required. Designated doctors who perform examinations under §127.10(d) or (e) of this title must also complete and file the division</p>  |  |



| §127.220. Designated Doctor Reports   |  |   |
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| Current text  | Informal draft text  | Notes   |
| subsections with their narrative reports. Designated doctors shall complete and file these forms in the manner required by applicable division rules.   | forms required by those subsections with their narrative reports. Designated doctors must complete and file these forms in the manner required by applicable division rules. |   |
| <p>(c) Designated doctors who perform examinations under §127.10(f) of this title must, in addition to filing a narrative report that complies with subsection (a) of this section, also file a Designated Doctor Examination Data Report in the form and manner required by the Division. A Designated Doctor Examination Data Report must:</p> <p>(1) include general information regarding the identity of the designated doctor, injured employee, insurance carrier, as well as the identity of the certified workers' compensation healthcare network under Chapter 1305, Insurance Code, if applicable, or whether the injured employee is receiving medical benefits through a political subdivision health care plan under Labor Code §504.053(b)(2) and the identity of that plan, if applicable;</p> <p>(2) identify the question(s) the division ordered to be addressed by the designated doctor examination;</p> <p>(3) provide a clearly defined answer for each question to be addressed by the designated doctor examination and only for each of those questions. For extent of injury examinations, the designated doctor should also provide, for informational purposes only, a diagnosis code for each disputed injury;</p> <p>(4) state the date of the examination, the time the examination began, and the address where the examination took place;</p> <p>(5) list any additional testing conducted or referrals made as part of the evaluation, including the identity of any healthcare providers to which the designated doctor referred the injured employee under §127.10(c) of this title, the types of tests conducted or referrals made and the dates the testing or referral examinations occurred;</p> |  | <ul style="list-style-type: none"> <li>DWC Form-068, <i>Designated Doctor Data Report</i> is no longer needed.</li> </ul> |

| <b>§127.220. Designated Doctor Reports</b>                            |                            |  |
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| <b>Current text</b>   | <b>Informal draft text</b> | <b>Notes</b>   |
| (6) be signed by the designated doctor who performed the examination. |                            |  |
| (d) This section will become effective on December 6, 2018.           |                            | <ul style="list-style-type: none"> <li>Effective date of changes will be 20 days after rule adoption. Specific effective date not needed in rule.</li> </ul> |

| <b>§180.23. Division Required Training for Doctors</b>   |  |   |
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| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b>  |
| §180.23. Division Required Training for Doctors  | §180.23. Division-Required Training for Doctors  |   |
| (a) This section governs authorization relating to certification of maximum medical improvement (MMI), determination of permanent impairment, and assignment of impairment ratings in the event that a doctor finds permanent impairment exists.   | (a) <b>Applicability.</b> This section governs authorization relating to certification of maximum medical improvement (MMI), determination of permanent impairment, and assignment of impairment ratings in the event that a doctor finds permanent impairment exists.   |   |
| (b) Full authorization to assign an impairment rating and certify MMI in an instance where the injured employee is found to have permanent impairment requires a doctor to obtain division certification by successfully completing the division-prescribed impairment rating training and passing the test or meeting the training and testing requirements for designated doctor certification or recertification under §127.100 and §127.110 of this title (relating to Designated Doctor Certification and Designated Doctor Recertification, respectively). To remain certified, a doctor is required to successfully complete follow-up training and testing at least every two years. | (b) <b>Authorization.</b> Full authorization to assign an impairment rating and certify MMI in an instance where the injured employee is found to have permanent impairment requires a doctor to obtain division certification by completing the division-prescribed impairment rating training and passing the test or meeting the training and testing requirements for designated doctor certification under §127.100 of this title (relating to Designated Doctor Certification). To remain certified, a doctor is required to complete follow-up training at least every two years.   | <ul style="list-style-type: none"> <li>Removed references to recertification and §127.110.</li> </ul> |
| (c) A doctor who has not completed the required training under subsection (b) of this section but who has had similar training in the American Medical Association Guides from a division-approved vendor within the prior two years may submit the syllabus and training materials from that course to the division for review. If the division determines that the training is substantially the same as the division-required training and the doctor passes the division-required test, the doctor is fully authorized under this section. The ability to substitute training only applies to the initial training requirement, not the follow-up training.                              | (c) <b>Training.</b> A doctor who has not completed the required training under subsection (b) of this section but who has had similar training in the American Medical Association Guides from a division-approved vendor within the prior two years may submit the syllabus and training materials from that course to the division for review. If the division determines that the training is substantially the same as the division-required training and the doctor passes the division-required test, the doctor is fully authorized under this section. The ability to substitute training only applies to the initial training requirement. |   |
| (d) Notwithstanding any other provision of this section, a doctor who has not successfully completed training and testing required by this section for   | (d) <b>Exceptions.</b> Notwithstanding any other provision of this section, a doctor who has not successfully completed training and testing required by this section  |   |

| <b>§180.23. Division Required Training for Doctors</b>   |  |   |
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| <b>Current text</b>  | <b>Informal draft text</b>   | <b>Notes</b>  |
| authorization to assign impairment ratings and certify MMI when there is permanent impairment may receive permission by exception to do so from the division on a specific case-by-case basis. | for authorization to assign impairment ratings and certify MMI when there is permanent impairment may receive permission by exception to do so from the division on a specific case-by-case basis. |   |
| (e) This section is effective September 1, 2012.   |  | <ul style="list-style-type: none"> <li>• Effective date of changes will be 20 days after rule adoption. A specific effective date is not needed in the rule.</li> </ul> |