

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**

3
4 **Case No. MISC. NO. 262**

5 **IN RE: COVID-19 STATE OF EMERGENCY**
6 **EN BANC – NO. 3**
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9 Upon a unanimous vote of its members,¹ the Appeals Board issues this decision as a whole as an
10 en banc decision.² (Lab. Code, § 115.)

11 On March 19, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order
12 N-33-20, requiring all Californians to stay home with certain limited exceptions.³ In light of the continued
13 state of emergency and to facilitate adjudication of claims while complying with public health measures,
14 we will order suspension of certain WCAB Rules of Practice and Procedure regarding the 20 day
15 requirement to file documentary trial exhibits.

16 **I.**

17 WCAB Rule 10620 (entitled "Filing Proposed Exhibits") states in full: "Any document that a party
18 proposes to offer into evidence at a trial shall be filed with the Workers' Compensation Appeals Board at
19 least 20 days prior to the trial **unless otherwise ordered by the Workers' Compensation Appeals**
20 **Board.**" (Cal. Code Regs., tit. 8, former § 10393(h), now § 10620 (eff. Jan. 1, 2020), emphasis added.)

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23 ¹ Commissioner Gaffney was unavailable and did not participate in this decision.

24 ² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs.,
25 tit. 8, former § 10341, now § 10325 (eff. Jan. 1, 2020); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126
26 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424,
fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted as a precedent decision pursuant to Government Code
section 11425.60(b).

27 ³ Governor Newsom's Executive Order N-33-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>. (See Evid. Code, § 452(c).)

1 We will order suspension of the 20 day requirement pursuant to the authority to do so provided by the
2 Rule.

3 WCAB Rule 10670(b) provides in relevant part:

4 (b) The Workers' Compensation Appeals Board may decline to receive in
5 evidence:

6 ...

7 (3) Any document not filed 20 days prior to trial, unless otherwise ordered
8 by a workers' compensation judge or good cause is shown.

9 (Cal. Code Regs., tit. 8, former § 10622, now § 10670(b)(3) (eff. Jan. 1,
10 2020).)

11 In light of the state of emergency, there is good cause to permit receipt into evidence of documents
12 not filed 20 days prior to trial. Therefore, we will also order suspension of the 20 day requirement in
13 WCAB Rule 10670(b)(3). A workers' compensation administrative law judge retains the authority to
14 decline to receive documents in evidence as otherwise permitted by WCAB Rule 10670(b) and the law.

15 This order will remain in effect until further notice.

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1 For the foregoing reasons,

2 **IT IS SO ORDERED** that the 20 day requirements in WCAB Rules 10620 and 10670(b)(3) are
3 suspended.

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5 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

6
7 /s/ Katherine A. Zalewski
8 *KATHERINE A. ZALEWSKI, Chair*

9 /s/ Deidra E. Lowe
10 *DEIDRA E. LOWE, Commissioner*

11 /s/ Marguerite Sweeney
12 *MARGUERITE SWEENEY, Commissioner*

13 /s/ José H. Razo
14 *JOSÉ H. RAZO, Commissioner*

15 /s/ Katherine Williams Dodd
16 *KATHERINE WILLIAMS DODD, Commissioner*

17 /s/ Craig Snellings
18 *CRAIG SNELLINGS, Commissioner*

19
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 **04/28/2020**

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