

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD

FINAL STATEMENT OF REASONS

**Subject Matter of Proposed Regulations:
Rules of Practice and Procedure of the Workers' Compensation Appeals Board**

By its authority under Labor Code sections 5307 and 5307.4 (see also Lab. Code, §§ 133, 5309 and 5708), the Workers' Compensation Appeals Board (WCAB) noticed and held a public hearing and accepted written comments on its proposal to adopt and amend certain Rules of Practice and Procedure (Rules) in Title 8, Division 1, Chapter 4.5, subchapters 1.9 (§ 10210 et seq.) and 2 (§ 10300 et seq.), of the California Code of Regulations. The public hearing on the initially proposed Rules modifications was held on September 17, 2014.

By analogy to Government Code Section 11346.9(b),¹ this Final Statement of Reasons (FSOR) incorporates the Initial Statement of Reasons (ISOR). Accordingly, not all of the provisions of the adopted Rules will be discussed in this FSOR. Instead, we will briefly discuss the six written comments we received and address the single modification we made to Rule 10957.1 as a result of the comments received during the public comment period.

We did not receive any oral comments at the public hearing held on September 17, 2014. We received six written comments.

The Executive Committee of the Workers' Compensation Section of the State Bar suggested that Rule 10390 "Place of Filing Documents" be amended to reference Rule 10397 "Restrictions on the Rejection for Filing of Documents Subject to a Statute of Limitations or a Jurisdictional Time Limitation." While we decline to amend the regulation, we will add a reference to Rule 10397 to the references appended to Rule 10390. The Executive Committee also questioned whether appearances can be required of a lien claimant in Rule 10563.1 before a lien claimant becomes a party to a workers' compensation case. In response, we note that this requirement was present in former Court Administrator rule 10240 and represents a non-substantive change. The Executive Committee also recommended that Rule 10563.1 specifically reference Rule 10770.1(m). We note that Rule 10563.1 references Rule 10770.1 and decline to add a reference to subsection (m).

Aderant commented that Rule 10957.1(c) and Rule 9768.16(b) now have inconsistent deadlines and suggested that 10957.1(c) be amended to more closely reflect the language of Labor Code section 4610.6(h). In response, we amended Rule 10957.1 as described below to more closely track Labor Code section 4610.6(h) and further note that Rule 9768.16 is not one of the Rules of Practice and Procedure of the Workers' Compensation Appeals Board.

¹ As discussed more thoroughly in its ISOR, the WCAB is not subject to the rulemaking provisions of Article 5 (Gov. Code, § 11346 et seq.), Article 6 (*id.* § 11349 et seq.), Article 7 (*id.* § 11349.7 et seq.), and Article 8 (*id.* § 11350 et seq.) of the Administrative Procedure Act (APA), with one exception not relevant here.

Thomas Harbinson requested that we amend Court Administrator rule 10280 to delete the requirement that walk-through documents be served on all parties and lien claimants. In response, we decline to make any substantive amendment to the walk-through procedure at this time, but we may consider substantive changes in a future rulemaking.

Boehm & Associates commented that proposed rule 10563.1 requires only lien claimants with liens in excess of \$25,000 to appear at all mandatory settlement conferences and trials of the case in chief when the claim has been accepted with settlement authority, but does not impose the same requirement found in former section 10240 upon defendants. We direct the commenter's attention to rule 10563(b) which does contain the requirement.

Nunez & Barrera Interpreters expressed concern that interpreters who file petitions for costs are not being placed on the official address record. As parties, petitioners for costs should be placed on the official address record. No regulatory change is necessary to address this problem.

Advocal requested clarification on whether an interpreter must wait until the lien conference to pursue a petition for a claim of costs. We refer the commenter to Rule 10451.3(g) which describes the procedure for petitions for costs. We also note that Advocal has requested an amendment to Rule 10205.5, but Rule 10205.5 is not one of the Rules of Practice and Procedure of the Workers' Compensation Appeals Board. Advocal also expressed concern that interpreters who file petitions for costs are not being placed on the official address record. As parties, petitioners for costs should be placed on the official address record. No regulatory change is necessary to address this problem. Advocal also suggested that 10770(h) and 10770.1 be amended to reference petitioners for costs. In response, we decline to make any amendments to the lien procedures at this time, but we may consider substantive changes in a future rulemaking.

As a result of the public comments, we made the following amendments to our original proposal:

Section Amended: 10957.1. Petition Appealing Independent Medical Review Determination of the Administrative Director.

The WCAB has made a minor, non-substantive modification to rule 10957.1. In subsection (c), "service" is replaced with "service by mail" to more closely reflect the requirement in Labor Code section 4610.6(h) that an appeal be filed "within 30 days of the date of mailing of the determination."