

# Rethinking the Lien Process

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## Disclaimer

The views expressed in this outline are Judge Foust's alone and do not reflect the views of the Division of Workers' Compensation, the Workers' Compensation Appeals Board, or any other Workers' Compensation Administrative Law Judge

## Constitutional Mandate

"...to determine any dispute or matter arising under" the workers' compensation laws.

"...to accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..."

Article XIV, §4, California Constitution

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## Civil Courts

### Superior Court

- Formal proceedings
- Rules of evidence apply
- Trials by jury
- Only attorneys can appear in a representative capacity

### Small Claims Court

- Less than \$7,500 in controversy
- No attorneys
- No real trial record
- Moving party has no right of appeal

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## WCAB

- Informal proceedings
- No monetary jurisdictional limits
- Not bound by rules of evidence
- Hearing representatives allowed
- Judge required to issue findings of fact and opinion on decision
- Record is certified to the appellate courts

## Civil Courts

In the civil courts, if the moving party doesn't carry its burden of proof...it loses.

## WCAB

Before the WCAB, if the moving party doesn't carry its burden of proof...the WCJ may be required to **"develop the record."**

### Definition of "developing the record" in lien disputes

The WCJ prepares the case for both parties because the amount in controversy doesn't justify the cost of doing it themselves.

### **The WCJ may be required to**

- Identify the issues
- Tell the parties what evidence they need
- Present the evidence to him/herself
- Make sure the trial record is complete
- Write the decision at the trial level
- Write the decision of the appellate body in the event of an appeal

**IF YOU OFFER PEOPLE SUPERIOR COURT JUSTICE FOR A SMALL CLAIMS PRICE, THEY'RE GOING TO BE LINED UP AROUND THE BLOCK TO TAKE ADVANTAGE OF SUCH A BARGAIN!**

### **The WCJ's dilemma**

How to prevent the attorneys and hearing reps from acting as if they're in Small Claims Court while holding the WCJ to the standards of a Superior Court judge.

### **The parties' dilemma**

How to get due process, justice and a fair trial without spending a ridiculous amount of time, energy, and money in the process.

### **Procedural pitfalls**

#### **No relevant lien stipulations and issues**

- The parties stipulate that the lien claimants want money.
- The issue is whether or not the defendant has to pay them and if so, how much.
- This is not adequate to identify the specific questions to be answered and the evidence necessary to decide the dispute.

#### **Confusion over burden of proof**

- Lien claimants have the burden of proof on all affirmative issues.
- It is not the defendant's burden to disprove the claim
- A failure to object to a lien does not constitute a waiver of any defense.

#### **Confusion over service rules**

- Lien claimants and defendants are entitled to service of medical reports.
  - Treating physicians
  - AMEs and QMEs
- Lien claimants and defendants are entitled to service of all documents offered into evidence.

- Lien claimants are not entitled to the products of the defendants' discovery at the defendant's expense.
  - Deposition transcripts
  - Subpoenaed medical and other records
- However, the defendant must identify the documents and advise the lien claimants where copies can be obtained

## What is a lien?

### Real world definition

- A lien is a claim against an asset or property that utilizes the property as security for repayment of a loan or other debt and affects the ability to transfer ownership.
- A classic example of a lien is the mortgage on a house.
- Medical bills in personal injury cases are real liens because they are secured by the proceeds of the settlement or judgment.

### Workers' comp definition

- A lien is a procedural device by which someone other than an injured worker makes a monetary claim against the employer or its insurance carrier in a workers' compensation case.

IN WORKERS' COMPENSATION, MOST SO-CALLED "LIENS" ARE **NOT LIENS AT ALL** ACCORDING TO THE DICTIONARY DEFINITION OF THE TERM.

## Types of Liens

### Official version

- Attorney' fees
- Medical treatment and medical-legal costs
- Living expenses of the applicant/dependents
- Burial expenses of the deceased employee
- Child & spousal support
- EDD benefits
- California Victims of Crime Program benefits
- Asbestos Workers' Account benefits
- Uninsured Employers' Benefit Trust Fund benefits

### Reality version

- Liens against compensation - the only real liens
- Liens of group health providers - subrogation claims
- Litigation costs - the applicant's costs of proving his/her case
- Liens of direct medical providers - contracts or contracts implied in law

## **Liens against compensation**

### **Examples**

- Attorney fees
- Living expenses
  - Cash loans
  - Deferral of rent payments
  - EDD and other disability benefits
- Child and spousal support

### **Characteristics**

- Debt secured by the potential proceeds of the workers' compensation claim.
- The defendant can't release the funds to the applicant without satisfying the lien.
- The defendant has no independent liability to the lien claimant.

## **Liens of group health providers**

### **Examples**

- Group health plans such as Kaiser or Blue Cross
- Public medical benefit programs such as Medicare, Medi-Cal, County General Hospitals

### **Characteristics**

- Two insurance companies arguing over which one is primarily liable for paying the applicant's medical bills.
- The "lien claimant" is legally obligated to pay for the medical services subject to a right of subrogation against the employer or its workers' compensation carrier.

## **Litigation Costs**

### **Examples**

- Medical-legal expenses
- Non medical costs of litigation
  - Lay and expert testimony and reports
  - Associated interpreting costs
  - Photocopy of records
  - Deposition attorney fees

### **Characteristics**

- Public policy decision to level the playing field between applicants and defendants.
- Costs incurred by the applicant that are necessary to prove entitlement to benefits
- Non medical litigation costs are not liens but have traditionally been treated as liens

## **Liens of Direct Medical Providers**

### **Examples**

- Physicians' services
- Pharmaceuticals
- Outpatient surgical services
- Durable medical equipment
- Medical travel
- Attendant & housekeeping services

### **Characteristics**

- The lien claimant is not obligated to provide the applicant with medical services.
- If the defendant authorizes the services, there is a contractual relationship between the defendant and the medical provider.
- If the defendant doesn't authorize the services, there is a contractual or quasi-contractual relationship between the applicant and the medical provider.
- If the services are determined to be the defendant's liability, the defendant will be required to reimburse the applicant for the cost by satisfying the lien.

## **Liens Against Compensation**

### **Liens of Employment Development Department & disability insurance carriers**

- EDD can assert lien against any monetary benefit - TD, PD or VRMA
  - Baird Formula may be used in connection with C & R only
- Disability insurance recovery depends on policy
- Duplication of benefits
  - If benefits owed to applicant, EDD entitled to reimbursement from applicant.
  - If no benefits owed to applicant, EDD entitled to reimbursement from defendant if defendant was on notice of lien when benefits furnished

### **Practice Tip for Defendants**

Don't agree to negotiate an EDD lien in connection with a Compromise and Release without making sure there was no duplication of benefits. Otherwise, you are setting up your client to assume the applicant's obligation.

## **Child and Spousal Support Liens**

### **Requirements**

- Claim by spouse/minor child or assignee - usually district attorney for Welfare Dept.
- Applicant breaches a legal obligation for support
- Living expenses subsequent to date of injury

### **Calculation of recovery**

- Allowed in proportion that WCAB deems proper
- *County of Sutter v. WCAB (Neel)* 55 CCC 313 provides a suggested formula for use in appropriate cases.

### **Wage Assignment Orders**

- Issued by Superior Court
- Temporary disability treated as wages [Family Code §5208; Code of Civil Procedure §704.160.]
- Defendant must deduct and pay (25% of T.D.)
- Exception to exclusive remedy - WCAB has no power to modify Court order

## **Liens of Group Health Carriers**

- Disputed issue is usually injury AOE/COE.
- Gregory formula may be used in connection with C & R.
- Recovery limited by reasonable necessity and Official Medical Fee Schedule

### **Practice Tip**

Estimate probability of applicant prevailing in terms of a percentage and compromise reasonable value of lien by the same percentage.

## **Litigation Costs**

### **Medical-Legal Costs**

#### **Statutory basis**

**Labor Code §4620.** (a) For purposes of this article, a medical-legal expense means any costs and expenses incurred by or on behalf of any party, the administrative director, the board, or a referee for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and, as needed, interpreter's fees, for the purpose of proving or disproving a contested claim.

#### **Threshold requirements**

- Employment – On the date of injury, the applicant was employed by the defendant employer.

- Insurance Coverage – As to the particular insurance company defendant, the employer had a policy of insurance that was in effect on the date of injury.

**Other requirements**

**Qualified provider**

- Treating physicians
- or-
- Licensed physicians and surgeons holding M.D. or D.O. degrees, psychologists, optometrists, dentists, podiatrists and chiropractors
- Certified by DWC Medical Unit as QME

**Many doctors who write medical-legal reports as QMEs are not.**

When in doubt, check the DWC's QME database on the internet at

<http://www.dir.ca.gov/databases/imcstartnew.asp>

and/or contact the DWC Medical Unit at

(650) 737-2700 or (800) 794-6900

to verify QME status.

**Requested by a party (or WCJ, WCAB, AD)**

- No doctor to doctor referrals (not including referrals from panel QME to QMEs in other specialties)
- Permanent and stationary reports generated in compliance with AD regulations are treatment services

**Contested claim**

- Disputed medical issue
- Defendant is on notice of claim for benefits and has had time to dispute it
- Statutory time requirements observed

**Evidentiary value**

- Report is capable of proving disputed medical fact. (a report that is worthless as evidence is not entitled to payment)
- Diagnostic testing and interpreters' liens invalid if used for a report with no evidentiary value
- Diagnostic testing must be relevant and used by doctor to determine disputed medical fact.

**Disclosure requirements**

**Self-referral prohibitions**

**Licensing and certification requirements**

**Zenith Insurance Company v. WCAB (Capi) (2006) 71 CCC 374**

Lien claimants, in order to establish their right to reimbursement, bear the initial burden of proving they were properly licensed or accredited

**Reasonable value**

- Medical-Legal Fee Schedule
  - New schedule for dates of service on or after July 1, 2006
- Diagnostic testing per Official Medical Fee Schedule
- Interpreters per Interpreter Fee Schedule

**Interpreters**

- An interpreter for a medical-legal evaluation or for an administrative hearing or event must be *qualified*.
- A *qualified* interpreter is one that is certified or provisionally certified as a
  - Court interpreter (Superior Court, administrative hearings and medical evaluations)
  - Administrative interpreter (administrative hearings and medical evaluations only)
  - Medical interpreter (medical evaluations only)

**Many interpreters claim to be certified when they are not.**

When in doubt, verify the certification on the internet.

Court interpreters are certified by the Judicial Council

<http://www.courtinfo.ca.gov/programs/courtinterpreters/master.htm>

Administrative and medical interpreters are certified by Cooperative Personnel Services

<http://www.cps.ca.gov/SPB/Interpreter/>

Caveat: Uncertified interpreters sometimes work under the name of a certified interpreter

**Government Code § 11435.55.**

(a) An interpreter used in a hearing shall be certified pursuant to Section 11435.30. However, if an interpreter certified pursuant to Section 11435.30 cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and use another interpreter.

(b) An interpreter used in a medical examination shall be certified pursuant to Section 11435.35. However, if an interpreter certified pursuant to Section 11435.35 cannot be present at the medical examination, the physician provisionally may use another interpreter if that fact is noted in the record of the medical evaluation.

**Types of legal events**

- WCAB hearings, rehab conferences, arbitrations or other settings per AD.
- Must have administrative/court interpreter certification or “provisional certification.”
- To enable the applicant to understand and participate in the proceedings; not to facilitate communication with his/her attorney.
- Compensated at the Superior Court rate.
- Not a lien issue, but a cost under L.C. §5811.

**Depositions and “deposition-related events”**

- Preparing applicant for deposition
- Interpreting during deposition
- Reviewing deposition transcript
- Interpreter must be certified or deemed (provisionally) certified
- Payment per interpreter fee schedule

**Non medical litigation costs – LC §5811**

- Photocopy of non medical records - i.e. employment records
- Costs of depositions/WCAB testimony of lay witnesses other than applicant.
- Costs of depositions/WCAB testimony of non medical expert witnesses

**Crucial distinction to be made in cost claims:**  
Is it a necessary cost of litigation?  
- or -  
Is it the applicant’s attorney’s cost of doing business?  
**However, regulations have never been adopted.**

Will the following costs be assessed against the defendant if the issue is litigated?

- Costs of obtaining a private rating of a medical report utilizing either the old or new PDRS.
- Costs of rehabilitation experts retained by applicants to prove that the degree of preclusion from the labor market is greater than the rating under the new PDRS.

***Costa v. Hardy Diagnostics (2006) 71 CCC 1797, Appeals Board en banc***  
“...Current section 4660 as amended by SB 899, continues to allow the parties to present rebuttal evidence to a permanent disability rating under the new PDRS, and...the costs of such rebuttal evidence may be allowable.”

## Liens of Direct Medical Providers

### Statutory basis

“Labor Code §4600. (a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer...”

“...Labor Code §4600(b) As used in this division and notwithstanding any other provision of law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27 or, prior to the adoption of those guidelines, the updated American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines...”

### Threshold requirements

- Employment
- Insurance Coverage
- Statute of Limitations
- Injury AOE/COE
- Post-termination exclusion (unless there is an applicable exception)

### Special requirements for psychiatric injuries

- Actual events of employment were the **predominate cause** of the injury as to all causes combined or the **substantial cause** of injury through acts of violence.
- The injury was not substantially caused by a **lawful, nondiscriminatory, good faith personnel action**.
- The applicant was **employed for at least six months**, unless the injury was caused by a sudden and extraordinary employment condition.

### Other requirements

- **Parts of Body** – The injury involved the part of body or medical condition treated by the medical provider or treatment of an unrelated body part or condition was necessary in order to treat the industrial injury.
- **Qualified Provider** – The medical services were rendered by an individual who possessed the requisite education and professional license.
- **Medical Control** - The applicant must have had the right to designate the treating physician at the time the medical services were rendered.
  - First 30 days after injury reported
  - Health Care Organizations (HCO)
  - Medical Provider Networks (MPN)

***Knigh t v. WCAB (2006) 71 CCC 1423, Appeals Board en banc***

If the defendant does not put the injured worker on notice of the MPN, he or she may select a treating physician outside of the MPN.

- **Reasonable Medical Necessity** - The medical services must be reasonably required to cure or relieve from the effects of the industrial injury.
  - ACOEM is presumed correct but can be rebutted by “a preponderance of the scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury.”

***Sierra Pacific Industries v. WCAB (Chatham) (2006) 71 CCC 714***

The ACOEM Guidelines are applicable to medical treatment liens for which a final determination had not been made when SB 899 was enacted.

## **ACOEM Guidelines**

### **Some basic principles**

- Reasonable treatment is that which is likely to produce a lasting functional improvement
- It is better for the patient to be an active participant in his/her own rehabilitation.
- Multidisciplinary approach recommended in chronic cases.

### **Common disputes**

- Physical improvement and conditioning
  - Gym memberships
  - Weight loss programs
- Not medically necessary after reasonable initial trial period if applicant
  - Doesn't participate or
  - Doesn't cooperate
  - Derives no functional benefit.
- Diagnostic testing results must be used by the treating physician to formulate a treatment plan.
  - Why order an MRI for a muscle strain?
  - Exotic and unusual testing procedures must be justified.

## **Reasonable Value**

### **The medical provider is only entitled to recover the reasonable value of the services**

- Official Medical Fee Schedule (OMFS)
- If no fee schedule allowance, the charges must still be “reasonable.”

### Fee schedule disputes

- **Scenario #1** - The lien claimant claims entitlement to more than the fee schedule allowance.
- **Scenario #2** - The lien claimant claims the defendant paid less than the fee schedule allowance.
- Requirements for payment of medical treatment in excess of the OMFS
  - The charges must be reasonable.
  - “Extraordinary circumstances related to the unusual nature of the medical services.”

**WCJs are legal experts; not accountants.**

It is the responsibility of the parties to identify the values that are in dispute and to explain why the code proposed by each is the correct one per the OMFS.

### Possible procedures for determining the proper value in accordance with the OMFS

- Stipulations and issues
- Explanation of benefits
- Testimony of defendant’s bill reviewer - is it necessary?

### Specific Types of Lien Disputes Concerning Reasonable Medical Necessity and Reasonable Value

#### Outpatient Surgical Centers

No fee schedule for facility fee prior to January 1, 2004

***Kunz v. Patterson Floor Coverings, Inc. (2002) 67 CCC 1588,***  
**Appeals Board en banc**

- the OMFS applies to physician’s services.

- facility fees not covered by the OMFS must be “reasonable.”

#### **Factors to be considered in determining reasonableness per *Kunz*:**

- the fee usually accepted (not charged) by the medical provider and others in the same geographical area
- the fee the outpatient surgery center usually accepts for the same or similar services
- the fee usually accepted by other providers in the same geographical area, including in-patient providers

#### **Methods of obtaining evidence per *Kunz* decision**

- Notices to produce and depositions of surgery center’s employees by defendant
- “Representative samples” of amounts paid and amounts accepted

- Fee schedule allowances of inpatient facilities or other third party payers in geographic area.

**Benefit to Applicant**

Epidural injections and stellate ganglion blocks

- If 2 or 3 injections produced no benefit, I was probably unreasonable to do 15 more.

**Durable Medical Equipment**

**Title 22, California Code of Regulations**

**§51160. Durable Medical Equipment.**

Durable medical equipment means equipment prescribed by a licensed practitioner to meet medical equipment needs of the patient that:

- (a) Can withstand repeated use.
- (b) Is used to serve a medical purpose.
- (c) Is not useful to an individual in the absence of an illness, injury, functional impairment, or congenital anomaly.
- (d) Is appropriate for use in or out of the patient's home.

***VisionQuest v. WCAB (Mejia) 68 CCC 363, writ denied***

“held that lien claimant did not make prima facie case of necessity for medical device when ... applicant's treating physician issued prescription for interferential stimulator and noted this device ‘is indicated’ but provided no explanation for prescription or further information about what kind of unit was indicated, how often it was to be used, what treatment result was anticipated, or why it was likely to benefit applicant.”

**Evidence**

- Verification from prescribing physician specifying the type of equipment prescribed and why.
- Copy of manufacturer’s specifications.
- Copy of delivery receipt signed by applicant.

**Determining reasonable value:**

- Retail price of equipment or its equivalent.
- Retail price of supplies
- Medical supply houses in geographic area and internet

**Medical Transportation**

**Title 22, California Code of Regulations**

**§51151. Medical Transportation Services.**

“Medical transportation services” means the transportation of the sick, injured, invalid, convalescent, infirm or otherwise incapacitated persons by ambulances, litter vans or wheelchair vans licensed, operated, and equipped in accordance with applicable state or local statutes, ordinances or

regulations. Medical transportation services do not include transportation of beneficiaries by passenger car, taxicabs or other forms of public or private conveyances.

**Understand the distinction between**

- Non emergency medical transportation
- Non medical transportation
- Medical travel reimbursement

**Non emergency medical transportation** is reasonably required if the applicant’s physical condition prevents him/her from using other modes of transportation, as verified by a physician.

- **Example:** The applicant is in a wheelchair or otherwise cannot get in and out of a vehicle without assistance.

**Non medical transportation** may be necessary if the applicant cannot drive his own vehicle or use public transportation, but does not need non emergency medical transportation

- **Example:** bilateral wrist fractures prevent the applicant from grasping a steering wheel or a pole on a bus.

**Medical travel reimbursement** is calculated by multiplying the mileage rate adopted by the Dept. of Personnel Administration pursuant to §19820 of the Government Code by the number of miles traveled.

- **Example:** Applicant takes the bus or drives his own vehicle.

<p><b>Mileage Rate</b></p> <p>For travel prior to July 1, 2006: 34 cents per mile For travel between July 1, 2006 and December 31, 2006: 44.5 cents per mile For travel on or after January 1, 2007: 48.5 cents per mile</p>
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Transportation companies are supposed to be licensed by counties and municipalities

**Interpreters**

Labor Code authorizes interpreters for

- Hearings at WCAB and Rehab Unit (L.C. 5811)
- Depositions (L.C. 5710)
- Medical-legal evaluations (L.C. 4620)
- Exams requested by employer, AD, Appeals Board or WCJ (L.C. 4600)
- No specific statutory authorization for interpreters for treatment at defendant’s expense
- No case law other than panel decisions.

**THE REAL ISSUE IS NOT WHETHER THE APPLICANT HAS A RIGHT TO COMMUNICATE WITH HIS TREATING PHYSICIAN BUT RATHER WHO SHOULD BEAR THE COST**

**Employer/Insurance Carrier? or Medical Provider?**

**Practice Tip for Defendants**

Contact the doctor’s office to find out if he/she uses bilingual staff members for interpretation and record the response for future cases.

Demand the name of the interpreter that provided the services and verify certification.

Find out if the applicant required an interpreter at the depo or a QME exam.

**PPO Contracts**

**Definitions**

**PPO (Preferred Provider Organization)**

An organization that provides health care services for which payment is made at the time the services are rendered for a reduced fee.

**HMO or HCO (Health Maintenance or Health Care Organization)**

An organization that provides health care services for which payment is made in advance in the form of a fixed periodic payment.

**Real issue: Does the WCAB have jurisdiction?**

**Labor Code § 5304.** The appeals board has jurisdiction over any controversy relating to or arising out of Sections 4600 to 4605 inclusive, unless an express agreement fixing the amounts to be paid for medical, surgical or hospital treatment as such treatment is described in those sections has been made between the persons or institutions rendering such treatment and the employer or insurer.

**One contract – no WCAB jurisdiction**

K payer ↔ provider

**Two contracts – WCAB jurisdiction**

K payer ↔ PPO ↔ provider

**Peripheral Issues**

- Payer’s complaint – breach of contract
- Provider’s complaint – “silent PPOs”

***Glenn Ferguson v. Handee Market, Kemper Insurance/Broadspire (Lexis Noteworthy Panel Decision) 2005 Cal. Wrk. Comp. P.D. LEXIS 22***

WCAB had no jurisdiction over medical treatment lien under Labor Code § 5304, because there was an “express agreement” between defendant/insurer and lien claimant/medical provider created through a chain of contracts between lien claimant and PPO, and PPO and defendant; WCAB found that there need not be a single contract between two parties to create an “express agreement” within the meaning of § 5304.

**PPO agreements have arbitration provisions.**

**However...why pay for an arbitrator when you can have a WCJ for free?**

**THE WCAB CANNOT SERVE AS THE BAND-AID FOR ALL THE ILLS OF SOCIETY**

## **Penalties**

### **General rules**

- Lien claimants are not entitled to penalties under Labor Code §5814.
- All medical-legal lien claimants are entitled to penalties under Labor Code §4622.
- Some medical treatment lien claimants are entitled to penalties under Labor Code §4603.2.
- No statutory basis for penalties or pre-judgment interest for any other type of lien claimant – i.e interpreters at the WCAB, EDD/

### **Medical-legal expenses**

- Defendant must pay or object within 60 days after receipt of the bill and report or be liable for a 10 percent penalty plus interest if it later admits liability or is found to be liable for the charges.
- No waiver of any defense to liability by a failure to object.
- Penalty based on amount unreasonably unpaid; not total amount of bill or specie of benefit.

### **Medical treatment**

- Liability for penalties limited to “medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer.”
  - Group health carriers
  - Other providers not associated with primary treating physician
- The provider must serve itemization of medical services provided, together with any required reports and any written authorization for services that may have been received by the physician.
- The defendant must pay or object within 45 working days or be liable for a 15 percent penalty plus interest retroactive to the date of receipt if it later admits liability or is found to be liable for the charges.
  - No requirement that objection be reasonable or factually correct
  - No waiver of any defense to liability by a failure to object
- Penalty based on amount unpaid and unobjected; not total amount of bill or specie of benefit
- Defendants are required to self-assess penalties without WCAB intervention or be subject to administrative penalties

## **Sanctions**

- Imposed for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.
- Reasonable expenses, including attorney's fees and costs, incurred by another party
- Additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.