

## PROPOSED REGULATION ORDER

California Code of Regulations  
Title 9. Rehabilitative and Developmental Services  
Division 1. Department of Mental Health  
Chapter 15. Assessment of Sexually Violent Predators

Adopt new sections 4020 and 4020.1, title 9, California Code of Regulations to read as follows:

[NOTE: The entire text of sections 4020 and 4020.1 is new language to be added to the California Code of Regulations]

### **§ 4020. Evaluations Definitions.**

(a) "Necessary" shall mean no more frequently than annually, with an exception if the original evaluation(s) will become older than a year old during the time of trial under the Sexually Violent Predator Act.

(b) "Original evaluation" shall mean either:

- (1) Two concurring initial evaluations conducted pursuant to Welfare and Institutions Code section 6601, subdivision (d); or
- (2) Two concurring independent evaluations conducted pursuant to Welfare and Institutions Code section 6601, subdivision (f).

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 6601 and 6603, Welfare and Institutions Code; and *Albertson v. Superior Court* (2001) 25 Cal.4th 796.

### **§ 4020.1. Update Evaluations.**

(a) The Department of State Hospitals shall perform necessary update evaluations pursuant to Welfare and Institutions Code section 6603, subdivision (c)(1), on the original evaluations.

- (1) When update evaluations of the original evaluations are requested by the petitioner after a petition is filed, pursuant to Welfare and Institutions Code section 6603, subdivision (c)(1), and two independent evaluations have previously been assigned to address a difference of opinion post-petition, the two independent evaluations and the original evaluations may be updated.
- (b) The department shall only provide independent evaluations to resolve a difference of opinion one time during the Welfare and Institutions Code section 6603, subdivision (c)(1), post-petition evaluation phase.
- (c) Any time the Department of State Hospitals determines that an evaluation report contains an error, or when the Department of State Hospitals obtains or produces additional pertinent information, it shall authorize the currently assigned evaluators to prepare an addendum.
- (d) The Department of State Hospitals shall have the sole authority to designate evaluators for update evaluations and replacement evaluations for the petitioner.
  - (1) Only an evaluator designated by the Department of State Hospitals may testify on behalf of the Department of State Hospitals.
  - (2) The Department of State Hospitals shall replace an evaluator in accordance with Welfare and Institutions Code section 6603, subdivision (c)(2).
- (e) Only an evaluator designated by the Department of State Hospitals shall have access to a Department of State Hospitals patient's records for the purposes of conducting an update or replacement evaluation absent a court order.
- (f) An evaluator who is no longer available to testify for the petitioner in court proceedings pursuant to Welfare and Institutions Code section 6603,

subdivision (c)(2), may not be designated by the Department of State Hospitals to perform an update evaluation.

(g) If an evaluator who is no longer available to testify for the petitioner in court proceedings pursuant to Welfare and Institutions Code section 6603, subdivision (c)(2), is called by a party to testify at trial, costs for the testimony shall be paid by the party calling the evaluator to testify.

NOTE: Authority cited: Sections 4005.1, 4027 and 4101, Welfare and Institutions Code. Reference: Sections 6601, 6603, 6604 and 6605, Welfare and Institutions Code.