

SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS
28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, AND 127.25

SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL
[~~RECERTIFICATION~~], AND QUALIFICATIONS
28 TAC §§127.100, 127.120, 127.130, AND 127.140

REPEAL OF 28 TAC §127.110

SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES
28 TAC §§127.200, 127.210, AND 127.220

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend Subchapter A §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25; the title of Subchapter B; Subchapter B §§127.100, 127.120, 127.130, and 127.140; and Subchapter C §§127.200, 127.210, and 127.220; and to repeal 28 TAC §127.110. The sections DWC proposes to amend concern how the designated doctor program operates. The section DWC proposes to repeal, §127.110, has been incorporated into amended §127.100. The proposed amendments and repeal implement Texas Labor Code §§408.0041 and 408.1225, which directs DWC on the operation of the designated doctor program.

EXPLANATION. The amendments are necessary to maintain and increase participation in the designated doctor program and to allow better access to certain types of specialized examinations. DWC evaluated the program and identified several possible areas of improvement, including changes to address training and testing requirements; designated doctor qualifications, certification, and renewals; multiple certifications; and administrative burdens.

To that end, the proposed amendments move the substance of the repealed section into another section to reduce duplication and streamline and clarify the process involved, make changes to revise training and testing requirements, reduce administrative burdens, and update designated doctor qualifications to enable better access to traumatic brain injury and multiple fracture examinations for injured employees.

The amendments add new subsection headers throughout the chapter that enable readers to identify and navigate subsections more easily. They remove unnecessary and obsolete section-specific applicability and effective dates to avoid confusion and streamline rule language. They make editorial changes that clarify the rule language and organization by removing unnecessary words, simplifying sentence structure, adding references, and breaking long paragraphs into shorter paragraphs and lists. The amendments also correct typographic, grammar, and punctuation errors in the current rule text; make changes to update obsolete references; and make updates for plain language and agency style. Some examples of these amendments include changing "shall" to "must," "facsimile" to "fax," and adding "insurance" before "carrier."

Section 127.1 concerns requesting designated doctor examinations. The amendments remove language related to the multiple certification requirement to harmonize with amendments to the multiple certification process in §127.10. The amendments also update and simplify DWC's website and physical addresses, and clarify DWC's requirements for a case-specific good cause determination for scheduling an examination within 60 days. The amendments remove the provision that formerly required the requester to list all compensable injuries, because the designated doctor will be determining what injuries are compensable when performing an extent of injury examination, rather than relying on information from the requester.

Section 127.5 concerns scheduling designated doctor appointments. The amendments relocate existing rule language about designated doctor certification from §127.130 for better placement in the chapter.

Section 127.10 concerns general procedures for designated doctor examinations. The amendments add a reference to Labor Code §408.0041(c), clarify that testing and referral doctors for designated doctor examinations do not have to be in the same workers' compensation network for health care as the injured employee, and clarify that the insurance carrier must pay benefits on the condition to which the designated doctor determines the compensable injury extends.

The amendments also divide subsection (d) into two subsections, remove the requirement for a designated doctor to provide multiple certifications, and add language that specifies that, for examinations conducted under subsection (d) on or after June 5, 2023, a designated doctor may provide multiple certifications of maximum medical improvement (MMI) and impairment ratings only when DWC directs.

DWC analyzed data about designated doctor examinations, benefit review conferences, and contested case hearings involving the issues of MMI, impairment rating, and extent of injury in 2019, and determined that only about 20% of designated doctor reports with multiple certifications were involved in DWC dispute resolution processes. In addition, of the 20% of claims where the parties disputed MMI, impairment rating, and extent of injury in a DWC contested case hearing, DWC administrative law judges requested new certifications from designated doctors about 50% of the time, since the multiple certifications the designated doctor previously produced did not represent the compensable injury determined during the proceeding. DWC concluded that where multiple certifications are appropriate, DWC administrative law judges are already directing designated doctors to provide them. As a result, the amendment that specifies

that designated doctors may provide multiple certifications of MMI and impairment ratings only when directed by DWC will reduce the number of unnecessary multiple certifications that consume time and resources, while continuing to allow for necessary multiple certifications without causing unnecessary delay.

Section 127.15 concerns undue influence on a designated doctor. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.20 concerns requesting a letter of clarification regarding designated doctor reports. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.25 concerns failure to attend a designated doctor examination. The amendments clarify that the requirement applies to a designated doctor examination or a referral examination under §127.10(c).

Subchapter B concerns designated doctor certification, renewal, and qualifications. The amendments change the title of the subchapter by changing "recertification," which referred to the section being repealed, to "renewal" to describe the procedure more accurately.

Section 127.100 concerns designated doctor certification. The amendments merge the language in §127.110, which is being repealed, with §127.100 to eliminate redundancy, reduce confusion and inconsistencies, update terminology, and clarify the process for certification and renewal.

The amendments specify that the requirements for certification and renewal are now combined into §127.100, and modify the requirement for certification testing by requiring that a designated doctor complete certification on or after May 13, 2013. Designated doctors that pass or have previously passed the certification test on or after May 13, 2013, are no longer required to retest every two years when they renew their certification. However, the amendments also add §127.100(d), which allows DWC to require testing of all designated doctors on renewal of their certification if needed. Examples of when testing might be required include, but are not limited to, individual need for retesting based on substandard performance, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.

The amendments clarify that the disclosure questions on the certification application require detailed explanations, add suspension and revocation to the certification actions that require DWC to send the designated doctor written notice, and relocate existing rule requirements for certification effective and expiration dates.

The amendments add §127.100(g), which relocates existing rule requirements from §127.110. Subsection (g) explains that a designated doctor seeking to renew their certification immediately after their current term expires, without interruption, must apply for certification no later than 45 days before the end of the term. Subsection (g) also explains that DWC will not assign examinations to the designated doctor during the last 45 days of an expiring term if it does not receive an application 45 days before the end of the term, but that designated doctors may still provide services on claims DWC had previously assigned to them during this 45-day period.

The amendments add §127.100(h), which allows DWC to approve a designated doctor certification but restrict some or all appointments until the designated doctor completes additional training, testing, or other requirements. This is necessary for DWC to ensure that designated doctors are adequately trained and able to perform their duties

as the Labor Code and DWC rules and guidelines require. Subsection (h) also provides a way for the designated doctor to dispute the restriction.

The amendments reletter existing subsection (f) as subsection (i). They clarify the range of possible actions that, under existing statutes, the commissioner may take on a designated doctor's certification to ensure the quality of the designated doctor's decisions and reviews. The amendments also add failure to comply with the requirements of §180.24 (relating to Financial Disclosure) as a ground for action under the subsection.

The amendments add §127.100(k), which relocates existing rule requirements for certification renewal from §127.110, to ensure consistency in the restructured process. The amendments change "informal hearing" to "informal conference" to clarify the informal nature of the discussion about a denial, suspension, or revocation of a designated doctor certification or application for certification or renewal. Subsection (k) details the procedure for designated doctors to request an informal conference.

The amendments remove existing §127.100(h) because this subsection was added in 2012 when designated doctors were transitioning to the then-new rules for examination qualification criteria. Only one doctor used that process during that transition, and there is no longer a need for it.

The amendments remove existing §127.100(i) because DWC transitioned all designated doctor certification terms to a two-year cycle in 2012. There is no longer a need for this provision in the rules.

Section 127.110 is repealed. The proposal combines certification and renewal requirements in amended §127.100 to reduce redundancy and inconsistency, and to make the requirements easier to understand and follow.

Section 127.120 concerns exception to certification as a designated doctor for out-of-state doctors. The amendments make editorial changes and remove obsolete and unnecessary language.

Section 127.130 concerns qualification standards for designated doctor examinations. The amendments specify an applicability date for the section for designated doctor examination assignments made on or after June 5, 2023, to clarify which standards apply to a given assignment.

The amendments to §127.130(b)(9)(A) also update the qualification requirements for physicians examining traumatic brain injuries, including concussion and post-concussion syndrome, by adding to the list of qualifying American Board of Medical Specialties and American Osteopathic Association Bureau of Osteopathic Specialists board certifications. These amendments are necessary to ensure that injured employees with traumatic brain injuries can continue to access designated doctor examinations.

Over the past several years, DWC has experienced a marked decrease in the number of qualified board-certified physicians to examine injured employees with traumatic brain injuries. Current §127.130(d) allows DWC to exempt a designated doctor from the applicable qualification standard if no other designated doctor is qualified and available to perform the examination. All physicians are trained and tested to be able to handle designated doctor assignments for non-musculoskeletal injuries, and to recognize when an injured employee needs to be referred for ancillary testing. Due to lack of availability, within a seven-month period, DWC selected a physician with a board certification other than those currently listed in §127.130(b)(9)(A) to examine an injured employee with a traumatic brain injury 26% of the time. These designated doctors coordinated testing and referral examinations with other health care practitioners to

complete their reports. Their reports were comparable to reports submitted by qualified, board-certified physicians.

As a result, DWC acknowledges the need for the rule to increase the number of board-certified physicians available to examine injured employees with traumatic brain injuries, as well as to improve the ability of physicians with a broader range of board certifications to use testing and referral resources to produce reports that meet the requirements of the designated doctor program. Board-certified physicians are all capable of coordinating referrals of injured employees to other specialists, when necessary, regardless of the types of patients the physicians may see in their medical practice. Should a situation arise where any designated doctor does not believe they have the knowledge or training to address a specific issue in an exam, designated doctors may return the examination to DWC for reassignment.

To support those doctors, DWC would provide additional training, focused on coordinating additional testing and referrals necessary when examining injured employees, and techniques for incorporating the results of the testing and referral examinations into the overall report effectively. This would preserve the quality of the reports on traumatic brain injuries while expanding the pool of doctors able to conduct those examinations.

The amendments to §127.130(b)(9)(B) also update the qualification requirements for physicians examining injured employees with spinal cord injuries and diagnoses, a spinal fracture with documented neurological deficit, or cauda equina syndrome. The amendments change the phrase "documented neurological deficit" to "documented neurological injury, or vascular injury," to clarify what types of conditions require a designated doctor examination by a qualified, board-certified specialist. The amendments also clarify that an injured employee with more than one spinal fracture must be examined

by a qualified, board-certified specialist to harmonize with the amendments to the types of multiple fractures, joint dislocation, and pelvis or hip fractures in §127.130(b)(9)(E).

The amendments to §127.130(b)(9)(E) clarify the certifications required for complex fractures. They no longer require a board-certified specialist for multiple fractures unless they are accompanied by vascular injury or are more than one spinal fracture. Currently, a board-certified physician must examine an injured employee with multiple fractures (more than one fracture). That can create unnecessary administrative problems and delays. Sometimes, a chiropractor or physician without a board specialty listed in §127.130(b)(9)(E) is selected as a designated doctor to examine an injured employee with a single fracture. But when the designated doctor gets the medical records, they may show more than one simple, resolved fracture, which means that the designated doctor must return the examination for reassignment.

As a result, the amendments to §127.130(b)(9)(E) are necessary to clarify that an injured employee with one or more fractures with vascular injury, including crush injuries to bones, must be examined by a physician qualified under §127.130(b)(9)(E). An injured employee with more than one simple, resolved fracture (without vascular injury) may be examined by a chiropractor or a physician with a different board certification or no board certification. This amendment will reduce wasted time and resources, and increase efficiency in assigning and conducting designated doctor examinations.

The amendments also allow a chiropractor or a physician with a different board certification or no board certification to examine an injured employee with a hip fracture without vascular injury; and add multiple rib fractures, with or without vascular injury, to the types of injuries that require examination by a physician qualified under §127.130(b)(9)(E). Because multiple rib fractures may be accompanied by damage to internal organs, clarifying that their examination requires a board-certified physician is necessary.

The amendments to §127.130(c) remove language related to disqualification of a designated doctor under Labor Code §408.0041(b-1) for clarity.

The amendments to §127.130(g) remove a reference to §127.110(b) that the proposed repeal of §127.110 makes obsolete.

Section 127.140 concerns disqualifying associations. The amendments make editorial changes.

Section 127.200 concerns duties of a designated doctor. The amendments add the requirement for a designated doctor to complete required training or pass required testing detailed in the designated doctor's approval of certification to harmonize with the proposed language in §127.100(h) that allows DWC to approve a designated doctor certification but restrict some or all appointments for a designated doctor until the designated doctor completes additional training, testing, or other requirements. The amendments are necessary to enhance and preserve the integrity of the program.

Section 127.210 concerns designated doctor administrative violations. The amendments clarify that a designated doctor's failure to attend an examination or comply with rescheduling requirements may be grounds for revoking or suspending a certification or sanctioning a designated doctor. The amendments are necessary to ensure the quality and efficiency of the designated doctor program.

Section 127.220 concerns designated doctor reports. The amendments add the requirements for a designated doctor to specify the date the additional testing or referral examination was completed, and to provide the total amount of time required for the designated doctor to review the medical records. They are necessary for DWC to

administer the designated doctor program effectively by ensuring a more complete and descriptive record that provides the required information and better reflects the amount of work involved in producing the report.

Informal Comments. DWC posted two informal working drafts and held a stakeholder meeting while developing this proposal. DWC posted the first informal working draft on March 3, 2022, and received 12 comments; and the second on June 1, 2022, and received six comments; and held a stakeholder meeting on June 7, 2022, to discuss the drafts. DWC considered those comments when drafting this proposal. One comment that was repeated several times in the written comments and in the meeting was that stakeholders did not want DWC to simplify reporting by retiring DWC Form-068, *Designated Doctor Examination Data Report* and replacing it with an optional template. As a result, this proposal retains the designated doctor examination data report.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Business Process Joseph McElrath has determined that during each year of the first five years the proposed amendments and repeal are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner McElrath does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments and repeal are in effect, Deputy Commissioner McElrath expects that enforcing and administering the proposed amendments and repeal will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.0041 and 408.1225 and are current, accurate, and readable, which promotes transparent and efficient regulation. The proposed amendments will also have the public benefit of increasing doctor participation in the designated doctor program because they revise certification testing requirements and reduce administrative burdens. The proposed amendments will also increase the number and types of physicians available to examine injured employees with certain complex injuries and diagnoses. That change will reduce injured employees' wait time and increase their access to examinations.

Deputy Commissioner McElrath expects that the proposed amendments and repeal will not increase the cost to comply with Labor Code §§408.0041 and 408.1225 because they do not impose requirements beyond those in the statute or that currently exist in the rules. In contrast, the proposed amendments and repeal should decrease the net cost and increase the benefits of participation in the designated doctor program by streamlining the procedure, reducing administrative burdens, and enabling better access to examinations.

Labor Code §408.0041 governs designated doctor examinations to resolve questions about an employee's injury. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking. Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an

independent training and testing provider to conduct the certification program under those guidelines.

The proposed amendments and repeal implement and conform with the requirements in Labor Code §§408.0041 and 408.1225, and do not impose new substantive duties or affect additional people. Instead, they aim to preserve and increase participation in and access to the designated doctor program by streamlining and clarifying requirements and reducing administrative burdens, while maintaining program quality. As a result, any cost associated with the proposed amendments does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments and repeal will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. They are intended to maintain and increase participation in the designated doctor program. To that end, the proposed amendments move the substance of the repealed section into another section to reduce duplication and streamline and clarify the process involved, make changes to revise training and testing requirements, reduce administrative burdens, and update designated doctor qualifications to enable better access to traumatic brain injury and multiple fracture examinations for injured employees. They also make editorial changes, changes to update obsolete references, and updates for plain language and agency style. The proposed amendments do not change the people the rule affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal does not impose a possible cost on regulated persons. Instead, DWC expects that the reduced administrative burdens and other designated doctor retention efforts in the proposal would reduce the cost of compliance with the existing rule. As a result, no additional rule amendments are required under Government Code §2001.0045. Even if the rule did impose a possible cost on regulated persons, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendments are necessary to implement Labor Code §§408.0041 and 408.1225 by maintaining a functioning designated doctor program.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

DWC made these determinations because the proposal includes a repeal. The proposal moves the substance of the repealed section into another section to reduce duplication and streamline and clarify the process involved. The proposed amendments

also make changes to revise training and testing requirements, reduce administrative burdens, and update designated doctor qualifications to enable better access to traumatic brain injury examinations for injured employees; as well as editorial changes, changes to update obsolete references, and updates for plain language and agency style. They do not change the people the rule affects or impose additional costs.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on January 30, 2023. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, TX 78711-2050.

DWC will also consider written and oral comments on the proposal at a public hearing at 10:00 a.m., Central time, on January 18, 2023. The hearing will take place remotely. DWC will publish details of how to view and participate in the hearing on the agency website at www.tdi.texas.gov/alert/event/index.html.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER A. DESIGNATED DOCTOR SCHEDULING AND EXAMINATIONS
28 TAC §§127.1, 127.5, 127.10, 127.15, 127.20, AND 127.25

STATUTORY AUTHORITY. DWC proposes §§127.1, 127.5, 127.10, 127.15, 127.20, and 127.25 under Labor Code §§408.0041, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Sections 127.1, 127.5, 127.10, 127.15, 127.20, and 127.25 implement Labor Code §§408.0041 and 408.1225. Section 408.0041 was enacted by House Bill (HB) 2600, 77th Legislature, Regular Session (2001); and amended by HB 7, 79th Legislature, Regular Session (2005); Senate Bill (SB) 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); and HB 2605, 82nd Legislature, Regular Session (2011). Section 408.1225 was enacted by HB 7, 79th Legislature, Regular Session (2005); and amended by HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2056, 85th Legislature, Regular Session (2017).

TEXT.

§127.1. Requesting Designated Doctor Examinations.

(a) Initiating an examination. 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]:

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

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

- (1) provide a specific reason for the examination;
- (2) report the injured employee's current diagnosis or diagnoses and body part or body parts affected by the injury;
- ~~[(3) list all injuries determined to be compensable by the division or court, or all injuries accepted as compensable by the insurance carrier;]~~
- (3) [(4)] provide general information about [~~regarding~~] the identity of the requester [~~requestor~~], injured employee, [~~employer,~~] treating doctor, and insurance carrier;
- (4) [(5)] identify the workers' compensation health care network certified under Insurance Code[;] Chapter 1305 through which the injured employee is receiving treatment, if applicable;
- (5) [(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;
- (6) [(7)] submit the request on the form prescribed by the division under this section. A copy of the prescribed form is [~~can be obtained from~~]:
 - (A) on the division's website at www.tdi.texas.gov/wc [~~www.tdi.texas.gov/wc/indexwc.html~~]; or
 - (B) at the division's headquarters in Austin, Texas [~~the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744~~] or any [~~local~~] division field office location;
- (7) [(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;

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

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

(B) if the requester ~~[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 the division or a court or by agreement of the parties, if any;

(C) if the requester ~~[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;

(D) if the requester ~~[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 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);

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

(F) if the requester ~~[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;

(G) if the requester ~~[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 ~~[question(s)]~~; and

(9) ~~[(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.

(c) Scheduling an examination within 60 days. The division will not schedule ~~[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 the most recent designated doctor [a previous] examination absent a showing of [the injured employee that party must provide] good cause. [for scheduling that designated doctor 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:]~~

(1) Good cause requires the requester to show that the requested examination ~~[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 questions [question(s)] and that it will affect entitlement to benefits. [; or]~~

(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. ~~[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.]~~

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

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

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

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

~~(4) [(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 reasonably merit approval. ~~[-or]~~

~~[(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.]~~

(e) Examination ordered during a dispute. During a dispute on the compensability of a claim as a whole, if ~~[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 about ~~[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.

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

(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.

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

(3) To dispute an approved or denied request for a designated doctor examination [Additionally], a party may [is entitled to] 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). [to dispute an approved or denied request for a designated doctor examination.]

(4) If the division receives and approves a timely [The division, upon timely receipt and approval of the] request for expedited proceedings to dispute a designated doctor examination, the division will [shall] stay the disputed examination pending the outcome [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)].~~

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

§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.]~~

~~(a) [(b)] Order assigning a designated doctor. Within ~~[The division, within]~~ 10 days after approving ~~[approval of]~~ a valid request, the division will ~~[shall]~~ issue an order that assigns a designated doctor and will ~~[shall]~~ 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 ~~[will be]~~ directed to examine the injured employee. The order will ~~[shall]~~:~~

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

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

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

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

(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).

~~(b) [(c)] Change of examination address. The examination address indicated on the order in subsection (a)(4) ~~[(b)(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 [~~of the division~~].

(c) [~~(d)~~] Availability of designated doctor. Except as provided in subsection (g) [~~(h)~~] of this section, the division will [~~shall~~] select the next available doctor on the designated 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:

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

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

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

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

(A) within the past 12 months; or

(B) for [~~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.

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

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

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

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

(4) ~~[(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.

(5) ~~[(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.

(6) ~~[(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.

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

(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.

(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.

(3) An ~~Assignment of 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.

(4) 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.

(f) ~~[(g)]~~ Exemptions. 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 [The] division may assign a designated doctor as necessary ~~[if there is no available designated doctor in the county of the injured employee].~~

(g) ~~[(h)]~~ Subsequent examinations. 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 ~~[shall reassign that]~~ doctor to a subsequent examination for that claim ~~[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.

(h) ~~[(i)]~~ Mutual agreement required to reschedule. The designated doctor's office and the injured employee must ~~[shall]~~ contact each other if there is 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 the other at least one working day before ~~[prior to]~~ the appointment. The one working day requirement is ~~[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:

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

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

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

(4) the reason for the scheduling conflict; and

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

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

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

(1) Within one working day of rescheduling, the designated doctor must provide the time and date of the rescheduled examination to [~~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~~].

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

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

~~[(1) This section will become effective on December 6, 2018.]~~

§127.10. General Procedures for Designated Doctor Examinations.

(a) Authorization to receive documents. 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 ~~[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 designated doctor's receipt of medical records and analyses ~~[by the designated doctor]~~:

(1) The treating doctor and insurance carrier must ~~[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.

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

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

(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.

(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 ~~[, as well as]~~ marked copies of medical records.

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

(C) If the treating doctor sends an analysis to the designated doctor, the treating doctor must ~~[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].~~

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

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

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

(C) 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 must ~~[shall]~~ reschedule the examination to occur no later than 21 days after receiving ~~[receipt of]~~ the records.

(b) Requirement to review information. Before examining an injured employee, the designated doctor must ~~[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 that ~~[provided by]~~ the insurance carrier and treating doctor provide in accordance with subsection (a) of this section, and any materials the division submits ~~[submitted]~~ to the doctor ~~[by the division]~~.

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

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

(c) Additional testing and referrals. The designated doctor must ~~[shall]~~ perform additional testing when necessary to resolve the issue in question. The designated doctor must ~~[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 it ~~[the issue in question]~~.

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

(2) Payment for additional testing or referrals that the designated doctor has determined are necessary under this subsection must not ~~[nor shall these services]~~ be denied prospectively or retrospectively, regardless of any potential disagreements about ~~[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].~~

(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).

(4) 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):

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

(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).

(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 [expiration of the] 15 working days expire.

(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 [approved by] the division approved, the designated doctor must [shall] complete the [doctor's] 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.

(d) MMI and impairment ratings. Any evaluation relating to either MMI [maximum medical improvement (MMI)], an impairment rating, or both, must [shall] be conducted in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment). For examinations conducted

under this subsection on or after June 5, 2023, the [if a] designated doctor may [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 only when directed by the division [that take into account each reasonable outcome for the extent of the injury].

(e) Reports on MMI and impairment ratings. 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, must [shall] complete and file a report as required by §§130.1 and 130.3 [§130.1 of this title 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).

(1) If the designated doctor provides [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 assigned impairment rating [assigned] and a designated doctor examination data report under [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.

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

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

(f) [(e)] Reports on return to work. A designated doctor who examines an injured employee for [pursuant to] any question relating to return to work must complete [is required to file] a Work Status Report that complies with [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. 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 ~~[of the examination of]~~ the injured employee.

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

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

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

(g) ~~[(f)]~~ Report on other issues. A designated doctor who resolves questions on issues other than those listed in subsections (d), ~~[and]~~ (e), and (f) of this section must file ~~;~~ ~~shall file~~ a designated doctor examination data report ~~[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 the designated doctor examines ~~[of the examination of]~~ the injured employee.

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

(2) The ~~[In addition, the]~~ designated doctor must ~~[shall]~~ provide these reports to the injured employee and the injured employee's representative (if any) by fax

~~[facsimile]~~ or ~~[by]~~ electronic transmission if the designated doctor has a fax ~~[been provided with a facsimile]~~ number or email ~~[address]~~ for the recipient. ~~[, otherwise,]~~

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

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

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

(1) If the designated doctor provides multiple certifications of MMI and impairment ratings ~~[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 must ~~[shall]~~ pay benefits based on the conditions to which the designated doctor determines the compensable injury extends.

(2) For medical benefits, the insurance carrier has ~~[shall 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 ~~[of the designated doctor's report]~~. By the end of this period, insurance carriers must pay ~~[shall tender payment on]~~ these medical bills in accordance with the Labor Code ~~[Act]~~ and Chapters 133 and 134 of this title.

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

(j) ~~(4)~~ Record retention. The designated doctor must ~~[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.

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

(2) These records must ~~[shall]~~ include the injured employee's medical records, any analysis ~~[submitted by]~~ the insurance carrier or treating doctor submits (including supporting information), reports the designated doctor generates ~~[generated by the designated doctor]~~ as a result of the examination, and narratives ~~[provided by]~~ the insurance carrier and treating doctor~~;~~ provide to reflect:

(A) ~~(1)~~ the date and time of any designated doctor appointments scheduled with an injured employee;

(B) ~~(2)~~ the circumstances for ~~[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;

(C) ~~(3)~~ the date of the examination;

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

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

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

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

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

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

§127.15. Undue Influence on a Designated Doctor.

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

(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 ~~[prior to the examination of the injured employee by the designated doctor regarding]~~ the injured employee's medical condition or history before the designated doctor examines the injured employee;

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

(3) the designated doctor may initiate communication with:

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

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

(b) Communication about administrative matters. 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 designated doctor has filed the report ~~[has been filed]~~, or other similar matters.

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

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

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

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

(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.

(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 ~~[address]~~.

(4) A ~~[Additionally, a]~~ designated doctor must ~~[shall]~~ only respond to the questions or requests submitted to the designated doctor in the request for clarification

and must ~~shall~~ not ~~otherwise~~ reconsider their ~~the doctor's~~ previous decision, issue a new or amended decision, or provide clarification on their ~~the doctor's~~ previous decision.

(b) Requirements. Requests for clarification must:

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

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

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

(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.

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

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

(1) The designated doctor must ~~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(g) ~~§127.10(f)~~ of this title (relating to General Procedures for Designated Doctor Examinations).

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

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

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

(C) ~~[(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(g) ~~§127.10(f)~~ of this title.

(e) Administrative violation. 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.]~~

§127.25. Failure to Attend a Designated Doctor Examination.

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

(b) No good cause. If there is no division finding that good cause exists ~~[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:

(1) failed to submit to the examination; and

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

(c) Rescheduling timeframe. 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 ~~shall~~ schedule the examination to occur as soon as possible, but no ~~not~~ later than 21 days ~~the 21st day~~ after the injured employee contacted the doctor.

(d) New examination request required. If the injured employee fails to contact the designated doctor within 21 days of the ~~scheduled date 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 ~~a~~ Designated Doctor Examinations ~~Examination~~).

(e) Reinitiation of benefits. The insurance carrier must ~~shall~~ reinstate TIBs effective on ~~as of~~ the date the injured employee submitted to the rescheduled examination under subsection (c) of this section or the date the examination was scheduled at ~~pursuant to~~ the injured employee's request under subsection (d) of this section, unless the designated doctor's report ~~of the designated doctor~~ indicates that the injured employee has reached MMI or is otherwise not eligible for income benefits. The reinitiation ~~re-initiation~~ of TIBs must ~~shall~~ occur no later than the seventh day following:

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

(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.

(f) Benefits during suspension. An injured employee is not entitled to TIBs during the ~~for a~~ period when ~~during which~~ the insurance carrier suspended benefits under

[pursuant to] this section unless the injured employee later submits to the examination,
and:

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

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

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

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL
[RECERTIFICATION], AND QUALIFICATIONS
28 TAC §§127.100, 127.120, 127.130, AND 127.140

STATUTORY AUTHORITY. DWC proposes amending the title of Subchapter B and amending §§127.100, 127.120, 127.130, and 127.140 under Labor Code §§408.0041, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop

guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Sections 127.100, 127.120, 127.130, and 127.140 implement Labor Code §§408.0041 and 408.1225. Section 408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001); and amended by HB 7, 79th Legislature, Regular Session (2005); SB 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); and HB 2605, 82nd Legislature, Regular Session (2011). Section 408.1225 was enacted by HB 7, 79th Legislature, Regular Session (2005); and amended by HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2056, 85th Legislature, Regular Session (2017).

TEXT.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS

**SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL
[RECERTIFICATION], AND QUALIFICATIONS**

§127.100. Designated Doctor Certification.

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

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

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

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

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

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

~~(B) the division's adopted;~~

~~(i) treatment guidelines; and~~

(ii) return-to-work guidelines.;

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

(4) Have ~~[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 ~~[for the treatment of]~~ patients. ~~;~~ and

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

(A) be licensed in Texas;

(B) ~~[(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 to assign ~~[for the assignment of]~~ impairment ratings and all return-to-work and treatment guidelines adopted by the division; and

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

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

(1) contact information for the doctor;

(2) information on the doctor's education;

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

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

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

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

(7) detailed answers to disclosure questions on [~~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;

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

(9) an attestation that:

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

(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

(C) the doctor will [~~shall~~] 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 [~~used or intended to be used by the designated doctor~~] to perform designated doctor examinations for the duration of the doctor's certification.

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

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

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

(d) Additional certification testing. On receipt of an application for designated doctor certification renewal, the division may require a designated doctor to complete additional certification testing to demonstrate proficient knowledge on the specific duties of a designated doctor under the Labor Code and division rules. Examples of circumstances that may require additional certification testing include, but are not limited to, individual need for retesting based on substandard performance, changes in the duties of a designated doctor, updates to the guidelines, and legislative changes.

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

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

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

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

(3) the designated doctor's ~~[Approvals will also include the]~~ examination qualifications ~~[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].~~

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

(1) If the division does not receive all of the information required under subsection (b)(1)-(9) above no later than 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.

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

(h) Approval of renewal application with restrictions. 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.

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

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

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

(2) ~~(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]~~

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

or

(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:

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

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

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

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

(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 ~~[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];~~

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

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

(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];~~

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

(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;

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

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

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

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

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

(A) If the final decision is still a denial, the division's final notice will ~~[shall]~~ provide the reasons ~~[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.

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

(k) Request for informal conference. A designated doctor whose renewal application is denied, or whose certification is suspended or revoked, may either 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.

(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.

(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.

(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.

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

(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.

(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.

(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.

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

(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).]~~

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

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

~~[(a) If ~~When necessary because~~ the injured employee is temporarily located or resides out of state ~~[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 help timely resolve a ~~[facilitate a timely resolution of the]~~ dispute or perform a particular examination.~~

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

§127.130. Qualification Standards for Designated Doctor Examinations.

(a) Applicability. This section applies to designated doctor assignments made on or after June 5, 2023 [~~the effective date of this section~~].

(b) Qualification standards by type of injury or diagnosis. A designated doctor is qualified to perform a designated doctor examination on an injured employee if the designated doctor meets the appropriate qualification standard [~~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 standards [~~criteria~~] are [~~determined~~] as follows:

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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

(A) internal systems;

(B) ear, nose, and throat;

(C) head and face;

(D) skin;

(E) cuts to skin involving underlying structures;

(F) non-musculoskeletal structures of the torso;

(G) hernia;

(H) respiratory;

(I) endocrine;

(J) hematopoietic; and

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

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

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

(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

(ii) ~~[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).

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

(i) Qualifying ABMS certifications are: ~~[(A)]~~

(I) neurological surgery;~~[(1)]~~

(II) neurology;~~[(2)]~~

(III) physical medicine and rehabilitation;~~[(3) or]~~

(IV) psychiatry; ~~[by the ABMS.]~~

(V) orthopaedic surgery;

(VI) occupational medicine;

(VII) dermatology;

(VIII) plastic surgery;

(IX) surgery;

(X) anesthesiology with a subspecialty in pain medicine;

(XI) emergency medicine;

(XII) internal medicine;

(XIII) thoracic and cardiac surgery; or

(XIV) family medicine.

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

(I) neurological surgery;^[r]

(II) neurology;^[r]

(III) physical medicine and rehabilitation;^[r-er]

(IV) psychiatry; ~~[by the AOABOS.]~~

(V) orthopedic surgery;

(VI) preventive medicine/occupational-environmental
medicine;

(VII) preventive medicine/occupational;

(VIII) dermatology;

(IX) plastic and reconstructive surgery;

(X) surgery (general);

(XI) anesthesiology with certificate of added
qualifications in pain management;

(XII) emergency medicine;

(XIII) internal medicine;

(XIV) thoracic and cardiovascular surgery; or

(XV) family practice and osteopathic manipulative
treatment.

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

(i) Qualifying ABMS certifications are:

(I) neurological surgery;^[r]

(II) neurology;^[r]

(III) physical medicine and rehabilitation;^[r]

(IV) orthopaedic surgery;^[7] or

(V) occupational medicine. [~~by the ABMS or board certified in~~]

(ii) Qualifying AOABOS certifications are:

(I) neurological surgery;^[7]

(II) neurology;^[7]

(III) physical medicine and rehabilitation;^[7]

(IV) orthopedic surgery;^[7]

(V) preventive medicine/occupational-environmental medicine;^[7] or

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

(D) [~~(C)~~] To examine severe burns, including chemical burns^[7] defined as deep partial or full thickness burns, also known as second, third, or fourth-degree [~~2nd, 3rd, or 4th degree~~] burns, a designated doctor must be board-certified by the ABMS or AOABOS. [~~board certified in~~]

(i) Qualifying ABMS certifications are:

(I) dermatology;^[7]

(II) physical medicine and rehabilitation;^[7]

(III) plastic surgery;^[7]

(IV) orthopaedic surgery;^[7]

(V) surgery;^[7] or

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

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

(I) dermatology;^[7]

(II) physical medicine and rehabilitation;^[7]

(III) plastic and reconstructive surgery;^[7]
(IV) orthopedic surgery;^[7]
(V) surgery (general);^[7]
(VI) preventive medicine/occupational-environmental
medicine;^[7] or
(VII) preventive medicine/occupational ~~by the~~
AOABOS].

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

(i) Qualifying ABMS certifications are:
(I) neurological surgery;^[7]
(II) neurology;^[7]
(III) orthopaedic surgery;^[7]
(IV) plastic surgery;^[7]
(V) anesthesiology with a subspecialty in pain
medicine;^[7]
(VI) occupational medicine;^[7] or
(VII) physical medicine and rehabilitation. ~~[by the~~
ABMS]

(ii) Qualifying AOABOS certifications are: ~~[or board-certified in]~~
(I) neurological surgery;^[7]
(II) neurology;^[7]
(III) orthopedic surgery;^[7]
(IV) plastic surgery;^[7]

(V) preventive medicine/occupational-environmental
medicine;^[7]

(VI) preventive medicine/occupational;^[7]

(VII) anesthesiology with certificate of added
qualifications in pain management;^[7] or

(VIII) physical medicine and rehabilitation [~~by the
AOABOS~~].

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

(i) Qualifying ABMS certifications are:

(I) emergency medicine;^[7]

(II) orthopaedic surgery;^[7]

(III) plastic surgery;^[7]

(IV) physical medicine and rehabilitation;^[7] or

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

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

(I) emergency medicine;^[7]

(II) orthopedic surgery;^[7]

(III) plastic surgery;^[7]

(IV) physical medicine and rehabilitation;^[7]

(V) preventive medicine/occupational-environmental
medicine;^[7] or

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

(G) ~~[(F)]~~ 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. ~~[board-certified in]~~

(i) Qualifying ABMS certifications are:

(I) internal medicine; or

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

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

(I) internal medicine;~~;~~

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

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

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

(i) Qualifying ABMS certifications are:

(I) internal medicine;~~;~~

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

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

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

(I) internal medicine;~~;~~

(II) emergency medicine;~~;~~

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

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

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

(i) Qualifying ABMS certifications are:

(I) internal medicine;_[r]

(II) emergency medicine;_[r]

(III) occupational medicine;_[r]

(IV) thoracic and cardiac surgery;_[r] or

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

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

(I) internal medicine;_[r]

(II) emergency medicine;_[r]

(III) preventive medicine/occupational-environmental medicine;_[r]

(IV) preventive medicine/occupational;_[r]

(V) thoracic and cardiovascular surgery;_[r] or

(VI) family practice and osteopathic manipulative treatment [~~by the AOABOS~~].

(c) Qualification to perform initial examination. 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. [~~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.~~]

(d) Exemption from qualification standards. If a designated doctor is not available with the qualifications listed in subsections (b)(9)(A) - (I) [~~For any particular designated~~]

~~doctor examination~~], the division may exempt a medical doctor or doctor of osteopathy ~~[designated doctor]~~ 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 ~~[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].~~

(e) Continuity of examinations. A designated doctor who performs an initial designated doctor examination of an injured employee and meets ~~[had]~~ the appropriate qualification standard ~~[criteria]~~ to perform that examination under subsection (b) of this section will~~[-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.

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

- (1) decides to stop practicing in the workers' compensation system;
- (2) decides to stop practicing as a designated doctor in the workers' compensation system;
- (3) relocates their ~~[the doctor's]~~ residence or practice;
- (4) asks ~~[has asked]~~ the division to indefinitely defer the doctor's availability on the designated doctor list;
- (5) determines that examining the injured employee would ~~[require the designated doctor to]~~ exceed the scope of practice authorized by their ~~[the doctor's]~~ license; or

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

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

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

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

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

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

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

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

(h) License revoked or suspended. The division will prohibit a designated doctor from performing examinations on all new or existing claims if the designated doctor's ~~[doctor has had the doctor's]~~ license has been ~~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.]~~

§127.140. Disqualifying Associations.

(a) Definition. 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:

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

(2) shared investment or ownership interest;

(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;

(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 management or operation of~~] the doctor's practice;

(5) personal or family relationships;

(6) a contract with the same workers' compensation health care network certified under Insurance Code 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 providing [~~the provision of~~] medical benefits to the injured employee; or

(7) any other financial arrangement that would require disclosure under the Labor Code, the Insurance 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.

(b) Disqualification of agent. A designated doctor also has [~~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.

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

(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.

(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) Notice required. 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 ~~[Insurance]~~ carriers must ~~[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)].~~

(e) Effect of disqualifying association. 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 ~~[shall be]~~ stripped of their presumptive weight.

(f) Disputes about disqualifying associations. 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 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 [~~Labor Code~~] and Chapters 140-144 [~~140—144~~] and 147 of this title (relating to dispute resolution [~~Dispute Resolution~~] processes, proceedings, and procedures).

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

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER B. DESIGNATED DOCTOR CERTIFICATION, RENEWAL
[RECERTIFICATION], AND QUALIFICATIONS
REPEAL OF 28 TAC §127.110

STATUTORY AUTHORITY. DWC proposes repealing §127.110 under Labor Code §§408.0041, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Repealing §127.110 implements Labor Code §§408.0041 and 408.1225. Section 408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001); and amended by HB 7, 79th Legislature, Regular Session (2005); SB 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); and HB 2605, 82nd Legislature, Regular Session (2011). Section 408.1225 was enacted by HB 7, 79th Legislature, Regular Session (2005); and amended by HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2056, 85th Legislature, Regular Session (2017).

TEXT.

§127.110. Designated Doctor Recertification.

CHAPTER 127. DESIGNATED DOCTOR PROCEDURES AND REQUIREMENTS
SUBCHAPTER C. DESIGNATED DOCTOR DUTIES AND RESPONSIBILITIES
28 TAC §§127.200, 127.210, AND 127.220

STATUTORY AUTHORITY. DWC proposes §§127.200, 127.210, and 127.220 under Labor Code §§408.0041, 408.1225, 402.00111, 402.00116, and 402.061.

Labor Code §408.0041 provides in part that, at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination (a designated doctor examination) to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the extent of the employee's compensable injury, whether the injured employee's disability is a direct result of the work-related injury, the ability of the employee to return to work, or other similar issues. It also includes requirements for doctors' and insurance carriers' duties and obligations, assignments, reporting, and payment of benefits; and requires rulemaking.

Labor Code §408.1225 requires in part that the commissioner by rule develop a process for certification of a designated doctor, and that those rules must require standard training and testing. Section 408.1225 also requires that DWC develop guidelines for certification training programs to ensure a designated doctor's competency in providing assessments, and allows DWC to authorize an independent training and testing provider to conduct the certification program under those guidelines.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Sections 127.200, 127.210, and 127.220 implement Labor Code §§408.0041 and 408.1225. Section 408.0041 was enacted by HB 2600, 77th Legislature, Regular Session (2001); and amended by HB 7, 79th Legislature, Regular Session (2005); SB 1169, 80th Legislature, Regular Session (2007); HB 2004, 80th Legislature, Regular Session (2007); and HB 2605, 82nd Legislature, Regular Session (2011). Section 408.1225 was enacted by HB 7, 79th Legislature, Regular Session (2005); and amended by HB 2004, 80th Legislature, Regular Session (2007); HB 2605, 82nd Legislature, Regular Session (2011); and HB 2056, 85th Legislature, Regular Session (2017).

TEXT.

§127.200. Duties of a Designated Doctor.

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

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

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

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

(2) Ensure ~~[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.~~;~~

(3) Ensure [ensure] that all agreements with persons [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:

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

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

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

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

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

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

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

(5) Notify [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[:a] designated doctor who no longer wishes to practice [~~as a designated doctor~~] before their [~~the doctor's~~] current certification expires must expressly surrender their [~~the designated doctor's~~] certification in a signed, written statement to the division.[:]

(6) Be ~~[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.^[;]

(7) Apply ~~[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.^[;]

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

(9) Maintain ~~[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. ~~[produced by the designated doctor;]~~

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

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

(12) Notify ~~[notify]~~ the division if their ~~[a designated doctor's]~~ continued participation on a claim they have ~~[to which the designated doctor has]~~ already been

assigned would ~~[required the doctor to]~~ exceed the scope of practice authorized by their
~~[the doctor's]~~ license.~~;~~

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

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

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

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

(B) The notice provided to the designated doctor under ~~[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 the division will investigate ~~[being investigated by the division]~~ during that visit.~~;~~

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

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

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

(b) Agents. 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.]~~

§127.210. Designated Doctor Administrative Violations.

(a) Grounds for sanctions. 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 [~~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~~]:

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

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

(3) failing to attend a designated doctor examination;

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

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

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

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

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

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

(10) [(8)] submitting [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;

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

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

(13) [(11)] self-referring, including referring [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 the designated doctor evaluated [by the designated doctor];

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

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

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

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

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

(b) Responsibility for agents' actions. 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) Notification and appeal. 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 [~~sanction~~] 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.]~~

§127.220. Designated Doctor Reports.

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

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

(2) Provide [~~provide~~] a clearly defined answer for each question to be addressed by the designated doctor examination and only for each of those questions.^[(1)]

(3) Sufficiently [~~sufficiently~~] explain how the designated doctor determined the answer to each question within a reasonable degree of medical probability.^[(1)]

(4) Demonstrate [~~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.[:]

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

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

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

(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);[:]

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

(C) the dates the testing or referral examinations occurred; [~~and~~]

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

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

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

(9) List ~~[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. ~~[;]~~

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

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

(12) ~~[(11)]~~ Include ~~[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. ~~[Labor Code;]~~

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

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

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

(c) Designated doctor examination data report. 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 ~~[Designated Doctor Examination Data Report]~~ in the form and manner required by

the division [~~Division~~]. A designated doctor examination data report [~~Designated Doctor Examination Data Report~~] must:

(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 Insurance Code 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;

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

(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;

(4) state the date of the examination, the time the examination began, and the address where the examination took place;

(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;
and

(6) be signed by the designated doctor who performed the examination.

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

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on December 8, 2022.



Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation