

**Proposed Changes to
California Code of Regulations, Title 8, Division 1
Chapter 4.5. Division of Workers' Compensation
Subchapter 1.9. Rules of the Court Administrator
&
Subchapter 2. Workers' Compensation Appeals Board--Rules
of Practice and Procedure**

Subchapter 1.9. Rules of the Court Administrator

**Article 5. Declarations of Readiness to Proceed and Objections and Hearing
Calendars**

§ 10250. Declaration of Readiness to Proceed.

(a) Except when a hearing is set on the Workers' Compensation Appeals Board's own motion, Applications or petitions no matter shall not be placed on calendar for mandatory settlement conferences, status conferences, priority conferences, expedited hearing or any other hearing unless one of the parties has filed and served a declaration of readiness to proceed in the form prescribed by the Appeals Board court administrator. The declaration of readiness shall be served on all other parties and lien claimants.

(b) Where the declaration of readiness is for a lien conferences or lien trial, it shall be served on all parties and lien claimants listed on the official participant record in EAMS at the time of service and, if represented, on their attorney(s) or nonattorney(s) representative(s) of record.

(c)(1) Except for a lien claimant listed in section 10205.10(c)(5), a declaration of readiness shall not be filed by any person or entity unless it is a "party" as defined by section 10301(dd)(4).

(2) Where a lien claimant is required to pay a filing or activation fee, it shall not file a declaration of readiness unless it has: (A) paid the requisite fee; and (B) entered a valid confirmation number for that fee in the confirmation number field of the declaration of readiness form. If the lien claimant asserts it is exempted from payment of a fee, it shall indicate the basis for the claimed exemption in the designated field of the lien form.

(b)(de) All declarations of readiness to proceed shall state under penalty of perjury that the moving party has made a genuine, good faith effort to resolve the dispute before filing the declarations of readiness to proceed, and shall state with specificity the same on the declarations of readiness to proceed. Unless a status or priority conference is requested, the declarant shall also state under penalty of perjury that the moving party has completed discovery and is ready to proceed on the issues specified in the declaration of readiness.

~~(e)~~(e)(1) A false declaration or certification by any party, lien claimant, attorney or representative, including a false declaration or certification pertaining to payment of a lien filing or activation fee, may give rise to proceedings under Labor Code section 134 for contempt or Labor Code section 5813 for sanctions.

(2) Except for lien claimants listed in section 10205.10(c)(5), if a declaration of readiness is filed without complying with the provisions of this section, the Workers' Compensation Appeals Board may order the hearing off calendar and may impose sanctions and award attorney's fees and costs in accordance with Labor Code section 5813 and Rule 10561.

~~(d)~~(f) If a party or lien claimant is represented by an attorney or representative any declaration of readiness filed on behalf of the party shall be executed by the attorney or representative.

Authority: Sections ~~127.5~~, 133, 5307~~(e)~~, and 5502(a), 5708, Labor Code.

Reference: Sections ~~134~~, 4903.05, 4903.06, 5500.3, 5502 and 5813, Labor Code.

Article 6. Consolidation Procedures

§ 10260. Assignment of Consolidated Cases.

(a) Any request or petition to consolidate cases that are assigned to different workers' compensation ~~administrative law~~ judges in the same district office, or that have not been assigned but are venued at the same district office, shall be referred to the presiding workers' compensation ~~administrative law~~ judge of that office, whether the cases involve the same injured worker or multiple injured workers.

(b) Any request or petition to consolidate cases involving the same injured worker that are assigned to workers' compensation ~~administrative law~~ judges at different district offices, or that have not been assigned but are venued at different district offices, shall first be referred to the presiding ~~workers' compensation administrative law~~ judges of the district offices to which the cases are assigned. If the presiding ~~workers' compensation administrative law~~ judges are unable to agree on where the cases will be assigned for hearing, the conflict shall be resolved by the ~~court administrator~~ Chief Judge of the Division of Workers' Compensation or his or her designee upon referral by one of the presiding judges.

(c) Any request or petition to consolidate cases involving multiple injured workers that are assigned to workers' compensation ~~administrative law~~ judges at different district offices, or that have not been assigned but are venued at different district offices, shall be referred to the ~~court administrator~~ Chief Judge or his or her designee.

(d) In resolving any request or petition to consolidate cases under subdivision (b) or (c) that are assigned to workers' compensation administrative law judges at different district offices, or that have not been assigned but are venued at different district offices, the

~~court administrator~~ Chief Judge or his or her designee shall set the request or petition for a conference regarding the place of hearing. At or after the conference, the ~~court administrator~~ Chief Judge or his or her designee shall determine the place of hearing and may determine the workers' compensation ~~administrative-law~~ judge to whom the cases will be assigned, giving consideration to the factors set forth in California Code of Regulations, title 8, section 10589. In reaching any determination, the ~~court administrator~~ Chief Judge or his or her designee may assign a workers' compensation ~~administrative-law~~ judge to hear any discovery motions and disputes relevant to discovery in the action and to report their findings and recommendations to the ~~court administrator~~ Chief Judge or his or her designee.

(e) Any party aggrieved by the determination of the ~~court administrator~~ Chief Judge or his or her designee may request proceedings pursuant to Labor Code section 5310, except that an assignment to a particular workers' compensation ~~administrative-law~~ judge shall be challenged only in accordance with the provisions of California Code of Regulations, title 8, sections 10452 and 10453.

Authority: Sections 133, ~~and~~ 5307, 5309, and 5708, Labor Code.

Reference: Sections 5300, 5301, 5303 and 5708, Labor Code.

Subchapter 2. Workers' Compensation Appeals Board--Rules and Practice Procedure

Article 1. General

§ 10300. Adoption, Amendment or Rescission of Rules.

(a) Notices required by Labor Code Sections 5307 and 5307.4 shall be served by the Appeals Board by regular mail, fax, electronic mail or any similar technology, not less than thirty (30) days prior to the date of hearing on those who have on file with the Secretary of the Workers' Compensation Appeals Board in San Francisco a written request for notification. Notice of action taken shall be served on the same persons by regular mail within thirty (30) days following the filing of any order pertaining to the rules with the Secretary of State.

(b) The provisions of these Rules are severable. If any provision of these Rules, or the application thereof to any person or circumstances, is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Authority: Sections 133, 5307, 5309, and 5708, Labor Code.

Reference: Section 5307.4, Labor Code; Stats. 1984, ch. 252, § 7; Stats. 1993, ch. 117, § 2; Stats. 2004, ch. 34, § 48.

§ 10301. Definitions.

As used in this subchapter:

(a) “Administrative Director” means the Administrative Director of the Division of Workers’ Compensation or his or her designee.

(b) “Adjudication file” or “ADJ file” means a case file in which the jurisdiction of the Workers’ Compensation Appeals Board has been invoked and which is maintained by the Division of Workers’ Compensation in paper format, electronic format, or both, including a temporary paper case file.

(c) “Appeals Board” means the commissioners and deputy commissioners of the Workers’ Compensation Appeals Board acting en banc, ~~or~~ in panels, or individually.

(d) “Applicant” or “injured employee” or “injured worker” or “dependent” means any person asserting a right to relief under the provisions of Labor Code Section 5300.

(e) “Application for Adjudication” or “application” means the initial pleading that asserts a right to relief under the provisions of Labor Code Section 5300.

(f) “Carve-out case” means a workers’ compensation case that, in accordance with the criteria specified in Labor Code sections 3201.5 through 3201.9, is subject to an alternative dispute resolution (ADR) system that supplements or replaces all or part of the dispute resolution processes contained in Division 4 of the Labor Code.

(g) “Case opening document” means any document that creates an adjudication case and invokes the jurisdiction of the Workers’ Compensation Appeals Board for the first time.

~~(h) “Court Administrator” means the administrator of the workers’ compensation adjudicatory process at the trial level, or his or her designee.~~

(h) “Cost” means any claim for reimbursement of expense or payment of service that is not allowable as a lien against compensation under Labor Code section 4903. “Costs” include, but are not limited to:

(1) expenses and fees under Labor Code section 5710;

(2) costs under Labor Code section 5811, ~~including qualified interpreter services rendered during a medical treatment appointment or medical legal examination; and~~

(3) any amount payable under Labor Code section 4600 that would not be subject to a lien against the employee’s compensation, including but not limited to any amount payable directly to the injured employee for

reasonable transportation, meal, and lodging expenses and for temporary disability indemnity for each day of lost wages; and

(4) any amount payable as a medical-legal expense under Labor Code section 4620 et seq.

The inclusion of medical-legal expenses within the definition of “cost” does not permit them to be claimed through a petition for costs; however, medical-legal expenses may be sought through a claim of costs in the form of a lien.

(i) “Declaration of Readiness to Proceed” or “Declaration of Readiness” means a request for a ~~proceeding~~ hearing at a district office.

(j) “Declaration of Readiness to Proceed to Expedited Hearing” means a request for a ~~proceeding~~ hearing at a district office pursuant to Labor Code section 5502(b).

(k) “Defendant” means any person against whom a right to relief is claimed.

(l) “Director” means the Director of Industrial Relations or his or her designee.

~~(h)~~(m) “District office” means a location of a trial court of the Workers’ Compensation Appeals Board.

~~(m)~~(n) “Document” is a pleading, petition, medical report, record, declaration, exhibit, or another filing submitted by a party or lien claimant, including an electronically filed document or a scanned version of a document that was filed in paper form. Each medical report or other record having a different author and/or a different date is a separate “document.”

~~(n)~~(o) “Document cover sheet” means the form adopted ~~by the Court Administrator~~ under section ~~40232.4~~ 10205.13, which is placed on top of a document or set of documents being filed at one time in a specific case.

~~(o)~~(p) “Document separator sheet” means the form adopted ~~adopted by the Court Administrator~~ under section ~~40232.2~~ 10205.14, which is placed on top of each individual document, when one or more documents are being filed at the same time in the same case, and which is placed on top of each individual attachment to each document being filed, when a document has one or more attachments.

~~(p)~~(q) “Electronic Adjudication Management System” or “EAMS” means the computerized case management system used by the Division of Workers’ Compensation to electronically store and maintain adjudication files and to perform other case management functions.

(r) “Electronic filing” means the electronic transmission of a document into EAMS for purposes of filing it with the Workers’ Compensation Appeals Board, in accordance with the provisions of these rules and the rules of the Administrative Director.

~~(q)~~(s) “Fax” means a document that has been electronically served by a facsimile (fax) machine or other fax technology.

~~(r)~~(t) To “file” a document means: (1) to deliver a document or cause it to be delivered to the district office with venue or to the Appeals Board for the purpose of having it included in the adjudication file; or (2) to electronically transmit a document to EAMS for the purpose of having it included in the adjudication file.

~~(s)~~(u) “Hearing” means any trial, mandatory settlement conference, rating mandatory settlement conference, status conference, lien conference, or priority conference at a district office or before the Appeals Board.

(v) “Lien” and “lien claim” shall include any claim of costs filed utilizing a lien claim form, even though a claim of costs is not allowable as a lien against the injured employee’s compensation.

(w) “Lien activation fee” or “activation fee” is the fee payable under Labor Code section 4903.06(a)(1) for a medical treatment and/or medical-legal cost lien filed prior to January 1, 2013, unless the lien claimant: (1) is exempted from the fee by Labor Code section 4903.06(b); or (2) provides proof of having paid a filing fee as previously required by former Labor Code section 4903.05 as added by Chapter 639 of the Statutes of 2003.

~~(t)~~(x) “Lien claimant” means any person or entity claiming payment under the provisions of Labor Code section 4903 or 4903.1 et seq., including a claim of costs filed as a lien.

(y) “Lien filing fee” or “filing fee” is the fee payable under Labor Code section 4903.05(c) for a section 4903(b) lien and/or claim of costs lien filed on or after January 1, 2013, unless the lien claimant is exempted from the fee by Labor Code section 4903.05(c)(7).

(z) “Lien issue(s)” shall include any issue(s) relating to a claim of costs filed as a lien claim.

~~(u)~~(aa) “Lien conference” means a proceeding, including a proceeding following an order of consolidation, held in accordance with section 10770.1 for the purpose of assisting the parties in resolving disputed lien claims or claims of costs filed as liens pursuant to Labor Code section 4903 or 4903.1 or, if the dispute cannot be resolved, to frame the issues and stipulations and to list witnesses and exhibits in preparation for a lien trial.

~~(v)~~(bb) “Mandatory settlement conference” means a proceeding to assist the parties in resolving their dispute or, if the dispute cannot be resolved, to frame the issues and stipulations and to list witnesses and exhibits in preparation for a trial.

~~(w)~~(cc) “Optical character recognition form” or “OCR form” means a paper form designed to be scanned so that its information is automatically extracted and stored in EAMS.

~~(x)~~(dd) “Party” means: (1) a person claiming to be an injured employee or the dependent of a deceased employee; (2) a defendant; (3) an appellant from an independent medical review or independent bill review decision or an injured employee or provider seeking to enforce such a decision; (4) an interpreter filing a petition for costs in accordance with section 10451.3; or (3 4 5) a lien claimant ~~or a non-employee petitioner for costs~~ where either (A) the underlying case of the injured employee or the dependent(s) of ~~an injured a deceased~~ employee has been resolved or (B) the injured employee or the dependent(s) of a deceased employee choose(s) not to proceed with his, her, or their case.

~~(y)~~(ee) “Petition” means any request for action by the Workers’ Compensation Appeals Board other than an Application for Adjudication, an Answer or a Declaration of Readiness to Proceed.

~~(z)~~(ff) “Priority conference” means a proceeding in which the applicant is represented by an attorney and the issues in dispute at the time of the proceeding include employment and/or injury arising out of and in the course of employment.

~~(aa)~~(gg) “Rating mandatory settlement conference” means a mandatory settlement conference conducted to facilitate determination of the existence and extent of permanent disability through the use of informal ratings issued by the Disability Evaluation Unit, where the only unresolved issues are permanent disability and the need for future medical treatment.

~~(bb)~~(hh) “Regular hearing” means a trial.

(ii) “Section 4903(b) lien” means a lien claim filed in accordance with Labor Code section 4903(b) for medical treatment expenses incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Labor Code section 4600), including but not limited to expenses for interpreter services, copying and related services, and transportation services ~~expenses~~ incurred in connection with medical treatment. It shall not include any amount payable directly to the injured employee.

~~(ee)~~(jj) To “serve” a document means to personally deliver a copy of the document, or to send it in a manner permitted by these rules or the rules of the ~~Court Administrator~~ Administrative Director, to a party, lien claimant, or attorney who is entitled to a copy of the document.

~~(dd)~~(kk) “Status conference” means a proceeding set for the purpose of ascertaining if there are genuine disputes requiring resolution, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of facilitating preparation for trial if a trial is necessary.

~~(ee)~~(ll) “Submission” means the closing of the record to the receipt of further evidence or argument.

~~(ff)~~(mm) “Trial” means a proceeding set for the purpose of receiving evidence.

~~(gg)~~(nn) “Venue” means the district office, as established by Labor Code section 5501.5 or 5501.6, at which any trial level proceedings will be conducted and from which any trial level orders, decisions, or awards will be issued.

~~(hh)~~(oo) “Workers’ Compensation Appeals Board” means the Appeals Board, commissioners, deputy commissioners, presiding workers’ compensation judges and workers’ compensation judges.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 20, 54, 110, 130, 131, 134, 3201.5 et seq., 4903 et seq., 5300, 5307, 5309, 5310, 5500, 5500.3, 5501, 5501.5, 5501.6, 5502, 5700, 5701 and 5808, Labor Code.

Article 5. Pleadings and Forms

§ 10408. Forms of Application for Adjudication of Claim Form and Other Forms.

(a) ~~Each of the following documents~~ The Application for Adjudication for compensation benefits and death benefits shall be on a form forms prescribed and approved by the Appeals Board: (1) an application for adjudication of claim for compensation benefits or death benefits; (2) a lien; (3) a declaration of readiness (including for an expedited hearing); (4) a pretrial conference statement (including for a lien conference); (5) Minutes of Hearing (except Minutes of Hearing prepared by a court reporter); (6) a compromise and release agreement (including for dependency and third-party claims); (7) stipulations with request for award (including death cases); (8) a petition to terminate liability for temporary disability indemnity; (9) a special notice of lawsuit; and (10) any other form the Appeals Board, in its discretion, determines should be uniform and standardized.

(b) Any form prescribed and approved by the Appeals Board may be printed (i.e., hard copy) by the Division of Workers’ Compensation for distribution at district offices of the Workers’ Compensation Appeals Board. In addition, the Division may create: (1) electronic versions of the prescribed and approved forms (i.e., e-forms); and/or (2) optical character recognition versions of those forms (i.e., OCR forms), either in fillable format or otherwise, for posting on the Division’s Forms webpage. Any hard copy, e-form, or OCR form for proceedings before the Workers’ Compensation Appeals Board created by the Division shall be presumed to have been prescribed and approved by the Appeals

Board unless the Appeals Board issues an order or a formal written statement to the contrary.

(c) No workers' compensation administrative law judge and no district office of the Workers' Compensation Appeals Board shall require the parties to use a form other than that prescribed and approved by the Appeals Board.

~~Venue shall be at the district office where the Application for Adjudication is filed pursuant to Labor Code Section 5501.5.~~

Authority: Sections 133, ~~and~~ 5307, 5309 and 5708, Labor Code.

Reference: Sections 3716, 4903.5, 5500, 5500.3, and 5501.5, and 5502, Labor Code.

§ 10450. Petitions and Answers.

(a) A request for action by the Workers' Compensation Appeals Board, other than an Application for Adjudication, an Answer, or a Declaration of Readiness, shall be made by petition. The caption of each petition shall contain the case title and adjudication case number and shall indicate the type of relief sought.

(b) Unless otherwise provided by statute or rule, an answer may be filed within 10 days after the filing of a petition.

(c) Unless otherwise provided by statute or rule, the time limit for filing any petition or any answer shall be extended in accordance with sections 10507 and 10508.

~~(b)(d)~~ Any previously filed document shall not be attached to a petition or answer; any such document ~~that is~~ attached to a petition or answer may be discarded.

(e) All petitions and answers shall be verified under penalty of perjury in the manner required for verified pleadings in courts of record. A failure to comply with the verification requirement constitutes a valid ground for summarily dismissing or denying a petition or summarily rejecting an answer.

(f) All petitions and answers shall be served on all parties to the case and on any other person, entity, or lien claimant whose rights or liabilities are specifically questioned by the petition or answer. A failure to concurrently file a proof of service with a petition or answer constitutes a valid ground for summarily dismissing or denying the petition or summarily rejecting the answer.

(g) A document cover sheet and a document separator sheet shall be filed with each petition or answer. The appropriate title for the petition or answer shall be entered into the document title field of the document separator sheet.

(h) Except as provided in sections 10840, 10865, 10953, and 10959, petitions shall be filed as follows:

(1) if a case opening document was previously filed, the petition, unless e-filed, shall be filed only with the district office having venue;

(2) if no case opening document was previously filed: (A) an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and (B) unless e-filed, the petition and application shall be filed only with the district office where venue is being asserted.

(i) If the petition is filed by a person or entity who is not already a party or lien claimant of record, the petitioner shall be added to the official participant record for each listed adjudication case number, and the petitioner shall be served with notices of all hearings.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 126 and 5905, Labor Code.

§ 10451.1. Determination of Medical-Legal Expense Disputes.

(a) The following procedures shall be utilized for the determination of medical-legal expense disputes.

(b) For purposes of this section:

(1) “medical-legal expense” shall mean any cost or expense incurred by or on behalf of any party for the purpose of proving or disproving a contested claim, including but not limited to:

(A) goods or services expressly specified by Labor Code section 4620(a);

(B) services rendered by a non-medical expert witness;

(C) services rendered by a certified interpreter during a medical-legal examination; and

(D) all costs or expenses for copying and related services.

(2) “medical-legal provider” shall mean any person or entity that seeks payment for or reimbursement of a medical-legal expense, other than an employee, a dependent, or the attorney or non-attorney representative of an employee or dependent who directly paid for medical-legal goods or services.

(c) Medical-Legal Expense Disputes Not Subject to Independent Bill Review

(1) Where applicable, independent bill review (IBR) applies solely to disputes directly related to the amount payable to a medical-legal provider under an official fee schedule in effect on the date the medical-legal goods or services were provided. Other medical-legal expense disputes between a defendant and a medical-legal provider are non-IBR disputes. Such non-IBR disputes shall include, but are not limited to:

(A) any threshold issue that would entirely defeat a medical-legal expense claim (e.g., employment, statute of limitations, insurance coverage, personal or subject matter jurisdiction), however, for purposes of this section, a “threshold issue” shall not include a dispute over whether the employee sustained industrial injury or injury to a particular body part;

(B) medical-legal goods or services provided prior to January 1, 2013;

(C) whether the claimed medical-legal expense was incurred for the purpose of proving or disproving a contested claim;

(D) whether the claimed medical-legal expense was reasonably, actually, and necessarily incurred;

(E) an assertion by the medical-legal provider that the defendant has waived any objection to the amount of the bill because the defendant allegedly failed to comply with the relevant requirements, timelines, and procedures set forth in Labor Code sections 4622, 4603.3, and 4603.6 and the related Rules of the Administrative Director;

(F) an assertion by the defendant that the medical-legal provider has waived any claim to further payment because the provider allegedly failed to comply with the relevant requirements, timelines, and procedures set forth in Labor Code sections 4622 and 4603.6 and the related Rules of the Administrative Director; and

(G) an assertion by the defendant that an interpreter who rendered services at a medical-legal examination did not meet the criteria established by Labor Code sections 4620(d) and 5811(b)(2) and the Rules of the Administrative Director, as applicable.

(2) Petition for Determination of Non-IBR Medical-Legal Dispute Filed by a Defendant

(A) A defendant shall concurrently file both a “Petition for Determination of Non-IBR Medical-Legal Dispute” and a declaration of readiness (DOR) if:

(i) the defendant has denied all or a portion of a provider’s billing for medical-legal expenses under Labor Code section 4620 et seq. for any reason other than the amount to be paid pursuant to the fee schedule in effect on the date the medical-legal goods or services were provided; and

(ii) the medical-legal provider has objected to this denial or partial denial within 90 days of the defendant’s service of its explanation of review on the provider.

(B) The defendant’s petition and DOR shall be filed within 60 days of the provider’s service of the objection on the defendant. A copy of the provider’s objection and its proof of service shall be appended to the petition. The petition and DOR shall be concurrently served on: (i) the medical-legal provider; (ii) the employee or dependent; and (iii) any other defendant(s). If any of these persons or entities is represented, service shall be made on the attorney(s) or hearing representative(s).

(3) Petition for Determination of Non-IBR Medical-Legal Dispute Filed by a Medical-Legal Provider

(A) A medical-legal expense provider may file a “Petition for Determination of Non-IBR Medical-Legal Dispute” with respect to any medical-legal expense dispute not subject to IBR if: (i) a defendant breaches its duty to timely file a petition and/or declaration of readiness as required by Labor Code section 4622(c) and Rule 10451.1(e)(2); or (ii) a defendant breaches a duty under Labor Code section 4622(a) and/or (b) or the Rules of the Administrative Director at an earlier stage of the non-IBR dispute.

(B) A DOR may, but need not, accompany the petition.

(C) A copy of the petition and any DOR shall be concurrently served on: (i) the defendant(s); and (ii) the employee or dependent. If any of these persons or entities is represented, service shall also be made on the attorney(s) or hearing representative(s).

(D) A medical-legal provider is not required to file a claim of costs in the form of the lien in conjunction with the petition or DOR. However, if the provider elects to file such a lien, it must pay a lien filing fee, if applicable.

(4) Notwithstanding the filing of a DOR in accordance with the provisions of subdivisions (c)(2) or (c)(3), if there is a threshold issue within the meaning of subdivision (c)(1)(A), the Workers' Compensation Appeals Board may defer hearing and determining this issue until: (A) the issue is presented for determination in the underlying claim of the employee or dependent; or (B) the underlying claim of the employee or dependent has been resolved by a compromise and release agreement or has been abandoned.

(d) Medical-Legal Expense Disputes Subject to Independent Bill Review

(1) If a defendant has contested liability for any reason other than the amount payable under an official medical fee schedule, that issue shall be resolved prior to IBR.

(2) If a non-IBR medical-legal expense dispute is resolved in the medical-legal provider's favor, then any outstanding issue over the amount payable under an official fee schedule shall be resolved through IBR, if applicable.

(3) Any appeal of an IBR determination of the Administrative Director shall comply with the procedures of section 10957. A claim of costs in the form of a lien need not be filed, and a lien filing fee need not be paid, when a petition appealing an IBR determination is filed.

(e) Medical-Legal Lien Claims Filed prior to January 1, 2013 under Former Labor Code Section 4903(b)

Medical-legal lien claims filed prior to January 1, 2013 under former Labor Code section 4903(b) shall be subject to the lien conference and lien trial procedures of section 10770.1, subject to the timely payment of a lien activation fee, if applicable.

(f) Petition to Enforce IBR Determination

(1) Any medical-legal provider may file a "Petition to Enforce IBR Determination" if:

(A) the Administrative Director has issued an IBR determination and order requiring payment and either: (i) a petition appealing this determination and order is not filed with the Workers' Compensation Appeals Board; or (ii) the Workers' Compensation Appeals Board has issued a final order affirming this determination and order; and

(B) the defendant has not paid the full amount allowed, including possible penalties and interest under Labor Code section 4622(a) and/or possible IBR fee reimbursement under Labor Code section

4603.6(c), within 20 days of finality of the determination and order, as extended by sections 10507 and 10508.

Where the conditions of subdivision (g)(1)(A) are met, the medical-legal provider is not required to file a claim of costs lien, pay a lien filing or activation fee, or file a DOR.

(2) The petition shall append a copy of Administrative Director's IBR determination and order requiring payment and, if an appeal was filed, a copy of the Workers' Compensation Appeals Board's final order affirming this determination and order.

(3) Within 15 days of the filing of the petition to enforce, the Workers' Compensation Appeals Board shall issue a notice of intention to grant or deny the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no less than 10 calendar days to file an objection showing good cause to the contrary. If no timely objection is filed, or if the objection on its face fails to show good cause, the Workers' Compensation Appeals Board, in its discretion, may: (A) issue an order regarding the petition to enforce, consistent with the notice of intention; or (B) set the matter for hearing.

(g) Waiver of Medical-Legal Expense Issues

(1) Waiver by a Defendant

(A) A defendant shall be deemed to have finally waived all objections to a medical-legal provider's billing, other than compliance with Labor Code sections 4620 and 4621, if the Workers' Compensation Appeals Board determines that:

(i) the provider submitted a properly documented billing to the defendant and, within 60 days thereafter, the defendant either (I) failed to serve an explanation of review (EOR) that complies with Labor Code section 4603.3 and any applicable regulations adopted by the Administrative Director and/or (II) failed to make payment consistent with that EOR; or

(ii) the provider submitted a timely and proper request for a second review to the defendant in accordance with Labor Code section 4622(b)(1) and, within 14 days thereafter, the defendant either (I) failed to serve a final written determination that complies with any applicable regulations adopted by the Administrative Director and/or (II) failed to

make payment consistent with that final written determination.

(B) A defendant shall be deemed to have finally waived all objections relating to a medical-legal provider's billing, other than the amount to be paid pursuant to the fee schedule(s) in effect on the date the services were rendered and compliance with Labor Code sections 4620 and 4621, if the Workers' Compensation Appeals Board determines that the provider submitted a timely objection to the defendant's EOR regarding a dispute other than the amount payable and, within 60 days thereafter, the defendant failed to file both a "Petition for Determination of Non-IBR Medical-Legal Dispute" and a DOR with the Workers' Compensation Appeals Board as required by Labor Code section 4622(c) and Rule 10451.1(e)(2).

(2) Waiver by a Medical-Legal Provider

(A) A medical-legal provider's bill will be deemed satisfied, and neither the employee nor the employer shall be liable for any further payment, if the Workers' Compensation Appeals Board determines that the defendant issued a timely and proper EOR and made payment consistent with that EOR within 60 days after receipt of the provider's written billing and report and, within 90 days after service of the EOR.

(B) A medical-legal provider will be deemed to have waived any objection based on the amount payable under the fee schedule(s) in effect on the date the services were rendered if the Workers' Compensation Appeals Board determines that the defendant issued a timely and proper final written determination and made payment consistent with that determination within 14 days after receipt of the provider's request for second review and, within 90 days after service of the determination, the provider failed to make a proper objection to the determination in the form prescribed by the Rules of the Administrative Director.

(h) Bad Faith Actions or Tactics

(1) If the Workers' Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a defendant failed to comply with the requirements, timelines, and procedures set forth in Labor Code sections 4622, 4603.3, and 4603.6 and the related Rules of the Administrative Director, the defendant shall be liable for the medical-legal provider's reasonable attorney's fees and costs, if any, and for sanctions under Labor Code section 5813 and section 10561. The amount of the attorney's fees,

costs, and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this section, the monetary sanctions shall not be less than \$500. In addition, the medical-legal provider's "costs" shall include reimbursement of any lien filing or activation fee paid by the provider.

For purposes of this subdivision, "bad faith" actions or tactics by a defendant may include but are not limited to:

(A) failing to timely pay any uncontested portion of a medical-legal provider's billing;

(B) failing to make a good faith effort to timely comply with applicable statutory or regulatory medical-legal timelines or procedures; or

(C) contesting liability for the medical-legal provider's billing based on a dispute over injury, or injury to a particular body part.

These attorney's fees, costs, and monetary sanctions shall be in addition to any penalties and interest that may be payable under Labor Code sections 4622 or other applicable provisions of law, and in addition to any IBR fee that the defendant might be obligated to reimburse to the medical-legal provider.

(2) If the Workers' Compensation Appeals Board determines that, as a result of bad faith actions or tactics, a medical-legal provider has improperly asserted that a defendant failed to comply with the requirements, timelines, and procedures set forth in Labor Code sections 4622 and 4603.6 and the related Rules of the Administrative Director, the medical-legal provider shall be liable for the defendant's reasonable attorney's fees and costs, if any, and for sanctions under Labor Code section 5813 and section 10561. The amount of the attorney's fees, costs, and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this section, the monetary sanctions shall not be less than \$500.

Authority: Sections 133, 4622(e)(2), 4627, 5307, 5309 and 5708, Labor Code.

Reference: Sections 139.5, 4603.3, 4603.6, 4620, 4621, 4622, 4903.05, and 4903.06, Labor Code; Sections 9792.5.5(b)(2) and 9792.5.7(c)(5), title 8, California Code of Regulations.

~~§ 10451.2. Petition for Determination of Non-IBR Medical-Legal Dispute.~~

~~(a) Except as provided in section 10451, subdivisions (b)(2) and (b)(3), and section 10451.1, disputes over medical legal expenses shall be resolved solely through: (A) the procedures established by Labor Code sections 4622(a) and (b), 4603.3, and 4603.6 for any dispute over the amount payable under an official fee schedule; and/or (B) the procedures established by Labor Code sections 4622(a), 4603.3, and 4622(c) and this Rule for any other dispute.~~

~~(b) A defendant shall concurrently file both a “Petition for Determination of Non-IBR Medical Legal Dispute” and a declaration of readiness if:~~

~~(1) the defendant has denied all or a portion of a billing for medical legal expenses under Labor Code section 4620 et seq. for any reason other than the amount to be paid pursuant to the fee schedule in effect on the date the medical legal provider’s services were rendered; and~~

~~(2) the medical legal provider has objected to this denial or partial denial within 90 days of the defendant’s service of its explanation of review on the provider.~~

~~(c) The petition and the declaration of readiness shall be filed within 60 days of the provider’s service of the objection on the defendant. A copy of the provider’s objection and its proof of service shall be appended to the petition.~~

~~(d) If the defendant has objected to the provider’s medical legal billing based both on the amount payable under the fee schedule and on any other ground, the Workers’ Compensation Appeals Board shall hear and determine only the non-fee schedule issue(s) raised by the defendant, unless a timely independent bill review appeal is concurrently pending before it, in which case that appeal shall be heard and determined in accordance with section 10957.~~

~~(e) If a defendant fails to timely file a petition and declaration of readiness as required by Labor Code section 4622(c) and Rule 10451.2(c), the provider may file a petition for costs in accordance with Rule 10451(b)(3)(C).~~

~~Authority: Sections 133, 4622(e)(2), 5307, 5309 and 5708, Labor Code.~~

~~Reference: Sections 4603.6 and 4622, Labor Code.~~

§ 10451.2. Determination of Medical Treatment Disputes.

~~(a) The following procedures shall be utilized for the determination of all disputes over medical treatment and related goods and services.~~

~~(b) For purposes of this section, “medical treatment” means any goods or services provided in accordance with Labor Code section 4600 et seq., including but not limited to services rendered by an interpreter at a medical treatment appointment.~~

(c) Medical Treatment Disputes Not Subject to Independent Medical Review and/or Independent Bill Review

(1) Where applicable, independent medical review (IMR) applies solely to disputes over the necessity of medical treatment where a defendant has conducted a timely and otherwise procedurally proper utilization review (UR). Where applicable, independent bill review (IBR) applies solely to disputes directly related to the amount payable to a medical treatment provider under an official fee schedule in effect on the date the medical treatment was provided. All other medical treatment disputes are non-IMR/IBR disputes. Such non-IMR/IBR disputes shall include, but are not limited to:

(A) any threshold issue that would entirely defeat a medical treatment claim (e.g., injury, injury to the body part for which treatment is disputed, employment, statute of limitations, insurance coverage, personal or subject matter jurisdiction);

(B) a dispute over a UR determination if the employee's date of injury is prior to January 1, 2013 and the decision is communicated to the requesting physician prior to July 1, 2013;

(C) an assertion by an employee or a medical treatment provider that IMR is not required because UR was not undertaken or not timely undertaken or was otherwise procedurally deficient; however, if the employee prevails in this assertion, the employee or provider still has the burden of showing entitlement to the recommended treatment;

(D) an assertion by the medical treatment provider that the defendant has waived any objection to the amount of the bill because the defendant allegedly breached a duty prescribed by Labor Code sections 4603.2 or 4603.3 or by the related Rules of the Administrative Director;

(E) an assertion by the defendant that the medical treatment provider has waived any claim to further payment because the provider allegedly breached a duty prescribed by Labor Code section 4603.2 or by the related Rules of the Administrative Director;

(F) a dispute over whether the employee was entitled to select a treating physician not within the defendant's medical provider network (MPN); and

(G) an assertion by the defendant that an interpreter who rendered services at a medical treatment appointment did not meet the criteria established by Labor Code sections 4600(f) and (g) and 5811(b)(2) and the Rules of the Administrative Director, as applicable.

(2) Medical treatment disputes not subject to IMR and/or IBR shall be resolved as follows:

(A) if the dispute is between an employee and a defendant, the procedures for claims for ordinary benefits shall be utilized, including the procedures for an expedited hearing, if applicable; and

(B) if the dispute is between a medical treatment provider and a defendant, the procedures applicable to lien claims shall be utilized, including the filing of a lien claim under Labor Code section 4903(b) and the payment of a lien filing fee or lien activation fee, if applicable.

(3) If a non-IMR/IBR dispute is resolved in favor of the employee or the medical treatment provider, then any applicable IMR and/or IBR procedures established by the Labor Code and the Rules of the Administrative Director shall be followed. In addition:

(A) Any appeal of an IMR determination of the Administrative Director shall comply with the procedures of section 10957.1; and

(B) Any appeal of an IBR determination of the Administrative Director shall comply with the procedures of section 10957.

Authority: Sections 133, 4603.2(f), 4604, 5304, 5307, 5309 and 5708, Labor Code. Reference: Sections 4061, 4061.5, 4062, 4600, 4603.2, 4603.3, 4603.6, 4604.5 4610, 4610.5, 4610.6, 4616.3, 4616.4, and 4903(b), Labor Code.

§ 10451.3 Petition for Costs.

(a) ~~Any person or entity may file a~~ A petition for costs may be filed only by (1) an employee or the dependent of a deceased employee, (2) a defendant, (3) a qualified interpreter for services other than those rendered at a medical treatment appointment, medical-legal examination, or medical-legal deposition; or (4) the attorney or non-attorney representative of one of those persons or entities. A petition for costs submitted by any other person or entity, or a petition for costs submitted by an interpreter that includes services rendered at a medical treatment appointment, medical-legal examination, or medical-legal deposition, shall be deemed dismissed by operation of law.

~~(b)(1) Except as provided in subdivision (b)(2) or subdivision (b)(3), a petition for costs shall not be filed for: (A) any medical treatment cost that may be claimed through as a section 4903(b) lien; (B) any medical-legal cost under Labor Code section 4620 et seq.; or (C) any cost that is subject to independent medical review (IMR) or independent bill review (IBR) and their related procedures.~~

~~(2) A petition for costs filed by an employee, a dependent, a defendant, or their attorney or non-attorney representative may seek reimbursement for payment(s) previously made directly to a provider of medical-legal goods or services, subject to any applicable official fee schedule. A petition for costs shall not be filed by a medical-legal provider.~~

~~(c) A petition for costs submitted in violation of this section shall not toll or extend any statute of limitations or other timely filing requirement of the Labor Code, these Rules, or the Rules of the Administrative Director, and shall not relieve the petitioning person or entity from the lien filing fee, lien activation fee, and other provisions of Labor Code sections 4903.05 and 4903.06 and their related regulations.~~

~~(2) A petition for costs may be filed for interpreter services rendered during a medical treatment appointment or a medical-legal examination. Such a petition may raise all issues, including the amount payable under an official fee schedule whether or not independent bill review was previously pursued. Such a petition may be filed only if the Labor Code section 4603.2 and 4622 procedures of billing and report submission, explanation of review, and second review (as applicable) have been completed or have been timely attempted without timely response. Nothing in this subdivision shall preclude an interpreter from electing to pursue independent bill review.~~

~~(3) A petition for costs may be filed for any medical-legal cost if:~~

~~(A) the provider submits a properly documented written billing to the defendant in accordance with Labor Code section 4622(a)(1) and, within 60 days thereafter, the defendant makes less than full payment and fails to serve an explanation of review that complies with Labor Code section 4603.3 and any related regulations adopted by the Administrative Director; or~~

~~(B) the provider submits a timely and proper request for a second review to the defendant in accordance with Labor Code section 4622(b)(1) and, within 14 days thereafter, the defendant either fails to make a final written determination or it fails to make payment consistent with that final written determination; or~~

~~(C) the provider submits a timely objection to the defendant's explanation of review regarding a dispute other than the amount payable and, within 60 days thereafter, the defendant fails to file both a "Petition for Determination of Non-IBR Medical-Legal Dispute" and a declaration of readiness with the Workers'~~

~~Compensation Appeals Board as required by Labor Code section 4622(e) and Rule 10451.2.~~

~~(4) If the Workers' Compensation Appeals Board determines that:~~

~~(A) a defendant failed to comply with the provisions of subdivisions (b)(3)(A) and/or (b)(3)(B), the defendant shall be deemed to have finally waived all objections to the provider's medical-legal billing other than compliance with Labor Code sections 4620 and 4621.~~

~~(B) a defendant failed to comply with the provisions of subdivision (b)(3)(C), the defendant shall be deemed to have finally waived all objections relating to the provider's medical-legal billing other than: (i) the amount to be paid pursuant to the fee schedule(s) in effect on the date the services were rendered; and (ii) compliance with Labor Code sections 4620 and 4621.~~

~~(e)~~ No petition for costs shall be filed or served until at least 60 days after a written demand for the costs has been mailed to or personally served on the defendant or the person or entity from whom the costs are claimed. The petition shall append: (1) a copy of the written demand, together with a copy of its proof of service; and (2) a copy of the defendant's response, if any. A petition that fails to comply with these provisions ~~shall~~ may be dismissed, with or without prejudice.

Notwithstanding the provisions of sections 10205.6 and 10505(b), for purposes of this section "written demand" includes a demand served electronically, including but not limited to by e-mail or fax. If electronic service is utilized, the proof of service required by this section will be deemed satisfied if it substantially conforms to the "proof of electronic service" forms of the Judicial Council of California.

~~(d) Except as provided in subdivision (b)(2) or (b)(3), if the petition seeks payment for any costs that are lienable under Labor Code section 4903(b) or that are subject to independent medical review and/or independent bill review, the entire petition shall be dismissed by operation of law. In addition, the petition shall not toll the time for filing a lien claim under Labor Code section 4903.5, whether or not the petition was accepted for filing, and it shall not relieve the petitioning person or entity from the lien filing fee, lien activation fee, and other provisions of Labor Code sections 4903.05 and 4903.06 and their related regulations.~~

~~(e)~~ The caption of the petition shall be identified identify it as a "Petition for Costs."

~~(f) A document cover sheet and a document separator sheet shall be filed with the petition and "Petition for Costs" shall be entered into the document title field of the document separator sheet.~~

~~(g) The petition shall be filed as follows:~~

~~(1) if a case opening document was previously filed, the petition, unless e-filed, shall be filed only with the district office having venue;~~

~~(2) if no case opening document was previously filed: (A) an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and (B) unless e-filed, the petition and application shall be filed only with the district office where venue is being asserted.~~

~~(h) If the petition for costs is filed by a person or entity who is not already a party or lien claimant of record, the petition shall be accompanied by a notice of representation, even if the petitioner is self-represented.~~

~~(f) If a petition for costs is filed by an interpreter in accordance with subdivision (a)(3), then, in addition to the general factual allegations of the petition, the petition shall contain:~~

~~(1) a statement of the name(s) of any interpreter(s) who performed the services; and~~

~~(2) either: (A) a statement of the certification number of the interpreter(s); or (B) if not certified, a statement that specifies why a certified interpreter was not used and that sets forth the qualifications of the interpreter, including any qualifications for a non-certified interpreter established by the Rules of the Administrative Director; and~~

~~(3) a statement that the services claimed were actually performed.~~

~~(g)(1) A petition for costs shall be placed on calendar: (A) on the filing of a declaration of readiness by an employee, a dependent, a defendant, or a petitioning interpreter that lists the petition as an issue; or (B) on the Workers' Compensation Appeals Board's own motion. ~~A declaration of readiness shall be filed only by a "party" as defined by section 10301(dd)(4).~~~~

~~(2) Notwithstanding subdivision ~~(g)~~(g)(1), the Workers' Compensation Appeals Board may, at any time, issue a notice of intention to allow or disallow the costs sought by the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no less than ~~10~~ 15 calendar days to file written objection showing good cause to the contrary. If no timely ~~written~~ objection is filed, or if the ~~written~~ objection on its face fails to show good cause, the Workers' Compensation Appeals Board, in its discretion, may: (A) issue an order regarding the petition for costs, consistent with the notice of intention; or (B) set the matter for hearing.~~

(h) Nothing in this section precludes the filing of a claim of costs in the form of a lien, but such a lien is not required to claim costs under section 5811.

(i) If the filing of a petition for costs, or the failure to promptly make good faith payments on the costs sought by the petition, was the result of bad faith actions or tactics, the Workers' Compensation Appeals Board may impose monetary sanctions and allow reasonable attorney's fees and costs, if any, under Labor Code section 5813 and section 10561. The amount of the attorney's fees, costs, and sanctions payable shall be determined by the Workers' Compensation Appeals Board; however, for bad faith actions or tactics occurring on or after the effective date of this section, the monetary sanctions shall not be less than \$500.

~~(j) Unless the petition for costs is filed by a "party" within the meaning of section 10301(dd)(1) or (2), the petitioner shall be treated as a lien claimant under:~~

~~(1) section 10770(g), i.e., the petitioner for costs shall comply with the section 10770(g) duties of written notification when its petition for costs has been resolved or withdrawn;~~

~~(2) section 10770(h)(1), i.e., the petition for costs shall be deemed dismissed with prejudice by operation of law when the petitioner provides written notification to the Workers' Compensation Appeals Board that its lien has been resolved or withdrawn; and~~

~~(3) section 10770.1, i.e., the petitioner for costs shall have the same rights and responsibilities as a lien claimant for all purposes under section 10770.1 (other than provisions relating to the payment of a lien filing or activation fee), including but not limited to the following:~~

~~(A) any unresolved petitions for costs shall be heard at the lien conference, whether or not listed in any declaration of readiness;~~

~~(B) any declaration of readiness filed by the petitioner for costs shall request a "lien conference";~~

~~(C) notwithstanding section 10240, the petitioner for costs shall appear at all lien conferences and lien trials, either in person or by attorney or representative, and the petitioner or its attorney or representative: (i) shall have sufficient knowledge to inform the Workers' Compensation Appeals Board of all relevant factual and/or legal issues in dispute; (ii) shall have authority to enter into binding factual stipulations; and (iii) shall either have full settlement authority or have full settlement authority immediately available by telephone;~~

~~(D) if the petition for costs is not fully resolved at the lien conference by an order signed by a workers' compensation judge, the petitioner and the defendant(s) shall prepare, sign, and file a pretrial settlement conference with the workers' compensation judge that complies with section 10770.1(f);~~

~~(E) discovery shall close at the lien conference, except as provided by section 10770.1(h); and~~

~~(F) if the petitioner fails to appear at a lien conference or lien trial, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss the petition for costs in accordance with section 10770.1(i).~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4600, 4903 et seq., 5710, ~~and~~ 5811 and 5813, Labor Code; Section 10561, title 8, California Code of Regulations.

§ ~~10451.1~~ 10451.4. Petition to Enforce IBR Determination.

(a) Any person or entity may file a petition to enforce an independent bill review (IBR) determination ~~and/or the recovery of an IBR fee under Labor Code section 4603.6(c)~~ if:

(1) the Administrative Director has issued an IBR determination and order requiring payment and either: (A) a petition appealing this determination and order is not ~~timely~~ filed with the Workers' Compensation Appeals Board; or (B) the Workers' Compensation Appeals Board has issued a final order affirming this determination and order; and

(2) the defendant has not paid the full amount allowed, including ~~possible any~~ penalties and interest ~~payable~~ under Labor Code section 4622(a) and/or ~~possible any~~ IBR fee reimbursement ~~payable~~ under Labor Code section 4603.6(c), within 20 days of finality of the determination and order, as extended by sections 10507 and 10508.

(b) Where the conditions of subdivision (a) are ~~met~~ claimed, the medical treatment or medical-legal provider is not required to file a section 4903(b) lien or a claim of costs lien and is not required to pay a lien filing or activation fee.

(c) The caption of the petition shall ~~be identified~~ identify it as a "Petition to Enforce IBR Determination."

~~(d) A document cover sheet and a document separator sheet shall be filed with the petition and "Petition to Enforce IBR Determination" shall be entered into the document title field of the document separator sheet.~~

(d e) The petition shall append a copy of Administrative Director’s IBR determination and order requiring payment and, if ~~a timely an~~ appeal was filed, a copy of the Workers’ Compensation Appeals Board’s final order affirming this determination and order.

~~(f) The petition shall be filed as follows:~~

~~(1) if a case opening document was previously filed, the petition, unless e-filed, shall be filed only with the district office having venue;~~

~~(2) if no case opening document was previously filed: (A) an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and (B) unless e-filed, the petition and application shall be filed only with the district office where venue is being asserted.~~

(e g) If the petition to enforce is filed by a person or entity who is not already a party or lien claimant of record, the petition shall be accompanied by a notice of representation, even if the petitioner is self-represented.

(f) The petition to enforce may include a request for penalties and interest in accordance with Labor Code section 4603.2(b). For purposes of penalties and interest, a final decision of the Workers’ Compensation Appeals Board that affirms a determination of the Administrative Director requiring payment shall be deemed an “award.”

(g h) Within 15 days of the filing of the petition to enforce, the Workers’ Compensation Appeals Board shall issue a notice of intention to grant or deny the petition, in whole or in part. The notice of intention shall give the petitioner and any adverse party no less than ~~10~~ 15 calendar days to file written objection showing good cause to the contrary. If no timely written objection is filed, or if the written objection on its face fails to show good cause, the Workers’ Compensation Appeals Board, in its discretion, may: (1) issue an order regarding the petition to enforce, consistent with the notice of intention; or (2) set the matter for hearing.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4603.6, 4622, 4903.05, and 4903.06, Labor Code.

§ 10498. Special Requirements for Pleadings Filed or Served by Attorneys or by Non-Attorney Employees of an Attorney or Law Firm.

Where a party or lien claimant is represented by an attorney, all pleadings filed with the Workers’ Compensation Appeals Board or served on any party, lien claimant, or other person shall include the name, State Bar number, law firm, if any, business address, and business telephone number of the attorney.

If a non-attorney employee of an attorney or law firm is executing the pleading being filed or served, the pleading shall include a heading containing the non-attorney’s name

and the name, State Bar number, law firm, if any, business address, and business telephone number of the attorney primarily responsible for supervising the non-attorney.

For purposes of this section, “pleading” shall include, but is not limited to, any petition, answer, application for adjudication, declaration of readiness, subpoena, or subpoena duces tecum, but shall not include any ~~form~~ pleading on a form approved by the Workers’ Compensation Appeals Board and/or created by the Division of Workers’ Compensation if there is no designated space on the form for the requisite information.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 5000, 5501, 5505, and 5900 et seq., Labor Code; Sections 10232(a)(4), 10450, and 10773, title 8, California Code of Regulations; Rules 2.111(1), 8.204(b)(10)(D), California Rules of Court.

Article 7. Subpoenas

§ 10538. Subpoenas for Medical Information by Non-Physician Lien Claimants.

A lien claimant that is not either a “physician” as defined in Labor Code section 3209.3 or an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b) shall not issue any subpoena or subpoena duces tecum that seeks to obtain any medical information about an injured worker, but shall instead follow the procedure set forth in section 10608(c).

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.

Reference: Sections 130, 4903.6(d), and 5710(a), Labor Code; Sections 56.05 and 56.10, Civil Code.

Article 8. Hearings

§ 10582.5. Dismissal of Inactive Lien Claims for Lack of Prosecution.

(a) A lien claim may be dismissed for lack of prosecution on a petition filed by a party or on the Workers’ Compensation Appeals Board’s own motion if the lien claimant fails to file a declaration of readiness to proceed by the earlier of:

- (1) 180 days after the lien claimant becomes a “party” within the meaning of section ~~10301(x)(3)~~ 10301(dd)(~~4~~5); or

(2) 180 days after a lien conference or lien trial at which the lien claim was at issue is ordered off calendar.

The 180-day period of subdivision (a)(1) is computed from the date that the original owner of the lien claim became a party or would have become a party if it still owned the lien claim.

(b) At least 30 days prior to filing a petition to dismiss a lien claim for lack of prosecution, the petitioner shall send a letter to the lien claimant *and*, if represented, to the lien claimant's attorney or representative of record, stating petitioner's intention to file such a petition.

(c) A petition to dismiss a lien claim for lack of prosecution shall be accompanied by all of the following:

(1) A copy of the 30-day letter referenced in subdivision (b).

(2) A declaration under penalty of perjury stating whether:

(A) the lien claimant has served the petitioner with a declaration of readiness and, if so, the date of such service.

(B) the petitioner has received any billing(s) from the lien claimant and, if so, stating either:

(i) the petitioner made a reasonable and good faith payment and, where required, an explanation of review on each billing consistent with all ~~existing~~ applicable law(s), ~~where applicable, including but not limited to the following: (I) Lab. Code, § 4603.2(b)(1) and Cal. Code Regs., tit. 8, § 9792.5(e) for medical treatment liens; (II) Lab. Code, § 4622(e) and Cal. Code Regs., tit. 8, § 9794(b) & (c) for medical legal liens; and (III) Cal. Code Regs., tit. 8, § 9795.4(a) for interpreter liens; or~~

(ii) the reason(s) why no such payment or tender of payment was made.

(C) the petitioner has timely served all medical reports and medical-legal reports on the lien claimant, to the extent ~~required~~ provided by section ~~10608(f)~~ 10608.

(d) In addition to the requirements of subdivision (c), a petition to dismiss a lien claim for lack of prosecution shall be accompanied by the following, as applicable:

(1) If the petition seeks dismissal under section 10582.5(a)(1) based on the lien claimant's failure to file a declaration of readiness to proceed within 180 days after the underlying case has resolved within the meaning of section ~~10301(x)(3)(A)~~ 10301(dd)(45)(A), the petition shall be accompanied by:

(A) a copy of an order approving a compromise and release agreement, a stipulated Findings and Award, an adjudicated Findings and Award, or any other decision or order resolving the underlying case; and

(B) if this decision or order was served by designated service under section 10500(a), proof that it was served on the lien claimant.

(2) If the petition seeks dismissal under section 10582.5(a)(1) based on the lien claimant's failure to file a declaration of readiness to proceed within 180 days after the injured employee or the dependent(s) of a deceased employee "choose(s) not to proceed with his, her, or their case" within the meaning of section ~~10301(x)(3)(B)~~ 10301(dd)(45)(B), the petition shall be accompanied by a declaration concisely stating facts to support the "choose(s) not to proceed" allegation. This declaration, at a minimum, shall specify based on the petitioner's knowledge and belief:

(A) the nature and date of the last activity by the injured employee or the dependent(s) of a deceased employee relating to the case; and

(B) the nature and date of the last payment of disability indemnity.

(3) If the petition seeks dismissal under section 10582.5(a)(2), the petition shall be accompanied by a copy of the order taking the lien conference or lien trial at which the lien claim was at issue off calendar.

(e) A copy of the petition to dismiss a lien claim for lack of prosecution shall be served on each of the following, together with a proof of service:

(1) the lien claimant *and*, if represented, the lien claimant's attorney or representative of record;

(2) any defendant(s) in any case(s) listed on the lien claim *or*, if represented, the attorney or representative of record of any such defendant(s); and

(3) the injured employee and, if represented, the injured employee's attorney or representative of record.

(f) A lien claim shall not be dismissed for lack of prosecution unless:

(1) the Workers' Compensation Appeals Board has issued a notice of intention to dismiss with or without prejudice, giving the lien claimant at least 30 days to file written objection showing good cause to the contrary; and

(2) the lien claimant fails to timely object or the written objection, on its face, fails to show good cause.

Any objection to the notice of intention shall be filed with the Workers' Compensation Appeals Board and served on the defendant(s).

(g) If a defendant is designated to serve the notice of intention to dismiss under section 10500(a), the defendant shall serve the notice of intention within 10 business days. If the defendant does not receive a timely objection (taking into consideration the time extension provisions of sections 10507 and 10508), the defendant shall file and serve a proposed order dismissing the lien and copies of the notice of intention and the notice's proof of service.

(h) An order dismissing a lien claim for lack of prosecution shall be served only by the Workers' Compensation Appeals Board and not by designated service.

(i) All pleadings and declarations filed under this section shall be verified under penalty of perjury in the manner required for verified pleadings in courts of record.

(j) This section shall become operative on August 1, 2012 and, except as provided in subdivision (k), shall apply to all lien claims, regardless of the date of filing of the lien claim, the injured employee's date(s) of injury, or the date(s) on which the lien claimant provided the service(s) that are the subject of the lien claim.

(k) This section shall not apply to the lien claim(s) of any of the following: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under parts (A) through (C) of section ~~10228(e)(5)~~ 10205.10(c)(5); and (4) any governmental entity pursuing a lien claim for child support or spousal support; and (5) the Uninsured Employers Benefits Trust Fund.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903, 4903.5, 4903.6, 5404.5, Labor Code.

Article 9. Evidence and Reports

§ 10606. Physicians' Reports as Evidence.

(a) The Workers' Compensation Appeals Board favors the production of medical evidence in the form of written reports. Direct examination of a medical witness will not be received at a trial except upon a showing of good cause. A continuance may be granted for rebuttal medical testimony subject to Labor Code Section 5502.5.

(b) Medical reports should include where applicable:

~~(a)~~(1) the date of the examination;

~~(b)~~(2) the history of the injury;

~~(c)~~(3) the patient's complaints;

~~(d)~~(4) a listing of all information received ~~from the parties reviewed~~ in preparation of the report or relied upon for the formulation of the physician's opinion;

~~(e)~~(5) the patient's medical history, including injuries and conditions, and residuals thereof, if any;

~~(f)~~(6) findings on examination;

~~(g)~~(7) a diagnosis;

~~(h)~~(8) opinion as to the nature, extent, and duration of disability and work limitations, if any;

~~(i)~~(9) cause of the disability;

~~(j)~~(10) treatment indicated, including past, continuing, and future medical care;

~~(k)~~(11) opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;

~~(l)~~(12) apportionment of disability, if any;

~~(m)~~(13) a determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;

~~(n)~~(14) the reasons for the opinion; and,

~~(o)~~(15) the signature of the physician.

~~Failure to comply with (a) through (o) will be considered in weighing the evidence.~~

In death cases, the reports of non-examining physicians may be admitted into evidence in lieu of oral testimony.

(c) All medical-legal reports shall comply with the provisions of Labor Code Section 4628. Except as otherwise provided by the Labor Code, including Labor Code Sections 4628 and 5703, and the rules of practice and procedure of the Appeals Board, failure to comply with the requirements of this section will not make the report inadmissible but will be considered in weighing the evidence.

Authority: Sections 133, ~~and~~ 5307, 5309 and 5708, Labor Code.

Reference: Sections 4061, 4603.2, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4, 4628, 5703, 5708 and 5709, Labor Code.

§ 10606.5. Vocational Experts' Reports as Evidence.

(a) The Workers' Compensation Appeals Board favors the production of vocational expert evidence in the form of written reports. Direct examination of a vocational expert witness will not be received at a trial except upon a showing of good cause. **Good cause shall not be found if the vocational expert witness has not issued a report and the party offering the witness fails to demonstrate that it exercised due diligence in attempting to obtain a report.** A continuance may be granted for rebuttal testimony if a report that was not served sufficiently in advance of the close of discovery to permit rebuttal is admitted into evidence.

(b) A vocational expert's written report shall meet the following requirements:

(1) The report shall contain a declaration by the vocational expert signing the report stating: "I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true. I further declare under penalty of perjury that there has not been a violation of Labor Code section 139.32." The foregoing declaration shall be dated and signed by the vocational expert and shall indicate the county wherein it was signed.

(2) The report shall disclose the qualifications of the vocational expert signing the report, which may be satisfied by attaching a curriculum vitae.

(3) **Except as provided in subdivision (b)(4), the** ~~The~~ body of the report shall contain a statement, above the declaration under penalty of perjury, that: "No person, other than the vocational expert signing the report, has participated in the nonclerical preparation of the report, including all of the following: (i) taking a history from the employee; (ii) reviewing and

summarizing medical and/or non-medical records; and (iii) composing and drafting the conclusions of the report.”

(4) Notwithstanding subdivision (b)(3), ~~above,~~ it is permissible for a person or persons, other than the vocational expert signing the report, to prepare an initial outline of the employee’s history and/or to excerpt prior medical and non-medical records. If this is done, however, the vocational expert signing the report:

(A) shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant issues;

(B) shall include in the statement required by subdivision (b)(3) that, as applicable, an initial outline of the employee’s history and/or an excerpt of the employee’s prior medical and non-medical records were prepared by another person or persons and that the vocational expert signing the report has reviewed any such excerpts and/or outline and has made any additional inquiries and examinations necessary and appropriate to identify and determine the relevant issues; and

(C) shall comply with subdivision (~~a~~ b)(5), below.

(5) The report shall disclose the name(s) and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation.

(c) The vocational expert’s report should include, where applicable:

(1) the date(s) of any evaluation(s), interview(s), and test(s);

(2) the history of the injury;

(3) the employee’s vocational history;

(4) the injured employee’s complaints;

(5) a listing of all information reviewed in preparation of the report or relied upon for the formulation of the vocational expert’s opinion;

(6) the injured employee’s medical history, including injuries and conditions, and residuals thereof, if any;

(7) findings and opinion on evaluation;

(8) the reasons for the opinion; and

(9) the signature of the vocational expert.

A failure to comply with the requirements of subdivision (c) will not make the report inadmissible but will be considered in weighing the evidence.

(d) Statements concerning any vocational expert's bill for services are admissible only if they comply with subdivision (b)(1).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 139.32, 4628, **5502(d)(3)**, and 5703(j), Labor Code.

§ 10608. Filing and Service of Medical Reports, and Medical-Legal Reports, and Other Medical Information.

(a) All medical reports and medical-legal reports filed with the Workers' Compensation Appeals Board shall be filed in accordance with the regulations of the Court Administrator, or as otherwise provided by these rules. Service of all medical reports, and medical-legal reports, and other medical information on other parties and lien claimants shall be made in accordance with the provisions of this section. For purposes of this section, the following definitions shall apply:

(1) "Lien claimant" shall mean a person or entity that: (A) has invoked the jurisdiction and authority of the Workers' Compensation Appeals Board by filing a lien claim, including a claim of costs, or a petition for costs; and (B) has previously paid any lien filing or activation fee required by Labor Code sections 4903.05 or 4903.06.

(2) "Medical information" shall include but is not limited to: (A) medical reports; (B) medical-legal reports; (C) deposition transcripts (including but not limited to depositions of physicians) containing references to medical reports, medical-legal reports, medical treatment, medical diagnoses, or other medical opinions; (D) medical chart notes; and (E) diagnostic imaging as defined in section 10603(a)(2).

(3) "Non-physician lien claimant" shall mean a lien claimant that is not defined as a "physician" by Labor Code section 3209.3 and that is not an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b).

(4) "Party" shall mean: (A) an injured employee; (B) the dependent of a deceased injured employee; (C) a party defendant named in the application or other case opening document or subsequently joined; or (D) the attorney or non-attorney representative of any of the foregoing. For purposes of this section only, "party" shall not include any other person or entity, even if it would otherwise be deemed a "party" under section

10301(dd)(4) or (5), except as provided by subdivision 10608(c)(8)(D)(ii)(II).

(5) “Physician lien claimant” shall mean a lien claimant defined as a “physician” by Labor Code section 3209.3, an entity described in Labor Code sections 4903.05(c)(7) and 4903.06(b), or the attorney or non-attorney representative for any such physician or entity. For purposes of this section, an attorney or non-attorney representative shall not include any person or entity to whom a physician lien claimant’s lien has been assigned, either as an assignment of all right, title, and interest in the accounts receivable or as an assignment for collection.

(b) Service of Medical Reports and Medical-Legal Reports on a Party or a Physician Lien Claimant

The provisions of this subdivision shall apply to the service of medical reports and medical-legal reports on a party or on a physician lien claimant.

(1) After the filing of an ~~Application for Adjudication~~ application or other case opening document, if a party or lien claimant is requested by another party or a physician lien claimant to serve copies of medical reports and medical-legal reports relating to the claim, the party or lien claimant receiving the request shall serve copies of the reports ~~that are~~ in its possession or under its control on the requesting party or physician lien claimant within ~~six (6)~~ 10 calendar days of the request, if ~~the reports have~~ not been previously served. The party or lien claimant receiving the request shall serve a copy of any subsequently-received medical report and medical-legal report on the party or physician lien claimant within ~~six (6)~~ 10 calendar days of receipt ~~of the report~~.

~~(e)~~(2) At the time of the filing of any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, the filing declarant shall concurrently serve copies of all medical reports and medical-legal reports relating to the claim that have not been previously served and that are in the possession or under the control of the filing declarant on: ~~(1)~~(A) all other parties, whether or not they have previously requested service; and ~~(2)~~(B) all physician lien claimants that have previously requested service. The filing declarant also shall serve a copy of any subsequently-received medical report and medical-legal report relating to the claim on all other parties and each physician lien claimant within ~~six (6)~~ 10 calendar days of receipt ~~of the report~~.

~~(d)~~(3) Within ~~six (6)~~ 10 calendar days after service of any Declaration of Readiness to Proceed or Declaration of Readiness to Proceed to Expedited Hearing, all other parties and lien claimants shall serve copies of all medical reports and medical-legal reports relating to the claim that are in

their possession or under their control, and that have not been previously served, on: ~~(1)~~(A) all other parties, whether or not they have previously requested service; and ~~(2)~~(B) all physician lien claimants that have previously requested service. The other parties and lien claimants also shall serve a copy of any subsequently-received medical report and medical-legal report relating to the claim on the requesting party or physician lien claimant within ~~six~~ ~~(6)~~ 10 calendar days of receipt ~~of the report~~, consistent with ~~subsections (d)(1) and (d)(2)~~ subdivisions (b)(3)(A) and (b)(3)(B).

~~(e)~~(4) If, at any time after the periods specified in ~~subsections (b), (c) and (d)~~ subdivisions (b)(1), (b)(2) and (b)(3), a physician lien claimant initiates a request for service of medical reports and medical-legal reports, all parties and other lien claimants shall serve the requesting physician lien claimant with copies of all medical reports and medical-legal reports relating to the claim that are in their possession or under their control, and that have not been previously served, within ~~six~~ ~~(6)~~ 10 calendar days of receipt of the request. The parties and other lien claimants also shall serve a copy of any subsequently-received medical report and medical-legal report relating to the claim on the physician lien claimant within ~~six~~ ~~(6)~~ 10 calendar days of receipt ~~of the report~~.

~~(f)~~(5) All medical reports and medical-legal reports relating to the claim that have not been previously served shall be served on all other parties and physician lien claimants upon the filing of a compromise and release or stipulations with request for award, unless the rights and/or liabilities of those parties or physician lien claimants were previously fully resolved.

(c) Service of Medical Reports, Medical-Legal Reports, and other Medical Information on a Non-Physician Lien Claimant

The provisions of this subdivision shall apply to the service of medical reports, medical-legal reports, or other medical information on a non-physician lien claimant.

(1) If a party or lien claimant is requested by a non-physician lien claimant to serve a copy of any medical report, medical-legal report, or other medical information relating to the claim, the party or lien claimant receiving the request shall not serve a copy on the non-physician lien claimant unless ordered to do so by the Workers' Compensation Appeals Board.

(2) A non-physician lien claimant shall not subpoena any medical information. Any subpoena that, in whole or in part, requests medical information shall be deemed quashed in its entirety by operation of law.

(3) A non-physician lien claimant shall not seek to obtain any medical information using a waiver, release, or other authorization signed by the employee. Any such waiver, release, or other authorization shall be deemed invalid by operation of law.

(4 ~~2~~) A non-physician lien claimant may petition the Workers' Compensation Appeals Board for an order directing a party or other lien claimant in possession or control of any medical report, medical-legal report, or other medical information to serve a copy of that report or information, or a particular portion thereof, on the non-physician lien claimant.

(5 ~~3~~) For each document, or a portion thereof, containing medical information that is sought, the petition shall specify each of the following:

(A) the name of the issuing physician, medical organization (e.g., a group medical practice or hospital), or other entity and the date of the document containing medical information, if known, or if not known, sufficient information that the party or lien claimant from whom it is sought may reasonably be expected to identify it; and

(B) the specific reason(s) why the non-physician lien claimant believes that the document containing medical information, or a portion thereof, is or is reasonably likely to be relevant to its burden of proof on its lien claim or its petition for costs.

(6 ~~4~~) When the petition is filed, a copy shall be concurrently served on each party or, if represented, the attorney or non-attorney of record for the represented party. In addition, if the medical information is alleged to be in the possession or control of a non-party or another lien claimant, a copy of the petition shall be concurrently served on that non-party or other lien claimant or, if represented, its attorney or non-attorney of record.

(7 ~~5~~) The ~~caption of the~~ petition shall ~~be identified~~ identify it as a "Petition by Non-Physician Lien Claimant for Medical Information."

~~(6) A document cover sheet and a document separator sheet shall be filed with the petition and "Petition for Medical Information" shall be entered into the document title field of the document separator sheet.~~

~~(7) The petition shall be filed as follows:~~

~~(A) if a case opening document was previously filed, the petition, unless e filed, shall be filed only with the district office having venue;~~

~~(B) if no case opening document was previously filed: (i) an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and (ii) unless e filed, the petition and application shall be filed only with the district office where venue is being asserted.~~

(8) Disposition of a Petition by Non-Physician Lien Claimant for Medical Information:

(A) The Workers' Compensation Appeals Board, in its discretion, may take whatever action on the petition it deems appropriate, including but not limited to: (i) denying the petition if it is inadequate on its face; (ii) issuing a notice of intention to order that the non-physician lien claimant is entitled to service of all, some, or none of the medical information sought; or (iii) setting the petition for a hearing, either without or after issuing a notice of intention.

The Workers' Compensation Appeals Board shall serve or cause to be served each notice of hearing or notice of intention pertaining to the petition on the petitioner and on each person or entity listed in subdivision 10608(c)(4).

(B) When issuing a notice of intention or setting a hearing, the Workers' Compensation Appeals Board may order that the party or lien claimant alleged to be in possession of the medical information shall send it to the personal and confidential attention of the assigned workers' compensation judge, in a sealed envelope lodged by mail or personal service only, for in camera review. Medical information so lodged shall not be deemed filed or admitted in evidence and shall not become part of the record.

(C) If a notice of intention is issued, it shall issue within 15 business days after the filing of the petition and it shall give the petitioner and any adverse party 10 days to file a written response. ~~This time limit shall be extended by sections 10507 and 10508.~~

(D)(i) If a hearing is set after the issuance of a notice of intention, the hearing date shall be within 45 days after the lapse of the period for the timely filing of a response.

(ii) If a notice of intention is not issued and (I) the non-physician lien claimant is a "party" within the meaning of section 10301(dd)(4) ~~or (5)~~, a hearing shall not be set unless a declaration of readiness is filed; (II) the non-physician lien claimant is not yet

a “party” and is therefore precluded from filing a declaration of readiness by section 10250, the hearing date shall be within 60 days after the petition was filed.

(E) The Workers’ Compensation Appeals Board shall serve any order disposing of the petition on the petitioner and on each person or entity listed in subdivision 10608(c)(4). Designated service shall not be used for such service. If the Board orders that the non-physician lien claimant is entitled to service of medical information, it may also order that a portion or portions of the medical information shall be redacted before it is served on the non-physician lien claimant.

(d) Any violation of the provisions of this section may result in sanctions, attorney’s fees, and costs under Labor Code section 5813 and section 10561.

Authority: Sections 133, 4903.6(d), 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903.6(d), 5001, 5502, 5703 and 5708, Labor Code; Sections 56.05 and 56.10, Civil Code.

§ 10608.5. Service by Parties and Lien Claimants of Reports and Records on Other Parties and Lien Claimants.

(a) In order to promote cost-effective and efficient discovery and information exchange, document service between parties and lien claimants may be effected by CD-ROM, DVD, or other electronic media including e-mail attachments, except as provided in subdivision (b) below. Production in PDF/A format shall be the preferred form of service. Indexing of documents and Bates-stamping of pages shall also be preferred.

(b) Where the injured employee is self-represented, discovery documents shall be served only in paper (hard copy) form, unless specifically requested by the employee in writing or ordered by the Workers’ Compensation Appeals Board.

(c) Nothing in this section shall preclude: (1) the Workers’ Compensation Appeals Board or the Administrative Director from adopting any regulation that would permit service or receipt of service to be effected by alternative technologies; or (2) the Workers’ Compensation Appeals Board from ordering or allowing an alternative form of service, including service in paper form, in any particular case.

(d) For purposes of this section, the terms: (1) “serve” and “service” shall include any requirement to produce, allow inspection of, or allow access to any report, record, or other document; and (2) “party” and “lien claimant” shall include any attorney, representative, or agent (including a copy service) of a party or lien claimant.

(e)(1) This section shall apply only to reports, records, and other documents: (A) served in response to a discovery request, subpoena duces tecum, or order; (B) served in

accordance with the requirements of sections 10601, 10603, 10605, 10607, 10608, 10615, 10616, 10618, and 10626; or (C) served in accordance with other orders or rules relating to discovery and the exchange of information.

(2) This section shall not apply to the filing of any report, record, or other document with the Workers' Compensation Appeals Board.

(f) This section shall not preclude the Workers' Compensation Appeals Board, upon a showing of good cause, from ordering a party or lien claimant to either allow the on-site inspection of its records or to produce those records at hearing.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Art. XIV, § 4, Cal. Const.; Section 5307.9, Labor Code; Section 250, Evidence Code.

§ 10622. Failure to Comply.

Disclosure, service and filing of all medical reports in the possession and control of every party to a proceeding, except as otherwise expressly provided, is essential to and required in the expeditious determination of controversies.

The Workers' Compensation Appeals Board may decline to receive in evidence, either at or subsequent to hearing, any report offered under the provisions of Labor Code Section 5703 by a party who has failed to comply with the provisions of Rules 10600, 10608, 10615, 10616 or 10618. A medical or vocational expert report shall not be refused admission into evidence at a hearing, solely upon the ground of a late filing, where examination was diligently sought and said report came into possession or control of the party offering it within the preceding seven (7) days.

Where a willful suppression of a medical or vocational expert report is shown to exist in violation of these rules, it shall be presumed that the findings, conclusions and opinions therein contained, would be adverse, if produced.

The remedies in this section are cumulative to all others authorized by law.

Authority: Sections 133 and 5307, Labor Code.

Reference: ~~Section~~ Sections 5703 and 5708, Labor Code.

Article 13. Liens

§ 10770. Filing and Service of Lien Claims.

(a) Lien Claims that May Be Filed or Served:

(1) A lien claim may be filed or served only if permitted by Labor Code section 4900 et seq. An otherwise permissible lien claim shall not be filed

or served if doing so would violate the premature filing restrictions of Labor Code section 4903.6(a).

(2) Except as provided in subdivision (a)(3), any lien claim that is not statutorily allowable, in whole or in part, or is filed before the lapse of the premature filing restrictions of Labor Code section 4903.6(a) shall be deemed invalid, whether or not accepted for filing, and shall be deemed dismissed by operation of law.

(3) Claims for medical-legal costs and other claims of costs are not allowable as a lien against compensation. Nevertheless, a claim for medical-legal costs or other claims of costs may be filed as a lien claim. If, however, a lien claim includes medical-legal costs or other claims of costs:

(A) the filing person or entity shall pay the lien filing or lien activation fees, if required by Labor Code sections 4903.05(c) and 4903.06; and

(B) if the person or entity fails to pay any requisite filing fee or lien activation fee within the time limits specified by Labor Code sections 4903.05(c) and 4903.06, the entire lien claim shall be deemed dismissed by operation of law.

(a)(b) Format of Lien Claims:

(1) Electronically-filed lien claims:

(A) A section 4903(b) lien, a claim of costs lien, and any lien form that includes either or both of these liens shall be filed electronically. Any lien submitted in paper form in violation of this subparagraph: (i) shall not be deemed filed for any purpose, whether or not it was accepted for filing; (ii) shall not toll or extend the time for filing a lien claim under Labor Code section 4903.5; (iii) shall not be acknowledged or returned to the filer; and (iv) may be destroyed at any time without notice.

(B) All other lien claims may be filed electronically.

(C) Any electronically submitted lien claim shall be deemed filed only if it utilizes an e-form approved by the Appeals Board and it is submitted in accordance with the requirements of:

(i) the electronic filing or JET-filing procedures established by the Administrative Director under

sections 10205.11 and 10206 et seq., including the Business Rules and Technical Specifications they incorporate by reference; or

(ii) any other administrative procedures or standards for electronic filing established by statute, regulation, en banc decision of the Appeals Board, published appellate opinion, or policy of the Administrative Director, applying to documents to be filed with the Workers' Compensation Appeals Board.

(4)(2) Non-electronically-filed lien claims:

(A) All other lien claims ~~Unless the lien claimant is excepted by parts (A) through (C) of section 10228(e)(5), a lien claimant under Labor Code sections 4903 or 4903.1 shall be filed~~ file its lien claim: (A) utilizing an optical character recognition (OCR) lien claim form approved by the Appeals Board and completed in compliance with section 10205.10(c), unless the lien claimant is excepted by parts (A) through (C) of section 10205.10(c)(5); or (B) electronically utilizing an e form approved by the Appeals Board.

(2)(B) Lien claimants set forth in parts (A) through (C) of section 10205.10(c)(5) may file a lien claim utilizing an approved optical character recognition OCR form or a non-OCR paper lien form completed in compliance with section 10205.10(e).

(3) The claims of two or more providers of goods or services shall not be merged into a single lien. However, an individual provider may claim more than one type of lien on a single lien form by marking the "Other Lien(s)" checkbox on the form and by specifying the nature and statutory basis for each lien in that checkbox's associated text box.

(b)(c) Requirements for Filing of Lien Claims with the Workers' Compensation Appeals Board:

(1) The requirements of this subdivision shall apply to all lien claims, whether or not filed electronically.

(4 2) Only original (i.e., initial or opening) lien claims accompanied by a proof of service shall be filed accepted for filing. Except as provided in subdivisions (g) or (h) of section 10233 or as ordered by the Workers'

Compensation Appeals Board, no amended liens lien claims and no documentation in support of any lien (original or amended) shall be filed will be accepted. If an original lien is filed with supporting documentation, the original lien shall be filed but not the supporting documentation. Any amended lien previously filed or lodged for filing may be destroyed without notice.

(3) Except as provided in subdivisions (g) or (h) of section 10233 or as ordered by the Workers' Compensation Appeals Board, no statement or itemized voucher shall be filed in support of any lien claim (original or amended). If an original lien claim is filed with supporting documentation, the original lien claim shall be filed but not the supporting documentation. Any supporting documentation for any lien claim (original or amended) that was previously filed or lodged for filing may be destroyed without notice.

(4) The following documents shall be concurrently filed with each lien claim:

(A) a proof of service;

(B) the verification under penalty of perjury required by section 10770.5;

(C) a true and correct copy of any assignment of the lien, if required by Labor Code section 4903.8(a) and (b);

(D) the declaration under penalty of perjury required by Labor Code section 4903.8(d); and

(E) any other declaration or form required by law to be concurrently filed with a lien claim.

(5) Unless the lien claimant is concurrently filing an initial (case opening) application in accordance with section 10770.5, a lien claim shall bear an the adjudication case number(s) previously assigned by the Workers' Compensation Appeals Board for the injury or injuries will not be accepted.

(6) Any person or entity filing a section 4903(b) lien and/or a claim of costs lien shall not file any such lien unless it has paid the requisite lien filing fee.

If the lien claimant asserts it is exempt from payment of the filing fee because it is not filing a section 4903(b) or claim of costs lien or because it

is an entity specified in Labor Code section 4903.05(c)(7), it shall indicate this in the designated field of the lien form.

Any lien claim filed in violation of this provision shall be deemed dismissed by operation of law.

(7)(A) For medical treatment provided on or after July 1, 2013, a section 4903(b) lien shall not be filed if the *only* remaining dispute(s) must be resolved by the independent medical review procedures established by Labor Code sections 4610.5, 4610.6, 4616.3, and 4616.4 and/or by the independent bill review procedures established by Labor Code sections 4603.2, 4603.3, and 4603.6.

(B) Nothing in this subdivision shall preclude a medical treatment lien claimant from filing a lien claim if there are other outstanding disputes, including but not limited to injury, employment, jurisdiction, or the statute of limitations.

(8) Any lien claim or supporting documentation submitted in violation of this subdivisions (c)(1) through (c)(7) shall not be deemed filed for any purpose, shall not be acknowledged or returned to the filer ~~lien claimant~~, and may be destroyed at any time without notice.

~~(2) Any amended lien or documentation supporting any lien (original or amended) previously filed or lodged for filing may be destroyed without notice.~~

~~(3)~~(9) The service of a lien claim on a defendant, or the service of notice of any claim that would be allowable as a lien, shall not constitute the filing of a lien claim with the Workers' Compensation Appeals Board within the meaning of its rules of practice and procedure or within the meaning of Labor Code section 4903.1 et seq., including but not limited to section 4903.5.

~~(4)~~(10) Where a lien has been served on any a party ~~under Labor Code section 4903.1(b)~~, that ~~no~~ party shall have ~~an~~ no obligation to file that lien with the Workers' Compensation Appeals Board. ~~If:~~

~~(A) the lien has been paid in full; or~~

~~(B) a good faith partial payment has been made and:~~

~~(i) the lien claimant has been concurrently provided with a clear written explanation that both justifies the amount paid and specifies all additional information the lien claimant must submit as a prerequisite to additional or full payment,~~

~~in conformity with the following, as applicable: (I) Lab. Code, § 4603.2(b)(1) and Cal. Code Regs., tit. 8, § 9792.5(c) for medical treatment liens; (II) Lab. Code, § 4622 and Cal. Code Regs., tit. 8, § 9794(b) & (c) for medical legal liens; and (III) Cal. Code Regs., tit. 8, § 9795.4(a) for interpreter liens; and~~

~~(ii) no additional written demand for payment is made by the lien claimant within 90 calendar days after the partial payment.~~

~~(e)~~(d) Service of Lien Claims and Supporting Documentation on the Parties

(1) All original and amended lien claims, ~~together with a full statement or itemized voucher supporting the lien and a proof of service~~ and all related documents, including supporting documentation and any document listed in subdivision (c)(2), shall be served on:

(A) the injured worker (or, if deceased, the worker's dependent(s)), unless:

(i) the worker or dependent is represented by an attorney or other agent of record, in which event service may be made solely upon the attorney or agent of record; or

(ii) the underlying case of the worker or dependent(s) has been resolved. For purposes of this subdivision, the underlying case will be deemed to have been resolved if:

(I) in a stipulated findings and award or in a compromise and release agreement, a defendant has agreed to hold the worker or dependent(s) harmless from the specific lien claim being filed and has agreed to pay, adjust, or litigate that lien claim;

(II) a defendant had written notice of the lien claim before the lien claim was filed and, in a stipulated findings and award or in a compromise and release agreement, that defendant has agreed to pay, adjust, or litigate all lien claims;

(III) the application for adjudication of claim filed by the worker or the dependent(s) has been dismissed, and the lien claimant is filing or has filed a new application; or

(IV) the worker or the dependent(s) chooses
~~choose(s)~~ not to proceed with his, her, or their case.

(B) any employer(s) or insurance carrier(s) that are parties to the case *and*, if represented, their attorney(s) or other agent(s) of record.

(2) The full statement or itemized voucher supporting the lien claim or amended lien claim shall include: (A) any amount(s) previously paid by any source for each itemized service; (B) a statement that clearly and specifically sets forth the basis for the claim for additional payment; (C) proof of ownership of the debt if that the lien claimant is not the original service provider ~~or owner of the alleged debt~~; and (D) a declaration under penalty of perjury under the laws of the State of California that all of the foregoing information provided is true and correct.

~~The requirement of proof that the lien claimant is the owner of the alleged debt may be satisfied if, as part of the declaration under penalty of perjury, the declarant states that the lien claimant possesses documents either establishing original ownership of the lien claim or establishing that the right to payment for the claimed services was transferred to the lien claimant by the original owner and any intermediate owners. The lien claimant shall furnish a copy of such documentation to any party or to the Workers' Compensation Appeals Board upon demand and shall have a copy available for immediate production at any lien conference or lien trial.~~

(3) When serving an amended lien claim, the lien claimant shall indicate in the box set forth on the lien form that it is an "amended" lien claim.

~~(d)~~(e) The lien claimant shall provide the name, mailing address, and telephone number of a person with authority to resolve the lien claim on behalf of the lien claimant.

~~(e)~~(f) For purposes of this subdivision, an "amended" lien claim includes: (1) a lien claim that is for or includes additional services or charges for the same injured employee for the same date or dates of injury; (2) a lien claim that reflects a change in the amount of the lien claim based on payments made by the defendant; and/or (3) a lien claim that has been corrected for clerical or mathematical error. A subsequent lien claim that adds an additional adjudication case number or numbers is an "amended" lien claim with respect to the adjudication case number(s) originally listed.

~~(f)~~(g) Within five business days after a lien claim has been resolved or withdrawn, the lien claimant shall provide written notification to:

(1) the Workers' Compensation Appeals Board;

(2) the party defendant(s) or, if represented, their attorney(s); and

(3) the worker or dependent(s) or, if represented, the attorney(s) for the worker or dependent(s), except that no such notification is required if the underlying case has been resolved as provided in subdivision ~~(e)~~(d) (1)(A)(ii)(I) through (IV).

For purposes of this section, a lien is not “resolved” unless payment in accordance with an order or an informal agreement has in fact been made and received.

If the notification of lien resolution or withdrawal is being filed by a lien claimant’s attorney or non-attorney representative, then a copy shall also be served on the lien claimant. If the notification is being filed by a lien claimant who is represented, then a copy shall also be served on the attorney or non-attorney representative. In either case, the written notification shall include a request to end-date both the lien claimant and its representative as case participants in EAMS.

~~(h)~~(i) When a lien claimant notifies the Workers’ Compensation Appeals Board in writing that its lien has been resolved or withdrawn, the lien claim shall be deemed dismissed with prejudice by operation of law.

~~(2) If a petition for costs is filed that seeks reimbursement for any of the same goods or services that had previously been sought by filing a lien claim, the lien claim shall be deemed withdrawn and dismissed without prejudice by operation of law. This provision, however, shall not nullify the provisions of section 10451(e).~~

~~(g)~~(i) The Workers’ Compensation Appeals Board shall either serve or, under sections 10500(a) and 10544, cause to be served notice on all lien claimants of each hearing scheduled, whether or not the hearing directly involves that lien claimant’s lien claim.

~~(h)~~(j) Inclusion of the injured employee’s Social Security number on a lien claim form is voluntary, not mandatory. A failure to provide a Social Security number will not have any adverse consequences. Nevertheless, although a lien claimant is not required by law to include the employee’s Social Security number, lien claimants are encouraged to do so because this will facilitate the processing and filing of the lien claim. Social Security numbers are used solely for identification and verification purposes in order to administer the workers’ compensation system. A Social Security number will not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the applicant, or as permitted or required by statute, regulation, or judicial order.

~~(i)~~(k) Any violation of the provisions of this section may give rise to monetary sanctions, attorney’s fees, and costs under Labor Code section 5813 and Rule 10561.

~~(j)(1)~~ The provisions of subdivisions ~~(b)(3), (b)(4), and (e)(2)~~ (c)(4)(D), (c)(8), (c)(9), and (d)(2) shall not apply to any notice of claim or lien claim of: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under parts (A) through (C) of section ~~10228(e)(5)~~ 10205.10(c)(5); ~~and~~ (4) any governmental entity pursuing a lien claim for child support or spousal support; and (5) the Uninsured Employers Benefits Trust Fund.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903, 4903.05, 4903.06, 4903.8, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 4603.2, 4603.3, 4603.6, 4610.5, 4610.6, 4616.3, 4616.4, 4622, and 5813, Labor Code; Sections 9792.5, 9794, 9795.4, and 10561, title 8, California Code of Regulations.

§ 10770.1. Lien Conferences and Lien Trials.

(a)(1) A lien conference shall be set: ~~(1)(A)~~ when any party, including a lien claimant who is a “party” as defined by section ~~10301(x)(3)~~ 10301(dd)(45), files a declaration of readiness (DOR) in accordance with section 10250 on any issue(s) directly relating to any lien claim(s); or ~~(2)(B)~~ by the Workers’ Compensation Appeals Board on its own motion at any time.

(2) Based upon resources available and such other considerations as the Workers’ Compensation Appeals Board in its discretion may deem appropriate, a lien conference may be set at any district office without the necessity of an order changing venue.

(3) Unless otherwise expressly stated in the notice of hearing, all unresolved lien claims and lien issues shall be heard at the lien conference, whether or not listed in any ~~declaration of readiness~~ DOR. An agreement to “pay, adjust or litigate” a lien claim or its equivalent, or an award leaving a lien claim to be adjusted, is not a resolution of the lien claim or lien issue.

(4) Once a DOR for a lien conference has been filed, it cannot be withdrawn. If the lien of a lien claimant that has filed a DOR has been resolved, that lien claimant shall request that its lien be withdrawn in accordance with section 10770(g).

(5.4) To the extent feasible, the date of the lien conference shall be no sooner than 60 days after the date the notice of hearing for it is served.

(b) Nothing in this section shall preclude the Workers’ Compensation Appeals Board, in its discretion, from: (1) setting a type of hearing other than that requested in the ~~declaration of readiness~~ DOR, in accordance with section 10420; (2) issuing a ten-day notice of intention to order payment of the lien claim, in full or in part, in accordance with section 10888; or (3) issuing a ten-day notice of intention to disallow the lien claim, in accordance with section 10888.

(c) No lien claimant that is required to pay a lien filing or lien activation fee shall file a declaration of readiness or participate in any lien conference, including obtaining an

order allowing its lien in whole or in part, without submitting written proof of prior timely payment of the fee.

(1) At the lien conference, there shall be a rebuttable presumption that a lien claimant is required to pay a lien filing fee or activation fee.

(A) If a lien claimant asserts it is an entity listed in Labor Code sections 4903.05(c)(7) or 4903.06(b), it shall be prepared to file proof or submit a stipulation to that effect at the lien conference, upon request by the workers' compensation judge. The judge, however, may formally or informally take judicial notice that the lien claimant is such an entity. This may include, but is not necessarily limited to, taking judicial notice of prior decisions of the Workers' Compensation Appeals Board and taking judicial notice based on the "common knowledge" or the "not reasonably subject to dispute" provisions of Evidence Code section 452(g) and (h).

(B) If a lien claimant asserts under Labor Code section 4903.06(a) that it already paid a filing fee as required by former Labor Code section 4903.05 as added by Chapter 639 of the Statutes of 2003, it shall submit written proof of such payment at the lien conference.

(2) The following requirements must be met to satisfy the lien claimant's burden of demonstrating prior timely payment:

(A) Proof of prior timely payment shall be in the form provided by the Rules of the Administrative Director or by a printout from the Public Information Search Tool of EAMS. An offer of proof or a stipulation that payment was made shall not be adequate.

(B) Proof of prior timely payment of a filing fee must establish that the fee was paid contemporaneously with the filing of the lien.

(C) Proof of prior timely payment of an activation fee must establish that the fee was paid before the scheduled starting time of the lien conference set forth in the notice of hearing, except that, if the lien claimant filed the declaration of readiness, the proof shall establish that the activation fee was paid contemporaneously with the filing of the declaration of readiness.

If a lien claimant fails to submit proper written proof of prior timely payment, the Workers' Compensation Appeals Board may elect to conduct a search within the Electronic Adjudication Management System to confirm prior timely payment, but is not obligated to do so, and a failure to

conduct such a search shall not be a proper basis for a petition for reconsideration, removal, or disqualification.

(3) If a lien claimant that is required to pay a lien filing or activation fee fails to provide proper written proof prior timely payment, then:

(A) If the proof of prior timely payment of the activation fee is not submitted, the lien claim shall be dismissed with prejudice. This provision shall apply even if, but for the lien conference, the activation fee would not have been due until December 31, 2013.

(B) If the proof of prior timely payment of the filing fee is not submitted, the lien claim shall be deemed dismissed by operation of law as of the time of its filing, except that if the lien claimant filed a declaration of readiness its lien shall be dismissed with prejudice; however, in neither case shall the dismissed lien toll, preserve, or extend any applicable statute of limitations.

A lien claimant shall not avoid dismissal by attempting to pay the fee at or after the hearing.

(4) If a lien claimant fails to appear at a lien conference, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss consistent with the provisions above.

~~(e)~~(d) When a party, including a lien claimant who is a "party" as defined by section 10301(x)(3) 10301(dd)(45), files a declaration of readiness on an issue directly relating to a lien claim, including any preliminary or intermediate procedural or evidentiary issue, the party shall designate on the declaration of readiness form that it is requesting a "lien conference" and shall not designate any other kind of conference ~~or hearing~~. If a status conference or any other type of ~~hearing conference~~ is requested or is set on the calendar, that status conference or other type of ~~hearing conference~~ shall be deemed a "lien conference" and shall be governed by any and all rules applying to a "lien conference." Notwithstanding any other provision of these Rules, the Workers' Compensation Appeals Board shall not convert, re-set, or continue a "lien conference" to any other type of conference.

~~(d)~~(e) Notwithstanding section 10240, all defendants and lien claimants shall appear at all lien conferences and lien trials, either in person or by attorney or representative. Each defendant, lien claimant, attorney, and hearing representative appearing at any lien conference or lien trial: (1) shall have sufficient knowledge of the lien dispute(s) to inform the Workers' Compensation Appeals Board as to all relevant factual and/or legal issues in dispute; (2) shall have authority to enter into binding factual stipulations; and (3) shall either have full settlement authority or have full settlement authority immediately available by telephone.

~~(e)~~(f) For any lien claim(s) or lien issue(s) not fully resolved at the lien conference by an order signed by a workers' compensation judge, the defendant(s) and lien claimant(s) shall prepare, sign, and file with the workers' compensation judge a pretrial conference statement, which shall include: (1) all stipulations; (2) the specific issues in dispute; (3) all documentary evidence that might be offered at the lien trial; and (4) all witnesses who might testify at the lien trial. The right to present any issue, documentary evidence, or witness not listed in the pretrial conference statement shall be deemed waived, absent a showing of good cause. This subdivision shall apply regardless of which action the Workers' Compensation Appeals Board takes under subdivision ~~(f)~~(g).

~~(f)~~(g) If any lien claim(s) or lien issue(s) cannot be fully resolved at the lien conference, the Workers' Compensation Appeals Board shall take one of the following actions:

(1) set a lien trial;

(2) upon a showing of good cause, allow a one-time continuance of the lien conference to another lien conference, after which a lien trial shall be set; or

(3) upon a showing of good cause, order the lien conference off calendar.

Good cause shall not include the delayed or late appointment of an attorney or other representative by a defendant or lien claimant or the delayed receipt of the defendant's or lien claimant's file by that attorney or other representative.

The action taken shall apply to all unresolved lien claim(s) or lien issue(s).

~~(g)~~(h) Discovery shall close on the date of the lien conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the lien conference.

~~(h)~~(i) If a lien claimant fails to appear at a lien conference or lien trial, the Workers' Compensation Appeals Board may issue a notice of intention to dismiss the lien claim with or without prejudice in accordance with section 10562(d)(1) and/or section 10241(b)(2).

If a defendant is designated to serve the notice of intention to dismiss under section 10500(a), the defendant shall serve the notice of intention within 10 business days. If the defendant does not receive a timely objection (taking into consideration the time extension provisions of sections 10507 and 10508), the defendant shall file and serve a proposed order dismissing the lien and copies of the notice of intention and the notice's proof of service.

An order dismissing a lien claim for failure to appear shall be served only by the Workers' Compensation Appeals Board and not by designated service.

~~(i)~~(j) The Workers' Compensation Appeals Board may order that any unresolved lien claim(s) or lien issue(s) be submitted for decision solely on the exhibits listed in the pretrial conference statement if: (1) no witnesses are listed in the pretrial conference statement; or (2) witnesses are listed but no good cause is shown for any witness to testify at trial. Good cause may be established by offers of proof made at the lien conference.

If the disputed lien claim(s) or lien issue(s) are submitted for decision at the lien conference, the workers' compensation judge shall prepare minutes of hearing and a summary of evidence listing: (1) all exhibits offered in evidence; (2) the identity of the party or lien claimant offering each exhibit; and (3) whether or not each exhibit is admitted in evidence. This descriptive listing shall be filed and served no later than the date of the decision on the submitted issues.

~~(j)~~(k) After a lien conference or lien trial has been ordered off calendar, no party or lien claimant shall file a new declaration of readiness for at least 90 days. The declaration of readiness shall designate that a "lien conference" is requested and shall state under penalty of perjury that there has been no hearing on the lien claim(s) or lien issue(s) within the preceding 90 calendar days.

Nothing in this subdivision shall preclude the Workers' Compensation Appeals Board from (1) restoring the lien claim(s) or lien issue(s) to the lien conference or lien trial calendar on its own motion or (2) restoring the lien claim(s) or lien issue(s) to the lien conference or lien trial calendar less than 90 calendar days after the most recent hearing.

~~(k)~~(l) If a defendant was designated to serve a lien claimant with notice of a lien conference or lien trial under sections 10500(a) and 10544, the defendant shall bring a copy of its proof of service to the lien conference or lien trial and, if the lien claimant fails to appear, the defendant shall file that proof of service with the Workers' Compensation Appeals Board.

~~(l)~~(m) Any violation of the provisions of this section may give rise to monetary sanctions, attorney's fees, and costs under Labor Code section 5813 and Rule 10561.

~~(m)~~(n) The provisions of subdivisions ~~(e), (g), and (h)~~ (f), (h), and (i)(2) shall not apply to the lien claim(s) of any of the following: (1) the Employment Development Department; (2) the California Victims of Crime Program; (3) any lien claimant listed as being excepted under section ~~10228(e)(5)~~ 10205.10(c)(5); ~~and~~ (4) any governmental entity pursuing a lien claim for child support or spousal support; ~~and~~ (5) lien claims of the Uninsured Employers Benefits Trust Fund.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903, 4903.05, 4903.06, 4903.1, 4903.4, 4903.5, 4903.6, 4904, 5502 and 5502.5, Labor Code; Sections 351, ~~and~~ 352, 451, ~~and~~ 452, Evidence Code; and Sections 10250, ~~10250.1~~10205.16, 10301(u) ~~and~~ (z), 10364(a), 10561, 10629 and 10770-10772, title 8, California Code of Regulations.

§ 10770.5. Verification to Filing of Lien Claim or Application by Lien Claimant.

(a) Any ~~section 4903(b) lien claim or application for adjudication filed under Labor Code section 4903(b), any lien or petition~~ for medical-legal costs, and any application related to any such lien or petition shall have attached to it a verification under penalty of perjury which shall contain a statement specifying in detail the facts establishing that ~~one~~ both of the following ~~has~~ have occurred:

(1) Sixty days have elapsed since after the date of acceptance or rejection of liability for the claim, or the time provided for investigation of liability pursuant to Labor Code section 5402(b) has elapsed, whichever is earlier; and

(2) either of the following:

(A) The time provided for payment of medical treatment bills pursuant to Labor Code section 4603.2 ~~has elapsed.~~ has expired and, if the employer objected to the amount of the bill, the reasonable fee has been determined pursuant to Labor Code section 4603.6, and, if authorization for the medical treatment has been disputed pursuant to Labor Code section 4610, the medical necessity of the medical treatment has been determined pursuant to Labor Code sections 4610.5 and 4610.6; or

~~(B)~~ (B) The time provided for payment of medical-legal expenses pursuant to Labor Code section 4622 ~~has elapsed~~ has expired and, if the employer objected to the amount of the bill, the reasonable fee has been determined pursuant to Labor Code section 4603.6.

(b) The verification under penalty of perjury shall also contain a statement declaring that the lien or petition is not being filed solely because of a dispute subject to the independent medical review and/or the independent bill review process.

~~(c)~~ (c) In addition, if an application for adjudication is also being filed, the verification under penalty of perjury ~~also~~ shall contain:

(1) A statement specifying in detail the facts establishing that venue in the district office being designated is proper pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2); and

(2) A statement specifying in detail the facts establishing that the filing lien claimant has made a diligent search and has determined that no adjudication case number exists for the same injured worker and same date of injury at any district office. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or

inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

~~(e)~~(d) The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California:

(1) that ~~one~~ of the time periods set forth in Rule 10770.5(a) has have elapsed;

(2) that the section 4903(b) lien, the lien ~~or the petition~~ for medical-legal costs, or the application is not being filed solely because of a dispute subject to the independent medical review and/or independent bill review process; and

(3) that, if an application for adjudication is being filed, that venue is proper as set forth in Rule 10770.5(b) and that I have made a diligent search and have determined that no adjudication case number exists for the same injured worker and the same date of injury. In determining that no adjudication case number exists for the same injured worker and the same date of injury, I have made a diligent search consisting of the following efforts (specify):

s/s _____ on _____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903 and 4903.6, Labor Code.

§ 10770.6. Verification to Filing of Declaration of Readiness By or on Behalf of Lien Claimant.

No Declaration of Readiness to Proceed shall be filed for a ~~lien under Labor Code~~ section 4903(b) lien, or for a lien claim ~~or petition~~ for medical-legal costs, without an attached verification ~~certifying executed~~ under penalty of perjury:

(a) stating either that:

(1) the declaration of readiness is not being filed because of a dispute solely subject to the independent medical review and/or independent bill review process; or

(2) a timely petition appealing the Administrative Director's determination regarding independent medical review and/or independent bill review has been filed; and

(b) stating either (1) that:

(1) the underlying case has been resolved; ~~or~~ or

(2) ~~that~~ at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case.

The declarant shall make a diligent search to determine that the injured worker has chosen not to proceed with his or her case and the verification shall specify the efforts made in conducting the diligent search. A diligent search shall include contacting the injured worker, contacting the employer or carrier, or inquiring at the district office with appropriate venue pursuant to Labor Code section 5501.5(a)(1) or Labor Code section 5501.5(a)(2).

The verification shall be in the following form:

I declare under penalty of perjury under the laws of the State of California that:

[] the declaration of readiness is not being filed because of a dispute subject to the independent medical review and/or independent bill review process; or [] a timely petition appealing the Administrative Director's determination regarding independent medical review and/or independent bill review has been filed (Check one box); and

[] ~~that~~ the underlying case has been resolved; or [] ~~that~~ at least six months have elapsed from the date of injury and the injured worker has chosen not to proceed with his or her case (Check one box). In determining that the injured worker has chosen not to proceed with his or her case, I have made a diligent search consisting of the following efforts (specify):

s/s _____ on _____

Failure to attach the verification or an incorrect verification may be a basis for sanctions.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903 and 4903.6, Labor Code.

Article 14. Attorneys and Representatives.

§ 10774.5. Notices of Representation, Change of Representation, and Non-Representation for Lien Claimants.

(a) Whenever any lien claimant obtains representation by an attorney or a non-attorney, changes such representation, or such representation ceases, the lien claimant shall provide written notice to: (1) the Workers' Compensation Appeals Board; (2) the injured employee and the dependent(s) of a deceased employee or, if represented, to the attorney or non-attorney representative of the employee or dependent(s); and (3) each defendant and each defendant's attorney or non-attorney representative, if any. The written notice shall be accompanied by a proof of service made under penalty of perjury.

(b) The notice shall:

(1) caption the case title (i.e., the name of the injured employee and the name of the defendant or primary defendant(s)) and the adjudication case number(s) to which the notice relates;

(2) set forth the full legal name, mailing address, and telephone number of the lien claimant; and

(3) set forth the full legal name, mailing address, and telephone number of the initial or new attorney or non-attorney representative or, where a lien claimant becomes self-represented, the name of the former attorney or non-attorney representative.

(c) The notice shall be filed and served within five working days of when: (1) a self-represented lien claimant obtains an attorney or a non-attorney representative; (2) a represented lien claimant changes to a new attorney or non-attorney representative; or (3) a represented lien claimant becomes self-represented.

(d) The notice shall be verified by a declaration under penalty of perjury stating: "I declare under penalty of perjury that the statements and information contained in this notice are true and correct."

(e) Notices of Representation and Notices of Change of Representation:

Whenever a lien claimant obtains or changes representation to an attorney, the lien claimant's duties, as set forth in subdivisions (a) through (d), may be satisfied by notice of representation or change of representation filed and served by the attorney. If the attorney assuming representation files and serves such a notice, the provisions of subdivision (e)(1) through (e)(7) shall not apply.

In all other instances, the lien claimant shall comply with the following procedures:

(1) Where a self-represented lien claimant obtains a representative, a "Notice of Representation" shall be filed. Where a represented lien claimant changes to a new representative, a "Notice of Change of Representation" shall be filed.

(2) If a lien claimant becomes represented by or changes representation less than five working days before a scheduled hearing or if, for any reason, a copy of the notice of representation or change of representation does not appear in the Workers' Compensation Appeals Board's record by the time of hearing, a copy of the fully executed notice shall be lodged with the workers' compensation judge presiding over the hearing and shall be concurrently personally served on each party or lien claimant appearing at the hearing or, if represented, their appearing attorney or non-attorney representative.

(3) The notice of representation or change of representation is required even if the initial or new representative has signed or is signing a pleading on behalf of the lien claimant.

(4) The lien claimant and the representative who is assuming representation must each sign and date the notice of representation or change of representation before the relationship shall become effective.

If the lien claimant or the representative is a partnership, corporation, or other organization, the notice of representation or change of representation may be signed by a corporate officer, partner, or fiduciary under a statement certifying that the person signing has the authority to sign.

(5) If no fully executed notice of representation or change of representation has been filed at or before the time of any hearing:

(A) the lien claimant shall be deemed not to be represented even if a representative who purportedly has assumed representation appears; and

(B) if the lien claimant does not otherwise appear at the hearing, it shall be subject to all of the consequences of a failure to appear.

(6) A notice of representation or change of representation shall not be filed for the sole purpose of allowing a third party agent, such as a copy service, to sign and issue a subpoena or subpoena duces tecum under Labor Code section 130, Labor Code section 5710, or Rule 10530 et seq.

(7) The notice of representation or change of representation shall contain each of the following, verified under penalty of perjury:

(A) a declaration executed by both the lien claimant and by the representative assuming representation stating: “I declare that the named initial or new representative has consented to represent the interests of the named lien claimant and that the named lien claimant has consented to this representation.”;

(B) a declaration executed by both the lien claimant and by the representative assuming representation stating one of the following, as appropriate:

(i) “This representation began on _____, _____, 20____. I am not aware of any other attorney or non-attorney who was previously representing the lien claimant.”; or

(ii) “This representation began on: _____, _____, 20____. I _____ am _____ aware _____ that

_____ [specify person or entity] was previously representing the lien claimant. This Notice of Change of Representation supersedes a previous Notice of Representation dated _____, 20____. I hereby certify that I have notified the previous attorney or non-attorney representative in writing of the change of representation.

(C) a declaration executed by the representative stating: “By signing below, I affirm that I am not disqualified from appearing under Labor Code section 4907, WCAB Rule 10779 (Cal. Code Regs., tit. 8, § 10779) or by any other Rule, order, or decision of the Workers’ Compensation Appeals Board, the State Bar of California, or court.”

(f) Notice of Non-Representation:

(1) If a lien claimant’s representation by an attorney or non-attorney representative terminates for any reason (including but not limited to the attorney or non-attorney’s discharge or death, or the suspension or removal of the attorney’s or non-attorney’s right to appear) and the lien

claimant does not concurrently execute a notice of change of representation, the lien claimant shall be deemed self-represented and shall file and serve a “Notice of Non-Representation.”

(2) The notice of non-representation shall comply with the provisions of subsections (a) through (d), above.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4903(a), 4903.6(b), 4906, 4907, 5501, and 5700; Sections 284, 285, and 286, Code of Civil Procedure; Sections 10774 and 10779, title 8, California Code of Regulations.

Article 17. Reconsideration, Removal, and Disqualification

§ 10845. General Requirements for Petitions for Reconsideration, Removal, and Disqualification, and for Answers and Other Documents.

(a) Except as otherwise provided by sections 10840 or 10865, all documents filed in connection with any petition for reconsideration, petition for removal, petition for disqualification or any other matter pending before the Appeals Board shall comply with the requirements of sections 10205.10, 10205.12, 10227, 10228, 10230, 10232, 10235, and 10236, including but not limited to the 25-page limitation of section ~~10232(a)(10)~~ 10205.12(a)(10), except that any supplemental petition or answer allowed by the Appeals Board under section 10848 shall not exceed ten pages. Any verification, proof of service, exhibit, or document cover sheet filed with the petition or answer shall not be counted in determining the page limitation.

(b) Upon its own motion, or upon a clear and convincing showing of good cause, the Appeals Board may allow the filing of a petition, answer, or supplemental petition or answer that does not comply with the provisions of subdivision (a), including but not limited to the page limitations. A request to exceed the page limitations shall be made by a separate petition, made under penalty of perjury, that specifically sets forth the facts or other reasons why the request should be granted.

(c) A document that has been sent directly to the Appeals Board by fax or e-mail will not be accepted for filing, unless otherwise ordered by the Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 5310, 5311, 5900 and 5905, Labor Code.

Article 18. Settlements

§ 10886. Service on Lien Claimants.

Where a lien claim is on file with the Workers’ Compensation Appeals Board ~~or where a party has been served with a lien~~, and a compromise and release agreement or

stipulations with request for award or order is filed, a copy of the compromise and release agreement or stipulations shall be served on the lien claimant.

No lien claim shall be disallowed or reduced unless the lien claimant has been given notice and an opportunity to be heard.

Authority: Sections 133 and 5307, Labor Code.

Reference: Sections 4903, 4903.05, 4903.1, 4903.4, 4904, 4904.1, 4905 and 4906, Labor Code.

Article 20. Review of Administrative Orders

§ 10957. Petition Appealing Independent Bill Review Determination of the Administrative Director.

(a) An aggrieved party may file a petition appealing an independent bill review (IBR) determination of the Administrative Director (AD). For purposes of this section, a “determination” includes a decision regarding the amount payable to the provider, if any, and a decision that a dispute is not subject to independent bill review.

(b) The petition shall be filed with the Workers’ Compensation Appeals Board no later 20 days after ~~the AD served~~ the IBR serves the determination, ~~except the time for filing shall be extended in accordance with sections 10507 and 10508.~~ An untimely petition may be summarily dismissed.

~~(c) The petition shall be filed as follows:~~

~~(1) if a case opening document was previously filed, the petition, unless e-filed, shall be filed only with the district office having venue;~~

~~(2) if no case opening document was previously filed: (A) an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and (B) unless e-filed, the petition and application shall be filed only with the district office where venue is being asserted;~~

~~(c)(d)~~ The caption of the petition shall ~~be identified~~ identify it as a “Petition Appealing Administrative Director’s Independent Bill Review Determination.”

~~(d)(e)~~ The caption of the petition shall include: (1) the injured employee’s first and last names; (2) the name(s) of the defendant(s) involved in the IBR dispute; (3) the case number assigned by the AD to the IBR determination; and (4) the adjudication case number, if any, assigned by the Workers’ Compensation Appeals Board to any related application for adjudication of claim(s) previously filed.

~~(f) A document cover sheet and a document separator sheet shall be filed with the petition and “Appeal of Determination of AD-IBR” shall be entered into the document title field of the document separator sheet.~~

~~(e)(g)~~ The petition shall include a copy of the IBR determination and proof of service to that determination.

~~(f)(h)~~ The petition shall comply with each of the following provisions:

(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4603.6(f).

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IBR determination to be unjust or unlawful, and every issue to be considered by the Workers’ Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the IBR determination other than those set forth in the petition appealing.

~~(3) The petition shall be verified upon oath in the manner required for verified pleadings in courts of record.~~

~~(3)~~ (4) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25-page restriction.

~~(4)~~ (5) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.

~~(g)(i)~~ A copy of the petition shall be concurrently served on: (1) the adverse party(ies) or provider(s) or, if represented, their attorney or non-attorney representatives; (2) the injured employee or, if represented, the employee’s attorney; and (3) the Division of Workers’ Compensation, Independent Bill Review Unit (IBR Unit). ~~A failure to file a proof of service concurrently with the petition shall constitute valid ground for summarily dismissing it.~~

~~(j) The adverse party(ies) or provider(s) and the AD may file an answer to the petition within 10 days of its date of service. A document cover sheet and a document separator sheet shall be filed with the answer and “IBR Answer to Appeal” shall be entered into the document title field of the document separator sheet.~~

~~(h)(k)~~ Upon receiving notice of the petition, the IBR Unit may download the record of the independent bill review organization into EAMS, in whole or in part. The Workers’ Compensation Appeals Board, in its discretion, may: (1) admit all or any part of the

downloaded IBR record into evidence; and/or (2) permit the parties to offer in evidence documents that are duplicates of ones already existing in the downloaded IBR record.

~~(i)(4)~~ The petition shall not be placed on calendar unless a declaration of readiness is filed. The declaration of readiness may be either concurrently filed with the petition or subsequently filed. Any declaration of readiness shall be concurrently served on the adverse party(ies) or provider(s) and on the IBR Unit.

~~(j)(3)~~ The petition shall be adjudicated by a workers' compensation judge at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference, except that the IBR determination shall be presumed correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the Labor Code section 4603.6(f) statutory grounds for appeal.

~~(k)(2)~~ Any party aggrieved by a final decision, order, or award of the workers' compensation judge may file a petition for reconsideration with the Appeals Board within the same time and in the same manner specified for petitions for reconsideration. The workers' compensation judge shall prepare a report on the petition for reconsideration in accordance with section 10860, unless the judge acts on a timely filed petition for reconsideration in accordance with section 10859.

~~(l)(1)~~ If the IBR determination is reversed by the workers' compensation judge or the Appeals Board, the dispute shall be remanded to the AD in accordance with Labor Code section 4603.6(g).

~~(m)(1)~~ If a final decision of the Workers' Compensation Appeals Board results in the defendant being liable for any payment to the provider, the amount for which the defendant is liable shall be paid to the provider forthwith. If the defendant fails to pay forthwith, the provider need not file a lien claim and may file a petition to enforce under section 10451.4. ~~10451.1, which may include a request for penalties and interest in accordance with the law. For purposes of penalties and interest, a final decision of the Board that affirms a determination of the AD requiring payment shall be deemed an "award."~~

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4603.6, 5500, 5501, 5502, 5700 et seq., 5800 et seq., 5900 et seq., Labor Code; Sections 10250, 10409, 10507, 10508, 10842, 10845, 10846, 10852, 10856, 10859, 10860, California Code of Regulations, title 8.

§ 10957.1. Petition Appealing Independent Medical Review Determination of the Administrative Director.

(a) This section shall apply only to petitions appealing an independent medical review (IMR) determination of the Administrative Director (AD) regarding treatment for: (1) an injury occurring on or after January 1, 2013; and (2) an injury occurring on or before

December 31, 2012, if the decision is communicated to the requesting physician on or after July 1, 2013. This section shall not apply where the injured employee asserts that a defendant's utilization review is untimely or otherwise invalid unless, as an alternative challenge, the employee is also appealing the IMR determination.

(b) An aggrieved party may file a petition appealing the AD's independent medical review (IMR) determination. For purposes of this section, a "determination" includes a decision regarding medical necessity and a decision that a dispute is not subject to independent medical review.

(c) The petition shall be filed with the Workers' Compensation Appeals Board no later than 20 days after the AD served the IMR determination, ~~except the time for filing shall be extended in accordance with sections 10507 and 10508.~~ An untimely petition may be summarily dismissed.

~~(d) The petition shall be filed as follows:~~

~~(1) if a case opening document was previously filed, the petition, unless e-filed, shall be filed only with the district office having venue;~~

~~(2) if no case opening document was previously filed: (A) an application shall be filed together with the petition, and venue shall be designated and determined in accordance with Labor Code section 5501.5 and section 10409; and (B) unless e-filed, the petition and application shall be filed only with the district office where venue is being asserted.~~

~~(d)(e)~~ The caption of the petition shall ~~be identified~~ identify it as a "Petition Appealing Administrative Director's Independent Medical Review Determination."

~~(e)(f)~~ The caption of the petition shall include: (1) the injured employee's first and last names; (2) the name(s) of the defendant(s) involved in the IMR dispute; (3) the case number assigned by the AD to the IMR determination; and (4) the adjudication case number, if any, assigned by the Workers' Compensation Appeals Board to any related application for adjudication of claim(s) previously filed.

~~(g) A document cover sheet and a document separator sheet shall be filed with the petition and "Appeal of Determination of AD-IMR" shall be entered into the document title field of the document separator sheet.~~

~~(f)(h)~~ The petition shall include a copy of the IMR determination and proof of service to that determination.

~~(g)(i)~~ The petition shall comply with each of the following provisions:

(1) The petition shall be limited to raising one or more of the five grounds specified in Labor Code section 4610.6(h).

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the IMR determination to be unjust or unlawful, and every issue to be considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the IMR determination other than those set forth in the petition.

~~(3) The petition shall be verified upon oath in the manner required for verified pleadings in courts of record.~~

(3) (4) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25-page restriction.

(4) (5) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.

~~(h) (j) A copy of the petition shall be concurrently served on: (1) the adverse party(ies) or provider(s) or, if represented, their attorney or non-attorney representatives; (2) the injured employee or, if represented, the employee's attorney; and (3) the Division of Workers' Compensation, Independent Medical Review Unit (IMR Unit). A failure to file a proof of service concurrently with the petition shall constitute valid ground for summarily dismissing it.~~

~~(k) The adverse party(ies) or provider(s) and the AD may file an answer to the petition within 10 days of the date of its service. A document cover sheet and a document separator sheet shall be filed with the answer and "IMR Answer to Appeal" shall be entered into the document title field of the document separator sheet.~~

(i) (4) Upon receiving notice of the petition, the IMR Unit may download the record of the independent bill review organization into EAMS, in whole or in part. The Workers' Compensation Appeals Board, in its discretion, may: (1) admit all or any part of the downloaded IMR record into evidence; and/or (2) permit the parties to offer in evidence documents that are duplicates of ones already existing in the downloaded IMR record.

(j) (m) (1) The petition shall not be placed on calendar unless a declaration of readiness is filed. The declaration of readiness may be either concurrently filed with the petition or subsequently filed. Any declaration of readiness shall be concurrently served on the adverse party(ies) or provider(s) and on the IMR Unit.

(2) Notwithstanding the filing of a declaration of readiness, a petition appealing an IMR determination shall be deferred if at the time of the determination the defendant is also disputing liability for the treatment for any reason besides medical necessity.

~~(k)(m)~~ The petition shall be adjudicated by a workers' compensation judge at the trial level of the Workers' Compensation Appeals Board utilizing the same procedures applicable to claims for ordinary benefits, including but not limited to the setting of a mandatory settlement conference unless an expedited hearing is being conducted in accordance with Labor Code section 5502(b). However, the IMR determination shall be presumed correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the Labor Code section 4610.6(h) statutory grounds for appeal.

~~(l)(e)~~ Any party aggrieved by a final decision, order, or award of the workers' compensation judge may file a petition for reconsideration with the Appeals Board within the same time and in the same manner specified for petitions for reconsideration. The workers' compensation judge shall prepare a report on the petition for reconsideration in accordance with section 10860, unless the judge acts on a timely filed petition for reconsideration in accordance with section 10859.

~~(m)(e)~~ If the IMR determination is reversed by the workers' compensation judge or the Appeals Board, the dispute shall be remanded to the AD in accordance with Labor Code section ~~4603.6(g)~~ 4610.6(i).

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4610.6, 5500, 5501, 5502, 5700 et seq., 5800 et seq., 5900 et seq., Labor Code; Sections 10250, 10409, 10507, 10508, 10842, 10845, 10846, 10852, 10856, 10859, 10860, California Code of Regulations, title 8.

§ 10959. Petition Appealing Medical Provider Network Determination of the Administrative Director.

(a) Any aggrieved person or entity may file a petition appealing a determination of the Administrative Director (AD) to: (1) deny a medical provider network (MPN) application; (2) revoke or suspend an MPN plan; (3) place an MPN plan on probation; (4) deny a petition to revoke or suspend an MPN plan; or (5) impose administrative penalties against an MPN or against an insurer, employer, or other entity providing MPN services.

For purposes of this section, an "aggrieved person or entity" shall include, but is not necessarily limited to, an MPN, an MPN applicant, an insurer, an employer, or any other entity that provides or seeks to provide MPN services. It shall also include, but is not necessarily limited to, an injured employee or a group of injured employees ~~complaining~~ alleging that the AD failed to act in accordance with the MPN regulations regarding third party petitions for suspension or revocation and should have suspended or revoked a previously approved MPN plan.

(b) The petition shall be filed only as follows:

(1) The petition shall be filed no later than 20 days after the date of service of the AD's determination, ~~except the time for filing shall be~~

~~extended in accordance with sections 10507 and 10508.~~ An untimely petition may be summarily dismissed.

(2) Notwithstanding any other provision of these rules or of AD Rules 9767.8(i), 9767.13(f), and 9767.14(f), the petition shall be filed solely in paper (hard copy) form directly with the Office of the Commissioners of the Appeals Board at either its P.O. Box or street address. Up-to-date P.O. Box and street address information may be obtained at the website of the Department of Industrial Relations, Workers' Compensation Appeals Board (currently, at <http://www.dir.ca.gov/wcab/WCAB.PetitionforReconsideration.htm>) or by telephoning the Office of the Commissioners (currently, (415) 703-4550).

(3) The petition shall not be submitted to any district office of the Workers' Compensation Appeals Board, including the San Francisco district office, and it shall not be submitted electronically.

(4) A petition submitted in violation of this subdivision shall neither be accepted for filing nor deemed filed and shall not be acknowledged or returned to the submitting party.

(c) The ~~caption of the~~ petition shall ~~be identified~~ identify it as a "Petition Appealing Administrative Director's Medical Provider Network Determination."

(d) The caption of the petition shall include: (1) the name of the MPN or MPN applicant; (2) the identity of the petitioner; and (3) the case number assigned by the AD to the MPN determination.

(e) The petition shall include a copy of the AD's determination and proof of service to that determination.

(f) The petition shall comply with each of the following provisions:

(1) The petition may appeal the AD's determination upon one or more of the following grounds and no other: (A) the determination was without or in excess of the AD's powers; (B) the determination was procured by fraud; (C) the evidence does not justify the determination; (D) the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and presented to the AD prior to the determination; and/or (E) the AD's findings of fact do not support the determination.

(2) The petition shall set forth specifically and in full detail the factual and/or legal grounds upon which the petitioner considers the determination of the AD to be unjust or unlawful, and every issue to be

considered by the Workers' Compensation Appeals Board. The petitioner shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the AD's determination other than those set forth in the petition appealing.

~~(3) The petition shall be verified upon oath in the manner required for verified pleadings in courts of record.~~

(3) (4) The petition shall comply with the requirements of sections 10842(a) & (c), 10846, and 10852. It shall also comply with the provisions of section 10845, including but not limited to the 25-page restriction.

(4) (5) Any failure to comply with the provisions of this subdivision shall constitute valid ground for summarily dismissing or denying the petition.

(g) A copy of the petition shall be concurrently served on the Division of Workers' Compensation, Medical Provider Network Unit (MPN Unit). ~~A failure to file a proof of service concurrently with the petition shall subject the petition to summary dismissal.~~

~~(h) The AD may file an answer to the petition within 10 days of the date of service of that petition, except the time for filing shall be extended in accordance with sections 10507 and 10508.~~

(h)(i) The petition shall be assigned to a panel of the Appeals Board in accordance with Labor Code section 115.

(i)(i) Within 30 days after the filing of an answer or the lapse of the time allowed for filing one, the Appeals Board shall issue a notice for an evidentiary hearing regarding the petition. The evidentiary hearing shall be set for the purposes of specifying the issue(s) in dispute and any stipulations, taking testimony, and listing and identifying any documentary evidence offered. The proceedings shall be transcribed by a court reporter, which the Appeals Board in its discretion may order the petitioner to provide. The Appeals Board also may order the petitioner to pay the costs of the transcript(s) of the evidentiary hearing.

(j)(i) In its discretion, the Appeals Board may provide that the evidentiary hearing shall be conducted by:

(1) one or more Commissioners of the Appeals Board; or

(2) a workers' compensation judge appointed under Labor Code sections 5309(b) for the sole purpose of holding hearings and ascertaining facts necessary to enable the Appeals Board to render a decision on the petition; a judge appointed for this purpose shall not render any factual

determinations, but may make a recommendation regarding the credibility of any witness(es) presented.

The time, date, length, and place of the evidentiary hearing shall be determined by the Appeals Board in its discretion.

~~(k)(4)~~ The assigned panel of the Appeals Board shall determine when the petition is submitted for decision. Within 60 days after submission, the panel shall render a decision on the petition appealing unless, within that time, the panel orders that the time be extended so that it may further study the facts and relevant law.

~~(l)(3)~~ Special Procedures if Timely Request Made to Administrative Director to Re-Evaluate Initial MPN Determination:

Nothing in this section shall preclude a person or entity aggrieved by an MPN determination of the AD from making a timely request to the AD to re-evaluate that initial determination in accordance with sections 9767.8(f), 9767.13(c), and 9767.14(c) or any similar current or future regulation or statute.

(1) If a request for re-evaluation is made to the AD prior to filing a petition with the Office of the Commissioners of the Appeals Board, the time for filing such a petition shall be tolled until the AD files and serves a decision and order regarding the request for re-evaluation.

(2) If a request for re-evaluation is made to the AD after a petition appealing the AD's initial determination is filed with the Office of the Commissioners of the Appeals Board, the petitioner shall file a copy of the re-evaluation request with the Office of the Commissioners in accordance with subdivisions (b)(2) and (b)(3), together with a cover letter requesting that its petition be dismissed without prejudice. A copy of the cover letter and request for re-evaluation shall be concurrently served on the Division of Workers' Compensation MPN Unit.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.

Reference: Sections 4616 et seq., 5300(f), 5900 et seq., Labor Code.