

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1(g)(4)	<p>The commenter states that this section mentions nothing about unreasonable denials that are nonetheless timely. Does this mean that timeliness is the only claims function that can incur penalties in the UR setting? Should the commenter assume that there is no recourse for the injured worker when there is a UR practice that essentially games the system by using employer bottom line focused documents and meta analysis from only one source that are consistently over applied, requiring the treating physician to write innumerable letters, and ultimately obligates the MD to convince a brain injured unrepresented worker to get their full time employed family members to file for an expedited hearing on medical treatment. The commenter states where he stands with a UR denial for cognitive rehabilitation in an individual whose disability under the old system would have been > 60%, and who still rates at 29% whole person impairment. The design of such a UR system is to bury the MD in paperwork so that in frustration ceases to advocate for his patient. .</p>	<p>Harvey Edmonds, MD May 9, 2006 Email</p>	<p>We agree to use the words of that statute: “an unreasonable delay or refusal” so that the subdivision is clear.</p>	<p>Former subdivision (g), now (i), will be revised to replace the words “a failure” and “timely” with the words “an unreasonable delay or refusal.”</p>

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<p>§ 10225.1 (a) and (b)</p>	<p>Commenter is concern that the Division may not have the legal authority to investigate.</p> <p>The issue of a delay or a denial being unreasonable under 5814 is an issue of fact. As such, only a trier of fact can make the determination that a delay or a denial was unreasonable. The regs</p>	<p>Dennis Knotts IEA Instructor</p> <p>May 12, 2006 Email</p>	<p>We disagree that the division does not have authority to investigate. Labor Code section 5814.6 authorizes the imposition of penalties when an employer or insurer knowingly violates section 5814 with a frequency that indicates a general business practice. Although the division will be able to determine if penalty awards were issued, there may be additional investigation that is required in order to meet the requirements of the statute. Labor Code section 133 provides the power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon the division under the code.</p> <p>Agree to clarify how the audit unit will receive copies of WCAB decisions, findings and awards and that the audit unit must receive one or more final</p>	<p>None.</p> <p>The following language will be added: <u>(b) The Division of Workers'</u></p>

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	<p>attempt to assume legal authority it does have and to use a single [or more] determination(s) by the WCAB that a delay or denial was unreasonable to open up the door to audit all files in a claims operation. Technically, the only files that would be able to audit would be those files where a declared delay or denial was found unreasonable by a WCJ.</p> <p>The commenter added that its going to run into another problem on this in that there is no vehicle for a WCJ to issue a determination that a delay or denial was unreasonable unless one of the parties raises it.</p> <p>Commenter raised issue that unless a WCJ issues a decision, and that decision is considered final, the Division would not- under the regulation have any legal authority or jurisdiction to conduct an audit or investigation into the claim operation except for a very limited audited of that single file where the final decision was issued by the WCAB.</p>		<p>penalty awards before it proceeds with an investigation.</p> <p>This is beyond the scope of these regulations, which only concern the penalties when 5814 penalty awards have issued.</p> <p>We agree to clarify that an investigation is trigger by more than one penalty award.</p>	<p><u>Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.</u></p> <p><u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings, and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit Unit may proceed with an investigation.</u></p>

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§10225	<p>As is more specifically delineated below commenter primary objections to the regulations are threefold:</p> <ol style="list-style-type: none"> 1. Imposing a penalty [under proposed Rule 10225.1(d)] in part based upon conduct which occurred prior to June 1, 2004 (the effective date of the statute) and under a now repealed statute violates California law. 2. Imposing a penalty [under proposed Rules 10225.1(g)(3), 10225.1(g)(4) 10225.1(g) (5) for failure to give written notices contravenes both Labor Code Section 5814 and 5814.6 which are limited to delays in payment of compensation ... not late benefit notices. Alternative language is proposed below highlighted in yellow for those sections. 	<p>David Mitchell Republic Indemnity</p> <p>June 2, 2006 Email</p>	<p>Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p> <p>We agree that the penalty should be based on the unreasonable delay or refusal to provide the “benefit,” not the “notice.”</p>	<p>None.</p> <p>The subdivision will be changed to state: <u>(6)-(5) \$ 2,500 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal a failure to provide the Notice or to provide the supplemental job displacement benefit</u></p>

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	<p>3. The definitions of “prospective”, “concurrent” and “retrospective” under proposed rules 10225(h), (v) and (x) are at odds with the definitions of the same concepts under existing Rules 9792.6(d), (n) and (p), and inconsistent with Rule 9792.6(o) (Request for Authorization) such that the regulation is unclear.</p> <p>4. Without a showing of managerial awareness, the imposition of an administrative penalty of \$400,000 for “knowingly” violating Labor Code Section 5814, upon a mere showing knowledge by any employee, violates the statutory scheme of progressive penalties for</p>		<p>We disagree. The terms are different than those defined in the utilization review regulations and used in a different context.</p> <p>We disagree. The regulation requires more than one order or award issued by a workers’ compensation judge due to a violation of section 5814. The award is served on all parties. Therefore, the claims administrator is on notice. The corporation has knowledge if</p>	<p><u>voucher, as required by section 10133.51(b) and section 10133.56(c), respectively, of Title 8 of the California Code of Regulations, in a timely manner to an eligible employee.</u></p> <p>None.</p> <p>None.</p>

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	<p>progressively egregious conduct and thus cannot be approved by OAL. Alternative language is proposed below highlighted in yellow for that section.</p> <p>5. Because Labor Code Section 5814 was enacted and became operative at the same time as Labor Code Section 5814.6 was enacted, the authority to review files for administrative penalty is limited to those in which a violation of new Labor Code Section 5814 has occurred for conduct on/after June 1, 2004. We note this below highlighted in yellow comment where appropriate in the attached draft</p>		<p>the award is in the claims administrators records. As long as employee acting within scope of employment, the claims administrator has imputed knowledge. Additionally, in order to reach the \$400,000 penalty, the claims administrator will have to have been found to have knowingly violated section 5814 with a frequency that indicates a general business practice on multiple occasions.</p> <p>Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p>	<p>Subdivision (a) will be amended o clarify that the penalty awards must have been issued on or after June 1, 2004.</p>

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	<p>regulations keyed to the relevant sections.</p> <p>Civil law references “authorized or ratified” and requires conduct of an “officer, director or managing agent” and that the person be in a position to make decisions that create corporate policy, as a prerequisite to imposition punitive damages. But instead, a mistake by two clerks is enough under proposed Regulation 10225(g) for imposition of the \$400,000 administrative penalty. Without a showing of managerial awareness, the imposition of an administrative penalty of \$400,000 for “knowingly” violating Labor Code Section 5814, upon a mere showing of knowledge by any employee at any level, violates the statutory scheme of progressive penalties for progressively egregious conduct, is overreaching beyond the express or implied legislative grant of authority, inconsistent with other statutes, and thus cannot be approved by OAL.</p>		<p>These are administrative penalties, not punitive damages. The language suggested by commenter comes from jury instructions regarding proving malice, oppression or fraud by a corporation. Our language comes from CACI 3701 for vicarious liability.</p>	<p>None.</p>

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<p>§ 10225 (c)</p> <p>§ 10225 (d)</p>	<p>Proposed Alternative Language: (c) Claim – means a request for compensation, or record of an occurrence in which compensation reasonably would be expected to be payable for an injury arising out of and in the course of employment, and in which the WCAB has awarded a 5814 penalty for conduct occurring on/after June 1, 2004.</p> <p>Proposed Alternative Language: (d) Claim File - means a record in paper or electronic form, or any combination, containing all of the information specified in Section 10101.1 of these regulations and all documents or entries related to the provision, payment, delay, or denial of benefits or compensation under Divisions 1, 4 or 4.5 of the Labor Code and in which the WCAB has awarded a 5814 penalty for conduct occurring on/after June 1, 2004.</p> <p>Proposed Alternative</p>		<p>Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p> <p>Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p>	<p>Subdivision (a) will be amended o clarify that the penalty awards must have been issued on or after June 1, 2004.</p> <p>Subdivision (a) will be amended o clarify that the penalty awards must have been issued on or after June 1, 2004.</p>

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§ 10225 (l)	<p>Language: “General business practice” means a pattern of violations of Labor Code section 5814 on or after June 1, 2004, at a single adjusting location that can be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of more than one claim. The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier compensation order in more than one claim. The conduct may include a single practice and/or separate, discrete acts or omissions in the handling of more than one claim, <u>for which the WCAB has awarded a 5814 penalty for conduct occurring on/after June 1, 2004.</u></p>		Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.	Subdivision (a) will be amended o clarify that the penalty awards must have been issued on or after June 1, 2004.
§ 10225 (m)	<p>Proposed Alternative Language: “Indemnity” means payments made directly to an eligible person on/after June 1, 2004 as a result of a work injury and as required under Division 4 of the Labor Code, including but</p>		Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers'</i>	Subdivision (a) will be amended o clarify that the penalty awards must have

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§ 10225 (o)	<p>not limited to temporary disability indemnity, salary continuation in lieu of temporary disability indemnity, permanent disability indemnity, vocational rehabilitation temporary disability indemnity, vocational rehabilitation maintenance allowance, life pension and death benefits, <u>and for which the WCAB has awarded a 5814 penalty for conduct occurring on/after June 1, 2004.</u></p> <p>Proposed Alternative Language: "Investigation" means the process used by the Administrative Director, or his or her designee, pursuant to Section 10225.1 and/or Government Code sections 11180 through 11191, to determine whether a violation of Labor Code section 5814.6 has occurred, including but not limited to reviewing, evaluating, copying and preserving electronic and paper records, files, accounts and other things, and interviewing potential witnesses. <u>regarding conduct on/after June 1, 2004 and for which the WCAB has awarded a 5814 penalty for conduct occurring on/after June</u></p>		<p><i>Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p> <p>Disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p>	<p>been issued on or after June 1, 2004.</p> <p>Subdivision (a) will be amended to clarify that the penalty awards must have been issued on or after June 1, 2004.</p>

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§ 10225 (q)	<p><u>1, 2004</u></p> <p>Proposed Alternative Language: “Knowingly” means a managing agent acting with knowledge of the facts of the conduct at issue and of the award under Labor Code Section 5814. For the purposes of this article, a corporation has knowledge of the facts a managing agent employee receives while acting within the scope of his or her authority. A corporation has knowledge of information known by its managing agents and contained in its records and of the actions of its managing agents performed in the scope and course of employment. An employer or insurer has knowledge of information contained in the records of its third-party administrator and of the actions of the employees of the third-party administrator performed in the scope and course of employment if those actions are known to the corporation’s managing agent. A person is a “managing agent” if he or she</p>		<p>We disagree. The regulation requires more than one order or award issued by a workers’ compensation judge due to a violation of section 5814. The award is served on all parties. Therefore, the claims administrator is on notice. A corporation has knowledge of the award if it is in the claims administrator’s records. As long as employee acting within scope of employment, the claims administrator has imputed knowledge. Additionally, in order to reach the \$400,000 penalty, the claims administrator will have to have been found to have knowingly violated section 5814 with a frequency that indicates a general business practice on multiple occasions.</p>	None.

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§ 10225.1 (a)	<p>exercises substantial independent authority and judgment in his or her corporate decision making so that his or her decisions ultimately determine corporate policy.</p> <p>Proposed alternative Language: (a) Administrative penalties shall only be imposed under this section based awards of penalties under Labor Code section 5814, for conduct on/after June 1, 2004, after more than one penalty awards have been issued by a workers' compensation administrative law judge for unreasonable delay or refusal to pay compensation, and where such penalties have been awarded <u>with such frequency as to indicate general business practice, but not including an order approving a compromise and release</u></p>		We disagree. This proposed language does not clarify this subdivision.	None.
§ 10225.1 (b)	<p>Proposed Alternative Language: To determine whether a violation described in</p>		We agree to clarify that an investigation will not be	Subdivisions (b) and (c) will be added:

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	<p>Labor Code section 5814.6 has occurred, and notwithstanding Labor Code section 129 (a) through (d) and section 129.5 subdivisions (a) through (c) and sections 10106, 10106.1, 10107 and 10107.1 of these regulations, the Administrative Director, or his or her designee, may conduct an investigation, which may include but is not limited to an audit of claims and/or utilization review files. The investigation may be independent of, or may be conducted concurrently with, an audit conducted pursuant to Labor Code section 129 and 129.5. <u>The investigation shall include only those claims and claims files in which the WCAB has awarded a 5814 penalty for conduct occurring on/after June 1, 2004</u></p>		<p>triggered unless there has been more than one penalty award.</p> <p>We disagree with the underlined section. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460. Also, conduct occurring prior to June 1, 2004 may be important regarding the claims administrator's knowledge of the conduct.</p>	<p><u>(b) The Division of Workers' Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.</u></p> <p><u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings, and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit Unit may proceed with an investigation.</u></p>

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§ 10225.1 (d)	Proposed Alternative Language: No administrative penalty assessed pursuant to this section shall be based in any way on conduct occurring before June 1, 2004.		We disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.	None.
§ 10225.1 (g)(2)	Proposed Alternative Language: \$30,000 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for failure to comply with an existing compensation order on/after June 1, 2004.		We disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.	The subdivision will be changed to track the language of 5814 as follows: <u>(2) \$ 30,000 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal failure to comply with an existing compensation order</u>
§ 10225.1 (g)(3)	Proposed Alternative Language: For each penalty award by a workers' compensation administrative law		Disagree. The recommendation is to remove the language that states "or	The subdivision will be changed to track the language of 5814

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10225.1 (g)(4)	<p>judge for a violation of Labor Code section 5814 for a failure to make a timely payment of temporary disability benefits or salary continuation payments in lieu of temporary disability; vocational rehabilitation maintenance allowance, life pension, or death benefits:</p> <p>Proposed Alternative Language: For each penalty award by a workers' compensation administrative law</p>		<p>failure to make a proper objection to the TD benefit.” If the objection was not proper, claims administrator should have paid benefit. However, the subdivision will be revised to track the language in 5814.</p> <p>We agree to re-word this subdivision to clarify it.</p>	<p>as follows: (3) For each penalty award by a workers' <u>compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal a failure to make a timely payment or proper objection to temporary disability benefits or salary continuation payments in lieu of temporary disability; vocational rehabilitation maintenance allowance, life pension, or death benefits:</u></p> <p>This subdivision will be broken down into two parts for clarity and the language will</p>

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	<p>judge for a violation of Labor Code section 5814 for a failure to timely provide medical treatment or failure to timely reimburse an employee for self-procured medical treatment costs:</p>			<p>track 5814 as follows: <u>(4) For each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal a failure to timely provide or deny authorization for medical treatment or a failure to timely reimburse an employee for self-procured medical treatment costs: ...</u> <u>(5) For each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal to reimburse an employee for self-procured medical</u></p>

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§ 10225.1 (g)(5)	<p>Proposed Alternative Language:</p> <p>\$ 2,500 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for a failure to provide the supplemental job displacement benefit voucher, as required by section 10133.51(b) and section 10133.56(c), respectively, of Title 8 of the California Code of Regulations, in a timely manner to an eligible employee.</p>		<p>Agree with the concept that "notices" should not be included, but we will refer to the "benefit" instead of voucher.</p>	<p><u>treatment costs:</u></p> <p>The subdivision will be revised to state: (6)-(5) <u>\$ 2,500 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal a failure to provide the Notice or to provide the supplemental job displacement benefit voucher, as required by section 10133.51(b) and section 10133.56(c), respectively, of Title 8 of the California Code of Regulations; in a timely manner to an eligible employee.</u></p>
§ 10225	The commenter believes that the	Sherry Smith	Agree that administrative	The June 1, 2004

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	<p>regulations should be retroactive, allowing injured workers to file complaints against insurance companies for bad faith practices that occurred on or after SB 899 and SB 228 were enacted.</p> <p>Commenter believes that the new regulations proposed under LC 5814.6 (Title 8 CCR 10225 et seq) should allow an injured worker and/or her attorney to testify in proceedings against employers and insurers and receive copies of decisions in these cases.</p>	June 15, 2006 Email	<p>penalties may be imposed after more than one penalty awards have been issued by a workers' compensation law judge on or after June 1, 2004 – the effective date of SB 899.</p> <p>Section 10225.2(e)(4) provides when witnesses need to disclosed and section 10225.2(p)(1) provides that the parties have a right to call witnesses.</p>	<p>date will be inserted inn 10225.1(a).</p> <p>None.</p>
§10225	<p>Recommended modifications are indicated by <u>underline</u> and striketrough.</p> <p>Recommendation: Division of Workers' Compensation Audit Authority. The Institute recommends that all auditing performed by the Division of Workers' Compensation (DWC) remain within the confines of the statutory scheme created in Labor Code Sections 129 and 129.5 (AB 749).</p> <p>The proposed Section 5814.6</p>	<p>Michael McClain, General Counsel and Vice President</p> <p>California Workers' Compensation Institute</p> <p>June 29, 2006 Via Email and Hand Delivery</p>	<p>We disagree. Labor Code 5814.6 is not comparable to audits conducted under Labor Code section 129. Section 129 audits are checking for ordinary claims handling practices. Labor Code section 5814.5 is authorizes assessing penalties when an employer or</p>	None.

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	<p>Administrative Penalty regulations require independent auditing with separate standards, rules, processes, and penalties. Whether the section 5814.6 penalty review is to be done by the Audit Unit, an Independent Investigation Unit, or the administrative director's designee, the proposed regulations establish separate and distinct units within the Division to conduct independent audits. That structure is directly contrary to the statutory scheme adopted by the Legislature in AB 749 and implemented in 2003. The social policy decision regarding the Division's audit authority has been made and the proposed expansion of the audit function is not required or authorized by SB 899. Failing to follow the audit scheme contained in Labor Code section 129 will produce redundant audits, chaotic administration, and wasted resources, as it has in the past.</p> <p>The Institute's members agree that an efficient auditing apparatus is essential to the effective operation of the workers' compensation system.</p>		insurer knowingly violates section 5814 with a frequency that indicates a general business practice.	

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	<p>Institute supports the creation of a strong audit program because it requires a specific performance standard for all claims administrators in the system. Whether the Division’s audit function is centralized in the Audit Unit or independent based on clear statutory authority, the essential features of a performance review must reflect the findings of the Commission and the legislative philosophy of Labor Code .</p> <p>With regard to section 5814.6 penalty, the Division is limited to the review of section 5814 penalties awarded by a WCALJ. Any enforcement effort must focus on these awards. Auditors can determine conduct equivalent to “a general business practice” or a company policy of unreasonable denial or delay in the payment of benefits from a straightforward comparison between penalty awards and the number of files being managed. This can be done most efficiently during the PAR audit.</p>		<p>Agree to clarify how the audit unit will receive copies of WCAB decisions, findings and awards and that the audit unit must receive one or more final penalty awards before it proceeds with an investigation. A PAR audit is not necessary to determine how many 5814 penalty awards have issued against a claims administrator.</p>	<p>The regulations will be revised to include: <u>(b) The Division of Workers’ Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.</u> <u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall</u></p>

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	<p>Review All Claims Administrators Periodically: The section 5814.6 penalty audit program must be set up to cover all programs within a reasonable period of time and it must be coordinated with the other aspects of the Division's audit function. The best way to accomplish that goal is to include the review of section 5814 penalties at the time of the routine PAR audits under section 129.</p> <p>The initial review of section 5814</p>		<p>See above.</p> <p>See above.</p>	<p><u>determine if the decisions, findings, and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit Unit may proceed with an investigation.</u></p> <p>See above.</p> <p>See above.</p>

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	<p>penalty awards should be within the context of a routine audit and should be sufficient on which to base a determination. But a more serious pattern of failures at this stage would also allow the Division to conduct a more thorough review, followed by a targeted audit, if necessary.</p> <p>Complaint Audits: Based on a verified complaint relating to specific section 5814 penalties, the Division can trigger a focused audit under section 129 and impose any necessary enforcement tools to correct a poorly performing program.</p> <p>While section 5814.6 permits only the application of a monetary penalty, the resulting penalties might cause the administrative director, under the broader authority of Labor Code section 129, to target poor performing programs, identify the specific problems causing multiple section 5814 penalties, and set up a remedial plan to ensure compliance with or without multiple additional monetary penalties.</p> <p>While SB 899 gave the administrative</p>		<p>See above.</p> <p>We disagree. Labor Code section 5814.6 provides authority to assess penalties that would not be allowed under Labor Code section 129. Labor Code section 129 does not provide for remedial plans.</p>	<p>See above.</p> <p>None.</p>

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	<p>director the authority to apply administrative penalties for a pattern of knowing violations of section 5814 penalty, for all the reasons stated above, the best way to accomplish that goal is through the routine DWC audits that are already in place. The Division has proposed separate and independent audits not just for section 5814.6 penalties, but also the UR program and WCIS.</p> <p>CWCI supports the effective enforcement of these new standards but the Institute's members are concerned that the creation of new separate and independent audits is not only abandoning a functioning program, but seems to be a rejection of the social policy decision made by the Legislature in 2002 and a repudiation of the Commission's research. The Institute is troubled that the Division plans to conduct 4 separate audits of claims administrators without needing to do so. The community wants to avoid a diluted and ineffective program with duplicative procedures, inadequate coordination, and wasted resources by</p>		<p>See above. The revised regulations will clarify that there will be not investigation or audit unless more than one final penalty award has been issued on or after June 1, 2004.</p>	<p>See above.</p>

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	<p>both the regulated community and the DWC.</p> <p>Recommendation: The regulation must include an unambiguous notice advising the regulated community of the operative date of the statute and a statement that conduct occurring before that date will not be considered for the purposes of this penalty.</p> <p>The proposed regulations are replete with ambiguous references relating to whether claim files, documents, or other conduct can be “used as evidence of violations of Labor Code section 5814”.</p> <p>The only evidence of a violation of section 5814 is a findings and award issues by a WCALJ. The only section 5814 penalty awards that are relevant to the inquiry posed by these</p>		<p>We disagree. The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p> <p>Additionally, conduct that occurred prior to June 1, 2004 may be relevant to show a general business practice and that a claims administrator acted with knowledge of the facts.</p> <p>See above response.</p>	<p>The regulations will be revised to indicate that the award must be issued on or after June 1, 2004 and that no penalty will be based solely on penalty awards issued before June 1, 2004.</p> <p>See above response.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225(l)	<p>regulations are those involving conduct on or after June 1, 2004. Any conduct prior to the operational date of the statute is beyond the scope of the enabling act. The regulations should state that unambiguously. Section 5814.6 imposes an entirely new administrative penalty with the highest upper end limit in the Labor Code. It is the most significant monetary enforcement device available to the administrative director (AD).</p> <p>General business practice: As defined by the proposed regulations, the statutory standard has been diluted to mean that anyone charged with corporate knowledge could be penalized to the maximum extent of the statute for having “more than one” section 5814 penalty award imposed against them. This wordplay eviscerates the meaning of the law.</p> <p>Recommendation: “General business practice” means a pattern of <u>penalties for which the Workers’ Compensation Appeals Board has awarded a section 5814</u></p>		<p>We disagree. Although a finding that the claims administrator unreasonably failed or refused to make a timely compensation payment in 20% of its claims files would clearly be evidence of a general business practice, it is not a minimum standard. The proposed definition sets forth a minimum requirement and allows for a case by case approach. Also, the mitigation factors set forth in 10225.1(j) may be applied to adjust penalties.</p>	<p>The definition will be revised to state: <u>“General business practice” means a pattern of violations of Labor Code section 5814 at a single adjusting location that can be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of more than one claim.</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>penalty for conduct occurring on/or after June 1, 2004 violations of Labor Code section 5814 at a single adjusting location that can be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of 20% or more than one of the claims. The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier compensation order in more than one claim. The conduct may include a single practice and/or separate, discrete acts or omissions, in the handling of more than one claims.</p>			<p><u>However, where a claim file with a violation of Labor Code section 5814 has been adjusted at multiple adjusting locations, that claim file may be considered when determining the general business practice of any of the adjusting locations where the violation occurred even if the file has been transferred to a different adjusting location. The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier compensation order in more than one claim. The conduct may include a single practice and/or</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225(q)	<p>Recommendation: “Knowingly” means a <u>managing agent</u> acting with <u>actual knowledge that the act or omission is unlawful, or with conscious disregard for the unlawful nature of the</u> of the facts of the conduct at issue. For the purposes of this article, a corporation has knowledge of the facts an employee a <u>managing agent</u> receives while acting within the scope of his or her authority. A corporation has knowledge of information contained in its records and of the actions of its employees performed in the scope and course of employment, <u>if known to its managing agent</u>. An employer or insurer has knowledge of information contained in the records of its third-party administrator and of the actions of the employees of the third-party administrator performed in the scope and course of employment, <u>if those actions are known to the corporation’s managing agent</u>.</p>		<p>We disagree. These are administrative penalties, not punitive damages. The language suggested by commenter comes from jury instructions regarding proving malice, oppression or fraud by a corporation. Our language comes from CACI 3701 for vicarious liability.</p>	<p><u>separate, discrete acts or omissions in the handling of more than one claim.</u></p> <p>None.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>§10225(m)</p> <p>§10225.1(a)</p>	<p>Recommendation: “Indemnity” means payments made directly to an eligible person as a result of a work injury and as required under Division 4 of the Labor Code, including but not limited to temporary disability indemnity, salary continuation in lieu of temporary disability indemnity, permanent disability indemnity, vocational rehabilitation temporary disability indemnity, vocational rehabilitation maintenance allowance, life pension and death benefits.</p> <p>Recommendation: Administrative penalties shall only be imposed under this section based on when an employer or insurer has knowingly violations of violated Labor Code section 5814, after more than one penalty awards have been issued by a workers’ compensation administrative law judge for unreasonable delay or refusal to pay compensation <u>with a frequency that indicates a general business practice.</u></p>		<p>We disagree. The proposed definition clarifies what is included by the term “indemnity.”</p> <p>We disagree. The recommendation does not clarify when penalties will be imposed – it merely restates the Labor Code.</p>	<p>None.</p> <p>The subdivision will be revised as follows: (a) <u>Administrative penalties shall only be imposed under this section based on violations of Labor Code section 5814, after more than one penalty awards have been issued by a workers’ compensation administrative law</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225(g)(8)	This section should be deleted.		We disagree. This section covers other unnamed penalty awards	<u>judge on or after June 1, 2004 for unreasonable delay or refusal to pay compensation.</u> None.
	<p>Commenter states that the proposed rule unnecessarily abandons the legislative authority to impose larger penalties for egregious violations of section 5816. The proposed rule should take full advantage of the authority granted by SB 899. However, the proposed rule does not. Section 5814.6, as amended by SB 899, provides for a penalty of up to four hundred thousand dollars (\$400,000.00) for violations of section 5814 when the violations are indicative of a business practice. The proposed rule only authorizes a penalty of one hundred thousand dollars (\$100,000.00) for the same egregious conduct.</p> <p>The Legislature clearly contemplated</p>	<p>Bo V. Thoreen, Esq. Law Offices of Bo Thoreen June 29, 2006 Via Email and Fax</p>	<p>We agree to clarify the section. \$100,000 is the minimum penalty for each finding of a knowing violation of Labor Code 5814.6 with a frequency that indicates a general business practice and the subsequent penalties will be added to that penalty. If there are subsequent findings, the penalty will be doubled and then tripled, but shall not exceed \$400,000.</p>	<p>The subdivision will be revised to state: <u>(1) \$ 100,000 for each finding by the Administrative Director, or his or her designee, that an employer or insurer, or entity acting on its behalf, knowingly violated of a knowing violation of Labor Code section 5814 with a frequency that indicates a general business practice, and for each applicable penalty award, the following;</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>that there are, or could be, providers within the Workers' Compensation system who make delay and denial a part of their business model. Such conduct is antithetical to the operation of the system but, absent a substantial penalty, it is the most economically advantageous decision. The Legislature clearly chose not to rely on providers to do the right thing on their own. To that end, the Legislature authorized a penalty of up to Four Hundred Thousand Dollars (\$400,000.00).</p> <p>The full penalty will be reserved for flagrant misconduct. There is <i>never</i> a circumstance in which a penalty would be imposed on a carrier who has conducted itself properly. The penalty is exclusively reserved for those situations in which, after hearing, a carrier has been found to have made a business practice of knowing and unjustified delay and denial. The truth is that a penalty cannot be truly enough unless it forces the complete disgorgement of all value obtained by the misconduct. However, the Legislature has only authorized a</p>			

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>Four Hundred Thousand Dollar (\$400,000.00) penalty. The Department should retain the full authority granted by the Legislature so that it has the maximum flexibility to assess egregious violations and make certain that providers cannot ultimately benefit from their wrongs. The lower penalty limit undermines the deterrent value of the penalty. A penalty limit of One Hundred Thousand Dollars (\$100,000.00) is simply too low. It is not a sufficient threat to deter carriers from conducting themselves in clear and conscious violation of Section 5814.</p>			
<p>§ 10225</p>	<p>Commenter shares the concern of others that the proposed regulations are not consistent with the auditing philosophy as expressed in Labor Code Sections 129 and 129.5, and ACIC urges DWC to modify the proposed regulations to bring them into conformance with the philosophy of the Labor Code. Also, ACIC believes that it is inconsistent with the legislative intent of Labor Code Section 5814.6 to consider conduct occurring prior to June 1, 2004. ACIC</p>	<p>Maria Altamero Association of California Insurance Companies June 29, 2006 Email</p>	<p>Disagree. Labor Code 5814.6 is not comparable to audits conducted under Labor Code section 129. Section 129 audits are checking for ordinary claims handling practices. Labor Code section 5814.5 is authorizes assessing penalties when an employer or insurer knowingly violates section 5814 with a frequency that indicates a general business practice.</p>	<p>None.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
	<p>are concerned that one post-2004 incident could be combined with a couple of examples of misconduct occurring 5-10 years earlier to impose a Section 5814.6 penalty. That is not the Legislature's intent.</p> <p>Commenter also agrees with those suggesting that the definition of "knowingly" is too broad and unrealistic. ACIC specifically endorses the comments of the California Workers' Compensation Institute (CWCI) regarding the proposed penalty regulations.</p>		<p>The award must be post 6/1/04, not the conduct that caused the award. See <i>Abney v. Workers' Compensation Appeals Board</i> (Writ Denied, 2005) 70 Cal. Comp. Cases 460.</p> <p>Additionally, conduct that occurred prior to June 1, 2004 may be relevant to show a general business practice and that a claims administrator acted with knowledge of the facts.</p> <p>We disagree. These are administrative penalties, not punitive damages. The language suggested by CWCI comes from jury instructions regarding proving malice, oppression or fraud by a corporation. Our language comes from CACI 3701 for vicarious liability.</p>	<p>The regulations will be revised to indicate that the award must be issued on or after June 1, 2004 and that no penalty will be based solely on penalty awards issued before June 1, 2004.</p> <p>None.</p>
§ 10225	The commenter states that the proposed regulations do not include a process to follow once the Administrative Director (AD) has	Jose Ruiz Claims Operations Manager	We disagree. As set forth in 10225.1(d) and (e), the audit unit may follow the audit regulations or the provisions of	None.

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§ 10225 (l)	<p>made a determination that an employer/insurer warrants an investigation or audit under LC §5814.6. Existing regulations for an audit or investigation include the processes used by the Division of Workers' Compensation (DWC) (§§10106 and 10106.1) and have been a useful tool for the industry. The defined processes insure that each entity selected for audit is treated in the same manner, held to the same standards and informed of the process from commencement to completion. Commenter recommends establishing a process in the regulations that is consistent with existing investigation regulations used by the DWC (§§10106, 10106.1 and 10106.5).</p> <p>Recommendation: Amendment to the definition of a "General Business Practice", and inclusion of the definition for "Practice" as follows: General Business Practice. <i>For purposes of this article, a general business practice</i> means a pattern of violations of Labor Code section 5814 at a single adjusting location that can</p>	<p>State Compensation Insurance Fund</p> <p>June 29, 2006 Email</p>	<p>the Government Code. However, it is possible to determine if 5814 penalty awards have been issued without auditing the claims administrators.</p> <p>Disagree. DWC's definition of knowingly requires employee to be acting within scope of employment. However, simply having an un-enforced procedure manual should not shield an insurer that fails to pay awards for compensation.</p>	<p>None.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1 (a)	<p>be distinguished by a reasonable person from an isolated event. The pattern of violations must occur in the handling of more than one claim. The pattern also may be based on evidence of violations of Labor Code section 5814 for failure to comply with an earlier award of compensation in more than one claim. The conduct may include a single practice and/or separate, discrete acts or omissions in the handling of more than one claim. <u>General Business Practice is conduct that is demonstrated by a frequency and pattern of practices. Practice is defined as a series of deliberate acts occurring in the course of business adopted by a claims administrator which constitutes a regular, recurring series of events, and which is not the result of the actions of a single person acting beyond his or her authorized scope of authority as defined by the claims administrator’s job description or operations manual.</u></p> <p>Recommendation: Amend the language as follows:</p> <p>“(a) Administrative penalties shall</p>		<p>We disagree. This section refers to the penalties. The “frequency” language is contained in 10225.1(i)(1).</p>	<p>None.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1 (b)	<p>only be imposed under this section based on violations of Labor Code section 5814, after more than one penalty awards have has been issued by a workers' compensation administrative law judge for unreasonable delay or refusal to pay compensation <i>with a frequency that indicates a general business practice as defined in paragraph subsection 10225(l).</i></p> <p>State Fund recommends that the use of statistical data from a LC §5814.6 investigation should not be included in the formula use under §10107.1 to determine if an audit should be expanded.</p>		<p>Agree to clarify how the audit unit will receive copies of WCAB decisions, findings and awards and that the audit unit must receive one or more final penalty awards before it proceeds with an investigation.</p>	<p>The regulations will be revised to include: <u>(b) The Division of Workers' Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.</u></p> <p><u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings,</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>§10225.1 (a), (d) and (e)</p>	<p>Neither §10225.1 (a), (d) nor (e) provide a timeframe for when violations of LC §5814 awards will be applied to the <i>more than one penalty award has been issued</i>. When a violation of a LC §5814 award is issued on or after 6/1/04, it could be accrued and counted towards “more than one penalty award.” The PAR audit regulations provide a specific timeframe of three years of claims to be audited. Due to an absence of a timeframe, DWC could find an employer/insurer with one violation in 2004 and a second in 2009 and the insurer could be subject to an</p>		<p>We agree to revise the adjustment factors to address this concern.</p>	<p><u>and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit Unit may proceed with an investigation.</u></p> <p>Section 10225.1(i)(5) will be added as an adjustment factor: <u>(5) The time period in which the violations occurred</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1 (g) (5)	<p>investigation of a general business practice under LC §5814.6. State Fund recommends providing a definitive start and end period of when a violation of LC §5814 will be counted towards application of LC §5814.6.</p> <p>Recommendation: Amend the regulation as follows:</p> <p>(g)(5) \$ 2,500 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for a failure to provide the Notice or to provide the supplemental job displacement benefit voucher, as required by section 10133.51(b) and section 10133.56(c), respectively, of Title 8 of the California Code of Regulations, in a timely manner to an eligible employee.</p>		We agree to revise the subdivision.	<p>(6)-(5) \$ 2,500 for each penalty award by a workers' compensation administrative law judge for a violation of Labor Code section 5814 for an unreasonable delay or refusal a failure to provide the Notice or to provide the supplemental job displacement benefit voucher, as required by section 10133.51(b) and section 10133.56(c), respectively, of Title 8 of the California Code of Regulations; in a timely manner to</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1 (i)	<p>Recommendation is to amend the following: “(i) Each administrative penalty assessed under this section shall be doubled upon a second finding by the Administrative Director under Labor Code §5814.6 within a five (5) year period. <u>Any LC §5814.6 violation / conduct that occurred during the previous investigation process shall not be included in determining a general business practice for any subsequent investigation.</u> Upon a third or subsequent finding by the Administrative Director under Labor Code §5814.6, within the same five (5) year period, each penalty shall be tripled. In no event shall the administrative penalties assessed against a single employer or insurer after doubling or tripling exceed \$400,000.”</p>		<p>We disagree. A prior violation would be relevant to knowledge and pattern of practice.</p>	<p>an eligible employee None.</p>
§10225.2 (q), (r) and (s)	<p>Recommendation: Amend subsections (q), (r) and (s) to reflect calendar or working days.</p>		<p>Agree.</p>	<p>The subdivisions will be revised to state “calendar” days.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225 <i>et seq.</i>	<p>Commenter believes that with minor changes, the regulations should be adopted as quickly as possible. Commenter supports the regulation in general and suggest only the following changes. First, the current practice of requiring workers' compensation judges to report all Findings and Awards or Findings and Orders for violation of LC §5814 to the Administrative Director should be memorialized via regulation. In the past, some judges have expressed reluctance to "turn in" defendants for fear that they would be challenged by that defendant in the future. Putting into regulation the current practice insures compliance.</p>	<p>David N. Rockwell, President</p> <p>California Applicant's Attorneys Association</p> <p>June 29, 2006 Via Hand delivery</p>	<p>Agree.</p>	<p>The following subdivisions will be added:</p> <p><u>b) The Division of Workers' Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.</u></p> <p><u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings, and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit</u></p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
<p>§10225.1 (i)</p> <p>§10225.1 (a)</p>	<p>It would double or triple administrative penalties for a second and third finding by the Administrative Director within a five (5) year period. This creates a deadline for the “findings” that we believe is unrealistic given the time it takes to litigate what would be a hotly contested issue. We believe that the five (5) year period should be extended to ten (10) years for the process to occur.</p> <p>The section contains a clerical error. The sentence should read.</p> <p>(a) <u>Administrative penalties shall only be imposed under this section based on violations of LC section 5814, after more than one penalty awards have been issued by a workers’ compensation administrative law judge for unreasonable delay or refusal to pay compensation.</u></p>		<p>We disagree. Five years is an adequate time period.</p> <p>Agree.</p>	<p><u>Unit may proceed with an investigation.</u></p> <p>None.</p> <p>This correction will be made.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1 (a)	Commenter states that it appears that a party found in violation of Labor Code Section 5814 is immune from administrative penalties until they have violated this Labor Code section for the second time. Commenter questions why they are being awarded a “free bite of the apple” with respect to any administrative penalty. The first violation is one too many.	Stephen Cattolica, Director, Government Relations Advocal June 29, 2006 Email	Disagree. Labor Code section 5814 requires a frequency to indicate a general business practice. This requires more than one violation.	None.
§10225(l) §10225(q) §10225.1 (b) and (c)	The commenter states that the proposed regulation defining “general business practice” fails to comply with the Government Code Section 11349.1 standards of necessity, authority, clarity, and consistency. It cannot be easily understood. The definition “knowingly” does not comply with the necessity standard. To note, the word “knowingly” is not used in proposed section 10255.1 It does not comply with the authority standard. Nothing in Labor Code section 5814.6 provides the DWC the power to conduct independent investigations or separate compliance	Steven Suchil, Asst. Vice-President American Insurance Association June 29, 2006 Via Email and Mail	We disagree. It sets forth a minimum standard and is based on case law. As the facts will be different from case to case, there must be flexibility in the definition. Agree that section 10225.1(i)(1) should use the word “knowingly” not “knowing.” We agree to clarify that an investigation is trigger by more than one penalty award. We disagree that the sections do not comply with the	None. Section 10225.1(i)(1) will be revised to replace “knowing” with “knowingly.” The following language will be added: <u>(b) The Division of Workers’</u>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
10225(h)(v)(x)(cc)	<p>audits. Further, subdvs. (b) and (c) fail to comply with the necessity standard.</p> <p>These UR definitions are not relevant.</p>		<p>authority provided by the Labor Code or that they are nor necessary. Labor Code section 5814.6 authorizes the imposition of penalties when an employer or insurer knowingly violates section 5814 with a frequency that indicates a general business practice. Although the division will be able to determine if penalty awards were issued, there may be additional investigation that is required in order to meet the requirements of the statute. Labor Code section 133 provides the power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon the division under the code.</p> <p>Disagree. They are defined because they are used in</p>	<p><u>Compensation shall regularly submit copies of WCAB decisions, findings, and/or awards issued pursuant to Labor Code section 5814 to the Audit Unit.</u></p> <p><u>(c) The Audit Unit shall obtain monthly Labor Code section 5814 activity reports and shall determine if the decisions, findings, and/or awards are final. If more than one final penalty award has been issued on or after June 1, 2004 against a claims administrator at a single adjusting location, the Audit Unit may proceed with an investigation.</u></p> <p>None.</p>

Administrative Penalties Pursuant to Labor Code Section 5814.6	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
§10225.1(g)	Fails to comply with the authority, clarity, necessity and consistency standards. Section 10225.1 states a penalty can only be imposed after more than one penalty award has been issued. While (g)(2) through (8) provide for a single penalty violation, Labor Code section 5814.6 requires a frequency that indicates a general business practice.		<p>section 10225.1(g)(4)(A)(B) and (C).</p> <p>We agree to clarify that the penalties in (g) (now(i)) are imposed in addition to the \$100,000, after there has been an initial finding of a general business practice.</p>	<p>The subdivision will be revised to state: <u>(1) \$ 100,000 for each finding by the Administrative Director, or his or her designee, that an employer or insurer, or entity acting on its behalf, knowingly violated of a knowing violation of Labor Code section 5814 with a frequency that indicates a general business practice, and for each applicable penalty award, the following:</u></p>