

P.I.P.E. TRUST WORKERS
COMPENSATION ALTERNATIVE
DISPUTE RESOLUTION PROGRAM
P. O. Box 127
Imperial Beach, CA 91933-0127
Tel./Fax 1-866-254-7473

**RULES OF THE P.I.P.E TRUST FUND
JOINT LABOR MANAGEMENT SAFETY
COMMITTEE (JLMSC) WORKERS'
COMPENSATION ALTERNATIVE
DISPUTE RESOLUTION PROGRAM**

Pursuant to the provisions of California Labor Code Section 3201.5 the JOINT LABOR MANAGEMENT SAFETY COMMITTEE (Hereafter: J.L.M.S.C.) Workers' Compensation Alternative Dispute Resolution Program (hereinafter "the ADR Program") replaces all of those dispute resolution processes contained in Division 4 of the California Labor Code. These rules may be changed by the J.L.M.S.C. at any time. These rules are intended to facilitate and expedite the resolution of disputes involving work-related injuries. Whenever the terms appeals board, workers' compensation referee, administrative director, and rehabilitation unit are referenced or used herein they shall refer to Arbitrator, Mediator, Ombudsman and/or the ADR Program, as the context so requires.

If any provision of these rules or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of these rules that can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

ARTICLE I. Pre-Arbitration Discovery:

Section 1. Pre-Arbitration discovery shall be allowed. Deposition of witnesses may be taken in the manner prescribed by law for California superior court civil actions under Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure. To that end the attendance of witnesses and the production of records may be required. Subpoenas and Subpoenas Duces Tecum shall be issued by any of the Arbitrators authorized to serve as Arbitrators in the ADR Program. Where the insurer requests deposition of an injured worker or dependent of a deceased injured worker, the deponent is entitled to

reasonable expenses of transportation, meals and lodging incident to the deposition. The insurer or employer shall be responsible for the reasonable cost of an interpreter if interpreter services are needed and provided by a language interpreter certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or section 68566 of, the Government Code.

Section 2. Upon the filing of a claim of workers' compensation injury by any covered member of the program, it shall be the duty of all parties to immediately serve upon all opposing parties, as the case may be, copies of all medical reports in their possession or under their control, or that may come into their possession or under their control.

Section 2.3 The ADR Program is an alternative dispute resolution program consisting of 2 pre-litigation stages and the litigation stage. The stages of Ombudsman and Mediation are pre-litigation stages. The Arbitration stage is the litigation stage.

ARTICLE I – A. Ombudsman.

Section 2.5. For evidentiary and discovery purposes, the Ombudsman shall be considered a mediator pursuant to Sections 703.5 and 1152.5 of the California Evidence Code.

ARTICLE II. Commencing Mediation:

Section 3. Provided a dispute has been submitted to the Ombudsman and it has not been resolved within 10 working days, or such period mutually agreed upon between the employee and the employer, mediation may be commenced by either party. A dispute is considered submitted to the Ombudsman when he has completed collecting information from all the parties involved in the dispute. When used in any of the mediation and arbitration rules, policies, and procedures, the word "employer" also refers to the employer's workers' compensation insurance carrier. Failure to timely file a "Request for Mediation" shall bar any further right to adjudicate the issue or issues submitted to the Ombudsman, including the right to arbitration or review by the Workers' Compensation Appeals Board.

Section 4. Either party may request the Ombudsman to assist in the filing of a request for mediation.

Section 5. The "Request for Mediation" shall be filed with the J.L.M.S.C. on the "Request for Mediation" form, which is available from the Ombudsman.

Section 6. The Ombudsman shall sign the "Request for Mediation" certifying that the dispute or issue which is the subject of the Mediation request was presented to the Ombudsman for resolution but the Ombudsman was unable to resolve same, and that the "Request for Mediation" is or is not being filed timely. A request for Mediation is not timely unless it is filed within 60 days following notification by the Ombudsman of the unresolved dispute and mailing of the "Notification of Mediation Rights" to the parties by the Ombudsman. The Ombudsman may extend the time for filing the "Request for Mediation" for good cause shown filed in writing with the Ombudsman.

Section 7. At the time of filing the "Request for Mediation" the filing party shall serve a copy of the "Request for Mediation" by mail, facsimile transmission, or other means to assure receipt within 3 days upon the other party or parties.

ARTICLE III. Processing the "Request for Mediation":

Section 8. Upon receipt of the "Request for Mediation" the J.L.M.S.C. shall:

- a. Endorse the Request as filed and assign a J.L.M.S.C. Mediation number to the case.

- b. Within three working days assign a mediator to the case from the list of mediators approved by the J.L.M.S.C. and send notification to the Mediator of such assignment together with a copy of the "Request for Mediation". The proposed Mediator shall advise the J.L.M.S.C. within 5 days of his or her acceptance of the assignment. If the Mediator does not accept the assignment, another mediator shall be assigned in the same manner as set forth herein, until a mediator accepts the assignment.

ARTICLE IV. Mediator:

Section 9. The Mediator shall promptly contact the parties involved in the dispute in a manner consistent with resolving the dispute within ten days from the date of acceptance of the assignment or receipt of relevant information as required by the Mediator to facilitate mediation of the disputed issues. The time for completing Mediation may be extended by mutual agreement of the employer and employee.

Section 10. The parties shall be personally involved in the Mediation and may not address the Mediator through a representative, provided however, notwithstanding this limitation, the employer may be represented by the claims examiner assigned to the employee's claim.

Section 11. The Mediator shall take whatever steps the Mediator deems reasonable to bring the dispute to an agreed conclusion within the time allowed for completing the Mediation, including scheduling mediation sessions, implementing means to discuss the dispute with the parties individually or collectively, requiring a party or parties to provide additional documentation or information, or appointing an authorized health care professional to assist in the resolution of any medical issue.

Section 12. Within ten days of completion of the Mediation, the Mediator shall file with the J.L.M.S.C. the "Mediator's Statement of Completion and Result" and serve a copy of same on the parties.

ARTICLE V. Arbitration:

Section 13. The Arbitrator or Arbitrators (hereinafter referred to as "the Arbitrator") approved by the J.L.M.S.C. are vested with full power and authority and jurisdiction to try and determine finally all the matters specified in Section 5300 of the California Labor Code, subject only to the review by the Workers' Compensation Appeals Board of the State of California by a Petition for Reconsideration filed pursuant to Chapter 4.5. Division of Workers' Compensation Subchapter 2. Workers' Compensation Appeals Board-- Rules and Practice Procedure, Article 17, Section 10865 and the courts specified in Division 4 of the California Labor Code as

having powers of review of determinations of the appeals board. The Arbitrator shall apply California law, both decisional and statutory, except as modified herein under the authority of California Labor Code Section 3201.5, in rendering his or her decision. The rules of Arbitration herein are in lieu of the rules of the American Arbitration Association.

Section 14. All orders, rules, findings, decisions, and awards of the Arbitrator shall be prima facie lawful and conclusively presumed to be reasonable and lawful, until and unless they are modified or set aside by the appeals board or upon a review by the courts within the time and in the manner specified in Division 4 of the California Labor Code.

Section 15. There is but one cause of action for each injury coming within the ADR Program. All claims brought for medical expense, disability payments, death benefits, burial expense, liens, or any other matter arising out of such injury may, in the discretion of the Arbitrator, be joined in the same proceeding at any time; provided, however, that no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death. Notwithstanding the foregoing, the rule established in the case of *Wilkinson v WCAB* (1977) 19 C3d 491, 138 CR 696, 42 CCC 406, shall govern combining permanent disabilities that become permanent and stationary at the same time.

Section 16. The Arbitrator has jurisdiction over any controversy relating to or arising out of medical and hospital treatment as between the parties and others.

Section 17. The Arbitrator has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of California in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this state. Any such employee or his dependents shall be entitled to the compensation or death benefits provided by the ADR Program.

Section 18. The death of an employer subsequent to the sustaining of any injury by an employee shall not impair the right of the employee to proceed within the ADR Program against the estate of the employer, and the failure of the employee or his dependents to cause the claim to be presented to the executor or administrator of the estate shall not in any way bar or suspend such right.

Section 19. The Arbitrator may appoint a trustee or guardian ad litem to appear for and represent any minor or incompetent upon the terms and conditions which he or she deems proper.

Section 20. The Arbitrator may provide for the joinder in the same proceeding of all persons interested therein, whether as employer, insurer, employee, dependent, creditor, service provider or otherwise.

ARTICLE VI. Settlements:

Section 21. Any case may be settled upon submission of the proposed settlement to the J.L.M.S.C.. The proposed settlement shall be set forth either upon the forms approved by the J.L.M.S.C. and entitled "Compromise & Release Agreement" or "Stipulation with Request for Award." Upon receipt of a fully executed proposed settlement, the J.L.M.S.C. shall forward same to an Arbitrator for review for adequacy and approval.

Section 22. Upon receipt of a proposed settlement, the Arbitrator shall act independently and, in issuing orders or awards, shall either:

- a. Approve the proposal as submitted and issue an appropriate order or award and serve same on the parties and the J.L.M.S.C.;
- b. Reject the proposal and specify the reasons therefor in writing and serve same on the parties and the J.L.M.S.C.; or
- c. Contact the parties by telephone or writing and suggest amendments that would qualify the proposal for approval.

If the Arbitrator elects to proceed under subsection "c." above, the parties shall have 5 working days to notify the Arbitrator of his, its, or her acceptance or rejection of the suggested amendments. If accepted, the Arbitrator shall

hold the file for not more than 20 working days for receipt of the appropriately amended agreement. If rejected, the Arbitrator shall immediately return the file to the J.L.M.S.C. and advise the parties and the J.L.M.S.C. in writing that the proposed settlement was unacceptable and state the reasons therefor.

Section 22.1 In cases where the medical evidence is not in dispute, any party may request the Ombudsman to present proposed Stipulations with Request for Award together with the supporting evidence to an Arbitrator for issuance of a twenty (20) day Notice of Intention to make Findings of Fact and issue Award thereon, unless objection is properly made.

a. The Ombudsman shall submit the request to the Arbitrator with all accompanying documents.

b. Upon review and prior to issuance of Award, the Arbitrator shall serve NOTICE OF INTENTION to make Findings of Fact and issue an Award twenty (20) days after service of said NOTICE, unless GOOD CAUSE to the contrary is shown in writing within said twenty (20) days.

c. The Ombudsman may present any issue(s) he deems as undisputed and/or appropriate to an Arbitrator for consideration of issuance of a twenty (20) Notice of Intention to make Orders and/or Awards the Arbitrator deems appropriate.

ARTICLE VII. Commencing Arbitration:

Section 23. Within 30 calendar days following the filing of the "Mediator's Statement of Completion and Result" any party not satisfied with the outcome of Mediation may file with the J.L.M.S.C. a request that the matter be referred to Arbitration. Failure to timely file the request for referral to arbitration of the disputed issue or issues submitted to the Mediator shall bar any further right to adjudicate such disputed issue or issues. The time for filing the request for arbitration may be extended upon a showing of good cause filed in writing with the J.L.M.S.C. and approved by an Arbitrator.

ARTICLE VIII. Processing the Request for Arbitration:

Section 24. Upon receipt of the request for arbitration the J.L.M.S.C. shall:

a. Endorse the request as filed and assign a J.L.M.S.C. Arbitration number to the case and forthwith serve a copy thereof upon all adverse parties.

b. Within five working days assign an arbitrator from the list of arbitrators approved by the J.L.M.S.C. and send notification to the proposed Arbitrator of such assignment together with a copy of the Request for Arbitration. The proposed Arbitrator shall advise the J.L.M.S.C. within ten days of the sending of the notification of his or her acceptance of the assignment. If the Arbitrator does not accept the assignment, another arbitrator shall be assigned in the same manner as set forth herein, until an arbitrator accepts the assignment.

Section 25. Upon receipt of notice of acceptance of the assignment from the Arbitrator to the J.L.M.S.C., the J.L.M.S.C. shall consult with the parties and allow them 30 days to retain and/or consult with legal counsel. The J.L.M.S.C. shall set the date of hearing not more than 60 days from the date the Arbitrator accepts assignment and give notice of the date, time and place for hearing. Notwithstanding the foregoing, the hearing date may be set at anytime if agreed upon by the parties and approved by the Arbitrator.

a. The J.L.M.S.C. shall fix the place of hearing in a locale giving priority consideration to the county of residence of the employee.

b. Notice of time and place for hearing shall be given by the J.L.M.S.C. by mailing to each party notice thereof at least twenty calendar days in advance, unless the parties agree otherwise.

c. Any party to the hearing may be represented by an attorney. A party intending to be represented by an attorney shall notify the other party or parties and the J.L.M.S.C. of the name and address of such attorney not less than 5 days prior to the date set for the hearing at which the attorney is first to appear.

ARTICLE IX. Hearing:

Section 26. The J.L.M.S.C. shall arrange for a stenographic record to be made of the proceedings at hearing, the cost of which shall be paid by the employer. The cost of any

transcription shall be borne by the requesting party.

Section 27. It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter as such is defined in California Labor Code Section 5811(b) and fees shall be allowed in accordance with said Labor Code section.

Section 28. The Arbitrator shall maintain the privacy of the hearing unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend the hearing. The Arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other person.

Section 29. The Arbitrator may, for good cause, postpone the hearing upon the request of a party or upon the arbitrator's own initiative, and shall grant such postponement when all of the parties agree thereto.

Section 30. Before proceeding with the first hearing the Arbitrator shall take an oath of office. The Arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by either party, shall do so.

Section 31. Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

Section 32. If a Request for Arbitration shows upon its face that the requestor is not entitled to compensation, the Arbitrator may, after opportunity to the requestor to be heard orally or to submit his or her claim or argument in writing dismiss the Request for Arbitration without any hearing thereon. Such dismissal may be upon the motion of the Arbitrator or upon the motion of the adverse

party. The pendency of such motion or notice of intended dismissal shall not, unless otherwise ordered by the Arbitrator, delay the hearing on the Request for Arbitration upon its merits.

Section 33. Order of Proceedings:

a. The hearing shall be opened by the filing of the oath of the Arbitrator, where required; by the recording of the place, time and date of the hearing and the presence of the Arbitrator, the parties, and counsel, if any; and by the receipt by the Arbitrator of the statement of the claim and answer, if any.

b. The Arbitrator may, at the beginning of the hearing, ask for the statements clarifying the issues involved. The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination. The Arbitrator has discretion to vary this procedure but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs. The Arbitrator shall fully develop the record.

c. Exhibits, when offered by either party, may be received in evidence by the Arbitrator.

d. The name and addresses of all witnesses and exhibits in the order received shall be made part of the record.

e. The parties may, by written agreement, provide for the waiver of oral hearings.

Section 34. Evidence:

a. The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. The Arbitrator is authorized to subpoena witnesses or documents and may do so upon the request of any party or independently.

b. The Arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All of the evidence shall be taken in the presence of the Arbitrator and all of the parties, except where any of the parties is absent in default or waives the right to be present.

c. Any party intending to offer any medical report or record at the hearing must provide the other party with a copy at least twenty days in advance thereof, unless the

Arbitrator finds good cause for failure to do so.

d. The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Arbitrator deems it entitled to after consideration of any objection made to its admission.

e. If the parties agree or the Arbitrator directs that documents are to be submitted to the Arbitrator after the hearing, they shall be filed with the J.L.M.S.C. for transmission to the Arbitrator. The filing party shall serve the other party or parties with copies of same at the time of filing.

f. The Arbitrator may in his or her sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue.

Section 35. Unless the parties otherwise agree, the arbitration proceeding shall be completed within 30 days after the first hearing which is deemed to be the date of referral. The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the Arbitrator shall declare the hearing closed and submitted for decision and such closing and submission shall be made a part of the record of proceedings. If briefs are to be filed, the hearing shall be declared to be closed and submitted as of the final date set by the Arbitrator for the receipt of briefs. If post-hearing filing of evidentiary documents is allowed by the Arbitrator and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing and submission for decision. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing and submission for decision.

Section 36. The hearing may be reopened by the Arbitrator at his or her discretion, or for good cause upon the application of any party at any time before the Arbitrator files his or her decision and award. However, if reopening the hearing would extend completion of the proceedings beyond thirty days from the date of the first hearing the hearing shall not be reopened, unless the parties agree otherwise.

Section 37. The Arbitrator shall, within ten calendar days of closing the hearing and submission of the case, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

ARTICLE X. Findings and Awards:

Section 38. All awards of the Arbitrator either for payment of compensation or for the payment of death benefits, shall carry interest at the same rate as judgments in civil actions on all due and unpaid payments from the date of the making and filing of said award. Such interest shall run from the date of making and filing of an award. As to amounts which by the terms of the award subsequently become due in installments or otherwise, such interest shall run from the date each such amount becomes due and payable.

Section 39. The Arbitrator in his or her award may fix and determine the total amount of compensation to be paid and specify the manner of payment, or may fix and determine the weekly disability payment to be made and order payment thereof during the continuance of disability.

Section 40. The ADR Program has continuing jurisdiction over all orders, decisions, and awards made and entered under its authority and pursuant to the provisions of California Labor Code Section 3201.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the Arbitrator may rescind, alter, or amend any order, decision, or award, good cause appearing therefor. This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed for workers' compensation judges or referees by Division 4 of the California Labor Code, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

Section 41. The certified copy of the findings and order, decision, or award of the Arbitrator as filed with the J.L.M.S.C. and a copy of the judgment constitute the judgment-roll of the J.L.M.S.C.. The pleadings, all orders of the Arbitrator, Arbitrator's original findings and order, decision, or award, and all other papers and documents filed in the cause shall remain on file in the Office of the J.L.M.S.C.. The J.L.M.S.C. may charge and collect fees for copies of records or documents of an Arbitration, including settlements by Compromise and Release Agreement or Stipulations With Request For Award.

Section 42. The Arbitrator shall have the same authority as workers' compensation referees with respect to Sections 5813, 5814, and 5814.5 including, but not limited to, those relating to bad faith actions or tactics, liability for additional expenses, and unreasonable delay or refusal of payment of compensation.

Section 43. Every order, decision, or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the Arbitrator prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

ARTICLE XI. Attorney's Fees:

Section 44. No charge, claim or agreement for legal services is enforceable, valid, or binding in excess of a reasonable amount. Pursuant to the collective bargaining process the parties to the ADR Program have determined the reasonable attorney's fee is an amount not greater than 12% of the permanent disability award.

The injured worker shall be responsible for his or her attorney fees. Provided, however, no compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled thereto, unless otherwise ordered by the Arbitrator pursuant to the written request of the injured worker setting forth the services furnished by the attorney and accompanied by an itemized statement of time spent submitted by the attorney and signed under

penalty of perjury. The attorney shall include in his statement the date the injured worker contacted him and the date the attorney responded to the injured worker.

The injured worker and his/her attorney may agree upon any billing format. Neither the injured worker nor the attorney are required to agree to a fee agreement that requires the injured worker to pay a percentage of his or her settlement or Award to the attorney. The injured worker and the attorney may agree upon an hourly fee with the total fee limited to the maximum limitation of this section. The injured worker has the right to exclude the value of future medical treatment, temporary disability benefits and vocational rehabilitation from any fee agreement.

Section 44.1. None of the parties will be permitted to be represented by legal counsel at the ombudsman stage or mediation stage of the proceedings. All the communications between the ombudsman or mediator and any of the parties shall be directly with the parties, and not through legal counsel. This provision is not intended to limit any party's right to obtain legal advice. Any party has a right to legal advice at such party's own expense. The participation of legal counsel during any proceedings under this program is limited to the Arbitration, provided a written request for Arbitration has been timely filed with the J.L.M.S.C.

Section 45. The Arbitrator shall make a finding as to which party is the prevailing party in the arbitration proceeding. If the employee is found to be the prevailing party the Arbitrator shall set the attorney's fee at no greater than 12% of the permanent disability award and order the attorney's fee to be paid by the employer. If the employee is not found to be the prevailing party, the Arbitrator shall set the attorney's fee at no greater than 12% of the permanent disability award and order the attorney's fee to be withheld from the employee's compensation and paid to the employee's attorney.

a. In nearly all cases the employee will prevail to some extent, as "take nothing" awards are rare. In order for the employee to be the "prevailing party" to support an award of attorney fees over-and-above the award for permanent disability, all of the following conditions must be found to exist:

(1)The issue of percentage of permanent disability must be disputed and be addressed at the requested arbitration.

(2)There must have been an offer or demand to settle the percentage of permanent disability made at mediation. The final report of the Mediator shall be filed with the J.L.M.S.C. and Arbitrator and shall be admitted as evidence for the purpose of determining the extent to which an offer or demand to settle was made at mediation.

(3)A final written offer or demand for settlement made by the employee must be filed with the J.L.M.S.C. and Arbitrator and served on the opposing party not less than 20 days prior to the date set for arbitration hearing.

(4)The issue of permanent disability must be resolved on a written medical report issued and served on the parties not less than 30 days prior to the date set for the arbitration hearing; such written medical opinion must describe (1) the condition of the employee as permanent and stationary, and (2) the factors of permanent disability; such medical opinion must have been rated by one of the disability evaluation specialists (raters) authorized by the J.L.M.S.C. and the awarded percentage of permanent disability shall be based on such rating.

(5)The percentage of permanent disability awarded by the arbitrator through settlement or after hearing and conclusion of the arbitration must be equal to or greater than the employee's final written settlement offer or demand, which was filed and served as required by (3) above.

b. The employee will be responsible for the payment of any portion of an award of attorney fees that exceeds 12% of the permanent disability award. The excess amount shall be deducted from any benefits due, or that may become due, the employee."

c. A copy of this Rule (Section 45) shall be served on all parties at the time for service of "Notification of Mediation Rights" and "Notification of Arbitration Rights".

Section 46. The employee and the attorney may agree to a fee in excess of the 12% maximum, provided the attorney submits evidence, including a copy of a written fee agreement between the employee and the attorney, and itemization of personal time involved in activities relating to advancing the employee's cause, which shall include good faith settlement efforts, to the Arbitrator justifying such excess fee, and the Arbitrator makes

specific findings of fact to support an order granting such excess fee. Any excess fee shall be withheld from the employee's compensation and paid to the attorney.

ARTICLE XII. Division 4 of California Labor Code-Provisions Included Herein by Reference:

Section 47. The following additional provisions of Division 4 of the California Labor Code, except as modified by these Rules or the ADR Agreement, are included herein by this reference.

a. Labor Code Section 3201.5 and those Labor Code Sections referenced therein.

b. Labor Code Sections 3202, 3202.5, 3204 – 3211, 3501 – 3503, 3600, 3601, 3602, 3603, 3604, 3605, 3850 – 3865, 4050 – 4056, 4451 – 4454, 4550 – 4558, 4600, 4600.1, 4603.2, 4604.5, 4605, 4610, 4610.1, 4650, 4652 – 4664, 4700 – 4706.5, 4900 – 4903, 4903.5 – 4909, 5000 – 5006, 5100 – 5105, 5300 – 5306, 5307.5, 5309, 5310, 5312, 5316, 5400 – 5406, 5407 – 5413, 5800, 5801, and 5803 - 5814.

ARTICLE X111. Selection of Qualified Medical Evaluator/Medical Evaluations.

Section 48. Notwithstanding any provision in these Rules or the law to the contrary the procedure for obtaining a second medical opinion arising from a dispute over a Qualified Medical Evaluator's (QME) and/or the treating physician's findings/lack of findings or a dispute over denial of industrial causation of injury shall be as follows:

a. The party disputing the QME's and/or treating physician's findings/lack of findings or the denial shall contact the Ombudsman and describe the nature of the dispute within thirty (30) days of receipt of the QME's and/or treating physician's report containing the findings/lack of findings or written denial that are the subject of the objection(s). The Ombudsman shall, upon request, assist in the completion of a Request For Qualified Medical Evaluator. The Request For Qualified Medical Evaluator shall be filed within thirty (30) days of receipt of the report containing the findings/lack of findings or written denial that are the subject of the objection(s).

b. If the injured worker disputes

the QME's and/or treating physician's findings/lack of findings or seeks a medical opinion on the issue of industrial causation, the J.L.M.S.C. shall within ten (10) days of receipt of the QME request provide a panel of three physicians, to the injured worker. The injured worker shall *thereupon within thirty (30) days* select a physician from the panel to prepare a medical evaluation on all related issues in dispute. The injured worker shall be responsible for making an appointment with the selected QME within sixty (60) days or as soon as reasonably possible, and shall immediately notify the J.L.M.S.C. of the QME selected, and the date and time of the appointment.

c. If the insurer disputes the QME's and/or treating physician's findings/lack of findings, the insurer shall select a QME within thirty (30) days of receipt of the QME's and/or treating physician's report and set the QME appointment within sixty (60) days or as soon as reasonably possible at a location located in reasonable proximity to the zip code of the injured worker's California residence, and notify the injured worker and the J.L.M.S.C. of the QME selected, date, time and location. If the insurer seeks a medical opinion on the issue of industrial causation, the insurer shall select a QME within a reasonable proximity to the zip code of the injured worker's residence. The employer shall be responsible for making an appointment with the QME as soon as reasonably possible, and shall immediately notify the J.L.M.S.C. and the injured worker of the QME selected, the date and time of the appointment. The QME selected by the insurer to determine issues of causation shall be subject to the time constraints governing claim denial.

d. The evaluation report(s) of the QME selected by the injured worker and/or the insurer and the Report(s) of the treating physician(s) shall be the only admissible reports obtained by the employer or injured worker.

e. The provisions of California Labor Code sections 4050 through 4056 related to medical examinations and required cooperation by the injured worker are incorporated herein. Whenever the terms administrative director, appeals board or referee are used therein, they shall refer to the Arbitrator, the and/or the ADR Program as the context so requires.

f. Neither the employer nor the injured worker shall be liable for any comprehensive medical legal evaluation

performed by other than the treating physician either in whole or in part on behalf of the injured worker prior to the filing of a claim form and prior to the time the claim is denied or becomes presumptively compensable. No such report shall be admissible as evidence.

g. Failure to select and set a QME appointment within the time limits set forth above shall result in the termination of a party's right to a second medical opinion or right to dispute denial of the claim of injury.

h. At any time the parties may agree to use an AME (Agreed Medical Evaluator) to resolve and settle any and all medical and/or industrial causation issues. The report of the AME shall be controlling as to any and all medical and industrial causation issues addressed in the report and no other medical reports shall be considered by an Arbitrator in determining those issues addressed in the AME report; provided, however, the Arbitrator or, the parties by mutual agreement, may request the AME to issue a supplemental report or reports to clarify an issue(s) or address a new issue(s).

ARTICLE XIV. VOCATIONAL REHABILITATION:

Section 49. The Ombudsman shall perform and replace the dispute resolution functions of the Rehabilitation Unit of the Division of Workers' Compensation. Disputes involving Vocational Rehabilitation shall be processed according to the ADR process.

Vocational Rehabilitation Notices for injuries occurring through 12/31/03 shall be provided by the insurer to the injured worker as required by the Administrative Director of the Division of Workers' Compensation, except as otherwise provided in these rules. Also, except as provided otherwise in these rules, the vocational rehabilitation benefits and services shall be administered and governed by the Regulations established by the Administrative Director. In the event of conflict between these rules and those of the Administrative Director these rules shall prevail.

Section 50. As to vocational rehabilitation benefits arising from injuries occurring prior to 1/1/04, the employer and the injured worker may agree to settle the injured worker's right to prospective vocational rehabilitation services and benefits with a one-time payment to the injured worker not to exceed ten thousand dollars (\$10,000) for the injured

worker's use in self directed vocational rehabilitation. The settlement agreement shall be submitted to, and approved by, an Arbitrator in the same manner as Compromise and Release Agreements or Stipulations With Request For Award are submitted and approved. The Arbitrator shall approve the settlement of vocational rehabilitation upon a finding that the injured worker has knowingly and voluntarily agreed to relinquish his or her rehabilitation rights. The Arbitrator may only disapprove the settlement of rehabilitation services and benefits upon a finding that receipt of vocational rehabilitation benefits and services pursuant to a formal vocational rehabilitation plan are necessary to return the injured worker to suitable gainful employment.

The settlement of vocational rehabilitation services and benefits can be a stand-alone agreement, or included as an addendum to, or provision of, a Compromise and Release Agreement, or Stipulations With Request For Award.

Section 51. As to injuries occurring on 1/1/04 and after, Supplemental Job Displacement Benefits as described in Labor Code Sections 4658.5 and 4658.6 are subject to the following:

a. Within ten (10) days of receipt by the insurer, injured worker, and J.L.M.S.C. of the QME's or treating physician's permanent and stationary report or report releasing the injured worker to modified duty in which work restrictions are described and set forth and such report states that the injured worker is unable to return to his usual and customary duties, the insurer shall provide notice to the injured worker of potential rights to supplemental job displacement benefits on a form approved by the J.L.M.S.C.. The notice shall also state whether or not the insurer is disputing the findings of the treating physician regarding eligibility for supplemental job displacement benefits. The notice shall be sent certified mail to the injured worker with copies to the Ombudsman and the employer.

b. Upon receipt of the permanent disability rating, if any of the parties object to the treating physician's findings on any issues, including job displacement, the objecting party shall obtain a second opinion as provided in ARTICLE XIII. The time for providing job displacement benefits is tolled while a 2nd medical opinion is being obtained and acted upon, and/or the job displacement issue is being

addressed through the stages of dispute resolution.

c. If there is no objection to the QME's or treating physician's findings on the issue of job displacement and there is permanent partial disability and the injured worker is medically restricted from returning to his/her usual and customary duties then within 60 days of the termination of temporary disability the injured worker is eligible for supplemental job displacement benefits, provided the employer is unable to meet either of the following conditions:

(1) Within thirty (30) days of the termination of temporary disability indemnity payments, the employer offers and the injured worker rejects, or fails to accept, modified work to last not less than 12 months, that accommodates the injured worker's work restrictions contained in the report upon which the injured worker's permanent disability is based.

(2) Within thirty (30) days of the termination of temporary disability indemnity payments, the employer offers, and the employee rejects, or fails to accept, alternative work meeting all of the following conditions:

- (i) the injured worker has the ability to perform the essential functions of the job provided,
- (ii) the job provided is in a regular position lasting at least 12 months,
- (iii) the job provided offers wages and compensation that are within 15 percent (15%) of those paid to the injured worker at the time of injury, and
- (iv) the job is located within reasonable commuting distance of the employee's residence at the time of injury.

d. It is important that supplemental job displacement benefits be delivered as early as possible to when the injured worker reaches permanent and stationary medical status. Within thirty (30) days following receipt of written agreement between the insurer and the injured worker that the supplemental job displacement benefit is resolved the insurer will provide a list of at least three vocational or return to work counselors and authorize issuance of a supplemental job displacement benefit in the form of a non-transferable voucher for education-related retraining or skill enhancement, or both, at state approved or accredited schools in the amounts as set forth as follows:

- (1) Up to \$4000 for permanent

partial disability of less than 15%.

(2) Up to \$6000 for permanent partial disability of between 15% and 25%.

(3) Up to \$8000 for permanent disability between 26% and 49%.

(4) Up to \$10,000 for permanent disability between 50% and 99%.

The voucher may be used for payment of those expenses agreed upon between the injured worker and the school, and other related costs and expenses. The injured worker shall submit an itemization of all costs to be paid under the voucher, and upon payment of such itemized costs as directed by the injured worker, any further obligation of the insurer for supplemental job displacement benefits and costs is terminated. There is no requirement that the injured worker utilize the services of vocational or return to work counselors.

e. An employer's liability for Supplemental Job Displacement benefits terminates when any of the following occur:

(1) the employer has offered work meeting the requirements of California Labor Code section 4658.6; or

(2) the injured worker fails to enroll for retraining pursuant to California Labor Code section 4658.5 within the time allowed by California Labor Code section 5410; or

(3) the maximum funds allowed by the voucher have been exhausted.

ARTICLE XV. Medical and Hospital Treatment.

Section 52. Medical and hospital treatment and related services and equipment that is reasonably required to cure or relieve the effects of the injury shall be provided by the employer provided the physician or facility has been selected in accordance with ARTICLE III of the ADR Agreement to provide treatment to the injured worker. Treatment "reasonably required to cure or relieve" means treatment that is based on the guidelines adopted by the Administrative Director of the Division of Workers' Compensation pursuant to California Labor Code Section 5307.27 or the American College of Occupational and Environmental Medicine (ACOEM) Guidelines

Section 53. The injured worker shall be allowed reasonable expenses of transportation and other expenses related to the treatment according to current law.

Section 54. The primary treating physician (PTP) shall be an authorized provider. The PTP is the physician who is primarily responsible for managing the care of an injured worker, and who has examined the injured worker at least once for the purpose of rendering or prescribing treatment and has accepted the responsibility for monitoring the effect of the treatment thereafter. There shall be but one PTP. The injured worker may change his or her PTP one time and the new PTP must be from the authorized providers.

Any PTP shall submit a Form DLSR 5021, Doctor's First Report of Occupational Injury or Illness, following the initial examination. The PTP shall be responsible for obtaining all of the reports of secondary physicians and shall within 20 days of receipt of each report incorporate, or comment upon, the findings and opinions of the other physicians in the PTP's report and submit all reports to the insurer.

Within 20 days a PTP shall provide written report(s) to the insurer when any one or more of the following occurs

a. The injured worker's condition undergoes a previously unexpected significant change;

b. A significant change in the treatment plan occurs;

c. The injured worker's condition permits return to modified or regular work;

d. The injured worker's condition requires him/her to leave work, or requires changes in work restrictions or modifications;

e. The injured worker is released from care;

f. The PTP concludes that the injured worker's permanent disability precludes, or is likely to preclude the injured worker from engaging in his/her usual occupation or the occupation in which the injured worker was engaged in at the time of injury.

g. The insurer, the Ombudsman, Mediator, or Arbitrator reasonably requests appropriate additional information that is necessary to administer the claim.

h. In addition, when continuing medical treatment is provided, a progress report shall be made no later than 45 days from the last report of any type, even if no event described in paragraphs a. thru g. has occurred. In any event, if an examination has occurred, a written report shall be signed and transmitted within 20 days of

the examination.

The PTP may make reports in any manner and form mutually agreed upon as between the PTP and the insurer.

Section 55. A secondary physician is any physician other than the PTP who examines or provides treatment to the injured worker and who has not been designated as the new PTP to replace the initial PTP. Secondary physicians, physical therapists, and other health care providers to whom the injured worker is referred by the PTP shall provide timely written reports to the PTP and provide copies to the insurer.

Section 56. The insurer shall establish a utilization review process pursuant to the definition of "utilization review" contained in California Labor Code section 4610. Provided, however, secondary physician recommendations shall be submitted to the PTP for review and recommendation prior to submission to utilization review. After the PTP reviews the treatment recommendations of the secondary physician and the written recommendations of the PTP are received, the written recommendation of the PTP shall be submitted to utilization review. The utilization review decision to prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny the proposed medical treatment services shall be consistent with the time requirements contained in Labor Code section 4610 (g).

If the injured worker objects to a decision based upon the utilization review to modify, deny, or delay a treatment recommendation, the injured worker shall have twenty (20) days from receipt of written notice of the decision to file his or her written objection with the insurer and J.L.M.S.C.. Upon receipt of the objection the J.L.M.S.C. shall provide a 3 member QME panel to the injured worker and the injured worker shall obtain a QME opinion in conformity with ARTICLE XI11 above relating to medical examinations

Section 57. It is recognized that spinal surgery often fails to meet the expectations of the treating physician and the injured worker. In addition, many times the injured worker is reluctant to have the spinal surgery. Within ten (10) days of receipt of the treating physician's written report requesting authorization for spinal surgery and the injured

worker's request that such authorization be granted, the insurer may object to the spinal surgery. Based on the objection, if the parties cannot resolve the dispute over the spinal surgery authorization, the insurer shall procure a QME opinion on the issue of spinal surgery within forty-five (45) days of receipt of the written report and the injured worker's request that such surgery be granted. If the QME agrees that the requested spinal surgery is appropriate and should be authorized, the insurer shall immediately authorize the spinal surgery. The insurer/employer shall not be liable for medical costs for or related to the objected to spinal surgical procedure or for periods of temporary disability resulting from the spinal surgical procedure, if the objected to spinal surgical procedure is performed prior to the completion of the QME second opinion process.

Section 58. Medical determination means a decision made by the PTP regarding any and all medical issues necessary to determine the injured workers' eligibility for compensation. The reports of the PTP shall be presumed to include the PTP's consideration of the findings of any and all secondary physician(s).

Section 59. Permanent and stationary (P&S) status is the point in time when the PTP, QME, AME, or Independent Medical Evaluator (IME) has determined the injured worker has reached maximum medical improvement or his/her condition has been stationary for a reasonable period of time.

Section 60. The insurer shall assign a nurse case manager to any claim that involves serious and/or catastrophic injury. The injured worker shall not interfere with the duties assigned to the nurse case manager. Nurse case managers may be assigned to any case involving loss of time from work and/or cash indemnity benefits.

Section 61. All injuries shall be covered by the American College of Occupational and Environmental Medicine (ACOEM) Occupational Medicine Practice Guidelines or official utilization schedule after adoption pursuant to California Labor Code section 5307.27, and if not covered by the ACOEM Guidelines or the schedule they shall be in accordance with other evidence based

medical treatment guidelines recognized by the medical community as authoritative. Provided, however, an injured worker shall be entitled to no more than 24 chiropractic and 24 physical therapy and 24 occupational therapy visits per industrial injury.

Notwithstanding any provision of law to the contrary, the 24-visit restriction may only be waived or changed by mutual agreement of the parties in writing setting forth the reasons for any extension of chiropractic or physical therapy or industrial therapy treatments.

The Guidelines set forth in the schedule shall be presumptively correct on the issue of extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of the evidence establishing that a variance from the Guidelines is reasonably required to cure and relieve the employee from the effects of his or her injury. To defeat the presumption requires that the preponderance of the evidence show that a variance from the guidelines is reasonably required to cure and relieve from the effects of the injury. A showing of temporary relief is not sufficient to overcome the presumption.

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